



AGENDA
CITY OF LAKE WORTH BEACH
UTILITY CITY COMMISSION MEETING
CITY HALL COMMISSION CHAMBER
TUESDAY, SEPTEMBER 26, 2023 - 6:00 PM

ROLL CALL:

PLEDGE OF ALLEGIANCE: led by Commissioner Sarah Malega

AGENDA - Additions / Deletions / Reordering:

PRESENTATIONS: (there is no public comment on Presentation items)

- A. Electric Utility Update by Ed Liberty, Electric Utility Director
- B. Water Utility Update by Sam Heady, Water Utility Director

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:

APPROVAL OF MINUTES:

- A. [August 29, 2023](#)

CONSENT AGENDA: (public comment allowed during Public Participation of Non-Agendaed items)

- A. [Amendment No. 1 to Agreement 22FRP69 between the Florida Department of Environmental Protection and the City of Lake Worth Beach](#)
- B. [Fiscal Year 2024 Resilient Florida Grant Program Additional Funding Request for the Eden Place Sea Level Rise Mitigation Project](#)
- C. [Fiscal Year 2024 Resilient Florida Grant Program Application for the 9th Avenue South Pump Station Project](#)
- D. [Fiscal Year 2024 Resilient Florida Grant Program Application for the Parrot Cove Stormwater Resiliency Project](#)

UNFINISHED BUSINESS:

- A. [Purchased Power Cost Adjustment Update \(PCA\)](#)
- B. [Resolution No. 31-2023 – Establishment of an Electric Utility Rate Stabilization Fund](#)

NEW BUSINESS:

- A. [Resolution No. 43-2023 – Establishing the rates and charges for the Electric Utility for Fiscal Year 2024](#)
- B. [Resolution No. 44-2023 – Establish the rates and charges for the Water System for Fiscal Year 2023-2024](#)
- C. [Resolution No. 45-2023 – Establishing the rates, fees and changes for the City's Sub-regional Sewer System](#)

- D. [Resolution No. 46-2023 – Establishing the rates and charges for the Local Sewer System](#)
- E. [Agreement with Encop, Inc. for the renovation of Men’s Room, the Employee Lounge, small Ladies’ Room, Supplies Room and for construction of the Linemen’s Ready Room at the 1900 2nd Avenue North Building](#)
- F. [Ratification of Purchases from NuCAT Corporation under Work Orders #61 thru #73](#)
- G. [Transmission Operator Alliance Agreement](#)
- H. [Approval of contracts with L. E. Myers Co., Michels Power Inc., Wilco Electrical LLC., and Hooper Corporation to provide construction services for the Electric Utility System Hardening and Reliability Improvement Program](#)
- I. [Approval of contracts with NuCAT Corp., TeamWorknet, Inc and Powerserve Technologies, Inc for professional services to perform electrical equipment inspection, testing, repair and maintenance for the City’s Electric Utility](#)
- J. [Agreement with Bermex, Inc. for the reading of electric and water utility meters during emergency situations](#)
- K. [Waiver of Procurement Process and Agreement with Gresco Utility Supply, Inc., for the purchase and delivery of 27 kV Capacitor Banks](#)
- L. [Resolution No. 47-2023 - Designate Vaughn Hayduk as the City’s Board Member for the East Central Regional Water Reclamation Facility \(ECR\) as Sam Heady’s alternate member representing Lake Worth Beach](#)
- M. [Piggyback agreement with Tripp Electric, Inc. for pump, motor, and equipment services](#)
- N. [Third Amendment to Agreement with Allied Universal Corporation to purchase Sodium Hypochlorite \(Bleach\) for water treatment and odor control](#)
- O. [Piggyback Agreement with Miller Pipeline, LLC for the provision of Wastewater Collection System Rehabilitation Services](#)
- P. [Agreement for On-Call Large Pipeline Contractor Services with Amici Engineering Contractors, LLC](#)
- Q. [Purchase Order with PSI Technologies, Inc. for a Wilo Sewage Pump for the Regional Master Pump Station](#)

ADJOURNMENT:

The City Commission has adopted Rules of Decorum for Citizen Participation (See Resolution No. 81-2022). The Rules of Decorum are posted within the City Hall Chambers, City Hall Conference Room, posted online at: <https://lakeworthbeachfl.gov/government/virtual-meetings/>, and available through the City Clerk’s office. Compliance with the Rules of Decorum is expected and appreciated.

If a person decides to appeal any decision made by the board, agency or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. (F.S. 286.0105)

**MINUTES
CITY OF LAKE WORTH BEACH
UTILITY CITY COMMISSION MEETING
CITY HALL COMMISSION CHAMBER
TUESDAY, AUGUST 29, 2023 - 6:00 PM**

The meeting was called to order by Mayor Resch on the above date at 6:03 PM in the City Commission Chamber located at City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

ROLL CALL:

Present were Mayor Betty Resch, Vice Mayor Christopher McVoy, Commissioners Sarah Malega, Kimberly Stokes and Commissioner Reinaldo Diaz. Also present were City Manager Carmen Davis, Assistant City Attorney Christy Goddeau and Deputy City Clerk Shayla Ellis.

PLEDGE OF ALLEGIANCE: led by Commissioner Sarah Malega.

AGENDA - Additions/Deletions/Reordering:

There were no changes to the agenda.

PRESENTATIONS: (there is no public comment on Presentation items)

- A. Water Utility Update by Sam Heady, Water Utility Director (0:27)
- B. Electric Utility Update by Ed Liberty, Electric Utility Director (38:14)
- C. Overview of Electric Utility Bond-Funded Projects Underway by Ashley Sirdar, Electric Utility Assistant Project Manager (46:18)
- D. Operational Benefits from SHRIP Projects Utilizing Bond Funds by Jason Bailey, Assistant Director - System Operations (51:46)

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA: (1:05:47)

APPROVAL OF MINUTES: (1:06:07)

Action: Motion made by Commissioner Stokes and seconded by Commissioner Diaz to approve the following minutes:

- A. July 25, 2023

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz.. NAYS: None.

CONSENT AGENDA: (public comment allowed during Public Participation of Non-Agendaed items) (1:06:14)

Action: Motion made by Commissioner Malega and seconded by Commissioner Stokes to approve the Consent Agenda.

- A. Utility Easement by and between Gator State Storage Lake Worth, LLC and the City of Lake Worth Beach
- B. Authorize Drinking Water State Revolving Fund Amendment 2 to Loan Agreement DW501750 for the 2-inch Watermain Replacement Phase 5 and 6 Project
- C. Authorize Ethernet cards and Stratix Switch purchase with Rexel for the City's Water Utility Department
- D. The City of Lake Worth Beach and The Town of Lantana Interlocal Agreement

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz.. NAYS: None

NEW BUSINESS: (1:06:25)

- A. Resolution No. 31-2023 – Establishment of an Electric Utility Rate Stabilization Fund (1:06:26)

Action: Motion made by Commissioner Malega and seconded by Commissioner Diaz to approve Resolution No. 31-2023 – Establishment of an Electric Utility Rate Stabilization Fund. **Motion withdrawn.**

Action: Consensus to table this item until the next utility meeting to address the requested changes to outline the specific guidelines for fund balance ranges, the review of this fund on a quarterly basis with the PCA rate review and the addition of language to outline the specific intent of the fund and the requirements for fund usage.

Action: Consensus to utilize the surplus PCA funds after the Establishment of the Rate Stabilization Fund to establish an Emergency Storm Fund. (1:39:17)

The meeting recessed at 7:41 and reconvened at 7:53 PM.

- B. Agreement with Transportation Management Services Inc for the transportation of contract and/or mutual aid crews during emergency situations (1:48:35)

Action: Motion made by Commissioner Malega and seconded by Vice Mayor McVoy to approve the Agreement with Transportation Management Services Inc for the transportation of contract and/or mutual aid crews during emergency situations.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz.. NAYS: None

- C. Resolution No. 32-2023 – 2020 Non-Ad Valorem Revenue Bond Reallocation (1:49:48)

Action: Motion made by Commissioner Diaz and seconded by Commissioner Stokes to approve Resolution No. 32-2023 – 2020 Non-Ad Valorem Revenue Bond Reallocation.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz.. NAYS: None

D. Resolution No. 33-2023 – FY 2023 Budget Amendment for Subregional Wastewater payment to Palm Beach County Water Utilities Department (1:50:41)

Action: Motion made by Vice Mayor McVoy and seconded by Commissioner Malega to approve Resolution No. 33-2023 – FY 2023 Budget Amendment for Subregional Wastewater payment to Palm Beach County Water Utilities Department.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz.. NAYS: None

E. Authorize water meter purchase with Badger Meter for the City's Water Utility Department (1:51:50)

Action: Motion made by Commissioner Stokes and seconded by Vice Mayor McVoy to approve the water meter purchase with Badger Meter for the City's Water Utility Department.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz.. NAYS: None

F. Authorize water meter encoders purchase with The Avanti Company for the City's Water Utility Department (1:52:14)

Action: Motion made by Vice Mayor McVoy and seconded by Commissioner Diaz to approve the water meter encoders purchase with The Avanti Company for the City's Water Utility Department.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz.. NAYS: None

G. Work Order No. 08 with Globaltech, Inc. for Reverse Osmosis Water Treatment Plant Membrane Replacement Project (1:52:27)

Action: Motion made by Commissioner Diaz and seconded by Commissioner Malega to approve Work Order No. 08 with Globaltech, Inc. for Reverse Osmosis Water Treatment Plant Membrane Replacement Project.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz.. NAYS: None

H. Work Order No. 09 with Globaltech, Inc. for Water Treatment Plant Hurricane Hardening Project (1:52:58)

Action: Motion made by Commissioner Diaz and seconded by Vice Mayor McVoy to approve Work Order No. 09 with Globaltech, Inc. for Water Treatment Plant Hurricane Hardening Project.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz.. NAYS: None

I. Work Order No. 10 with Globaltech, Inc. for Design-Build services for Radio System Upgrade Phase 2 – Lift Stations Project (1:53:19)

Action: Motion made by Commissioner Malega and seconded by Commissioner Diaz to approve Work Order No. 10 with Globaltech, Inc. for Design-Build services for Radio System Upgrade Phase 2 – Lift Stations Project.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz.. NAYS: None

J. Task Order No. 02 with Kimley-Horn and Associates, Inc. for Nitrification Action Plan Phase 2 Project (1:53:37)

Action: Motion made by Commissioner Diaz and seconded by Vice Mayor McVoy to approve Task Order No. 02 with Kimley-Horn and Associates, Inc. for Nitrification Action Plan Phase 2 Project.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz.. NAYS: None

K. Agreement with Close Construction Services for South Palm Park Stormwater Pump Station Project (1:54:29)

Action: Motion made by Commissioner Diaz and seconded by Commissioner Malega to approve the Agreement with Close Construction Services for South Palm Park Stormwater Pump Station Project.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz.. NAYS: None

L. Task Order No. 03 with Holtz Consulting Engineers, Inc. for South Palm Park Stormwater Pump Station Project (2:12:37)

Action: Motion made by Commissioner Diaz and seconded by Vice Mayor McVoy to approve Task Order No. 03 with Holtz Consulting Engineers, Inc. for South Palm Park Stormwater Pump Station Project.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz.. NAYS: None

ADJOURNMENT: (2:13:30)

Action: Motion made by Commissioner Malega and seconded by Commissioner Stokes to adjourn the meeting at 8:18 PM.

Vote: Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy and Commissioners Malega, Stokes and Diaz.. NAYS: None

ATTEST:

Betty Resch, Mayor

Melissa Ann Coyne, City Clerk

Minutes Approved: September 26, 2023

Item time stamps correspond to the meeting recording on YouTube.

DRAFT

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Water Utilities

TITLE:

Amendment No. 1 to Agreement 22FRP69 between the Florida Department of Environmental Protection and the City of Lake Worth Beach

SUMMARY:

The First Amendment to the Agreement 22FPR69 between the Florida Department of Environmental Protection and the City provides for updates and revisions to the terms and conditions, and technical provisions of the original Agreement for the Lake Worth South Palm Park Sea Level Rise Mitigation project. There is no fiscal impact resulting from this amendment.

BACKGROUND AND JUSTIFICATION:

On July 5, 2022, the City Commission approved Resolution No. 40-2022 approving and authorizing the Vice Mayor to execute the Agreement 22FPR69 between the Florida Department of Environmental Protection (the "Department") and the City for the Lake Worth Beach South Palm Park Sea Level Rise Mitigation project. This Agreement set forth the terms and conditions for the use of \$300,000 in funding assistance under the Resilient Florida Grant Program to implement mitigation measures to relieve the chronic flooding in the South Palm Park neighborhood. The City is providing a local cost share of \$300,000 for the project.

Amendment No. 1 to the Project Agreement 22FPR69 contains updates, revisions and additions that the Department deemed necessary. These revisions include the following:

- Section 6 is revised to designate Ashley Larson as the Department's Grant Manager;
- Attachment 1, Standard Terms and Conditions is deleted in its entirety and replaced with Attachment 1-A, Revised Terms and Conditions
- Attachment 2, Special Terms and Conditions is deleted in its entirety and replaced with Attachment 2-A, Revised Special Terms and Conditions;
- Attachment 3, Grant Work Plan is deleted in its entirety and replaced with Attachment 3-A, Revised Grant Work Plan;
- Attachment 5, Special Audit Requirements is deleted in its entirety and replaced with Attachment 5-A, Revised Special Audit Requirements;
- Attachment 6, Resilient Florida Program Specific Requirements is deleted in its entirety and replaced with Attachment 6-A, Revised Resilient Florida Specific Requirements;
- Attachment 8, Contract Provisions SLFRF is deleted in its entirety and replaced with Attachment 8-A, Revised Contract Provisions;
- Exhibit A, Progress Report Form is deleted in its entirety and replaced with Exhibit A-1, Progress Report Form; and
- Exhibit J, Common Carrier or Contracted Carrier Attestation Form (PURR 1808) is added to the Agreement. (This form is not applicable to the City.)

All other terms and conditions of the original Agreement remain valid and in effect.

These revisions are essentially technical in nature and follow updates from the Office of the General Counsel.. Amendment No. 1 to the Agreement 22FPR69 has no fiscal impact on the project.

MOTION:

Move to approve/disapprove Amendment No. 1 to Agreement 22FPR69 between the Florida Department of Environmental Protection and the City.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
Amendment No. 1 to Agreement 22FPR69

**AMENDMENT NO. 1
TO AGREEMENT NO. 22FRP69
BETWEEN
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
CITY OF LAKE WORTH BEACH**

This Amendment to Agreement No. 22FRP69 (Agreement) is made by and between the Department of Environmental Protection (Department), an agency of the State of Florida, and City of Lake Worth Beach (Grantee), on the date last signed below.

WHEREAS, the Department entered into the Agreement with the Grantee for Lake Worth Beach South Palm Park Sea Level Rise Mitigation (Project), effective July 29, 2022; and,

WHEREAS, the DEPARTMENT has requested an update to Attachment 1, Attachment 2, Attachment 3, Attachment 5, Attachment 6, Attachment 8, Exhibit A, and Exhibit F following updates from the Office of the General Counsel.

WHEREAS, the Department has requested to add Exhibit J to the Agreement as set forth herein; and,

WHEREAS, other changes to the Agreement are necessary.

NOW THEREFORE, the Department and Grantee hereby agree as follows:

1. Section 6. of the Standard Grant Agreement is hereby revised to the following:

Department's Grant Manager
Name: Ashley Larson
Address: Resilient Florida Program 2600 Blair Stone Road, MS235 Tallahassee, Florida 32399
Phone: 850-245-8675
Email: ashley.m.larson@floridadep.gov

2. Attachment 1, Standard Terms and Conditions, is hereby deleted in its entirety and replaced with Attachment 1-A, Revised Standard Terms and Conditions. All references in the Agreement to Attachment 1 shall hereinafter refer to Attachment 1-A, Revised Standard Terms and Conditions.
3. Attachment 2, Special Terms and Conditions, is hereby deleted in its entirety and replaced with Attachment 2-A, Special Standard Terms and Conditions. All references in the Agreement to Attachment 2 shall hereinafter refer to Attachment 2-A, Revised Special Terms and Conditions.
4. Attachment 3, Grant Work Plan, is hereby deleted in its entirety and replaced with Attachment 3-A, Revised Grant Work Plan, as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to Attachment 3 shall hereinafter refer to Attachment 3-A, Revised Grant Work Plan.
5. Attachment 5, Special Audit Requirements, is hereby deleted in its entirety and replaced with Attachment 5-A, Revised Special Audit Requirements, attached hereto and made a part of the Agreement. All references in the Agreement to Attachment 5, shall hereinafter refer to Attachment 5-A, Revised Special Audit Requirements.
6. Attachment 6, Resilient Florida Program Specific Requirements is hereby deleted in its entirety and replaced with Attachment 6-A, Revised Resilient Florida Program Specific Requirements, attached hereto and made

a part of the Agreement. All references in the Agreement to Attachment 6, shall hereinafter refer to Attachment 6-A, Revised Resilient Florida Program Specific Requirements.

7. Attachment 8, Contract Provisions SLFRF is hereby deleted in its entirety and replaced with Attachment 8-A, Revised Contract Provisions SLFRF, attached hereto and made a part of the Agreement. All references in the Agreement to Attachment 8, shall hereinafter refer to Attachment 8-A, Revised Contract Provisions SLFRF.
8. Exhibit A, Progress Report Form, is hereby deleted in its entirety and replaced with Exhibit A-1, attached hereto and made a part of the Agreement. All references in the Agreement to Exhibit A shall hereinafter refer to Exhibit A-1.
9. Exhibit F, Final Project Report, is hereby deleted in its entirety and replaced with Exhibit F-1, attached hereto and made a part of the Agreement. All references in the Agreement to Exhibit F, shall hereinafter refer to Exhibit F-1.
10. All other terms and conditions of the Agreement remain in effect. If and to the extent that any inconsistency may appear between the Agreement and this Amendment, the provisions of this Amendment shall control.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

The parties agree to the terms and conditions of this Amendment and have duly authorized their respective representatives to sign it on the dates indicated below.

CITY OF LAKE WORTH BEACH

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
Authorized Signature

By: _____
Secretary or Designee

Betty Resch, Mayor
Print Name and Title

Alex Reed, Director
Print Name and Title

Date: _____

Date: _____

List of attachments/exhibits included as part of this Amendment:

Specify Type	Letter/ Number	Description
Attachment	1-A	Revised Standard Terms and Conditions (13 pages)
Attachment	2-A	Revised Special Terms and Conditions (3 pages)
Attachment	3-A	Revised Grant Work Plan (2 pages)
Attachment	5-A	Revised Special Audit Requirements (6 pages)
Attachment	6-A	Revised Program Specific Requirement (2 pages)
Attachment	8-A	Revised Contract Provisions SLFRF (6 pages)
Exhibit	A-1	Revised Progress Report Form (1 page)
Exhibit	F-1	Revised Final Progress Report (2 pages)
Exhibit	J	PUR 1808 – Common Carrier Attestation (1 page)

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
REVISED STANDARD TERMS AND CONDITIONS
APPLICABLE TO GRANT AGREEMENTS**

ATTACHMENT 1-A

1. Entire Agreement.

This Grant Agreement, including any Attachments and Exhibits referred to herein and/or attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Grantee's forms or invoices shall be null and void.

2. Grant Administration.

- a. Order of Precedence. If there are conflicting provisions among the documents that make up the Agreement, the order of precedence for interpretation of the Agreement is as follows:
- i. Standard Grant Agreement
 - ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
 - iii. Attachment 1, Standard Terms and Conditions
 - iv. The Exhibits in the order designated in the Standard Grant Agreement
- b. All approvals, written or verbal, and other written communication among the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.
- c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.
- d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following:
- (1) an increase or decrease in the Agreement funding amount;
 - (2) a change in Grantee's match requirements;
 - (3) a change in the expiration date of the Agreement; and/or
 - (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department.
- A change order to this Agreement may be used when:
- (1) task timelines within the current authorized Agreement period change;
 - (2) the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than twenty percent (20%) of the total budget as last approved by Department;
 - (3) changing the current funding source as stated in the Standard Grant Agreement; and/or
 - (4) fund transfers between budget categories for the purposes of meeting match requirements.
- This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
- e. All days in this Agreement are calendar days unless otherwise specified.

3. Agreement Duration.

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

4. Deliverables.

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

5. Performance Measures.

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not knowingly infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes, if provided by Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by Grantee meet the Agreement requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

6. Acceptance of Deliverables.

- a. Acceptance Process. All deliverables must be received and accepted in writing by Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at Grantee's expense. If Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at Grantee's sole expense. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which Grantee may remedy the objections noted by Department. The Grantee's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

7. Financial Consequences for Nonperformance.

- a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. None of the financial consequences for nonperformance in this Agreement as more fully described in the Grant Work Plan shall be considered penalties.
- b. Invoice reduction
If Grantee does not meet a deadline for any deliverable, the Department will reduce the invoice by 1% for each day the deadline is missed, unless an extension is approved in writing by the Department.
- c. Corrective Action Plan. If Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by Grantee to Department. The Department requests that Grantee specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
 - i. The Grantee shall submit a CAP within ten (10) days of the date of the written request from Department. The CAP shall be sent to the Department's Grant Manager for review and approval. Within ten (10) days of receipt of a CAP, Department shall notify Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, Grantee shall have ten (10) days from receipt of Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain Department approval of a CAP as specified above may result in Department's termination of this Agreement for cause as authorized in this Agreement.
 - ii. Upon Department's notice of acceptance of a proposed CAP, Grantee shall have ten (10) days to commence implementation of the accepted plan. Acceptance of the proposed CAP by Department does not relieve Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, Department shall retain the right to

require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by Department or steps taken by Grantee shall preclude Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to Department as requested by Department's Grant Manager.

- iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by Department may result in termination of the Agreement.

8. Payment.

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by Department, Department agrees to pay Grantee for services rendered in accordance with section 215.422, Florida Statutes (F.S.).
- b. Taxes. The Department is exempted from payment of State sales, use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with Department. The Grantee shall not use Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: <https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-expenditures.pdf>.
- e. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by Department pursuant to the Grant Work Plan shall be submitted to Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Grantee shall only invoice Department for deliverables that are completed in accordance with the Grant Work Plan.
- f. State Funds Documentation. Pursuant to section 216.1366, F.S., if Contractor meets the definition of a non-profit organization under section 215.97(2)(m), F.S., Contractor must provide the Department with documentation that indicates the amount of state funds:
 - i. Allocated to be used during the full term of the contract or agreement for remuneration to any member of the board of directors or an officer of Contractor.
 - ii. Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer of the Contractor.The documentation must indicate the amounts and recipients of the remuneration. Such information must be posted on the State's the contract tracking system and maintained pursuant to section 215.985, F.S., and must be posted on the Contractor's website, if Contractor maintains a website.
- g. Interim Payments. Interim payments may be made by Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by Department's Grant Manager.
- h. Final Payment Request. A final payment request should be submitted to Department no later than sixty (60) days following the expiration date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the expiration date of the Agreement.
- i. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature reduces or eliminates appropriations.
- j. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration. To obtain the applicable interest rate, please refer to: <https://www.myfloridacfo.com/division/aa/local-governments/judgement-interest-rates>.

- k. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded to Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department. If this Agreement is funded with federal funds and the Department is required to refund the federal government, the Grantee shall refund the Department its share of those funds.

9. Documentation Required for Cost Reimbursement Grant Agreements and Match.

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.
- b. Overhead/Indirect/General and Administrative Costs. If Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by Grantee exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual Costs (Subcontractors). Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.
- i. For fixed-price (vendedor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, Grantee shall request the advance written approval from Department's Grant Manager of the fixed price negotiated by Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of Department Grant Manager's approval of the fixed-price amount, Grantee may proceed in finalizing the fixed-price subcontract.
- ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
- d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with section 112.061, F.S.
- e. Direct Purchase Equipment. For the purposes of this Agreement, Equipment is defined as capital outlay costing \$5,000 or more. Match or reimbursement for Grantee's direct purchase of equipment is subject to specific approval of Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Exhibit B, Property Reporting Form.
- f. Rental/Lease of Equipment. Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
- g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the

terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of Grantee's contract obligations to its subcontractor, Department shall not reimburse any of the following types of charges: cell phone usage; attorney's fees or court costs; civil or administrative penalties; or handling fees, such as set percent overages associated with purchasing supplies or equipment.

- h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on Exhibit A, Progress Report Form, to Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by Grantee within thirty (30) days.

11. Retainage.

The following provisions apply if Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.
- b. If Grantee fails to perform the requested work or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment of the retainage associated with the work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed. The Department shall provide written notification to Grantee of the failure to perform that shall result in retainage forfeiture. If the Grantee does not correct the failure to perform within the timeframe stated in Department's notice, the retainage will be forfeited to Department.
- c. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- d. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

12. Insurance.

- a. Insurance Requirements for Sub-Grantees and/or Subcontractors. The Grantee shall require its sub-grantees and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as described in this Agreement. The Grantee shall require all its sub-grantees and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Sub-grantees and/or subcontractors must provide proof of insurance upon request.
- b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- c. Proof of Insurance. Upon execution of this Agreement, Grantee shall provide Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Agreement. Upon receipt of written request from Department, Grantee shall furnish Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- d. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Grantee cannot get adequate coverage, Grantee shall immediately notify Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.

- e. Insurance Trust. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured.

13. Termination.

- a. Termination for Convenience. When it is in the State's best interest, Department may, at its sole discretion, terminate the Agreement in whole or in part by giving 30 days' written notice to Grantee. The Department shall notify Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee must submit all invoices for work to be paid under this Agreement within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.
- b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described in the Events of Default provisions below occur or in the event that Grantee fails to fulfill any of its other obligations under this Agreement. If, after termination, it is determined that Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Department. The rights and remedies of Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination unless as otherwise directed by Department, Grantee shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, Grantee shall continue work on any portion of the Agreement not terminated. If the Agreement is terminated before performance is completed, Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Grantee shall not be entitled to recover any cancellation charges or lost profits.
- d. Continuation of Prepaid Services. If Department has paid for any services prior to the expiration, cancellation, or termination of the Agreement, Grantee shall continue to provide Department with those services for which it has already been paid or, at Department's discretion, Grantee shall provide a refund for services that have been paid for but not rendered.
- e. Transition of Services Upon Termination, Expiration, or Cancellation of the Agreement. If services provided under the Agreement are being transitioned to another provider(s), Grantee shall assist in the smooth transition of Agreement services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Grant Work Plan. The Grantee shall not perform any services after Agreement expiration or termination, except as necessary to complete the transition or continued portion of the Agreement, if any.

14. Notice of Default.

If Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, any of the events of default, Department shall provide notice to Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, Grantee will be found in default, and Department may terminate the Agreement effective as of the date of receipt of the default notice.

15. Events of Default.

Provided such failure is not the fault of Department or outside the reasonable control of Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding;
- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information;
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Agreement;

- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement;
- i. One or more of the following circumstances, uncorrected for more than thirty (30) days unless, within the specified 30-day period, Grantee (including its receiver or trustee in bankruptcy) provides to Department adequate assurances, reasonably acceptable to Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
 - i. Entry of an order for relief under Title 11 of the United States Code;
 - ii. The making by Grantee of a general assignment for the benefit of creditors;
 - iii. The appointment of a general receiver or trustee in bankruptcy of Grantee's business or property; and/or
 - iv. An action by Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle Grantee to any additional compensation.

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to Grantee. In case of any delay Grantee believes is excusable, Grantee shall notify Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Grantee shall perform at no increased cost, unless Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to Department, in which case Department may: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate Agreement in whole or in part.

18. Indemnification.

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
 - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Department;
 - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of Grantee.

- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon Department giving Grantee: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by Department in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Agreement.
- d. No provision in this Agreement shall require Department to hold harmless or indemnify Grantee, insure or assume liability for Grantee's negligence, waive Department's sovereign immunity under the laws of Florida, or otherwise impose liability on Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

20. Remedies.

Nothing in this Agreement shall be construed to make Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it, at law or in equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

21. Waiver.

The delay or failure by Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.
- b. Pursuant to sections 287.133, 287.134, and 287.137 F.S., the following restrictions apply to persons placed on the convicted vendor list, discriminatory vendor list, or the antitrust violator vendor list:
 - i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
 - ii. Discriminatory Vendors. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
 - iii. Antitrust Violator Vendors. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity;

may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.

- iv. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or antitrust violator vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

23. Compliance with Federal, State and Local Laws.

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts issued as a result of this Agreement.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

24. Build America, Buy America Act (BABA) - Infrastructure Projects with Federal Funding.

This provision does not apply to Agreements that are wholly funded by Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act. Also, this provision does not apply where there is a valid waiver in place. However, the provision may apply to funds expended before the waiver or after expiration of the waiver.

If applicable, Recipients or Subrecipients of an award of Federal financial assistance from a program for infrastructure are required to comply with the Build America, Buy America Act (BABA), including the following provisions:

- a. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. All manufactured products used in the project are produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- c. All construction materials are manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

25. Investing in America

Grantees of an award for construction projects in whole or in part by the Bipartisan Infrastructure Law or the Inflation Reduction Act, including the following provision:

- a. **Signage Requirements**
 - a. **Investing in America Emblem:** The recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a "project funded by President Biden's Bipartisan

Infrastructure Law” or “project funded by President Biden’s Inflation Reduction Act” as applicable. The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The recipient will ensure compliance with the guidelines and design specifications provided by EPA for using the official Investing in America emblem available at:

<https://www.epa.gov/invest/investing-america-signage>.

b. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

26. Scrutinized Companies.

- a. Grantee certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- b. If this Agreement is for more than one million dollars, the Grantee certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in section 287.135, F.S. Pursuant to section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- c. As provided in subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

27. Lobbying and Integrity.

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to section 216.347, F.S., except that pursuant to the requirements of section 287.058(6), F.S., during the term of any executed agreement between Grantee and the State, Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with sections 11.062 and 216.347, F.S.

28. Record Keeping.

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted, Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of Department’s Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee’s integrity or responsibility. Such information may include, but shall not be limited to, Grantee’s business or financial records, documents, or files of any type or form that refer to or relate to Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

29. Audits.

- a. Inspector General. The Grantee understands its duty, pursuant to section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its sub-grantees and/or subcontractors issued under this Agreement, if any, impose this requirement, in writing, on its sub-grantees and/or subcontractors, respectively.

- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
- i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;
 - ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
 - iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. Special Audit Requirements. The Grantee shall comply with the applicable provisions contained in Attachment 5, Special Audit Requirements. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, Grantee shall utilize the guidance provided under 2 CFR §200.331 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: <https://apps.fldfs.com/fsaa>.
- d. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) days of such request.
- e. No Commingling of Funds. The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
- i. If Department finds that these funds have been commingled, Department shall have the right to demand a refund, either in whole or in part, of the funds provided to Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from Department shall refund, and shall forthwith pay to Department, the amount of money demanded by Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from Department by Grantee to the date repayment is made by Grantee to Department.
 - ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by Department, from another source(s), Grantee shall reimburse Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by Grantee to the date repayment is made to Department.
 - iii. Notwithstanding the requirements of this section, the above restrictions on commingling funds do not apply to agreements where payments are made purely on a cost reimbursement basis.

30. Conflict of Interest.

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

31. Independent Contractor.

The Grantee is an independent contractor and is not an employee or agent of Department.

32. Subcontracting.

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Grantee.
- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to Department's secure information or any facility by any Grantee employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- e. The Department will not deny Grantee's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.
- f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both Grantee and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for Grantee to meet the required delivery schedule.

33. Guarantee of Parent Company.

If Grantee is a subsidiary of another corporation or other business entity, Grantee asserts that its parent company will guarantee all of the obligations of Grantee for purposes of fulfilling the obligations of Agreement. In the event Grantee is sold during the period the Agreement is in effect, Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Grantee.

34. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

35. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of Grantee, its agents, servants, and employees, nor shall Grantee disclaim its own negligence to Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department consents to a subcontract, Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

36. Severability.

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

37. Grantee's Employees, Subcontractors and Agents.

All Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under Agreement must comply with all security and administrative requirements of Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

38. Assignment.

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of Department. In the event of any assignment, Grantee remains secondarily liable for performance of the Agreement, unless Department expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to Grantee of its intent to do so.

39. Compensation Report.

If this Agreement is a sole-source, public-private agreement or if the Grantee, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the

Grantee shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation for the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Grantee must also inform the Department of any changes in total executive compensation between the annual reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Grantee.

40. Execution in Counterparts and Authority to Sign.

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Revised Special Terms and Conditions
AGREEMENT NO. 22FRP69**

ATTACHMENT 2-A

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Scope of Work.

The Project funded under this Agreement is Lake Worth Beach South Palm Park Sea Level Rise Mitigation. The Project is defined in more detail in Attachment 3, Grant Work Plan.

2. Duration.

- a. Reimbursement Period. The reimbursement period for this Agreement is the same as the term of the Agreement.
- b. Extensions. There are extensions available for this Project.
- c. Service Periods. Additional service periods may be added in accordance with 2.a above and are contingent upon proper and satisfactory technical and administrative performance by the Grantee and the availability of funding.

3. Payment Provisions.

- a. Compensation. This is a cost reimbursement Agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.
- b. Invoicing. Invoicing will occur as indicated in Attachment 3.
- c. Advance Pay. Advance Pay is not authorized under this Agreement.

4. Cost Eligible for Reimbursement or Matching Requirements.

Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

<u>Reimbursement</u>	<u>Match</u>	<u>Category</u>
<input type="checkbox"/>	<input type="checkbox"/>	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
<input type="checkbox"/>	<input type="checkbox"/>	a. Fringe Benefits, N/A.
<input type="checkbox"/>	<input type="checkbox"/>	b. Indirect Costs, N/A.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Contractual (Subcontractors)
<input type="checkbox"/>	<input type="checkbox"/>	Travel, in accordance with Section 112, F.S.
<input type="checkbox"/>	<input type="checkbox"/>	Equipment
<input type="checkbox"/>	<input type="checkbox"/>	Rental/Lease of Equipment
<input type="checkbox"/>	<input type="checkbox"/>	Miscellaneous/Other Expenses
<input type="checkbox"/>	<input type="checkbox"/>	Land Acquisition

5. Equipment Purchase.

No Equipment purchases shall be funded under this Agreement.

6. Land Acquisition.

There will be no Land Acquisitions funded under this Agreement.

7. Match Requirements

The Agreement requires at least a 50% match on the part of the Grantee. Therefore, the Grantee is responsible for providing \$300,000 through cash or third party in-kind towards the project funded under this Agreement.

The Grantee may claim allowable project expenditures made Choose an item or after for purposes of meeting its match requirement as identified above.

Each payment request submitted shall document all matching funds and/or match efforts (i.e., in-kind services) provided during the period covered by each request. The final payment will not be processed until the match requirement has been met.

8. Insurance Requirements

Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Grantee may provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:

- a. **Commercial General Liability Insurance.**
The Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The Department, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$250,000 for each occurrence and \$500,000 policy aggregate.
- b. **Commercial Automobile Insurance.**
If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage
- c. **Workers' Compensation and Employer's Liability Coverage.**
The Grantee shall provide workers' compensation, in accordance with Chapter 440, F.S. and employer liability coverage with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Grant.
- d. **Other Insurance.** None.

9. Quality Assurance Requirements.

There are no special Quality Assurance requirements under this Agreement.

10. Retainage.

Retainage is permitted under this Agreement. Retainage may be up to a maximum of 5% of the total amount of the Agreement.

11. Subcontracting.

The Grantee may subcontract work under this Agreement without the prior written consent of the Department's Grant Manager except for certain fixed-price subcontracts pursuant to this Agreement, which require prior approval. The Grantee shall submit a copy of the executed subcontract to the Department prior to submitting any invoices for subcontracted work. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement.

12. State-owned Land.

The work will not be performed on State-owned land.

13. Office of Policy and Budget Reporting.

There are no special Office of Policy and Budget reporting requirements for this Agreement.

14. Common Carrier.

- a. Applicable to contracts with a common carrier – firm/person/corporation that as a regular business transports people or commodities from place to place. If applicable, Contractor must also fill out and return PUR 1808 before contract execution. If Contractor is a common carrier pursuant to section

908.111(1)(a), Florida Statutes, the Department will terminate this contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808.

- b. Applicable to solicitations for a common carrier – Before contract execution, the winning Contractor(s) must fill out and return PUR 1808, and attest that it is not willfully providing any service in furtherance of transporting a person into this state knowing that the person unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The Department will terminate a contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808.

15. Additional Terms.

Documentary Evidence Requirement for Subcontractor(s). If any work associated with this Agreement is completed by a subcontractor(s), the Grantee shall require that such subcontractor(s) submit documentary evidence (e.g., workshop agendas; meeting recordings) to Grantee demonstrating that the subcontractor(s) has fully performed its Project obligation(s). The Grantee shall forward copies of all such documentary evidence to the Department with the Grantee's relevant deliverable(s), using the approved Project Timeline set forth in Attachment 3 to this Agreement (Grant Work Plan).

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
REVISED GRANT WORK PLAN
AGREEMENT NO. 22FRP69**

ATTACHMENT 3-A

PROJECT TITLE: Lake Worth Beach South Palm Park Sea Level Rise Mitigation

PROJECT LOCATION: The Project is located in the City of Lake Worth Beach within Palm Beach County, Florida.

PROJECT DESCRIPTION:

The City of Lake Worth Beach (Grantee) will implement the Lake Worth Beach South Palm Park Sea Level Rise Mitigation (Project) which will address the chronic flood conditions at the southern end of the South Palm Park neighborhood along 18th Avenue South in Lake Worth Beach, which is getting worse with sea level rise. The existing stormwater outfall is out of date and ineffective, therefore during high and king tide events, collected stormwater is not properly discharged into Lake Worth Lagoon. In order to make the stormwater system more resilient to sea level rise and higher tides, the stormwater collection system will be improved to include the installation of a stormwater pump station and a new outfall pipe with a tidal check valve.

TASKS AND DELIVERABLES:

Task 1 - Construction

Description: The Grantee will construct a stormwater collection pump station and replace an existing outfall pipe with a new outfall pipe equipped with a tidal check valve, in accordance with the construction contract documents. Project costs associated with the Construction task include work approved through construction bids and/or construction-phase engineering and monitoring services contracts. Eligible activities may include mobilization, demobilization, construction observation or inspection services, physical and environmental surveys, and mitigation projects. Project Management activities may include field engineering services, site meetings with construction contractor(s) and design professionals, and overall project coordination and supervision. Construction shall be conducted in accordance with all local, state, and federal permits.

Deliverables: The Grantee will submit:

- **1.1:** List of permit type, number, and issuing entity for all local, state, and federal permits required for the Project;
- **1.2:** A copy of the final design and record (as-built) drawings;
- **1.3:** A Certificate of Completion signed by a Florida-registered Professional Engineer;
- **1.4:** Coordinate final site visit with Department and submit the Closeout Site Visit Form received from assigned Field Agent; and
- **1.5:** Quarterly Project management reports signed by a Florida-registered Professional Engineer, to include:
 - A summary of project and site inspection(s);
 - Meeting minutes to all attended meetings; and
 - Field notes

PERFORMANCE MEASURES: The Grantee will submit all deliverables for each task to the Department’s Grant Manager on or before the Task Due Date listed in the Project Timeline. The Department’s Grant Manager will review the deliverable(s) to verify that they meet the specifications in the Grant Work Plan and the task description, to include any work being performed by any subcontractor(s), and will provide written acceptance or denial of the deliverable(s) to the Grantee within thirty (30) calendar days. Tasks may include multiple deliverables to be completed. The Department will accept partial and full deliverables. Incomplete deliverables will not be accepted. A “partial deliverable” is defined as a deliverable consisting of one (1) or more (but not all) subcomponents listed in the deliverable list for a single task, where such subcomponent(s) are delivered to the Department at one hundred percent (100%) completion. A “full deliverable” is defined as a deliverable comprising all subcomponents listed in the deliverable list for a single task, all delivered to the Department at one hundred percent (100%) completion. An “incomplete deliverable” is defined as a deliverable for which one hundred percent (100%) completion has not been achieved for any of the subcomponents listed in the deliverable list for a single task. A task is considered one hundred percent (100%) complete upon the Department’s receipt and approval of all deliverable(s) listed within the task and the Department’s approval provided by the Deliverable Acceptance Letter.

CONSEQUENCES FOR NON-PERFORMANCE: For each task deliverable not received by the Department at one hundred percent (100%) completion and by the specified due date listed in the Agreement’s most recent Project Timeline, the Department will reduce the relevant Task Funding Amount(s) paid to Grantee in proportion to the percentage of the deliverable(s) not fully completed and/or submitted to the Department in a timely manner.

PAYMENT REQUEST SCHEDULE: Following the Grantee’s full or partial completion of a task’s deliverable(s) and acceptance by the Department’s Grant Manager, the Grantee may submit a payment request for cost reimbursement using the Exhibit C, Payment Request Summary Form. All payment requests must be accompanied by the Deliverable Acceptance Letter; the Exhibit A, Progress Report Form, detailing all progress made in the invoice period; and supporting fiscal documentation including match, if applicable. Interim payments will not be accepted. Upon the Department’s receipt of the aforementioned documents and supporting fiscal documentation, the Department’s Grant Manager will have ten (10) working days to review and approve or deny the payment request.

PROJECT TIMELINE AND BUDGET DETAIL: The tasks must be completed by, and all deliverables received by, the corresponding task due date listed in the table below. Cost-reimbursable grant funding must not exceed the budget amounts indicated below. Requests for any change(s) must be submitted prior to the current task due date listed in the Project Timeline. Requests are to be sent via email to the Department’s Grant Manager, with the details of the request and the reason for the request made clear.

Task No.	Task Title	Budget Category	DEP Amount	Local Amount	Total Amount	Task Start Date	Task Due Date
1	Construction	Contractual Services	\$300,000	\$300,000	\$600,000	Upon Execution	6/30/2026
Total:			\$300,000	\$300,000	\$600,000		

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Revised Special Audit Requirements
(State and Federal Financial Assistance)**

Attachment 5-A

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the agreement*) to the recipient (*which may be referred to as the "Recipient", "Grantee" or other name in the agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEP Department staff, limited scope audits as defined by 2 CFR 200.425, or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR §200.330

1. A recipient that expends \$750,000 or more in Federal awards in its fiscal year, must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of Environmental Protection. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200.514 will meet the requirements of this part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508-512.
3. A recipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F-Audit Requirements. If the recipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F-Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <https://sam.gov/content/assistance-listings>.

Attachment 5-A

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through the Department of Environmental Protection by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal year ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and required by PART I of this form shall be submitted, when required by 2 CFR 200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR 200.36 and 200.512
 - A. The Federal Audit Clearinghouse designated in 2 CFR §200.501(a) (the number of copies required by 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

By Mail:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

2. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (<http://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

4. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

5. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with 2 CFR 200, Subpart F-Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (non and for-profit organizations), Rules of the Auditor General, should indicate the date and the reporting package was delivered to the recipient correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (5)** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

EXHIBIT – 1

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Note: If the resources awarded to the recipient represent more than one federal program, provide the same information shown below for each federal program and show total federal resources awarded

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program A	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
Original Agreement	U.S. Department of Treasury	21.027	SLFRP0125	\$300,000.00	152-D22
Federal Program B	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	

Note: Of the resources awarded to the recipient represent more than one federal program, list applicable compliance requirements for each federal program in the same manner as shown below:

Federal Program A	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.:(eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	
Federal Program B	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	

Note: If the resources awarded to the recipient for matching represent more than one federal program, provide the same information shown below for each federal program and show total state resources awarded for matching.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program A	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category
Federal Program B	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

Note: If the resources awarded to the recipient represent more than one state project, provide the same information shown below for each state project and show total state financial assistance awarded that is subject to section 215.97, F.S.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program A	State Awarding Agency	State Fiscal Year ¹	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
State Program B	State Awarding Agency	State Fiscal Year ²	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category

Total Award	\$300,000.00	
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Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc.) listed under this category.

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [<https://sam.gov/content/assistance-listings>] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/searchCatalog.aspx>], and State Projects Compliance Supplement (Part Four: State Projects Compliance Supplement [https://apps.fldfs.com/fsaa/state_project_compliance.aspx]). The services/purposes for which the funds are to be used are included in the Agreement’s Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.

¹ Subject to change by Change Order.

² Subject to change by Change Order.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
REVISED PROGRAM-SPECIFIC REQUIREMENTS
RESILIENT FLORIDA PROGRAM**

ATTACHMENT 6-A

1. Sea Level Impact Projection Study Requirement. If the project is within the designated area, pursuant to Section 161.551, F.S. and Chapter 62S-7, *Florida Administrative Code*, the Grantee is responsible for performing a Sea Level Impact Projection (SLIP) study and submitting the resulting report to the Department. The SLIP study report must be received by the Department, approved by the Department, and be published on the Department's website for at least thirty (30) days before construction can commence. This rule went into effect July 1, 2021, and applies to certain state-funded construction projects located in the coastal building zone as defined in the rule.
2. Permits. The Grantee acknowledges that receipt of this grant does not imply nor guarantee that a federal, state, or local permit will be issued for a particular activity. The Grantee agrees to ensure that all necessary permits are obtained prior to implementation of any grant-funded activity that may fall under applicable federal, state, or local laws. Further, the Grantee shall abide by all terms and conditions of each applicable permit for any grant-funded activity. Upon request, the Grantee must provide a copy of all acquired and approved permits for the project.
3. Attachment 3, Grant Work Plan, Performance Measures. All deliverables and reports submitted to the Department should be submitted electronically and must be compliant with the Americans with Disabilities Act, also known as "508 Compliant," in all formats provided.
4. Copyright, Patent and Trademark. The Department reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for state government purposes:
 - a. The copyright in any work developed under this Agreement; and
 - b. Any rights or copyright to which the Grantee or subcontractor purchases ownership with grant support.
5. Grant funds may not be used to support ongoing efforts to comply with legal requirements, including permit conditions, mitigation, and settlement agreements.
6. Funding Source. With the exception of audiovisuals not intended for presentation to the general public that are produced either as research instruments or for documenting experimentation or findings (unless otherwise required under the special terms of this Agreement), Grantee agrees to include the Department's logo (which can be found on the Department's website at: <https://floridadep.gov> or by contacting the Grant Manager for a copy) on all publications, printed reports, maps, audiovisuals (including videos, slides, and websites), and similar materials, as well as the following language:

"This work was funded in part through a grant agreement from the Florida Department of Environmental Protection's Office of Resilience and Coastal Protection Resilient Florida Program. The views, statements, findings, conclusions, and recommendations expressed herein are those of the author(s) and do not necessarily reflect the views of the State of Florida or any of its subagencies."

The next printed line must identify the month and year of the publication.

7. Final Project Report. The Grantee must submit Exhibit F, Final Project Report Form, prior to requesting final payment. The Final Project Report may be submitted in lieu of the final quarterly status report, only in instances where the next quarterly report falls after the project's completion date.

8. Project Photos. The Grantee must submit Exhibit G, Photo Release Form, with the first submission of deliverables and reports (Exhibit A and F) that include photos.
9. Contractual Services. For all grant agreements that include Contractual Services as an expenditure category, the Grantee must submit Exhibit H, Contractual Services Certification, and all required supporting documentation for all contractors conducting work under the grant agreement, prior to requesting payment that includes contractual services.
10. Vulnerability Assessments. For all Planning grant agreements (Resilient Florida Grant Program and Regional Resilience Entities), the Grantee must submit Exhibit I, Vulnerability Assessment Compliance Checklist Certification, with the final grant deliverable(s).
11. Geographic Information System (GIS) files and associated metadata. All GIS files and associated metadata must adhere to the Resilient Florida Program's GIS Data Standards (found on the Resilient Florida Program website: <https://floridadep.gov/rcp/resilient-florida-program/documents/resilient-florida-program-gis-data-standards>), and raw data sources shall be defined within the associated metadata.
12. State and Local Fiscal Recovery Funds. For all grant agreements funded with the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) under the American Rescue Plan Act, the Grantee must submit the SLFRF Reporting Requirements Form upon execution of the grant agreement.

ATTACHMENT 8-A
Revised Contract Provisions for Coronavirus State and Local Fiscal Recovery Funds
(SLFRF) Agreements

The Department, as a Non-Federal Entity as defined by 2 CFR §200.69, shall comply with the following provisions, where applicable. For purposes of this Grant Agreement between the Department and the Grantee, the term “Recipient” shall mean “Grantee.”

Further, the Department, as a pass-through entity, also requires the Grantee to pass on these requirements to all lower tier subrecipients/contractors, and to comply with the provisions of the award, the SLFRF implementing regulation, including applicable provisions of the OMB Uniform Guidance (2 CFR Part 200), and all associated terms and conditions. Therefore, Grantees must include these requirements in all related subcontracts and/or sub-awards. Grantees can include these requirements by incorporating this Attachment in the related subcontract and/or sub-awards, however for all such subcontracts and sub-awards, the Grantee shall assume the role of the Non-Federal Entity and the subrecipients shall assume the role of the Recipient.

2 CFR PART 200 APPENDIX 2 REQUIREMENTS

1. Administrative, Contractual, and Legal Remedies

The following provision is required if the Agreement is for more than \$150,000. In addition to any of the remedies described elsewhere in the Agreement, if the Recipient materially fails to comply with the terms and conditions of this Contract, including any Federal or State statutes, rules, or regulations, applicable to this Contract, the Non-Federal Entity may take one or more of the following actions.

- A. Temporarily withhold payments pending correction of the deficiency by the Recipient.
- B. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- C. Wholly or partly suspend or terminate this Contract.
- D. Take other remedies that may be legally available.

The remedies identified above, do not preclude the Recipient from being subject to debarment and suspension under Presidential Executive Orders 12549 and 12689. The Non-Federal entity shall have the right to demand a refund, either in whole or part, of the funds provided to the Recipient for noncompliance with the terms of this Agreement.

2. Termination for Cause and Convenience

Termination for Cause and Convenience are addressed elsewhere in the Agreement.

3. Equal Opportunity Clause

The following provision applies if the agreement meets the definition of “federally assisted construction contract” as defined by 41 CFR Part 60-1.3:

During the performance of this Agreement, the Recipient agrees as follows:

- A. The Recipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Recipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - i. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Recipient will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's

essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Recipient's legal duty to furnish information.

- D. The Recipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Agreement or understanding, a notice to be provided advising the said labor union or workers' representatives of the Recipient's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Recipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Recipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Recipient's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Recipient may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Recipient will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Recipient will take such action with respect to any subcontractor purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. Contract Work Hours and Safety Standards Act

Where applicable, if the Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, the Recipient must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Recipient must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. Rights to Inventions Made Under Agreement

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the Non-Federal Entity or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Non-Federal Entity or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. Clean Air Act (42 U.S.C. 7401-7671q.), the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), and EPA Regulations

If the Agreement is in excess of \$100,000, the Recipient shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control

Act as amended (33 U.S.C. 1251-1387), and by the EPA (40 CFR Part 15). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).

- i. The Grantee shall include these requirements for the Clean Air Act and the Federal Water Pollution Act in each subcontract exceeding \$100,000 financed in whole or in part with SLFRF funds.

7. Debarment and Suspension (Executive Orders 12549 and 12689)

The Recipient certifies that it is not listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 and 2 CF 1200 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.”

8. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

The Recipient certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. If applicable, the Recipient shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award, using form SF-LLL, available at:

https://apply07.grants.gov/apply/forms/sample/SFLLL_1_2_P-V1.2.pdf.

- i. Grantees who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier, up to the recipient.

9. Procurement of Recovered Materials

The Recipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act as described in 2 CFR part 200.322.

10. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

The Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. See Section 889 of Public Law 115-232 (National Defense Authorization Act 2019). Also, see 2 CFR 200.216 and 200.471.

11. Domestic Preferences for Procurement

The Recipients and subrecipients must, to the greatest extent practical, give preference to the purchase, acquisition, or use of goods, products, or materials produced in the United States in accordance with 2 CFR 200.322.

ADMINISTRATIVE

1. General Federal Regulations

Recipients shall comply with the regulations listed in 2 CFR 200, 48 CFR 31, and 40 U.S.C. 1101 *et seq.*

2. Rights to Patents and Inventions Made Under a Contract or Agreement

Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 U.S.C. 200 through 212.

3. Compliance with the Trafficking Victims Protection Act of 2000 (2 CFR Part 175)

Recipients, their employees, subrecipients under this award, and subrecipients' employees may not:

- A. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- B. Procure a commercial sex act during the period of time that the award is in effect; or
- C. Use forced labor in the performance of the award or subawards under the award.

4. Whistleblower Protection

Recipients shall comply with U.S.C. §4712, Enhancement of Recipient and Subrecipient Employee Whistleblower Protection. This requirement applies to all awards issued after July 1, 2013 and effective December 14, 2016 has been permanently extended (Public Law (P.L.) 114-261).

- A. This award, related subawards, and related contracts over the simplified acquisition threshold and all employees working on this award, related subawards, and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).
- B. Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.
- C. The Recipient shall insert this clause, including this paragraph C, in all subawards and in contracts over the simplified acquisition threshold related to this award; best efforts should be made to include this clause, including this paragraph C in any subawards and contracts awarded prior to the effective date of this provision.

5. Notification of Termination (2 CFR § 200.340)

In accordance with 2 CFR § 200.340, in the event that the Agreement is terminated prior to the end of the period of performance due to the Recipient's or subcontractor's material failure to comply with Federal statutes, regulations or the terms and conditions of this Agreement or the Federal award, the termination shall be reported to the Office of Management and Budget (OMB)-designated integrity and performance system, accessible through System for Award Management (SAM) currently the Federal Awardee Performance and Integrity Information System (FAPIIS). The Non-Federal Entity will notify the Recipient of the termination and the Federal requirement to report the termination in FAPIIS. See 2 CFR § 200.340 for the requirements of the notice and the Recipient's rights upon termination and following termination.

6. Additional Lobbying Requirements

- A. The Recipient certifies that no funds provided under this Agreement have been used or will be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.
- B. The Lobbying Disclosure Act of 1995, as amended (2 U.S.C. §1601 et seq.), prohibits any organization described in Section 501(c)(4) of the Internal Revenue Code, from receiving federal funds through an award, grant (and/or subgrant) or loan unless such organization warrants that it does not, and will not engage in lobbying activities prohibited by the Act as a special condition of such an award, grant (and/or subgrant), or loan. This restriction does not apply to loans made pursuant to approved revolving loan programs or to contracts awarded using proper procurement procedures.
- C. Pursuant to 2 CFR §200.450 and 2 CFR §200.454(e), the Recipient is hereby prohibited from using funds provided by this Agreement for membership dues to any entity or organization engaged in lobbying activities.

7. Increasing Seat Belt Use in the United States

Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Grantee is encouraged to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented or personally owned vehicles.

8. Reducing Text Messaging While Driving

Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Grantee is encouraged to adopt and enforce policies that ban text messaging while driving and establish workplace safety policies to decrease accidents caused by distracted drivers.

9. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970

Where applicable, 42 U.S.C. §§ 4601-4655 and implementing regulations apply to this Agreement.

COMPLIANCE WITH ASSURANCES

1. Assurances

Recipients shall comply with all applicable assurances made by the Department or the Recipient to the Federal Government during the Grant application process.

FEDERAL REPORTING REQUIREMENTS

1. FFATA

Grant Recipients awarded a new Federal grant greater than or equal to \$30,000 awarded on or after October 1, 2015, are subject to the FFATA the Federal Funding Accountability and Transparency Act ("FFATA") of 2006. The FFATA legislation requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov.

The Grantee agrees to provide the information necessary, within one (1) month of execution, for the Department to comply with this requirement.

DEPARTMENT OF TREASURY-SPECIFIC

1. Civil Rights Compliance

Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services or otherwise discriminate on the basis of race, color, national origin, (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following: Title VI of Civil Rights Acts of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department of Treasury implementing regulations at 31 CFR part 23.

The Department of Treasury will request information on recipients' compliance with Title VI of the Civil Rights Act of 1964, as applicable, on an annual basis. This information may include a narrative describing the recipient's compliance with Title VI, along with other questions and assurances.

SLFRF-SPECIFIC

1. Period of Performance

All funds from SLFRF must be obligated by December 31, 2024 and expended by December 31, 2026.

2. Equipment and Real Property Management

Any purchase of equipment or real property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.

SLFRF INFRASTRUCTURE PROJECTS

For all infrastructure projects, the Grantee shall provide the following project information on a quarterly basis to the Department:

- i. Projected/actual construction start date (month/year)
- ii. Projected/actual initiation of operation date (month/year)
- iii. Location details

SLFRF INFRASTRUCTURE PROJECTS OVER \$10 MILLION

For infrastructure projects over \$10 million, the following provisions apply:

1. Wage Certification

Grantees may provide a certification that all laborers and mechanics employed by Grantee in the performance of such project are paid wages at the rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with the Davis-Bacon Act, for the corresponding classes of laborers and mechanics employed projected of a character similar to the contract work in the civil subdivision of Florida in which the work is to be performed. If the Grantee does not provide such certification, the Grantee must provide a project employment and local impact report detailing:

- i. The number of employees of contractors and sub-contractors working on the project;
- ii. The number of employees on the project hired directly and hired through a third party;
- iii. The wages and benefits of workers on the project by classification; and
- iv. Whether those wages are at rates less than those prevailing.

Grantee must maintain sufficient records to substantiate this information upon request.

2. Project Labor Agreements

Grantees may provide a certification that the project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with the section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the Grantee does not provide such certification, the Grantee must provide a project

workforce continuity plan, detailing:

- i. How the Grantee will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project;
 - ii. How the Grantee will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project;
 - iii. How the Grantee will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities;
 - iv. Whether workers on the project will receive wages and benefits that will secure and appropriately skilled workforce in the context of the local or regional labor market; and
 - v. Whether the project has completed a labor agreement.
3. Other Reporting Requirements

Grantees must report whether the project prioritizes local hires and whether the project has Community Benefit Agreement, with a description of any such agreement, if applicable.

SLFRF WATER & SEWER PROJECTS

For water and sewer projects, Grantees shall provide the following information to the Department once the project starts, as applicable:

- i. National Pollutant Discharge Elimination System (NPDES) Permit Number, for projects aligned with the Clean Water State Revolving Fund
- ii. Public Water System (PWS) ID number, for projects aligned with the Drinking Water State Revolving Fund.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
RESILIENT FLORIDA GRANT PROGRAM
EXHIBIT A-1
REVISED PROGRESS REPORT FORM**

The current **Exhibit A, Progress Report Form** for the Resilient Florida Program grant agreements can be found on the Department's website at the link below. Each payment request must be submitted on the current form. The Department will notify grantees of any substantial changes to Exhibit A that occur during the grant agreement period.

<https://floridadep.gov/Resilient-Florida-Program/Grants>

EXHIBIT F-1

DEP AGREEMENT NO. 22FRP69

LAKE WORTH BEACH SOUTH PALM PARK SEA LEVEL RISE MITIGATION

City of Lake Worth Beach

Revised Final Project Report



Insert Month & Year

This report is funded in part through a grant agreement from the Florida Department of Environmental Protection. The views, statements, findings, conclusions, and recommendations expressed herein are those of the author(s) and do not necessarily reflect the views of the State of Florida or any of its subagencies.

Part I. Executive Summary

Part II. Methodology

Part III. Outcome

Include the following: 1) evaluation of project's ability to meet goals and expected performance measures and provide explanation for why goals were not met, if applicable; 2) identify successful outcomes, areas for improvement, and quantifiable metrics (including the assigned metric in Exhibit A, if applicable) as a result of the project; and 3) final project photos, if an implementation construction project.

Part IV. Further Recommendations

Instructions for completing Exhibit F Final Project Report Form:

DEP AGREEMENT NO.: This is the number on your grant agreement.

GRANTEE NAME: Enter the name of the grantee's agency.

PROJECT TITLE: Enter the title shown on the first page of the grant agreement.

MONTH & YEAR: Enter month and year of publication

The final Project Report must contain the following sections: Executive Summary, Methodology, Outcome, and Further Recommendations. The Final Project Report must comply with the publication requirements in the grant agreement. Please limit the final project report to no more than five (5) pages. One electronic copy shall be submitted to the Department's Grant Manager for approval. Final payment will be held until receipt and approval of the Final Project Report.

Questions regarding completion of the Final Project Report should be directed to the Department's Grant Manager, identified in paragraph 18 of this agreement.

**COMMON CARRIER OR CONTRACTED CARRIER ATTESTATION
FORM
(PUR 1808)**

Exhibit J

This form must be completed by a Common Carrier or contracted carrier and submitted to the Governmental Entity with which a Contract being is executed, amended, or renewed. Capitalized terms used herein have the definitions ascribed in section 908.111, F.S.

_____ is not willfully providing and will not willfully provide any service during the Contract term in furtherance of transporting a person into this state knowing that the person is an Unauthorized Alien, except to facilitate the detention, removal, or departure of the person from this state or the United States.

Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated in it are true.

Printed Name:

Title:

Signature:

Date:

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Water Utilities

TITLE:

Resilient Florida Grant Program Additional Funding Request for the Eden Place Sea Level Rise Mitigation Project

SUMMARY:

On July 27, 2022, the City entered into an Agreement with the Florida Department of Environmental Protection that sets forth the terms and conditions for the use of \$300,000 in funding assistance under the Resilient Florida Grant Program for mitigation measures to relieve the chronic flooding problems that adversely impact the Eden Park neighborhood. In the preliminary stages of the project it has been determined that more substantial shoreline protection will be necessary around the new outfall to address erosion issues and provide requisite safety measures. Accordingly, the City has applied for additional funding under the Fiscal Year 2024 Resilient Florida Grant Program in the amount of \$491,375 for this purpose.

BACKGROUND AND JUSTIFICATION:

On July 27, 2022, the City entered into Agreement 22FRP70 with the Florida Department of Environmental Protection that sets for the terms and conditions for the use of \$300,000 in funding assistance under the Resilient Florida Grant Program for undertaking mitigation measures to relieve the chronic flooding conditions in the Eden Park neighborhood.

The eastern terminus of 16th Avenue North currently lacks a stormwater outfall and adequate storage to alleviate local flooding. In the preliminary stages of the project, it has been determined that more substantial shoreline protection will be needed around the new outfall to address erosion issues due to high tides, and safety measures will be needed (e.g., rails or ramp). Further, the permitting and design phases will be more involved than originally contemplated, as the project location is immediately north of the Lake Worth Beach Golf Course, which may be subject to additional permit restrictions. Additional analyses will need to be conducted by the project engineer to ensure that the proposed improvements will provide resiliency in times of heavy rainfall and high tides.

The City has accordingly requested an additional \$491,375 in funding under the Fiscal Year 2024 Resilient Florida grant program. A local cost share of \$491,375 will be required to this grant funding. The source of the local cost-share funding will be the Stormwater Enterprise Fund.

According to the Stantec Financial Sustainability Analysis of the Stormwater Enterprise Fund, there are enough reserves in the fund balance to meet the requirements if Lake Worth Beach were to receive this grant opportunity.

MOTION:

Move to approve/disapprove the City's request for \$491,375 in funding assistance under the FY 2024 Resilient Florida grant funding for the Eden Place Sea Level Rise Mitigation project.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
FY 2024 Resilient Florida Grant Program Funding Request

Project Cost Estimate

Additional funding is for current work scope only. Expanded work scopes or additional phases of your project will require a new application.

Application for Additional Funding

1. Grant Information

- **Grant Name:** 22FRP70 Lake Worth Beach Eden Place Sea Level Rise Mitigation

2. Project Information

- a. What are the additional funds you are requesting? \$491,375.00**

b. Provide justification for additional funds.

The Eden Place Sea Level Rise Mitigation project was originally estimated to have a total project cost of \$600,000. This project is intended to address chronic flooding at the eastern terminus of 16th Avenue North, which currently lacks a stormwater outfall and adequate storage to alleviate local flooding. In the preliminary stages of the project, it has been determined that more substantial shoreline protection will be needed around the new outfall to address erosion issues due to high tides, and safety measures will be needed (e.g., rails or ramp). Further, the permitting and design phases will be more involved than originally contemplated, as the project location is immediately north of the Lake Worth Beach Golf Course, which may be subject to additional permit restrictions. Additional analyses will need to be conducted by the project engineer to ensure that the proposed improvements will provide resiliency in times of heavy rainfall and high tides.

- c. How much additional match has been secured? \$491,375.00**



16th Avenue N/Bella Vista Avenue

Date: August 30, 2023

Phase 1 - Preliminary Study

Item No.	Item Description	Design and Permitting ¹	Project Management ²	Construction ³	Total
1	H&H Study	\$30,000.00	-	-	\$30,000.00
2	Geotechnical Services	\$9,000.00	-	-	\$9,000.00
3	Surveyor Services	\$8,750.00	-	-	\$8,750.00
Total Estimate Per Category		\$47,750.00	-	-	\$47,750.00

Phase 2 - Seawall and Drainage Improvements

Item No.	Item Description	Design and Permitting ¹	Project Management ²	Construction ³	Total
1	Proposed Seawall	\$35,000.00	\$50,000.00	\$630,000.00	\$715,000.00
2	Road ROW and Site Civil - Include Drainage, Earthwork, and Miscellaneous Site Civil	\$60,000.00	\$50,000.00	\$685,000.00	\$795,000.00
3	Permitting Services	\$25,000.00	-	-	\$25,000.00
Total Estimate Per Category		\$120,000.00	\$100,000.00	\$1,315,000.00	\$1,535,000.00

Project Totals

		Design and Permitting ¹	Project Management ²	Construction ³	Total
Total Estimate Per Task (Phase 1 + Phase 2)		\$167,750.00	\$100,000.00	\$1,315,000.00	\$1,582,750.00

Notes:

1. The design and permitting category includes professional services for the engineering and design of each item.
2. The project management category includes field engineering services, construction observations, site meetings with the contractor, and overall project coordination and supervision.
3. The construction category includes the complete construction of each item in accordance with the construction contract documents and all state or federal permits.

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Water Utilities

TITLE:

Fiscal Year 2024 Resilient Florida Grant Program Application for the 9th Avenue South Pump Station Project

SUMMARY:

The City has applied for \$150,000 in grant funding from the Fiscal Year 2024 Resilient Florida Program for the design and permitting required for the installation of a new pump station in the 9th Avenue South easement at South Palm Way. The project will serve to address the chronic flooding in the area by improving the stormwater collection system. A local cost share of \$150,000 will be required if the grant funding is approved.

BACKGROUND AND JUSTIFICATION:

At present, the South Palm Park Neighborhood is adversely affected by significant flooding resulting from stormwater that collects from heavy rainfall and surge of water from the king tides that overflow from the Lake Worth Lagoon into the surrounding residential neighborhood. The existing stormwater drainage system is largely ineffective as the existing outfall that empties into the Lake Worth Lagoon has exceeded its useful life and has been subsequently compromised to a severely deteriorated condition.

The project will serve to relieve the chronic flooding in the area by improving the stormwater collection system through the installation of a new stormwater pump station and outfall pipe and check valve. The stormwater pump station will serve to collect stormwater and discharge it a short distance away by pumping the water through the new outfall pipe into the Lake Worth Lagoon. The installation of the tidal check valve will assist in the prevention of flood water resulting from high tides and ongoing sea level rise from penetrating into the stormwater system and adversely impacting the service area.

The City is requesting \$150,000 in grant funding through the FY 2024 Resilient Florida program to procure the services of a qualified consultant for the design and permitting of the 9th Avenue South Pump Station project. The City will be required to provide a local cost share of \$150,000 if the grant funding is approved. The source of the local cost share will be the Stormwater Enterprise Fund.

According to the Stantec Financial Sustainability Analysis of the Stormwater Enterprise Fund, there are enough reserves in the fund balance to meet the requirements if Lake Worth Beach were to receive this grant opportunity.

MOTION:

Move to approve/disapprove submission of the City's application for \$150,000 in Fiscal Year 2024 Resilient Florida grant funding for the design and permitting of the 9th Avenue Pump Station project.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
FY 2024 Resilient Florida Application



GRANT APPLICATIONS AVAILABLE FOR REVIEW

Note: status tracking is not available during the evaluation period after the portal closed on September 1, if you have any questions about the status of your application please contact Resilience@floridadep.gov.

RCP Grant Applications					
Application Type	Applicant Name	Project Name	Application Nbr	Status	
<input type="radio"/> Funding for Resilient Florida - Inf...	City of Lake Worth Beach	9th Avenue Stormwater Pump St...	RAN-01003	Submitted	

[View Existing Application](#)

Application

Resilient Florida - Infrastructure Grants

1. Applicant Information

Applicant Account ⓘ

Applicant Grant Manager ⓘ

Applicant Authorized Signee ⓘ

Applicant Fiscal Agent ⓘ

2. Project Information

*
 Choose the Entity Category:
 ⓘ

Choose the project type you are submitting:
 ⓘ

Available

- Living Shoreline and Erosion Control
- Natural Systems Restoration
- Transportation and Evacuation
- Wastewater Infrastructure
- Drinking Water Infrastructure

Chosen

- Stormwater Infrastructure
- Coastal Flood Control (Grey)

Metric Assigned ⓘ

Metric Value ⓘ

Metric Value Units

* (required) Project Title ⓘ

List the City(ies)/ Town(s)/Village(s) ⓘ

Lake Worth Beach

Project Geo Location

Latitude

26.604785

Longitude

-80.050182

Project Location (narrative)



The project is on 9th Avenue South. The cross street is South Palm Way at the 9th Ave easement.

State Lands or State Parks Utilized

No

Area Served



Available

Alachua
Baker
Bay
Bradford
Brevard

Chosen

Palm Beach

Sponsor City/County

--None--

2A. General Information

Background

Explain the demonstrated need(s) and how the project will address those needs.



Reduction in chronic flooding from excessive rainfall and water surges from king tides and sea level rise. Reduction of property damage to the surrounding neighborhood from flooding and the incidence of mosquitoes and other pests from standing water by improved discharge of stormwater.

Explain how the proposed project fits into the Project Types chosen above.

The Project will address flooding in the South Palm Park neighborhood along 18th Avenue by improving the stormwater collection system by installing a stormwater pump station and a new outfall pipe and tidal check valve.

2B. Project Scoring Criteria

> Tier 1 Criteria Information

> Tier 2 Criteria Information

> Tier 3 Criteria Information

> Tier 4 Criteria Information

> Additional Information

> Multiagency Information

3. Project Work Plan

Project Summary

The Project will address flooding and improving the stormwater collection system through the installation of a stormwater pump station and a new outfall pipe and tidal check valve.

Project Description

The stormwater pump station will operate to eliminate flood inundation that has become more recurring during intense rainstorms especially those occurring during seasonal high tides. The pump station collects the flood waters and discharge it a short distance away by pumping the water through to an outfall in the intracoastal waterway. The outfall check valve on the existing outfall will work in conjunction with the pump station's check valves to prevent tidal waters from flooding back through the outfall into the neighborhood. The specific hazards mitigated will be eliminating

Files Uploaded

Name	Type
LW_SW-EXEC-SUMMARY_2021-07-20Final_SS_GR Review	PDF
FY24 CIP Summary updated 8.7.23 SH01	EXCEL_X

Application Tasks

Complete information about the Tasks

Tasks

Task Number	Title	Work Performed By	Task Description	Goal	Time To Com
<input type="radio"/> 1	Design and Permitting or Pre...	Contractor only	Design and Permit for the pu...	Design the station to handle t...	2 years

Input task information below.

At least one task is required to submit the application.

Please select "Create New Project Task" to save the record. Once a task is created, it will be added to the table above. To add additional tasks, update the details below and select "Create New Project Task".

To edit a task after creation, you must delete the entry and create a new task to replace it with the correct details. To delete, select the arrow on the table next to the associated task, and select "delete". Then enter the correct task information below and select "Create New Task".

Application Tasks Budget Category

Tasks Budget Category

Task Number	Budget Expense Amount
<input type="radio"/> 1	\$150,000.00

Input task budget category information below.

Select "Create New Application Task Budget" to save the entry. Repeat for each task until completed. If multiple budget categories are needed for a single task, submit multiple entries until the budget for that task is completed.

Application Tasks Personnel Grantee

Task Personnel Grantee

Complete information about the Task Personnel

Task Number	Position Title	Maximum Hours	Maximum Hours Time Unit
<hr/>			

NOTE: This section is only necessary if the GRANTEE is performing work on the project as indicated previously under "Task Category." This section is NOT required if a contractor is the only budget category on the project.

Enter the Task Personnel Information for the Grantee

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Water Utilities

TITLE:

Fiscal Year 2024 Resilient Florida Grant Program Application for the Parrot Cove Stormwater Resiliency Project

SUMMARY:

The City has applied for \$250,000 in grant funding from the Fiscal Year 2024 Resilient Florida Program to provide improvements to the existing stormwater system infrastructure and for mitigation measures to relieve coastal flooding issues caused by high tides along the City's golf course and the Parrot Cove neighborhood. The City will be required to provide a local cost share of \$250,000 if the grant funding request is approved.

BACKGROUND AND JUSTIFICATION:

The project to address the worsening flood conditions and erosion of land along the City's golf course and Parrot Cove Neighborhood and the Lake Worth Lagoon, where stormwater outfalls currently exist. The 9th, 8th, 6th and 4th Avenues North stormwater outfalls are direct discharge connections to the Lake Worth Lagoon. The four existing pipes provide drainage for a portion of the golf course, as well as the neighborhood immediately to the west. This area has been subject to worsening flood conditions due to the compound effects of heavy rainfall, storm surges, king tides, and the rising sea level. Sinkholes are being created by joint separation in stormwater pipes that allow sand and soil to cave the main pipes and erode stormwater outfalls.

The proposed stormwater upgrades to this area include repairs to the existing outfalls and the installation of backflow prevention devices on the four existing outfalls to the Lagoon in order to prevent further erosion of land on the golf course and alleviate water backing up in the stormwater system from sea level rise. The current lack of controls on the stormwater pipes leaves the upstream residential and commercial properties vulnerable to tidal flooding, which is expected to be a greater concern as sea levels rise. Though relatively small in scope, this project offers benefits upstream and downstream of the stormwater infrastructure, helping to address existing flooding and water quality issues.

The City has been awarded grant funding in the amount of \$450,000 through the FY 2022 FL Legislative grants that does not require a match to fund a portion of these improvements. The City is requesting \$250,000 in grant funding from the Resilient Florida program for the balance of these improvements. The City will be required to provide a local cost share of \$250,000 if the grant funding request is approved. The source of the local cost share will be the Stormwater Enterprise Fund.

According to the Stantec Financial Sustainability Analysis of the Stormwater Enterprise Fund, there are enough reserves in the fund balance to meet the requirements if Lake Worth Beach were to receive this grant opportunity.

MOTION:

Move to approve/disapprove submission of the City's application for \$250,000 in grant funding from the Fiscal Year 2024 Resilient Florida program for the Parrot Cove Stormwater Resiliency project.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
FY 2024 Resilient Florida Grant Program Application



GRANT APPLICATIONS AVAILABLE FOR REVIEW

Note: status tracking is not available during the evaluation period after the portal closed on September 1, if you have any questions about the status of your application please contact Resilience@floridadep.gov.

RCP Grant Applications					
Application Type	Applicant Name	Project Name	Application Nbr	Status	
<input type="radio"/> Funding for Resilient Florida - Infr...	City of Lake Worth Beach	Parrot Cove Stormwater Improve...	RAN-01017	Submitted	

[View Existing Application](#)

Application

Resilient Florida - Infrastructure Grants

1. Applicant Information

Applicant Account ⓘ

Applicant Grant Manager ⓘ

Applicant Authorized Signee ⓘ

Applicant Fiscal Agent ⓘ

2. Project Information

*
 Choose the Entity Category:

Choose the project type you are submitting:

Available

- Emergency Facilities
- Land Acquisition and Conservation
- Living Shoreline and Erosion Control
- Natural Systems Restoration
- Transportation and Evacuation

Chosen

- Stormwater Infrastructure
- Coastal Flood Control (Grey)

Metric Assigned ⓘ

Metric Value ⓘ

Metric Value Units

* (required) Project Title ⓘ

List the City(ies)/ Town(s)/Village(s) ⓘ

City of Lake Worth Beach

Project Geo Location

Latitude

26.626039

Longitude

-80.046812

Project Location (narrative)



The Project will be located in the City of Lake Worth Beach within the City-owned Lake Worth Beach Golf Club golf course. Tidal valves will be installed on four existing outfall pipes along the Intracoastal Waterway-facing coast of the golf course.

State Lands or State Parks Utilized

No

Area Served



Available

Alachua

Baker

Bay

Bradford

Brevard

Chosen

Palm Beach

Sponsor City/County

--None--

2A. General Information

Background

Explain the demonstrated need(s) and how the project will address those needs.



The project serves to address the worsening flood conditions along and at the eastern end of 9th, 8th, 6th and 4th Avenues North along the City's golf course and Parrot Cove Neighborhood in Lake Worth Beach. Sinkholes are being created by joint separation in stormwater pipes that allow sand and soil to cave the main pipes and erode stormwater outfalls. This project will upgrade the system for efficient operation and preparation for sea level rise and king tides, along with preventing water from the Intracoastal Waterway from backing up through the outfalls.

Explain how the proposed project fits into the Project Types chosen above.

The project will be an improvement to existing stormwater infrastructure and will mitigate coastal flooding issues caused by high tides.

2B. Project Scoring Criteria

> Tier 1 Criteria Information

> Tier 2 Criteria Information

> Tier 3 Criteria Information

> Tier 4 Criteria Information

> Additional Information

> Multiagency Information

3. Project Work Plan

Project Summary

This is a stormwater infrastructure project that will address known flooding and erosion issues along the Intracoastal Waterway in Lake Worth Beach. The main task is to install outfall check valves on large existing outfalls that discharge directly to the Intracoastal Waterway.

Project Description

The 9th, 8th, 6th and 4th Avenues North stormwater outfalls are direct discharge connections to the Lake Worth Lagoon, a 20-mile portion of the Intracoastal Waterway in southeast Florida. The Lagoon is a brackish estuary that is an important nursery habitat for many marine plant and animal species. The existing pipes are located along the Lake Worth Golf Club, which is maintained by the City as a 1.3-mile long living shoreline. The area has been subject to worsening flood conditions due to the compound effects of heavy rainfall, storm surges, king tides, and the rising sea level. Four existing pipes provide drainage for a portion of the golf course, as well as the neighborhood immediately to the west.

The proposed stormwater upgrades to this area include the installation of backflow prevention devices on the four existing outfalls to the Lagoon. The current lack of controls on the stormwater pipes leaves the upstream residential and commercial properties vulnerable to tidal flooding, which is expected to be a greater concern as sea levels rise. Though relatively small in scope, this project offers benefits upstream and downstream of the stormwater infrastructure, helping to address existing flooding and water quality issues.

Files Uploaded

Name	Type
_08-23-005_Parrot_Cove-SET-17X11	PDF
FY24 CIP Summary	EXCEL_X
LW_SW-EXEC-SUMMARY_2021-04-20_GR comments	PDF

Application Tasks

Complete information about the Tasks

Tasks

Task Number	Title	Work Performed By	Task Description	Goal	Time To
<input type="radio"/> 1	Construction	Contractor only	Contractor will construct the s...	Improve flooding resilience fo...	1 year

Input task information below.

At least one task is required to submit the application.

Please select "Create New Project Task" to save the record. Once a task is created, it will be added to the table above. To add additional tasks, update the details below and select "Create New Project Task".

To edit a task after creation, you must delete the entry and create a new task to replace it with the correct details. To delete, select the arrow on the table next to the associated task, and select "delete". Then enter the correct task information below and select "Create New Task".

Application Tasks Budget Category

Tasks Budget Category

Task Number	Budget Expense Amount
<input type="radio"/> 1	\$1,000,000.00

Input task budget category information below.

Select "Create New Application Task Budget" to save the entry. Repeat for each task until completed. If multiple budget categories are needed for a single task, submit multiple entries until the budget for that task is completed.

Application Tasks Personnel Grantee

Task Personnel Grantee

Complete information about the Task Personnel

Task Number	Position Title	Maximum Hours	Maximum Hours Time U
<input type="radio"/> 1			

NOTE: This section is only necessary if the GRANTEE is performing work on the project as indicated previously under "Task Category." This section is NOT required if a contractor is the only budget category on the project.

Enter the Task Personnel Information for the Grantee

Florida Department of Environmental Protection
3900 Commonwealth Blvd.
Tallahassee, FL 32399-3000

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Electric Utility

TITLE:

Purchased Power Cost Adjustment Update (PCA)

SUMMARY:

Monthly update for the Purchased Power Cost Adjustment in Electric Utility Rates

BACKGROUND AND JUSTIFICATION:

The City's electric utility provides electricity to its customers using a variety of electric production resources. Among them are the City's entitlements in various Florida Municipal Power Agency (FMPA) St. Lucie and Stanton 1 Projects, the City's own solar farm atop City's closed landfill, the City's power plant, and a contract with Orlando Utilities Commission for supplemental energy and capacity (the "OUC Agreement").

As determined during the electric utility rate making process certain electric utility expenses largely related to the purchase of electric capacity, debt service, operations and maintenance, general fund transfer, and City shared internal service costs are recovered via the Base Energy Charge on customers' bills and are not included in the Purchased Power Cost Adjustment (PCA).

Expenses largely related to the purchase of electric energy from the aforementioned electric production resources, as well as the electric energy and capacity purchases under the OUC Agreement, and electric transmission costs, are recovered or returned via the Purchased Power Cost Adjustment (PCA) on customers' bills. As per City Resolution 92-2021 the PCA "shall be established for a projected 3-month period for energy sales during that period..."

In order to establish the PCA, City's Electric Utility Staff provides a recommendation to the City Commission of the PCA for the upcoming 3-month period.

In determining the PCA options for December 1, Staff has calculated actual incurred purchased power costs beginning with December '21 (when the PCA resolution was adopted by the Commission) through July '23 together with a forecast of purchased power costs for the upcoming 3-month period (September '23 – November '23).

In performing its analysis Staff then calculates a True-Up amount representing the over or under recovery of purchased power costs from the prior period (Dec '21 – July '23), which are then credited or debited to the following period accordingly.

Monthly PCA Review:

Due to the impact of natural gas costs on wholesale power costs. Staff has developed three cases or options for evaluation by the City Commission.

Option 1 would allow for a transfer of \$3,500,000 to the Rate Stabilization Fund as well as a reduction of \$4.28 on the PCA for the 1,000 kWh/month residential customer.

Option 2 would allow for a transfer of \$2,500,000 to the Rate Stabilization Fund as well as a reduction of \$11.93 on the PCA for the 1,000 kWh/month residential customer.

Option 3 would allow for a transfer of \$500,000 to the Rate Stabilization Fund as well as a reduction of \$27.24 on the PCA for the 1,000 kWh/month residential customer.

Funding the Rate Stabilization Fund would serve to minimize the impact to customers during periods of increase due to rising natural gas fuel costs by withdrawing from the Rate Stabilization Fund to offset PCA costs.

Staff develops its estimates of future purchased power costs using widely published and publicly available values for natural gas futures contracts for the applicable months. City does not actually purchase natural gas futures contracts, it merely used published prices as a forecasting tool.

Section 3 of City's Resolution 92-2021 defines the Purchased Power Cost Adjustment (PCA) and formula for calculation as follows:

$$PCA = (A + B + C) / D$$

Where:

A = The projected purchased power costs for the projected 3-month period comprised of costs such as the FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity; energy and directly related costs, Lake Worth Beach electric utility power plant generating fuel; and transmission costs:

B = A true-up amount representing the over or under recovery of purchased power costs from the prior period

C = The amount transferred to or from the Rate Stabilization Fund for the projected period

D = The projected total retail sales in MWh for the projected 3-month period

Option 1:

Accordingly, the PCA elements effective December 1, 2023 under Option 1 are as follows:

A = \$3,914,976

B = -\$3,606,725

C = \$3,500,000

D = 130,638 MWh

PCA = \$29.15 per MWh

Option 1 PCA; Residential First 1,000 kWh per month = \$0.02705 per kWh

Option 1 PCA; Residential Additional kWh above 1,000 kWh per month = \$0.03705 per kWh

Option 1 PCA; Average; Commercial and Demand = \$0.02915 per kWh

Option 2:

Alternatively, the PCA elements effective December 1, 2023 under Option 2 are as follows:

A = \$3,914,976

B = -\$3,606,725

C = \$2,500,000

D = 130,638 MWh

PCA = \$21.50 per MWh

Option 2 PCA; Residential First 1,000 kWh per month = \$0.01940 per kWh

Option 2 PCA; Residential Additional kWh above 1,000 kWh per month = \$0.02940 per kWh

Option 2 PCA; Average; Commercial and Demand = \$0.02150 per kWh

Option 3:

Lastly, the PCA elements effective December 1, 2023 under Option 3 are as follows:

A = \$3,914,976

B = -\$3,606,725

C = \$500,000

D = 130,638 MWh

PCA = \$6.19 per MWh

Option 3 PCA; Residential First 1,000 kWh per month = \$0.00409 per kWh

Option 3 PCA; Residential Additional kWh above 1,000 kWh per month = \$0.01409 per kWh

Option 3 PCA; Average; Commercial and Demand = \$0.00619 per kWh

If approved, the PCA for all customer rate classes will change effective December 1, 2023.

MOTION:

Move to approve/disapprove PCA as presented under Option 1; Option 2; or Option 3 effective December 1, 2023.

ATTACHMENT(S):

Fiscal Impact Analysis- N/A

Resolution 92-2021

PCA Option 1

PCA Option 2

PCA Option 3

PCA revenues vs. expenses

PCA update – 12/21 – 7/23

RESOLUTION NO. 92-2021 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, PROVIDING FOR RATES, FEES AND CHARGES, AND REGULATIONS FOR ALL ELECTRICITY SOLD BY THE CITY OF LAKE WORTH BEACH, FLORIDA FOR USE OF ELECTRIC LIGHT AND POWER SYSTEM; REPEALING ALL RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Lake Worth Beach, Florida, is authorized and required to fix uniform and adequate rates for its service; and

WHEREAS, the rates set forth herein are just and equitable and serve a valid public purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA as follows:

Section 1. Definitions: For the purpose of this resolution, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

- A. "Shall" is always mandatory and not merely directory.
- B. "Net Metering Accounts" are those customer accounts with the City's Electric Utility where the customer has applied to the City's Electric Utility; installed a Customer-Owned Renewable Generation System (as defined in the Net Metering Program Rules and Regulations); executed a City Interconnection Agreement; has been approved by the Electric Utility for interconnection with the City's electric system; and, remains in compliance with the City's Net Metering Program. All rates applicable to Net Metering Accounts are governed by Resolution No. 45-2019 (as may be amended from time to time).
- C. "Purchased Power Cost Adjustment (PCA)" The cost of electricity is affected by the price of fuel and the purchase price of power supply. The PCA is an adjustment charge caused by an increased or decreased in the cost to purchase or supply power to customers. It is shown on the customer's bill as a credit or a surcharge to the price per kilowatt-hour. The customer's utility bill may have a credit, as the cost of power supply decreases, or it may have a surcharge when the costs increase.

Section 2. The following schedules shall be the rates charged and the regulations imposed by the City of Lake Worth Beach, Florida, on all electric power sold by the City of Lake Worth Beach, Florida for lighting, heating and power purposes, to wit:

A. Regular Residential Electric (Schedule R-S)

1. Designation: Regular Residential Electric
2. Applicable: For domestic electric purposes in private residences and individually metered apartments. Residential rates shall apply for electric energy used in commonly-owned facilities in condominiums and cooperative apartment buildings, subject to the following criteria:
 - a. 100% of the energy is used exclusively for the co-owner's benefit.
 - b. None of the energy is used in any endeavor which sells or rents a commodity or provides service for a fee.
 - c. Each point of delivery will be separately metered and billed.
 - d. A responsible legal entity is established as the customer to whom the City of Lake Worth Beach can render its bills for said service.
 - e. A cooperative or condominium requesting residential rates shall apply for the rate and establish the above criteria.
3. Limitations: Auxiliary and stand-by generation or resale of the electric energy not permitted hereunder. Recognized rooming houses, tourist homes and dwellings accommodating more than four paying guests supplied through a single meter will not be served under this schedule.
4. Service: Single phase, 60 cycles at available standard voltage. Three phase service may be furnished but only under special arrangements and at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill, which will be applied to each electric account receiving a bill. \$10.55 per month.
 - b. Energy Charge per kWh

	First 1,000 KWH's	Excess
Base Energy	\$0.06900	\$0.08900
Power Cost Adjustment	\$0.03490	\$0.04490
Capacity	N/A	N/A
Total	\$0.1039	\$0.1339

6. The rates listed above include all administrative charges from the City of Lake Worth Beach.
7. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
9. Minimum Bill: The minimum bill for electric use shall be charged at \$35.00 per month.

B. Regular Commercial Service (Schedule C-S)

1. Designation: Regular Commercial Electric.
2. Applicable: For commercial, industrial, and governmental use within the territory served by the Electric Distribution System of the City of Lake Worth Beach, as available and at the option of the City.
3. Limitations: For consumers who own renewable energy facilities (such as wind, solar power or home fuel cells), resale of the electric energy is not permitted hereunder.
4. Service: Single or three phase, 60 cycles and at any available standard voltage, at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill which will be applied to each electric account receiving a bill. \$17.00 per month.
 - b. Energy Charge per kWh.

	All kWhs
Base Energy	\$0.08700
Power Cost Adjustment	\$0.03700
Capacity	N/A
Total	\$0.12400

6. The rates listed above includes all administrative charges from the City of Lake Worth Beach.
7. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
9. Minimum Bill: The minimum bill for electric use shall be \$50.00 per month for single phase service and \$100.00 per month for poly phase service.

C. Demand Commercial Service (Schedule CD-S)

1. Designation: Demand Commercial Electric
2. Applicable: For customers who qualifies for service under Schedule C-S above and has a peak demand of 25 kW or greater for three (3) consecutive months:
3. Limitations: Auxiliary or stand-by service or resale not permitted hereunder.
4. Service: Single or three phase, 60 cycles and at any available standard voltage, at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill, which will be applied to each electric account receiving a bill. \$130.00 per month.
 - b. Energy Charge per KWH

	All kWhs	Demand - KW
Base Energy	\$0.05200	\$12.00
Power Cost Adjustment	\$0.03700	
Capacity Charge	N/A	
Total	\$0.08900	\$12.00

6. The rates listed above include all administrative charges from the City of Lake Worth Beach.
7. Billing Demand: The maximum 15 minute measured demand in the month, subject to power factor adjustment.
8. Power Factor Adjustment: When demand is measured with a kW meter and customer's power factor in any month is below 95% the measured demand may be adjusted to 95% power factor.
9. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
10. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
11. Minimum Bill: The minimum bill for electric use shall be \$250.00 per month.

D. Regular Time of Use Commercial Service (Schedule CT-S)

1. Designation: Time of Use Commercial Service
2. Applicable: For commercial, industrial, and governmental use within the territory served by the Electric Distribution System of the City of Lake Worth Beach, as available and at the option of the City.
3. Limitations: For consumers who own renewable energy facilities (such as wind, solar power or home fuel cells), resale of the electric energy is not permitted hereunder.
4. Service: Single or three phase, 60 cycles and at any available standard voltage, at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill which will be applied to each electric account receiving a bill. \$30.00 per month.
 - b. Energy Charge:
 - i. Off Peak \$0.0840 per kWh
 - ii. On Peak \$0.2600 per kWh
 - iii. Determination of Off-Peak Period: October – May: The off-peak period is defined as the hours between 1:00 p.m. and 6:00 a.m., Monday through Friday and all day Saturday and Sunday. In addition, the following holidays will also be considered off-peak: New Year's Day, Memorial Day, Thanksgiving Day, and Christmas Day. June – September: The off-peak period is defined as the hours between 7:00 p.m. and 2:00 p.m., Monday through Friday and all day Saturday and Sunday. In addition, the following holidays will also be considered off-peak: Independence Day and Labor Day. All other hours are considered on peak hours.

6. Term of Contract: One year and thereafter until terminated at the option of either party by the giving of not less than thirty (30) days advance written notice of the effective date of termination.
 7. Purchased Power Cost Adjustment Charge: A Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
 8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
 9. Minimum Bill: The minimum bill for electric use shall be \$50.00 per month for single phase service and \$100.00 per month for poly phase service.
- E. Time of Use Demand Commercial Service (Schedule CDT-S)
1. Designation: Time of Use Demand Commercial Service
 2. Applicable: For commercial, industrial, and governmental use within the territory served by the Electric Distribution System of the City of Lake Worth Beach, as available and at the option of the City.
 3. Limitations: For consumers who own renewable energy facilities (such as wind, solar power or home fuel cells), resale of the electric energy is not permitted hereunder.
 4. Service: Single or three phase, 60 cycles and at any available standard 416 voltage, at the option of the City of Lake Worth Beach.
 5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill which will be applied to each Electric account receiving a bill. \$140.00 per month.
 - b. Energy Charge:
 - i. Off Peak \$0.0620 per kWh
 - ii. On Peak \$0.2400 per kWh
 - iii. Demand Charge: \$7.00 per kW.
 - iv. Billing Demand: The maximum 15 minute measured demand in the month, subject to power factor adjustment.
 - v. Power Factor Adjustment: When demand is measured with a kW 438 meter and customer's power factor in any month is below 95% the measured demand may be adjusted to 95% power factor.
 - vi. Determination of Off-Peak Period: October – May: The off-peak period is defined as the hours between 1:00 p.m. and 6:00 a.m., Monday through Friday and all day Saturday and Sunday. In addition, the following holidays will also be considered off-peak: New Year's Day, Memorial Day, Thanksgiving Day, and Christmas Day.
 - vii. June – September: The off-peak period is defined as the hours between 7:00 p.m. and 2:00 p.m., Monday through Friday and all day Saturday and Sunday. In addition, the following holidays will also be considered off-peak: Independence Day and Labor Day. All other hours are considered on peak hours.
 6. Term of Contract: One year and thereafter until terminated at the option of either party by the giving of not less than thirty (30) days advance written notice of the effective date of termination.
 7. Purchased Power Cost Adjustment Charge: A Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.

- 8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
- 9. Minimum Bill: The minimum bill for electric use shall be \$140.00 per month.

F. Electric Vehicle Charging Level II (Schedule EV2-S)

- 1. Designation: Electric Vehicle Charging Level II
- 2. Applicable: For City owned public electric vehicle Level II charging stations.
 - a. None of the energy is used in any endeavor which sells or rents a commodity or provides service for a fee.
 - b. Each point of delivery will be separately metered and billed.
 - c. Limitations: Auxiliary and stand-by generation or resale of the electric energy not permitted hereunder.

3. Energy Charge per kWh

	All KWH's
Base Energy	\$0.05148
Power Cost Adjustment	\$0.03578
Capacity	\$0.01020
Total	\$0.09746

- 4. The rates listed above include all administrative charges from the City of Lake Worth Beach.
- 5. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
- 6. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.

G. Private Area Lighting (Schedule L-P)

- 1. Designation: Private Area Lighting
- 2. Applicable: For year-round outdoor security lighting of yards, driveways, walkways, parking lots, parks, and other areas, under the following conditions:
 - a. Lights to be served hereunder shall be at locations that are easily and economically accessible to the City of Lake Worth Beach equipment and personnel for construction and maintenance.
 - b. Original location of lighting fixtures shall be by mutual agreement and shall not be located so as to create a public nuisance.
 - c. Any relocation requested by customer after installation shall be made at customer's expense. All new lighting units provided under this Schedule shall be the high pressure sodium vapor (conservation lighting) type.
- 3. Limitations:
 - a. Auxiliary and stand-by generation or resale of the electric energy not permitted hereunder.
 - b. The City of Lake Worth Beach, while exercising reasonable diligence at all times to furnish service hereunder, does not guarantee continuous lighting and will not be liable for damages for any interruption, deficiency or failure of service and reserves the right to interrupt service at any time for necessary repairs to lines or equipment.

4. **Service:** Service includes lamp renewals, energy from approximately dusk each day until approximately dawn the following day and maintenance of facilities. The City of Lake Worth Beach will replace all burned out lamps and will maintain its facilities during regular daytime working hours as soon as practicable following notification by the customer that such work is necessary. The City of Lake Worth Beach shall be permitted to enter the customer's premises at all reasonable times for the purpose of inspecting, maintaining, installing and removing any or all of its equipment and facilities. Single phase, 60 cycles at available standard voltage. Three phase service may be furnished but only under special arrangements and at the option of the City of Lake Worth Beach.
5. **Term of Service:** Not less than one (1) year.
6. **Monthly Rates:** A fixed monthly charge based on the number of units installed shall be charged based on the following schedule.
 - a. **Standard Lighting:**

Description Unit Cost per Month

175 Watt (7,000 Lumen) Mercury –Vapor Street Light Unit on Existing Pole	\$12.21
400 Watt (20,500 Lumen) Mercury-Vapor Street Light Unit on Existing Pole	\$19.15
1,000 Watt (55,000 Lumen) Mercury-Vapor Street Light Unit on Existing Pole	\$37.68
100 Watt (9,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$9.93
250 Watt (27,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$14.26
360 Watt High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$17.05
400 Watt (50,000 Lumen) High Pressure Sodium Vapor Street Light Unit on existing pole	\$17.15
48 Watt LED Street Light Unit on Existing Pole	\$9.00
70 Watt LED Street Light Unit on Existing Pole	\$9.70
80 Watt LED Street Light Unit on Existing Pole	\$9.70
101 Watt LED Street Light Unit on Existing Pole	\$16.30
110 Watt LED Street Light Unit on Existing Pole	\$16.30
133 Watt LED Street Light Unit on Existing Pole	\$16.30
150 Watt LED Street Light Unit on Existing Pole	\$16.30
Wood Pole and span of Overhead Conductors or Pole used only for Light	\$10.00
Concrete Pole and Span of Overhead Conductors or Pole used only for Light	\$15.00
Underground Conductors up to 150 feet	\$1.33
Underground Conductors from 150 feet to 300 feet	\$2.68

7. **Purchased Power Cost Adjustment Charge:** A Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. **Outside City Limits Surcharge:** A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.

H. Street Lighting (Schedule L-S)

1. Designation: Street Lighting
2. Applicable: For lighting of public right-of ways.
3. Limitations:
 - a. Auxiliary and stand-by generation or resale of the electric energy not permitted hereunder.
 - b. The City of Lake Worth Beach, while exercising reasonable diligence at all times to furnish service hereunder, does not guarantee continuous lighting and will not be liable for damages for any interruption, deficiency or failure of service and reserves the right to interrupt service at any time for necessary repairs to lines or equipment.
 - c. Should the City of Lake Worth Beach be required by the customer to replace the street light(s) with a light (or lights) of another type or rating, then the customer may be required to pay the estimated labor, vehicle use and other direct costs involved in replacing the fixtures.
4. Service: Service includes lamp renewals, energy from approximately dusk each day until dawn the following day and maintenance of City of Lake Worth Beach owned street lighting systems.
5. Term of Service: For not less than ten (10) years for City of Lake Worth Beach facilities or customer will be required to pay depreciated cost of installed facilities plus cost of removal.
6. Monthly Rates:
 - a. A fixed monthly charge based on the number of units installed shall be charged based on the following schedule.
 - b. Conservation Lighting:

Description Unit Cost per Month

100 Watt (9,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$7.85
150 Watt (27,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$9.33
250 Watt (27,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$12.26
360 Watt High Pressure Sodium Vapor Street Light Unit on Existing Pole	\$15.19
400 Watt (50,000 Lumen) High Pressure Sodium Vapor Street Light Unit on existing pole	\$17.09
48 Watt LED Street Light Unit on Existing Pole	\$9.00
70 Watt LED Street Light Unit on Existing Pole	\$9.70
80 Watt LED Street Light Unit on Existing Pole	\$9.70
101 Watt LED Street Light Unit on Existing Pole	\$16.30
110 Watt LED Street Light Unit on Existing Pole	\$16.30
133 Watt LED Street Light Unit on Existing Pole	\$16.30
150 Watt LED Street Light Unit on Existing Pole	\$16.30

c. Appurtenances:

Description Unit Cost per Month

Wood Pole and span of Overhead Conductors \$10.00 or Pole used only for Light
 Concrete Pole and Span of Overhead Conductors \$15.00 or Pole used only for Light
 Underground Conductors up to 150 feet \$1.33
 Underground Conductors from 150 feet to 300 feet \$2.68

7. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. Outside City Limits Surcharge:
 - A. Surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.

Section 3. Purchased Power Cost Adjustment (PCA): A Purchased Power Cost Adjustment Charge (PCA) shall be established for a projected 3 month period for energy sales during that period as follows:

$$PCA = (A + B + C) / D$$

where:

A = The projected purchased power costs for the projected 3 month period comprised of costs such as the FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity, energy and directly related costs, Lake Worth Beach electric utility power generating fuel, and transmission costs

B = A true-up amount representing the over or under recovery of purchased power costs from the prior period

C = The amount transferred to or from the Rate Stabilization Fund for the projected period

D = The projected total retail sales in MWh for the projected 3 month period

The purchased power cost adjustment charge will be reconciled quarterly and trued up between estimated costs and billing units and actual costs and billing units.

Section 4. Surcharge For Service Outside The Municipal Limits: With respect to any residents, premises and/or users outside the corporate limits of the City of Lake Worth Beach, Florida, where such residents, premises and/or users now or hereafter have or use electrical utility service with the electrical system of the City of Lake Worth Beach, they shall be charged a rate for the electricity they use equal to the charge established for service to the residents, premises and/or users within the City of Lake Worth Beach, Florida, plus any applicable taxes or fees that are required in the Code of Ordinances or Resolutions of the specific jurisdiction in which those accounts reside. Such taxes and fees are collected by the City of Lake Worth Beach and remitted directly to the appropriate County or Municipal entity.

Section 5. Nothing in this resolution shall prohibit the City of Lake Worth Beach from entering into an agreement to provide electricity and electric utility services to or within any unit of government or governmental subdivision with terms and conditions other than contained herein.

Section 6. All resolutions or parts of resolutions in conflict herewith are expressly repealed.

Section 7. If any provision of this resolution or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the resolution, which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared severable.

Section 8. This resolution shall be in effect for billings issued on or after January 1, 2022.

The passage of this resolution was moved by Commissioner McVoy, seconded by Commissioner Malega and upon being put to a vote, the vote was as follows:

Mayor Betty Resch	AYE
Vice Mayor Herman Robinson	AYE
Commissioner Sarah Malega	AYE
Commissioner Christopher McVoy	AYE
Commissioner Kimberly Stokes	AYE

The Mayor thereupon declared this resolution duly passed and enacted on the 14th day of December 2021.

LAKE WORTH BEACH CITY COMMISSION

By: _____

Betty Resch, Mayor

ATTEST:



Melissa Ann Coyne, City Clerk



CITY OF LAKE WORTH BEACH, FLORIDA
POWER COST ADJUSTMENT CALCULATION
Option 1

1 Projected Period Sept 2023 - Nov 2023
2 Prior Period True-Up Dec 2021 - July 2023

PCA = (A + B + C) / D

3	A = Projected Power Costs for the 3 months (FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity, energy and directly related costs, Lake Worth Beach electric utility power generating fuel, and transmission costs)	\$3,914,976	Based on anticipated Purchased Power, Gas futures; planned outages and transmission projections.
B = True up amount for prior period Dec 2021 - July 2023			
4	Actual Power Costs	\$33,114,027	OUC bill, Stanton Energy only, Transmission & Power Plant Gas
5	Actual PCA Revenues	\$36,720,752	PCA Revenues ACTUAL
6	Difference	-\$3,606,725	
7	B = True Up amount = Line 6	-\$3,606,725	
8	Remaining Costs to be Recovered	\$0	
9	A + B =	\$308,251	
10	C = Amount transferred to or from the Rate Stabilization Fund	\$3,500,000	Commission approved \$500K for RSF (5/2/23) & \$3M transfer option to RSF
11	D = Projected retail sales in MWh for the 3 months Sept 2023 - Nov 2023	130,638	Derived from Sept - Nov '22 actual sales plus 2% added for gro
12	PCA = (A + B + C) / D =	\$29.15	per MWh
13		\$0.02915	per kWh
14		\$29.15	per 1,000 kWh
15	Current PCA (Average - Commercial, Demand)	\$0.03343	per kWh
16	Current PCA (First 1,000 kWh Residential)	\$0.03133	per kWh
17	Current PCA (Additional kWh Residential)	\$0.04133	per kWh
18	Current PCA (Average - Commercial, Demand)	\$33.43	per 1,000 kWh
19	Change in PCA	-\$0.00428	per kWh
20	Monthly Change in Bill for 1,000 kWh Residential Customer and other customers per 1,000 kWh	-\$4.28	
21	Proposed PCA (Average - Commercial, Demand)	\$0.02915	per kWh
22	Proposed PCA (First 1,000 kWh Residential)	\$0.02705	per kWh
23	Proposed PCA (Additional kWh Residential)	\$0.03705	per kWh

CITY OF LAKE WORTH BEACH, FLORIDA
POWER COST ADJUSTMENT CALCULATION
Option 2

1 Projected Period Sept 2023 - Nov 2023
2 Prior Period True-Up Dec 2021 - July 2023

PCA = (A + B + C) / D

3	A = Projected Power Costs for the 3 months (FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity, energy and directly related costs, Lake Worth Beach electric utility power generating fuel, and transmission costs)	\$3,914,976	Based on anticipated Purchased Power, Gas futures; planned outages and transmission projections.
	B = True up amount for prior period		
4	Actual Power Costs	\$33,114,027	OUC bill, Stanton Energy only, Transmission & Power Plant Gas
5	Actual PCA Revenues	\$36,720,752	PCA Revenues ACTUAL
6	Difference	-\$3,606,725	
7	B = True Up amount = Line 6	-\$3,606,725	
8	Remaining Costs to be Recovered	\$0	
9	A + B =	\$308,251	
10	C = Amount transferred to or from the Rate Stabilization Fund	\$2,500,000	Commission approved \$500K for RSF (5/2/23) & \$2MM transfer option
11	D = Projected retail sales in MWh for the 3 months	130,638	Derived from Sept - Nov '22 actual sales plus 2% added for growth
12	PCA = (A + B + C) / D =	<u>\$21.50</u>	per MWh
13		<u>\$0.02150</u>	per kWh
14		\$21.50	per 1,000 kWh
15	Current PCA (Average - Commercial, Demand)	\$0.03343	per kWh
16	Current PCA (First 1,000 kWh Residential)	\$0.03133	per kWh
17	Current PCA (Additional kWh Residential)	\$0.04133	per kWh
18	Current PCA (Average - Commercial, Demand)	\$33.43	per 1,000 kWh
19	Change in PCA	-\$0.01193	per kWh
20	Monthly Change in Bill for 1,000 kWh Residential Customer and other customers per 1,000 kWh	<u>-\$11.93</u>	
21	Proposed PCA (Average - Commercial, Demand)	\$0.02150	per kWh
22	Proposed PCA (First 1,000 kWh Residential)	\$0.01940	per kWh
23	Proposed PCA (Additional kWh Residential)	\$0.02940	per kWh

CITY OF LAKE WORTH BEACH, FLORIDA
POWER COST ADJUSTMENT CALCULATION
Option 3

1 Projected Period Sept 2023 - Nov 2023
2 Prior Period True-Up Dec 2021 - July 2023

PCA = (A + B + C) / D

3 A = Projected Power Costs for the 3 months Sept 2023 - Nov 2023 \$3,914,976
(FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity, energy and directly related costs, Lake Worth Beach electric utility power generating fuel, and transmission costs)
Based on anticipated Purchased Power, Gas futures; planned outages and transmission projections.

B = True up amount for prior period Dec 2021 - July 2023

4 Actual Power Costs	\$33,114,027	OUC bill, Stanton Energy only, Transmission & Power Plant Gas
5 Actual PCA Revenues	\$36,720,752	PCA Revenues ACTUAL
6 Difference	-\$3,606,725	
7 B = True Up amount = Line 6	-\$3,606,725	
8 Remaining Costs to be Recovered	\$0	

9 A + B = \$308,251

10 C = Amount transferred to or from the Rate Stabilization Fund \$500,000 Commission approved \$500K for RSF (5/2/23) No additional transfers

11 D = Projected retail sales in MWh for the 3 months Sept 2023 - Nov 2023 130,638 Derived from Sept - Nov '22 actual sales plus 2% added for growth

12 PCA = (A + B + C) / D = \$6.19 per MWh

13 \$0.00619 per kWh

14 \$6.19 per 1,000 kWh

15 Current PCA (Average - Commercial, Demand) \$0.03343 per kWh

16 Current PCA (First 1,000 kWh Residential) \$0.03133 per kWh

17 Current PCA (Additional kWh Residential) \$0.04133 per kWh

18 Current PCA (Average - Commercial, Demand) \$33.43 per 1,000 kWh

19 Change in PCA -\$0.02724 per kWh

20 Monthly Change in Bill for 1,000 kWh Residential Customer and other customers per 1,000 kWh -\$27.24

21 Proposed PCA (Average - Commercial, Demand) \$0.00619 per kWh

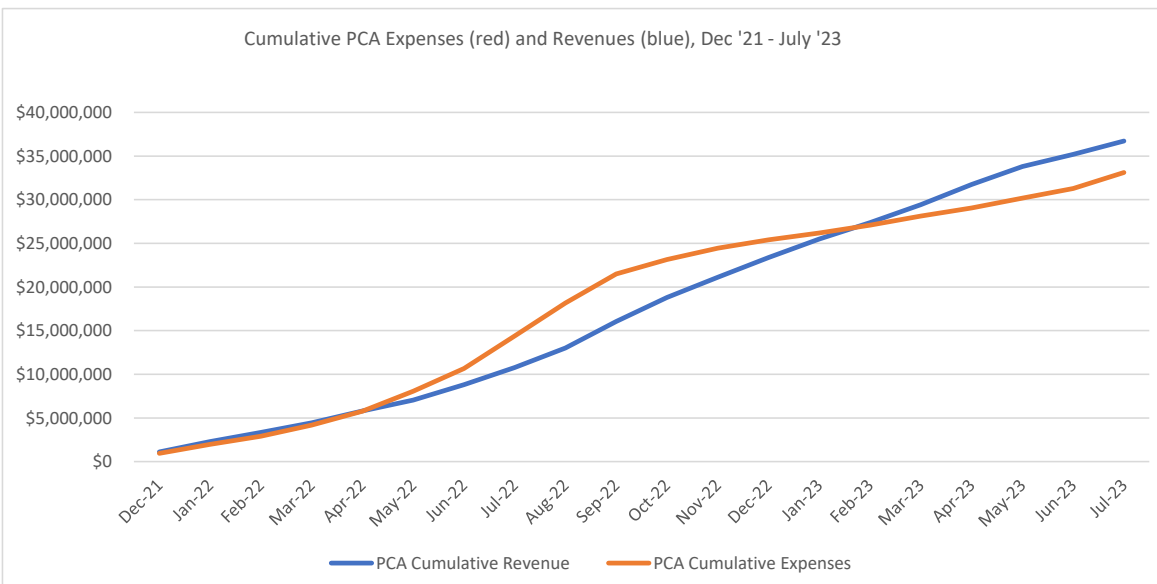
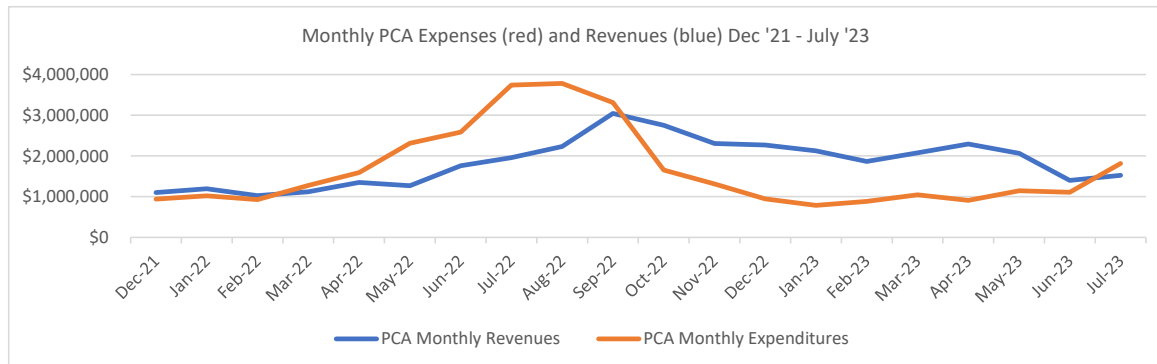
22 Proposed PCA (First 1,000 kWh Residential) \$0.00409 per kWh

23 Proposed PCA (Additional kWh Residential) \$0.01409 per kWh

PCA Table & Graphs

Month	PCA Monthly Revenues	PCA Monthly Expenditures	Difference
Dec-21	\$1,103,969	\$942,601	\$161,368
Jan-22	\$1,194,586	\$1,023,131	\$171,455
Feb-22	\$1,025,360	\$926,824	\$98,536
Mar-22	\$1,119,913	\$1,273,434	(\$153,521)
Apr-22	\$1,347,197	\$1,591,498	(\$244,301)
May-22	\$1,266,715	\$2,310,587	(\$1,043,872)
Jun-22	\$1,758,533	\$2,583,598	(\$825,065)
Jul-22	\$1,959,972	\$3,743,037	(\$1,783,065)
Aug-22	\$2,229,001	\$3,782,608	(\$1,553,607)
Sep-22	\$3,044,528	\$3,315,729	(\$271,201)
Oct-22	\$2,754,939	\$1,656,627	\$1,098,312
Nov-22	\$2,305,698	\$1,313,150	\$992,548
Dec-22	\$2,267,120	\$948,626	\$1,318,494
Jan-23	\$2,123,484	\$786,317	\$1,337,167
Feb-23	\$1,864,011	\$886,202	\$977,809
Mar-23	\$2,074,694	\$1,047,496	\$1,027,198
Apr-23	\$2,295,461	\$908,816	\$1,386,645
May-23	\$2,064,788	\$1,146,676	\$918,112
Jun-23	\$1,398,725	\$1,109,974	\$288,751
Jul-23	\$1,522,057	\$1,817,096	(\$295,039)
TOTALS	\$36,720,751	\$33,114,027	\$3,606,724

PCA Cumulative Revenue	PCA Cumulative Expenses
\$1,103,969	\$942,601
\$2,298,555	\$1,965,732
\$3,323,915	\$2,892,556
\$4,443,828	\$4,165,990
\$5,791,025	\$5,757,488
\$7,057,740	\$8,068,075
\$8,816,273	\$10,651,673
\$10,776,245	\$14,394,710
\$13,005,246	\$18,177,318
\$16,049,774	\$21,493,047
\$18,804,713	\$23,149,674
\$21,110,411	\$24,462,824
\$23,377,531	\$25,411,450
\$25,501,015	\$26,197,767
\$27,365,026	\$27,083,969
\$29,439,720	\$28,131,465
\$31,735,181	\$29,040,281
\$33,799,969	\$30,186,957
\$35,198,694	\$31,296,931
\$36,720,751	\$33,114,027



Month	Actual Invoices							Average Delivered NG Price		
	PCA Revenues	OUC	Stanton Energy	FPL Transmission	Power Plant Gas	Total PCA Expenditures	Difference	Forecasted		Actual
Dec-21	\$1,103,969	\$624,137	\$150,600	\$161,877	\$5,987	\$942,601	\$161,368			
Jan-22	\$1,194,586	\$597,332	\$185,672	\$157,785	\$82,342	\$1,023,131	\$171,455			
Feb-22	\$1,025,360	\$629,349	\$114,305	\$193,045	-\$9,875	\$926,824	\$98,536			
Mar-22	\$1,119,913	\$757,376	\$319,272	\$207,018	-\$10,232	\$1,273,434	-\$153,521			
Apr-22	\$1,347,197	\$1,100,745	\$275,769	\$234,601	-\$19,617	\$1,591,498	-\$244,301			
May-22	\$1,266,715	\$1,821,194	\$244,121	\$245,204	\$68	\$2,310,587	-\$1,043,872			
Jun-22	\$1,758,533	\$2,052,485	\$231,784	\$220,612	\$78,717	\$2,583,598	-\$825,065			
Jul-22	\$1,959,972	\$3,186,177	\$225,766	\$268,782	\$62,312	\$3,743,037	-\$1,783,065			
Aug-22	\$2,229,001	\$3,246,599	\$210,589	\$309,347	\$16,073	\$3,782,608	-\$1,553,607			
Sep-22	\$3,044,528	\$2,793,956	\$223,199	\$281,616	\$16,958	\$3,315,729	-\$271,201			
Oct-22	\$2,754,939	\$1,143,371	\$261,212	\$252,044	\$0	\$1,656,627	\$1,098,312			
Nov-22	\$2,305,698	\$767,327	\$288,673	\$242,922	\$14,228	\$1,313,150	\$992,548			
Dec-22	\$2,267,120	\$594,138	\$254,194	\$155,730	-\$55,436	\$948,626	\$1,318,494			
Jan-23	\$2,123,484	\$535,886	\$106,848	\$143,583	\$0	\$786,317	\$1,337,167			
Feb-23	\$1,864,011	\$617,271	\$58,539	\$210,392	\$0	\$886,202	\$977,809			
Mar-23	\$2,074,694	\$800,769	\$15,895	\$219,482	\$11,350	\$1,047,496	\$1,027,198			
Apr-23	\$2,295,461	\$518,884	\$162,861	\$226,621	\$450	\$908,816	\$1,386,645	\$2.73		\$2.50
May-23	\$2,064,788	\$775,620	\$133,640	\$237,416	\$0	\$1,146,676	\$918,112	\$2.93		\$2.47
Jun-23	\$1,398,726	\$921,208	\$170,925	\$17,841	\$0	\$1,109,974	\$288,752	\$3.30		\$2.72
Jul-23	\$1,522,057	\$1,312,766	\$244,592	\$259,738	\$0	\$1,817,096	-\$295,039	\$3.33		\$3.72
Aug-23								\$3.22		
Sep-23								\$3.07		
TOTALS	\$36,720,752	\$24,796,590	\$3,878,456	\$4,245,656	\$193,325	\$33,114,027	\$3,606,725	\$3.10		

Approved creation of stabilization fund with PCA Option 2 at May 2 2023 meeting ----- \$500,000

over/under collection after transfer of \$500,000 to stabilization f \$3,106,725

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Electric Utility

TITLE:

Resolution No. 31-2023 – Establishment of an Electric Utility Rate Stabilization Fund

SUMMARY:

Resolution No. 31-2023 establishes a new Special Revenue Fund titled “Electric Utility Rate Stabilization Fund” for the purpose of maintaining rate competitiveness and rate stability by mitigating cost increases that would otherwise be passed along to the customers of the Electric Utility.

BACKGROUND AND JUSTIFICATION:

As a result of sudden increases in the costs of natural gas in 2022-2023 and other factors impacting the power costs, the City of Lake Worth Beach desires to establish an “Electric Utility Rate Stabilization Fund” to maintain rates competitive with other utilities, mitigate against potential increased costs of purchased power, and provide rate stability for the customers of the Electric Utility.

To provide the necessary funding, the Electric Utility Fund will transfer \$3,500,000 of excess Power Cost Adjustment (PCA) revenues accumulated as of August 2023 and appropriate each year from the electric fund an amount of not less than 10% of the expected annual PCA expense or an amount not greater than 25% of the expected annual PCA expense to The Fund.

The City Commission shall have the sole authority to direct the deposit or withdrawal of funds from The Fund. The Fund shall be administered by the Electric Utility and Financial Services Department.

MOTION:

Move to approve/disapprove Resolution No. 31-2023 to establish a new Special Revenue Fund titled “Electric Utility Rate Stabilization Fund” which will be funded by excess PCA revenues accumulated as of August 2023.

ATTACHMENT(S):

Fiscal Impact Analysis
Resolution No. 31-2023

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Current Appropriation	0	0	0	0	0
Operating	\$3,500,000	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	\$3,500,000	0	0	0	0
No. of Addn'l Full-Time Employee Positions					
	0	0	0	0	0

Budget Transfer Impact		
	Revenue Source	Expenditure
Department	Rate Stabilization Fund	Electric Fund
Division	N/A	Non-Departmental
GL Description	Transfers In	Transfers Out
GL Account Number	TBD (New GL Account)	TBD (New GL Account)
Project Number	N/A	N/A
Requested Funds	\$3,500,000	\$3,500,000

RESOLUTION NO. 31-2023 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, ESTABLISHING A RATE STABILIZATION FUND TO STABILIZE ELECTRIC UTILITY RATES FROM SUDDEN FLUCTUATIONS; AUTHORIZING THE TRANSFER OF EXCESS POWER COST ADJUSTMENT REVENUES TO THE RATE STABILIZATION FUND; SETTING GENERAL GUIDELINES FOR THE RATE STABILIZATION FUND; AND, PROVIDING FOR REPEAL OF CONFLICTS AND AN EFFECTIVE DATE

WHEREAS, the Electric Utility of the City of Lake Worth Beach desires to maintain rates competitive with other utilities, mitigate against potential increased costs of purchased power, and provide rate stability for the customers of the Electric Utility; and

WHEREAS, due to sudden increases in the costs of natural gas in 2022-2023 and other factors impacting the City's power costs, the City is in need of a fund to assist in stabilizing the rates paid by the Electric Utility customers, which fund can assist in reducing the impact of sudden changes in the City's power costs; and

WHEREAS, consistent with the desires of the Electric Utility Department, the Financial Services Department, and the City Commission, the City seeks to establish an Electric Utility Rate Stabilization Fund; and

WHEREAS, the City Commission finds establishing a Rate Stabilization Funds serves a valid public purpose.

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, that:

Section 1. The City hereby establishes a Rate Stabilization Fund ("The Fund") for the purpose of maintaining rate competitiveness and rate stability by mitigating cost increases due to fluctuations in power costs or other emergencies that would otherwise be passed along to the customers of the Electric Utility.

Section 2. The City Commission authorizes the transfer of \$3,500,000 from the Electric Utility's excess Power Cost Adjustment (PCA) revenues as of August 2023 into The Fund.

Section 3. The City Commission shall have the sole authority to direct the deposit or withdrawal of funds from The Fund. The Fund shall be administered by the Electric Utility and Financial Services Department. The general guidelines for The Fund are as follows:

1. The Fund shall not be used for any purpose except for mitigating cost increases due to fluctuations in power costs or other electric utility emergencies that would otherwise be passed along to the customers in the form of a sudden electric utility rate increase.

2. Subject to the ultimate approval of the City Commission, the Electric Utility and Financial Services Department will propose to appropriate each year from the electric fund an amount of not less than 10% of the expected annual PCA expense or an amount not greater than 25% of the expected annual PCA expense to The Fund.
3. If during a fiscal year, The Fund falls to an amount less than 10% of the annual PCA expense, the City Commission shall consider increasing the electric utility rates to increase the amount in The Fund. If during a fiscal year, The Fund increases to an amount of more than 25% of the annual PCA expense, the City Commission shall consider reducing electric utility rates to decrease the amount in The Fund.
4. On at least a quarterly basis, the Electric Utility in conjunction with the Financial Services Department shall provide a status of The Fund to the City Commission and a recommendation regarding any proposed changes to The Fund.

Section 4. All resolutions or parts of resolutions are hereby amended to the extent that they are in conflict with this Resolution.

Section 5. This Resolution shall become effective immediately upon passage.

The passage of this resolution was moved by Commissioner _____, seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch
Vice Mayor Christopher McVoy
Commissioner Sarah Malega
Commissioner Kimberly Stokes
Commissioner Reinaldo Diaz

The Mayor thereupon declared this resolution duly passed and adopted on the ____ day of _____ 2023.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, MMC, City Clerk

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Electric Utility

TITLE:

Resolution No. 43-2023 – Establishing the rates and charges for the Electric Utility for Fiscal Year 2024

SUMMARY:

Resolution 43-2023 proposes a 5% Increase in Base Energy Charges, Demand Charges, Minimum Bill, and Customer Service Charges

BACKGROUND AND JUSTIFICATION:

Base Energy Charges, Demand Charges, and Customer Service Charges have remained unchanged since January 2021. During City’s budget process it was determined that an increase in the electric utility’s Base Revenues were required to help increase the utility’s Working Capital Fund (also referred to as “Reserves”) so as to grow Reserves gradually over a period of multiple years to an amount equal to six months of operating and maintenance expenses. Base Revenues include items such as Base Energy Charges, Demand Charges, Minimum Bill, and Customer Service Charges.

If approved, the impact to the electric bill for a residential customer using 1,000 kilowatt-hour of electricity per month will be an increase by \$3.98 per month.

Not included in the proposed increase is the Power Cost Adjustment (“PCA”) which is adjusted periodically to reflect costs of power purchases by the electric utility on behalf of its customers. There are no proposed changes to the PCA at this time.

MOTION:

Move to approve/disapprove Resolution No. 43-2023 – Establishing the rates and charges for the Electric Utility for Fiscal Year 2024.

ATTACHMENT(S):

Fiscal Impact Analysis

Resolution 43-2023

Electric Utility Rate Schedule Effective June 1, 2023

Proposed Electric Utility Rate Schedule Effective October 1, 2023

Comparison of Existing to Proposed Rates

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Current Appropriation	0	0	0	0	0
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

RESOLUTION NO. 43-2023 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, PROVIDING FOR RATES, FEES AND CHARGES, AND REGULATIONS FOR ALL ELECTRICITY SOLD BY THE CITY OF LAKE WORTH BEACH, FLORIDA FOR USE OF ELECTRIC LIGHT AND POWER SYSTEM; REPEALING ALL RESOLUTIONS IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Lake Worth Beach, Florida, is authorized and required to fix uniform and adequate rates for its service; and

WHEREAS, the rates set forth herein are just and equitable and serve a valid public purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA as follows:

Section 1. Definitions: For the purpose of this resolution, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

- A. "Shall" is always mandatory and not merely directory.
- B. "Net Metering Accounts" are those customer accounts with the City's Electric Utility where the customer has applied to the City's Electric Utility; installed a Customer-Owned Renewable Generation System (as defined in the Net Metering Program Rules and Regulations); executed a City Interconnection Agreement; has been approved by the Electric Utility for interconnection with the City's electric system; and, remains in compliance with the City's Net Metering Program. All rates applicable to Net Metering Accounts are governed by Resolution No. 45-2019 (as may be amended from time to time).
- C. "Purchased Power Cost Adjustment (PCA)" The cost of electricity is affected by the price of fuel and the purchase price of power supply. The PCA is an adjustment charge caused by an increased or decreased in the cost to purchase or supply power to customers. It is shown on the customer's bill as a credit or a surcharge to the price per kilowatt-hour. The customer's utility bill may have a credit, as the cost of power supply decreases, or it may have a surcharge when the costs increase.

Section 2. The following schedules shall be the rates charged and the regulations imposed by the City of Lake Worth Beach, Florida, on all electric power sold by the City of Lake Worth Beach, Florida for lighting, heating and power purposes, to wit:

A. Regular Residential Electric (Schedule R-S)

1. Designation: Regular Residential Electric
2. Applicable: For domestic electric purposes in private residences and individually metered apartments. Residential rates shall apply for electric energy used in commonly-owned facilities in condominiums and cooperative apartment buildings, subject to the following criteria:
 - a. 100% of the energy is used exclusively for the co-owner’s benefit.
 - b. None of the energy is used in any endeavor which sells or rents a commodity or provides service for a fee.
 - c. Each point of delivery will be separately metered and billed.
 - d. A responsible legal entity is established as the customer to whom the City of Lake Worth Beach can render its bills for said service.
 - e. A cooperative or condominium requesting residential rates shall apply for the rate and establish the above criteria.
3. Limitations: Auxiliary and stand-by generation or resale of the electric energy not permitted hereunder. Recognized rooming houses, tourist homes and dwellings accommodating more than four paying guests supplied through a single meter will not be served under this schedule.
4. Service: Single phase, 60 cycles at available standard voltage. Three phase service may be furnished but only under special arrangements and at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill, which will be applied to each electric account receiving a bill.

Effective Date	10/1/2022	10/01/23
Charge:	\$10.55	\$11.08

b. Energy Charge per kWh

Effective Date:	10/1/2022		10/01/23	
	First 1,000 KWH's	Excess	First 1,000 KWH's	Excess
Base Energy	\$0.06900	0.08900	\$0.07245	\$0.09345
Power Cost Adjustment	0.06092	0.07092	\$0.03133	\$0.04133
Capacity	N/A	N/A	N/A	N/A
Total	0.12992	0.15992	\$0.10378	\$0.13478

6. The rates listed above include all administrative charges from the City of Lake Worth Beach.
7. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.

8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
9. Minimum Bill: The minimum bill for electric use shall be charged at \$37.00 per month.

B. Regular Commercial Service (Schedule C-S)

1. Designation: Regular Commercial Electric.
2. Applicable: For commercial, industrial, and governmental use within the territory served by the Electric Distribution System of the City of Lake Worth Beach, as available and at the option of the City.
3. Limitations: For consumers who own renewable energy facilities (such as wind, solar power or home fuel cells), resale of the electric energy is not permitted hereunder.
4. Service: Single or three phase, 60 cycles and at any available standard voltage, at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill which will be applied to each electric account receiving a bill.

Effective Date	10/1/2022	10/01/23
Charge:	\$17.00	\$17.85

b. Energy Charge per kWh.

Effective Date:	10/1/2022	10/1/2023
	All kWhs	All kWhs
Base Energy	\$0.08700	\$0.09135
Power Cost Adjustment	\$0.06302	\$0.03343
Capacity	N/A	N/A
Total	\$0.15002	\$0.12478

6. The rates listed above includes all administrative charges from the City of Lake Worth Beach.
7. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
9. Minimum Bill: The minimum bill for electric use shall be \$53.00 per month for single phase service and \$105.00 per month for poly phase service.

C. Demand Commercial Service (Schedule CD-S)

1. Designation: Demand Commercial Electric
2. Applicable: For customers who qualifies for service under Schedule C-S above and has a peak demand of 25 kW or greater for three (3) consecutive months:
3. Limitations: Auxiliary or stand-by service or resale not permitted hereunder.

4. Service: Single or three phase, 60 cycles and at any available standard voltage, at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill, which will be applied to each electric account receiving a bill.

Effective Date	10/1/2022	10/01/23
Charge:	\$130.00	\$136.50

b. Energy Charge per KWH

Effective Date:	10/1/2022		10/1/2023	
	All kWhs	Demand - KW	All kWhs	Demand - KW
Base Energy	\$0.05200	\$12.00	\$0.05460	\$12.60
Power Cost Adjustment	\$0.06302		\$0.03343	
Capacity Charge	N/A		N/A	
Total	\$0.11502	\$12.00	\$0.08803	\$12.60

6. The rates listed above include all administrative charges from the City of Lake Worth Beach.
7. Billing Demand: The maximum 15 minute measured demand in the month, subject to power factor adjustment.
8. Power Factor Adjustment: When demand is measured with a kW meter and customer's power factor in any month is below 95% the measured demand may be adjusted to 95% power factor.
9. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
10. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
11. Minimum Bill: The minimum bill for electric use shall be \$263.00 per month.

D. Regular Time of Use Commercial Service (Schedule CT-S)

1. Designation: Time of Use Commercial Service
2. Applicable: For commercial, industrial, and governmental use within the territory served by the Electric Distribution System of the City of Lake Worth Beach, as available and at the option of the City.
3. Limitations: For consumers who own renewable energy facilities (such as wind, solar power or home fuel cells), resale of the electric energy is not permitted hereunder.
4. Service: Single or three phase, 60 cycles and at any available standard voltage, at the option of the City of Lake Worth Beach.

5. Monthly Rates:

- a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill which will be applied to each electric account receiving a bill.

Effective Date	10/1/2022	10/01/23
Charge:	\$30.00	\$31.50

b. Energy Charge:

Effective Date:	10/1/2022	10/1/2023
	Per kWh	Per kWh
Off Peak	\$0.840	\$0.08820
On Peak	\$0.2600	\$0.27300

- i. Determination of Off-Peak Period: October – May: The off-peak period is defined as the hours between 1:00 p.m. and 6:00 a.m., Monday through Friday and all day Saturday and Sunday. In addition, the following holidays will also be considered off-peak: New Year's Day, Memorial Day, Thanksgiving Day, and Christmas Day. June – September: The off-peak period is defined as the hours between 7:00 p.m. and 2:00 p.m., Monday through Friday and all day Saturday and Sunday. In addition, the following holidays will also be considered off-peak: Independence Day and Labor Day. All other hours are considered on peak hours.
6. Term of Contract: One year and thereafter until terminated at the option of either party by the giving of not less than thirty (30) days advance written notice of the effective date of termination.
7. Purchased Power Cost Adjustment Charge: A Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
9. Minimum Bill: The minimum bill for electric use shall be \$53.00 per month for single phase service and \$105.00 per month for poly phase service.

E. Time of Use Demand Commercial Service (Schedule CDT-S)

1. Designation: Time of Use Demand Commercial Service
2. Applicable: For commercial, industrial, and governmental use within the territory served by the Electric Distribution System of the City of Lake Worth Beach, as available and at the option of the City.
3. Limitations: For consumers who own renewable energy facilities (such as wind, solar power or home fuel cells), resale of the electric energy is not permitted hereunder.
4. Service: Single or three phase, 60 cycles and at any available standard 416 voltage, at the option of the City of Lake Worth Beach.
5. Monthly Rates:
 - a. Customer Charge: A fixed charge based on the cost of preparing and delivering a bill which will be applied to each Electric account receiving a bill \$147.00 per month.

Effective Date	10/1/2022	10/01/23
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Charge:	\$140.00	\$147.00
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b. Energy Charge:

Effective Date:	10/1/2022	10/1/2023
	Per kWh	Per kWh
Off Peak	\$0.0620	\$0.06510
On Peak	\$0.2400	\$0.25200
Demand Charge	\$7.00 per kW	\$7.35 per kW

- i. Billing Demand: The maximum 15 minute measured demand in the month, subject to power factor adjustment.
 - ii. Power Factor Adjustment: When demand is measured with a kW 438 meter and customer's power factor in any month is below 95% the measured demand may be adjusted to 95% power factor.
 - iii. Determination of Off-Peak Period: October – May: The off-peak period is defined as the hours between 1:00 p.m. and 6:00 a.m., Monday through Friday and all day Saturday and Sunday. In addition, the following holidays will also be considered off-peak: New Year's Day, Memorial Day, Thanksgiving Day, and Christmas Day.
 - iv. June – September: The off-peak period is defined as the hours between 7:00 p.m. and 2:00 p.m., Monday through Friday and all day Saturday and Sunday. In addition, the following holidays will also be considered off-peak: Independence Day and Labor Day. All other hours are considered on peak hours.
6. Term of Contract: One year and thereafter until terminated at the option of either party by the giving of not less than thirty (30) days advance written notice of the effective date of termination.
 7. Purchased Power Cost Adjustment Charge: A Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
 8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.
 9. Minimum Bill: The minimum bill for electric use shall be \$147.00 per month.

F. Electric Vehicle Charging Level II (Schedule EV2-S)

1. Designation: Electric Vehicle Charging Level II
2. Applicable: For City owned public electric vehicle Level II charging stations.
 - a. None of the energy is used in any endeavor which sells or rents a commodity or provides service for a fee.
 - b. Each point of delivery will be separately metered and billed.
 - c. Limitations: Auxiliary and stand-by generation or resale of the electric energy not permitted hereunder.
3. Energy Charge per kWh

Effective Date:	10/1/2022	10/1/2023
	All KWH's	All KWH's
Base Energy	\$0.05148	\$0.07245

Power Cost Adjustment	\$0.06180	\$0.03133
Capacity	\$0.01020	N/A
Total	\$0.12348	\$0.10378

4. The rates listed above include all administrative charges from the City of Lake Worth Beach.
5. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
6. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.

G. Private Area Lighting (Schedule L-P)

1. Designation: Private Area Lighting
2. Applicable: For year-round outdoor security lighting of yards, driveways, walkways, parking lots, parks, and other areas, under the following conditions:
 - a. Lights to be served hereunder shall be at locations that are easily and economically accessible to the City of Lake Worth Beach equipment and personnel for construction and maintenance.
 - b. Original location of lighting fixtures shall be by mutual agreement and shall not be located so as to create a public nuisance.
 - c. Any relocation requested by customer after installation shall be made at customer's expense. All new lighting units provided under this Schedule shall be the high pressure sodium vapor (conservation lighting) type.
3. Limitations:
 - a. Auxiliary and stand-by generation or resale of the electric energy not permitted hereunder.
 - b. The City of Lake Worth Beach, while exercising reasonable diligence at all times to furnish service hereunder, does not guarantee continuous lighting and will not be liable for damages for any interruption, deficiency or failure of service and reserves the right to interrupt service at any time for necessary repairs to lines or equipment.
4. Service: Service includes lamp renewals, energy from approximately dusk each day until approximately dawn the following day and maintenance of facilities. The City of Lake Worth Beach will replace all burned out lamps and will maintain its facilities during regular daytime working hours as soon as practicable following notification by the customer that such work is necessary. The City of Lake Worth Beach shall be permitted to enter the customer's premises at all reasonable times for the purpose of inspecting, maintaining, installing and removing any or all of its equipment and facilities. Single phase, 60 cycles at available standard voltage. Three phase service may be furnished but only under special arrangements and at the option of the City of Lake Worth Beach.
5. Term of Service: Not less than one (1) year.
6. Monthly Rates: A fixed monthly charge based on the number of units installed shall be charged based on the following schedule.
 - a. Standard Lighting:

Description Unit Cost per Month

	Effective Date:	10/1/2022	10/1/2023
175 Watt (7,000 Lumen) Mercury –Vapor Street Light Unit on Existing Pole		\$12.21	\$12.82
400 Watt (20,500 Lumen) Mercury-Vapor Street Light Unit on Existing Pole		\$19.15	\$20.11
1,000 Watt (55,000 Lumen) Mercury-Vapor Street Light Unit on Existing Pole		\$37.68	\$39.56
100 Watt (9,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole		\$9.93	\$10.43
250 Watt (27,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole		\$14.26	\$14.97
360 Watt High Pressure Sodium Vapor Street Light Unit on Existing Pole		\$17.05	\$17.90
400 Watt (50,000 Lumen) High Pressure Sodium Vapor Street Light Unit on existing pole		\$17.15	\$18.01
48 Watt LED Street Light Unit on Existing Pole		\$9.00	\$9.45
70 Watt LED Street Light Unit on Existing Pole		\$9.70	\$10.19
80 Watt LED Street Light Unit on Existing Pole		\$9.70	\$10.19
101 Watt LED Street Light Unit on Existing Pole		\$16.30	\$17.12
110 Watt LED Street Light Unit on Existing Pole		\$16.30	\$17.12
133 Watt LED Street Light Unit on Existing Pole		\$16.30	\$17.12
150 Watt LED Street Light Unit on Existing Pole		\$16.30	\$17.12
Wood Pole and span of Overhead Conductors or Pole used only for Light		\$10.00	\$10.50
Concrete Pole and Span of Overhead Conductors or Pole used only for Light		\$15.00	\$15.75
Underground Conductors up to 150 feet		\$1.33	\$1.40
Underground Conductors from 150 feet to 300 feet		\$2.68	\$2.81

7. Purchased Power Cost Adjustment Charge: A Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. Outside City Limits Surcharge: A surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.

H. Street Lighting (Schedule L-S)

1. Designation: Street Lighting
2. Applicable: For lighting of public right-of ways.
3. Limitations:
 - a. Auxiliary and stand-by generation or resale of the electric energy not permitted hereunder.
 - b. The City of Lake Worth Beach, while exercising reasonable diligence at all times to furnish service hereunder, does not guarantee continuous lighting and will not be liable for damages for any interruption, deficiency or failure of service and reserves the right to interrupt service at any time for necessary repairs to lines or equipment.
 - c. Should the City of Lake Worth Beach be required by the customer to replace the street light(s) with a light (or lights) of another type or rating, then the customer may

be required to pay the estimated labor, vehicle use and other direct costs involved in replacing the fixtures.

4. Service: Service includes lamp renewals, energy from approximately dusk each day until dawn the following day and maintenance of City of Lake Worth Beach owned street lighting systems.
5. Term of Service: For not less than ten (10) years for City of Lake Worth Beach facilities or customer will be required to pay depreciated cost of installed facilities plus cost of removal.
6. Monthly Rates:
 - a. A fixed monthly charge based on the number of units installed shall be charged based on the following schedule.
 - b. Conservation Lighting:

Description Unit Cost per Month

	Effective Date:	10/1/2022	10/1/2023
100 Watt (9,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole		\$7.85	\$8.24
150 Watt (27,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole		\$9.33	\$9.80
250 Watt (27,500 Lumen) High Pressure Sodium Vapor Street Light Unit on Existing Pole		\$12.26	\$12.87
360 Watt High Pressure Sodium Vapor Street Light Unit on Existing Pole		\$15.19	\$15.95
400 Watt (50,000 Lumen) High Pressure Sodium Vapor Street Light Unit on existing pole		\$17.09	\$17.94
48 Watt LED Street Light Unit on Existing Pole		\$9.00	\$9.45
70 Watt LED Street Light Unit on Existing Pole		\$9.70	\$10.19
80 Watt LED Street Light Unit on Existing Pole		\$9.70	\$10.19
101 Watt LED Street Light Unit on Existing Pole		\$16.30	\$17.12
110 Watt LED Street Light Unit on Existing Pole		\$16.30	\$17.12
133 Watt LED Street Light Unit on Existing Pole		\$16.30	\$17.12
150 Watt LED Street Light Unit on Existing Pole		\$16.30	\$17.12

- c. Appurtenances:

Description Unit Cost per Month

Wood Pole and span of Overhead Conductors \$10.50 or Pole used only for Light
 Concrete Pole and Span of Overhead Conductors \$15.75 or Pole used only for Light
 Underground Conductors up to 150 feet \$1.40
 Underground Conductors from 150 feet to 300 feet \$2.81

7. Purchased Power Cost Adjustment Charge:
 - A. Purchased Power Cost Adjustment Charge will be applied as set forth in Section 3 below.
8. Outside City Limits Surcharge:

- A. Surcharge for electric use outside the City of Lake Worth Beach, Florida, municipal limits shall be charged as set forth in Section 4 below.

Section 3. Purchased Power Cost Adjustment (PCA): A Purchased Power Cost Adjustment Charge (PCA) shall be established for a projected 3 month period for energy sales during that period as follows:

$$PCA = (A + B + C) / D$$

where:

A = The projected purchased power costs for the projected 3 month period comprised of costs such as the FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity, energy and directly related costs, Lake Worth Beach electric utility power generating fuel, and transmission costs

B = A true-up amount representing the over or under recovery of purchased power costs from the prior period

C = The amount transferred to or from the Rate Stabilization Fund for the projected period

D = The projected total retail sales in MWh for the projected 3 month period

The purchased power cost adjustment charge will be reconciled quarterly and trued up between estimated costs and billing units and actual costs and billing units.

Section 4. Surcharge For Service Outside The Municipal Limits: With respect to any residents, premises and/or users outside the corporate limits of the City of Lake Worth Beach, Florida, where such residents, premises and/or users now or hereafter have or use electrical utility service with the electrical system of the City of Lake Worth Beach, they shall be charged a rate for the electricity they use equal to the charge established for service to the residents, premises and/or users within the City of Lake Worth Beach, Florida, plus any applicable taxes or fees that are required in the Code of Ordinances or Resolutions of the specific jurisdiction in which those accounts reside. Such taxes and fees are collected by the City of Lake Worth Beach and remitted directly to the appropriate County or Municipal entity.

Section 5. Nothing in this resolution shall prohibit the City of Lake Worth Beach from entering into an agreement to provide electricity and electric utility services to or within any unit of government or governmental subdivision with terms and conditions other than contained herein.

Section 6. All resolutions or parts of resolutions in conflict herewith are expressly repealed.

Section 7. If any provision of this resolution or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the resolution, which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared severable.

Section 8. This resolution shall be in effect for billings issued on or after October 1, 2023.

The passage of this resolution was moved by Commissioner McVoy, seconded by Commissioner Malega and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Christopher McVoy
- Commissioner Sarah Malega
- Commissioner Kimberly Stokes
- Commissioner Reinaldo Diaz

The Mayor thereupon declared this resolution duly passed and enacted on the 26th day of September 2023.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, MMC, City Clerk



Electric Rates Effective June 1, 2023

Residential Service

Customer Charge	\$10.55 /month	
Energy Charges:	First 1,000 kWh	Additional kWh
Base Energy Charge	\$0.06900 / kWh	\$0.08900 / kWh
Power Cost Adjustment	\$0.03133 / kWh	\$0.04133 / kWh
Total Energy Charges	\$0.10033 / kWh	\$0.13033 / kWh
Minimum Bill:	\$35.00	

Commercial Service

Customer Charge	\$17.00 /month
Energy Charges:	
Base Energy Charge	\$0.08700 / kWh
Power Cost Adjustment	\$0.03343 / kWh
Total Energy Charges	\$0.12043 / kWh
Minimum Bill Single Phase Service:	\$50.00
Minimum Bill Poly Phase Service:	\$100.00

Commercial Demand Service

Customer Charge	\$130.00 /month
Demand Charge	\$12.00 /kW
Energy Charges:	
Base Energy Charge	\$0.05200 / kWh
Power Cost Adjustment	\$0.03343 / kWh
Total Energy Charges	\$0.08543 / kWh
Minimum Bill:	\$250.00

Time of Use Commercial Service

Customer Charge	\$30.00 /month
Energy Charges:	
Off-Peak Energy Charge	\$0.08400 / kWh
On-Peak Energy Charge	\$0.26000 / kWh
Power Cost Adjustment	\$0.03343 / kWh
Minimum Bill Single Phase Service:	\$50.00
Minimum Bill Poly Phase Service:	\$100.00

Time of Use Commercial Demand Service

Customer Charge	\$140.00 /month
Demand Charge	\$7.00 /kW
Energy Charges:	
Off-Peak Energy Charge	\$0.06200 / kWh
On-Peak Energy Charge	\$0.24000 / kWh
Power Cost Adjustment	\$0.03343 / kWh
Minimum Bill:	\$140.00

Electric Vehicle Charging Level II

Energy Charges:	
Base Energy Charge	\$0.06168 / kWh
Power Cost Adjustment	\$0.03133 / kWh
Total Energy Charges	\$0.09301 / kWh

PURCHASE POWER COST ADJUSTMENT (PCA)

Purchased Power Cost Adjustment (PCA): A Purchased Power Cost Adjustment Charge (PCA) shall be established for a projected 3 month period for energy sales during that period as follows:

PCA = (A + B + C) / D, where:

A = The projected purchased power costs for the projected 3 month period comprised of costs such as the FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity, energy and directly related costs, Lake Worth Beach electric utility power generating fuel, and transmission costs

B = A true-up amount representing the over or under recovery of purchased power costs from the prior period

C = The amount transferred to or from the Rate Stabilization Fund for the projected period

D = The projected total retail sales in MWh for the projected 3 month period

The purchased power cost adjustment charge will be reconciled quarterly and tried up between estimated costs and billing units and actual costs and billing units.

Private Area Lighting

175 W Mercury Vapor	\$12.21 /month
400 W Mercury Vapor	\$19.15 /month
1,000 W Mercury Vapor	\$37.68 /month
100 W Sodium Vapor	\$9.93 /month
250 W Sodium Vapor	\$14.26 /month
360 W Sodium Vapor	\$17.05 /month
400 W Sodium Vapor	\$17.15 /month
48 W LED	\$9.00 /month
70 W LED	\$9.70 /month
80 W LED	\$9.70 /month
101 W LED	\$16.30 /month
110 W LED	\$16.30 /month
133 W LED	\$16.30 /month
150 W LED	\$16.30 /month
Wood Pole and Span	\$10.00 /month
Concrete Pole and Span	\$15.00 /month
Underground Conductors:	
Up to 150 ft	\$1.33 /ft/month
150-300 ft	\$2.68 /ft/month

Street Lighting

100 W Sodium Vapor	\$7.85 /month
150 W Sodium Vapor	\$9.33 /month
250 W Sodium Vapor	\$12.26 /month
360 W Sodium Vapor	\$15.19 /month
400 W Sodium Vapor	\$17.09 /month
48 W LED	\$9.00 /month
70 W LED	\$9.70 /month
80 W LED	\$9.70 /month
101 W LED	\$16.30 /month
110 W LED	\$16.30 /month
133 W LED	\$16.30 /month
150 W LED	\$16.30 /month
Wood Pole and Span	\$10.00 /month
Concrete Pole and Span	\$15.00 /month
Underground Conductors:	
Up to 150 ft	\$1.33 /ft/month
150-300 ft	\$2.68 /ft/month

The lighting rates shown above do not include the Power Cost Adjustment of \$0.03133 per kWh.



Electric Rates Effective October 1, 2023

Residential Service

Customer Charge	\$11.08 /month	
Energy Charges:	First 1,000 kWh	Additional kWh
Base Energy Charge	\$0.07245 / kWh	\$0.09345 / kWh
Power Cost Adjustment	\$0.03133 / kWh	\$0.04133 / kWh
Total Energy Charges	\$0.10378 / kWh	\$0.13478 / kWh
Minimum Bill:	\$37.00	

Commercial Service

Customer Charge	\$17.85 /month
Energy Charges:	
Base Energy Charge	\$0.09135 / kWh
Power Cost Adjustment	\$0.03343 / kWh
Total Energy Charges	\$0.12478 / kWh
Minimum Bill Single Phase Service:	\$53.00
Minimum Bill Poly Phase Service:	\$105.00

Commercial Demand Service

Customer Charge	\$136.50 /month
Demand Charge	\$12.60 /kW
Energy Charges:	
Base Energy Charge	\$0.05460 / kWh
Power Cost Adjustment	\$0.03343 / kWh
Total Energy Charges	\$0.08803 / kWh
Minimum Bill:	\$263.00

Time of Use Commercial Service

Customer Charge	\$31.50 /month
Energy Charges:	
Off-Peak Energy Charge	\$0.08820 / kWh
On-Peak Energy Charge	\$0.27300 / kWh
Power Cost Adjustment	\$0.03343 / kWh
Minimum Bill Single Phase Service:	\$53.00
Minimum Bill Poly Phase Service:	\$105.00

Time of Use Commercial Demand Service

Customer Charge	\$147.00 /month
Demand Charge	\$7.35 /kW
Energy Charges:	
Off-Peak Energy Charge	\$0.06510 / kWh
On-Peak Energy Charge	\$0.25200 / kWh
Power Cost Adjustment	\$0.03343 / kWh
Minimum Bill:	\$147.00

Electric Vehicle Charging Level II

Energy Charges:	
Base Energy Charge	\$0.07245 / kWh
Power Cost Adjustment	\$0.03133 / kWh
Total Energy Charges	\$0.10378 / kWh

PURCHASE POWER COST ADJUSTMENT (PCA)

Purchased Power Cost Adjustment (PCA): A Purchased Power Cost Adjustment Charge (PCA) shall be established for a projected 3 month period for energy sales during that period as follows:

PCA = (A + B + C) / D, where:

A = The projected purchased power costs for the projected 3 month period comprised of costs such as the FMPA Stanton 1 variable costs, the FMPA Municipal Solar Project power costs, supplemental purchased power capacity, energy and directly related costs, Lake Worth Beach electric utility power generating fuel, and transmission costs

B = A true-up amount representing the over or under recovery of purchased power costs from the prior period

C = The amount transferred to or from the Rate Stabilization Fund for the projected period

D = The projected total retail sales in MWh for the projected 3 month period

The purchased power cost adjustment charge will be reconciled quarterly and tried up between estimated costs and billing units and actual costs and billing units.

Private Area Lighting

175 W Mercury Vapor	\$12.82 /month
400 W Mercury Vapor	\$20.11 /month
1,000 W Mercury Vapor	\$39.56 /month
100 W Sodium Vapor	\$10.43 /month
250 W Sodium Vapor	\$14.97 /month
360 W Sodium Vapor	\$17.90 /month
400 W Sodium Vapor	\$18.01 /month
48 W LED	\$9.45 /month
70 W LED	\$10.19 /month
80 W LED	\$10.19 /month
101 W LED	\$17.12 /month
110 W LED	\$17.12 /month
133 W LED	\$17.12 /month
150 W LED	\$17.12 /month
Wood Pole and Span	\$10.50 /month
Concrete Pole and Span	\$15.75 /month
Underground Conductors:	
Up to 150 ft	\$1.40 /ft/month
150-300 ft	\$2.81 /ft/month

Street Lighting

100 W Sodium Vapor	\$8.24 /month
150 W Sodium Vapor	\$9.80 /month
250 W Sodium Vapor	\$12.87 /month
360 W Sodium Vapor	\$15.95 /month
400 W Sodium Vapor	\$17.94 /month
48 W LED	\$9.45 /month
70 W LED	\$10.19 /month
80 W LED	\$10.19 /month
101 W LED	\$17.12 /month
110 W LED	\$17.12 /month
133 W LED	\$17.12 /month
150 W LED	\$17.12 /month
Wood Pole and Span	\$10.50 /month
Concrete Pole and Span	\$15.75 /month
Underground Conductors:	
Up to 150 ft	\$1.40 /ft/month
150-300 ft	\$2.81 /ft/month

The lighting rates shown above do not include the Power Cost Adjustment of \$0.03133 per kWh.

CITY OF LAKE WORTH BEACH, FLORIDA
Electric Cost of Service Study

Comparison of Existing and Proposed Residential Service Rates [1]

			Residential Service	
			Existing	Proposed 2024
Customer Charge		(\$)	\$10.55	\$11.08
Energy Charge	First 1,000 kWh	(\$/kWh)	\$0.06900	\$0.07245
Energy Charge	Additional kWh	(\$/kWh)	\$0.08900	\$0.09345
PCA [2]	First 1,000 kWh	(\$/kWh)	\$0.03133	\$0.03133
PCA [2]	Additional kWh	(\$/kWh)	\$0.04133	\$0.04133

Usage (kWh)	Existing		Proposed 2024		Difference	
	Amount (\$)	Unit Cost (Cents/kWh)	Amount (\$)	Unit Cost (Cents/kWh)	Amount (\$)	Unit Cost (Cents/kWh)
500	60.72	12.143	62.97	12.594	2.26	0.451
600	70.75	11.791	73.35	12.225	2.60	0.433
700	80.78	11.540	83.73	11.961	2.94	0.421
800	90.81	11.352	94.10	11.763	3.29	0.411
900	100.85	11.205	104.48	11.609	3.64	0.404
1,000	110.88	11.088	114.86	11.486	3.98	0.398
1,100	123.91	11.265	128.34	11.667	4.43	0.402
1,200	136.95	11.412	141.82	11.818	4.87	0.406
1,300	149.98	11.537	155.29	11.946	5.32	0.409
1,400	163.01	11.644	168.77	12.055	5.76	0.411
1,500	176.05	11.736	182.25	12.150	6.20	0.414
2,000	241.21	12.061	249.64	12.482	8.43	0.422
2,500	306.38	12.255	317.03	12.681	10.66	0.426
3,000	371.54	12.385	384.42	12.814	12.88	0.429
4,000	501.87	12.547	519.20	12.980	17.33	0.433
5,000	632.20	12.644	653.98	13.080	21.78	0.436

[1] Amounts shown reflect single phase, inside the City service.

[2] Power Cost Adjustment effective June 2023.

CITY OF LAKE WORTH BEACH, FLORIDA
Electric Cost of Service Study

Comparison of Existing and Proposed General Service Non-Demand Rates [1]

				General Service Non-Demand	
				Existing	Proposed 2024
Customer Charge		(\$)		\$17.00	\$17.85
Energy Charge	All kWh	(\$/kWh)		\$0.08700	\$0.09135
Power Cost Adjustment [2]		(\$/kWh)		\$0.03343	\$0.03343

Usage (kWh)	Existing		Proposed 2024		Difference	
	Amount (\$)	Unit Cost (Cents/kWh)	Amount (\$)	Unit Cost (Cents/kWh)	Amount (\$)	Unit Cost (Cents/kWh)
1,000	137.43	13.743	142.63	14.263	5.20	0.520
1,250	167.54	13.403	173.83	13.906	6.29	0.503
1,500	197.65	13.176	205.02	13.668	7.38	0.492
1,750	227.75	13.014	236.22	13.498	8.46	0.484
1,900	245.82	12.938	254.93	13.417	9.12	0.480
2,000	257.86	12.893	267.41	13.371	9.55	0.478
3,000	378.29	12.610	392.19	13.073	13.90	0.463
4,000	498.72	12.468	516.97	12.924	18.25	0.456
5,000	619.15	12.383	641.75	12.835	22.60	0.452
6,000	739.58	12.326	766.53	12.776	26.95	0.449
7,000	860.01	12.286	891.31	12.733	31.30	0.447
8,000	980.44	12.256	1,016.09	12.701	35.65	0.446
9,000	1,100.87	12.232	1,140.87	12.676	40.00	0.444
10,000	1,221.30	12.213	1,265.65	12.657	44.35	0.444

[1] Amounts shown reflect single phase, inside the City service.

[2] Power Cost Adjustment effective June 2023.

CITY OF LAKE WORTH BEACH, FLORIDA
Electric Cost of Service Study

Comparison of Existing and Proposed Rates for General Service Demand [1]

General Service Demand		
	Existing	Proposed 2024
Customer Charge (\$)	\$130.00	\$136.50
Demand Charge (\$/kW)	\$12.00	\$12.60
Energy Charge All kWh (\$/kWh)	\$0.05200	\$0.05460
Power Cost Adjustment [2] (\$/kWh)	\$0.03343	\$0.03343

Demand (kW)	Hours	Usage (kWh)	Existing		Proposed 2024		Difference	
			Amount (\$)	Unit Cost (Cents/kWh)	Amount (\$)	Unit Cost (Cents/kWh)	Amount (\$)	Unit Cost (Cents/kWh)
30	200	6,000	1,002.58	16.710	1,042.68	17.378	40.10	0.668
	300	9,000	1,258.87	13.987	1,306.77	14.520	47.90	0.532
	400	12,000	1,515.16	12.626	1,570.86	13.091	55.70	0.464
150	200	30,000	4,492.90	14.976	4,667.40	15.558	174.50	0.582
	300	45,000	5,774.35	12.832	5,987.85	13.306	213.50	0.474
	400	60,000	7,055.80	11.760	7,308.30	12.181	252.50	0.421
500	200	100,000	14,673.00	14.673	15,239.50	15.240	566.50	0.567
	300	150,000	18,944.50	12.630	19,641.00	13.094	696.50	0.464
	400	200,000	23,216.00	11.608	24,042.50	12.021	826.50	0.413

[1] Amounts shown reflect inside the City service, and exclude any applicable primary service discount or power factor correction.

[2] Power Cost Adjustment effective June 2023.

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26,2023

DEPARTMENT: Water Utilities

TITLE:

Resolution No. 44-2023 – Establish the rates and charges for the Water System for Fiscal Year 2023-2024

SUMMARY:

Resolution 44-2023 establishes the rates and charges for the City's Water System for Fiscal Year 2023-2024, which includes a rate increase of 3.25%.

BACKGROUND AND JUSTIFICATION:

The City of Lake Worth Beach contracts with Stantec on an ongoing basis to provide a yearly Revenue Sufficiency Analysis. This analysis provides a multi-year projection of the sufficiency of revenues for the Water Utility to meet current and projected financial requirements and determine the level of revenue increases necessary in each year to provide adequate revenues to fund all identified cost requirements.

The results of the current FY 2023-2024 rate sufficiency analysis have shown that there is a need for a rate increase of a 3.25% from the previous fiscal year.

Continued conservation efforts including water conservation education materials and the City's block rate structure will assure that the City remains a leader in water conservation efforts.

Pursuant to section 180.136, Florida Statutes, the City notified its customers of the proposed increase in the water rates through the City's billing process.

MOTION:

Move to approve/disapprove Resolution No. 44-2023 establishing the rates and charges for the City Water Utility for Fiscal Year 2023-2024.

ATTACHMENT(S):

Fiscal Impact Analysis N/A
Resolution No. 44-2023

RESOLUTION NO. 44-2023 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, PROVIDING FOR WATER SYSTEMS RATES AND CHARGES FOR FISCAL YEAR 2024; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Lake Worth Beach, Florida, is authorized and required to fix uniform and adequate rates for its services; and

WHEREAS, an evaluation of the level of Water system rates establishes a need to revise the rates and charges as set forth herein in order to meet the several objectives identified by the evaluation; and

WHEREAS, the City Commission finds the rates and charges for the City's Water System for Fiscal Year 2023 as set forth herein are fair and equitable and serve a valid public purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION TO THE CITY OF LAKE WORTH BEACH, FLORIDA, that:

Section 1: For the purpose of this resolution, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

"Shall" is always mandatory and not merely directory.

"Phase I water shortage", "Phase II water shortage", "Phase III water shortage", and "Phase IV water shortage", shall refer to the phases of water shortage that may be declared by the South Florida Water Management District pursuant to the Florida Administrative Code Chapter 40E-21.

"ERU" shall stand for "Equivalent Residential Unit" and shall mean the average amount of potable water used by a residential facility in terms of the reserved capacity needed to serve that facility. One (1) ERU is, by definition, equal to one (1) single-family residence. Each residential unit in a multi-family complex or mobile home park unit is equivalent to 66% of one ERU, or as calculated in accordance with Chapter 18, Article VI, Code of Ordinances of the City of Lake Worth Beach.

Section 2: The following schedules shall be the rate charged by the City of Lake Worth Beach for all water sold by the City of Lake Worth Beach for all purposes, to wit:

GENERAL SERVICE – SCHEDULE NO. 1

Designation: General Service

Applicable: For commercial, industrial, and governmental use within the territory served by the Water Distribution System of the City of Lake Worth Beach, as available and at the option of the City.

Monthly Rates: **Customer Charge**, effective as of the dates listed:

Effective Date:	10/01/2022	10/01/2023
Charge:	\$5.31	\$5.48

A fixed charge based on the cost of preparing and delivering a bill, which will be applied to each water account receiving a bill.

Base Facility Charge, effective as of the dates listed:

Effective Date:	10/01/2022	10/01/2023
5/8" x 3/4" Meter	\$15.83	\$16.35
1" Meter	\$39.61	\$40.90
1-1/2" Meter	\$79.19	\$81.77
2" Meter	\$126.73	\$130.85
3" Meter	\$253.47	\$261.71
4" Meter	\$396.02	\$408.89
6" Meter	\$792.06	\$817.80
8" Meter	\$1,230.06	\$1,270.04

For meter sizes larger than those shown in the table, the Director shall determine the charge on a case-by-case basis.

A fixed charge designed to recover a portion of the fixed costs of the water system shall be applied to each meter based upon the size of the meter.

Volume Charge: Rates for each hundred gallons of metered water consumption effective as of the dates listed:

Effective Date:	10/01/2022	10/01/2023
Block 1	\$.341	\$.352
Block 2	\$.525	\$.542
Block 3	\$.711	\$.734
Block 4	\$1.244	\$1.284
Block 5	\$1.561	\$1.612

The amount of water consumption in each block subject to the rates in the table above is based upon meter size and is as follows (in hundreds of gallons):

Meter Size	Block 1		Block 2		Block 3		Block 4		Block 5	
	Min	Max	Min	Max	Min	Max	Min	Max	Min	Max
5/8" x 3/4"	1	40	41	80	81	120	121	200	201	∞
1"	1	100	101	200	201	300	301	500	501	∞
1-1/2"	1	200	201	400	401	600	601	1,000	1001	∞
2"	1	320	321	640	641	960	961	1,600	1601	∞
3"	1	640	640	1,280	1281	1,920	1921	3,200	3201	∞
4"	1	1,000	1001	2,000	2001	3,000	3001	5,000	5001	∞
6"	1	2,000	2001	4,000	4001	6,000	6001	10,000	10001	∞
8"	1	4,000	4001	6,000	6001	8,000	8001	12,000	12001	∞

Meter Deposit: Reference City of Lake Worth Resolution No. 59-2019 or latest revision thereof.

RESIDENTIAL – SCHEDULE NO. 2

Designation: Residential

Applicable: For individually metered single-family customers, master-metered single-family residential units, individually metered multi-family customers, master-metered multi-family residential units, cottages, apartments, trailers or mobile home parks use within the territory served by the Water Distribution System of the City of Lake Worth Beach, as available and at the option of the City.

Monthly Rates: **Customer Charge**, effective as of the dates listed:

Effective Date:	10/01/2022	10/01/2023
Charge:	\$5.31	\$5.48

A fixed charge based on the cost of preparing and delivering a bill, which will be applied to each water account receiving a bill.

Base Facility Charge, effective as of the dates listed:

Effective Date	10/01/2022	10/01/2023	ERU
Charge:	\$15.83	\$16.35	Per ERU
Charge:	\$10.45	\$10.79	Per multi-family residential unit or mobile home unit (66% of 1 ERU)

A fixed charge designed to recover a portion of the fixed costs of the water system shall be applied to each ERU served, as defined above.

Volume Charge: Rates for each hundred gallons of metered water consumption effective as of the dates listed:

Effective Date:	10/01/2022	10/01/2023
Block 1	\$.341	\$.352
Block 2	\$.525	\$.542
Block 3	\$.711	\$.734
Block 4	\$1.244	\$1.284
Block 5	\$1.561	\$1.612

The amount of water consumption in each block subject to the rates in the table above is for each meter served per month, as defined above, and is as follows (in hundreds of gallons):

Water Use Per Meter Per Month Blocks	Single-Unit Accounts		Multi-Unit Accounts	
	Minimum	Maximum	Minimum	Maximum
Block 1	1	40	1	20
Block 2	41	80	21	40
Block 3	81	120	41	60
Block 4	121	200	61	100
Block 5	201	∞	101	∞

Meter Deposit: Reference City of Lake Worth Resolution No. 59-2019 or latest revision thereof.

UNMETERED FIRE LINE – SCHEDULE NO. 3

Designation: Fire Service

Applicable: All buildings requiring this service.

Monthly Rate: Rates effective as of the dates listed:

Effective Date:	10/01/2022	10/01/2023
2" Connection	\$30.35	\$31.33
4" Connection	\$78.39	\$80.94
6" Connection	\$156.89	\$161.99
8" Connection	\$254.71	\$262.98
10" Connection	\$391.74	\$404.47
12" Connection	\$666.10	\$687.74

TEMPORARY HYDRANT METER: Charge effective as of dates listed:

10/01/2023

Meter Deposit: \$525.00
 Activation Fee: \$35.00

Application Fee:	\$17.00
Fee to move a hydrant meter:	\$30.00
Minimum charge per month:	\$261.71

IRRIGATION SERVICE – SCHEDULE NO. 4

Designation: Irrigation Service

Applicable: For any customer with an independent meter for irrigation use within the territory served by the Water Distribution System of the City of Lake Worth Beach, as available and at the option of the City.

Monthly Rates: **Customer Charge**, effective as of the dates listed:

Effective Date:	10/01/2022	10/01/2023
Charge:	\$5.31	\$5.48

A fixed charge based on the cost of preparing and delivering a bill, which will be applied to each water account receiving a bill.

Base Facility Charge, effective as of the dates listed:

Effective Date:	10/01/2022	10/01/2023
5/8" x 3/4" Meter	\$15.83	\$16.35
1" Meter	\$39.61	\$40.90
1-1/2" Meter	\$79.19	\$81.77
2" Meter	\$126.73	\$130.85
3" Meter	\$253.47	\$261.71
4" Meter	\$396.02	\$408.89
6" Meter	\$792.06	\$817.80

A fixed charge designed to recover a portion of the fixed costs of the water system shall be applied to each meter based upon the size of the meter.

Volume Charge: Rates for each hundred gallons of meter water consumption effective as of the dates listed:

Effective Date:	10/01/2022	10/01/2023
Block 1	\$.711	\$.734
Block 2	\$1.244	\$1.284
Block 3	\$1.561	\$1.612

The amount of water consumption in each block subject to the rates in the table above is based upon meter size and is as follows (in hundreds of gallons):

	Block 1		Block 2		Block 3	
Meter Size	Min	Max	Min	Max	Min	Max
5/8" x 3/4"	1	100	101	200	201	∞

1"	1	250	251	500	501	∞
1-1/2"	1	500	501	1,000	1,001	∞
2"	1	800	801	1,600	1,601	∞
3"	1	1,600	1,601	3,200	3,201	∞
4"	1	2,500	2,501	5,000	5,001	∞
6"	1	5,000	5,001	10,000	10,001	∞

Meter Deposit: Reference City of Lake Worth Resolution No. 59-2019 or latest revision thereof.

Section 3: It is the City’s intention to maintain Phase I (3 days per week) water restrictions within the City’s service area. However, in the event that a Phase II or IV mandatory water restriction is declared by the South Florida Water Management District or other authority having jurisdiction upon the City to reduce water production, the Volume Charge listed in Section 2 above will be adjusted upwards by fifteen percent (15%). The application of the water restriction surcharge is to maintain net revenue margins of the utility system, which may be eroded due to reduced sales resulting from the imposed water restrictions, to meet debt service covenants on any outstanding indebtedness allocable to utility system and to promote water conservation. The water consumption rates will be adjusted and will be applicable to all water use above the first consumption block usage range as referenced in Section 1 – General Service – Schedule No. 1 for the commercial, industrial and governmental use and Section 2 – Residential – Schedule No. 2 for individually metered single-family and multiple-family residential, as well as master metered multiple-family residential use.

The water restriction surcharge will not be applied to the base facility charge, unmetered fire line charge or the wastewater rates for service. The water restriction surcharge shall be applied by the City beginning with the first billing cycle following the declared mandatory Phase IV water restrictions as imposed by the South Florida Water Management District or other authority having jurisdiction.

The mandatory water restriction surcharge shall be discontinued by the City beginning at the first billing cycle following the removal or lifting of the Phase IV water restrictions by the South Florida Water Management District or other authority having jurisdiction.

Section 4: Average Billing Calculation: The average billing process will establish a monthly bill, which will be based on the average water bill for the preceding 12 calendar months. If the residence or apartment has been occupied for the last 12 months and the customer can qualify as an existing customer, the previous tenant or owner’s bill may be used to estimate the average monthly billing.

The average billing calculation will be reviewed and adjustments made to correct for changes in rates, usage, or other factors to be implemented on the bills issued during June and December of each year.

Section 5: With respect to any premises or users situated outside the corporate limits of the City of Lake Worth Beach, which premises or users now or hereafter have active connections with the water system of the City, there shall be charged a rate equal to the

charges established for service to residents of the City, plus a surcharge equal to twenty-five percent (25%) of such charge as outlined in the Policies & Procedures Manual. The foregoing surcharge shall not apply to users with whom the City has now or shall hereafter contract for services at charges established in such contracts unless the contract provides for surcharges.

Section 6: If any provision of this resolution, or the application thereof any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the resolution, which can be given effect without the invalid provision or applications, and to this end, the provisions of this resolution are declared severable.

Section 7: All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Section 8: This resolution shall be in effect for billings issued on or after the 1st day of October 2023.

The passage of this resolution was moved by Commissioner _____, seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch
Vice Mayor Christopher McVoy
Commissioner Sarah Malega
Commissioner Kimberly Stokes
Commissioner Reinaldo Diaz

The Mayor thereupon declared this resolution duly passed and adopted this _____ day of September 2023.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, MMC, City Clerk

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Water Utilities

TITLE:

Resolution No. 45-2023 – Establishing the rates, fees and changes for the City’s Sub-regional Sewer System

SUMMARY:

Resolution 45-2023 establishes the rates Sub-regional sewer utility based on the recommendations of the sub-regional board for Fiscal Year 2024.

BACKGROUND AND JUSTIFICATION:

The Lake Worth Beach Sub-Regional System is made up of wastewater collection systems that connect to the Lake Worth Beach system and include the City of Lake Worth Beach and seven other entities (Town of Lantana, City of Atlantis, Town of Manalapan, Town of South Palm Beach, Village of Palm Springs, Town of Lake Clarke Shores and Palm Beach State College).

The Sub-regional system transports the other entities’ wastewater through the City’s Sub-regional System to the East Central Regional Water Reclamation Facility (ECR). The Lake Worth Beach Sub-Regional System includes several major gravity interceptors, a master pump station (MPS) located in Bryant Park, a 36-inch forcemain, a repump station (RPS) located north of 2nd Avenue North, a pump station at Palm Beach State College and a second section of 36-inch forcemain that transfers flow to the Palm Beach County portion of the regional system and eventually to the ECR.

The operating agreement approved on March 5, 2013 contained a rate calculation methodology for use during the term of the agreement. The proposed rates were calculated in accordance with this method.

The City held a meeting with the Sub-regional Customer Member Board to discuss these proposed rates as required under the new agreements. All members attended and the Board is recommending approval of the rates.

MOTION:

Move to approve/disapprove Resolution No. 45-2023 establishing the Fiscal Year 2024 rates and charges for the City’s Sub-regional Sewer System.

ATTACHMENT(S):

Fiscal Impact Analysis N/A
Resolution 45-2023

RESOLUTION NO. 45-2023 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, PROVIDING FOR RATES, FEES AND CHARGES FOR USE OF THE REGIONAL SEWAGE DISPOSAL SYSTEM OF THE CITY OF LAKE WORTH BEACH; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING RESOLUTIONS OR CONFLICTING PARTS OF RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Lake Worth Beach, Florida, is authorized and required to fix uniform and adequate rates for its service; and

WHEREAS, an evaluation of the level of regional sewer system rates establishes a need to revise the rates and charges as set forth herein in order to meet the several objectives identified by the evaluation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, that:

Section 1. The following schedules, except as otherwise provided, shall be the rates, fees and charges for the use of and for the services and facilities furnished or to be furnished by the regional sewage disposal system, to be paid by those entities who use the regional sewage disposal system.

1. East Central Regional Water Reclamation Facility Renewal & Replacement Payment

A fixed charge to each customer based on the contribution requirements billed to the City of Lake Worth Beach regional sewer system for the East Central Regional Water Reclamation Facility in each fiscal year multiplied against the percentage of total capacity of the regional sewer system reserved by each customer. For FY 2024 the charge is:

ECR R&R Per Entity	Reserved Capacity	Annual Charge
Lake Worth Beach	43.927%	\$805,353.31
Palm Springs	28.200%	\$517,016.54
Lantana	14.073%	\$258,014.05
Atlantis	4.217%	\$77,321.31
PBSC	0.939%	\$17,217.94
Manalapan	1.322%	\$24,232.66
South Palm Beach	2.974%	\$54,523.48
Lake Clarke Shores	4.348%	\$79,712.71
Total:	100.00%	\$1,833,392.00

2. East Central Regional Water Reclamation Facility Debt Payment

A fixed charge to each customer based on the indebtedness requirements billed to the City of Lake Worth Beach regional sewer system for the East Central Regional Water Reclamation Facility in each fiscal year multiplied against the percentage of total capacity of the regional sewer system reserved by each customer. Note that debt service is included in the ECR Operations and Maintenance charges.

3. Lake Worth Regional Sewer System Renewal & Replacement Charge

A fixed charge to each customer to recover the cost of scheduled system renewal and replacements and reserve requirements of the City of Lake Worth regional sewer system based on the renewal and replacement cost and reserve requirements of the regional sewer system in each fiscal year multiplied against the percentage of total capacity of the regional sewer system reserved by each customer. For FY 2024 the charge is:

Lake Worth Beach Sub-regional R&R per Entity	Reserved Capacity	Annual Charge
Lake Worth Beach	43.927%	\$169,338.42
Palm Springs	28.200%	\$108,711.00
Lantana	14.073%	\$54,251.58
Atlantis	4.217%	\$16,258.04
PBSC	0.939%	\$3,620.35
Manalapan	1.322%	\$5,095.30
South Palm Beach	2.974%	\$11,464.43
Lake Clarke Shores	4.348%	\$16,760.87
Total:	100.000%	\$385,500.00

4. Palm Beach County Force Main Capital Reserve Charge

A fixed charge to each customer to recover the cost of the sub-regional sewer system share of planned Palm Beach County capital projects. The capital amount to be reserved annually will be multiplied against the percentage of total capacity reserved by each customer. For FY 2024, the charge is:

PBC Sub-regional R&R Per Entity	Reserved Capacity	Annual Charge
Lake Worth Beach	43.927%	\$ 307,488.70
Palm Springs	28.200%	\$ 197,400.00
Lantana	14.073%	\$ 98,511.30
Atlantis	4.217%	\$ 29,521.74
PBSC	0.939%	\$ 6,573.91
Manalapan	0.322%	\$ 9,252.17
South Palm Beach	0.974%	\$ 20,817.39
Lake Clarke Shores	4.348%	\$ 30,434.78
Total:	100.000%	\$ 700,000.00

5. Operations & Maintenance Charge

A volume charge will be applied to each thousand gallons of metered volume to recover the annual operating and maintenance costs directly related to the transmission, treatment, and disposal of sewage utilizing the City of Lake Worth Beach regional sewer system.

Operations & Maintenance Charge effective as of the dates listed:

All Customers Excluding Village of Palm Springs

Effective Date:	10/1/2022	10/1/2023
Charge:	\$2.863	\$3.194

Village of Palm Springs

Effective Date:	10/1/2022	10/1/2023
Charge:	\$2.548	\$2.859

Section 2. Should any section or provision of this resolution or any portion thereof, any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or any part thereof other than the part declared to be invalid.

Section 3. If any provision of this resolution, or the application thereof any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the resolution, which can be given effect without the invalid provision or applications, and to this end, the provisions of this resolution are declared severable.

Section 4. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Section 5. This resolution shall be in effect for billings issued on or after October 1, 2023.

The passage of this resolution was moved by Commissioner ____, seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Christopher McVoy
- Commissioner Sarah Malega
- Commissioner Kimberly Stokes
- Commissioner Reinaldo Diaz

The Mayor thereupon declared this resolution duly passed and adopted this _____ day of September 2023.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Water Utilities

TITLE:

Resolution No. 46-2023 – Establishing the rates and charges for the Local Sewer System

SUMMARY:

Resolution 46-2023 establishes the rates and charges for the City's Local Sewer System for Fiscal Year 2024 which includes a 10% rate increase.

BACKGROUND AND JUSTIFICATION:

The City of Lake Worth Beach contracts with Stantec on an ongoing basis to provide a yearly Revenue Sufficiency Analysis. This analysis provides a multi-year projection of the sufficiency of revenues for the Local Sewer Utility to meet current and projected financial requirements and determine the level of revenue increases necessary in each year to provide adequate revenues to fund all identified cost requirements.

The results of the current Fiscal Year 2024 rate sufficiency analysis have shown that a 10% rate increase is needed from the previous fiscal year.

Future costs for the local sewer utility are related to costs to maintain the system and continue Infiltration & Inflow improvements, as well as contributions towards the subregional sewer system, which has a steep increase due to East Central Regional Water Reclamation Facility (ECRWRF) R&R projects. These projects are needed to maintain the reliability and environmental requirements of the sewer system.

Pursuant to section 180.136, Florida Statutes, the City notified all utility customers of the proposed 10% rate increase through the City's utility billing process.

MOTION:

Move to approve/disapprove Resolution No. 46-2023 establishing the Fiscal Year 2024 rates and charges for the City's Local Sewer System.

ATTACHMENT(S):

Fiscal Impact Analysis N/A
Resolution 46-2023

RESOLUTION NO. 46-2023 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, PROVIDING FOR RATES, FEES AND CHARGES FOR USE OF SEWAGE DISPOSAL SYSTEM OF THE CITY OF LAKE WORTH BEACH; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING RESOLUTIONS OR PARTS OF RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Lake Worth Beach, Florida, is authorized and required to fix uniform and adequate rates for its service; and

WHEREAS, an evaluation of the level of sewer system rates establishes a need to revise the rates and charges as set forth herein in order to meet the several objectives identified by the evaluation; and

WHEREAS, the City Commission finds that the rates established herein are fair and equitable and serve a valid public purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, that:

Section 1. The following schedules, except as otherwise provided, shall be the rates, fees and charges for the use of and for the services and facilities furnished or to be furnished by the sewage disposal system, to be paid by the owner, tenant or occupant of each lot or parcel of land which may be connected with or may use the sewage disposal system by or through any part of the sewer system of the City of Lake Worth Beach. These charges are those necessary to cover operation, maintenance and replacement costs.

Accounts, which are served and metered by the Lake Worth Beach Utilities Water System.

1. Customer Charge effective as of the dates listed:

Effective Date:	10/1/2022	10/1/2023
Charge:	\$5.86	\$6.45

A fixed charge based on the cost of preparing and delivering a bill, which will be applied to each sewer account receiving a bill.

Base Facility Charge:

Residential Accounts:

A fixed charge designed to recover a portion of the fixed costs of the sewer system will be applied to each Equivalent Residential Unit (ERU), which is defined as follows:

“ERU” shall stand for “Equivalent Residential Unit” and shall mean the

average amount of wastewater discharged by a residential facility in terms of the reserved capacity needed to serve that facility. One ERU is, by definition, equal to one single family residence. Each residential unit in a multi-family complex or mobile home park unit is equivalent to 66% of one ERU or as calculated in accordance with Chapter 18, Article IV, Code of Ordinances of the City of Lake Worth Beach.

Base Facility Charge effective as of the dates listed:

Effective Date:	10/1/2022	10/1/2023	
Charge:	\$12.24	\$13.46	per ERU
Charge:	\$8.08	\$8.89	per multi-family residential unit or mobile home unit (66% of 1 ERU)

Commercial and Industrial Use Accounts:

A fixed charge designed to recover a portion of the fixed costs of the sewer system will be applied to each water meter based upon the size of the meter:

Base Facility Charge effective as of the dates listed:

Effective Date:	10/1/2022	10/1/2023
5/8 X 3/4" Meter	\$12.24	\$13.46
1" Meter	\$30.59	\$33.65
1-1/2" Meter	\$61.19	\$67.30
2" Meter	\$97.91	\$107.70
3" Meter	\$195.80	\$215.38
4" Meter	\$305.92	\$336.51
6" Meter	\$611.86	\$673.04
8" Meter	\$911.14	\$1002.26

For meter sizes larger than those shown in the table, the Director shall determine the charge on a case by case basis.

2. Volume Charge effective as of the dates listed:

Effective Date:	10/1/2022	10/1/2023
Charge:	\$0.548	\$0.602

A volume charge based on those costs related directly to the transmission, treatment and disposal of sewage generated.

Residential use:

A residential use is defined as a use consisting of a minimum of one dwelling unit but shall not include transient facilities.

A volume charge will be applied to each hundred gallons of water consumed up to a maximum of twelve thousand (12,000) gallons per ERU for individually metered, single or multi-unit residential accounts or six thousand (6,000) gallons per ERU for master-metered, multi-unit residential accounts.

Commercial use:

A commercial use shall include all non-residential uses, including but not limited to motels, hotels, nursing homes, restaurants, commercial businesses and institutions.

A volume charge will be applied to each hundred gallons of water consumed.

Industrial Use Class:

An industrial use shall be defined as a commercial use that is able to demonstrate that over fifty percent (50%) of its water usage is not returned to the City sewer system.

A volume charge would be applied to each hundred gallons of water consumed up to a maximum flow as approved by the Water Utilities Director. This limitation for this charge is established to provide for the use of water for industrial and other uses that do not generate sewage.

Accounts, which are not served by the Lake Worth Beach Water Utilities System.

1. Customer Charge effective as of dates listed:

Effective Date:	10/1/2022	10/1/2023
Charge:	\$5.86	\$6.45

A fixed charge based on the cost of preparing and delivering a bill, which will be applied to each sewer account receiving a bill.

2. Base Facility Charge effective as of dates listed:

Effective Date:	10/1/2022	10/1/2023	
Charge:	\$12.24	\$13.46	Per ESU
Charge:	\$8.08	\$8.89	Per mutli-family or mobile home (66% of 1 ESU)

A fixed charge designed to recover a portion of the fixed costs of the sewer system will be applied to each Equivalent Service Unit (ESU), which is

defined as follows:

A single-family residence: Each residential unit in a multi-family complex such as duplexes, triplexes, apartment buildings and condominiums. Each separate living unit in a mobile home or trailer park complex. Each washing machine in a commercial laundry. Each multiple of four (4) sewer fixtures or fraction thereof, in a commercial or institutional establishment such as an office, store, hotel, motel, combination store/apartment, office/apartment, nursing home, etc.

3. Fixture Charge effective as of dates listed:

Effective Date:	10/1/2022	10/1/2023
Charge:	\$12.24	\$13.46

A fixture charge applied to each sewer plumbing fixture defined as toilet, sink, washing machine, shower, bathtub, floor drain, drinking fountain and other fixtures as defined in the Florida Building Code for non-residential uses. Four plumbing fixtures shall be assumed for all single family residential and each residential unit in a multi-family complex and separate living unit in a mobile home or trailer park.

Collection of Sewer Service Charge:

The sewer service charges shall become effective as to each lot or parcel of land which may be connected with the sewage disposal system by or through any part of the sewer system of the City of Lake Worth Beach, upon the placing of the sewage disposal system in operation and the construction of all connections thereto from the sanitary sewer serving such lot or parcel.

In cases where water is furnished by the Lake Worth Beach Utilities System, the amount of the sewer service charges shall be included in the bills for water rendered by the City of Lake Worth Beach. In all cases where water is furnished by any plant or system other than the Lake Worth Beach Utilities System, bills shall be rendered for the amount of such sewer service charges in the same manner as bills are rendered for water. If the amount of such sewer service charges shall not be paid by the due date shown on the bill, the City of Lake Worth Beach may discontinue furnishing water to such premises, and shall disconnect the same from the Lake Worth Beach Utilities System, and shall proceed forthwith to recover the amount of such sewer service charges in such lawful manner as it may deem advisable. The City of Lake Worth Beach may enter into contracts with the County of Palm Beach, City of West Palm Beach, or any municipality, public utility, special authority or government unit in Palm Beach County for the treatment and disposal of sewage collected outside the territorial limits of the City of Lake Worth Beach and pumped and delivered to some part of the sewer system of the City of Lake Worth Beach; provided, however, that notwithstanding any of the other provisions of this resolution, the charges

to be paid for the treatment and disposal of such sewage shall not be less than an amount which is fair and equitable taking into account the cost to the City of Lake Worth Beach of such treatment and disposal and the principal and interest requirements of the bonds issued pursuant to Lake Worth Utilities Authority Resolution No. U-18-75. That certain State Bond Loan Agreement between the Lake Worth Utilities Authority and the Department of Environmental Regulation of the State of Florida is dated January 6, 1976. User charges will be reviewed periodically to assure adequate revenue to cover operation, maintenance and replacement costs and a proportional distribution of costs among users. Users will receive annually, a notification of the current rate structure.

Section 2. With respect to any premises or users situated outside the corporate limits of the City of Lake Worth Beach, which premises or users now or hereafter have active connections to the sewage disposal system of the City, there shall be charged a rate equal to the charge established for service to residents of the City, plus a surcharge equal to twenty-five percent (25%) of such charge as outlined in the Policies & Procedures Manual.

The foregoing surcharge shall apply to users with whom the City has now or shall hereafter contract for services at charges established in such contracts unless the contract does not allow for a surcharge.

Section 3. Average Billing Calculation. The average billing process will establish a monthly bill which will be based on the average sewer bill for the preceding twelve (12) calendar months. If the residence or apartment has been occupied for the last twelve (12) months and the customer can qualify as an existing customer, the previous tenant's or owner's bill may be used to estimate the average monthly billing.

The average billing calculation will be reviewed and adjustments made to correct for changes in rates, or usage or other factors to be implemented on the bills issued during June and December of each year.

Section 4. Should any section or provision of this resolution or any portion thereof, any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or any part thereof other than the part declared to be invalid.

Section 5. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Section 6. This resolution shall be in effect for billings issued on or after October 1, 2023.

The passage of this resolution was moved by Commissioner _____, seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch
Vice Mayor Christopher McVoy

Commissioner Sarah Malega
Commissioner Reinaldo Diaz
Commissioner Kimberly Stokes

The Mayor thereupon declared this resolution duly passed and adopted this
_____ day of September, 2023.

LAKE WORTH BEACH CITY COMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Electric Utility

TITLE:

Agreement with Encop, Inc. for the renovation of Men's Room, the Employee Lounge, small Ladies' Room, Supplies Room and for construction of the Linemen's Ready Room at the 1900 2nd Avenue North Building

SUMMARY:

The Agreement authorizes Encop, Inc., to provide construction services for the Renovation of the 1900 Building Phase 2 at a cost not to exceed \$242,467.30.

BACKGROUND AND JUSTIFICATION:

The City issued an Invitation for Bid (IFB 23-117) seeking bids from qualified companies to provide construction services for the Renovation of the 1900 Building Phase 2 at the City's 1900 Building. Encop Inc. was one of four contractors to provide bids and is recommended to provide the construction services.

The Electric Utility, its warehouse facility with outside yard for materials and service vehicles and the Department of Community Sustainability occupy the 1900 Building. Linemen occupy portions of the facility 24/7/365.

Phase 1 Renovation work took place in FY2020. Work included converting warehouse space into offices, a complete renovation of the Women's bathroom and a buildout of the Engineering office area.

The Phase 2 scope of work includes converting warehouse space into a Linemen's Ready Room where linemen have access to dedicated computers for completing reports and attend on-line training, a conference room for meetings and proximity to the Employees Lounge. The Employees Lounge will be updated with new appliances, cabinetry, flooring and ceiling tiles and is intended to be used by all employees in the 1900 building.

Additionally, the Phase 2 renovations include a nursing station for mothers with newborn children as well as updating a smaller Women's Room. The 1900 Building's Men's Room will be totally renovated. Work includes all mechanical, electrical, plumbing work for the associated areas and temporary bathroom facilities while the Men's Room is unavailable.

Encop Inc. will be providing all labor, materials and equipment. The City will provide furniture, computers, video monitors, fire sprinkler work and low voltage IT cabling. The agreement includes contingency and credits price in the final price of \$242,467.30.

MOTION:

Move to approve/disapprove the Agreement with Encop Inc., to provide construction services for the renovation of the 1900 Building Phase 2 at a cost not to exceed \$242,467.30.

ATTACHMENT(S):

Fiscal Impact Analysis
Contract
Bid Tab

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Current Appropriation	0	0	0	0	0
Operating	0	0	0	0	0
Capital	0	\$242,467.30	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

Contract Award - Existing Appropriation	
	Expenditure
Department	Electric Utility
Division	
GL Description	Improve Other than Build / Infrastructure
GL Account Number	421-6010-531-62.00
Project Number	EL2204
Requested Funds	\$225,084.18

Contract Award - Existing Appropriation	
	Expenditure
Department	Capital Project Fund/ Community Sustainability
Division	Building
GL Description	Improve Other than Build
GL Account Number	301-2020-589.63-00
Project Number	GV2302
Requested Funds	\$17,383.12

**CONSTRUCTION CONTRACT
(CITY OF LAKE WORTH BEACH 1900 BUILDING IMPROVEMENTS PHASE 2)**

THIS CONSTRUCTION CONTRACT (“Contract”) is dated on the _____, by and between the **CITY OF LAKE WORTH BEACH**, a Florida municipal corporation (“City”) and **ENCOP, Inc.**, a corporation located at 7858 SW 3rd Street, North Lauderdale, FL 33068, which is authorized to do business in the State of Florida (“Contractor”).

WHEREAS, the CITY is a municipal corporation organized and existing pursuant to the Charter and the Constitution of the State of Florida; and

WHEREAS, the CITY issued on an Invitation for Bid (IFB# 23-117) for the City of Lake Worth Beach 1900 Building Improvements Phase 2 (“IFB”), which IFB is not attached but is incorporated by the reference into this Contract; and

WHEREAS, the City received four (4) responsive bids to the IFB; and

WHEREAS, Contractor was found to be the lowest, responsive and responsible bidder and was recommended for the award; and

WHEREAS, the City requested Contractor to delete some of the line items from its bid and, the CONTRACTOR submitted a revised bid to meet this reduction request; and

WHEREAS, the City desires to accept the Contractor’s revised bid in order for Contractor to make interior improvements at the existing building at the City of Lake Worth Beach Electric Utility located at 1900 2nd Avenue North, Lake Worth Beach, pursuant to the terms and conditions of this Contract; and

WHEREAS, the Contractor further warrants that it is experienced and capable of performing the tasks hereunder in a professional and competent manner; and

WHEREAS, the City finds entering this Contract with the Contractor as described herein serves a valid public purpose.

NOW THEREFORE, the City hereby engages the services of the Contractor, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

ARTICLE 1. RECITALS AND WORK.

1.1 The Recitals set forth above are incorporated into this Contract as true and correct statements and incorporated herein as if set forth in the body of this Contract.

1.2 Contractor shall complete all Work as specified and indicated in the IFB as amended and Contract Documents. The Work is generally described as City of Lake Worth Beach 1900 Building Improvements Phase 2 Project (“Project”).

ARTICLE 2. CONTRACT TIME.

2.1 The Work will be substantially completed within **120 calendar days** from the date of the Notice to Proceed. Final completion of the Work that includes final improvements of the Project shall be within **150 calendar days** from the Notice to Proceed.

2.2 Time is of the essence under this Contract.

2.3 **LIQUIDATED DAMAGES.** The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss if the work described in the Contract Documents is not completed within the times specified in paragraph 2.1 above. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City two hundred dollars (\$200.00) for each day that expires after the time specified in paragraph 2.1.

2.4 The Contractor shall not be considered in default by reason of a delay in timely performance if such delay and failure arise out of causes reasonably beyond the control of the Contractor or its subcontractors (if authorized) and without the Contractor's or subcontractor's fault or negligence. Upon the Contractor's written request, the City shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the Contractor and, if the Contractor's delay and failure to timely perform was without it or its subcontractors' fault or negligence, as reasonably determined by the City, the time of completion shall be extended for any reasonable time that the City may reasonably decide; subject to the City's rights to change, terminate, or stop any or all of the work at any time. If the Contractor is delayed at any time in the progress of the work by any act or neglect of the City or its employees, by an approved written change in the scope from the original Contract Documents, or by any other contractor employed by the City, or by changes ordered by the City or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Contractor's reasonable control, or by delay authorized by the City pending negotiation or by any cause which the City shall reasonably decide justifies the delay, then the time of completion shall be extended for any reasonable time the City may decide. The Contractor must provide the City with written notice of any delay claims and no extension of time shall be made for any delay occurring more than five (5) days before a claim is made in writing to the City. In the case of continuing cause of delay, only one (1) claim is necessary. With the exception of an approved written change in the scope from the original Contract Documents, the Contractor's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the Work and Contractor specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by Contractor due to a delay in completion of the work. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery or damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the City. Otherwise, the Contractor shall be entitled only to extensions of the Contract times as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above. Further, in the City's sole discretion, a requested extension of time may be denied for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last five (5) years of weather recorded or otherwise established by the City.

ARTICLE 3. CONTRACT PRICE.

3.1 City shall pay Contractor for completion of the Work in accordance with the Contract Documents a lump sum, not to exceed amount of **Two Hundred Forty-Two Thousand Four Hundred Sixty Seven Dollars and Thirty Cents (\$242,467.30)**, which shall be payable in accordance with Article 4 of this Contract. The Contract Price includes **Seven Thousand Five Hundred Dollars (\$7,500.00)** as a contingency for unforeseen changes and potential additional changes requested by the City (“Contingency”). The Contractor must submit a written request to the City prior to commencing any Work to be covered by the Contingency. The City’s Contract Administrator is authorized to approve in writing the use of the Contingency by the Contractor.

ARTICLE 4. PAYMENT PROCEDURES.

4.1 Generally. The Contractor shall submit invoices on a monthly basis detailing all Work accomplished in the prior month, which is installed and to be used in the Project. Contractor’s invoices shall be submitted to:

City of Lake Worth Beach
Attn: Financial Services Department
7 N. Dixie Highway
Lake Worth Beach, FL 33460

The City’s Contract Administrator will review each invoice submitted by the Contractor. If approved by the City’s Contract Administrator and the Financial Services Department, the City will make payment in accordance with the Contract Documents. If not approved, the City will notify the Contractor within twenty (20) business days of the City’s receipt and identify the action necessary to correct the invoice or a deficiency.

4.2 Payment to the Contractor shall be made pursuant Florida’s Prompt Payment Act (for construction services), section 218.735, Florida Statutes (2023), except as provided herein. Specifically, the City will withhold five percent (5%) of each payment to the Contractor as retainage until fifty percent (50%) of the Work is completed by the Contractor. After fifty percent (50%) of the Work is completed, upon written request from the Contractor, the City’s Contract Administrator may agree in writing with the Contractor to release a portion of the retainage not to exceed fifty percent (50%) of the total retainage amount. Within twenty (20) business days of the finalization of the punch-list described below and upon receipt of a payment request from the Contractor, the City will pay the Contractor all retainage held less an amount equal to 150% of the estimated cost to complete the items on the punch-list. Upon completion of all items on the finalized punch-list, the Contractor may submit a request for release of all retainage.

4.3 In accordance with section 218.735(7), Florida Statutes (2023), as soon as possible, **but no later than ten (10) business days prior to reaching substantial completion**, the Contractor shall create a proposed punch-list of items that must be completed by the Contractor prior to the Contractor submitting its final payment request. The Contractor’s proposed punch-list must include all items of Work which remain to be completed and the estimated cost to complete each Work item on the list. Upon receipt of the Contractor’s proposed punch-list, the City will have five (5) business days to review, make modifications, or agree to the proposed punch-list and estimated cost. If the City does not make any modifications to the Contractor’s proposed punch-list within five (5) business days of receipt, the proposed punch-list will be deemed accepted by the City. The City’s Contract Administrator or designee will resolve any disputes in the punch-list and determine the final punch-list for the parties **no later than five (5) days after the City’s review and deliver the same to the**

Contractor. Once the punch-list is finalized and delivered to the Contractor, the Contractor shall have thirty (30) days to complete all Work on the punch-list or until the time set for final completion of the Work (if the final completion date provides for more time). The failure of either party to include any corrective work or pending items on the finalized punch-list does not alter the responsibility of the Contractor to complete all Work and the Project. The Contractor's proposed punch-list and modifications by the City may be by informal written notice (e.g., email, fax, or hand-delivery); however, proof of delivery shall be kept by the party providing the informal written notice to the other party.

4.4 Final Payment. Upon final completion and acceptance of the work in accordance with the Contract Documents (including all punch-list items) and final inspection by the appropriate agency with jurisdiction over the project (if other than the City), the Contractor shall submit a "final invoice" to the City. In order for both parties to close their books and records, the Contractor will clearly state "FINAL" on the Contractor's final invoice. This certifies that all work under the applicable work order has been properly completed and all charges have been invoiced to the City. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the Contractor. If the Contractor's Final Invoice is approved as set forth above, the City shall pay the remainder of the work order price including any amount held as retainage.

4.5 Notwithstanding the foregoing, the City shall not be required to pay or release any amount of retainage that is subject of a good faith dispute made in writing, the subject of a claim brought pursuant to section 255.05, Florida Statutes, or otherwise the subject of a written claim or demand by the City.

4.6 Final payment shall not become due until the Contractor and all of its subcontractors submit to the City releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract Documents or otherwise related to the Program.

4.7 Acceptance of final payment by the Contractor or a subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final invoice.

ARTICLE 5. INDEMNITY, INSURANCE AND BOND

5.1 The parties recognize that the Contractor is an independent contractor. The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor against the City and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third-party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

5.2 Prior to commencing any services, Contractor shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the City and Contractor. All such insurance policies may not be modified or terminated without the express written authorization of the City.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Commercial general liability (Products/completed operations)	\$1, 000,000 per occurrence
Contractual, insurance broad form property, Independent Contractor, personal injury)	\$2,000,000 annual aggregate
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker's Compensation	\$ statutory limits

The commercial general liability and automobile liability policies will name the City as an additional insured on a primary, non-contributing basis, and proof of all insurance coverage shall be furnished to the City by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that Contractor has obtained insurance of the type, amount, and classification as required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve Contractor of its liability and obligations under this Agreement.

5.3 The Contractor shall provide a public construction bond in accordance with the provisions of section 255.05, Florida Statutes. The bond shall conform with the bond form attached hereto as **Exhibit "A"** or be in such substantially similar form as approved by the City. The bond shall be in an amount not less than the total Contract Price by a Surety Company acceptable to the City. The

Contractor must provide the City with a fully executed and recorded copy (in the Official Records of Palm Beach County) of the bond prior to commencing any Work. To be acceptable to the City as the Owner, a Surety Company shall comply with the following provisions:

1. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida Department of Insurance, authorizing it to write surety bonds in the State of Florida.
2. The Surety Company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
4. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to Proposal is issued.
5. The Surety Company shall have at least the ratings of A-/Class V in the latest issue of Best's Key Rating Guide.
6. The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
 - a. Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.
 - b. In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

ARTICLE 6. TERMINATION.

6.1 **TERMINATION BY CITY:** The City (through its City Manager or designee) may terminate the Contract Documents if the Contractor:

1. refuses or fails to supply enough properly skilled workers or proper materials;
2. fails to prosecute the Work in a timely manner;
3. fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
4. disregards or takes action contrary to any laws, ordinances, or rules, regulations orders of a public authority having jurisdiction;
5. takes action, short of declaring bankruptcy, evidencing insolvency;
6. fails or refuses to provide and/or maintain insurance or proof of insurance or the public construction bond as required by the Contract Documents; or,
7. otherwise is in breach of a provision of the Contract Documents.

When any of the above reasons exist, the City, may without prejudice to any other rights or remedies of the City and after giving the Contractor written notice and five (5) days to cure, terminate the Contract and Contract Documents and may:

1. take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by or paid for by the City; and,
2. finish the Work by whatever reasonable method the City may deem expedient.

The Contractor shall be liable for any damage to the City, including additional attorney and engineering/architectural fees, resulting from the Contractor's termination under this provision by the City, including but not limited to, and any increased costs incurred by the City in completing the Work.

When the City terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment, if any, until the Work is finished.

Should it be determined by a mediator or a court of competent jurisdiction that the City wrongfully terminated the Contract, then the Contractor agrees to treat such termination as a termination for convenience.

6.2 TERMINATION BY THE CITY FOR CONVENIENCE: The City may, at any time, terminate the Contract Documents for the City's convenience and without cause. Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

1. cease operations as directed by the City in the notice;
2. take actions necessary, or that the City may direct, for the protection and preservation of the Work; and
3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the City's convenience, the Contractor shall be entitled to receive payment for Work executed and reasonable costs incurred by reason of such termination including termination payments to subcontractors and demobilization costs.

ARTICLE 7. CONTRACT DOCUMENTS.

7.1 Contract Documents. The Contract Documents are incorporated herein by reference as if originally set forth in this Contract, and comprise the entire agreement between the City and Contractor. The Contract Documents consist of the terms and conditions set forth in this Contract, the IFB including all Project plans/drawings and issued addenda; the bid submitted by the Contractor; and any duly executed and City issued Change Orders, Work Directive Changes, Field Orders and amendments relating thereto, and the Contractor's revised bid. If, during the performance of the Work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, within five (5) business days and before proceeding shall obtain a written interpretation or clarification. Failure to obtain a written interpretation or clarification will be deemed a waiver of the ambiguity, error or discrepancy by the Contractor. The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

- First Priority: Change Orders, Work Directive Changes, Field Orders and Amendments approved and executed by the parties
- Second Priority: Terms and conditions of this Contract
- Third Priority: The IFB, addenda issued with the IFB, and Project plans
- Fourth Priority: Contractor's revised bid.

7.2 Contract Administrator. Whenever the term "Contract Administrator" is used herein, it is intended to mean the City Manager or designee, for the City of Lake Worth Beach, Florida. In the administration of this Contract, all parties may rely upon instructions or determinations made by the Contract Administrator except that all determinations that result in an increase in Contract Time and/or an increase in the Contract Price, shall require a formal Change Order executed by the City Manager or the City Commission (depending on the authority set forth in the City's Procurement Code).

ARTICLE 8. CONTRACTOR'S REPRESENTATIONS AND SCOPE OF WORK.

8.1 In order to induce City to enter into this Contract, Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents and any data and reference items identified in the Contract Documents.
2. Contractor has visited the Project site ("Site"), conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress and performance of the Work.
3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress and performance of the Work.
4. Contractor has studied carefully all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Contract Documents, especially with respect to any technical data in such reports and drawings, and (2) reports and drawings related to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Contract Documents, especially with respect to technical data in such reports and drawings. Contractor accepts the determination set forth in the Contract Documents of the extent of the technical data contained in such reports and drawings upon which Contractor is entitled to rely, if any.
5. Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies, if any, (in addition to or to supplement those referred to in paragraph 7.4 above) which pertain to the subsurface or physical conditions at or adjacent to the Site or otherwise may affect the cost, progress, performance or furnishing of the Work as Contractor considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract

Documents; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

6. Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents, if any, with respect to existing Underground Facilities at or adjacent to the Site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by Contractor in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

7. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress and performance of the work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

8. Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents and based on the information and observations referred to above, the Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

9. Contractor has given the Contract Administrator written notice of all conflicts, errors or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by the Contract Administrator is acceptable to Contractor.

10. Contractor acknowledges that the Contract Documents are generally sufficient to indicate and convey an adequate understanding of all terms and conditions for performance and furnishing of the Work.

11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

12. Contractor is aware of the general nature of work to be performed by City and others at the Site that relates to the Work as indicated in the Contract Documents.

13. Contractor agrees to be solely responsible for compliance with all applicable environmental and safety laws and regulations, for any liability arising from non-compliance with the laws and regulations and to reimburse the City for any loss incurred in connection therewith. This compliance provision specifically includes the Contractor's compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

8.2 The Project and Work includes all materials and services and other things necessary for the Contractor to complete the Project as described the Contract Documents.

8.3 The Contractor represents to the City that the Work provided under the Contract Documents shall be in accordance with accepted and established trade practices and procedures recognized in the Contractor's trade in general and that the materials shall conform to the highest standards and in accordance with the Contract Documents.

8.4 The Contractor represents that it is licensed to do business in the State of Florida and holds and will maintain all applicable licenses required for the work to be completed under the Contract Documents. The Contractor further warrants its capability and experience to perform the work provided for herein in a professional and competent manner.

8.5 The Work shall be performed by the Contractor or under its supervision and all personnel engaged in performing the work shall be fully qualified and, if required, authorized or permitted under the state and local law to perform such Work. All of the Contractor's personnel (and all subcontractors), shall comply with all applicable laws and regulations governing safety and security.

8.6 Should the City require additional materials or services not included in the Contract Documents, fees and payment for such work will be set forth in a separate written amendment or change order prior to any such additional materials or services being provided by the Contractor. The Contractor has no authority to approve any changes to the Contract Documents without prior written authorization from the City's Contract Administrator.

8.7 The City's Fiscal Year ends on September 30th of each calendar year. The City cannot authorize the purchase of goods or services beyond September 30th of each calendar year, prior to the annual budget being approved by the City Commission or funds otherwise being available to pay the Contractor. Additionally, the City must have budgeted appropriate funds for the goods and services in any subsequent Fiscal Year. If the budget is approved for said goods and services, the City will issue a new purchase order for the remaining approved goods and/or services but the terms of such purchase order shall not apply; the Contract Documents shall control.

ARTICLE 9. MISCELLANEOUS.

9.1 *Assignment.* Unless expressly agreed to elsewhere in the Contract Documents, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.2 *Successors and assigns.* City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

9.3 *Severability.* Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor, who agree that the Contract Documents shall be reformed to replaced such stricken provision or part thereof with a valid and enforceable provisions that comes as close as possible to expressing the intention of the stricken provision.

9.4 *Public entity crimes.* A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not be awarded or perform Work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.

9.5 *Inspector General.* In accordance with Palm Beach County ordinance number 2011-009, the Contract Documents may be subject to investigation and/or audit by the Palm Beach County Inspector General. Contractor should review such ordinance in order to be aware of its rights and/or obligations under such ordinance and as applicable.

9.6 *Waiver.* Failure of either party to enforce or exercise any right(s) under the Contract Documents shall not be deemed a waiver of either party's right to enforce said right(s) at any time thereafter.

9.7 *Waiver of jury trial.* TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THE CONTRACT DOCUMENTS.

9.8 *Independent Contractor.* The Contractor is, and shall be, in the performance of all Work under the Contract Documents, an Independent Contractor, and not an employee, agent, or servant of the City. All persons engaged in any of the Work performed pursuant to the Contract Documents shall at all times and in all places be subject to the Contractor's sole direction, supervision and control.

9.9 *Access and audits.* The Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Work for at least five (5) years after final payment is made. The City shall have access to such books, records, and documents as required for the purpose of inspection or audit during normal business hours at the Contractor's place of business. Under no circumstances will Contractor be required to disclose any confidential or proprietary information regarding its products and service costs.

9.10 *Preparation.* The Contract Documents shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

9.11 *Public Records Law.* As applicable, the Contractor shall comply with Florida's Public Records Laws, and specifically agrees to:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City

upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION CITY CLERK, (561) 586-1660 OR CITYCLERK@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.

9.12 *Enforcement costs.* If any legal action or other proceeding is brought for the enforcement of the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of the Contract Documents, the parties agree that each party shall be responsible for its own attorney's fees.

9.13 *Binding authority.* Contractor's representative below has full power, authority and legal right to execute and deliver these Contract Documents and perform all of its obligations under the Contract Documents. By signing the Contract Documents, the representative hereby represents to the City that he/she has the authority and full legal power to execute the Contract Documents and any and all documents necessary to effectuate and implement the terms of the Contract Documents on behalf of the party for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in the Contract Documents.

9.14 *Assignment of warranties.* Contractor shall assign to City all warranties extended to Contractor by material suppliers. If an assignment of warranty requires the material supplier to consent to same, then Contractor shall secure the material supplier's consent to assign said warranties to City.

9.15 *Contractor's certifications.* Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract Documents. For the purposes of this paragraph:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract Documents to the detriment of City, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of City, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract Documents.

9.16 *Construction defects.* PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

9.17 *Delays; Contractor's remedies.* NOTWITHSTANDING ANY PROVISION ELSEWHERE IN THE CONTRACT DOCUMENTS, NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST CITY BY REASON OF ANY DELAYS. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance, be it reasonable or unreasonable, foreseeable or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delays, in accordance with and the extent specifically provided herein.

9.18 *Termination for failure to provide Public Construction Bond.* If a Public Construction Bond is required under the Construction Documents and the Contractor fails to provide the fully executed Public Construction Bond, including a certified copy of the Public Construction Bond as recorded in the Official Records for Palm Beach County, within fifteen (15) calendar days after the Contractor's and City's execution of this Contract, the City may immediately terminate this Contract upon written notice to the Contractor and the City shall have no further obligation to the Contractor under the Contract Documents. In the event of such termination, the Contractor shall also forfeit its bid security to the City.

9.19 *Scrutinized Companies.*

1. Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Contract at its sole option if the Contractor or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Contract.

2. If this Contract is for one million dollars or more, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Contract at its sole option if the Contractor, or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Contract.

3. The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.

4. The Contractor agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Contract, including any and all renewals.

5. The Contractor agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the Contractor shall immediately notify the City of the same.

6. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

9.20 *Counterparts*: This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument. Further, this Contract may be executed by electronic signature as authorized by the City.

9.21 *Entire Contract and Amendment*: This Contract (together with the other Contract Documents) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof.

9.22 *Governing Law; Consent to Jurisdiction*: This Contract (together with the other Contract Documents) shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and, to the extent permitted by applicable law, any claim that such suit, action or proceeding by any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

9.23 *Third Party Beneficiary rights*: This Contract shall create no rights or claims whatsoever in any person other than a party herein.

9.24 *Severability*: If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

9.25 *Effective date*: The effective date of this Contract is the date the Contract is approved by the City Commission or City Manager as appropriate.

9.26 *Compliance*: Each of the parties agrees to perform its obligations under the Contract Documents in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of the work and under the Contract Documents.

9.27 *Work for Hire*: All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the Contractor or its subcontractors under this Contract shall be considered a "Work for Hire" and the exclusive property of the City. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, Contractor and Contractor's Subcontractors will assign to the City all right, title and interest in and to Contractor and/or Contractor's Subcontractors' copyright(s) for such Documents. Contractor shall execute and

deliver to City such instruments of transfer and take such other action that City may reasonable request, including, without limitation, executing and filing, at City's expense, copyright applications, assignments and other documents required for the protection of City's right to such Documents. The Contractor shall retain copies of the Documents for a period of three (3) years from the date of completion of the Project. The City grants to the Contractor and Contractor's Subcontractors the right and/or limited license to use a portion of the Documents prepared by the Contractor or the Contractor's Subcontractors in future projects of the Contractor or Contractor's Subcontractors with said right and/or limited license to use a portion at Contractor's or Contractor's Subcontractor's own risk and without any liability to City. Any modifications made by the City to any of the Contractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the Contractor will be at the City's sole risk and without liability to the Contractor.

9.28 Continuing Obligations: Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

9.29 Notice: Any notice required to be given under the Contract Documents shall be sent by certified mail (return receipt requested) or by nationally recognized overnight courier or by hand-delivery as follows to the City:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and to the Contractor as follows:

ENCOP, INC
7858 SW 3rd St.
North Lauderdale, FL 33068
Attn: Wolmer F. Oliveira, President

Either party may amend this provision by written notice to the other party. Notice shall be deemed provided upon receipt of certified mail (signed receipt) or overnight courier (signed receipt) or hand-delivery (signed receipt).

9.30 Warranty/Guaranty: All Work, materials, labor, and equipment to be furnished and/or installed by the Contractor under the Contract Documents shall be guaranteed by the Contractor or manufacturer, if any, for a period of one year from the date of final approval of the Project against defective materials, design and workmanship. Upon receipt of notice from the City of failure of any part covered under such warranty/guaranty period, the affected Work, labor, materials, or equipment shall be repaired and/or replaced promptly by the Contractor or the manufacturer at no expense to the City. In the event the Contractor fails to make the necessary repairs or replacements within thirty (30) days after notification by the City, the City may accomplish the repairs and/or replacements at the expense of the Contractor.

9.31 Protection of Work and Property: The Contractor shall continuously maintain adequate protection of all Work from damage, and shall protect such Work and the City's property from injury or loss arising during the term of the Contract. Except for any such damage, injury, or loss which may be directly caused by the City or its employees, the Contractor shall adequately protect adjacent

property, as provided by the law, and shall provide guard fences, lights, and any other necessary materials to carry out such protection.

Until final acceptance of the Project by the City, the Contractor shall take every necessary precaution against injury or damage to the Work by the action of the elements or from any other cause whatsoever, and the Contractor shall repair, restore and make good, without additional charge any work occasioned by any of the above causes before its completion and acceptance by the City.

9.32 *Subcontractors*: The total Work to be accomplished by subcontractors is listed in the Contractor's bid (if any) and may not be changed unless approved in writing by the Contract Administrator. The balance of Work must be accomplished by the Contractor's own forces. The Contractor shall be responsible for the acts or omissions of its subcontractors. The subcontractors shall have insurance consistent with the insurance required of the Contractor as set forth in the Contract Documents unless otherwise agreed in writing by the Contract Administrator.

10. *E-Verify*: Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the Contractor shall:

1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;
2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
3. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the City upon request;
4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
5. Be aware that a violation of section 448.09, Florida Statutes (Unauthorized Aliens; Employment Prohibited), shall be grounds for termination of this Contract; and,
6. Be aware that if the City terminates this Contract under Section 448.095(2)(c), Florida Statutes, the Contractor may not be awarded a contract for at least one (1) year after the date on which the Contract is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Contract.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the City and Contractor have caused this Contract for the City of Lake Worth Beach 1900 Building Improvements Phase 2 to be executed the day and year shown below.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

By: _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: **ENCOP, INC.**

By: Wolmer F. de Oliveira

[Corporate Seal]

Print Name: WOLMER F. DE OLIVEIRA

Title: PRESIDENT

STATE OF FLORIDA
COUNTY OF PALM BEACH

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 13th day of SEPTEMBER 2023, by WOLMER DE OLIVEIRA as the PRESIDENT [title] of **ENCOP, Inc.**, a Florida Corporation, who is personally known to me or who has produced FL DL as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Seal:



Notary Public Signature

Exhibit "A"
CITY OF LAKE WORTH BEACH
PAYMENT AND PERFORMANCE BOND
(Pursuant to secs. 255.05 and 337.18, Fla. Stat.)

Surety Bond No. _____

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR:

Name:

Principal Business Address:

Telephone Number:

SURETY:

Name:

Principal Business Address

Telephone Number:

OWNER:

City of Lake Worth Beach
7 North Dixie Highway
Lake Worth Beach, FL 33460
(561) 586-1600

CONTRACT:

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

This Bond is issued in favor of the City of Lake Worth Beach/Owner conditioned on the full and faithful performance of the Contract.

1. Contractor has entered into Project No. _____ with the City for the project titled "_____" (the "Contract"), with conditions and provisions as are further described in the aforementioned Contract, which Contract, including all of its attachments, exhibits and incorporated documents (hereinafter, collectively, the "Contract Documents") is by reference made a part hereof for the purposes of explaining this bond.
2. Principal and Surety are bound to the Owner in the sum of the Contract Amount set forth above for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.
3. THE CONDITION OF THIS BOND is that if Principal:
 - a. Performs the Work required of and in accordance with the Contract Documents at the times and in the manner prescribed in the Contract Documents, which are made a part of this bond by reference; and
 - b. In accordance with sec. 255.05 and sec. 337.18, Florida Statutes, promptly makes payments to all persons, defined in sec. 713.01, Florida Statutes, who furnish labor, services or materials for prosecution of the work set forth in the Contract Documents described above; and
 - c. Pays Owner all losses, damages (including liquidated damages), expenses, costs, and professional fees, including but not limited to attorneys' fees, including appellate proceedings, that Owner sustains because of a default by Principal under the Contract Documents; and

d. Performs the warranty and guarantee of all work and materials furnished under the Contract Documents for the time specified in the Contract Documents, then this bond is void; otherwise it remains in full force.

4. Section 255.05, Fla. Stat., as amended, together with all notice and time provisions contained therein, is incorporated herein by reference.

5. Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in secs. 255.05(2) and (10), Fla. Stat., and those of sec. 337.18, Fla. Stat.

6. Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract Documents or the changes does not affect Surety's obligation under this bond, and Surety waives notice of such changes.

7. Principal and Surety expressly acknowledge that any and all provisions relating to consequential, delay and liquidated damages contained in the contract are expressly covered by and made a part of this Performance, Labor and Material Payment Bond. Principal and Surety acknowledge that any such provisions lie within their obligations and within the policy coverages and limitations of this instrument.

8. Any action brought under this instrument shall be brought in the state court of competent jurisdiction in Palm Beach County, Florida, and not elsewhere. Surety and Contractor, intending to be legally bound hereby, subject to the terms included herein and as required under Florida Statutes, do each cause this Performance and Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

Signed and sealed this _____ day of _____, 2023.

Witness

Principal

Title

(Corporate Seal)

Witness

Surety

Attorney-in-Fact
(Attach Power of Attorney)

Print Name

(Corporate Seal)



City of Lake Worth Beach
Compliance Checklist & Bid Tab

IFB#23-117 City of Lake Worth Beach 1900 Building Improvements Phase 2

	IBIS Building Corporation	All-Site Construction, Inc.	ENCOP, Inc.	Florida Palm Construction, Inc.
Bid Price :	\$430,735.59	\$418,769.00	\$246,712.50	\$436,376.42
Preference Amount:		\$15,000.00		\$15,000.00
Total for Evaluation:	\$430,735.59	\$403,769.00	\$246,712.50	\$421,376.42
Bid Package Cover Sheet (B1)	submitted	submitted	submitted	submitted
Bidder's Minimum Qualifications (B2)	submitted	submitted	submitted	submitted
Bid (B3)	submitted	submitted	submitted	submitted
Schedule of Unit Prices (B4)	submitted	submitted	submitted	submitted
Substitution Sheet (B5)	submitted	submitted	submitted	submitted
Schedule of Subcontractors (B6)	submitted	not provided	submitted	submitted
Contractor Verification Form (B7)	submitted	submitted	submitted	submitted
Reference List (B8)	submitted	submitted	submitted	submitted
Non-Collusion Affidavit (B9)	submitted	submitted	submitted	submitted
Drug Free Certification (B10)	submitted	submitted	submitted	submitted
Campaign Contribution Statement (B11)	submitted	submitted	submitted	submitted
Scrutinized Companies Certification (B12)	submitted	submitted	submitted	submitted
Veteran Owned Enterprise, and Small Business Preference Form (B13)	n/a	small business preference applied	n/a	small business preference applied
Bid Bond	submitted	submitted	submitted	submitted
Comments:	Did not provide unit price breakdown	completion time not provided		Did not provide unit price on one item

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Electric Utility

TITLE:

Ratification of Purchases from NuCAT Corporation under Work Orders #61 thru #73

SUMMARY:

This agenda item is seeking City Commission ratification of Work Orders numbered #61 to #73 for work which Electric Utility department personnel authorized but did not obtain formal purchasing authorization. The cumulative value of the work orders for ratification is \$412,672.

BACKGROUND AND JUSTIFICATION:

In 2022 and 2023, the Electric Utility Department authorized a City contracted vendor to proceed with work aimed at tackling urgent challenges without adhering to all of the City's purchasing requirements. The work encompassed a range of activities, the majority of which is categorized as Operations and Maintenance (O&M) work. The work included testing underground cabling, transformer build-out, transformer repairs, repair of breakers, transformer testing and replacement, as well as circuit breaker maintenance. Each segment of the work (13 separate activities) qualified for the City Manager's purchasing approval as a work order of less than \$50,000 and funds were available for the work; however, the proper purchasing approvals were not obtained prior to the work commencing and being completed.

Among the total of thirteen (13) work activities, eight (8) were O&M activities necessitated by emergent circumstances stemming from either existing failures or immediate threats of potential disruptions leading to substantial outages. These situations required rapid response and resolution to prevent further complications. Additionally, three (3) work activities were categorized as capital projects. WO #61 was driven by time-sensitive considerations linked to project schedules. WO #62 and WO #63 were driven by transformer manufacturer warranty obligations. These projects were carefully planned to align with specific timelines, ensuring the optimization of resources and warranties. Furthermore, WO #65 and WO #68, were intricately timed due to seasonal system demand load constraints, aligning with the progress of preceding emergent tasks. While not technically adhering to the purchasing requirements, this strategic sequencing of work helped in maximizing operational efficiency and minimizing any operational disruptions to the Electric Utility customers.

The vendor utilized for the work, NuCAT Corporation, is a specialized electric utility contractor, which has a long-standing and competitively selected contract with the City and has extensive experience with this type of work.

When the lack of proper purchasing procedures was discovered, it was self-reported by the Electric Utility staff, who initiated and managed the work, to the Financial Services Department. The matter was then promptly addressed by the Electric Utility including preparing Exception to Procurement forms for each work order, appropriate disciplinary action, development of a corrective action plan detailing the required procedures, and all City staff involved received mandatory purchasing training by the Procurement Division. The matter has further been reported to the Palm Beach County Office of Inspector General. The Procurement Division will continue to provide mandatory training to all City staff to ensure all current and new personnel are educated and aware of the required purchasing procedures for all City purchases.

Due to the total amount of the purchases from NuCAT, the City is requesting City Commission approval in an effort to provide further transparency and acknowledgement of the matter.

MOTION:

Move to approve/disapprove ratification of the purchases from NuCAT Corporation under Work Orders 61 thru 73 for a total aggregate cost of \$412,672.

ATTACHMENT(S):

Fiscal Impact Analysis

NuCAT WO#61 - 7th Ave Substation Equipment Testing

NuCAT WO#62 - Assemble and Test Tx WT05887

NuCAT WO#63 - Assemble and Test Tx WT05888

NuCAT WO#64 - Supply (3) 50DHP350 Circuit Breakers

NuCAT WO#65 - TD 70 LTC Repair

NuCAT WO#66 - Inspect and Test 26B1W05

NuCAT WO#67 - Inspect and Test 26B5001, 5002 and 5003

NuCAT WO#68 - Repair Transformer TD-12

NuCAT WO#69 - Install New Interrupters Spare Circuit Breaker

NuCAT WO#70 - Repair and test Circuit Breaker 26BE09

NuCAT WO#71 - Test GT2 Transformer

NuCAT WO#72 - Replace TD-12

NuCAT WO#73 - LTC TD06

All Work Orders are together as one attachment and the Exception to Procurement forms are together as a separate attachment.

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Current Appropriation	\$130,567	0	0	0	0
Operating	\$282,105	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	\$282,105	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

Budget Transfer Impact

	Revenue Source	Expenditure
Department	Electric	Electric
Division	System Operations	Transmission & Distribution
GL Description	Contractual Services	Repair/Maint Services/Substation Equipment
GL Account Number	401-6033-531-34.50	401-6034-531-46.71
Project Number		
Requested Funds	-\$282,105	+\$282,105

Contract Award - Existing Appropriation

	Expenditure
Department	Electric
Division	Transmission & Distribution
GL Description	Repair/Maint Services/Substation Equipment <i>and</i> Improve Other than Build / Infrastructure
GL Account Number	401-6034-531-46-71 & 421-6034-531-63-15
Project Number	Numerous
Requested Funds	\$412,672 (Sum of \$130,567 + \$282,105)

Electrical Equipment Inspection, Testing, Repair and Maintenance Services

WORK ORDER NO. 61

THIS WORK ORDER for SERVICES ("Work Order" hereafter) is made on _____ 2023, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 ("City") and **NuCAT Corporation**, a Florida corporation ("Contractor").

1.0 **Project Description:**

The City desires the Contractor to provide those services and work as identified herein related to the City's Electric Utility System generally describe as: Test new cables and equipment at the 7th Ave Substation. Project completed 04/27/2022. (the "Project"). The Project is more specifically described in the scope and fee proposal prepared by NuCAT Corp., dated May 10, 2023, and which are incorporated herein by reference.

2.0 **Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 **Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within **60** calendar days from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within **90** calendar days from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City 100 dollars (\$100 .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation

This Work Order is issued for a lump sum, not to exceed amount of \$33,821.00. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

_____.

5.0 Project Manager

The Project Manager for the Contractor is David Bernier , phone: 954-553-5566 ; email: davidbernier@nucacorp.com ; and, the Project Manager for the City is David Martyniuk, phone: 561-586-1629 ; email: Dmartyniuk@lakeworthbeachfl.gov .

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty

Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is pursuant to the Electrical Equipment Inspection, Testing, Repair and Maintenance Services Contract for between the City of Lake Worth Beach and the Contractor, dated May 15, 2018 ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

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IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order to the Electrical Equipment Inspection, Testing, Repair and Maintenance Agreement on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, CMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

NuCAT Corporation

By: David Bernier

Print Name: DAVID BERNIER

Title: PRESIDENT



STATE OF FL
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 24 day of August 2023, by David Bernier, as the President [title] of **NuCAT Corporation**, a Florida Corporation authorized to do business in the State of Florida, who is personally known to me or who has produced FLDL as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Joseph Gall
Notary Public Signature

Notary Seal:

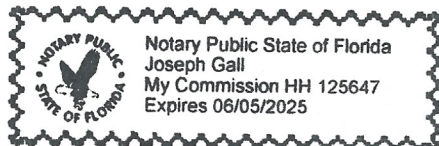


Exhibit 1
Contract for Electrical Equipment Inspection, Testing, Repair and
Maintenance Services
Task Order No. 061

Services to be provided by: NuCAT Corporation

Services provided to (City): City of Lake Worth Beach

Proposal Date: May 10, 2023

Proposal Terms

A. Project Description:

Test new equipment and cables at the 7th Ave Substation.

B. Scope of Services:

NuCat Corp. Will perform electrical testing of the new equipment and cables installed at the 7th Ave Substation.

C. Equipment:

HVA60 W/TD

D. Fees and Rates:

1. NuCat Corp. will complete the following work on a time and material basis, we anticipate the total cost to be
\$33,821.00



NuCAT CORPORATION
657 RAMBLING DRIVE CIRCLE
WELLINGTON, FL 33414

PH: (561) 333-4021

May 10, 2023

City of Lake Worth
1900 2nd Avenue North
Lake Worth, FL 33461
Attention: David Martyniuk

Ref No.: NC05102305

Subject: Contract for Electrical Equipment Inspection, Testing, Repair And
Maintenance Services. Work Order # 061

Dear David:

Pursuant to your request, NuCat Corporation is pleased to provide you with this proposal to test the new electrical equipment and cables installed at the 7th Ave Substation.

SCOPE OF WORK:

NuCat Corp. will provide all the materials, equipment, qualified manpower, and technical supervision to perform the testing at the 7th Ave Substation.

PRICING:

Total Price \$33,821.00

Sincerely,
David A Bernier
David A Bernier

Electrical Equipment Inspection, Testing, Repair and Maintenance Services

WORK ORDER NO. 62

THIS WORK ORDER for SERVICES ("Work Order" hereafter) is made on _____2023, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 ("City") and **NuCAT Corporation**, a Florida corporation ("Contractor").

1.0 **Project Description:**

The City desires the Contractor to provide those services and work as identified herein related to the City's Electric Utility System generally describe as: Assemble and Test Transformer WT05887. Project completed 02/01/2023. (the "Project"). The Project is more specifically described in the scope and fee proposal prepared by NuCAT Corp., dated May 09, 2023, and which are incorporated herein by reference.

2.0 **Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 **Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within **60** calendar days from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within **90** calendar days from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City 100 dollars (\$100 .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation

This Work Order is issued for a lump sum, not to exceed amount of \$48,373.00. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

_____.

5.0 Project Manager

The Project Manager for the Contractor is David Bernier , phone: 954-553-5566 ; email: davidbernier@nucacorp.com ; and, the Project Manager for the City is David Martyniuk, phone: 561-586-1629 ; email: Dmartyniuk@lakeworthbeachfl.gov .

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty

Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is pursuant to the Electrical Equipment Inspection, Testing, Repair and Maintenance Services Contract for between the City of Lake Worth Beach and the Contractor, dated May 15, 2018 ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order to the Electrical Equipment Inspection, Testing, Repair and Maintenance Agreement on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, CMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

NuCAT Corporation



[Corporate Seal]

By: David Bernier

Print Name: DAVID BERNIER

Title: PRESIDENT

STATE OF FL
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 24 day of August 2023, by David Bernier, as the President [title] of **NuCAT Corporation**, a Florida Corporation authorized to do business in the State of Florida, who is personally known to me or who has produced FLDL as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Joseph Gall
Notary Public Signature

Notary Seal:

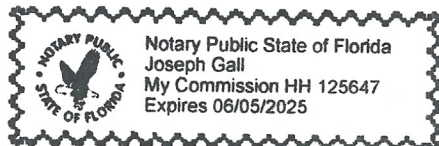


Exhibit 1
Contract for Electrical Equipment Inspection, Testing, Repair and
Maintenance Services
Task Order No. 062

Services to be provided by: NuCAT Corporation

Services provided to (City): City of Lake Worth Beach

Proposal Date: May 08, 2023

Proposal Terms

A. Project Description:

Assemble and Test Transformer WT05887

B. Scope of Services:

NuCat Corp. Will Assemble and Test Transformer WT05887

C. Equipment: _____

D. Fees and Rates:

1. NuCat Corp. will complete the following work on a time and material basis, we anticipate the total cost to be \$48,373.00.

**Assemble and Test Transformer WT05887
for The
City of Lake Worth
Estimate of Fees**

ASSEMBLE AND TEST CANAL SUBSTATION TRANSFORMER WT05887											
Technicians						Engineer					
Men	Hrs ST	Rate	Hrs OT	Rate	Total	Men	Hrs ST	Rate	Hrs OT	Rate	Total
3	63	\$95.00	9	\$142.50	\$21,802.50	1	63	\$125.00	8	\$187.50	\$9,375.00
0	0	\$95.00	0	\$142.50	\$0.00	0	0	\$125.00	0	\$187.50	\$0.00
Total					\$21,802.50	Total					\$9,375
Labor Total											\$31,177.50
Material											
Part number	Description	Outline drawing	QTY	Price EA	Total	Mrk up	Total				
					\$0.00	1.2	\$0.00				
	Fuel		1	\$600.00	\$600.00	1.2	\$720.00				
	Generator		1	\$3,000.00	\$3,000.00	1.2	\$3,600.00				
	Dry air		1	\$500.00	\$500.00	1.2	\$600.00				
	Doble M4000		1	\$1,000.00	\$1,000.00	1.2	\$1,200.00				
	Misc		1	\$215.00	\$215.00	1	\$215.00				
	Vacuum Oil Processer		36	\$150.00	\$5,400.00	1.2	\$6,480.00				
	Filter Press		1	\$150.00	\$150.00	1.2	\$180.00				
	SFRA & Winding Res. test set		1	2500	\$2,500.00	1.2	\$3,000.00				
	Fence Repair		1	1000	\$1,000.00	1.2	\$1,200.00				
					\$0.00	1.2	\$0.00				
			0	\$0.00	\$14,365.00						
Mtl Total							\$17,195.00				
Grand Total											\$48,373



NuCAT CORPORATION
657 RAMBLING DRIVE CIRCLE
WELLINGTON, FL 33414

PH: (954) 553-5566

May 08, 2023

City of Lake Worth
1900 2nd Avenue North
Lake Worth, FL 33461
Attention: David Martyniuk

Ref No.: NC05082301

Subject: Contract for Electrical Equipment Inspection, Testing, Repair And
Maintenance Services. Work Order # 062

Dear David:

Per your request, NuCAT Corporation is pleased to provide you with this proposal to assemble, vacuum fill and test the new Canal Substation transformer WT05887.

SCOPE OF WORK:

NuCat Corp. will provide the equipment, qualified manpower and technical supervision to assemble, vacuum fill and test the transformer per the following specification.

Receiving inspection and testing

Scope includes:

Record or download impact recorder.
Perform dew point testing and document findings.

Complete inventory. This inventory shall be a complete, firsthand count and check of all materials and items that were delivered as compared to the items listed as delivered on the shipping manifest.



NuCAT CORPORATION

If the shipping manifest is not on-site, NuCat Corp. shall obtain one directly from the manufacturer. NuCat Corp. shall also verify that an instruction book and factory test report was delivered with the transformer. Any missing items or items with shipping damage shall be promptly reported to the manufacturer for replacement.
Dress out of Transformer.

Scope includes.

Furnish cranes, tools, equipment, and power as required.
Installation of ground connection to transformer tank.
Turrets, bushings and CT installation and internal connections.
Radiator, conservator tank, valve, and piping installation.
Desiccant breather shall be filled with dry desiccant.
Control and auxiliary cabinet installation and wiring terminations.
CT, relay, fans, pumps and ancillary equipment installation and wiring to control cabinets. Load Tap Changer (LTC) assembly and connection (if equipped).
Verification of acceptable Dew Point test results then Vacuum process and fill with oil.
Oil will be provided by the transformer manufacturer. NuCat Corp. shall co-ordinate Deliveries directly with the manufacturer and shall verify that sufficient quantities are delivered and that the oil meets requirements.
Touch-up painting after assembly is complete.

Vacuum processing and oil filling

Scope includes:

Furnish processing equipment, tools, and power (as required).
Pressure test and dew point test and repair as required.
Apply and hold vacuum per manufactures spec.
Perform oil dielectric tests on all tankers, drums or other containers before oil is placed in transformer.
Fill the transformer with oil using a complete processing rig equipped with and using vacuum degasification, filters, and heaters during filling.
Complete final oil filling and possible trapped air purge per manufacturer's procedures in their instruction book.
Check for and repair any leaks, as required.



NuCAT CORPORATION
657 RAMBLING DRIVE CIRCLE
WELLINGTON, FL 33414

PH: (954) 553-5566

Take complete final oil sample for testing by lab. Oil drawn from the filled transformer shall test to not greater than the Percent Saturation moisture limits for the appropriate voltage class.

Transformer testing

Scope includes:

Perform insulation-resistance tests, winding-to-winding and windings-to-ground utilizing a megohmmeter. The test duration shall be for 10 minutes with resistance tabulated at 30 seconds, 1 minute and 10 minutes. Calculate polarization Index.

Perform a turns-ratation test between windings at all tap positions.

Perform insulation power-factor tests on all windings and bushings. Overall dielectric-dielectric-loss and power factor (CH, CL, CHL0 shall be determined. Test voltage shall be limited to the line-to-ground voltage rating of the transformer winding.

Perform Excitation test on each winding.

Verify proper core grounding if accessible.

Perform SFRA test.

Perform tests on the protection sensors as recommended by the manufacturer.

A comprehensive test report will be provided upon completion of the testing.

Pricing: \$ 48,373.00
(Forty-Eight Thousand, Three Hundred and Seventy-Three Dollars)

If you have any questions, or require additional information, please contact me at your convenience (954-553-5566).

Sincerely,
David A Bernier
David A Bernier

Electrical Equipment Inspection, Testing, Repair and Maintenance Services

WORK ORDER NO. 63

THIS WORK ORDER for SERVICES ("Work Order" hereafter) is made on _____2023, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 ("City") and **NuCAT Corporation**, a Florida corporation ("Contractor").

1.0 **Project Description:**

The City desires the Contractor to provide those services and work as identified herein related to the City's Electric Utility System generally describe as: Assemble and Test Transformer WT05888. Project completed 02/01/2023. (the "Project"). The Project is more specifically described in the scope and fee proposal prepared by NuCAT Corp., dated May 10, 2023, and which are incorporated herein by reference.

2.0 **Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 **Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within **60** calendar days from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within **90** calendar days from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City 100 dollars (\$100 .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation

This Work Order is issued for a lump sum, not to exceed amount of \$48,373.00. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

5.0 Project Manager

The Project Manager for the Contractor is David Bernier , phone: 954-553-5566 ; email: davidbernier@nucacorp.com ; and, the Project Manager for the City is David Martyniuk, phone: 561-586-1629 ; email: Dmartyniuk@lakeworthbeachfl.gov .

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty

Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is pursuant to the Electrical Equipment Inspection, Testing, Repair and Maintenance Services Contract for between the City of Lake Worth Beach and the Contractor, dated May 15, 2018 ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order to the Electrical Equipment Inspection, Testing, Repair and Maintenance Agreement on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, CMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

NuCAT Corporation

By: David Bernier

Print Name: DAVID BERNIER

Title: PRESIDENT



STATE OF FL
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 24 day of August 2023, by David Bernier, as the President [title] of **NuCAT Corporation**, a Florida Corporation authorized to do business in the State of Florida, who is personally known to me or who has produced FLDL as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Joseph Gall
Notary Public Signature

Notary Seal:

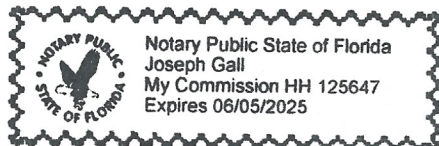


Exhibit 1
Contract for Electrical Equipment Inspection, Testing, Repair and
Maintenance Services
Task Order No. 063

Services to be provided by: NuCAT Corporation

Services provided to (City): City of Lake Worth Beach

Proposal Date: May 09, 2023

Proposal Terms

A. Project Description:

Assemble and Test Transformer WT05888

B. Scope of Services:

NuCat Corp. Will Assemble and Test Transformer WT05888

C. Equipment: _____

D. Fees and Rates:

1. NuCat Corp. will complete the following work on a time and material basis, we anticipate the total cost to be \$48,373.00.

Assemble and Test Transformer WT05888
for The
City of Lake Worth
Estimate of Fees

ASSEMBLE AND TEST CANAL SUBSTATION TRANSFORMER WT05888											
Technicians						Engineer					
Men	Hrs ST	Rate	Hrs OT	Rate	Total	Men	Hrs ST	Rate	Hrs OT	Rate	Total
3	63	\$95.00	9	\$142.50	\$21,802.50	1	63	\$125.00	8	\$187.50	\$9,375.00
0	0	\$95.00	0	\$142.50	\$0.00	0	0	\$125.00	0	\$187.50	\$0.00
					Total						Total
					\$21,802.50						\$9,375
											Labor Total
											\$31,177.50
Material											
Part number	Description	Outline drawing	QTY	Price EA	Total	Mrk up	Total				
					\$0.00	1.2	\$0.00				
	Fuel		1	\$600.00	\$600.00	1.2	\$720.00				
	Generator		1	\$3,000.00	\$3,000.00	1.2	\$3,600.00				
	Dry air		1	\$500.00	\$500.00	1.2	\$600.00				
	Doble M4000		1	\$1,000.00	\$1,000.00	1.2	\$1,200.00				
	Misc		1	\$215.00	\$215.00	1	\$215.00				
	Vacuum Oil Processer		36	\$150.00	\$5,400.00	1.2	\$6,480.00				
	Filter Press		1	\$150.00	\$150.00	1.2	\$180.00				
	SFRA & Winding Res. test set		1	2500	\$2,500.00	1.2	\$3,000.00				
	Fence Repair		1	1000	\$1,000.00	1.2	\$1,200.00				
					\$0.00	1.2	\$0.00				
			0	\$0.00	\$14,365.00						
					Mtl Total	\$17,195.00					
											Grand Total
											\$48,373



NuCAT CORPORATION
657 RAMBLING DRIVE CIRCLE
WELLINGTON, FL 33414

PH: (954) 553-5566

May 09, 2023

City of Lake Worth
1900 2nd Avenue North
Lake Worth, FL 33461
Attention: David Martyniuk

Ref No.: NC05092301

Subject: Contract for Electrical Equipment Inspection, Testing, Repair And
Maintenance Services. Work Order # 063

Dear David:

Per your request, NuCAT Corporation is pleased to provide you with this proposal to assemble, vacuum fill and test the new Canal Substation transformer WT05888.

SCOPE OF WORK:

NuCat Corp. will provide the equipment, qualified manpower and technical supervision to assemble, vacuum fill and test the transformer per the following specification.

Receiving inspection and testing

Scope includes:

Record or download impact recorder.
Perform dew point testing and document findings.

Complete inventory. This inventory shall be a complete, firsthand count and check of all materials and items that were delivered as compared to the items listed as delivered on the shipping manifest.



NuCAT CORPORATION

If the shipping manifest is not on-site, NuCat Corp. shall obtain one directly from the manufacturer. NuCat Corp. shall also verify that an instruction book and factory test report was delivered with the transformer. Any missing items or items with shipping damage shall be promptly reported to the manufacturer for replacement.
Dress out of Transformer.

Scope includes.

Furnish cranes, tools, equipment, and power as required.
Installation of ground connection to transformer tank.
Turrets, bushings and CT installation and internal connections.
Radiator, conservator tank, valve, and piping installation.
Desiccant breather shall be filled with dry desiccant.
Control and auxiliary cabinet installation and wiring terminations.
CT, relay, fans, pumps and ancillary equipment installation and wiring to control cabinets. Load Tap Changer (LTC) assembly and connection (if equipped).
Verification of acceptable Dew Point test results then Vacuum process and fill with oil.
Oil will be provided by the transformer manufacturer. NuCat Corp. shall co-ordinate Deliveries directly with the manufacturer and shall verify that sufficient quantities are delivered and that the oil meets requirements.
Touch-up painting after assembly is complete.

Vacuum processing and oil filling

Scope includes:

Furnish processing equipment, tools, and power (as required).
Pressure test and dew point test and repair as required.
Apply and hold vacuum per manufactures spec.
Perform oil dielectric tests on all tankers, drums or other containers before oil is placed in transformer.
Fill the transformer with oil using a complete processing rig equipped with and using vacuum degasification, filters, and heaters during filling.
Complete final oil filling and possible trapped air purge per manufacturer's procedures in their instruction book.
Check for and repair any leaks, as required.



NuCAT CORPORATION
657 RAMBLING DRIVE CIRCLE
WELLINGTON, FL 33414

PH: (954) 553-5566

Take complete final oil sample for testing by lab. Oil drawn from the filled transformer shall test to not greater than the Percent Saturation moisture limits for the appropriate voltage class.

Transformer testing

Scope includes:

Perform insulation-resistance tests, winding-to-winding and windings-to-ground utilizing a megohmmeter. The test duration shall be for 10 minutes with resistance tabulated at 30 seconds, 1 minute and 10 minutes. Calculate polarization Index.

Perform a turns-ratation test between windings at all tap positions.

Perform insulation power-factor tests on all windings and bushings. Overall dielectric-dielectric-loss and power factor (CH, CL, CHL0 shall be determined. Test voltage shall be limited to the line-to-ground voltage rating of the transformer winding.

Perform Excitation test on each winding.

Verify proper core grounding if accessible.

Perform SFRA test.

Perform tests on the protection sensors as recommended by the manufacturer.

A comprehensive test report will be provided upon completion of the testing.

Pricing: \$ 48,373.00
(Forty-Eight Thousand, Three Hundred and Seventy-Three Dollars)

If you have any questions, or require additional information, please contact me at your convenience (954-553-5566).

Sincerely,
David A Bernier
David A Bernier

Electrical Equipment Inspection, Testing, Repair and Maintenance Services

WORK ORDER NO. 64

THIS WORK ORDER for SERVICES ("Work Order" hereafter) is made on _____2023, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 ("City") and **NuCAT Corporation**, a Florida corporation ("Contractor").

1.0 **Project Description:**

The City desires the Contractor to provide those services and work as identified herein related to the City's Electric Utility System generally describe as: Supply, Test and Install Three 50DHP350 Circuit Breakers. Project completed 12/05/2022. (the "Project"). The Project is more specifically described in the scope and fee proposal prepared by NuCAT Corp., dated May 10, 2023, and which are incorporated herein by reference.

2.0 **Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 **Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within **60** calendar days from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within **90** calendar days from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City 100 dollars (\$100 .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation

This Work Order is issued for a lump sum, not to exceed amount of \$49,954.00. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

5.0 Project Manager

The Project Manager for the Contractor is David Bernier , phone: 954-553-5566 ; email: davidbernier@nucacorp.com ; and, the Project Manager for the City is David Martyniuk, phone: 561-586-1629 ; email: Dmartyniuk@lakeworthbeachfl.gov .

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty

Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is pursuant to the Electrical Equipment Inspection, Testing, Repair and Maintenance Services Contract for between the City of Lake Worth Beach and the Contractor, dated May 15, 2018 ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order to the Electrical Equipment Inspection, Testing, Repair and Maintenance Agreement on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, CMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

NuCAT Corporation



[Corporate Seal]

By: David Bernier

Print Name: DAVID BERNIER

Title: PRESIDENT

STATE OF FL
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 24 day of August 2023, by David Bernier, as the President [title] of **NuCAT Corporation**, a Florida Corporation authorized to do business in the State of Florida, who is personally known to me or who has produced FLDL as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Joseph Gall
Notary Public Signature

Notary Seal:

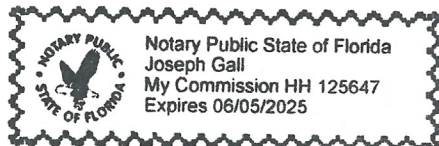


Exhibit 1
Contract for Electrical Equipment Inspection, Testing, Repair and
Maintenance Services
Task Order No. 064

Services to be provided by: NuCAT Corporation

Services provided to (City): City of Lake Worth Beach

Proposal Date: May 09, 2023

Proposal Terms

A. Project Description:

Supply, Test and Install Three 50DHP350 Circuit Breakers

B. Scope of Services:

NuCat Corp. Will Supply, Test and Install Three 50DHP350 Circuit Breakers

C. Equipment: _____

D. Fees and Rates:

1. NuCat Corp. will complete the following work on a time and material basis, we anticipate the total cost to be \$49,954.00.

**Supply, Test and Install Three 50DHP350 Circuit Breakers
for The
City of Lake Worth
Estimate of Fees**

Supply Test and Install Three 50DHP350 Circuit Breakers											
Technicians						Engineer					
Men	Hrs ST	Rate	Hrs OT	Rate	Total	Men	Hrs ST	Rate	Hrs OT	Rate	Total
2	28	\$95.00	0	\$142.50	\$5,320.00	1	17	\$125.00	0	\$187.50	\$2,125.00
0	0	\$95.00	0	\$142.50	\$0.00	0	0	\$125.00	0	\$187.50	\$0.00
					Total						Total
					\$5,320.00						\$2,125
											Labor Total
											\$7,445.00
Material											
Part number	Description	Outline drawing	QTY	Price EA	Total	Mrk up	Total				
					\$0.00	1.2	\$0.00				
	50DHP350		3	\$10,900.00	\$32,700.00	1.2	\$39,240.00				
	Frieght		6	\$454.00	\$2,724.00	1.2	\$3,268.80				
			0	\$0.00	\$0.00	1.2	\$0.00				
			0	\$0.00	\$0.00	1.2	\$0.00				
	Misc		0	\$0.00	\$0.00	1	\$0.00				
			0	\$0.00	\$0.00	1.2	\$0.00				
			0	\$0.00	\$0.00	1.2	\$0.00				
			0	\$0.00	\$0.00	1.2	\$0.00				
			0	\$0.00	\$0.00	1.2	\$0.00				
			0	\$0.00	\$35,424.00						
					Mtl Total	\$42,508.80					
											Grand Total
											\$49,954



NuCAT CORPORATION
657 RAMBLING DRIVE CIRCLE
WELLINGTON, FL 33414

PH: (954) 553-5566

May 09, 2023

City of Lake Worth
1900 2nd Avenue North
Lake Worth, FL 33461
Attention: David Martyniuk

Ref No.: NC05092302

Subject: Contract for Electrical Equipment Inspection, Testing, Repair And
Maintenance Services. Work Order # 064

Dear David:

Per your request, NuCAT Corporation is pleased to provide you with this proposal to supply, test and install three 50DHP350 circuit breakers.

SCOPE OF WORK:

NuCat Corp. will provide all the materials, equipment, qualified manpower, and technical supervision to complete the following work on the circuit breakers.

Supply refurbished circuit breakers.

Perform physical inspection.

Perform electrical testing.

Hipot

Ductor



NuCAT CORPORATION

Pricing: \$ 49,954.00
(Forty-Nine Thousand, Nine Hundred and Fifty-Four Dollars)

If you have any questions, or require additional information, please contact me at your convenience (954-553-5566).

Sincerely,
David A Bernier
David A Bernier

Electrical Equipment Inspection, Testing, Repair and Maintenance Services

WORK ORDER NO. 65

THIS WORK ORDER for SERVICES ("Work Order" hereafter) is made on _____2023, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 ("City") and **NuCAT Corporation**, a Florida corporation ("Contractor").

1.0 **Project Description:**

The City desires the Contractor to provide those services and work as identified herein related to the City's Electric Utility System generally describe as: Repair the LTC of Transformer TD-70. Project completed 04/04/2022. (the "Project"). The Project is more specifically described in the scope and fee proposal prepared by NuCAT Corp., dated May 10, 2023, and which are incorporated herein by reference.

2.0 **Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 **Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within **60** calendar days from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within **90** calendar days from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City 100 dollars (\$100 .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation

This Work Order is issued for a lump sum, not to exceed amount of \$37,638.00. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

_____.

5.0 Project Manager

The Project Manager for the Contractor is David Bernier , phone: 954-553-5566 ; email: davidbernier@nucacorp.com ; and, the Project Manager for the City is David Martyniuk, phone: 561-586-1629 ; email: Dmartyniuk@lakeworthbeachfl.gov .

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty

Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is pursuant to the Electrical Equipment Inspection, Testing, Repair and Maintenance Services Contract for between the City of Lake Worth Beach and the Contractor, dated May 15, 2018 ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order to the Electrical Equipment Inspection, Testing, Repair and Maintenance Agreement on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, CMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

NuCAT Corporation

By: David Bernier

Print Name: DAVID BERNIER

Title: PRESIDENT



STATE OF FL
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 24 day of August 2023, by David Bernier, as the President [title] of **NuCAT Corporation**, a Florida Corporation authorized to do business in the State of Florida, who is personally known to me or who has produced FLDL as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Joseph Gall
Notary Public Signature

Notary Seal:

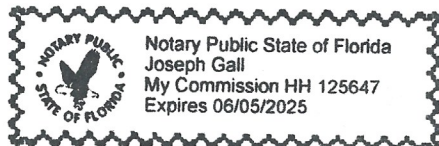


Exhibit 1
Contract for Electrical Equipment Inspection, Testing, Repair and
Maintenance Services
Task Order No. 065

Services to be provided by: NuCAT Corporation

Services provided to (City): City of Lake Worth Beach

Proposal Date: May 10, 2023

Proposal Terms

A. Project Description:

TD-70 LTC Repair

B. Scope of Services:

NuCat Corp. Will repair the LTC of Transformer TD-70.

C. Equipment:

Doble M4000

Processor

Filter Press

D. Fees and Rates:

1. NuCat Corp. will complete the following work on a time and material basis, we anticipate the total cost to be
\$37,638.00

Transformer TD-70 LTC Repair for The City of Lake Worth Estimate of Fees

Transformer TD-70 LTC Repair											
Technicians						Engineer					
Men	Hrs ST	Rate	Hrs OT	Rate	Total	Men	Hrs ST	Rate	Hrs OT	Rate	Total
3	26	\$95.00	16	\$142.50	\$14,250.00	1	25	\$125.00	10	\$187.50	\$5,000.00
0		\$95.00	0	\$142.50	\$0.00	0	0	\$125.00	0	\$187.50	\$0.00
					Total						Total
					\$14,250.00						\$5,000
						Labor Total					\$19,250.00
Material											
Description	Price EA	QTY	Total	Mrk up	Total						
Doble	\$1,000.00	2	\$2,000.00	1.2	\$2,400.00						
Fuel	\$200.00	1	\$200.00	1.2	\$240.00						
generator	\$2,400.33	1	\$2,400.33	1.2	\$2,880.40						
Dry air	\$100.00	13	\$1,300.00	1.2	\$1,560.00						
Oil	\$999.00	6	\$5,994.00	1.2	\$7,192.80						
Bearing	\$229.00	1	\$229.00	1.2	\$274.80						
gasket	\$250.00	2	\$500.00	1.2	\$600.00						
Misc	\$200.00	1	\$200.00	1.2	\$240.00						
			\$0.00	1.2	\$0.00						
			\$0.00	1.2	\$0.00						
processor	\$2,500.00	1	\$2,500.00	1.2	\$3,000.00						
			\$0.00	1.2	\$0.00						
			\$0.00	1.2	\$0.00						
					Mtl Total						\$18,388.00
						Grand Total					\$37,638



NuCAT CORPORATION
657 RAMBLING DRIVE CIRCLE
WELLINGTON, FL 33414

PH: (561) 333-4021

May 10, 2023

City of Lake Worth
1900 2nd Avenue North
Lake Worth, FL 33461
Attention: David Martyniuk

Ref No.: NC05102303

Subject: Contract for Electrical Equipment Inspection, Testing, Repair And
Maintenance Services. Work Order # 065

Dear David:

Per your request, NuCAT Corporation is pleased to provide you with this proposal to repair the LTC for transformer TD-70.

SCOPE OF WORK:

NuCat Corp. will supply all the materials, equipment, qualified manpower, and technical supervision to complete the following work on transformer TD-70.

Repair the LTC of TD-70 Transformer.
Fill LTC with new Mineral oil.
Hot Oil Process the transformer.

PRICING:

Total Price \$37,638.00

Sincerely,
David A Bernier
David A Bernier

Electrical Equipment Inspection, Testing, Repair and Maintenance Services

WORK ORDER NO. 66

THIS WORK ORDER for SERVICES ("Work Order" hereafter) is made on _____ 2023, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 ("City") and **NuCAT Corporation**, a Florida corporation ("Contractor").

1.0 Project Description:

The City desires the Contractor to provide those services and work as identified herein related to the City's Electric Utility System generally describe as: Inspect, Repair and test circuit Breaker 26B1W05. Project completed 03/02/2022. (the "Project"). The Project is more specifically described in the scope and fee proposal prepared by NuCAT Corp., dated May 11, 2023, and which are incorporated herein by reference.

2.0 Scope

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 Schedule and Liquidated Damages

Substantial completion of all services and work under this Work Order shall be within **60** calendar days from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within **90** calendar days from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City 100 dollars (\$100 .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation

This Work Order is issued for a lump sum, not to exceed amount of \$10,300.00. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

_____.

5.0 Project Manager

The Project Manager for the Contractor is David Bernier , phone: 954-553-5566 ; email: davidbernier@nucacorp.com ; and, the Project Manager for the City is David Martyniuk, phone: 561-586-1629 ; email: Dmartyniuk@lakeworthbeachfl.gov .

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty

Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is pursuant to the Electrical Equipment Inspection, Testing, Repair and Maintenance Services Contract for between the City of Lake Worth Beach and the Contractor, dated May 15, 2018 ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order to the Electrical Equipment Inspection, Testing, Repair and Maintenance Agreement on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, CMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

NuCAT Corporation



[Corporate Seal]

By: David Bernier

Print Name: DAVID BERNIER

Title: PRESIDENT

STATE OF FL
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 24 day of August 2023, by David Bernier, as the President [title] of **NuCAT Corporation**, a Florida Corporation authorized to do business in the State of Florida, who is personally known to me or who has produced FLDL as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Joseph Gall
Notary Public Signature

Notary Seal:

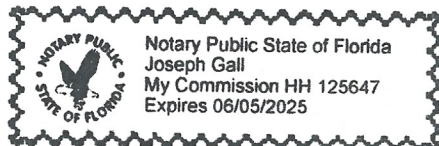


Exhibit 1
Contract for Electrical Equipment Inspection, Testing, Repair and
Maintenance Services
Task Order No. 066

Services to be provided by: NuCAT Corporation

Services provided to (City): City of Lake Worth Beach

Proposal Date: May 11, 2023

Proposal Terms

A. Project Description:

Inspect, Repair and Test Circuit Breaker 26B1W05

B. Scope of Services:

NuCat Corp. Will inspect repair and perform testing of Circuit Breaker 26B1W05.

C. Equipment:

Doble M4000

Doble TDR 9100

D. Fees and Rates:

1. NuCat Corp. will complete the following work on a time and material basis, we anticipate the total cost to be
\$10,300.00



NuCAT CORPORATION
657 RAMBLING DRIVE CIRCLE
WELLINGTON, FL 33414

PH: (561) 333-4021

May 11, 2023

City of Lake Worth
1900 2nd Avenue North
Lake Worth, FL 33461
Attention: David Martyniuk

Ref No.: NC05112301

Subject: Contract for Electrical Equipment Inspection, Testing, Repair And
Maintenance Services. Work Order # 066

Dear David:

Pursuant to your request, NuCat Corporation is pleased to provide you with this proposal to inspect repair and test Circuit Breaker 26B1W05.

SCOPE OF WORK:

NuCat Corp. will provide all the materials, equipment, qualified manpower, and technical supervision to complete the following work on the circuit breaker.

Perform physical inspection.
Replace pole assemblies.
Perform electrical testing.
 Power Factor
 Hipot
 Timing

PRICING:

Total Price \$10,300.00

Sincerely,
David A Bernier
David A Bernier

Electrical Equipment Inspection, Testing, Repair and Maintenance Services

WORK ORDER NO. 67

THIS WORK ORDER for SERVICES ("Work Order" hereafter) is made on _____ 2023, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 ("City") and **NuCAT Corporation**, a Florida corporation ("Contractor").

1.0 **Project Description:**

The City desires the Contractor to provide those services and work as identified herein related to the City's Electric Utility System generally describe as: Inspect and Test Circuit Breakers 26B5001, 5002 and 5003. Project completed 03/17/2022. (the "Project"). The Project is more specifically described in the scope and fee proposal prepared by NuCAT Corp., dated May 11, 2023, and which are incorporated herein by reference.

2.0 **Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 **Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within **60** calendar days from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within **90** calendar days from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City 100 dollars (\$100 .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation

This Work Order is issued for a lump sum, not to exceed amount of \$16,140.00. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

5.0 Project Manager

The Project Manager for the Contractor is David Bernier , phone: 954-553-5566 ; email: davidbernier@nucacorp.com ; and, the Project Manager for the City is David Martyniuk, phone: 561-586-1629 ; email: Dmartyniuk@lakeworthbeachfl.gov .

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty

Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is pursuant to the Electrical Equipment Inspection, Testing, Repair and Maintenance Services Contract for between the City of Lake Worth Beach and the Contractor, dated May 15, 2018 ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order to the Electrical Equipment Inspection, Testing, Repair and Maintenance Agreement on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, CMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

NuCAT Corporation

By: David Bernier

Print Name: DAVID BERNIER

Title: PRESIDENT



STATE OF FL
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 24 day of August 2023, by David Bernier, as the President [title] of **NuCAT Corporation**, a Florida Corporation authorized to do business in the State of Florida, who is personally known to me or who has produced FLDL as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Joseph Gall
Notary Public Signature

Notary Seal:

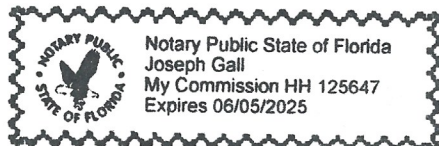


Exhibit 1
Contract for Electrical Equipment Inspection, Testing, Repair and
Maintenance Services
Task Order No. 067

Services to be provided by: NuCAT Corporation

Services provided to (City): City of Lake Worth Beach

Proposal Date: May 11, 2023

Proposal Terms

A. Project Description:

Inspect and Test Circuit Breakers 26B5001, 5002 and 5003

B. Scope of Services:

NuCat Corp. Will inspect and perform testing of Circuit Breakers 26B5001, 5002 and 5003.

C. Equipment:

Doble M4000

Doble TDR 9100

D. Fees and Rates:

1. NuCat Corp. will complete the following work on a time and material basis, we anticipate the total cost to be
\$16,140.00



NuCAT CORPORATION
657 RAMBLING DRIVE CIRCLE
WELLINGTON, FL 33414

PH: (561) 333-4021

May 11, 2023

City of Lake Worth
1900 2nd Avenue North
Lake Worth, FL 33461
Attention: David Martyniuk

Ref No.: NC05112302

Subject: Contract for Electrical Equipment Inspection, Testing, Repair And
Maintenance Services. Work Order # 067

Dear David:

Pursuant to your request, NuCat Corporation is pleased to provide you with this proposal to inspect and test Circuit Breakers 26B5001, 5002 and 5003.

SCOPE OF WORK:

NuCat Corp. will provide all the materials, equipment, qualified manpower, and technical supervision to complete the following work on the circuit breaker.

Perform physical inspection.

Perform electrical testing.

Power Factor

Hipot

Timing

Ductor

PRICING:

Total Price \$16,140.00

Sincerely,
David A Bernier
David A Bernier

Electrical Equipment Inspection, Testing, Repair and Maintenance Services

WORK ORDER NO. 68

THIS WORK ORDER for SERVICES ("Work Order" hereafter) is made on _____ 2023, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 ("City") and **NuCAT Corporation**, a Florida corporation ("Contractor").

1.0 **Project Description:**

The City desires the Contractor to provide those services and work as identified herein related to the City's Electric Utility System generally describe as: Repair Transformer TD-12. Project completed 05/05/2023. (the "Project"). The Project is more specifically described in the scope and fee proposal prepared by NuCAT Corp., dated May 12, 2023, and which are incorporated herein by reference.

2.0 **Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 **Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within **60** calendar days from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within **90** calendar days from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City 100 dollars (\$100 .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation

This Work Order is issued for a lump sum, not to exceed amount of \$49,997.00. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

5.0 Project Manager

The Project Manager for the Contractor is David Bernier , phone: 954-553-5566 ; email: davidbernier@nucacorp.com ; and, the Project Manager for the City is David Martyniuk, phone: 561-586-1629 ; email: Dmartyniuk@lakeworthbeachfl.gov .

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor’s Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty

Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is pursuant to the Electrical Equipment Inspection, Testing, Repair and Maintenance Services Contract for between the City of Lake Worth Beach and the Contractor, dated May 15, 2018 ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order to the Electrical Equipment Inspection, Testing, Repair and Maintenance Agreement on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, CMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

NuCAT Corporation

By: David Bernier

Print Name: DAVID BERNIER

Title: PRESIDENT



STATE OF FL
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 24 day of August 2023, by David Bernier, as the President [title] of **NuCAT Corporation**, a Florida Corporation authorized to do business in the State of Florida, who is personally known to me or who has produced FLDL as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Joseph Gall
Notary Public Signature

Notary Seal:

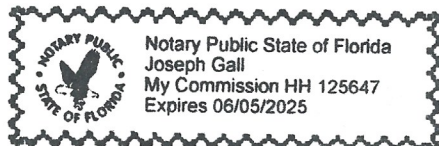


Exhibit 1
Contract for Electrical Equipment Inspection, Testing, Repair and
Maintenance Services
Task Order No. 068

Services to be provided by: NuCAT Corporation

Services provided to (City): City of Lake Worth Beach

Proposal Date: May 12, 2023

Proposal Terms

A. Project Description:

Repair Transformer TD-12

B. Scope of Services:

NuCat Corp. Will rebuild the LTC and repair Transformer TD-12

C. Equipment:

Processor
Doble M4000
Filter Press

D. Fees and Rates:

1. NuCat Corp. will complete the following work on a time and material basis, we anticipate the total cost to be \$49,997.00

Repair Transformer TD-12 for The City of Lake Worth Estimate of Fees

Repair Transformer TD12											
Technicians						Engineer					
Men	Hrs ST	Rate	Hrs OT	Rate	Total	Men	Hrs ST	Rate	Hrs OT	Rate	Total
2	65	\$95.00	8	\$142.50	\$14,630.00	1	65	\$125.00	8	\$187.50	\$9,625.00
0		\$95.00	0	\$142.50	\$0.00	0	0	\$125.00	0	\$187.50	\$0.00
					Total						Total
											Total
											Labor Total
											\$24,255.00
Material											
Description	Price EA	QTY	Total	Mrk up	Total						
Doble M4000	\$1,000.00	1	\$1,000.00	1.2	\$1,200.00						
Filter press	\$150.00	1	\$150.00	1.2	\$180.00						
LV Bushing Adaptors	\$423.00	1	\$423.00	1.2	\$507.60						
Shipping	\$189.00	1	\$189.00	1.2	\$226.80						
LTC TLS Switch Kit	\$12,332.88	1	\$12,332.88	1.2	\$14,799.46						
Processor	\$2,500.00	1	\$2,500.00	1.2	\$3,000.00						
Generator	\$1,800.00	1	\$1,800.00	1.2	\$2,160.00						
Gaskets	\$230.00	1	\$230.00	1.2	\$276.00						
Misc	\$0.00	1	\$0.00	1.2	\$0.00						
LTC indicator	\$2,827.00	1	\$2,827.00	1.2	\$3,392.40						
		0	\$0.00	1.2	\$0.00						
		0	\$0.00	1.2	\$0.00						
			\$0.00	1.2	\$0.00						
					Mtl Total						
											Grand Total
											\$49,997



NuCAT CORPORATION
657 RAMBLING DRIVE CIRCLE
WELLINGTON, FL 33414

PH: (561) 333-4021

May 12, 2023

City of Lake Worth
1900 2nd Avenue North
Lake Worth, FL 33461
Attention: David Martyniuk

Ref No.: NC05122302

Subject: Contract for Electrical Equipment Inspection, Testing, Repair And
Maintenance Services. Work Order # 068

Dear David:

Per your request, NuCAT Corporation is pleased to provide you with this proposal to repair transformer TD-12.

SCOPE OF WORK:

NuCat Corp. will supply all the materials, equipment, qualified manpower, and technical supervision to complete the following work on transformer TD-12.

Replace all LV bushings.
Rebuild LTC.
Process Transformer.
Perform electrical testing.
 Turns Ratio
 Insulation Resistance
 Power Factor

PRICING:

Total Price \$49,997.00

Sincerely,
David A Bernier
David A Bernier

Electrical Equipment Inspection, Testing, Repair and Maintenance Services

WORK ORDER NO. 69

THIS WORK ORDER for SERVICES ("Work Order" hereafter) is made on _____ 2023, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 ("City") and **NuCAT Corporation**, a Florida corporation ("Contractor").

1.0 **Project Description:**

The City desires the Contractor to provide those services and work as identified herein related to the City's Electric Utility System generally describe as: Install New Interrupters and Test the Spare Circuit Breaker. Project completed 01/24/2022. (the "Project"). The Project is more specifically described in the scope and fee proposal prepared by NuCAT Corp., dated May 11, 2023, and which are incorporated herein by reference.

2.0 **Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 **Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within **60** calendar days from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within **90** calendar days from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City **100** dollars (\$100 .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation

This Work Order is issued for a lump sum, not to exceed amount of \$10,300.00. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

_____.

5.0 Project Manager

The Project Manager for the Contractor is David Bernier , phone: 954-553-5566 ; email: davidbernier@nucacorp.com ; and, the Project Manager for the City is David Martyniuk, phone: 561-586-1629 ; email: Dmartyniuk@lakeworthbeachfl.gov .

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty

Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is pursuant to the Electrical Equipment Inspection, Testing, Repair and Maintenance Services Contract for between the City of Lake Worth Beach and the Contractor, dated May 15, 2018 ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

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IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order to the Electrical Equipment Inspection, Testing, Repair and Maintenance Agreement on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, CMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

NuCAT Corporation

By: David Bernier

Print Name: DAVID BERNIER

Title: PRESIDENT



STATE OF FL
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 24 day of August 2023, by David Bernier, as the President [title] of **NuCAT Corporation**, a Florida Corporation authorized to do business in the State of Florida, who is personally known to me or who has produced FLDL as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Joseph Gall
Notary Public Signature

Notary Seal:

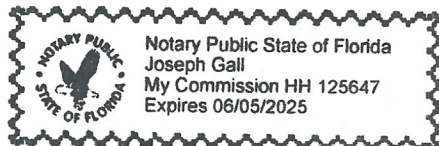


Exhibit 1
Contract for Electrical Equipment Inspection, Testing, Repair and
Maintenance Services
Task Order No. 069

Services to be provided by: NuCAT Corporation

Services provided to (City): City of Lake Worth Beach

Proposal Date: May 14, 2023

Proposal Terms

A. Project Description:

Install New Interrupters and Test Spare Circuit Breaker

B. Scope of Services:

NuCat Corp. Will Install New Interrupters and Test the Spare Circuit Breaker

C. Equipment: _____

Doble M4000

Doble TDR 9100

D. Fees and Rates:

1. NuCat Corp. will complete the following work on a time and material basis, we anticipate the total cost to be
\$10,300.00



NuCAT CORPORATION
657 RAMBLING DRIVE CIRCLE
WELLINGTON, FL 33414

PH: (561) 333-4021

May 14, 2023

City of Lake Worth
1900 2nd Avenue North
Lake Worth, FL 33461
Attention: David Martyniuk

Ref No.: NC05142301

Subject: Contract for Electrical Equipment Inspection, Testing, Repair And
Maintenance Services. Work Order # 069

Dear David:

Pursuant to your request, NuCat Corporation is pleased to provide you with this proposal to
Install New Interrupters and Test the Spare Circuit Breaker.

SCOPE OF WORK:

NuCat Corp. will provide all the materials, equipment, qualified manpower, and technical
supervision to complete the following work on the circuit breaker.

Perform physical inspection.
Replace pole assemblies.
Perform electrical testing.
Power Factor
Hipot
Timing

PRICING:

Total Price \$10,300.00

Sincerely,
David A Bernier
David A Bernier

Electrical Equipment Inspection, Testing, Repair and Maintenance Services

WORK ORDER NO. 70

THIS WORK ORDER for SERVICES ("Work Order" hereafter) is made on _____ 2023, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 ("City") and **NuCAT Corporation**, a Florida corporation ("Contractor").

1.0 **Project Description:**

The City desires the Contractor to provide those services and work as identified herein related to the City's Electric Utility System generally describe as: Repair and Test Circuit Breaker 26BE09. Project completed 02/28/2022. (the "Project"). The Project is more specifically described in the scope and fee proposal prepared by NuCAT Corp., dated May 14, 2023, and which are incorporated herein by reference.

2.0 **Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 **Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within **60** calendar days from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within **90** calendar days from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City **100** dollars (\$100 .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation

This Work Order is issued for a lump sum, not to exceed amount of \$8,100.00. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

5.0 Project Manager

The Project Manager for the Contractor is David Bernier , phone: 954-553-5566 ; email: davidbernier@nucacorp.com ; and, the Project Manager for the City is David Martyniuk, phone: 561-586-1629 ; email: Dmartyniuk@lakeworthbeachfl.gov .

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty

Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is pursuant to the Electrical Equipment Inspection, Testing, Repair and Maintenance Services Contract for between the City of Lake Worth Beach and the Contractor, dated May 15, 2018 ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order to the Electrical Equipment Inspection, Testing, Repair and Maintenance Agreement on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, CMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

NuCAT Corporation



[Corporate Seal]

By: David Bernier

Print Name: DAVID BERNIER

Title: PRESIDENT

STATE OF FL
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 24 day of August 2023, by David Bernier, as the President [title] of **NuCAT Corporation**, a Florida Corporation authorized to do business in the State of Florida, who is personally known to me or who has produced FLDL as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Joseph Gall
Notary Public Signature

Notary Seal:

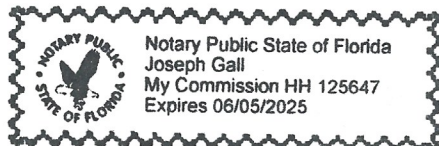


Exhibit 1
Contract for Electrical Equipment Inspection, Testing, Repair and
Maintenance Services
Task Order No. 070

Services to be provided by: NuCAT Corporation

Services provided to (City): City of Lake Worth Beach

Proposal Date: May 14, 2023

Proposal Terms

A. Project Description:

Repair and Test Circuit Breaker 26BE09

B. Scope of Services:

NuCat Corp. Will Repair and Test the Circuit Breaker 26BE09

C. Equipment: _____

Doble M4000

Doble TDR 9100

D. Fees and Rates:

1. NuCat Corp. will complete the following work on a time and material basis, we anticipate the total cost to be
\$8,100.00



NuCAT CORPORATION
657 RAMBLING DRIVE CIRCLE
WELLINGTON, FL 33414

PH: (561) 333-4021

May 14, 2023

City of Lake Worth
1900 2nd Avenue North
Lake Worth, FL 33461
Attention: David Martyniuk

Ref No.: NC05142301

Subject: Contract for Electrical Equipment Inspection, Testing, Repair And
Maintenance Services. Work Order # 070

Dear David:

Pursuant to your request, NuCat Corporation is pleased to provide you with this proposal to
Repair and Test Circuit Breaker 26BE09

SCOPE OF WORK:

NuCat Corp. will provide all the materials, equipment, qualified manpower, and technical
supervision to complete the following work on the circuit breaker.

Replace Motherboard and Capacitors.

Perform electrical testing.

Power Factor

Hipot

Timing

PRICING:

Total Price \$8,100.00

Sincerely,
David A Bernier
David A Bernier

Electrical Equipment Inspection, Testing, Repair and Maintenance Services

WORK ORDER NO. 71

THIS WORK ORDER for SERVICES ("Work Order" hereafter) is made on _____2023, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 ("City") and **NuCAT Corporation**, a Florida corporation ("Contractor").

1.0 **Project Description:**

The City desires the Contractor to provide those services and work as identified herein related to the City's Electric Utility System generally describe as: Test Transformer GT2. Project completed 03/03/2022. (the "Project"). The Project is more specifically described in the scope and fee proposal prepared by NuCAT Corp., dated May 14, 2023, and which are incorporated herein by reference.

2.0 **Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 **Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within **60** calendar days from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within **90** calendar days from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City 100 dollars (\$100 .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation

This Work Order is issued for a lump sum, not to exceed amount of \$4,665.00. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

5.0 Project Manager

The Project Manager for the Contractor is David Bernier , phone: 954-553-5566 ; email: davidbernier@nucacorp.com ; and, the Project Manager for the City is David Martyniuk, phone: 561-586-1629 ; email: Dmartyniuk@lakeworthbeachfl.gov .

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty

Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is pursuant to the Electrical Equipment Inspection, Testing, Repair and Maintenance Services Contract for between the City of Lake Worth Beach and the Contractor, dated May 15, 2018 ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order to the Electrical Equipment Inspection, Testing, Repair and Maintenance Agreement on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, CMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

NuCAT Corporation

By: David Bernier

Print Name: DAVID BERNIER

Title: PRESIDENT



STATE OF FL
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 24 day of August 2023, by David Bernier, as the President [title] of **NuCAT Corporation**, a Florida Corporation authorized to do business in the State of Florida, who is personally known to me or who has produced FLDL as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Joseph Gall
Notary Public Signature

Notary Seal:

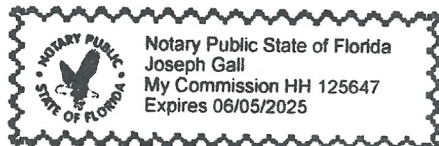


Exhibit 1
Contract for Electrical Equipment Inspection, Testing, Repair and
Maintenance Services
Task Order No. 071

Services to be provided by: NuCAT Corporation

Services provided to (City): City of Lake Worth Beach

Proposal Date: May 14, 2023

Proposal Terms

A. Project Description:

Test Transformer GT2

B. Scope of Services:

NuCat Corp. Will Test Transformer GT2

C. Equipment: _____

D. Fees and Rates:

1. NuCat Corp. will complete the following work on a time and material basis, we anticipate the total cost to be \$4,665.00.

Test Transformer GT2 for The City of Lake Worth Estimate of Fees

Test GT2 Transformer											
Technicians						Engineer					
Men	Hrs ST	Rate	Hrs OT	Rate	Total	Men	Hrs ST	Rate	Hrs OT	Rate	Total
2	8	\$95.00	2	\$142.50	\$2,090.00	1	8	\$125.00	2	\$187.50	\$1,375.00
0	0	\$95.00	0	\$142.50	\$0.00	0	0	\$125.00	0	\$187.50	\$0.00
					Total						Total
					\$2,090.00						\$1,375
											Labor Total
											\$3,465.00
Material											
Part number	Description	Outline drawing	QTY	Price EA	Total	Mrk up	Total				
			0		\$0.00	1.2	\$0.00				
			0	\$0.00	\$0.00	1.2	\$0.00				
			0	\$0.00	\$0.00	1.2	\$0.00				
			0	\$0.00	\$0.00	1.2	\$0.00				
	Doble M4000		1	\$1,000.00	\$1,000.00	1.2	\$1,200.00				
	Misc		0	\$0.00	\$0.00	1.2	\$0.00				
			0	\$0.00	\$0.00	1.2	\$0.00				
			0	\$0.00	\$0.00	1.2	\$0.00				
			0	\$0.00	\$0.00	1.2	\$0.00				
			0	\$0.00	\$0.00	1.2	\$0.00				
			0	\$0.00	\$1,000.00						
					Mtl Total	\$1,200.00					
											Grand Total
											\$4,665



NuCAT CORPORATION
657 RAMBLING DRIVE CIRCLE
WELLINGTON, FL 33414

PH: (954) 553-5566

May 14, 2023

City of Lake Worth
1900 2nd Avenue North
Lake Worth, FL 33461
Attention: David Martyniuk

Ref No.: NC05142303

Subject: Contract for Electrical Equipment Inspection, Testing, Repair And
Maintenance Services. Work Order # 071

Dear David:

Per your request, NuCAT Corporation is pleased to provide you with this proposal to test transformer GT2.

SCOPE OF WORK:

NuCat Corp. will provide the equipment, qualified manpower and technical supervision to test the transformer.

Pricing: \$ 4,665.00

If you have any questions, or require additional information, please contact me at your convenience (954-553-5566).

Sincerely,
David A Bernier
David A Bernier

Electrical Equipment Inspection, Testing, Repair and Maintenance Services

WORK ORDER NO. 72

THIS WORK ORDER for SERVICES ("Work Order" hereafter) is made on _____ 2022, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 ("City") and **NuCAT Corporation**, a Florida corporation ("Contractor").

1.0 **Project Description:**

The City desires the Contractor to provide those services and work as identified herein related to the City's Electric Utility System generally describe as: Inspection, Testing and replacement of Transformer TD-12. Project complete date 11/18/2022. (the "Project"). The Project is more specifically described in the scope and fee proposal prepared by NuCAT Corp., dated May 12, 2023, and which are incorporated herein by reference.

2.0 **Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 **Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within **60** calendar days from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within **90** calendar days from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City 100 dollars (\$100 .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation

This Work Order is issued for a lump sum, not to exceed amount of \$49,260.00. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

_____.

5.0 Project Manager

The Project Manager for the Contractor is David Bernier , phone: 954-553-5566 ; email: davidbernier@nucacorp.com ; and, the Project Manager for the City is David Martyniuk, phone: 561-586-1629 ; email: Dmartyniuk@lakeworthbeachfl.gov .

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty

Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is pursuant to the Electrical Equipment Inspection, Testing, Repair and Maintenance Services Contract for between the City of Lake Worth Beach and the Contractor, dated May 15, 2018 ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order to the Electrical Equipment Inspection, Testing, Repair and Maintenance Agreement on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, CMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

NuCAT Corporation



[Corporate Seal]

By: David Bernier

Print Name: DAVID BERNIER

Title: PRESIDENT

STATE OF FL
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 24 day of August 2023, by David Bernier, as the President [title] of **NuCAT Corporation**, a Florida Corporation authorized to do business in the State of Florida, who is personally known to me or who has produced FLDL as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Joseph Gall
Notary Public Signature

Notary Seal:

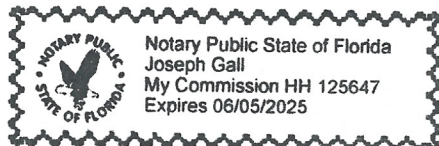


Exhibit 1
Contract for Electrical Equipment Inspection, Testing, Repair and
Maintenance Services
Task Order No. 072

Services to be provided by: NuCAT Corporation

Services provided to (City): City of Lake Worth Beach

Proposal Date: May 12, 2023

Proposal Terms

A. Project Description:

Inspect, Test and Replace Transformer TD-12

B. Scope of Services:

NuCat Corp. Will Inspect, Test and Replace Transformer TD-12

C. Equipment: _____

Doble M4000

Filter Press

D. Fees and Rates:

- 1 NuCat Corp. will complete the following work on a time and material basis, we anticipate the total cost to be \$49,260.00



NuCAT CORPORATION
657 RAMBLING DRIVE CIRCLE
WELLINGTON, FL 33414

PH: (561) 333-4021

May 12, 2023

City of Lake Worth
1900 2nd Avenue North
Lake Worth, FL 33461
Attention: David Martyniuk

Ref No.: NC05122301

Subject: Contract for Electrical Equipment Inspection, Testing, Repair And
Maintenance Services. Work Order # 072

Dear David:

Per your request, NuCAT Corporation is pleased to provide you with this proposal to inspect, test and replace transformer TD-12.

SCOPE OF WORK:

NuCat Corp. will supply all the materials, equipment, qualified manpower, and technical supervision to complete the following work on transformer TD-12.

Drain the LTC and perform internal inspection.

Perform electrical testing.

Turns Ratio

Insulation Resistance

Power Factor

Replace existing transformer with Spare.

PRICING:

Total Price \$49,260.00

Sincerely,

David A Bernier

David A Bernier

Electrical Equipment Inspection, Testing, Repair and Maintenance Services

WORK ORDER NO. 73

THIS WORK ORDER for SERVICES ("Work Order" hereafter) is made on _____ 2022, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 ("City") and **NuCAT Corporation**, a Florida corporation ("Contractor").

1.0 **Project Description:**

The City desires the Contractor to provide those services and work as identified herein related to the City's Electric Utility System generally describe as: Inspection and repair LTC for transformer TD-06. Project completed 05/22/2022. (the "Project"). The Project is more specifically described in the scope and fee proposal prepared by NuCAT Corp., dated May 10, 2023, and which are incorporated herein by reference.

2.0 **Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 **Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within **60** calendar days from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within **90** calendar days from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City 100 dollars (\$100 .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation

This Work Order is issued for a lump sum, not to exceed amount of \$45,751.00. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

_____.

5.0 Project Manager

The Project Manager for the Contractor is David Bernier , phone: 954-553-5566 ; email: davidbernier@nucacorp.com ; and, the Project Manager for the City is David Martyniuk, phone: 561-586-1629 ; email: Dmartyniuk@lakeworthbeachfl.gov .

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty

Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is pursuant to the Electrical Equipment Inspection, Testing, Repair and Maintenance Services Contract for between the City of Lake Worth Beach and the Contractor, dated May 15, 2018 ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order to the Electrical Equipment Inspection, Testing, Repair and Maintenance Agreement on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, CMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

NuCAT Corporation

By: David Bernier

Print Name: DAVID BERNIER

Title: PRESIDENT



STATE OF FL
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 24 day of August 2023, by David Bernier, as the President [title] of **NuCAT Corporation**, a Florida Corporation authorized to do business in the State of Florida, who is personally known to me or who has produced FLDL as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Joseph Gall
Notary Public Signature

Notary Seal:

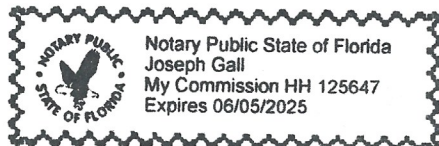


Exhibit 1
Contract for Electrical Equipment Inspection, Testing, Repair and
Maintenance Services
Task Order No. 073

Services to be provided by: NuCAT Corporation

Services provided to (City): City of Lake Worth Beach

Proposal Date: May 10, 2023

Proposal Terms

A. Project Description:

Inspect and Repair LTC TD06

B. Scope of Services:

NuCat Corp. Will Inspect, repair and perform testing of Transformer TD06.

C. Equipment:

Doble M4000

Filter Press

D. Fees and Rates:

- 1 NuCat Corp. will complete the following work on a time and material basis, we anticipate the total cost to be \$45,751.00

**Inspect and Repair LTC Transformer TD06
for The
City of Lake Worth
Estimate of Fees**

Inspect and Repair Transformer LTC TD06											
Technicians						Engineer					
Men	Hrs ST	Rate	Hrs OT	Rate	Total	Men	Hrs ST	Rate	Hrs OT	Rate	Total
3	42	\$95.00	0	\$142.50	\$11,970.00	1	40	\$125.00	0	\$187.50	\$5,000.00
0		\$95.00	0	\$142.50	\$0.00	0	0	\$125.00	0	\$187.50	\$0.00
					Total						Total
					\$11,970.00						\$5,000
											Labor Total
											\$16,970.00
Material											
Description	Price EA	QTY	Total	Mrk up	Total						
Doble M4000	\$1,000.00	1	\$1,000.00	1.2	\$1,200.00						
Filter press	\$150.00	2	\$300.00	1.2	\$360.00						
Tx oil 55 usg drum	\$935.50	4	\$3,742.00	1.2	\$4,490.40						
door gasket	\$200.00	1	\$200.00	1.2	\$240.00						
Arcing contacts	\$134.57	12	\$1,614.84	1.2	\$1,937.81						
Expedited oil Sample	\$400.00	1	\$400.00	1.2	\$480.00						
Diverters price diff	\$1,610.38	6	\$9,662.28	1.2	\$11,594.74						
Shipping	\$667.00	1	\$667.00	1.2	\$800.40						
Oil Procc	\$2,500.00	1	\$2,500.00	1.2	\$3,000.00						
Gaskets	\$200.00	1	\$200.00	1.2	\$240.00						
Rev SW Sta Contacts	\$1,404.00	1	\$1,404.00	1.2	\$1,684.80						
LTC oil increase	\$113.00	3	\$339.00	1.2	\$406.80						
Generator	\$1,755.00	1	\$1,755.00	1.2	\$2,106.00						
Fuel	\$200.00	1	\$200.00	1.2	\$240.00						
		0	\$0.00	1.2	\$0.00						
			\$0.00	1.2	\$0.00						
				Mtl Total	\$28,780.94						
											Grand Total
											\$45,751



NuCAT CORPORATION
657 RAMBLING DRIVE CIRCLE
WELLINGTON, FL 33414

PH: (561) 333-4021

May 10, 2023

City of Lake Worth
1900 2nd Avenue North
Lake Worth, FL 33461
Attention: David Martyniuk

Ref No.: NC05102304

Subject: Contract for Electrical Equipment Inspection, Testing, Repair And
Maintenance Services. Work Order # 073

Dear David:

Per your request, NuCAT Corporation is pleased to provide you with this proposal to inspect and repair LTC of transformer TD06.

SCOPE OF WORK:

NuCat Corp. will supply all the materials, equipment, qualified manpower, and technical supervision to complete the following work on transformer TD06.

Replace the LTC oil with new.

Perform thorough inspection and replace LTC parts, as necessary.

Process Transformer oil

Perform electrical testing.

Turns Ratio

Insulation Resistance

Power Factor

PRICING:

Total Price \$45,751.00

Sincerely,

David A Bernier

David A Bernier



EXCEPTION TO PROCUREMENT PROCEDURE

Vendor	Infraction	Description	Amount	Date of Infraction	Employee
Nucal	WO#61 - 7th Ave N UG Cable Testing - Capital Work	Testing of the new underground feeder cables for the new substation.	33,821.00	April 2022	David Marlyniuk
Total			\$33,821.00		

JUSTIFICATION

City of Lake Worth Procurement Policy was not followed due to:
 Nucal was brought in to do independent confirmation of new installations on underground cabling. In order to maintain project schedule, Nucal was notified and asked for a quote with short notice. Since we have used Nucal Exclusively for the last decade or more and were currently under a competitively bid maintenance contract, we utilized their services. Due to Nucal's high volume of emergent work with the city over the months preceding and during this task, I was unable to receive a quote for the work and execute the WO to maintain schedule prior to work being completed. Later learned, the owner and administrator of this small business dealt with personal issues slowing down the paperwork receipt for emergent work completed.

APPROVAL

I authorize creation of the purchase order and payment on the above item(s).

 Department Director Name Department Director Signature Date

 City Manager Signature/ Designee Date

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Electric Utility

TITLE:

Transmission Operator Alliance Agreement

SUMMARY:

Request for approval for the City of Lake Worth Beach to join the Transmission Operator Alliance operated by Orlando Utilities Commission (OUC) on behalf of Alliance parties.

BACKGROUND AND JUSTIFICATION:

The City of Lake Worth Beach Electric (CLWB) Electric Utility is currently planning for regulatory compliance activities that will be required in order to place the second interconnection with the Florida Power and Light (FP&L) transmission system into service. The Construction Agreement for this second interconnection project was approved by City Commission on September 20, 2022 and is planned to be placed in service mid-2024. This second transmission interconnection (aka "Tie Line") to be located at City's Canal Substation will supplement its current single transmission interconnection and will enhance the reliability of its electric system.

In order to place this second interconnection in service, the City of Lake Worth Beach Electric Utility will be legally required to register as a Transmission Operator (TOP) with the North American Electric Reliability Corporation (NERC) through the Southeast Reliability Corporation (SERC) and comply with a myriad of NERC mandated standards.

Currently, the City is required to comply with twenty-six (26) NERC reliability standards containing three hundred thirteen (313) requirements. We are currently compliant with all required standards

Following registration as a TOP, the City will be required to comply with ninety-four (94) additional standards containing over one thousand (1,000) requirements

Compliance with these requirements will require the City to significantly increase staffing levels of its Electric System Operations and Compliance teams, maintain proficiency in critical compliance requirements activities (such as training and maintenance of certified staff), and maintain an active backup control room. In short, maintaining such a rigorous compliance program and adequate staffing levels would represent a significant operating cost and ongoing challenge compared to the economies of scale made possible by the collaborative Alliance effort.

The Alliance (aka "CTOP") is a joint effort currently supported by three municipal utilities (Alliance Parties) which are Orlando Utilities Commission (OUC), Kissimmee Utility Authority (KUA), and Beaches Energy Services (Beaches Energy). The Alliance operating functions are conducted by OUC with oversight and governance by the Alliance Parties. Expenses to operate the Alliance are shared equally amongst the existing three Transmission Operator Alliance Parties, which would be expanded to four Parties with the inclusion of Lake Worth Beach in the Alliance. Should the city join the Alliance it will be entitled to representation in the Executive Committee and Operating Committee of the Alliance.

Cost and Liability Sharing

The Alliance voted to waive the initial one-time, non-refundable fee of \$585,000 per participant for the City of Lake Worth Beach to join the Alliance.

The Alliance has estimated that CLWB will be responsible for approximately \$200,000 in the up-front cost of integration into the Alliance. The breakdown of that cost is as follows:

- **\$100,000** for Alliance engineers to model the City of Lake Worth Beach grid in the CTOP Energy Management System (EMS) system.
- **\$100,000** for building the communication network between OUC (Agent for the performance of TOP Control Center functions) and CLWB including modeling, hardware, dedicated RTU Design, MPLS Connection to the City of Lake Worth Beach, AT&T Circuits

City's share of operating expenses (25% of the annual operating cost of the Alliance) is estimated at \$50,000 monthly or \$600,000 annually.

MOTION:

Move to approve/disapprove for the City of Lake Worth Beach signing the Transmission Operator Alliance Agreement and becoming a member of the Alliance.

ATTACHMENT(S):

Fiscal Impact Analysis Agreement

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2024	2025	2026	2027	2028
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Current Appropriation	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

New Appropriation Fiscal Impact:	
	Expenditure
Department	Electric Utility
Division	System Operations
GL Description	Contractual Services/Other Contractual Servc
GL Account Number	401-6033-531.34-50
Project Number	N/A
Requested Funds	\$600,000

**AMENDED AND RESTATED
TRANSMISSION OPERATOR ALLIANCE AGREEMENT**

AMONG

**ORLANDO UTILITIES COMMISSION, KISSIMMEE UTILITY AUTHORITY,
THE CITY OF JACKSONVILLE BEACH, D/B/A, BEACHES ENERGY SERVICES
AND CITY OF LAKE WORTH BEACH**

THIS AMENDED AND RESTATED TRANSMISSION OPERATOR ALLIANCE AGREEMENT (“Alliance Agreement”) is made as of the ____ day of _____, 2023 (the “**Effective Date**”) by and between **ORLANDO UTILITIES COMMISSION (“OUC”), KISSIMMEE UTILITY AUTHORITY (“KUA”), and THE CITY OF JACKSONVILLE BEACH, D/B/A, BEACHES ENERGY SERVICES (“BEACHES ENERGY”)** (collectively referred to as the “**Original Parties**”) and **CITY OF LAKE WORTH BEACH (“CLWB”)**, (the Original Parties and CLWB shall be collectively referred to herein as the “**Parties**” and separately as a “**Party**”).

RECITALS

WHEREAS, each of the Parties is a NERC registered Transmission Operator (“**TOP**”) responsible for the reliability of its local Transmission system; and

WHEREAS, the Original Parties formed a joint Bulk Electric System Transmission Operator alliance (the “**Alliance**”) to reduce their respective liabilities related to CIP compliance and achieve greater efficiencies and cost savings through economies of scale realized from creating a single centralized TOP Control Center (primary and back-up) and share in the cost of operating one centralized TOP; and

WHEREAS, the Original Parties entered into that certain Transmission Operation Alliance Agreement dated January 22, 2015 (the “**Original Agreement**”), under which OUC was designated and authorized to act as the NERC certified system operator for the Alliance, to govern the operation of the Alliance; and

WHEREAS, CLWB desires to become a member of the Alliance and the Original Parties agree to allow CLWB to become a member of the Alliance, on the terms and conditions set forth herein; and

WHEREAS, the Parties desire to amend and restate the Original Agreement in its entirety to reflect admission of CLWB into the Alliance, as set forth in this Alliance Agreement.

NOW THEREFORE, the Parties agree as follows:

1. **RECITALS.** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **DEFINITIONS.** The Parties agree that in construing this Alliance Agreement, capitalized words, phrases and terms used in this Alliance Agreement unless the context requires otherwise shall have the meaning set forth in Schedule A to this Alliance Agreement, which is incorporated herein by this reference.

3. **TERM AND TERMINATION.** This Alliance Agreement shall commence on the Effective Date and shall continue in perpetuity; provided, however, that any Party at any time may withdraw from the Alliance, and thereby terminate its participation in this Alliance Agreement, upon giving written notice of its intent to withdraw to all Parties no later than three years prior to the notified termination date.

4. **ORGANIZATION AND GOVERNANCE.**

(a) **Establishment of Committees.** As a means of securing effective cooperation, exchange of information and orderly management of the Alliance, the Parties agree that oversight and governance of the Alliance will be provided by an Executive Committee and an Operating Committee shall be established for oversight of operational matters as set forth below:

(i) **Executive Committee.** Each Party, by written notice signed by an officer duly authorized to commit such Party, shall designate a representative to serve on the Executive Committee and an alternate authorized to act in the absence of the designated representative. The names, addresses and contact information of the individuals comprising the Executive Committee are set forth in Exhibit 1, which is attached hereto and incorporated herein.

(1) **Function of the Executive Committee.** The Executive Committee shall implement this Alliance and shall be responsible for determining policy with respect to all matters within the scope of this Alliance. The Executive Committee will further serve to resolve any disputes between the parties arising under the Alliance prior to going into litigation. Each member of the Executive Committee shall be entitled to one vote. All decisions by the Executive Committee shall be by a super majority consent (greater than 2/3 or 67% of those members present).

(2) **Executive Committee Meetings.** At least ten (10) days written notice of any meetings of the Executive Committee shall be given by the chairman to each member and alternate member of the Executive Committee. The notice shall state the time and place of the meeting and shall include an agenda of the items to be considered. Except by unanimous consent of those present, no action shall be taken on any item other than those included on the agenda. The roles of committee officers and the parliamentary procedure used to conduct meetings shall be as generally described in Robert's Rules of Order.

(3) **The Executive Committee,** at least annually at an appropriate location, shall review the operations of the Alliance and make a good faith effort to resolve any inequities for any of the Parties which have arisen from the operation of the Alliance, or as a result of the terms of the definitive agreement or any other agreement(s) between the Parties. The

Executive Committee shall meet at least annually and at such times as the chairman may determine or as requested by two or more of the Executive Committee members.

(4) A representative from OUC shall serve as the inaugural chairman of the Executive Committee for an initial term to be decided by the Executive Committee. The Executive Committee shall select from among its members a vice chairman who will serve for the initial term. Thereafter, the Executive Committee shall select from among its members a chairman and vice chairman who will serve a term of two years. Commencing thereafter, and every two years thereafter, the vice chairman shall become the chairman and a new vice chairman shall be selected by the Executive Committee. If the chairman or vice chairman position becomes vacant, the Executive Committee shall select from among its members a chairman or vice chairman who shall serve the remainder of the term for the vacant position. Notwithstanding the foregoing, should the chairman position becomes vacant and a vice chairman was selected, then said vice chairman shall become the new chairman and a new vice chairman shall be selected by the Executive Committee.

(ii) Appointment of Members to Operating Committee. Each member of the Executive Committee shall appoint by written notice to the other members, a representative and alternate(s) to serve on the Operating Committee. The names, addresses and contact information of the individuals comprising the Operating Committee are set forth in Exhibit 2, which is attached hereto and incorporated herein.

(1) Function of the Operating Committee. The Operating Committee shall be responsible for oversight of operational matters with respect to the Alliance and shall develop an Alliance Handbook (“Handbook”) containing governing practices, procedures, policies, methodologies and other governing document for the Alliance and shall submit the same to the Executive Committee for approval. These practices shall be consistent with applicable NERC Reliability Standards where applicable. The Operating Committee shall also be responsible for ensuring the performance of all tasks and functions associated with compliance with the NERC Reliability Standards requirements. In order to fulfill the assigned responsibilities, the Operating Committee chairman shall have the authority to establish such subcommittees, working groups and task forces as he or she deems necessary. The Executive Committee may delegate authority to the Operating Committee to amend certain portions of the Handbook; decisions on such amendments shall be by the same voting requirements of the Executive Committee. All other decisions of the Operating Committee shall be by a majority vote of those members present. In the event of a tie-vote during Operating Committee meetings and a necessity to proceed with a timely decision due to safety, operational, compliance or economic considerations, the chairman of the Operating Committee shall communicate to the Executive Committee the details around any vote that requires a tie-breaking vote. Subsequently, the Executive Committee shall convene and cast the tie-breaking vote.

(2) Operating Committee Meetings. Except as provided in Section (4)(a)(ii)(3) below, at least ten (10) days written notice of any meetings of the Operating Committee shall be given by the chairman to each member of the Operating Committee. The notice shall state the time and place of the meeting and shall include an agenda of the items to be considered. Except by unanimous consent of those present, no action shall be taken on any item

other than those included on the agenda. The roles of committee officers and the parliamentary procedure used to conduct meetings shall be as generally described in Robert's Rules of Order.

(3) The Operating Committee, at least annually, shall review the operations of the Alliance and make a good faith effort to resolve any inequities for any of the Parties which have arisen from the operation of the Alliance, or as a result of the terms of the definitive agreement or any other agreement(s) between the Parties. The Operating Committee shall meet in person at least annually and at such times as the chairman may determine or as requested by two or more of the Operating Committee members. Notwithstanding anything to the contrary herein, the chairman may call for meetings or conference calls, with or without notice, on an as needed basis when operational circumstances or compliance related events dictate.

(4) A representative from OUC shall serve as the inaugural chairman of the Operating Committee for an initial term to be decided by the Operating Committee. The Operating Committee shall select from among its members a vice chairman who will serve for the initial term. Thereafter, the Operating Committee shall select from among its members a chairman and vice chairman who will serve a term of two years. Commencing thereafter, and every two years subsequently, the vice chairman shall become the chairman and a new vice chairman shall be selected by the Operating Committee.

(b) Authorization of Committee Action and Conduct of Meetings. The Parties recognize that certain actions or recommendations of the Executive and Operating Committees may require further authorization of their respective governing boards consistent with existing charter and other procedures applicable to each. The Parties further acknowledge that the Executive and Operating Committees need to be familiar with and be prepared to comply with all applicable notice, recordkeeping and other requirements set forth in Florida's open meetings law, as set forth in Florida Statutes, Chapter 286, to the extent meetings of either committee are subject to the law.

5. **ROLES, RESPONSIBILITIES AND AUTHORITY OF THE PARTIES.** The roles, responsibilities and authority of the Parties in conducting the business of the Alliance are set forth in the following:

(a) TOP Alliance Handbook. After execution of this Agreement, the Parties will develop a TOP Alliance Handbook ("Handbook") containing the governing policies, procedures, methodologies and similar governing documents for the business of the Alliance. The TOP Alliance Handbook will be approved by the Executive Committee and is hereby incorporated into this agreement by reference. Amendments to the Handbook may be made by the Executive Committee, which may delegate authority to amend certain portions of the Handbook to the Operating Committee.

(b) Responsibility Assignment. OUC shall act as Agent for the performance of TOP Control Center based functions and as such OUC shall be the NERC certified System Operator for the Parties' Bulk Electric System with respect to Transmission Operations Control Center functions. The Parties agree to enter into a NERC Coordinated Functional Registration Agreement ("Registration Agreement") with OUC as necessary for the performance of and compliance with all NERC Reliability Standards and requirements within said standards with

respect to the matters contemplated herein, and is attached hereto and incorporated herein as Exhibit 1. The responsibility for performing and demonstrating compliance to each individual NERC requirement applicable to TOPs will be set forth within Appendix 1 of the Registration Agreement (“Responsibility Assignment”). Any requirements not assigned to OUC according to the Responsibility Assignment will remain the responsibility of the individual entities. The Registration Agreement will be submitted to FRCC for approval; however non-approval does not release any member from performance of said requirements as assigned in the Registration Agreement. Amendments to the Registration Agreement shall be considered upon changes in regulation, such as when FERC approves a NERC standard, and best efforts by all Parties shall be made to incorporate any necessary changes to comply with the new or revised regulation before the effective date of that regulation. OUC shall be responsible for maintaining the Responsibility Assignment and bringing to the attention of the Executive Committee required modifications. Any necessary amendments to the Registration Agreement shall be made by the Executive Committee.

Parties agree to provide OUC, as needed, with sufficient data and information to demonstrate full compliance with requirements assigned to OUC as identified within Appendix 1 of the Registration Agreement but not specifically required to be performed within a Control Center.

In addition, the Parties agree to:

- (a) Authorize OUC to arrange for new interchange agreements if needed.
- (b) Provide OUC with studies to be used to plan for reliable operations.
- (c) Ensure the TOP System Operator participates in the Parties system planning process.
- (d) Notify OUC of any of the following:
 - (i) Intent to implement an Under Voltage Load Shed system
 - (ii) Any changes in protection systems configurations or settings
 - (iii) Any relay or equipment failures
 - (iv) Any significant changes in load
- (e) Implement and abide by the following which may be modified from time to time and or hereby incorporated by reference:
 - (i) OUC GMD Operating Procedure
 - (ii) OUC Event Reporting Operating Plan
 - (iii) OUC SOL Identification Methodology
- (c) Other OUC Responsibilities. OUC will further be responsible for:

- a. Maintaining OUC Control Center Facility to the current version of the NERC CIP Standards
- b. Maintaining NERC Certified Personnel.
- c. Ensuring the Control Center Operators follow OUC operational procedures and processes.
- d. Obtaining TOP Control Center Certification.
- e. Fulfilling applicable obligations of the Reliability Coordinator (e.g., the FRCC Handbook), including those not contained within the NERC standards.

(d) No Preference. OUC will perform its responsibilities associated with this Alliance Agreement without any preferential treatment to any member of the Alliance.

6. COST AND LIABILITY SHARING

(a) Initial Cost. The Original Parties have made a one-time, non-refundable fee for the initial investment, set-up for each Party and upgrading of the Control Center. The initial cost was set at \$585,000 per participant based on the number of original Alliance members. Should additional participants (“**New Members**”) enter into the Alliance, they shall be responsible for all modeling (SCADA, EMS, etc.) and other up-front costs associated with integration into the Alliance and such other charges as determined by the Executive Committee.

(b) Annual Operating Costs. Each Party agrees to share in the actual cost of operating the Control Center(s) including costs associated with system operators, EMS support, software, hardware, and compliance labor.

(c) Sharing of Penalties, Sanctions or Fines.

(i) Unless overridden by unanimous vote of the Executive Committee, any penalties, sanctions, fines or costs associated therewith assessed by FERC, NERC, or FRCC upon OUC for OUC’s responsibilities as established in Appendix 1 of the Registration Agreement for actual or alleged violations of a Reliability Standard, except as caused by gross negligence, shall be allocated equally amongst the Parties. This equal allocation shall not apply to penalties, sanctions, fines or costs (“liability”) assessed against any Party for any requirement not set forth in Appendix 1 of the Registration Agreement. Such liability would remain that Party’s responsibility alone.

(ii) Any penalties, sanctions, fines or costs associated therewith assessed by FERC, NERC, or FRCC upon a Party other than OUC for that Party’s responsibilities as established in Appendix 1 of the Registration Agreement for actual or alleged violations of a Reliability Standard shall be borne by that Party.

(d) Annual Budgeting Process.

(i) Budgeted Expenditures. Annually, by April 30th, OUC will present an operating budget and capital plan to the Executive Committee. The purpose shall be to inform the Alliance members as to their expected share of the expenses so they can properly adjust their own budgets for the upcoming fiscal year. The operating component of the budget will be comprised primarily of System Operator, Compliance staff, and EMS labor charges and will be considered non-discretionary. Approval by the Executive Committee shall be requested and such approval shall not be unreasonably withheld. The capital plan will be a forecast of the capital expenditures that OUC deems necessary for the upcoming year. Approval by the Executive Committee shall be requested and such approval shall not be unreasonably withheld. OUC shall not be obligated to and shall have sole discretion whether to fund any portion of the budget that is not approved by the Executive Committee.

(ii) Budget Amendments. In the course of any business, situations arise where expenditures may be required that were unexpected at the time the budget was formulated. For such cases, where expenditures are forecast to exceed the originally presented budgets, OUC shall develop a budget amendment and seek approval by the Executive Committee (“Budget Amendment”).

(iii) Actual vs. Budget Reporting. At a frequency determined by the Executive Committee, but, initially quarterly, OUC shall report on actual expenditures as compared to budget.

(e) Payment. OUC shall invoice the Alliance members monthly and such monthly invoice shall include: (i) a portion of the Initial Costs as set forth in paragraph 6(a) of this Alliance Agreement, if any and if payment for those costs are to be scheduled over a mutually agreed number of months; and (ii) actual Operating Costs as set forth in paragraph 6(b) of this Alliance Agreement. Each Party agrees to pay OUC all amounts due within 30 days of receipt of the monthly invoice. In the event of any dispute as to any portion of any bill, the Party shall nevertheless pay the full amount of the disputed charges when due and shall, within 45 days from the date of the disputed bill, give written notice of the dispute to the Executive Committee for settlement within 60 days. Such notice shall identify the disputed bill, state the amount in dispute and set forth a full statement on the ground on which the dispute is based. No adjustment shall be considered or made for disputed charges unless required notice is given.

(f) Audit Rights. Any Party or its designee shall have the right, at its sole expense and during normal working hours, to examine any and all records to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Alliance Agreement and/or the operation of the Alliance. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the interest rate of one percent (1%) per month, compounded monthly from the date the overpayment or underpayment was made until paid. The aforesaid audit rights are limited to 24 months after the issuance of any particular invoice.

7. ADMISSION OF NEW MEMBERS

(a) New members may be admitted to the Alliance from time to time, subject to approval of the Executive Committee and compliance with the provisions of Section 6 (a) and following compliance with the provisions of Section 6 (b).

(b) In order for a New Member to be admitted to the Alliance, such entity shall have executed and delivered to the Parties a written undertaking substantially in the form of the Joinder Agreement, which is attached hereto as Exhibit 4 and incorporated herein.

8. **DISPUTES RESOLUTION.** The Parties shall first negotiate in good faith to attempt to resolve any dispute, controversy or claim arising out of, under, or relating to the Alliance (a “Dispute”). In the event the Parties are unsuccessful in resolving a Dispute through such negotiations, the Parties must elevate the Dispute to the Executive Committee. If the Executive Committee cannot reach consensus in accordance with its parliamentary procedures, either Party may proceed immediately to litigation concerning the Dispute.

(a) **Good-Faith Negotiations.** The process of “good-faith negotiations” requires that each Party set out in writing to the other its reason(s) for adopting a specific conclusion or for selecting a particular course of action, together with the sequence of subordinate facts leading to the conclusion or course of action. The Parties shall attempt to mutually agree to a resolution of the Dispute. A Party shall not be required as part of these negotiations to provide any information which is confidential or proprietary in nature unless it is satisfied in its discretion that the other Party will maintain the confidentiality of and will not misuse such information or any information subject to attorney-client or other privilege under applicable law regarding discovery and production of documents.

(b) The negotiation process shall include at least one meeting to discuss any Dispute (with no obligation to have more than two meetings). Each Party must be represented at such meeting(s) by a person who has the authority to resolve the Dispute or has the authority to recommend settlement to the Party’s general manager or governing board. Unless otherwise mutually agreed, the first meeting shall take place within ten days after either Party has received notice from the other of the desire to commence formal negotiations concerning the Dispute. Unless otherwise mutually agreed, the second meeting shall take place no more than ten days later. In the event a Party refuses to attend a negotiation meeting, either Party may proceed immediately to the Executive Committee concerning the Dispute.

9. **INDEMNIFICATION.** To the extent permitted by law and without waiving sovereign immunity or the limits of liability contained in Florida Statute 768.28, each Party shall indemnify the other Parties and each of the other Party’s respective commissioners, directors, officers, managers, employees, agents, representatives, successors and assigns (the “Indemnified Parties”) from and against any and all claims brought by third parties for personal injury, death or property damage, including attorneys’ fees, which arise out of the Party’s willful misconduct, gross negligence, or willful violation of state, federal or local law in the performance of work, services or operations pursuant to the Transmission Operator Alliance Agreement. This Section 9 does not apply to any penalties, sanctions, fines, or costs referenced in Section 6.

10. **NOTICES.** Any notices which may be permitted or required hereunder shall be in writing, shall be delivered both electronically via e-mail and physically by overnight courier or hand

delivery, and shall be deemed to have been duly given (i) one day after depositing with a nationally recognized overnight courier service, or (ii) on the day of hand delivery (provided such delivery occurs prior to 5:00 pm, Eastern Standard Time, as applicable), to the address listed below or to such other address as a Party may from time to time designate by written notice in accordance with this paragraph:

To OUC: Vice President, Transmission
100 West Anderson Street
Orlando, Florida 32802

With a copy to: Office of General Counsel
100 West Anderson Street
Orlando, Florida 32802

To KUA: Vice President of Operations
1701 W. Carroll St.
Kissimmee, FL 34741

With copy to: General Counsel
1701 W. Carroll St.
Kissimmee, FL 34741

To Beaches Energy: Mike Staffopoulos
City Manager
CityManager's Office@jaxbchfl.net
11 3rd St. N
Jacksonville Beach, FL 32250

With copy to: Allen Putnam
Electric Director
aputnam@beachesenergy.com
Beaches Energy Services
1460 Shetter Avenue
Jacksonville Beach, FL 32250

With copy to: Kevin Stewart
System Operations Supervisor
kstewart@beachesenergy.com
Beaches Energy Services
1460 Shetter Avenue
Jacksonville Beach, FL 32250

With copy to: Don Cuevas
Engineering Supervisor
dcuevas@beachesenergy.com
Beaches Energy Services
1460 Shetter Avenue

Jacksonville Beach, FL 32250

With copy to: Carolyn Woodard
Regulatory Compliance Officer
Electrical Engineer
cwoodard@beachesenergy.com
Beaches Energy Services
1460 Shetter Avenue
Jacksonville Beach, FL 32250

To CLWB: Carmen Davis
City Manager
7 North Dixie Highway
Lake Worth Beach, FL 33460
cdavis@LakeWorthBeachfl.gov

With copy to: Edward Liberty
Director of Electric Utilities
1900 2nd Avenue North
Lake Worth Beach, FL 33461
eliberty@LakeWorthBeachfl.gov

With copy to: Jason Bailey
Assistant Director – System Operations
1900 2nd Avenue North
Lake Worth Beach, FL 33461
jbailey@LakeWorthBeachfl.gov

With copy to: Alyssa Kirk
NERC Compliance Manager
1900 2nd Avenue North
Lake Worth Beach, FL 33461
akirk@LakeWorthBeachfl.gov

11. **NO JOINT VENTURE.** The Parties intend by this Alliance Agreement to establish the basis upon which they will cooperate together, but on an independent basis. This Alliance Agreement does not constitute or create a joint venture, partnership, or any other similar arrangement between the Parties. Each of the Parties are independent and except as expressly provided herein, none of them are an agent of, nor has the authority to bind the others for any purpose. No Party shall bind any other, or represent that it has the authority to do so.

12. **NO CONSEQUENTIAL DAMAGES.** Notwithstanding anything to the contrary elsewhere in the Alliance Agreement, in no event shall any Party be liable to any other Party for indirect, incidental, special or consequential damages, including, but not limited to, loss of

revenue, loss of profit, cost of capital, or loss of opportunity regardless of whether such liability arises out of contract, tort (including negligence), strict liability, or otherwise.

13. **NO THIRD-PARTY BENEFICIARIES.** This Alliance Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and upon their assigns pursuant to the provisions of Section 15 hereof. Nothing in this Alliance Agreement, express or implied, is intended to confer upon any other person, organization or entity any rights or remedies hereunder.

14. **AMENDMENTS AND WAIVERS.** Each Party may request changes to this Alliance Agreement. Any changes, modifications, revisions or amendments to this Alliance Agreement which are mutually agreeable upon and between the Parties to this Alliance Agreement shall be incorporated by written instrument and effective when executed and signed by all Parties to this Alliance Agreement.

15. **NO ASSIGNMENT.** No Party may assign or otherwise transfer to or permit any third-parties to exercise any rights granted hereunder unless approved by all Parties.

16. **CHANGES IN LAW.** The understandings contained herein are premised upon and assume a continuation of present laws and regulations and the administration interpretation and application thereof in substantially the same manner as on the Effective Date of this Agreement. Should any applicable law or regulation, or the administration or interpretation thereof by NERC or any governmental entity, change in any manner, and any such change increases the cost to OUC for providing the centralized TOP Control Centers, (including the imposition of any new tax, fee or surcharge other than federal, state or local taxes based on net income), then OUC shall be entitled to calculate the impact thereof and recover such added expenses without profit, on an equitable pro rata basis, from all of the Parties in accordance with the budgeting process described in Section 6(d) of this Alliance Agreement.

17. **MISCELLANEOUS.**

(a) **Entire Agreement.** This Alliance Agreement contains the entire understanding of the Parties with respect to the matters set forth herein and no other agreement, oral or written, not set forth herein, nor any course of dealings of the Parties, shall be deemed to alter or affect the terms and conditions set forth herein.

(b) **Applicable Law.** This Alliance Agreement shall be construed in accordance with the laws of the State of Florida.

(c) **Headings.** The section headings in this Alliance Agreement are for convenience only, shall in no way define or limit the scope or content of this Alliance Agreement, and shall not be considered in any construction or interpretation of this Alliance Agreement or any part hereof.

(d) **Construction.** Where the sense of this Alliance Agreement requires, any reference to a term in the singular shall be deemed to include the plural of said term, and any reference to a term in the plural shall be deemed to include the singular of said term.

(e) Counterparts. This Alliance Agreement may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same Alliance Agreement

(f) Representation. The Party's City Manager or General Manager, will have the authority to execute and amend any exhibits to this agreement and is designated as the official with the full power to represent the party in all dealings related to this agreement.

IN WITNESS WHEREOF, the Parties to this Alliance Agreement through their duly authorized representatives have executed and delivered this Alliance Agreement to evidence their respective agreement to its terms and conditions of this Alliance Agreement.

ATTEST:

ORLANDO UTILITIES COMMISSION

By: _____

Title: _____

Clint Bullock
General Manager & CEO

Approved As To Form And Legality

Attorney

ATTEST:

KISSIMMEE UTILITY AUTHORITY

By: _____

Brian Horton
President & General Manager

Title: _____

Approved As To Form And Legality

Attorney

ATTEST:

BEACHES ENERGY SERVICES

By: _____

Mike Staffopoulos
City Manager

Title: _____

Approved As To Form And Legality

Attorney

ATTEST:

CITY OF LAKE WORTH BEACH, FLORIDA

By:

By:

Melissa Ann Coyne, MMC, City Clerk

Betty Resch, Mayor

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY:

By:

By:

Glen J. Torcivia, City Attorney

Yannick Ngendahayo, Financial Services Director

SCHEDULE A

DEFINITIONS

Agent: OUC acting as the agent of Alliance members, for the sole and limited purpose of performing the TOP Agent Functions as enumerated herein.

TOP Control Center Functions: Those NERC requirements applicable to a TOP registered entity, and performed by a Certified System Operator within a Control Center.

Bulk Electric System or “BES” (becomes effective on 7/1/14): Unless modified by the lists shown below, all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy.

Inclusions:

- I1 - Transformers with the primary terminal and at least one secondary terminal operated at 100 kV or higher unless excluded under Exclusion E1 or E3.
- I2 - Generating resource(s) with gross individual nameplate rating greater than 20 MVA or gross plant/facility aggregate nameplate rating greater than 75 MVA including the generator terminals through the high-side of the step-up transformer(s) connected at a voltage of 100 kV or above.
- I3 - Blackstart Resources identified in the Transmission Operator’s restoration plan.
- I4 - Dispersed power producing resources with aggregate capacity greater than 75 MVA (gross aggregate nameplate rating) utilizing a system designed primarily for aggregating capacity, connected at a common point at a voltage of 100 kV or above.
- I5 –Static or dynamic devices (excluding generators) dedicated to supplying or absorbing Reactive Power that are connected at 100 kV or higher, or through a dedicated transformer with a high-side voltage of 100 kV or higher, or through a transformer that is designated in Inclusion I1.

Exclusions:

- E1 - Radial systems: A group of contiguous transmission Elements that emanates from a single point of connection of 100 kV or higher and:
 - a) Only serves Load. Or,
 - b) Only includes generation resources, not identified in Inclusion I3, with an aggregate capacity less than or equal to 75 MVA (gross nameplate rating). Or,

- c) Where the radial system serves Load and includes generation resources, not identified in Inclusion I3, with an aggregate capacity of non-retail generation less than or equal to 75 MVA (gross nameplate rating).

Note – A normally open switching device between radial systems, as depicted on prints or one-line diagrams for example, does not affect this exclusion.

- E2 - A generating unit or multiple generating units on the customer's side of the retail meter that serve all or part of the retail Load with electric energy if: (i) the net capacity provided to the BES does not exceed 75 MVA, and (ii) standby, back-up, and maintenance power services are provided to the generating unit or multiple generating units or to the retail Load by a Balancing Authority, or provided pursuant to a binding obligation with a Generator Owner or Generator Operator, or under terms approved by the applicable regulatory authority.
- E3 - Local networks (LN): A group of contiguous transmission Elements operated at or above 100 kV but less than 300 kV that distribute power to Load rather than transfer bulk power across the interconnected system. LN's emanate from multiple points of connection at 100 kV or higher to improve the level of service to retail customer Load and not to accommodate bulk power transfer across the interconnected system. The LN is characterized by all of the following:
 - a) Limits on connected generation: The LN and its underlying Elements do not include generation resources identified in Inclusion I3 and do not have an aggregate capacity of non-retail generation greater than 75 MVA (gross nameplate rating);
 - b) Power flows only into the LN and the LN does not transfer energy originating outside the LN for delivery through the LN; and
 - c) Not part of a Flowgate or transfer path: The LN does not contain a monitored Facility of a permanent Flowgate in the Eastern Interconnection, a major transfer path within the Western Interconnection, or a comparable monitored Facility in the ERCOT or Quebec Interconnections, and is not a monitored Facility included in an Interconnection Reliability Operating Limit (IROL).
- E4 – Reactive Power devices owned and operated by the retail customer solely for its own use. Note - Elements may be included or excluded on a case-by-case basis through the Rules of Procedure exception process.

Control Center: One or more facilities hosting operating personnel that monitor and control the Bulk Electric System (BES) in real-time to perform the reliability tasks, including their associated data centers, of: 1) a Reliability Coordinator, 2) a Balancing Authority, 3) a Transmission Operator for transmission Facilities at two or more locations, or 4) a Generator Operator for generation Facilities at two or more locations.

Coordinated Functional Registration: refers to where two or more registered entities agree to a division of compliance responsibility among them for a particular function. A written agreement between the co-registrants identifies each entity's responsibility for one or more NERC Reliability Standards for that function, and may specify each entity's responsibility for one or more requirements within a standard(s).

Critical Infrastructure Protection Standards: refers to the standards and requirements promulgated by NERC covering the security of electronic perimeters and the protection of critical cyber assets as well as personnel and training, security management and disaster recovery planning.

EMS: Energy Management System.

FERC: The Federal Energy Regulatory Commission, or its successor.

FRCC: The Florida Reliability Coordinating Council, Inc., or its successor.

Joinder Agreement: means the joinder agreement in form and substance attached hereto as Exhibit 4.

NERC: The North American Electric Reliability Corporation, or its successor.

Operations Date: shall mean the date on which a Party transfers monitoring and control of their BES TOP assets to OUC.

Reliability Standards: A requirement, approved by the United States Federal Energy Regulatory Commission under Section 215 of the Federal Power Act, or approved or recognized by an applicable governmental authority in other jurisdictions, to provide for reliable operation of the bulk-power system [Bulk-Power System]. The term includes requirements for the operation of existing bulk-power system [Bulk-Power System] facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation [Reliable Operation] of the bulk-power system [Bulk-Power System], but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

Transmission: An interconnected group of lines and associated equipment for the movement or transfer of electric energy between points of supply and points at which it is transformed for delivery to customers or is delivered to other electric systems.

Transmission Operator or "TOP": The entity responsible for the reliability of its "local" transmission system, and that operates or directs the operations of the transmission facilities.

Transmission Operator Area: The collection of Transmission assets over which the Transmission Operator is responsible for operating.

Exhibit 1
(Executive Committee)

Executive Committee

OUC

Primary:

Name: _____
Title: _____
Address: _____

Telephone: _____
Email: _____

Back-up:

Name: _____
Title: _____
Address: _____

Telephone: _____
Email: _____

KUA

Primary:

Name: _____
Title: _____
Address: _____

Telephone: _____
Email: _____

Back-up:

Name: _____
Title: _____
Address: _____

Telephone: _____
Email: _____

THE BEACHES

Primary:

Name: _____

Title: _____

Address: _____

Telephone: _____

Email: _____

Back-up:

Name: _____

Title: _____

Address: _____

Telephone: _____

Email: _____

CLWB

Primary:

Name: _____

Title: _____

Address: _____

Telephone: _____

Email: _____

Back-up:

Name: _____

Title: _____

Address: _____

Telephone: _____

Email: _____

Exhibit 2
(Operating Committee)

OUC

Primary:

Name: _____

Title: _____

Address: _____

Telephone: _____

Email: _____

Back-up:

Name: _____

Title: _____

Address: _____

Telephone: _____

Email: _____

KUA

Primary:

Name: _____

Title: _____

Address: _____

Telephone: _____

Email: _____

Back-up:

Name: _____

Title: _____

Address: _____

Telephone: _____

Email: _____

BEACHES ENERGY SERVICES

Primary:

Name: _____

Title: _____

Address: _____

Telephone: _____

Email: _____

Back-up:

Name: _____

Title: _____

Address: _____

Telephone: _____

Email: _____

CLWB

Primary:

Name: _____

Title: _____

Address: _____

Telephone: _____

Email: _____

Back-up:

Name: _____

Title: _____

Address: _____

Telephone: _____

Email: _____

EXHIBIT 3
(Registration Agreement)

Exhibit 4
(Joinder Agreement)

JOINDER AGREEMENT

THIS JOINDER AGREEMENT (“**Joinder Agreement**”), dated as of _____, 2023 (the “**Effective Date**”) is made and executed in connection with the Amended and Restated Transmission Operator Alliance Agreement dated January ___, 2023, as amended from time to time (“**Alliance Agreement**”), among **ORLANDO UTILITIES COMMISSION (“OUC”)**, **KISSIMMEE UTILITY AUTHORITY (“KUA”)**, **THE CITY OF JACKSONVILLE BEACH, D/B/A, BEACHES ENERGY SERVICES (“BEACHES ENERGY”)** and **CITY OF LAKE WORTH BEACH (“CLWB”)**.

1. Effective Date. This Joinder Agreement shall be effective as of the Effective Date and shall be a part of and incorporated into the Alliance Agreement
2. Definitions. Capitalized terms used herein without definition shall have the meanings ascribed thereto in the Alliance Agreement.
3. Joinder. Pursuant to and in accordance with Section 7(b) of the Alliance Agreement, the undersigned hereby acknowledges that it has received and reviewed a complete copy of the Alliance Agreement and agrees that upon execution of this Joinder, such entity shall become a party to the Alliance Agreement and shall be fully bound by, and subject to, all of the covenants, terms, and conditions of the Alliance Agreement as though an original party thereto and shall be deemed, and is hereby admitted as, a member of the Alliance for all purposes thereof and entitled to all the rights incidental thereto.
4. Control Center Cutover. The Parties have developed a TOP Control Center Cutover schedule for the New Member. The Control Center Cutover schedule is attached hereto as Exhibit A and hereby incorporated into this agreement. The New Member shall submit to FRCC notice of moving its primary and back-up Control Center(s) to OUC.
5. Costs. Pursuant to and in accordance with Section 6(a) of the Alliance Agreement, the New Member acknowledges that it shall be responsible for all modeling (SCADA, EMS, etc.) and all costs associated with integration into the Alliance and such other charges as determined by the Executive Committee.
6. No Amendment. This Joinder Agreement does not and shall not be deemed to amend, change or modify the Alliance Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the party hereto has executed this Joinder Agreement as of this ____ day of _____, 2023.

NEW MEMBER

By: _____

Name: _____

Title: _____

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Electric Utility

TITLE:

Approval of contracts with L. E. Myers Co., Michels Power Inc., Wilco Electrical LLC., and Hooper Corporation to provide construction services for the Electric Utility System Hardening and Reliability Improvement Program

SUMMARY:

The Contracts have been negotiated with L. E. Myers Co., Michels Power Inc., Wilco Electrical LLC., and Hooper Corporation to build and construct numerous hardening and reliability improvements to the electrical distribution systems, where needed, based on engineering studies performed by in house and outside engineers.

BACKGROUND AND JUSTIFICATION:

The City issued an Invitation for Bid (IFB#23-116) for qualified contractors to be available, based on a schedule of unit prices included with each contract, to build and construct numerous hardening and reliability improvements to its 26kV Sub transmission, 26kV distribution and 4kV distribution systems, while systematically converting the 4kV distribution to a higher voltage, where needed, based on engineering studies performed by in house and outside engineers. The result will greatly enhance the hardening and reliability of the City's electrical distribution and sub transmission systems. Construction services under this agreement will be ordered on as needed basis by issuing individual Work Orders approved in accordance with the City's procurement Code and policy. The Agreement is for the duration of three years with two one-year options to extend, upon the mutual agreement of both parties, with each contractor, for construction services.

MOTION:

Move to approve/disapprove the construction services agreements with L. E. Myers Co., Michels Power Inc., Wilco Electrical LLC., and Hooper Corporation for the Electric Utility System Hardening and Reliability Improvement Program Project.

ATTACHMENT(S):

Fiscal Impact Analysis
L. E. Myers Co. Agreement
Michels Power Inc. Agreement
Wilco Electrical, LLC. Agreement
Hooper Corporation Agreement
Bid tab

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Current Appropriation	0	0	0	0	0
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions					
	0	0	0	0	0

Contract Award - Existing Appropriation	
	Expenditure
Department	Electric Utility
Division	Transmission and Distribution
GL Description	Improve Other than Build / Infrastructure
GL Account Number	421-6020-531-63.15
Project Number	BOND
Requested Funds	BOND

SYSTEM HARDENING AND RELIABILITY IMPROVEMENTS CONTRACT
IFB # 23-116

THIS CONTRACT for Electric Utility System Hardening and Reliability Improvements (“Contract”) is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **The L. E. Myers Co.**, a foreign for profit corporation authorized to do business in the State of Florida (“Contractor”) with its principal office located at 24925 SR-46, Sorrento, FL 32776 .

WHEREAS, the City issued Invitation for Bids # 23-116 for the construction of numerous hardening and reliability improvements to its electric utility transmission and distribution system (“IFB”); and

WHEREAS, the Contractor submitted its bid in response to the IFB; and

WHEREAS, the City desires to award the IFB to the Contractor on a non-exclusive basis for the construction of certain system hardening and reliability improvements and related services; and

WHEREAS, this Contract may be funded, in whole or in part, by the Federal agencies and work performed pursuant to this Contract or Work Order funded, in whole or in part, by Federal agencies will comply with all applicable Federal laws, Federal regulations, executive orders, policies, procedures, directives and special clauses as provided for in **Exhibit “D”**; and

WHEREAS, the City finds awarding the IFB to the Contractor as described herein serves a valid public purpose.

NOW THEREFORE, the City hereby engages the services of the Contractor, and in consideration of the mutual promises herein contained, the sufficient of which is hereby acknowledged by both parties, the parties agree as follows:

Article 1. GENERAL INFORMATION.

1.1 **Scope of Services/Work.** The Contractor shall provide the services and work requested by the City and required under a City approved work order as described herein. The general nature of the services and work to be provided by the Contractor under this Contract are the construction of hardening and reliability improvements to the City’s electric utility transmission and distribution system.

1.2 **Contract Documents.** The Contract Documents are incorporated herein by reference as if set forth in this Contract and comprise the entire agreement between the City and Contractor. The Contract Documents consist of this Contract, the IFB (including, but not limited to, the documents issued with the IFB as the scope and specifications, the drawings, addenda, attachments and exhibits); and, any duly executed and issued work orders, change orders and Contract amendments relating thereto. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, within five (5) business days and before proceeding shall obtain a written interpretation or clarification. Failure to obtain a written interpretation or clarification will be deemed a waiver of the ambiguity, error or discrepancy by the Contractor. The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

First Priority:	Fully executed Change Orders or Contract amendments
Second Priority:	This Contract

Third Priority: Fully executed Work Orders
Fourth Priority: IFB

1.3 **Contract Administrator.** Whenever the term Contract Administrator is used herein, it is intended to mean **the City Manager or designee, City of Lake Worth Beach, Florida**. In the administration of this Contract, all parties may rely upon instructions or determinations made by the Contract Administrator except that all requests and/or determinations that result in an increase in change in time of completion and/or an increase in the contract price shall require a formal change order or contract amendment executed by the City Manager or the City Commission (depending on the authority set forth in the City's Procurement Code).

1.4 **Work Orders.** This Contract does not guarantee that the City will utilize the Contractor in any capacity or for any services hereunder. When the City identifies a need for the Contractor's services, the City will request a proposal from the Contractor to provide the services requested. The City will provide the Contractor with plans and/or specifications in order for the Contractor to develop its proposal. The Contractor's proposal shall be submitted in the format of the sample work order, attached hereto and incorporated herein as **Exhibit "A"** along with a copy of the Contractor's proposal and shall be based on the Hourly Billing Rates attached hereto and incorporated herein as **Exhibit "B"**. Upon receipt of the Contractor's proposed work order and proposal, the City shall decide in its sole discretion whether to award the work order to the Contractor. Depending on the lump sum amount of each work order, the work order may be awarded by the City Manager (if within City Manager's purchasing authority (currently not to exceed \$50,000)) or the City Commission. If the work order is approved by the City, the Contractor shall commence the identified services upon the City's approval of the work order for the services and issuance of a notice to proceed. The City reserves the right to reject any and all proposals submitted by the Contractor. A City-approved work order shall include (by reference) the plans and/or specifications provided by the City to the Contractor.

1.5 **Purchase Orders.** The City's ordering mechanism for individual projects involving urgently required work and/or repairs in the amount of \$15,000 or less under this Agreement will be by a City issued Purchase Order(s); however, the terms and conditions stated in a City Purchase Order(s) shall not apply; the terms and conditions set forth in this Agreement shall apply. CONTRACTOR shall not provide services under this Agreement without a City Purchase Order specifically for the stated services. CONTRACTOR shall provide the amount of requested services and price listed in each Purchase Order and not exceed amounts expressed on any Purchase Order. CONTRACTOR shall be liable for any excess services or costs not specifically stated in the Purchase Order(s). The City's Fiscal Year ends on September 30th of each calendar year. The City cannot authorize the purchase of services beyond September 30th of each calendar year, prior to the annual budget being approved by the City Commission. Additionally, the City must have budgeted appropriate funds for the goods and services in any subsequent Fiscal Year. If the budget is approved for said goods and services, the City will issue a new Purchase Order(s) each Fiscal Year for required and approved services. Services provided pursuant to a City issued Purchase Order(s) under this Agreement shall not exceed \$ 50,000 per year without additional City Commission approval.

1.5 **Term.** The term of this Contract shall be for three (3) years, with an option for two additional twelve (12) month renewals upon the mutual agreement of both parties. The renewal term(s) may be approved by the City Manager on behalf of the CITY. Notwithstanding the foregoing, this Contract may be terminated as set forth in the Contract Documents.

1.6 **Hourly Billing Rates.** The Hourly Billing Rates set forth as **Exhibit "B"** shall remain fixed for the first three (3) years of this Contract. If due to applicable price escalations and/or reductions which impact the Contractor's Hourly Billing Rates, the City and Contractor may execute a written amendment to this Contract to establish new Hourly Billing Rates for the renewal term(s). The City Manager may approve changes in the Hourly Billing Rates based on the recommendation of the City's Electric Utility Director or designee.

Article 2. CONTRACT TIME.

2.1 All services and work to be provided under a City-approved work order shall be provided in a timely manner as time is of the essence under this Contract.

2.2 The Contractor shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the Contractor or its subcontractors (if authorized) and without the Contractor's or subcontractor's fault or negligence. Upon the Contractor's request, the City shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the Contractor and, if the Contractor's delay and failure to timely perform was without it or its subcontractors' fault or negligence, as reasonably determined by the City, the time of completion shall be extended for any reasonable time that the City may reasonably decide; subject to the City's rights to change, terminate, or stop any or all of the work at any time. If the Contractor is delayed at any time in the progress of the work by any act or neglect of the City or its employees, by an approved written change in the scope from the original Contract Documents, or by any other contractor employed by the City, or by changes ordered by the City or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Contractor's reasonable control, or by delay authorized by the City pending negotiation or by any cause which the City shall reasonably decide justifies the delay, then the time of completion shall be extended for any reasonable time the City may reasonably decide. The Contractor must provide the City with written notice of any delay claims and no extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) claim is necessary. With the exception of an approved written change in the scope from the original Contract Documents, the Contractor's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and Contractor specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by Contractor due to a delay in completion of the work. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery or damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the City. Otherwise, the Contractor shall be entitled only to extensions of the Contract Times as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

Article 3. PAYMENT PROCEDURES

3.1 Generally. The Contractor shall submit invoices on a monthly basis detailing all work accomplished in the prior month and all materials installed and used in the work pursuant to City approved work order. Contractor's invoices shall be submitted to:

City of Lake Worth Beach
Attn: Finance Department
7 N. Dixie Highway
Lake Worth Beach, FL 33460

The City's Contract Administrator or designee will review each invoice submitted by the Contractor. If approved, the City will make payment in accordance with the Contract Documents. If not approved, the City will notify the Contractor within twenty (20) business days of the City's receipt and identify the action necessary to correct the invoice or a deficiency.

3.2 Payment to the Contractor shall be made pursuant Florida's Prompt Payment Act (for construction

services), section 218.735, Florida Statutes, except as provided herein. Specifically, the City will withhold five percent (5%) of each payment from a work order to the Contractor as retainage until fifty percent (95%) of the work order price is paid to the Contractor. Upon written request from the Contractor, the Contract Administrator may agree in writing with the Contractor to release a portion of the retainage upon payment of ninety-five percent (95%) of the work order price being paid to the Contractor (not to exceed fifty percent (50%) of the total retainage amount).

3.3 Upon substantial completion, the Contractor and City shall establish a punch-list of items that must be completed by the Contractor prior to the Contractor submitting its final payment request.

3.4 Final Payment. Upon final completion and acceptance of the work in accordance with the Contract Documents (including all punch-list items) and final inspection by the appropriate agency with jurisdiction over the project (if other than the City), the Contractor shall submit a “final invoice” to the City. In order for both parties to close their books and records, the Contractor will clearly state “FINAL” on the Contractor’s final invoice. This certifies that all work under the applicable work order has been properly completed and all charges have been invoiced to the City. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the Contractor. If the Contractor’s Final Invoice is approved as set forth above, the City shall pay the remainder of the work order price including any amount held as retainage.

3.5 Notwithstanding the foregoing, the City shall not be required to pay or release any amount of retainage that is subject of a good faith dispute, the subject of a claim brought pursuant to section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the City.

3.6 Final payment shall not become due until the Contractor and all of its subcontractors submit to the City releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract Documents or otherwise related to the Program.

3.7 Acceptance of final payment by the Contractor or a subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final invoice.

Article 4. SUBCONTRACTS

The Contractor represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The Contractor shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. The Contractor shall comply with all applicable laws in the provision of services under this Contract. The Contractor agrees that it is fully responsible to the City for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City. All of the Contractor’s personnel (and all subcontractors) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of subcontractor or subcontractor’s personnel furnished by the Contractor upon written notice by City to Contractor of the cause for such replacement. All work performed by a subcontractor will be at cost to the City without any mark-up by the Contractor. All subcontractors must provide the same level and type of insurance as required of the Contractor under this Contract prior to commencing any services. The Contractor shall

submit the subcontractors' proof of insurance upon receipt of a notice to proceed.

Article 5. INDEMNITY AND INSURANCE.

The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, Contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor against the City and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. The Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification or any other provision in the Contract Documents shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

INSURANCE: Prior to commencing any work, the Contractor shall provide proof of insurance coverage as required in the IFB. All such insurance policies may not be modified or terminated without the express written authorization of the City. Failure to comply with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this Contract. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the Contract Documents and/or performance of the work. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

Article 6. REIMBURSEMENT OF ENGINEER EXPENSES.

Should the completion of a work order be delayed beyond the specified or adjusted time limit, Contractor shall reimburse the City for all expenses of engineering and inspection incurred by the City during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the City will be charged to Contractor and be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for in an applicable Work Order.

Article 7. PUBLIC CONSTRUCTION BOND.

If the City approves a work order which exceeds \$200,000 in total construction cost, the Contractor must provide the City with a public construction bond in accordance with section 255.05, Florida Statutes. Said bond must be recorded in the Official Records in and for Palm Beach County and a copy of the recorded bond must be provided to the City prior to the Contractor providing any services under the work order. The City reserves the right to request a bond for any work order which is less than \$200,000. The cost of the bond shall be a direct pass through cost to the City without any mark-up by the Contractor.

The public construction bond shall be on forms attached hereto as **Exhibit "C"** or substantially similar as approved by the City. The bond shall be in an amount not less than the total Work Order price and shall incorporate by reference the terms of the Contract Documents in their entirety.

To be acceptable to the City, a Surety Company shall comply with the following provisions:

The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida Department of Insurance, authorizing it to write surety bonds in the State of Florida.

- (a) The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
- (b) The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- (c) The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the Contractor submits its Work Order for City approval.
- (d) The Surety Company shall have at least the ratings of A-/Class V in the latest issue of Best's Key Rating Guide.
- (e) The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
 1. **Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.**
 2. In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or

held subject to the consent of the surety and for the protection of the surety shall be deducted.

Article 8. TERMINATION.

8.1 **TERMINATION BY CITY:** The City may terminate any work order, the Contract and/or the Contract Documents if the Contractor is in default as follows:

- (a) refuses or fails to supply enough properly skilled workers or proper materials to timely and competently complete the work;
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- (c) disregards or takes action contrary to any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- (d) takes action, short of declaring bankruptcy, evidencing insolvency;
- (e) fails to prosecute the services or work in a timely manner and reasonably be unable to reach substantial completion and/or final completion within the timeframe(s) required;
- (f) fails or refuses to provide and/or maintain insurance or proof of insurance as required by the Contract Documents; **or,**
- (g) otherwise is in breach of a provision of the Contract Documents.

When any of the above reasons exist, the City, may without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety (if applicable), written notice and five (5) days to cure, terminate the work order, Contract and/or Contract Documents and may:

- (a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by or paid for by the City; and,
- (b) finish the work by whatever reasonable method the City may deem expedient.

The Contractor and its surety (if any) shall be liable for any damage to the City, including additional attorney and engineering/architectural fees, resulting from the Contractor's termination under this provision by the City, including but not limited to, and any increased costs incurred by the City in completing the work.

When the City terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment, if any, until the work is finished.

Should it be determined by a mediator or a court of competent jurisdiction that the City wrongfully terminated the Contract, then the Contractor agrees to treat such termination as a termination for convenience.

8.2 **TERMINATION BY THE CITY FOR CONVENIENCE**

The City may, at any time, terminate the Contract and Contract Documents for the City's convenience and without cause. Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

- (a) cease operations as directed by the City in the notice;
- (b) take actions necessary, or that the City may direct, for the protection and preservation of the work; and
- (c) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the City's convenience, the Contractor shall be entitled to receive payment for work executed, and costs incurred by reason of such termination including termination payments to subcontractors and demobilization costs.

Article 9. TAXES AND DIRECT PURCHASES.

9.1 TAXES: The City is exempt from payment of Florida State Sales and Use Tax. The Contractor is not authorized to use the City's Tax Exemption Number unless approved in writing.

9.2 DIRECT PURCHASES: For certain projects, the City may seek to make direct purchases of equipment or materials to be used by the Contractor. Pursuant to Section 212.08(6), Florida Statutes, and the Fla. Admin. Code Ann. R. 12A-1.094 and 12A-1.038, the Parties agree to the following procedure regarding the City's direct-purchase from vendors of certain equipment and materials to be used in specific projects:

9.2.1 The City reserves the right, at the City's option, to direct purchase equipment and materials involved in a specific project, including subcontracts, if any so as to save the sales tax which would otherwise have been due with regard to the same. The Contractor and its subcontractors shall comply with the City's direct purchase procedures, including but not limited to those listed below.

9.2.2 As specifically set forth in a City issued work order, within 30 days (or other time as specified in the work order), the Contractor will present a list of direct purchase equipment for the City's consideration which will include the recommended vendors' name; the price quotes from all vendors provided to the Contractor; and, any terms and conditions the Contractor has negotiated with the recommended vendors. The City will then inform the Contractor as to which equipment it will direct purchase. In the event the City fails to exercise its option to direct purchase equipment and identify which equipment is to be purchased by the City within thirty (30) calendar days of receipt of the list from the Contractor, the City shall waive its right to direct purchase any and all equipment to be used in completion of the work under the applicable work order.

9.2.3 The Contractor is responsible for selecting each direct purchase vendor, subject to City approval. The Contractor is responsible for specifications, equipment receipt, inspecting shipments, and assuring that the equipment is in accordance with the work order and the Contractor's specifications. The Contractor is also responsible for providing the City with enough advance notice of when the direct purchase equipment will need to be ordered and delivered. In absence of the Contractor's receipt of a written notice of City's disapproval of a vendor within thirty (30) calendar days of City's receipt of the vendor/material list referenced in 9.2.2, the City shall be deemed to have waived any and all objections thereto.

9.2.4 The Contractor shall retain all responsibility for installing all equipment relating to the work and for maintaining the construction schedule so long as the City timely orders and pays for the correct direct purchase equipment. The City's direct purchase mechanism to effectuate tax savings in no way effects the obligation of the Contractor to meet all of the terms and conditions and all provisions and technical specifications of the Contract Documents. The Contractor shall be responsible for insuring all equipment once the equipment is in its care, custody and control, regardless of whether directly purchased by City.

9.2.5 The City will issue a direct purchase order to the vendor of the direct purchase equipment at the price proposed in the Contractor's or its subcontractor's bid, less sales tax. The City will promptly send a copy of the issued purchaser order to the Contractor.

9.2.6 It will be the Contractor's primary responsibility to properly expedite and follow up on direct

purchase orders, thereby assuring delivery of the equipment as ordered and at the time and place needed by the Contractor to complete the work in accordance with the work order and construction schedule. To the extent required by the Contractor, the City shall cooperate with all requests of the Contractor related to the expedition of and follow up on direct purchase orders.

9.2.7 The Contractor shall take delivery, unload, and install the equipment purchased on the direct purchase order in accordance with the work order and the Contract Documents with the vendor to repair, replace, and make good any defect without cost to the City, until such time as the work has been completed and accepted by City in accordance with the Contract Documents. The City, with assistance from the Contractor, will be responsible for undertaking and completing any returns of direct purchase equipment as requested by the Contractor and working with the vendor to effectuate any credits or warranties for the returned equipment (if applicable). Any returns not replaced shall be credited to City and acknowledged by a supplement to the direct purchase order and, if applicable, amendment to the Contract Sum. The Contractor shall not be responsible for warranting the direct purchase equipment to the City; however, the Contractor shall be responsible for facilitating the vendor's warranty of the direct purchase equipment and the Contractor shall be responsible for warranting the work to install and/or incorporate the equipment. The Contractor shall maintain records of all direct purchases received and incorporated into the work and provide the City with a monthly accounting until all direct purchase items that are received and accepted for inclusion in the specific project.

9.2.8 When delivery of a direct purchase order is complete, or a payment is to be made on a partial shipment, the Contractor will timely submit to City the documentation supporting the equipment received. Invoices for direct purchase orders will be sent by the direct purchase vendor directly to City's Finance Department, with all such invoices addressed to and in the name of the City. The City's Finance Department will forward invoices to the City's Contract Administrator. The City's Contract Administrator will forward the invoices to the Contractor to verify delivery and sign the invoice and associated documentation supporting the amount of the payment. The City will make timely payment to all vendors in compliance with each vendor's payment procedures. The City will take title to all equipment ordered through direct purchase upon or at the time of purchase. The Contractor will assist City in assuring prompt payment by supplying the vendor's FEI numbers, addresses, phone numbers, etc. All payments will be made in accordance with the Florida Prompt Payment Act.

Article 10. CONTRACTOR'S REPRESENTATIONS AND AGREEMENTS.

In order to induce the City to enter into this Contract, the Contractor makes the following representations:

10.1 Contractor has or will familiarize itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work prior to commencing the work under an applicable Work Order. All work shall be performed consistent with all applicable laws and regulations.

10.2 Contractor agrees to be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with the regulations and to reimburse the City for any loss incurred in connection therewith. This compliance provision specifically includes the Contractor's compliance with all applicable standards, orders or regulations including, without limitation, those issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

10.3 Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract.

10.4 The Contractor represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the work required under the Contract Documents. Proof of such licenses and approvals shall be submitted to the City upon request.

Article 11. INFRINGEMENT INDEMNITY.

11.1 The Contractor will defend or settle at its expense a claim or suit brought by a third party against the City arising out of a claim asserting that the services, work, repair, materials or other deliverables (“deliverables” hereafter) provided by the Contractor under the Contract Documents (if any) infringes any U.S. copyright or any U.S. patent or misappropriates a trade secret. The Contractor will indemnify and hold harmless the City against and from damages, costs, and attorneys’ fees, if any and at all levels of trial and appeal or mediation or arbitration, finally awarded in such suit or the amount of the settlement thereof; provided that (i) the Contractor is promptly notified in writing of such claim or suit, (ii) the Contractor will have the sole control of the defense and settlement thereof, and (iii) City furnishes the Contractor, on reasonable request, information available to City for such defense. The City will not admit any such claim without prior consent of the Contractor.

a. In the event of a claim of infringement, the Contractor shall, at its option:

1. procure for City the right to continue using the deliverables provided under the Contract Documents; or
2. replace or modify the deliverables so that the same becomes non-infringing but substantially equivalent in functionality and performance.
3. If neither of the above actions is reasonably feasible, the Contractor will refund to City the fee actually paid by City under the Contract Documents (as amortized on a straight-line basis over the time in which the City was able to use the deliverables.

b. The Contractor will have no obligation under this section for infringement if and to the extent that such claim arises from:

1. modification of the deliverables other than by the Contractor or by its recommendation; or
 2. combination of the deliverables with products other than those supplied by the Contractor;
- and,
3. the alleged infringement or misappropriation relates to such modification or combination.

c. The Contractor will also not have any indemnification obligation with respect to a claim: (i) if it has provided City with reasonable changes that would have avoided the problem and the reasonable changes are not fully implemented by City within a reasonable time or (ii) arising out use of the deliverables not in accordance with the Contract Documents.

d. The Contractor’s obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the Contractor whether such injury or damage shall accrue, or may be discovered, before or after termination or expiration of the Contract Documents.

Article 12. MISCELLANEOUS.

12.1 The City and Contractor each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

12.2 Additional work and/or changes to a work order's price and/or time, is subject to the City's prior written approval. Only the City Manager and City Commission (based on the procurement code) have the authority to approve such additional work and changes.

12.3 The headings contained in this Contract are inserted for convenience of reference only and shall not be a part or control or affect the meaning hereof.

12.4 This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

12.5 This Contract (together with the other Contract Documents) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Contract.

12.6 This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

12.7 This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and (c) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

12.8 This Contract shall create no rights or claims whatsoever in any third party.

12.9 If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

12.10 The effective date of this Contract is the date the Contract is approved by the City Commission.

12.11 **Public Records:** The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the City.
- (d) Upon completion of this Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION CITY CLERK, (561) 586-1660 OR CITYCLERK@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.

12.12 This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

12.13 In accordance with Palm Beach County ordinance number 2011-009, the Contractor acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

12.14 If any legal action or other proceeding is brought for the enforcement of this Contract or the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract or the Contract Documents, each party shall be responsible for their own attorney's fees at all levels. EACH PARTY ALSO AGREES AND VOLUNTARILY WAIVES ANY RIGHT TO A JURY TRIAL ARISING OUT OF ALLEGED DISPUTE, BREACH, DEFAULT, MISREPRESENTATION OR ANY OTHER CLAIM IN CONNECTION WITH OR ARISING FROM ANY PROVISION OF THIS CONTRACT OR THE CONTRACT DOCUMENTS

12.15 Each of the parties agrees to perform its obligations under the Contract Documents in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of the work and under the Contract Documents.

12.16 All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the Contractor or its subcontractors under this Contract shall be considered a "Work for Hire" and the exclusive property of the City. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, Contractor and Contractor's Subcontractors will assign to the City all right, title and interest in and to Contractor and/or Contractor's Subcontractors' copyright(s) for such Documents. Contractor shall execute and deliver to City such instruments of transfer and take such other action that City may reasonable request, including, without limitation, executing and filing, at City's expense, copyright applications, assignments and other documents required for the protection of City's right to such Documents. The Contractor shall retain copies of the Documents for a period of three (3) years from the date of completion of the Program. The City grants to the Contractor and Contractor's subcontractors the right and/or limited license to use a portion of the Documents prepared by the Contractor or the Contractor's subcontractors in future projects of the Contractor or Contractor's subcontractors with said right and/or limited license to use a portion at Contractor's or Contractor's subcontractor's own risk and without any liability to City. Any modifications made by the City to any of the Contractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the Contractor will be at the City's sole risk and without liability to the Contractor.

12.17 Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

12.18 Any notice required to be given under the Contract Documents shall be sent by certified mail (return receipt requested) or by nationally recognized overnight courier as follows to the City:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and to the Contractor as follows:

The L.E. Myers, CO
24925 SR-46
Sorrento, FL 32776
Attn: Raymond Richards, Sr. Ops. Manager

Either party may amend this provision by written notice to the other party.

12.19 The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes. The Contractor further represents that no person having any such conflicting interest shall be employed for said performance. The Contractor shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Contractor. The City agrees to notify the Contractor of its opinion within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the City shall

so state in the notification and the Contractor shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Contractor under the terms of this Contract.

12.20 The Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, Contractor shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

12.21 This Contract is not intended to be and shall not be construed as an exclusive agreement, and the City may employ additional or other contractors to perform services contemplated by this Contract without liability to the City.

12.22 PUBLIC ENTITY CRIMES. The Contractor acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The Contractor will promptly advise the City if it becomes aware of any violation of this statute.

12.21 PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

12.22 The Contract shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of all services and work. This includes being responsible for all precautions for safety of, and reasonable protection to prevent damage, injury or loss to employees performing the services and work and other persons who may be affected thereby; the work, materials and equipment incorporated therein; and other property, equipment or materials at the site or adjacent thereto including, without limitation, trees, shrubs, lawns, sidewalks, pavements, roadways or structures and utilities not designated for removal, relocation or replacement in the course of the work. The Contractor shall comply with and give all notices required by applicable laws, statutes, ordinances, rules and regulations bearing on safety of persons or property, or their protection from damage, injury or loss. The Contractor shall implement, erect and maintain reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards reasonably related to the work or which could arise therefrom. The Contractor shall promptly remedy damage and loss (other than covered by applicable insurance) caused in whole or in part by the Contractor or anyone directly or indirectly employed by or utilized by the Contractor in the performance of the work, which is not attributable to the City's negligence.

12.23 The Contractor agrees that, in all matters relating to this Contract, it will be acting as an independent contractor with exclusive control of the manner and means of performing the work, its obligations and tasks in accordance with the requirements of this Contract and the Contract Documents. The Contractor has no authority to act or make any agreements or representations on behalf of the City. This Contract is not intended, and shall not be construed to create, between the City and the Contractor, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of City.

Article 13. SCRUTINIZED COMPANIES

13.1 CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

13.2 If this Agreement is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

13.3 The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

13.4 The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

13.5 The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

13.6 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

Article 14. E-VERIFY

Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR shall:

14.1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

14.2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, Agreement with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

14.3. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;

14.4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;

14.5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,

14.6. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded a Agreement for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

Remainder of this page intentionally left blank
Signature page follows

IN WITNESS WHEREOF, the City and Contractor have caused this Contract for System Hardening and Reliability Improvements to be executed the day and year shown below.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

By: _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

THE L.E. MYERS, CO.

By: [Signature]

[Corporate Seal]

Print Name: RAYMOND RICHARDS

Title: SR. OPS MANAGER

STATE OF Florida)
COUNTY OF Lake)

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 10th day of August 2023, by Raymond Richards as the Sr. Operations Mgr [title] of The L.E. Myers, Co., a foreign for profit Corporation, who is personally known to me or who has produced Raymond Richards as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

[Signature]
Notary Public Signature

Notary Seal:

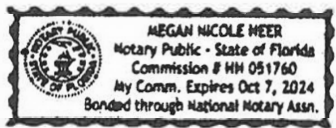


EXHIBIT "A"
SAMPLE WORK ORDER

CONTRACT FOR SYSTEM HARDENING AND RELIABILITY IMPROVEMENTS
WORK ORDER NO. _____

THIS WORK ORDER for System Hardening and Reliability Improvements ("Work Order" hereafter) is made on the _____, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460 ("City" hereafter) and **The L.E. Myers, Co.**, a foreign profit corporation authorized to do business in State of Florida ("Contractor" hereafter).

1.0 Project Description:

The City desires the Contractor to provide all goods, services, materials and equipment as identified herein related to the System Hardening and Reliability Improvements project generally described as: _____ (the "Project"). The Project is more specifically described in the plans prepared by _____, dated _____, and which are incorporated herein by reference.

2.0 Scope

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with construction services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 Schedule and Liquidated Damages

Substantial completion of all services and work under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City _____ hundred dollars (\$_____.00) for each day that expires after the time specified in this Work Order.

4.0 Compensation and Direct Purchases

This Work Order is issued for a lump sum, not to exceed amount of \$_____ (_____). The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City: _____

_____.

5.0 Project Manager

The Project Manager for the Contractor is _____, phone: _____; email: _____; and, the Project Manager for the City is _____, phone: _____; email: _____.

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations,

explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is issued pursuant to the System Hardening and Reliability Improvements Contract for between the City of Lake Worth Beach and the Contractor, dated _____, ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

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SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

By: DO NOT SIGN – SAMPLE ONLY _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: **The L.E. MYERS, CO**

By: DO NOT SIGN – SAMPLE ONLY _____

[Corporate Seal]

Print Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____ 2023, by _____, as the _____ [title] of **The L.E. Myers, Co.**, a foreign profit Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Public Signature

Notary Seal:

EXHIBIT "B"
HOURLY BILLING RATES

EQUIPMENT

Professional Overhead Hourly Rate Schedule	
Equipment	Hourly Rate
Truck Pickup 1/4T	Rental @ Market Pricing
Truck Pickup 1/4T (4X4)	Rental @ Market Pricing
Truck Pickup 1/2T	\$ 7.98
Truck Pickup 1/2T (4X4)	\$ 9.31
Truck Pickup 3/4T	\$ 12.03
Truck Pickup 3/4T (4X4)	\$ 13.91
Truck Pickup 1T	\$ 14.70
Truck Pickup 1T (4X4)	\$ 17.41
Truck Pickup 2T	\$ 30.42
Dump truck	\$ 13.84
Flatbed	\$ 17.28
Knuckle Bed Winch Medium	Rental @ Market Pricing
Knuckle Bed Winch Large	Rental @ Market Pricing
Fuel Truck-Small	Rental @ Market Pricing
Fuel Truck-Large	Rental @ Market Pricing
Bucket Truck 35'-49'	\$ 21.55
Bucket Truck 35'-49' (4X4)	\$ 21.55
Bucket Material Handler 35'-49'	\$ 23.42
Bucket Material Handler 35'-49' (4X4)	\$ 23.42
Bucket Truck 50'-60'	\$ 22.29
Bucket Truck 50'-60' (4X4)	\$ 29.42
Bucket Material Handler 50'-60'	\$ 29.04
Bucket Material Handler 50'-60' (4X4)	\$ 33.46
Bucket Truck 61'-75'	\$ 63.38
Bucket Truck 61'-75' (4X4)	\$ 63.38
Bucket Material Handler 61'-75'	\$ 67.93

Bucket Material Handler 61'-75' (4X4)	\$	67.93
Bucket Truck 76'-93'	\$	69.81
Bucket Truck 76'-93' (4X4)	\$	69.81
Bucket Truck 94'-100'	\$	77.49
Bucket Truck 94'-100' (4X4)	\$	77.49
Bucket Truck 101'-125'	\$	91.25
Bucket Truck 101'-125' (4X4)	\$	91.25
Bucket Truck 126'-150'		Rental @ Market Pricing
Pole Trailer	\$	4.61
Wire Trailer Single Reel	\$	1.65
Wire Trailer Two Reel	\$	2.64
Wire Trailer Three Reel	\$	6.84
Wire Trailer Four Reel		Rental @ Market Pricing
Material Trailer 16'-20'	\$	2.13
Tractor Trailer	\$	33.28
Lowboy Trailer 50 TON	\$	50.33
Step deck Trailer	\$	36.43
Trailer Single Axle	\$	3.23
Crane 30 TON	\$	66.42
Crane 55 TON	\$	111.54
Crane 70 TON	\$	131.82
Crane 110 TON	\$	268.72
Digger w Sheave Height 42.5 ft.	\$	34.62
Digger w Sheave Height 45.6 ft.	\$	30.25
Digger w Sheave Height 54.1 ft.	\$	52.70
Digger w Sheave Height 65.1 ft.	\$	56.89
Pressure Digger	\$	75.93
Wire Puller	\$	34.72
UG Wire Puller	\$	30.43
Single Drum Puller Distribution Pull Max. 3500lbs.	\$	31.08
Single Drum Puller Distribution Pull Max. 7500lbs.	\$	31.24
Three Drum Puller	\$	42.64
Four Drum Puller	\$	47.34
V Grove Puller	\$	49.73
Overhead Line Tensioner Max. 3000lbs.	\$	16.19
Directional Bore Machine		Rental @ Market Pricing
Skid Steer	\$	25.85
Backhoe	\$	20.72
Backhoe with Hammer	\$	22.79
Medium Front Loader	\$	46.97
Large Front Loader	\$	74.55
XL Front Loader	\$	96.93
Small Dozer w/ Winch	\$	25.79
Medium Dozer w/ Winch	\$	40.94
Large Dozer w/ Winch	\$	50.14

XL Dozer w/ Winch	\$	107.46
Mimi Excavator	\$	22.50
Medium Excavator	\$	39.53
Large Excavator	\$	67.93
XL Excavator	\$	112.08
Excavator Hammer	\$	15.16
Under 200 CFM Air Compressor	\$	4.79
200-800 CFM Air Compressor	\$	9.33
801-1600 CFM Air Compressor		Rental @ Market Pricing
Air Jack Hammer		No Charge, Small Tools
Generator 0-10KW		No Charge, Small Tools
Generator 11-50KW		Rental @ Market Pricing
Generator 51-125KW		Rental @ Market Pricing
Generator 126-400KW		Rental @ Market Pricing
Generator 401-1000KW		Rental @ Market Pricing
All Terrain Forklift 40'-70'	\$	35.79
All Terrain Forklift Over 70'	\$	29.24
Hydraulic Press 60 TON		No Charge, Small Tools
Pole Jacks w/ press motor	\$	5.32
Ground Pounder	\$	12.42
Plate Compactor	\$	12.42
Hydraulic Compactor	\$	12.42
Clay Plate Compactor	\$	12.42
Compactor	\$	12.42

LABOR

Professional Overhead Hourly Rate Schedule	
Labor	Hourly Rate
Superintendent	131.06
Mechanic	94.57
Project Manager	113.27
General Foreman	122.86
General Foreman OT	161.96
Foreman & Safety Supervisor	116.07
Foreman & Safety Supervisor OT	153.47
Journeyman	105.24
Journeyman OT	139.24
Cable Splicer	109.24
Cable Splicer OT	144.94
Equipment Operator	89.13
Equipment Operator OT	116.33
Heavy Equipment Operator	105.24
Heavy Equipment Operator OT	139.24

31

Apprentice 1	73.05
Apprentice 1 OT	93.45
Apprentice 2	77.08
Apprentice 2 OT	99.17
Apprentice 3	81.10
Apprentice 3 OT	104.91
Apprentice 4	85.11
Apprentice 4 OT	110.61
Apprentice 5	89.13
Apprentice 5 OT	116.33
Apprentice 6	93.17
Apprentice 6 OT	122.06
Apprentice 7	97.19
Apprentice 7 OT	127.79
Groundman	70.63
Groundman OT	90.01
Trouble Rate	166.37

Name of Bidder: The L.E. Myers Co.

Address: 24925 SR-46, Sorrento ST, FL Zip 32776

Phone: (407) 466-4663 Email: r-richards@myrgroup.com

Print Name: Raymond Richards Title: Sr. Ops. Manager

SIGNATURE:  Date: 06/02/2023

Type text here

EXHIBIT "C"
PUBLIC CONSTRUCTION BOND FORMS

Record and Return to:

CITY OF LAKE WORTH BEACH
PAYMENT AND PERFORMANCE BOND
(Pursuant to sec. 255.05, Fla. Stat.)

Surety Bond No. _____

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR:

Name:

Principal Business Address:

Telephone Number:

SURETY:

Name:

Principal Business Address

Telephone Number:

OWNER:

City of Lake Worth Beach
7 North Dixie Highway
Lake Worth Beach, FL 33460
(561) 586-1600

CONTRACT: System Hardening and Reliability Improvement Program

Contract Work Order No:

Date:

Amount:

Description (Name and Location):

General Description of Work:

BOND

Date (not earlier than Work Order Date):

Amount:

Modifications to this Bond Form:

This Bond is issued in favor of the City of Lake Worth Beach/Owner conditioned on the full and faithful performance of the Contract.

1. Contractor has entered into Project No. _____ with the City for the project titled " _____ " (the "Contract"), with conditions and provisions as are further described in the aforementioned Contract, which Contract, including all of its attachments, exhibits and incorporated documents (hereinafter, collectively, the "Contract Documents") is by reference made a part hereof for the purposes of explaining this bond.

2. Principal and Surety are bound to the Owner in the sum of the Contract Amount set forth above for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

3. THE CONDITION OF THIS BOND is that if Principal:

a. Performs the Work required of and in accordance with the Contract Documents at the times and in the manner prescribed in the Contract Documents, which are made a part of this bond by reference; and

b. In accordance with sec. 255.05 and sec. 337.18, Florida Statutes, promptly makes payments to all persons, defined in sec. 713.01, Florida Statutes, who furnish labor, services or materials for prosecution of the work set forth in the Contract Documents described above; and

c. Pays Owner all losses, damages (including liquidated damages), expenses, costs, and professional fees, including but not limited to attorneys' fees, including appellate proceedings, that Owner sustains because of a default by Principal under the Contract Documents; and

d. Performs the warranty and guarantee of all work and materials furnished under the Contract Documents for the time specified in the Contract Documents, then this bond is void; otherwise it remains in full force.

4. Section 255.05, Fla. Stat., as amended, together with all notice and time provisions contained therein, is incorporated herein by reference.

5. Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in secs. 255.05(2) and (10), Fla. Stat., and those of sec. 337.18, Fla. Stat.

6. Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract Documents or the changes does not affect Surety's obligation under this bond, and Surety waives notice of such changes.

7. Principal and Surety expressly acknowledge that any and all provisions relating to consequential, delay and liquidated damages contained in the contract are expressly covered by and made a part of this Performance, Labor and Material Payment Bond. Principal and Surety acknowledge that any such provisions lie within their obligations and within the policy coverages and limitations of this instrument.

8. Any action brought under this instrument shall be brought in the state court of competent jurisdiction in Palm Beach County, Florida, and not elsewhere.

Surety and Contractor, intending to be legally bound hereby, subject to the terms included herein and as required under Florida Statutes, do each cause this Performance and Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

Signed and sealed this _____ day of _____, 20__.

Witness

Principal

(Corporate Seal)

Title

Witness

Surety

Attorney-in-Fact
(Attach Power of Attorney)

Print Name

(Corporate Seal)

EXHIBIT "D"

Federal Contract Provisions

The Contractor hereby agrees that the following terms, at a minimum, will be incorporated into any subsequent contract resulting from this IFB, which is funded in whole or in part with any federal or other funding where the following terms are applicable:

Equal Employment Opportunity. During the performance of the resulting contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules,

regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. DOJ, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such

Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Clean Air Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Contractor agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Federal Water Pollution Control Act

(1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Contractor agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Suspension and Debarment.

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment.

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Procurement of Recovered materials.

- (i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
- Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.
- (ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

Access to Records.

- (1) The Contractor agrees to provide the State of Florida, the CITY, the DOJ Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DOJ Administrator or the Comptroller General of the United States.

DHS Seal, Logo, and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DOJ pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders.

By signing this agreement, the Contractor acknowledges that federal financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, federal policies, procedures, and directives.

No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

Affirmative Steps. Required Affirmative Steps

If the Contractor intends to subcontract any portion of the work covered by this Contract, the Contractor must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Domestic preferences for procurements.

- (1) As appropriate and to the extent consistent with law, the Contractor should purchase, acquire, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- (2) For purposes of this section:
 - (a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Prohibition on certain telecommunications and video surveillance services or equipment.

- (1) The Contractor is prohibited from obligating or expending loan or grant funds to:
 - (a) Procure or obtain;
 - (b) Extend or renew a contract to procure or obtain; or
 - (c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), the City shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

Compliance with the Davis-Bacon Act.

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.

Current Davis Bacon wage determination for Heavy Construction shall be attached to each Work Order if Federal Funds are utilized.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY
MATTERS - LOWER-TIER COVERED TRANSACTIONS**

This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Contractor is required to confirm that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Certification, the Contractor, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Contractor to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security,

without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.



Signature of Contractor's Authorized Official

Raymond Richards, Sr. Ops. Manager

Name and Title of Contractor's Authorized Official

06/02/2023

Date

Certification for Contracts, Grants, Loans, and Cooperative Agreements

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor The L.E. Myers Co. certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.


Signature of Contractor's Authorized Official

Raymond Richards, Sr. Ops. Manager
Name and Title of Contractor's Authorized Official

06/02/2023
Date

SYSTEM HARDENING AND RELIABILITY IMPROVEMENTS CONTRACT
IFB # 23-116

THIS CONTRACT for Electric Utility System Hardening and Reliability Improvements (“Contract”) is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Michels Power, Inc.**, a foreign for profit corporation authorized to do business in the State of Florida (“Contractor”) with its principal office located at 1775 E. Shady Lane, Neenah, WI 54956 .

WHEREAS, the City issued Invitation for Bids # 23-116 for the construction of numerous hardening and reliability improvements to its electric utility transmission and distribution system (“IFB”); and

WHEREAS, the Contractor submitted its bid in response to the IFB; and

WHEREAS, the City desires to award the IFB to the Contractor on a non-exclusive basis for the construction of certain system hardening and reliability improvements and related services; and

WHEREAS, this Contract may be funded, in whole or in part, by the Federal agencies and work performed pursuant to this Contract or Work Order funded, in whole or in part, by Federal agencies will comply with all applicable Federal laws, Federal regulations, executive orders, policies, procedures, directives and special clauses as provided for in **Exhibit “D”**; and

WHEREAS, the City finds awarding the IFB to the Contractor as described herein serves a valid public purpose.

NOW THEREFORE, the City hereby engages the services of the Contractor, and in consideration of the mutual promises herein contained, the sufficient of which is hereby acknowledged by both parties, the parties agree as follows:

Article 1. GENERAL INFORMATION.

1.1 **Scope of Services/Work.** The Contractor shall provide the services and work requested by the City and required under a City approved work order as described herein. The general nature of the services and work to be provided by the Contractor under this Contract are the construction of hardening and reliability improvements to the City’s electric utility transmission and distribution system.

1.2 **Contract Documents.** The Contract Documents are incorporated herein by reference as if set forth in this Contract and comprise the entire agreement between the City and Contractor. The Contract Documents consist of this Contract, the IFB (including, but not limited to, the documents issued with the IFB as the scope and specifications, the drawings, addenda, attachments and exhibits); and, any duly executed and issued work orders, change orders and Contract amendments relating thereto. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, within five (5) business days and before proceeding shall obtain a written interpretation or clarification. Failure to obtain a written interpretation or clarification will be deemed a waiver of the ambiguity, error or discrepancy by the Contractor. The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

First Priority:	Fully executed Change Orders or Contract amendments
Second Priority:	This Contract

Third Priority: Fully executed Work Orders
Fourth Priority: IFB

1.3 **Contract Administrator.** Whenever the term Contract Administrator is used herein, it is intended to mean **the City Manager or designee, City of Lake Worth Beach, Florida**. In the administration of this Contract, all parties may rely upon instructions or determinations made by the Contract Administrator except that all requests and/or determinations that result in an increase in change in time of completion and/or an increase in the contract price shall require a formal change order or contract amendment executed by the City Manager or the City Commission (depending on the authority set forth in the City's Procurement Code).

1.4 **Work Orders.** This Contract does not guarantee that the City will utilize the Contractor in any capacity or for any services hereunder. When the City identifies a need for the Contractor's services, the City will request a proposal from the Contractor to provide the services requested. The City will provide the Contractor with plans and/or specifications in order for the Contractor to develop its proposal. The Contractor's proposal shall be submitted in the format of the sample work order, attached hereto and incorporated herein as **Exhibit "A"** along with a copy of the Contractor's proposal and shall be based on the Hourly Billing Rates attached hereto and incorporated herein as **Exhibit "B"**. Upon receipt of the Contractor's proposed work order and proposal, the City shall decide in its sole discretion whether to award the work order to the Contractor. Depending on the lump sum amount of each work order, the work order may be awarded by the City Manager (if within City Manager's purchasing authority (currently not to exceed \$50,000)) or the City Commission. If the work order is approved by the City, the Contractor shall commence the identified services upon the City's approval of the work order for the services and issuance of a notice to proceed. The City reserves the right to reject any and all proposals submitted by the Contractor. A City-approved work order shall include (by reference) the plans and/or specifications provided by the City to the Contractor.

1.5 **Purchase Orders.** The City's ordering mechanism for individual projects involving urgently required work and/or repairs in the amount of \$15,000 or less under this Agreement will be by a City issued Purchase Order(s); however, the terms and conditions stated in a City Purchase Order(s) shall not apply; the terms and conditions set forth in this Agreement shall apply. CONTRACTOR shall not provide services under this Agreement without a City Purchase Order specifically for the stated services. CONTRACTOR shall provide the amount of requested services and price listed in each Purchase Order and not exceed amounts expressed on any Purchase Order. CONTRACTOR shall be liable for any excess services or costs not specifically stated in the Purchase Order(s). The City's Fiscal Year ends on September 30th of each calendar year. The City cannot authorize the purchase of services beyond September 30th of each calendar year, prior to the annual budget being approved by the City Commission. Additionally, the City must have budgeted appropriate funds for the goods and services in any subsequent Fiscal Year. If the budget is approved for said goods and services, the City will issue a new Purchase Order(s) each Fiscal Year for required and approved services. Services provided pursuant to a City issued Purchase Order(s) under this Agreement shall not exceed \$ 50,000 per year without additional City Commission approval.

1.5 **Term.** The term of this Contract shall be for three (3) years, with an option for two additional twelve (12) month renewals upon the mutual agreement of both parties. The renewal term(s) may be approved by the City Manager on behalf of the CITY. Notwithstanding the foregoing, this Contract may be terminated as set forth in the Contract Documents.

1.6 **Hourly Billing Rates.** The Hourly Billing Rates set forth as **Exhibit "B"** shall remain fixed for the first three (3) years of this Contract. If due to applicable price escalations and/or reductions which impact the Contractor's Hourly Billing Rates, the City and Contractor may execute a written amendment to this Contract to establish new Hourly Billing Rates for the renewal term(s). The City Manager may approve changes in the Hourly Billing Rates based on the recommendation of the City's Electric Utility Director or designee.

Article 2. CONTRACT TIME.

2.1 All services and work to be provided under a City-approved work order shall be provided in a timely manner as time is of the essence under this Contract.

2.2 The Contractor shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the Contractor or its subcontractors (if authorized) and without the Contractor's or subcontractor's fault or negligence. Upon the Contractor's request, the City shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the Contractor and, if the Contractor's delay and failure to timely perform was without it or its subcontractors' fault or negligence, as reasonably determined by the City, the time of completion shall be extended for any reasonable time that the City may reasonably decide; subject to the City's rights to change, terminate, or stop any or all of the work at any time. If the Contractor is delayed at any time in the progress of the work by any act or neglect of the City or its employees, by an approved written change in the scope from the original Contract Documents, or by any other contractor employed by the City, or by changes ordered by the City or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Contractor's reasonable control, or by delay authorized by the City pending negotiation or by any cause which the City shall reasonably decide justifies the delay, then the time of completion shall be extended for any reasonable time the City may reasonably decide. The Contractor must provide the City with written notice of any delay claims and no extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) claim is necessary. With the exception of an approved written change in the scope from the original Contract Documents, the Contractor's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and Contractor specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by Contractor due to a delay in completion of the work. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery or damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the City. Otherwise, the Contractor shall be entitled only to extensions of the Contract Times as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

Article 3. PAYMENT PROCEDURES

3.1 Generally. The Contractor shall submit invoices on a monthly basis detailing all work accomplished in the prior month and all materials installed and used in the work pursuant to City approved work order. Contractor's invoices shall be submitted to:

City of Lake Worth Beach
Attn: Finance Department
7 N. Dixie Highway
Lake Worth Beach, FL 33460

The City's Contract Administrator or designee will review each invoice submitted by the Contractor. If approved, the City will make payment in accordance with the Contract Documents. If not approved, the City will notify the Contractor within twenty (20) business days of the City's receipt and identify the action necessary to correct the invoice or a deficiency.

3.2 Payment to the Contractor shall be made pursuant Florida's Prompt Payment Act (for construction services), section 218.735, Florida Statutes, except as provided herein. Specifically, the City will withhold five

percent (5%) of each payment from a work order to the Contractor as retainage until fifty percent (95%) of the work order price is paid to the Contractor. Upon written request from the Contractor, the Contract Administrator may agree in writing with the Contractor to release a portion of the retainage upon payment of ninety-five percent (95%) of the work order price being paid to the Contractor (not to exceed fifty percent (50%) of the total retainage amount).

3.3 Upon substantial completion, the Contractor and City shall establish a punch-list of items that must be completed by the Contractor prior to the Contractor submitting its final payment request.

3.4 Final Payment. Upon final completion and acceptance of the work in accordance with the Contract Documents (including all punch-list items) and final inspection by the appropriate agency with jurisdiction over the project (if other than the City), the Contractor shall submit a “final invoice” to the City. In order for both parties to close their books and records, the Contractor will clearly state “FINAL” on the Contractor’s final invoice. This certifies that all work under the applicable work order has been properly completed and all charges have been invoiced to the City. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the Contractor. If the Contractor’s Final Invoice is approved as set forth above, the City shall pay the remainder of the work order price including any amount held as retainage.

3.5 Notwithstanding the foregoing, the City shall not be required to pay or release any amount of retainage that is subject of a good faith dispute, the subject of a claim brought pursuant to section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the City.

3.6 Final payment shall not become due until the Contractor and all of its subcontractors submit to the City releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract Documents or otherwise related to the Program.

3.7 Acceptance of final payment by the Contractor or a subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final invoice.

Article 4. SUBCONTRACTS

The Contractor represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The Contractor shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. The Contractor shall comply with all applicable laws in the provision of services under this Contract. The Contractor agrees that it is fully responsible to the City for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City. All of the Contractor’s personnel (and all subcontractors) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of subcontractor or subcontractor’s personnel furnished by the Contractor upon written notice by City to Contractor of the cause for such replacement. All work performed by a subcontractor will be at cost to the City without any mark-up by the Contractor. All subcontractors must provide the same level and type of insurance as required of the Contractor under this Contract prior to commencing any services. The Contractor shall submit the subcontractors’ proof of insurance upon receipt of a notice to proceed.

Article 5. INDEMNITY AND INSURANCE.

The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, Contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor against the City and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. The Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification or any other provision in the Contract Documents shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

INSURANCE: Prior to commencing any work, the Contractor shall provide proof of insurance coverage as required in the IFB. All such insurance policies may not be modified or terminated without the express written authorization of the City. Failure to comply with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this Contract. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the Contract Documents and/or performance of the work. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

Article 6. REIMBURSEMENT OF ENGINEER EXPENSES.

Should the completion of a work order be delayed beyond the specified or adjusted time limit, Contractor shall

reimburse the City for all expenses of engineering and inspection incurred by the City during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the City will be charged to Contractor and be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for in an applicable Work Order.

Article 7. PUBLIC CONSTRUCTION BOND.

If the City approves a work order which exceeds \$200,000 in total construction cost, the Contractor must provide the City with a public construction bond in accordance with section 255.05, Florida Statutes. Said bond must be recorded in the Official Records in and for Palm Beach County and a copy of the recorded bond must be provided to the City prior to the Contractor providing any services under the work order. The City reserves the right to request a bond for any work order which is less than \$200,000. The cost of the bond shall be a direct pass through cost to the City without any mark-up by the Contractor.

The public construction bond shall be on forms attached hereto as **Exhibit “C”** or substantially similar as approved by the City. The bond shall be in an amount not less than the total Work Order price and shall incorporate by reference the terms of the Contract Documents in their entirety.

To be acceptable to the City, a Surety Company shall comply with the following provisions:

The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida Department of Insurance, authorizing it to write surety bonds in the State of Florida.

- (a) The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
- (b) The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- (c) The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the Contractor submits its Work Order for City approval.
- (d) The Surety Company shall have at least the ratings of A-/Class V in the latest issue of Best’s Key Rating Guide.
- (e) The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
 1. **Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.**
 2. In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

Article 8. TERMINATION.

8.1 **TERMINATION BY CITY:** The City may terminate any work order, the Contract and/or the Contract Documents if the Contractor is in default as follows:

- (a) refuses or fails to supply enough properly skilled workers or proper materials to timely and competently complete the work;
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- (c) disregards or takes action contrary to any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- (d) takes action, short of declaring bankruptcy, evidencing insolvency;
- (e) fails to prosecute the services or work in a timely manner and reasonably be unable to reach substantial completion and/or final completion within the timeframe(s) required;
- (e) fails or refuses to provide and/or maintain insurance or proof of insurance as required by the Contract Documents; **or,**
- (f) otherwise is in breach of a provision of the Contract Documents.

When any of the above reasons exist, the City, may without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety (if applicable), written notice and five (5) days to cure, terminate the work order, Contract and/or Contract Documents and may:

- (a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by or paid for by the City; and,
- (b) finish the work by whatever reasonable method the City may deem expedient.

The Contractor and its surety (if any) shall be liable for any damage to the City, including additional attorney and engineering/architectural fees, resulting from the Contractor's termination under this provision by the City, including but not limited to, and any increased costs incurred by the City in completing the work.

When the City terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment, if any, until the work is finished.

Should it be determined by a mediator or a court of competent jurisdiction that the City wrongfully terminated the Contract, then the Contractor agrees to treat such termination as a termination for convenience.

8.2 **TERMINATION BY THE CITY FOR CONVENIENCE**

The City may, at any time, terminate the Contract and Contract Documents for the City's convenience and without cause. Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

- (a) cease operations as directed by the City in the notice;
- (b) take actions necessary, or that the City may direct, for the protection and preservation of the work; and
- (c) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the City's convenience, the Contractor shall be entitled to receive payment for work executed, and costs incurred by reason of such termination including termination payments to subcontractors and demobilization costs.

Article 9. TAXES AND DIRECT PURCHASES.

9.1 TAXES: The City is exempt from payment of Florida State Sales and Use Tax. The Contractor is not authorized to use the City's Tax Exemption Number unless approved in writing.

9.2 DIRECT PURCHASES: For certain projects, the City may seek to make direct purchases of equipment or materials to be used by the Contractor. Pursuant to Section 212.08(6), Florida Statutes, and the Fla. Admin. Code Ann. R. 12A-1.094 and 12A-1.038, the Parties agree to the following procedure regarding the City's direct-purchase from vendors of certain equipment and materials to be used in specific projects:

9.2.1 The City reserves the right, at the City's option, to direct purchase equipment and materials involved in a specific project, including subcontracts, if any so as to save the sales tax which would otherwise have been due with regard to the same. The Contractor and its subcontractors shall comply with the City's direct purchase procedures, including but not limited to those listed below.

9.2.2 As specifically set forth in a City issued work order, within 30 days (or other time as specified in the work order), the Contractor will present a list of direct purchase equipment for the City's consideration which will include the recommended vendors' name; the price quotes from all vendors provided to the Contractor; and, any terms and conditions the Contractor has negotiated with the recommended vendors. The City will then inform the Contractor as to which equipment it will direct purchase. In the event the City fails to exercise its option to direct purchase equipment and identify which equipment is to be purchased by the City within thirty (30) calendar days of receipt of the list from the Contractor, the City shall waive its right to direct purchase any and all equipment to be used in completion of the work under the applicable work order.

9.2.3 The Contractor is responsible for selecting each direct purchase vendor, subject to City approval. The Contractor is responsible for specifications, equipment receipt, inspecting shipments, and assuring that the equipment is in accordance with the work order and the Contractor's specifications. The Contractor is also responsible for providing the City with enough advance notice of when the direct purchase equipment will need to be ordered and delivered. In absence of the Contractor's receipt of a written notice of City's disapproval of a vendor within thirty (30) calendar days of City's receipt of the vendor/material list referenced in 9.2.2, the City shall be deemed to have waived any and all objections thereto.

9.2.4 The Contractor shall retain all responsibility for installing all equipment relating to the work and for maintaining the construction schedule so long as the City timely orders and pays for the correct direct purchase equipment. The City's direct purchase mechanism to effectuate tax savings in no way effects the obligation of the Contractor to meet all of the terms and conditions and all provisions and technical specifications of the Contract Documents. The Contractor shall be responsible for insuring all equipment once the equipment is in its care, custody and control, regardless of whether directly purchased by City.

9.2.5 The City will issue a direct purchase order to the vendor of the direct purchase equipment at the price proposed in the Contractor's or its subcontractor's bid, less sales tax. The City will promptly send a copy of the issued purchaser order to the Contractor.

9.2.6 It will be the Contractor's primary responsibility to properly expedite and follow up on direct

purchase orders, thereby assuring delivery of the equipment as ordered and at the time and place needed by the Contractor to complete the work in accordance with the work order and construction schedule. To the extent required by the Contractor, the City shall cooperate with all requests of the Contractor related to the expedition of and follow up on direct purchase orders.

9.2.7 The Contractor shall take delivery, unload, and install the equipment purchased on the direct purchase order in accordance with the work order and the Contract Documents with the vendor to repair, replace, and make good any defect without cost to the City, until such time as the work has been completed and accepted by City in accordance with the Contract Documents. The City, with assistance from the Contractor, will be responsible for undertaking and completing any returns of direct purchase equipment as requested by the Contractor and working with the vendor to effectuate any credits or warranties for the returned equipment (if applicable). Any returns not replaced shall be credited to City and acknowledged by a supplement to the direct purchase order and, if applicable, amendment to the Contract Sum. The Contractor shall not be responsible for warranting the direct purchase equipment to the City; however, the Contractor shall be responsible for facilitating the vendor's warranty of the direct purchase equipment and the Contractor shall be responsible for warranting the work to install and/or incorporate the equipment. The Contractor shall maintain records of all direct purchases received and incorporated into the work and provide the City with a monthly accounting until all direct purchase items that are received and accepted for inclusion in the specific project.

9.2.8 When delivery of a direct purchase order is complete, or a payment is to be made on a partial shipment, the Contractor will timely submit to City the documentation supporting the equipment received. Invoices for direct purchase orders will be sent by the direct purchase vendor directly to City's Finance Department, with all such invoices addressed to and in the name of the City. The City's Finance Department will forward invoices to the City's Contract Administrator. The City's Contract Administrator will forward the invoices to the Contractor to verify delivery and sign the invoice and associated documentation supporting the amount of the payment. The City will make timely payment to all vendors in compliance with each vendor's payment procedures. The City will take title to all equipment ordered through direct purchase upon or at the time of purchase. The Contractor will assist City in assuring prompt payment by supplying the vendor's FEI numbers, addresses, phone numbers, etc. All payments will be made in accordance with the Florida Prompt Payment Act.

Article 10. CONTRACTOR'S REPRESENTATIONS AND AGREEMENTS.

In order to induce the City to enter into this Contract, the Contractor makes the following representations:

10.1 Contractor has or will familiarize itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work prior to commencing the work under an applicable Work Order. All work shall be performed consistent with all applicable laws and regulations.

10.2 Contractor agrees to be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with the regulations and to reimburse the City for any loss incurred in connection therewith. This compliance provision specifically includes the Contractor's compliance with all applicable standards, orders or regulations including, without limitation, those issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

10.3 Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract.

10.4 The Contractor represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the work required under the Contract Documents. Proof of such licenses and approvals shall be submitted to the City upon request.

Article 11. INFRINGEMENT INDEMNITY.

11.1 The Contractor will defend or settle at its expense a claim or suit brought by a third party against the City arising out of a claim asserting that the services, work, repair, materials or other deliverables (“deliverables” hereafter) provided by the Contractor under the Contract Documents (if any) infringes any U.S. copyright or any U.S. patent or misappropriates a trade secret. The Contractor will indemnify and hold harmless the City against and from damages, costs, and attorneys’ fees, if any and at all levels of trial and appeal or mediation or arbitration, finally awarded in such suit or the amount of the settlement thereof; provided that (i) the Contractor is promptly notified in writing of such claim or suit, (ii) the Contractor will have the sole control of the defense and settlement thereof, and (iii) City furnishes the Contractor, on reasonable request, information available to City for such defense. The City will not admit any such claim without prior consent of the Contractor.

a. In the event of a claim of infringement, the Contractor shall, at its option:

1. procure for City the right to continue using the deliverables provided under the Contract Documents; or
2. replace or modify the deliverables so that the same becomes non-infringing but substantially equivalent in functionality and performance.
3. If neither of the above actions is reasonably feasible, the Contractor will refund to City the fee actually paid by City under the Contract Documents (as amortized on a straight-line basis over the time in which the City was able to use the deliverables.

b. The Contractor will have no obligation under this section for infringement if and to the extent that such claim arises from:

1. modification of the deliverables other than by the Contractor or by its recommendation; or
 2. combination of the deliverables with products other than those supplied by the Contractor;
- and,
3. the alleged infringement or misappropriation relates to such modification or combination.

c. The Contractor will also not have any indemnification obligation with respect to a claim: (i) if it has provided City with reasonable changes that would have avoided the problem and the reasonable changes are not fully implemented by City within a reasonable time or (ii) arising out use of the deliverables not in accordance with the Contract Documents.

d. The Contractor’s obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the Contractor whether such injury or damage shall accrue, or may be discovered, before or after termination or expiration of the Contract Documents.

Article 12. MISCELLANEOUS.

12.1 The City and Contractor each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

12.2 Additional work and/or changes to a work order's price and/or time, is subject to the City's prior written approval. Only the City Manager and City Commission (based on the procurement code) have the authority to approve such additional work and changes.

12.3 The headings contained in this Contract are inserted for convenience of reference only and shall not be a part or control or affect the meaning hereof.

12.4 This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

12.5 This Contract (together with the other Contract Documents) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Contract.

12.6 This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

12.7 This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and (c) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

12.8 This Contract shall create no rights or claims whatsoever in any third party.

12.9 If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

12.10 The effective date of this Contract is the date the Contract is approved by the City Commission.

12.11 **Public Records:** The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the City.
- (d) Upon completion of this Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION CITY CLERK, (561) 586-1660 OR CITYCLERK@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.

12.12 This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

12.13 In accordance with Palm Beach County ordinance number 2011-009, the Contractor acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

12.14 If any legal action or other proceeding is brought for the enforcement of this Contract or the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract or the Contract Documents, each party shall be responsible for their own attorney's fees at all levels. EACH PARTY ALSO AGREES AND VOLUNTARILY WAIVES ANY RIGHT TO A JURY TRIAL ARISING OUT OF ALLEGED DISPUTE, BREACH, DEFAULT, MISREPRESENTATION OR ANY OTHER CLAIM IN CONNECTION WITH OR ARISING FROM ANY PROVISION OF THIS CONTRACT OR THE CONTRACT DOCUMENTS

12.15 Each of the parties agrees to perform its obligations under the Contract Documents in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of the work and under the Contract Documents.

12.16 All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the Contractor or its subcontractors under this Contract shall be considered a "Work for Hire" and the exclusive property of the City. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, Contractor and Contractor's Subcontractors will assign to the City all right, title and interest in and to Contractor and/or Contractor's Subcontractors' copyright(s) for such Documents. Contractor shall execute and deliver to City such instruments of transfer and take such other action that City may reasonable request, including, without limitation, executing and filing, at City's expense, copyright applications, assignments and other documents required for the protection of City's right to such Documents. The Contractor shall retain copies of the Documents for a period of three (3) years from the date of completion of the Program. The City grants to the Contractor and Contractor's subcontractors the right and/or limited license to use a portion of the Documents prepared by the Contractor or the Contractor's subcontractors in future projects of the Contractor or Contractor's subcontractors with said right and/or limited license to use a portion at Contractor's or Contractor's subcontractor's own risk and without any liability to City. Any modifications made by the City to any of the Contractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the Contractor will be at the City's sole risk and without liability to the Contractor.

12.17 Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

12.18 Any notice required to be given under the Contract Documents shall be sent by certified mail (return receipt requested) or by nationally recognized overnight courier as follows to the City:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and to the Contractor as follows:

Michels Power, Inc.
1775 E. Shady Lane
Neenah, WI 54956
Attn: Mark Harasha, President

Either party may amend this provision by written notice to the other party.

12.19 The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes. The Contractor further represents that no person having any such conflicting interest shall be employed for said performance. The Contractor shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Contractor. The City agrees to notify the Contractor of its opinion within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the City shall

so state in the notification and the Contractor shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Contractor under the terms of this Contract.

12.20 The Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, Contractor shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

12.21 This Contract is not intended to be and shall not be construed as an exclusive agreement, and the City may employ additional or other contractors to perform services contemplated by this Contract without liability to the City.

12.22 PUBLIC ENTITY CRIMES. The Contractor acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The Contractor will promptly advise the City if it becomes aware of any violation of this statute.

12.21 PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

12.22 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of all services and work. This includes being responsible for all precautions for safety of, and reasonable protection to prevent damage, injury or loss to employees performing the services and work and other persons who may be affected thereby; the work, materials and equipment incorporated therein; and other property, equipment or materials at the site or adjacent thereto including, without limitation, trees, shrubs, lawns, sidewalks, pavements, roadways or structures and utilities not designated for removal, relocation or replacement in the course of the work. The Contractor shall comply with and give all notices required by applicable laws, statutes, ordinances, rules and regulations bearing on safety of persons or property, or their protection from damage, injury or loss. The Contractor shall implement, erect and maintain reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards reasonably related to the work or which could arise therefrom. The Contractor shall promptly remedy damage and loss (other than covered by applicable insurance) caused in whole or in part by the Contractor or anyone directly or indirectly employed by or utilized by the Contractor in the performance of the work, which is not attributable to the City's negligence.

12.23 The Contractor agrees that, in all matters relating to this Contract, it will be acting as an independent contractor with exclusive control of the manner and means of performing the work, its obligations and tasks in accordance with the requirements of this Contract and the Contract Documents. The Contractor has no authority to act or make any agreements or representations on behalf of the City. This Contract is not intended, and shall not be construed to create, between the City and the Contractor, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of City.

Article 13. SCRUTINIZED COMPANIES

13.1 CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

13.2 If this Agreement is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

13.3 The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

13.4 The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

13.5 The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

13.6 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

Article 14. E-VERIFY

Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR shall:

14.1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

14.2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, Agreement with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

14.3. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;

14.4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;

14.5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,

14.6. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded a Agreement for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

Remainder of this page intentionally left blank
Signature page follows

EXHIBIT "A"
SAMPLE WORK ORDER

CONTRACT FOR SYSTEM HARDENING AND RELIABILITY IMPROVEMENTS
WORK ORDER NO. _____

THIS WORK ORDER for System Hardening and Reliability Improvements ("Work Order" hereafter) is made on the _____, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460 ("City" hereafter) and **Michels Power, Inc.**, a foreign for profit corporation authorized to do business in State of Florida ("Contractor" hereafter).

1.0 Project Description:

The City desires the Contractor to provide all goods, services, materials and equipment as identified herein related to the System Hardening and Reliability Improvements project generally described as: _____ (the "Project"). The Project is more specifically described in the plans prepared by _____, dated _____, and which are incorporated herein by reference.

2.0 Scope

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with construction services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 Schedule and Liquidated Damages

Substantial completion of all services and work under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City _____ hundred dollars (\$_____.00) for each day that expires after the time specified in this Work Order.

4.0 Compensation and Direct Purchases

This Work Order is issued for a lump sum, not to exceed amount of \$_____ (_____). The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City: _____

_____.

5.0 Project Manager

The Project Manager for the Contractor is _____, phone: _____; email: _____; and, the Project Manager for the City is _____, phone: _____; email: _____.

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations,

explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is issued pursuant to the System Hardening and Reliability Improvements Contract for between the City of Lake Worth Beach and the Contractor, dated _____, ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

By: DO NOT SIGN – SAMPLE ONLY _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: **MICHELS POWER, INC.**

By: DO NOT SIGN – SAMPLE ONLY _____

[Corporate Seal]

Print Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____ 2023, by _____, as the _____ [title] of

Michels Power, Inc., a foreign profit Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Public Signature

Notary Seal:

EXHIBIT "B"
HOURLY BILLING RATES

EQUIPMENT

Professional Overhead Hourly Rate Schedule	
Equipment	Hourly Rate
Truck Pickup 1/4T	21.68
Truck Pickup 1/4T (4X4)	21.68
Truck Pickup 1/2T	21.68
Truck Pickup 1/2T (4X4)	21.68
Truck Pickup 3/4T	26.76
Truck Pickup 3/4T (4X4)	26.76
Truck Pickup 1T	29.51
Truck Pickup 1T (4X4)	29.51
Truck Pickup 2T	32.38
Dump truck	61.65
Flatbed	32.38
Knuckle Bed Winch Medium	26.20
Knuckle Bed Winch Large	51.29
Fuel Truck-Small	41.03
Fuel Truck-Large	91.04
Bucket Truck 35'-49'	42.76
Bucket Truck 35'-49' (4X4)	42.76
Bucket Material Handler 35'-49'	42.76
Bucket Material Handler 35'-49' (4X4)	42.76
Bucket Truck 50'-60'	50.18
Bucket Truck 50'-60' (4X4)	50.18
Bucket Material Handler 50'-60'	50.18
Bucket Material Handler 50'-60' (4X4)	50.18
Bucket Truck 61'-75'	69.86
Bucket Truck 61'-75' (4X4)	69.86
Bucket Material Handler 61'-75'	69.86

Bucket Material Handler 61'-75' (4X4)	69.86
Bucket Truck 76'-93'	106.18
Bucket Truck 76'-93' (4X4)	106.18
Bucket Truck 94'-100'	140.01
Bucket Truck 94'-100' (4X4)	140.01
Bucket Truck 101'-125'	151.38
Bucket Truck 101'-125' (4X4)	151.38
Bucket Truck 126'-150'	161.92
Pole Trailer	7.52
Wire Trailer Single Reel	7.11
Wire Trailer Two Reel	7.11
Wire Trailer Three Reel	11.00
Wire Trailer Four Reel	21.13
Material Trailer 16'-20'	7.52
Tractor Trailer	94.05
Lowboy Trailer 50 TON	45.15
Step deck Trailer	14.47
Trailer Single Axle	7.52
Crane 30 TON	87.28
Crane 55 TON	122.38
Crane 70 TON	166.86
Crane 110 TON	293.54
Digger w Sheave Height 42.5 ft.	57.40
Digger w Sheave Height 45.6 ft.	81.89
Digger w Sheave Height 54.1 ft.	81.89
Digger w Sheave Height 65.1 ft.	99.57
Pressure Digger	128.47
Wire Puller	77.88
UG Wire Puller	77.88
Single Drum Puller Distribution Pull Max. 3500lbs.	79.33
Single Drum Puller Distribution Pull Max. 7500lbs.	157.76
Three Drum Puller	244.08
Four Drum Puller	157.76
V Grove Puller	123.4
Overhead Line Tensioner Max. 3000lbs.	31.84
Directional Bore Machine	150.79
Skid Steer	46.58
Backhoe	50.47
Backhoe with Hammer	52.72
Medium Front Loader	112.79
Large Front Loader	174.23
XL Front Loader	305.84
Small Dozer w/ Winch	48.34
Medium Dozer w/ Winch	91.63
Large Dozer w/ Winch	111.05

XL Dozer w/ Winch	252.14
Mimi Excavator	41.98
Medium Excavator	80.68
Large Excavator	106.26
XL Excavator	195.19
Excavator Hammer	124.71
Under 200 CFM Air Compressor	31.69
200-800 CFM Air Compressor	44.19
801-1600 CFM Air Compressor	65.51
Air Jack Hammer	5.74
Generator 0-10KW	9.00
Generator 11-50KW	33.22
Generator 51-125KW	54.72
Generator 126-400KW	63.02
Generator 401-1000KW	74.05
All Terrain Forklift 40'-70'	55.80
All Terrain Forklift Over 70'	81.83
Hydraulic Press 60 TON	1.93
Pole Jacks w/ press motor	15.01
Ground Pounder	10.46
Plate Compactor	3.38
Hydraulic Compactor	6.56
Clay Plate Compactor	7.38
Compactor	11.48

LABOR

Professional Overhead Hourly Rate Schedule	
Labor	Hourly Rate
Superintendent	185.38
Mechanic	133.19
Project Manager	159.28
General Foreman	151.13
General Foreman OT	213.26
Foreman & Safety Supervisor	142.98
Foreman & Safety Supervisor OT	201.14
Journeyman	105.35
Journeyman OT	145.22
Cable Splicer	109.45
Cable Splicer OT	151.31
Equipment Operator	88.96
Equipment Operator OT	120.85
Heavy Equipment Operator	105.35
Heavy Equipment Operator OT	145.22

Apprentice 1	72.08
Apprentice 1 OT	96.00
Apprentice 2	76.18
Apprentice 2 OT	102.09
Apprentice 3	80.27
Apprentice 3 OT	108.18
Apprentice 4	84.37
Apprentice 4 OT	114.27
Apprentice 5	88.47
Apprentice 5 OT	120.36
Apprentice 6	92.57
Apprentice 6 OT	126.45
Apprentice 7	96.66
Apprentice 7 OT	132.54
Groundman	69.62
Groundman OT	92.34
Trouble Rate	232.91

Name of Bidder: Michels Power, Inc.

Address: 1775 E. Shady Lane, Neenah ST WI Zip 54956

Phone: (920) 721-9170 Email: powerbids@michels.us

Print Name: Mark Harasha Title: President

SIGNATURE:  Date: 06/08/2023

EXHIBIT "C"
PUBLIC CONSTRUCTION BOND FORMS

Record and Return to:

CITY OF LAKE WORTH BEACH
PAYMENT AND PERFORMANCE BOND
(Pursuant to sec. 255.05, Fla. Stat.)

Surety Bond No. _____

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR:

Name:

Principal Business Address:

Telephone Number:

SURETY:

Name:

Principal Business Address

Telephone Number:

OWNER:

City of Lake Worth Beach
7 North Dixie Highway
Lake Worth Beach, FL 33460
(561) 586-1600

CONTRACT: System Hardening and Reliability Improvement Program

Contract Work Order No:

Date:

Amount:

Description (Name and Location):

General Description of Work:

BOND

Date (not earlier than Work Order Date):

Amount:

Modifications to this Bond Form:

This Bond is issued in favor of the City of Lake Worth Beach/Owner conditioned on the full and faithful performance of the Contract.

1. Contractor has entered into Project No. _____ with the City for the project titled " _____ " (the "Contract"), with conditions and provisions as are further described in the aforementioned Contract, which Contract, including all of its attachments, exhibits and incorporated documents (hereinafter, collectively, the "Contract Documents") is by reference made a part hereof for the purposes of explaining this bond.

2. Principal and Surety are bound to the Owner in the sum of the Contract Amount set forth above for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

3. THE CONDITION OF THIS BOND is that if Principal:

a. Performs the Work required of and in accordance with the Contract Documents at the times and in the manner prescribed in the Contract Documents, which are made a part of this bond by reference; and

b. In accordance with sec. 255.05 and sec. 337.18, Florida Statutes, promptly makes payments to all persons, defined in sec. 713.01, Florida Statutes, who furnish labor, services or materials for prosecution of the work set forth in the Contract Documents described above; and

c. Pays Owner all losses, damages (including liquidated damages), expenses, costs, and professional fees, including but not limited to attorneys' fees, including appellate proceedings, that Owner sustains because of a default by Principal under the Contract Documents; and

d. Performs the warranty and guarantee of all work and materials furnished under the Contract Documents for the time specified in the Contract Documents, then this bond is void; otherwise it remains in full force.

4. Section 255.05, Fla. Stat., as amended, together with all notice and time provisions contained therein, is incorporated herein by reference.

5. Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in secs. 255.05(2) and (10), Fla. Stat., and those of sec. 337.18, Fla. Stat.

6. Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract Documents or the changes does not affect Surety's obligation under this bond, and Surety waives notice of such changes.

7. Principal and Surety expressly acknowledge that any and all provisions relating to consequential, delay and liquidated damages contained in the contract are expressly covered by and made a part of this Performance, Labor and Material Payment Bond. Principal and Surety acknowledge that any such provisions lie within their obligations and within the policy coverages and limitations of this instrument.

8. Any action brought under this instrument shall be brought in the state court of competent jurisdiction in Palm Beach County, Florida, and not elsewhere.

Surety and Contractor, intending to be legally bound hereby, subject to the terms included herein and as required under Florida Statutes, do each cause this Performance and Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

Signed and sealed this _____ day of _____, 20__.

Witness

Principal

(Corporate Seal)

Title

Witness

Surety

Attorney-in-Fact
(Attach Power of Attorney)

Print Name

(Corporate Seal)

EXHIBIT "D"

Federal Contract Provisions

The Contractor hereby agrees that the following terms, at a minimum, will be incorporated into any subsequent contract resulting from this IFB, which is funded in whole or in part with any federal or other funding where the following terms are applicable:

Equal Employment Opportunity. During the performance of the resulting contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules,

regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. DOJ, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such

Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Clean Air Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Contractor agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Federal Water Pollution Control Act

(1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Contractor agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Suspension and Debarment.

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment.

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Procurement of Recovered materials.

- (i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.
- (ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

Access to Records.

- (1) The Contractor agrees to provide the State of Florida, the CITY, the DOJ Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DOJ Administrator or the Comptroller General of the United States.

DHS Seal, Logo, and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DOJ pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders.

By signing this agreement, the Contractor acknowledges that federal financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, federal policies, procedures, and directives.

No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.

Affirmative Steps. Required Affirmative Steps

If the Contractor intends to subcontract any portion of the work covered by this Contract, the Contractor must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Domestic preferences for procurements.

- (1) As appropriate and to the extent consistent with law, the Contractor should purchase, acquire, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- (2) For purposes of this section:
 - (a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Prohibition on certain telecommunications and video surveillance services or equipment.

- (1) The Contractor is prohibited from obligating or expending loan or grant funds to:
 - (a) Procure or obtain;
 - (b) Extend or renew a contract to procure or obtain; or
 - (c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), the City shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

Compliance with the Davis-Bacon Act.

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.

Current Davis Bacon wage determination for Heavy Construction shall be attached to each Work Order if Federal Funds are utilized.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY
MATTERS - LOWER-TIER COVERED TRANSACTIONS**

This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Contractor is required to confirm that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Certification, the Contractor, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Contractor to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security,

without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.



Signature of Contractor's Authorized Official

Mark Harasha, President

Name and Title of Contractor's Authorized Official

June 7, 2023

Date

Certification for Contracts, Grants, Loans, and Cooperative Agreements

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

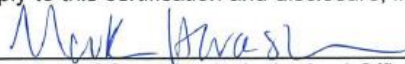
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor Michels Power, Inc. certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Mark Harasha, President

Name and Title of Contractor's Authorized Official

June 7, 2023

Date

SYSTEM HARDENING AND RELIABILITY IMPROVEMENTS CONTRACT
IFB # 23-116

THIS CONTRACT for Electric Utility System Hardening and Reliability Improvements (“Contract”) is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and, **Wilco Electrical, LLC.**, a Limited Liability Company authorized to do business in the State of Florida (“Contractor”) with its principal office located at 430 Business Park Way, Royal Palm Beach, FL 33411 .

WHEREAS, the City issued Invitation for Bids # 23-116 for the construction of numerous hardening and reliability improvements to its electric utility transmission and distribution system (“IFB”); and

WHEREAS, the Contractor submitted its bid in response to the IFB; and

WHEREAS, the City desires to award the IFB to the Contractor on a non-exclusive basis for the construction of certain system hardening and reliability improvements and related services; and

WHEREAS, this Contract may be funded, in whole or in part, by the Federal agencies and work performed pursuant to this Contract or Work Order funded, in whole or in part, by Federal agencies will comply with all applicable Federal laws, Federal regulations, executive orders, policies, procedures, directives and special clauses as provided for in **Exhibit “D”**; and

WHEREAS, the City finds awarding the IFB to the Contractor as described herein serves a valid public purpose.

NOW THEREFORE, the City hereby engages the services of the Contractor, and in consideration of the mutual promises herein contained, the sufficient of which is hereby acknowledged by both parties, the parties agree as follows:

Article 1. GENERAL INFORMATION.

1.1 **Scope of Services/Work.** The Contractor shall provide the services and work requested by the City and required under a City approved work order as described herein. The general nature of the services and work to be provided by the Contractor under this Contract are the construction of hardening and reliability improvements to the City’s electric utility transmission and distribution system.

1.2 **Contract Documents.** The Contract Documents are incorporated herein by reference as if set forth in this Contract and comprise the entire agreement between the City and Contractor. The Contract Documents consist of this Contract, the IFB (including, but not limited to, the documents issued with the IFB as the scope and specifications, the drawings, addenda, attachments and exhibits); and, any duly executed and issued work orders, change orders and Contract amendments relating thereto. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, within five (5) business days and before proceeding shall obtain a written interpretation or clarification. Failure to obtain a written interpretation or clarification will be deemed a waiver of the ambiguity, error or discrepancy by the Contractor. The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

First Priority: Fully executed Change Orders or Contract amendments

Second Priority: This Contract
Third Priority: Fully executed Work Orders
Fourth Priority: IFB

1.3 **Contract Administrator.** Whenever the term Contract Administrator is used herein, it is intended to mean the City Manager or designee, City of Lake Worth Beach, Florida. In the administration of this Contract, all parties may rely upon instructions or determinations made by the Contract Administrator except that all requests and/or determinations that result in an increase in change in time of completion and/or an increase in the contract price shall require a formal change order or contract amendment executed by the City Manager or the City Commission (depending on the authority set forth in the City's Procurement Code).

1.4 **Work Orders.** This Contract does not guarantee that the City will utilize the Contractor in any capacity or for any services hereunder. When the City identifies a need for the Contractor's services, the City will request a proposal from the Contractor to provide the services requested. The City will provide the Contractor with plans and/or specifications in order for the Contractor to develop its proposal. The Contractor's proposal shall be submitted in the format of the sample work order, attached hereto and incorporated herein as **Exhibit "A"** along with a copy of the Contractor's proposal and shall be based on the Hourly Billing Rates attached hereto and incorporated herein as **Exhibit "B"**. Upon receipt of the Contractor's proposed work order and proposal, the City shall decide in its sole discretion whether to award the work order to the Contractor. Depending on the lump sum amount of each work order, the work order may be awarded by the City Manager (if within City Manager's purchasing authority (currently not to exceed \$50,000)) or the City Commission. If the work order is approved by the City, the Contractor shall commence the identified services upon the City's approval of the work order for the services and issuance of a notice to proceed. The City reserves the right to reject any and all proposals submitted by the Contractor. A City-approved work order shall include (by reference) the plans and/or specifications provided by the City to the Contractor.

1.5 **Purchase Orders.** The City's ordering mechanism for individual projects involving urgently required work and/or repairs in the amount of \$15,000 or less under this Agreement will be by a City issued Purchase Order(s); however, the terms and conditions stated in a City Purchase Order(s) shall not apply; the terms and conditions set forth in this Agreement shall apply. CONTRACTOR shall not provide services under this Agreement without a City Purchase Order specifically for the stated services. CONTRACTOR shall provide the amount of requested services and price listed in each Purchase Order and not exceed amounts expressed on any Purchase Order. CONTRACTOR shall be liable for any excess services or costs not specifically stated in the Purchase Order(s). The City's Fiscal Year ends on September 30th of each calendar year. The City cannot authorize the purchase of services beyond September 30th of each calendar year, prior to the annual budget being approved by the City Commission. Additionally, the City must have budgeted appropriate funds for the goods and services in any subsequent Fiscal Year. If the budget is approved for said goods and services, the City will issue a new Purchase Order(s) each Fiscal Year for required and approved services. Services provided pursuant to a City issued Purchase Order(s) under this Agreement shall not exceed \$ 50,000 per year without additional City Commission approval.

1.5 **Term.** The term of this Contract shall be for three (3) years, with an option for two additional twelve (12) month renewals upon the mutual agreement of both parties. The renewal term(s) may be approved by the City Manager on behalf of the CITY. Notwithstanding the foregoing, this Contract may be terminated as set forth in the Contract Documents.

1.6 **Hourly Billing Rates.** The Hourly Billing Rates set forth as **Exhibit "B"** shall remain fixed for the first three (3) years of this Contract. If due to applicable price escalations and/or reductions which impact the Contractor's Hourly Billing Rates, the City and Contractor may execute a written amendment to this Contract to establish new Hourly Billing Rates for the renewal term(s). The City Manager may approve changes in the Hourly Billing Rates based on the recommendation of the City's Electric Utility Director or designee.

Article 2. CONTRACT TIME.

2.1 All services and work to be provided under a City-approved work order shall be provided in a timely manner as time is of the essence under this Contract.

2.2 The Contractor shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the Contractor or its subcontractors (if authorized) and without the Contractor's or subcontractor's fault or negligence. Upon the Contractor's request, the City shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the Contractor and, if the Contractor's delay and failure to timely perform was without it or its subcontractors' fault or negligence, as reasonably determined by the City, the time of completion shall be extended for any reasonable time that the City may reasonably decide; subject to the City's rights to change, terminate, or stop any or all of the work at any time. If the Contractor is delayed at any time in the progress of the work by any act or neglect of the City or its employees, by an approved written change in the scope from the original Contract Documents, or by any other contractor employed by the City, or by changes ordered by the City or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Contractor's reasonable control, or by delay authorized by the City pending negotiation or by any cause which the City shall reasonably decide justifies the delay, then the time of completion shall be extended for any reasonable time the City may reasonably decide. The Contractor must provide the City with written notice of any delay claims and no extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) claim is necessary. With the exception of an approved written change in the scope from the original Contract Documents, the Contractor's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and Contractor specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by Contractor due to a delay in completion of the work. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery or damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the City. Otherwise, the Contractor shall be entitled only to extensions of the Contract Times as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

Article 3. PAYMENT PROCEDURES

3.1 Generally. The Contractor shall submit invoices on a monthly basis detailing all work accomplished in the prior month and all materials installed and used in the work pursuant to City approved work order. Contractor's invoices shall be submitted to:

City of Lake Worth Beach
Attn: Finance Department
7 N. Dixie Highway
Lake Worth Beach, FL 33460

The City's Contract Administrator or designee will review each invoice submitted by the Contractor. If approved, the City will make payment in accordance with the Contract Documents. If not approved, the City will notify the Contractor within twenty (20) business days of the City's receipt and identify the action necessary to correct the invoice or a deficiency.

3.2 Payment to the Contractor shall be made pursuant Florida's Prompt Payment Act (for construction

services), section 218.735, Florida Statutes, except as provided herein. Specifically, the City will withhold five percent (5%) of each payment from a work order to the Contractor as retainage until fifty percent (95%) of the work order price is paid to the Contractor. Upon written request from the Contractor, the Contract Administrator may agree in writing with the Contractor to release a portion of the retainage upon payment of ninety-five percent (95%) of the work order price being paid to the Contractor (not to exceed fifty percent (50%) of the total retainage amount).

3.3 Upon substantial completion, the Contractor and City shall establish a punch-list of items that must be completed by the Contractor prior to the Contractor submitting its final payment request.

3.4 Final Payment. Upon final completion and acceptance of the work in accordance with the Contract Documents (including all punch-list items) and final inspection by the appropriate agency with jurisdiction over the project (if other than the City), the Contractor shall submit a “final invoice” to the City. In order for both parties to close their books and records, the Contractor will clearly state “FINAL” on the Contractor’s final invoice. This certifies that all work under the applicable work order has been properly completed and all charges have been invoiced to the City. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the Contractor. If the Contractor’s Final Invoice is approved as set forth above, the City shall pay the remainder of the work order price including any amount held as retainage.

3.5 Notwithstanding the foregoing, the City shall not be required to pay or release any amount of retainage that is subject of a good faith dispute, the subject of a claim brought pursuant to section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the City.

3.6 Final payment shall not become due until the Contractor and all of its subcontractors submit to the City releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract Documents or otherwise related to the Program.

3.7 Acceptance of final payment by the Contractor or a subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final invoice.

Article 4. SUBCONTRACTS

The Contractor represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The Contractor shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. The Contractor shall comply with all applicable laws in the provision of services under this Contract. The Contractor agrees that it is fully responsible to the City for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City. All of the Contractor’s personnel (and all subcontractors) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of subcontractor or subcontractor’s personnel furnished by the Contractor upon written notice by City to Contractor of the cause for such replacement. All work performed by a subcontractor will be at cost to the City without any mark-up by the Contractor. All subcontractors must provide the same level and type of insurance as required of the Contractor under this Contract prior to commencing any services. The Contractor shall

submit the subcontractors' proof of insurance upon receipt of a notice to proceed.

Article 5. INDEMNITY AND INSURANCE.

The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, Contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor against the City and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. The Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification or any other provision in the Contract Documents shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

INSURANCE: Prior to commencing any work, the Contractor shall provide proof of insurance coverage as required in the IFB. All such insurance policies may not be modified or terminated without the express written authorization of the City. Failure to comply with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this Contract. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the Contract Documents and/or performance of the work. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

Article 6. REIMBURSEMENT OF ENGINEER EXPENSES.

Should the completion of a work order be delayed beyond the specified or adjusted time limit, Contractor shall reimburse the City for all expenses of engineering and inspection incurred by the City during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the City will be charged to Contractor and be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for in an applicable Work Order.

Article 7. PUBLIC CONSTRUCTION BOND.

If the City approves a work order which exceeds \$200,000 in total construction cost, the Contractor must provide the City with a public construction bond in accordance with section 255.05, Florida Statutes. Said bond must be recorded in the Official Records in and for Palm Beach County and a copy of the recorded bond must be provided to the City prior to the Contractor providing any services under the work order. The City reserves the right to request a bond for any work order which is less than \$200,000. The cost of the bond shall be a direct pass through cost to the City without any mark-up by the Contractor.

The public construction bond shall be on forms attached hereto as **Exhibit "C"** or substantially similar as approved by the City. The bond shall be in an amount not less than the total Work Order price and shall incorporate by reference the terms of the Contract Documents in their entirety.

To be acceptable to the City, a Surety Company shall comply with the following provisions:

The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida Department of Insurance, authorizing it to write surety bonds in the State of Florida.

- (a) The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
- (b) The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- (c) The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the Contractor submits its Work Order for City approval.
- (d) The Surety Company shall have at least the ratings of A-/Class V in the latest issue of Best's Key Rating Guide.
- (e) The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

- 1. **Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.**
- 2. In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

Article 8. TERMINATION.

8.1 **TERMINATION BY CITY:** The City may terminate any work order, the Contract and/or the Contract Documents if the Contractor is in default as follows:

- (a) refuses or fails to supply enough properly skilled workers or proper materials to timely and competently complete the work;
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- (c) disregards or takes action contrary to any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- (d) takes action, short of declaring bankruptcy, evidencing insolvency;
- (e) fails to prosecute the services or work in a timely manner and reasonably be unable to reach substantial completion and/or final completion within the timeframe(s) required;
- (f) fails or refuses to provide and/or maintain insurance or proof of insurance as required by the Contract Documents; **or,**
- (g) otherwise is in breach of a provision of the Contract Documents.

When any of the above reasons exist, the City, may without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety (if applicable), written notice and five (5) days to cure, terminate the work order, Contract and/or Contract Documents and may:

- (a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by or paid for by the City; and,
- (b) finish the work by whatever reasonable method the City may deem expedient.

The Contractor and its surety (if any) shall be liable for any damage to the City, including additional attorney and engineering/architectural fees, resulting from the Contractor's termination under this provision by the City, including but not limited to, and any increased costs incurred by the City in completing the work.

When the City terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment, if any, until the work is finished.

Should it be determined by a mediator or a court of competent jurisdiction that the City wrongfully terminated the Contract, then the Contractor agrees to treat such termination as a termination for convenience.

8.2 **TERMINATION BY THE CITY FOR CONVENIENCE**

The City may, at any time, terminate the Contract and Contract Documents for the City's convenience and without cause. Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

- (a) cease operations as directed by the City in the notice;
- (b) take actions necessary, or that the City may direct, for the protection and preservation of the work; and
- (c) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the City's convenience, the Contractor shall be entitled to receive payment for work executed, and costs incurred by reason of such termination including termination payments to subcontractors and demobilization costs.

Article 9. TAXES AND DIRECT PURCHASES.

9.1 TAXES: The City is exempt from payment of Florida State Sales and Use Tax. The Contractor is not authorized to use the City's Tax Exemption Number unless approved in writing.

9.2 DIRECT PURCHASES: For certain projects, the City may seek to make direct purchases of equipment or materials to be used by the Contractor. Pursuant to Section 212.08(6), Florida Statutes, and the Fla. Admin. Code Ann. R. 12A-1.094 and 12A-1.038, the Parties agree to the following procedure regarding the City's direct-purchase from vendors of certain equipment and materials to be used in specific projects:

9.2.1 The City reserves the right, at the City's option, to direct purchase equipment and materials involved in a specific project, including subcontracts, if any so as to save the sales tax which would otherwise have been due with regard to the same. The Contractor and its subcontractors shall comply with the City's direct purchase procedures, including but not limited to those listed below.

9.2.2 As specifically set forth in a City issued work order, within 30 days (or other time as specified in the work order), the Contractor will present a list of direct purchase equipment for the City's consideration which will include the recommended vendors' name; the price quotes from all vendors provided to the Contractor; and, any terms and conditions the Contractor has negotiated with the recommended vendors. The City will then inform the Contractor as to which equipment it will direct purchase. In the event the City fails to exercise its option to direct purchase equipment and identify which equipment is to be purchased by the City within thirty (30) calendar days of receipt of the list from the Contractor, the City shall waive its right to direct purchase any and all equipment to be used in completion of the work under the applicable work order.

9.2.3 The Contractor is responsible for selecting each direct purchase vendor, subject to City approval. The Contractor is responsible for specifications, equipment receipt, inspecting shipments, and assuring that the equipment is in accordance with the work order and the Contractor's specifications. The Contractor is also responsible for providing the City with enough advance notice of when the direct purchase equipment will need to be ordered and delivered. In absence of the Contractor's receipt of a written notice of City's disapproval of a vendor within thirty (30) calendar days of City's receipt of the vendor/material list referenced in 9.2.2, the City shall be deemed to have waived any and all objections thereto.

9.2.4 The Contractor shall retain all responsibility for installing all equipment relating to the work and for maintaining the construction schedule so long as the City timely orders and pays for the correct direct purchase equipment. The City's direct purchase mechanism to effectuate tax savings in no way effects the obligation of the Contractor to meet all of the terms and conditions and all provisions and technical specifications of the Contract Documents. The Contractor shall be responsible for insuring all equipment once the equipment is in its care, custody and control, regardless of whether directly purchased by City.

9.2.5 The City will issue a direct purchase order to the vendor of the direct purchase equipment at the price proposed in the Contractor's or its subcontractor's bid, less sales tax. The City will promptly send a copy of the issued purchaser order to the Contractor.

9.2.6 It will be the Contractor's primary responsibility to properly expedite and follow up on direct

purchase orders, thereby assuring delivery of the equipment as ordered and at the time and place needed by the Contractor to complete the work in accordance with the work order and construction schedule. To the extent required by the Contractor, the City shall cooperate with all requests of the Contractor related to the expedition of and follow up on direct purchase orders.

9.2.7 The Contractor shall take delivery, unload, and install the equipment purchased on the direct purchase order in accordance with the work order and the Contract Documents with the vendor to repair, replace, and make good any defect without cost to the City, until such time as the work has been completed and accepted by City in accordance with the Contract Documents. The City, with assistance from the Contractor, will be responsible for undertaking and completing any returns of direct purchase equipment as requested by the Contractor and working with the vendor to effectuate any credits or warranties for the returned equipment (if applicable). Any returns not replaced shall be credited to City and acknowledged by a supplement to the direct purchase order and, if applicable, amendment to the Contract Sum. The Contractor shall not be responsible for warranting the direct purchase equipment to the City; however, the Contractor shall be responsible for facilitating the vendor's warranty of the direct purchase equipment and the Contractor shall be responsible for warranting the work to install and/or incorporate the equipment. The Contractor shall maintain records of all direct purchases received and incorporated into the work and provide the City with a monthly accounting until all direct purchase items that are received and accepted for inclusion in the specific project.

9.2.8 When delivery of a direct purchase order is complete, or a payment is to be made on a partial shipment, the Contractor will timely submit to City the documentation supporting the equipment received. Invoices for direct purchase orders will be sent by the direct purchase vendor directly to City's Finance Department, with all such invoices addressed to and in the name of the City. The City's Finance Department will forward invoices to the City's Contract Administrator. The City's Contract Administrator will forward the invoices to the Contractor to verify delivery and sign the invoice and associated documentation supporting the amount of the payment. The City will make timely payment to all vendors in compliance with each vendor's payment procedures. The City will take title to all equipment ordered through direct purchase upon or at the time of purchase. The Contractor will assist City in assuring prompt payment by supplying the vendor's FEI numbers, addresses, phone numbers, etc. All payments will be made in accordance with the Florida Prompt Payment Act.

Article 10. CONTRACTOR'S REPRESENTATIONS AND AGREEMENTS.

In order to induce the City to enter into this Contract, the Contractor makes the following representations:

10.1 Contractor has or will familiarize itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work prior to commencing the work under an applicable Work Order. All work shall be performed consistent with all applicable laws and regulations.

10.2 Contractor agrees to be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with the regulations and to reimburse the City for any loss incurred in connection therewith. This compliance provision specifically includes the Contractor's compliance with all applicable standards, orders or regulations including, without limitation, those issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

10.3 Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract.

10.4 The Contractor represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the work required under the Contract Documents. Proof of such licenses and approvals shall be submitted to the City upon request.

Article 11. INFRINGEMENT INDEMNITY.

11.1 The Contractor will defend or settle at its expense a claim or suit brought by a third party against the City arising out of a claim asserting that the services, work, repair, materials or other deliverables (“deliverables” hereafter) provided by the Contractor under the Contract Documents (if any) infringes any U.S. copyright or any U.S. patent or misappropriates a trade secret. The Contractor will indemnify and hold harmless the City against and from damages, costs, and attorneys’ fees, if any and at all levels of trial and appeal or mediation or arbitration, finally awarded in such suit or the amount of the settlement thereof; provided that (i) the Contractor is promptly notified in writing of such claim or suit, (ii) the Contractor will have the sole control of the defense and settlement thereof, and (iii) City furnishes the Contractor, on reasonable request, information available to City for such defense. The City will not admit any such claim without prior consent of the Contractor.

a. In the event of a claim of infringement, the Contractor shall, at its option:

1. procure for City the right to continue using the deliverables provided under the Contract Documents; or
2. replace or modify the deliverables so that the same becomes non-infringing but substantially equivalent in functionality and performance.
3. If neither of the above actions is reasonably feasible, the Contractor will refund to City the fee actually paid by City under the Contract Documents (as amortized on a straight-line basis over the time in which the City was able to use the deliverables.

b. The Contractor will have no obligation under this section for infringement if and to the extent that such claim arises from:

1. modification of the deliverables other than by the Contractor or by its recommendation; or
 2. combination of the deliverables with products other than those supplied by the Contractor;
- and,
3. the alleged infringement or misappropriation relates to such modification or combination.

c. The Contractor will also not have any indemnification obligation with respect to a claim: (i) if it has provided City with reasonable changes that would have avoided the problem and the reasonable changes are not fully implemented by City within a reasonable time or (ii) arising out use of the deliverables not in accordance with the Contract Documents.

d. The Contractor’s obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the Contractor whether such injury or damage shall accrue, or may be discovered, before or after termination or expiration of the Contract Documents.

Article 12. MISCELLANEOUS.

12.1 The City and Contractor each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

12.2 Additional work and/or changes to a work order's price and/or time, is subject to the City's prior written approval. Only the City Manager and City Commission (based on the procurement code) have the authority to approve such additional work and changes.

12.3 The headings contained in this Contract are inserted for convenience of reference only and shall not be a part or control or affect the meaning hereof.

12.4 This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

12.5 This Contract (together with the other Contract Documents) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Contract.

12.6 This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

12.7 This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and (c) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

12.8 This Contract shall create no rights or claims whatsoever in any third party.

12.9 If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

12.10 The effective date of this Contract is the date the Contract is approved by the City Commission.

12.11 Public Records: The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the City.
- (d) Upon completion of this Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION CITY CLERK, (561) 586-1660 OR CITYCLERK@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.

12.12 This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

12.13 In accordance with Palm Beach County ordinance number 2011-009, the Contractor acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

12.14 If any legal action or other proceeding is brought for the enforcement of this Contract or the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract or the Contract Documents, each party shall be responsible for their own attorney's fees at all levels. EACH PARTY ALSO AGREES AND VOLUNTARILY WAIVES ANY RIGHT TO A JURY TRIAL ARISING OUT OF ALLEGED DISPUTE, BREACH, DEFAULT, MISREPRESENTATION OR ANY OTHER CLAIM IN CONNECTION WITH OR ARISING FROM ANY PROVISION OF THIS CONTRACT OR THE CONTRACT DOCUMENTS

12.15 Each of the parties agrees to perform its obligations under the Contract Documents in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of the work and under the Contract Documents.

12.16 All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the Contractor or its subcontractors under this Contract shall be considered a "Work for Hire" and the exclusive property of the City. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, Contractor and Contractor's Subcontractors will assign to the City all right, title and interest in and to Contractor and/or Contractor's Subcontractors' copyright(s) for such Documents. Contractor shall execute and deliver to City such instruments of transfer and take such other action that City may reasonable request, including, without limitation, executing and filing, at City's expense, copyright applications, assignments and other documents required for the protection of City's right to such Documents. The Contractor shall retain copies of the Documents for a period of three (3) years from the date of completion of the Program. The City grants to the Contractor and Contractor's subcontractors the right and/or limited license to use a portion of the Documents prepared by the Contractor or the Contractor's subcontractors in future projects of the Contractor or Contractor's subcontractors with said right and/or limited license to use a portion at Contractor's or Contractor's subcontractor's own risk and without any liability to City. Any modifications made by the City to any of the Contractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the Contractor will be at the City's sole risk and without liability to the Contractor.

12.17 Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

12.18 Any notice required to be given under the Contract Documents shall be sent by certified mail (return receipt requested) or by nationally recognized overnight courier as follows to the City:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and to the Contractor as follows:

Wilco Electrical, LLC
430 Business Park Way
Royal Palm Beach, FL 33411
Attn: Thomas Nemic, President

Either party may amend this provision by written notice to the other party.

12.19 The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes. The Contractor further represents that no person having any such conflicting interest shall be employed for said performance. The Contractor shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of

interest if entered into by the Contractor. The City agrees to notify the Contractor of its opinion within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the City shall so state in the notification and the Contractor shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Contractor under the terms of this Contract.

12.20 The Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, Contractor shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

12.21 This Contract is not intended to be and shall not be construed as an exclusive agreement, and the City may employ additional or other contractors to perform services contemplated by this Contract without liability to the City.

12.22 PUBLIC ENTITY CRIMES. The Contractor acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The Contractor will promptly advise the City if it becomes aware of any violation of this statute.

12.21 PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

12.22 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of all services and work. This includes being responsible for all precautions for safety of, and reasonable protection to prevent damage, injury or loss to employees performing the services and work and other persons who may be affected thereby; the work, materials and equipment incorporated therein; and other property, equipment or materials at the site or adjacent thereto including, without limitation, trees, shrubs, lawns, sidewalks, pavements, roadways or structures and utilities not designated for removal, relocation or replacement in the course of the work. The Contractor shall comply with and give all notices required by applicable laws, statutes, ordinances, rules and regulations bearing on safety of persons or property, or their protection from damage, injury or loss. The Contractor shall implement, erect and maintain reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards reasonably related to the work or which could arise therefrom. The Contractor shall promptly remedy damage and loss (other than covered by applicable insurance) caused in whole or in part by the Contractor or anyone directly or indirectly employed by or utilized by the Contractor in the performance of the work, which is not attributable to the City's negligence.

12.23 The Contractor agrees that, in all matters relating to this Contract, it will be acting as an independent contractor with exclusive control of the manner and means of performing the work, its obligations and tasks in accordance with the requirements of this Contract and the Contract Documents. The Contractor has no authority to act or make any agreements or representations on behalf of the City. This Contract is not intended, and shall not be construed to create, between the City and the Contractor, the relationship of principal and

agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of City.

Article 13. SCRUTINIZED COMPANIES

13.1 CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

13.2 If this Agreement is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

13.3 The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

13.4 The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

13.5 The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

13.6 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

Article 14. E-VERIFY

Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR shall:

14.1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

14.2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, Agreement with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

14.3. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;

14.4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;

14.5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,

14.6. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded a Agreement for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

Remainder of this page intentionally left blank
Signature page follows

IN WITNESS WHEREOF, the City and Contractor have caused this Contract for System Hardening and Reliability Improvements to be executed the day and year shown below.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

By: _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

WILCO ELECTRICAL, LLC

By: _____

Print Name: Thomas Nemic

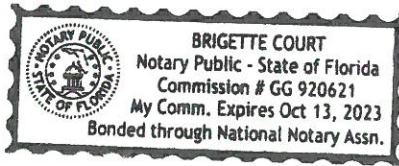
Title: President

[Corporate Seal]

STATE OF Florida)
COUNTY OF Palm Beach)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 15 day of August 2023, by Thomas Nemic, as the President [title] of **Wilco Electrical, LLC**, a Florida Limited Liability Company, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Seal:



Brigette Court
Notary Public Signature

EXHIBIT "A"
SAMPLE WORK ORDER

CONTRACT FOR SYSTEM HARDENING AND RELIABILITY IMPROVEMENTS
WORK ORDER NO. _____

THIS WORK ORDER for System Hardening and Reliability Improvements ("Work Order" hereafter) is made on the _____, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460 ("City" hereafter) and Wilco Electrical, LLC, a Florida Limited Liability Company authorized to do business in State of Florida ("Contractor" hereafter).

1.0 Project Description:

The City desires the Contractor to provide all goods, services, materials and equipment as identified herein related to the System Hardening and Reliability Improvements project generally described as: _____ (the "Project"). The Project is more specifically described in the plans prepared by _____, dated _____, and which are incorporated herein by reference.

2.0 Scope

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with construction services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 Schedule and Liquidated Damages

Substantial completion of all services and work under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City _____ hundred dollars (\$_____.00) for each day that expires after the time specified in this Work Order.

4.0 Compensation and Direct Purchases

This Work Order is issued for a lump sum, not to exceed amount of \$_____ (_____). The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City: _____

_____.

5.0 Project Manager

The Project Manager for the Contractor is _____, phone: _____; email: _____; and, the Project Manager for the City is _____, phone: _____; email: _____.

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations,

explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is issued pursuant to the System Hardening and Reliability Improvements Contract for between the City of Lake Worth Beach and the Contractor, dated _____, ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have made and executed this **Work Order** as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

By: DO NOT SIGN – SAMPLE ONLY _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

WILCO ELECTRICAL, LLC

By: DO NOT SIGN – SAMPLE ONLY _____

[Corporate Seal]

Print Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____ 2023, by _____, as the _____ [title] of **Wilco Electrical, LLC.**, a Florida Limited Liability Company, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Public Signature

Notary Seal:

EXHIBIT "B"
HOURLY BILLING RATES

EQUIPMENT

Professional Overhead Hourly Rate Schedule	
Equipment	Hourly Rate
Truck Pickup 1/4T	12.00
Truck Pickup 1/4T (4X4)	12.00
Truck Pickup 1/2T	12.00
Truck Pickup 1/2T (4X4)	12.00
Truck Pickup 3/4T	12.00
Truck Pickup 3/4T (4X4)	12.00
Truck Pickup 1T	12.00
Truck Pickup 1T (4X4)	12.00
Truck Pickup 2T	18.00
Dump truck	50.00
Flatbed	26.00
Knuckle Bed Winch Medium	48.00
Knuckle Bed Winch Large	75.00
Fuel Truck-Small	n/a
Fuel Truck-Large	n/a
Bucket Truck 35'-49'	35.00
Bucket Truck 35'-49' (4X4)	35.00
Bucket Material Handler 35'-49'	40.00
Bucket Material Handler 35'-49' (4X4)	40.00
Bucket Truck 50'-60'	42.00
Bucket Truck 50'-60' (4X4)	42.00
Bucket Material Handler 50'-60'	42.00
Bucket Material Handler 50'-60' (4X4)	42.00
Bucket Truck 61'-75'	n/a
Bucket Truck 61'-75' (4X4)	n/a
Bucket Material Handler 61'-75'	n/a

Bucket Material Handler 61'-75' (4X4)	n/a
Bucket Truck 76'-93'	n/a
Bucket Truck 76'-93' (4X4)	n/a
Bucket Truck 94'-100'	n/a
Bucket Truck 94'-100' (4X4)	n/a
Bucket Truck 101'-125'	n/a
Bucket Truck 101'-125' (4X4)	n/a
Bucket Truck 126'-150'	n/a
Pole Trailer	18.00
Wire Trailer Single Reel	12.00
Wire Trailer Two Reel	16.00
Wire Trailer Three Reel	18.00
Wire Trailer Four Reel	22.00
Material Trailer 16'-20'	14.00
Tractor Trailer	36.00
Lowboy Trailer 50 TON	45.00
Step deck Trailer	36.00
Trailer Single Axle	12.00
Crane 30 TON	
Crane 55 TON	
Crane 70 TON	
Crane 110 TON	
Digger w Sheave Height 42.5 ft.	45.00
Digger w Sheave Height 45.6 ft.	47.00
Digger w Sheave Height 54.1 ft.	52.00
Digger w Sheave Height 65.1 ft.	55.00
Pressure Digger	70.00
Wire Puller	22.00
UG Wire Puller	18.00
Single Drum Puller Distribution Pull Max. 3500lbs.	14.00
Single Drum Puller Distribution Pull Max. 7500lbs.	18.00
Three Drum Puller	26.00
Four Drum Puller	32.00
V Grove Puller	24.00
Overhead Line Tensioner Max. 3000lbs.	29.00
Directional Bore Machine	145.00
Skid Steer	35.00
Backhoe	40.00
Backhoe with Hammer	55.00
Medium Front Loader	55.00
Large Front Loader	60.00
XL Front Loader	70.00
Small Dozer w/ Winch	n/a
Medium Dozer w/ Winch	n/a
Large Dozer w/ Winch	n/a

XL Dozer w/ Winch	n/a
Mimi Excavator	18.00
Medium Excavator	20.00
Large Excavator	26.00
XL Excavator	n/a
Excavator Hammer	12.00
Under 200 CFM Air Compressor	25.00
200-800 CFM Air Compressor	30.00
801-1600 CFM Air Compressor	75.00
Air Jack Hammer	12.00
Generator 0-10KW	15.00
Generator 11-50KW	25.00
Generator 51-125KW	50.00
Generator 126-400KW	75.00
Generator 401-1000KW	125.00
All Terrain Forklift 40'-70'	60.00
All Terrain Forklift Over 70'	75.00
Hydraulic Press 60 TON	n/a
Pole Jacks w/ press motor	25.00
Ground Pounder	24.00
Plate Compactor	18.00
Hydraulic Compactor	22.00
Clay Plate Compactor	22.00
Compactor	35.00

LABOR

Professional Overhead Hourly Rate Schedule	
Labor	Hourly Rate
Superintendent	145.00
Mechanic	115.00
Project Manager	130.00
General Foreman	125.00
General Foreman OT	180.00
Foreman & Safety Supervisor	120.00
Foreman & Safety Supervisor OT	170.00
Journeyman	112.00
Journeyman OT	152.00
Cable Splicer	110.00
Cable Splicer OT	135.00
Equipment Operator	105.00
Equipment Operator OT	130.00
Heavy Equipment Operator	110.00
Heavy Equipment Operator OT	135.00

Apprentice 1	80.00
Apprentice 1 OT	105.00
Apprentice 2	84.00
Apprentice 2 OT	109.00
Apprentice 3	86.00
Apprentice 3 OT	111.00
Apprentice 4	88.00
Apprentice 4 OT	113.00
Apprentice 5	90.00
Apprentice 5 OT	115.00
Apprentice 6	95.00
Apprentice 6 OT	120.00
Apprentice 7	100.00
Apprentice 7 OT	125.00
Groundman	74.00
Groundman OT	95.00
Trouble Rate	125.00

Name of Bidder: Wilco Electrical llc

Address: 430 Business Park Way, Royal Palm Beach ST Fl Zip 33411

Phone: (305) 742-1752 Email: tom@wilcollc.com

Print Name: Thomas Nemic Title: President

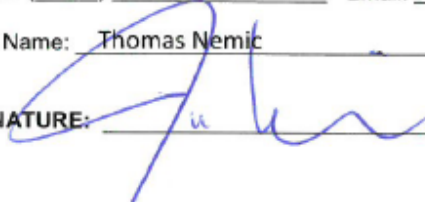
SIGNATURE:  Date: 6/01/2023

EXHIBIT "C"
PUBLIC CONSTRUCTION BOND FORMS

Record and Return to:

CITY OF LAKE WORTH BEACH
PAYMENT AND PERFORMANCE BOND
(Pursuant to sec. 255.05, Fla. Stat.)

Surety Bond No. _____

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR:

Name:

Principal Business Address:

Telephone Number:

SURETY:

Name:

Principal Business Address

Telephone Number:

OWNER:

City of Lake Worth Beach
7 North Dixie Highway
Lake Worth Beach, FL 33460
(561) 586-1600

CONTRACT: System Hardening and Reliability Improvement Program

Contract Work Order No:

Date:

Amount:

Description (Name and Location):

General Description of Work:

BOND

Date (not earlier than Work Order Date):

Amount:

Modifications to this Bond Form:

This Bond is issued in favor of the City of Lake Worth Beach/Owner conditioned on the full and faithful performance of the Contract.

1. Contractor has entered into Project No. _____ with the City for the project titled " _____ " (the "Contract"), with conditions and provisions as are further described in the aforementioned Contract, which Contract, including all of its attachments, exhibits and incorporated documents (hereinafter, collectively, the "Contract Documents") is by reference made a part hereof for the purposes of explaining this bond.

2. Principal and Surety are bound to the Owner in the sum of the Contract Amount set forth above for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

3. THE CONDITION OF THIS BOND is that if Principal:

a. Performs the Work required of and in accordance with the Contract Documents at the times and in the manner prescribed in the Contract Documents, which are made a part of this bond by reference; and

b. In accordance with sec. 255.05 and sec. 337.18, Florida Statutes, promptly makes payments to all persons, defined in sec. 713.01, Florida Statutes, who furnish labor, services or materials for prosecution of the work set forth in the Contract Documents described above; and

c. Pays Owner all losses, damages (including liquidated damages), expenses, costs, and professional fees, including but not limited to attorneys' fees, including appellate proceedings, that Owner sustains because of a default by Principal under the Contract Documents; and

d. Performs the warranty and guarantee of all work and materials furnished under the Contract Documents for the time specified in the Contract Documents, then this bond is void; otherwise it remains in full force.

4. Section 255.05, Fla. Stat., as amended, together with all notice and time provisions contained therein, is incorporated herein by reference.

5. Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in secs. 255.05(2) and (10), Fla. Stat., and those of sec. 337.18, Fla. Stat.

6. Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract Documents or the changes does not affect Surety's obligation under this bond, and Surety waives notice of such changes.

7. Principal and Surety expressly acknowledge that any and all provisions relating to consequential, delay and liquidated damages contained in the contract are expressly covered by and made a part of this Performance, Labor and Material Payment Bond. Principal and Surety acknowledge that any such provisions lie within their obligations and within the policy coverages and limitations of this instrument.

8. Any action brought under this instrument shall be brought in the state court of competent jurisdiction in Palm Beach County, Florida, and not elsewhere.

Surety and Contractor, intending to be legally bound hereby, subject to the terms included herein and as required under Florida Statutes, do each cause this Performance and Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

Signed and sealed this _____ day of _____, 20__.

Witness

Principal

(Corporate Seal)

Title

Witness

Surety

Attorney-in-Fact
(Attach Power of Attorney)

Print Name

(Corporate Seal)

EXHIBIT "D"

Federal Contract Provisions

The Contractor hereby agrees that the following terms, at a minimum, will be incorporated into any subsequent contract resulting from this IFB, which is funded in whole or in part with any federal or other funding where the following terms are applicable:

Equal Employment Opportunity. During the performance of the resulting contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules,

regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. DOJ, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such

Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Clean Air Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Contractor agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Federal Water Pollution Control Act

(1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Contractor agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Suspension and Debarment.

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment.

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Procurement of Recovered materials.

- (i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.
- (ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

Access to Records.

- (1) The Contractor agrees to provide the State of Florida, the CITY, the DOJ Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DOJ Administrator or the Comptroller General of the United States.

DHS Seal, Logo, and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DOJ pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders.

By signing this agreement, the Contractor acknowledges that federal financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, federal policies, procedures, and directives.

No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.

Affirmative Steps. Required Affirmative Steps

If the Contractor intends to subcontract any portion of the work covered by this Contract, the Contractor must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Domestic preferences for procurements.

- (1) As appropriate and to the extent consistent with law, the Contractor should purchase, acquire, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- (2) For purposes of this section:
 - (a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Prohibition on certain telecommunications and video surveillance services or equipment.

- (1) The Contractor is prohibited from obligating or expending loan or grant funds to:
 - (a) Procure or obtain;
 - (b) Extend or renew a contract to procure or obtain; or
 - (c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), the City shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

Compliance with the Davis-Bacon Act.

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.

Current Davis Bacon wage determination for Heavy Construction shall be attached to each Work Order if Federal Funds are utilized.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY
MATTERS - LOWER-TIER COVERED TRANSACTIONS**

This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Contractor is required to confirm that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

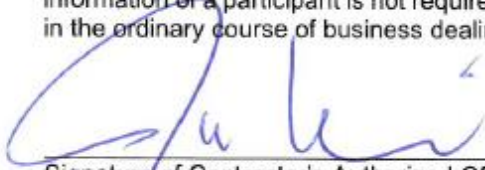
INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Certification, the Contractor, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Contractor to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security,

without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.



Signature of Contractor's Authorized Official

Thomas Nemic, President

Name and Title of Contractor's Authorized Official

6/1/2023

Date

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor WIKO ELECTRICAL certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Thomas Nemic, President

Name and Title of Contractor's Authorized Official

6/1/2023

Date

SYSTEM HARDENING AND RELIABILITY IMPROVEMENTS CONTRACT
IFB # 23-116

THIS CONTRACT for Electric Utility System Hardening and Reliability Improvements (“Contract”) is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Hooper Corporation**, a foreign for profit corporation authorized to do business in the State of Florida (“Contractor”) with its principal office located at 6450 Pederson Crossing Blvd., Deforest, WI 53532 .

WHEREAS, the City issued Invitation for Bids # 23-116 for the construction of numerous hardening and reliability improvements to its electric utility transmission and distribution system (“IFB”); and

WHEREAS, the Contractor submitted its bid in response to the IFB; and

WHEREAS, the City desires to award the IFB to the Contractor on a non-exclusive basis for the construction of certain system hardening and reliability improvements and related services; and

WHEREAS, this Contract may be funded, in whole or in part, by the Federal agencies and work performed pursuant to this Contract or Work Order funded, in whole or in part, by Federal agencies will comply with all applicable Federal laws, Federal regulations, executive orders, policies, procedures, directives and special clauses as provided for in **Exhibit “D”**; and

WHEREAS, the City finds awarding the IFB to the Contractor as described herein serves a valid public purpose.

NOW THEREFORE, the City hereby engages the services of the Contractor, and in consideration of the mutual promises herein contained, the sufficient of which is hereby acknowledged by both parties, the parties agree as follows:

Article 1. GENERAL INFORMATION.

1.1 **Scope of Services/Work.** The Contractor shall provide the services and work requested by the City and required under a City approved work order as described herein. The general nature of the services and work to be provided by the Contractor under this Contract are the construction of hardening and reliability improvements to the City’s electric utility transmission and distribution system.

1.2 **Contract Documents.** The Contract Documents are incorporated herein by reference as if set forth in this Contract and comprise the entire agreement between the City and Contractor. The Contract Documents consist of this Contract, the IFB (including, but not limited to, the documents issued with the IFB as the scope and specifications, the drawings, addenda, attachments and exhibits); and, any duly executed and issued work orders, change orders and Contract amendments relating thereto. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, within five (5) business days and before proceeding shall obtain a written interpretation or clarification. Failure to obtain a written interpretation or clarification will be deemed a waiver of the ambiguity, error or discrepancy by the Contractor. The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

First Priority: Fully executed Change Orders or Contract amendments

Second Priority: This Contract
Third Priority: Fully executed Work Orders
Fourth Priority: IFB

1.3 **Contract Administrator.** Whenever the term Contract Administrator is used herein, it is intended to mean the City Manager or designee, City of Lake Worth Beach, Florida. In the administration of this Contract, all parties may rely upon instructions or determinations made by the Contract Administrator except that all requests and/or determinations that result in an increase in change in time of completion and/or an increase in the contract price shall require a formal change order or contract amendment executed by the City Manager or the City Commission (depending on the authority set forth in the City's Procurement Code).

1.4 **Work Orders.** This Contract does not guarantee that the City will utilize the Contractor in any capacity or for any services hereunder. When the City identifies a need for the Contractor's services, the City will request a proposal from the Contractor to provide the services requested. The City will provide the Contractor with plans and/or specifications in order for the Contractor to develop its proposal. The Contractor's proposal shall be submitted in the format of the sample work order, attached hereto and incorporated herein as **Exhibit "A"** along with a copy of the Contractor's proposal and shall be based on the Hourly Billing Rates attached hereto and incorporated herein as **Exhibit "B"**. Upon receipt of the Contractor's proposed work order and proposal, the City shall decide in its sole discretion whether to award the work order to the Contractor. Depending on the lump sum amount of each work order, the work order may be awarded by the City Manager (if within City Manager's purchasing authority (currently not to exceed \$50,000)) or the City Commission. If the work order is approved by the City, the Contractor shall commence the identified services upon the City's approval of the work order for the services and issuance of a notice to proceed. The City reserves the right to reject any and all proposals submitted by the Contractor. A City-approved work order shall include (by reference) the plans and/or specifications provided by the City to the Contractor.

1.5 **Purchase Orders.** The City's ordering mechanism for individual projects involving urgently required work and/or repairs in the amount of \$15,000 or less under this Agreement will be by a City issued Purchase Order(s); however, the terms and conditions stated in a City Purchase Order(s) shall not apply; the terms and conditions set forth in this Agreement shall apply. CONTRACTOR shall not provide services under this Agreement without a City Purchase Order specifically for the stated services. CONTRACTOR shall provide the amount of requested services and price listed in each Purchase Order and not exceed amounts expressed on any Purchase Order. CONTRACTOR shall be liable for any excess services or costs not specifically stated in the Purchase Order(s). The City's Fiscal Year ends on September 30th of each calendar year. The City cannot authorize the purchase of services beyond September 30th of each calendar year, prior to the annual budget being approved by the City Commission. Additionally, the City must have budgeted appropriate funds for the goods and services in any subsequent Fiscal Year. If the budget is approved for said goods and services, the City will issue a new Purchase Order(s) each Fiscal Year for required and approved services. Services provided pursuant to a City issued Purchase Order(s) under this Agreement shall not exceed \$ 50,000 per year without additional City Commission approval.

1.5 **Term.** The term of this Contract shall be for three (3) years, with an option for two additional twelve (12) month renewals upon the mutual agreement of both parties. The renewal term(s) may be approved by the City Manager on behalf of the CITY. Notwithstanding the foregoing, this Contract may be terminated as set forth in the Contract Documents.

1.6 **Hourly Billing Rates.** The Hourly Billing Rates set forth as **Exhibit "B"** shall remain fixed for the first three (3) years of this Contract. If due to applicable price escalations and/or reductions which impact the Contractor's Hourly Billing Rates, the City and Contractor may execute a written amendment to this Contract to establish new Hourly Billing Rates for the renewal term(s). The City Manager may approve changes in the Hourly Billing Rates based on the recommendation of the City's Electric Utility Director or designee.

Article 2. CONTRACT TIME.

2.1 All services and work to be provided under a City-approved work order shall be provided in a timely manner as time is of the essence under this Contract.

2.2 The Contractor shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the Contractor or its subcontractors (if authorized) and without the Contractor's or subcontractor's fault or negligence. Upon the Contractor's request, the City shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the Contractor and, if the Contractor's delay and failure to timely perform was without it or its subcontractors' fault or negligence, as reasonably determined by the City, the time of completion shall be extended for any reasonable time that the City may reasonably decide; subject to the City's rights to change, terminate, or stop any or all of the work at any time. If the Contractor is delayed at any time in the progress of the work by any act or neglect of the City or its employees, by an approved written change in the scope from the original Contract Documents, or by any other contractor employed by the City, or by changes ordered by the City or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Contractor's reasonable control, or by delay authorized by the City pending negotiation or by any cause which the City shall reasonably decide justifies the delay, then the time of completion shall be extended for any reasonable time the City may reasonably decide. The Contractor must provide the City with written notice of any delay claims and no extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) claim is necessary. With the exception of an approved written change in the scope from the original Contract Documents, the Contractor's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and Contractor specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by Contractor due to a delay in completion of the work. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery or damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the City. Otherwise, the Contractor shall be entitled only to extensions of the Contract Times as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

Article 3. PAYMENT PROCEDURES

3.1 Generally. The Contractor shall submit invoices on a monthly basis detailing all work accomplished in the prior month and all materials installed and used in the work pursuant to City approved work order. Contractor's invoices shall be submitted to:

City of Lake Worth Beach
Attn: Finance Department
7 N. Dixie Highway
Lake Worth Beach, FL 33460

The City's Contract Administrator or designee will review each invoice submitted by the Contractor. If approved, the City will make payment in accordance with the Contract Documents. If not approved, the City will notify the Contractor within twenty (20) business days of the City's receipt and identify the action necessary to correct the invoice or a deficiency.

3.2 Payment to the Contractor shall be made pursuant Florida's Prompt Payment Act (for construction

services), section 218.735, Florida Statutes, except as provided herein. Specifically, the City will withhold five percent (5%) of each payment from a work order to the Contractor as retainage until fifty percent (95%) of the work order price is paid to the Contractor. Upon written request from the Contractor, the Contract Administrator may agree in writing with the Contractor to release a portion of the retainage upon payment of ninety-five percent (95%) of the work order price being paid to the Contractor (not to exceed fifty percent (50%) of the total retainage amount).

3.3 Upon substantial completion, the Contractor and City shall establish a punch-list of items that must be completed by the Contractor prior to the Contractor submitting its final payment request.

3.4 Final Payment. Upon final completion and acceptance of the work in accordance with the Contract Documents (including all punch-list items) and final inspection by the appropriate agency with jurisdiction over the project (if other than the City), the Contractor shall submit a “final invoice” to the City. In order for both parties to close their books and records, the Contractor will clearly state “FINAL” on the Contractor’s final invoice. This certifies that all work under the applicable work order has been properly completed and all charges have been invoiced to the City. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the Contractor. If the Contractor’s Final Invoice is approved as set forth above, the City shall pay the remainder of the work order price including any amount held as retainage.

3.5 Notwithstanding the foregoing, the City shall not be required to pay or release any amount of retainage that is subject of a good faith dispute, the subject of a claim brought pursuant to section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the City.

3.6 Final payment shall not become due until the Contractor and all of its subcontractors submit to the City releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract Documents or otherwise related to the Program.

3.7 Acceptance of final payment by the Contractor or a subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final invoice.

Article 4. SUBCONTRACTS

The Contractor represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The Contractor shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. The Contractor shall comply with all applicable laws in the provision of services under this Contract. The Contractor agrees that it is fully responsible to the City for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City. All of the Contractor’s personnel (and all subcontractors) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of subcontractor or subcontractor’s personnel furnished by the Contractor upon written notice by City to Contractor of the cause for such replacement. All work performed by a subcontractor will be at cost to the City without any mark-up by the Contractor. All subcontractors must provide the same level and type of insurance as required of the Contractor under this Contract prior to commencing any services. The Contractor shall

submit the subcontractors' proof of insurance upon receipt of a notice to proceed.

Article 5. INDEMNITY AND INSURANCE.

The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, Contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor against the City and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. The Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification or any other provision in the Contract Documents shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

INSURANCE: Prior to commencing any work, the Contractor shall provide proof of insurance coverage as required in the IFB. All such insurance policies may not be modified or terminated without the express written authorization of the City. Failure to comply with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this Contract. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the Contract Documents and/or performance of the work. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

Article 6. REIMBURSEMENT OF ENGINEER EXPENSES.

Should the completion of a work order be delayed beyond the specified or adjusted time limit, Contractor shall reimburse the City for all expenses of engineering and inspection incurred by the City during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the City will be charged to Contractor and be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for in an applicable Work Order.

Article 7. PUBLIC CONSTRUCTION BOND.

If the City approves a work order which exceeds \$200,000 in total construction cost, the Contractor must provide the City with a public construction bond in accordance with section 255.05, Florida Statutes. Said bond must be recorded in the Official Records in and for Palm Beach County and a copy of the recorded bond must be provided to the City prior to the Contractor providing any services under the work order. The City reserves the right to request a bond for any work order which is less than \$200,000. The cost of the bond shall be a direct pass through cost to the City without any mark-up by the Contractor.

The public construction bond shall be on forms attached hereto as **Exhibit "C"** or substantially similar as approved by the City. The bond shall be in an amount not less than the total Work Order price and shall incorporate by reference the terms of the Contract Documents in their entirety.

To be acceptable to the City, a Surety Company shall comply with the following provisions:

The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida Department of Insurance, authorizing it to write surety bonds in the State of Florida.

- (a) The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
- (b) The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- (c) The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the Contractor submits its Work Order for City approval.
- (d) The Surety Company shall have at least the ratings of A-/Class V in the latest issue of Best's Key Rating Guide.
- (e) The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
 1. **Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.**
 2. In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or

held subject to the consent of the surety and for the protection of the surety shall be deducted.

Article 8. TERMINATION.

8.1 **TERMINATION BY CITY:** The City may terminate any work order, the Contract and/or the Contract Documents if the Contractor is in default as follows:

- (a) refuses or fails to supply enough properly skilled workers or proper materials to timely and competently complete the work;
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- (c) disregards or takes action contrary to any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- (d) takes action, short of declaring bankruptcy, evidencing insolvency;
- (e) fails to prosecute the services or work in a timely manner and reasonably be unable to reach substantial completion and/or final completion within the timeframe(s) required;
- (f) fails or refuses to provide and/or maintain insurance or proof of insurance as required by the Contract Documents; **or,**
- (g) otherwise is in breach of a provision of the Contract Documents.

When any of the above reasons exist, the City, may without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety (if applicable), written notice and five (5) days to cure, terminate the work order, Contract and/or Contract Documents and may:

- (a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by or paid for by the City; and,
- (b) finish the work by whatever reasonable method the City may deem expedient.

The Contractor and its surety (if any) shall be liable for any damage to the City, including additional attorney and engineering/architectural fees, resulting from the Contractor's termination under this provision by the City, including but not limited to, and any increased costs incurred by the City in completing the work.

When the City terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment, if any, until the work is finished.

Should it be determined by a mediator or a court of competent jurisdiction that the City wrongfully terminated the Contract, then the Contractor agrees to treat such termination as a termination for convenience.

8.2 **TERMINATION BY THE CITY FOR CONVENIENCE**

The City may, at any time, terminate the Contract and Contract Documents for the City's convenience and without cause. Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

- (a) cease operations as directed by the City in the notice;
- (b) take actions necessary, or that the City may direct, for the protection and preservation of the work; and
- (c) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the City's convenience, the Contractor shall be entitled to receive payment for work executed, and costs incurred by reason of such termination including termination payments to subcontractors and demobilization costs.

Article 9. TAXES AND DIRECT PURCHASES.

9.1 TAXES: The City is exempt from payment of Florida State Sales and Use Tax. The Contractor is not authorized to use the City's Tax Exemption Number unless approved in writing.

9.2 DIRECT PURCHASES: For certain projects, the City may seek to make direct purchases of equipment or materials to be used by the Contractor. Pursuant to Section 212.08(6), Florida Statutes, and the Fla. Admin. Code Ann. R. 12A-1.094 and 12A-1.038, the Parties agree to the following procedure regarding the City's direct-purchase from vendors of certain equipment and materials to be used in specific projects:

9.2.1 The City reserves the right, at the City's option, to direct purchase equipment and materials involved in a specific project, including subcontracts, if any so as to save the sales tax which would otherwise have been due with regard to the same. The Contractor and its subcontractors shall comply with the City's direct purchase procedures, including but not limited to those listed below.

9.2.2 As specifically set forth in a City issued work order, within 30 days (or other time as specified in the work order), the Contractor will present a list of direct purchase equipment for the City's consideration which will include the recommended vendors' name; the price quotes from all vendors provided to the Contractor; and, any terms and conditions the Contractor has negotiated with the recommended vendors. The City will then inform the Contractor as to which equipment it will direct purchase. In the event the City fails to exercise its option to direct purchase equipment and identify which equipment is to be purchased by the City within thirty (30) calendar days of receipt of the list from the Contractor, the City shall waive its right to direct purchase any and all equipment to be used in completion of the work under the applicable work order.

9.2.3 The Contractor is responsible for selecting each direct purchase vendor, subject to City approval. The Contractor is responsible for specifications, equipment receipt, inspecting shipments, and assuring that the equipment is in accordance with the work order and the Contractor's specifications. The Contractor is also responsible for providing the City with enough advance notice of when the direct purchase equipment will need to be ordered and delivered. In absence of the Contractor's receipt of a written notice of City's disapproval of a vendor within thirty (30) calendar days of City's receipt of the vendor/material list referenced in 9.2.2, the City shall be deemed to have waived any and all objections thereto.

9.2.4 The Contractor shall retain all responsibility for installing all equipment relating to the work and for maintaining the construction schedule so long as the City timely orders and pays for the correct direct purchase equipment. The City's direct purchase mechanism to effectuate tax savings in no way effects the obligation of the Contractor to meet all of the terms and conditions and all provisions and technical specifications of the Contract Documents. The Contractor shall be responsible for insuring all equipment once the equipment is in its care, custody and control, regardless of whether directly purchased by City.

9.2.5 The City will issue a direct purchase order to the vendor of the direct purchase equipment at the price proposed in the Contractor's or its subcontractor's bid, less sales tax. The City will promptly send a copy of the issued purchaser order to the Contractor.

9.2.6 It will be the Contractor's primary responsibility to properly expedite and follow up on direct

purchase orders, thereby assuring delivery of the equipment as ordered and at the time and place needed by the Contractor to complete the work in accordance with the work order and construction schedule. To the extent required by the Contractor, the City shall cooperate with all requests of the Contractor related to the expedition of and follow up on direct purchase orders.

9.2.7 The Contractor shall take delivery, unload, and install the equipment purchased on the direct purchase order in accordance with the work order and the Contract Documents with the vendor to repair, replace, and make good any defect without cost to the City, until such time as the work has been completed and accepted by City in accordance with the Contract Documents. The City, with assistance from the Contractor, will be responsible for undertaking and completing any returns of direct purchase equipment as requested by the Contractor and working with the vendor to effectuate any credits or warranties for the returned equipment (if applicable). Any returns not replaced shall be credited to City and acknowledged by a supplement to the direct purchase order and, if applicable, amendment to the Contract Sum. The Contractor shall not be responsible for warranting the direct purchase equipment to the City; however, the Contractor shall be responsible for facilitating the vendor's warranty of the direct purchase equipment and the Contractor shall be responsible for warranting the work to install and/or incorporate the equipment. The Contractor shall maintain records of all direct purchases received and incorporated into the work and provide the City with a monthly accounting until all direct purchase items that are received and accepted for inclusion in the specific project.

9.2.8 When delivery of a direct purchase order is complete, or a payment is to be made on a partial shipment, the Contractor will timely submit to City the documentation supporting the equipment received. Invoices for direct purchase orders will be sent by the direct purchase vendor directly to City's Finance Department, with all such invoices addressed to and in the name of the City. The City's Finance Department will forward invoices to the City's Contract Administrator. The City's Contract Administrator will forward the invoices to the Contractor to verify delivery and sign the invoice and associated documentation supporting the amount of the payment. The City will make timely payment to all vendors in compliance with each vendor's payment procedures. The City will take title to all equipment ordered through direct purchase upon or at the time of purchase. The Contractor will assist City in assuring prompt payment by supplying the vendor's FEI numbers, addresses, phone numbers, etc. All payments will be made in accordance with the Florida Prompt Payment Act.

Article 10. CONTRACTOR'S REPRESENTATIONS AND AGREEMENTS.

In order to induce the City to enter into this Contract, the Contractor makes the following representations:

10.1 Contractor has or will familiarize itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work prior to commencing the work under an applicable Work Order. All work shall be performed consistent with all applicable laws and regulations.

10.2 Contractor agrees to be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with the regulations and to reimburse the City for any loss incurred in connection therewith. This compliance provision specifically includes the Contractor's compliance with all applicable standards, orders or regulations including, without limitation, those issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

10.3 Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract.

10.4 The Contractor represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the work required under the Contract Documents. Proof of such licenses and approvals shall be submitted to the City upon request.

Article 11. INFRINGEMENT INDEMNITY.

11.1 The Contractor will defend or settle at its expense a claim or suit brought by a third party against the City arising out of a claim asserting that the services, work, repair, materials or other deliverables (“deliverables” hereafter) provided by the Contractor under the Contract Documents (if any) infringes any U.S. copyright or any U.S. patent or misappropriates a trade secret. The Contractor will indemnify and hold harmless the City against and from damages, costs, and attorneys’ fees, if any and at all levels of trial and appeal or mediation or arbitration, finally awarded in such suit or the amount of the settlement thereof; provided that (i) the Contractor is promptly notified in writing of such claim or suit, (ii) the Contractor will have the sole control of the defense and settlement thereof, and (iii) City furnishes the Contractor, on reasonable request, information available to City for such defense. The City will not admit any such claim without prior consent of the Contractor.

a. In the event of a claim of infringement, the Contractor shall, at its option:

1. procure for City the right to continue using the deliverables provided under the Contract Documents; or
2. replace or modify the deliverables so that the same becomes non-infringing but substantially equivalent in functionality and performance.
3. If neither of the above actions is reasonably feasible, the Contractor will refund to City the fee actually paid by City under the Contract Documents (as amortized on a straight-line basis over the time in which the City was able to use the deliverables.

b. The Contractor will have no obligation under this section for infringement if and to the extent that such claim arises from:

1. modification of the deliverables other than by the Contractor or by its recommendation; or
 2. combination of the deliverables with products other than those supplied by the Contractor;
- and,
3. the alleged infringement or misappropriation relates to such modification or combination.

c. The Contractor will also not have any indemnification obligation with respect to a claim: (i) if it has provided City with reasonable changes that would have avoided the problem and the reasonable changes are not fully implemented by City within a reasonable time or (ii) arising out use of the deliverables not in accordance with the Contract Documents.

d. The Contractor’s obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the Contractor whether such injury or damage shall accrue, or may be discovered, before or after termination or expiration of the Contract Documents.

Article 12. MISCELLANEOUS.

12.1 The City and Contractor each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

12.2 Additional work and/or changes to a work order's price and/or time, is subject to the City's prior written approval. Only the City Manager and City Commission (based on the procurement code) have the authority to approve such additional work and changes.

12.3 The headings contained in this Contract are inserted for convenience of reference only and shall not be a part or control or affect the meaning hereof.

12.4 This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

12.5 This Contract (together with the other Contract Documents) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Contract.

12.6 This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

12.7 This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and (c) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

12.8 This Contract shall create no rights or claims whatsoever in any third party.

12.9 If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

12.10 The effective date of this Contract is the date the Contract is approved by the City Commission.

12.11 Public Records: The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the City.
- (d) Upon completion of this Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION CITY CLERK, (561) 586-1660 OR CITYCLERK@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.

12.12 This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

12.13 In accordance with Palm Beach County ordinance number 2011-009, the Contractor acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

12.14 If any legal action or other proceeding is brought for the enforcement of this Contract or the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract or the Contract Documents, each party shall be responsible for their own attorney's fees at all levels. EACH PARTY ALSO AGREES AND VOLUNTARILY WAIVES ANY RIGHT TO A JURY TRIAL ARISING OUT OF ALLEGED DISPUTE, BREACH, DEFAULT, MISREPRESENTATION OR ANY OTHER CLAIM IN CONNECTION WITH OR ARISING FROM ANY PROVISION OF THIS CONTRACT OR THE CONTRACT DOCUMENTS

12.15 Each of the parties agrees to perform its obligations under the Contract Documents in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of the work and under the Contract Documents.

12.16 All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the Contractor or its subcontractors under this Contract shall be considered a "Work for Hire" and the exclusive property of the City. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, Contractor and Contractor's Subcontractors will assign to the City all right, title and interest in and to Contractor and/or Contractor's Subcontractors' copyright(s) for such Documents. Contractor shall execute and deliver to City such instruments of transfer and take such other action that City may reasonable request, including, without limitation, executing and filing, at City's expense, copyright applications, assignments and other documents required for the protection of City's right to such Documents. The Contractor shall retain copies of the Documents for a period of three (3) years from the date of completion of the Program. The City grants to the Contractor and Contractor's subcontractors the right and/or limited license to use a portion of the Documents prepared by the Contractor or the Contractor's subcontractors in future projects of the Contractor or Contractor's subcontractors with said right and/or limited license to use a portion at Contractor's or Contractor's subcontractor's own risk and without any liability to City. Any modifications made by the City to any of the Contractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the Contractor will be at the City's sole risk and without liability to the Contractor.

12.17 Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

12.18 Any notice required to be given under the Contract Documents shall be sent by certified mail (return receipt requested) or by nationally recognized overnight courier as follows to the City:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and to the Contractor as follows:

Hooper Corporation
6450 Pederson Crossing Blvd.
Deforest, WI 53532
Attn: Bruce Cram, Vice President

Either party may amend this provision by written notice to the other party.

12.19 The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes. The Contractor further represents that no person having any such conflicting interest shall be employed for said performance. The Contractor shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of

interest if entered into by the Contractor. The City agrees to notify the Contractor of its opinion within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the City shall so state in the notification and the Contractor shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Contractor under the terms of this Contract.

12.20 The Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, Contractor shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

12.21 This Contract is not intended to be and shall not be construed as an exclusive agreement, and the City may employ additional or other contractors to perform services contemplated by this Contract without liability to the City.

12.22 PUBLIC ENTITY CRIMES. The Contractor acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The Contractor will promptly advise the City if it becomes aware of any violation of this statute.

12.21 PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

12.22 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of all services and work. This includes being responsible for all precautions for safety of, and reasonable protection to prevent damage, injury or loss to employees performing the services and work and other persons who may be affected thereby; the work, materials and equipment incorporated therein; and other property, equipment or materials at the site or adjacent thereto including, without limitation, trees, shrubs, lawns, sidewalks, pavements, roadways or structures and utilities not designated for removal, relocation or replacement in the course of the work. The Contractor shall comply with and give all notices required by applicable laws, statutes, ordinances, rules and regulations bearing on safety of persons or property, or their protection from damage, injury or loss. The Contractor shall implement, erect and maintain reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards reasonably related to the work or which could arise therefrom. The Contractor shall promptly remedy damage and loss (other than covered by applicable insurance) caused in whole or in part by the Contractor or anyone directly or indirectly employed by or utilized by the Contractor in the performance of the work, which is not attributable to the City's negligence.

12.23 The Contractor agrees that, in all matters relating to this Contract, it will be acting as an independent contractor with exclusive control of the manner and means of performing the work, its obligations and tasks in accordance with the requirements of this Contract and the Contract Documents. The Contractor has no authority to act or make any agreements or representations on behalf of the City. This Contract is not intended, and shall not be construed to create, between the City and the Contractor, the relationship of principal and

agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of City.

Article 13. SCRUTINIZED COMPANIES

13.1 CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

13.2 If this Agreement is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

13.3 The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

13.4 The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

13.5 The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

13.6 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

Article 14. E-VERIFY

Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR shall:

14.1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

14.2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, Agreement with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

14.3. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;

14.4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;

14.5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,

14.6. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded a Agreement for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

Remainder of this page intentionally left blank
Signature page follows

IN WITNESS WHEREOF, the City and Contractor have caused this Contract for System Hardening and Reliability Improvements to be executed the day and year shown below.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

By: _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: **HOOPER CORPORATION**

By: BC

Print Name: Bruce Cram

Title: Vice President

[Corporate Seal of Hooper Corporation]
STATE OF Wisconsin)
COUNTY OF Dane)



THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 9th day of August 2023, by Bruce Cram, as the Vice President [title] of **Hooper Corporation**, a foreign for profit Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Seal:

Rosemary L. Temby
Notary Public Signature
My Commission Expires: 02/01/2027

EXHIBIT "A"
SAMPLE WORK ORDER

CONTRACT FOR SYSTEM HARDENING AND RELIABILITY IMPROVEMENTS
WORK ORDER NO. _____

THIS WORK ORDER for System Hardening and Reliability Improvements ("Work Order" hereafter) is made on the _____, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460 ("City" hereafter) and **Hooper Corporation**, a foreign for profit corporation authorized to do business in State of Florida ("Contractor" hereafter).

1.0 Project Description:

The City desires the Contractor to provide all goods, services, materials and equipment as identified herein related to the System Hardening and Reliability Improvements project generally described as: _____ (the "Project"). The Project is more specifically described in the plans prepared by _____, dated _____, and which are incorporated herein by reference.

2.0 Scope

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with construction services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 Schedule and Liquidated Damages

Substantial completion of all services and work under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City _____ hundred dollars (\$_____.00) for each day that expires after the time specified in this Work Order.

4.0 Compensation and Direct Purchases

This Work Order is issued for a lump sum, not to exceed amount of \$_____ (_____). The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City: _____

_____.

5.0 Project Manager

The Project Manager for the Contractor is _____, phone: _____; email: _____; and, the Project Manager for the City is _____, phone: _____; email: _____.

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations,

explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is issued pursuant to the System Hardening and Reliability Improvements Contract for between the City of Lake Worth Beach and the Contractor, dated _____, ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

By: DO NOT SIGN – SAMPLE ONLY _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: **HOOPER CORPORATION**

By: DO NOT SIGN – SAMPLE ONLY _____

[Corporate Seal]

Print Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____ 2023, by _____, as the _____ [title] of **Hooper Corporation**, a foreign profit Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Public Signature

Notary Seal:

EXHIBIT "B"
HOURLY BILLING RATES

EQUIPMENT

Professional Overhead Hourly Rate Schedule	
Equipment	Hourly Rate
Truck Pickup 1/4T	\$18.25
Truck Pickup 1/4T (4X4)	\$19.75
Truck Pickup 1/2T	\$18.25
Truck Pickup 1/2T (4X4)	\$19.75
Truck Pickup 3/4T	\$18.25
Truck Pickup 3/4T (4X4)	\$19.75
Truck Pickup 1T	\$23.75
Truck Pickup 1T (4X4)	\$25.75
Truck Pickup 2T	\$28.95
Dump truck	\$35.00
Flatbed	\$30.50
Knuckle Bed Winch Medium	N/A
Knuckle Bed Winch Large	N/A
Fuel Truck-Small	N/A
Fuel Truck-Large	N/A
Bucket Truck 35'-49'	\$37.75
Bucket Truck 35'-49' (4X4)	\$37.75
Bucket Material Handler 35'-49'	\$37.75
Bucket Material Handler 35'-49' (4X4)	\$37.75
Bucket Truck 50'-60'	\$46.00
Bucket Truck 50'-60' (4X4)	\$46.00
Bucket Material Handler 50'-60'	\$46.00
Bucket Material Handler 50'-60' (4X4)	\$46.00
Bucket Truck 61'-75'	\$46.50
Bucket Truck 61'-75' (4X4)	\$46.50
Bucket Material Handler 61'-75'	\$56.97

Bucket Material Handler 61'-75' (4X4)	\$56.97
Bucket Truck 76'-93'	\$76.50
Bucket Truck 76'-93' (4X4)	\$76.50
Bucket Truck 94'-100'	\$92.28
Bucket Truck 94'-100' (4X4)	\$92.28
Bucket Truck 101'-125'	\$166.25
Bucket Truck 101'-125' (4X4)	\$166.25
Bucket Truck 126'-150'	Rental
Pole Trailer	\$8.28
Wire Trailer Single Reel	\$5.25
Wire Trailer Two Reel	\$6.00
Wire Trailer Three Reel	\$8.50
Wire Trailer Four Reel	\$11.00
Material Trailer 16'-20'	\$7.25
Tractor Trailer	\$17.66
Lowboy Trailer 50 TON	\$26.90
Step deck Trailer	\$20.97
Trailer Single Axle	\$5.25
Crane 30 TON	\$85.18
Crane 55 TON	\$145.72
Crane 70 TON	Rental
Crane 110 TON	Rental
Digger w Sheave Height 42.5 ft.	\$37.15
Digger w Sheave Height 45.6 ft.	\$50.00
Digger w Sheave Height 54.1 ft.	\$52.85
Digger w Sheave Height 65.1 ft.	\$60.25
Pressure Digger	\$108.25
Wire Puller	NA
UG Wire Puller	\$47.58
Single Drum Puller Distribution Pull Max. 3500lbs.	\$29.25
Single Drum Puller Distribution Pull Max. 7500lbs.	\$39.53
Three Drum Puller	NA
Four Drum Puller	\$46.64
V Grove Puller	\$126.15
Overhead Line Tensioner Max. 3000lbs.	\$65.75
Directional Bore Machine	Rental
Skid Steer	\$45.30
Backhoe	\$43.73
Backhoe with Hammer	Rental
Medium Front Loader	\$39.16
Large Front Loader	\$80.10
XL Front Loader	\$98.50
Small Dozer w/ Winch	\$58.44
Medium Dozer w/ Winch	\$71.67
Large Dozer w/ Winch	Rental

XL Dozer w/ Winch	Rental
Mimi Excavator	\$37.13
Medium Excavator	\$40.32
Large Excavator	\$63.47
XL Excavator	Rental
Excavator Hammer	Rental
Under 200 CFM Air Compressor	\$14.40
200-800 CFM Air Compressor	Rental
801-1600 CFM Air Compressor	Rental
Air Jack Hammer	Rental
Generator 0-10KW	\$5.00
Generator 11-50KW	\$12.91
Generator 51-125KW	Rental
Generator 126-400KW	Rental
Generator 401-1000KW	Rental
All Terrain Forklift 40'-70'	\$32.62
All Terrain Forklift Over 70'	\$54.73
Hydraulic Press 60 TON	\$2.50
Pole Jacks w/ press motor	\$2.75
Ground Pounder	\$1.50
Plate Compactor	\$2.25
Hydraulic Compactor	\$4.75
Clay Plate Compactor	\$5.00
Compactor	\$7.50

LABOR

Professional Overhead Hourly Rate Schedule	
Labor	Hourly Rate
Superintendent	\$141.78
Mechanic	\$ 90.40
Project Manager	\$ 88.94
General Foreman	\$135.03
General Foreman OT	\$177.02
Foreman & Safety Supervisor	\$111.35
Foreman & Safety Supervisor OT	\$133.18
Journeyman	\$103.16
Journeyman OT	\$133.18
Cable Splicer	\$107.45
Cable Splicer OT	\$138.83
Equipment Operator	\$ 85.40
Equipment Operator OT	\$110.54
Heavy Equipment Operator	\$101.81
Heavy Equipment Operator OT	\$133.18

Apprentice 1	\$ 68.44
Apprentice 1 OT	\$ 87.13
Apprentice 2	\$ 72.53
Apprentice 2 OT	\$ 92.77
Apprentice 3	\$ 76.62
Apprentice 3 OT	\$ 98.42
Apprentice 4	\$ 80.75
Apprentice 4 OT	\$104.12
Apprentice 5	\$ 84.84
Apprentice 5 OT	\$109.76
Apprentice 6	\$ 88.94
Apprentice 6 OT	\$115.42
Apprentice 7	\$ 93.02
Apprentice 7 OT	\$121.05
Groundman	\$ 65.96
Groundman OT	\$ 83.71
Trouble Rate	\$144.48

Name of Bidder: Hooper Corporation

Address: 6450 Pederson Crossing Blvd., DeForest ST WI Zip 53532

Phone: (608) 249-0451 Email: bgram@hoopercorp.com

Print Name: Bruce Cram Title: Vice President

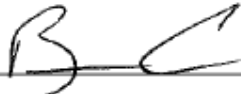
SIGNATURE:  Date: 5/31/2023

EXHIBIT "C"
PUBLIC CONSTRUCTION BOND FORMS

Record and Return to:

CITY OF LAKE WORTH BEACH
PAYMENT AND PERFORMANCE BOND
(Pursuant to sec. 255.05, Fla. Stat.)

Surety Bond No. _____

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR:

Name:

Principal Business Address:

Telephone Number:

SURETY:

Name:

Principal Business Address

Telephone Number:

OWNER:

City of Lake Worth Beach
7 North Dixie Highway
Lake Worth Beach, FL 33460
(561) 586-1600

CONTRACT: System Hardening and Reliability Improvement Program

Contract Work Order No:

Date:

Amount:

Description (Name and Location):

General Description of Work:

BOND

Date (not earlier than Work Order Date):

Amount:

Modifications to this Bond Form:

This Bond is issued in favor of the City of Lake Worth Beach/Owner conditioned on the full and faithful performance of the Contract.

1. Contractor has entered into Project No. _____ with the City for the project titled " _____ " (the "Contract"), with conditions and provisions as are further described in the aforementioned Contract, which Contract, including all of its attachments, exhibits and incorporated documents (hereinafter, collectively, the "Contract Documents") is by reference made a part hereof for the purposes of explaining this bond.

2. Principal and Surety are bound to the Owner in the sum of the Contract Amount set forth above for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

3. THE CONDITION OF THIS BOND is that if Principal:

a. Performs the Work required of and in accordance with the Contract Documents at the times and in the manner prescribed in the Contract Documents, which are made a part of this bond by reference; and

b. In accordance with sec. 255.05 and sec. 337.18, Florida Statutes, promptly makes payments to all persons, defined in sec. 713.01, Florida Statutes, who furnish labor, services or materials for prosecution of the work set forth in the Contract Documents described above; and

c. Pays Owner all losses, damages (including liquidated damages), expenses, costs, and professional fees, including but not limited to attorneys' fees, including appellate proceedings, that Owner sustains because of a default by Principal under the Contract Documents; and

d. Performs the warranty and guarantee of all work and materials furnished under the Contract Documents for the time specified in the Contract Documents, then this bond is void; otherwise it remains in full force.

4. Section 255.05, Fla. Stat., as amended, together with all notice and time provisions contained therein, is incorporated herein by reference.

5. Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in secs. 255.05(2) and (10), Fla. Stat., and those of sec. 337.18, Fla. Stat.

6. Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract Documents or the changes does not affect Surety's obligation under this bond, and Surety waives notice of such changes.

7. Principal and Surety expressly acknowledge that any and all provisions relating to consequential, delay and liquidated damages contained in the contract are expressly covered by and made a part of this Performance, Labor and Material Payment Bond. Principal and Surety acknowledge that any such provisions lie within their obligations and within the policy coverages and limitations of this instrument.

8. Any action brought under this instrument shall be brought in the state court of competent jurisdiction in Palm Beach County, Florida, and not elsewhere.

Surety and Contractor, intending to be legally bound hereby, subject to the terms included herein and as required under Florida Statutes, do each cause this Performance and Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

Signed and sealed this _____ day of _____, 20__.

Witness

Principal

(Corporate Seal)

Title

Witness

Surety

Attorney-in-Fact
(Attach Power of Attorney)

Print Name

(Corporate Seal)

EXHIBIT "D"

Federal Contract Provisions

The Contractor hereby agrees that the following terms, at a minimum, will be incorporated into any subsequent contract resulting from this IFB, which is funded in whole or in part with any federal or other funding where the following terms are applicable:

Equal Employment Opportunity. During the performance of the resulting contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules,

regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. DOJ, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such

Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Clean Air Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Contractor agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Federal Water Pollution Control Act

(1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Contractor agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

Suspension and Debarment.

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment.

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Procurement of Recovered materials.

- (i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.
- (ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

Access to Records.

- (1) The Contractor agrees to provide the State of Florida, the CITY, the DOJ Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DOJ Administrator or the Comptroller General of the United States.

DHS Seal, Logo, and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DOJ pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders.

By signing this agreement, the Contractor acknowledges that federal financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, federal policies, procedures, and directives.

No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.

Affirmative Steps. Required Affirmative Steps

If the Contractor intends to subcontract any portion of the work covered by this Contract, the Contractor must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Domestic preferences for procurements.

- (1) As appropriate and to the extent consistent with law, the Contractor should purchase, acquire, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- (2) For purposes of this section:
 - (a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Prohibition on certain telecommunications and video surveillance services or equipment.

- (1) The Contractor is prohibited from obligating or expending loan or grant funds to:
 - (a) Procure or obtain;
 - (b) Extend or renew a contract to procure or obtain; or
 - (c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), the City shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

Compliance with the Davis-Bacon Act.

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.

Current Davis Bacon wage determination for Heavy Construction shall be attached to each Work Order if Federal Funds are utilized.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - LOWER-TIER COVERED TRANSACTIONS

This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Contractor is required to confirm that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Certification, the Contractor, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Contractor to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification

is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor _____ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

City of Lake Worth Beach

Compliance Checklist & Bid Tab

IFB#23-116 System Hardening Reliability Improvement Program



	Hooper Corporation	Michels Power, Inc	Power Standard, LLC	Primoris T&D Services, LLC	The L.E. Myers Co.	Wico Electrical, LLC
Bid Package Cover Sheet (B1)	submitted	submitted	submitted	submitted	submitted	submitted
Minimum Qualifications Bidder's Minimum Qualifications with Qualification Questionnaire and Appendix 1 (B2)	submitted	submitted	submitted	submitted	submitted	submitted
Bid (B3)	submitted	submitted	submitted	submitted	submitted	submitted
Schedule of Unit Prices (B4)	submitted	submitted	submitted	submitted	submitted	submitted
Schedule of Unit Prices in Excel USB Drive (B4A)	submitted	submitted	submitted	not submitted	submitted	submitted
Substitution Sheet (B5)	submitted	submitted	submitted	submitted	submitted	submitted
Schedule of Subcontractors (B6)	submitted	submitted	submitted	submitted	submitted	submitted
Contractor Verification Form (B7)	submitted	submitted	submitted	submitted	submitted	submitted
Reference List (B8)	submitted	submitted	submitted	submitted	submitted	submitted
Non-Collusion Affidavit (B9)	submitted	submitted	submitted	submitted	submitted	submitted
Drug Free Certification (B10)	submitted	submitted	submitted	submitted	submitted	submitted
Campaing Contribution Statement (B11)	submitted	submitted	submitted	submitted	submitted	submitted
Scrutinized Companies Certification (B12)	submitted	submitted	submitted	submitted	submitted	submitted
Veteran Owned Enterprise, and Small Business Preference Form (B13)	n/a	n/a	n/a	n/a	n/a	n/a
Certification regarding Debarments, Suspension and Other Responsibility Matters (B14)	submitted	submitted	submitted	submitted	submitted	submitted
Agreements (B15)	submitted	submitted	submitted	submitted	submitted	submitted
Bid Bond	submitted	submitted	submitted	submitted	submitted	submitted
Comments:				Conditional bid pricing valid only 90 days/adjusted annually.		
Compliance :	Compliant	Compliant	Compliant	Not Compliant (conditional pricing)	Compliant	Compliant

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Electric Utility

TITLE:

Approval of contracts with NuCAT Corp., TeamWorknet, Inc and Powerserve Technologies, Inc for professional services to perform electrical equipment inspection, testing, repair and maintenance for the City's Electric Utility

SUMMARY:

The Contracts have been negotiated with NuCAT Corp., TeamWorknet, Inc and Powerserve Technologies, Inc to provide professional services to perform inspections, testing, repair and preventative maintenance for various electrical components located at the City's substations and Power Plant on an "as-needed" basis to improve electric system reliability for a term of 3 years with possibility of extension for additional two (2), one (1) year renewal terms.

BACKGROUND AND JUSTIFICATION:

The City issued a Request for Proposals (RFP 23-206) to provide Letters of Interest and Proposals from professional companies/firms to perform inspections, testing, repair and preventative maintenance for various electrical components located at the City's substations and Power Plant on an "as-needed" basis. Having the expertise of NuCAT Corp., TeamWorknet, Inc. and Powerserve Technologies, Inc. available to the City's Electric Utility will expedite the process to complete equipment inspection, testing, repair and preventative maintenance in a timely manner as well as making recommendations on repair or replacement of aged equipment. NuCAT Corp, TeamWorknet, Inc and Powerserve Technologies, Inc were selected under RFP 23-206 for Electrical Equipment Inspection, Testing, Repair and Maintenance Contracts and will be issued work orders, as needed, for the professional services under this Contract, in accordance with the City's procurement Code and policy.

MOTION:

Move to approve/disapprove the Contracts with NuCAT Corp., TeamWorknet, Inc. and Powerserve Technologies, Inc. for professional services to perform electrical equipment inspection, testing, repair and maintenance for the City's Electric Utility systems and facilities.

ATTACHMENT(S):

Fiscal Impact Analysis
NuCAT Corp. Contract
TeamWorknet, Inc. Contract
Powerserve Technologies, Inc. Contract
Bid tab

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Current Appropriation	0	0	0	0	0
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions					
	0	0	0	0	0

Contract Award - Existing Appropriation	
	Expenditure
Department	Electric Utility
Division	Transmission and Distribution
GL Description	Improve Other than Build / Infrastructure
GL Account Number	421-6034-531-63.15 and 421-6034-531-46.71
Project Number	
Requested Funds	

**ELECTRICAL EQUIPMENT INSPECTION, TESTING,
REPAIR, AND MAINTENANCE CONTRACT
RFP #23-206**

THIS CONTRACT for Electrical Equipment Inspection, Testing, Repair, and Maintenance (“Contract”) is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Nucat Corporation**, a corporation authorized to do business in the State of Florida (“Contractor”) with its principal office located at 657 Rambling Dr. Cir., Wellington, FL 33414.

WHEREAS, the City issued Request for Proposals #23-206 for the Electrical Equipment Inspection, Testing, Repair, and Maintenance (“RFP”); and

WHEREAS, the Contractor submitted its proposal in response to the RFP; and

WHEREAS, the City desires to award the RFP to the Contractor on a non-exclusive basis for the Electrical Equipment Inspection, Testing, Repair, and Maintenance; and

WHEREAS, the City finds awarding the RFP to the Contractor as described herein serves a valid public purpose.

NOW THEREFORE, the City hereby engages the services of the Contractor, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

Article 1. GENERAL INFORMATION.

1.1 **Scope of Services/Work.** The Contractor shall provide the services and work requested by the City and required under a City approved work order or purchase order as described herein. The general nature of the services and work to be provided by the Contractor under this Contract are the electrical Equipment Inspection, Testing, Repair, and Maintenance.

1.2 **Contract Documents.** The Contract Documents are incorporated herein by reference as if set forth in this Contract and comprise the entire agreement between the City and Contractor. The Contract Documents consist of this Contract, the RFP (including, but not limited to, the documents issued with the RFP as the scope and specifications, the drawings, addenda, attachments and exhibits); and, any duly executed and City issued work orders, purchase orders, and change orders, and any Contract amendments signed by the parties. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, within five (5) business days and before proceeding shall obtain a written interpretation or clarification. Failure to obtain a written interpretation or clarification will be deemed a waiver of the ambiguity, error or discrepancy by the Contractor. The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

First Priority:	Fully executed Change Orders or Contract amendments
Second Priority:	This Contract
Third Priority:	Fully executed and City issued Work Orders or Purchase Orders
Fourth Priority:	RFP

1.3 **Contract Administrator.** Whenever the term Contract Administrator is used herein, it is intended to mean **the City Manager or designee, City of Lake Worth Beach, Florida**. In the administration of this

Contract, all parties may rely upon instructions or determinations made by the Contract Administrator except that all requests and/or determinations that result in an increase in change in time of completion and/or an increase in the contract price shall require a formal change order or contract amendment executed by the City Manager or the City Commission (depending on the authority set forth in the City's Procurement Code).

1.4 **Work Orders.** This Contract does not guarantee that the City will utilize the Contractor in any capacity or for any services hereunder. When the City identifies a need for the Contractor's services, the City will request a proposal from the Contractor to provide the services requested. The City will provide the Contractor with plans and/or specifications in order for the Contractor to develop its proposal. The Contractor's proposal shall be submitted in the format of the sample work order, attached hereto and incorporated herein as **Exhibit "A"** along with a copy of the Contractor's proposal and shall be based on the Hourly Billing Rates attached hereto and incorporated herein as **Exhibit "B"**. Upon receipt of the Contractor's proposed work order and proposal, the City shall decide in its sole discretion whether to award the work order to the Contractor. Depending on the lump sum amount of each work order, the work order may be awarded by the City Manager (if within City Manager's purchasing authority (currently not to exceed \$50,000)) or the City Commission. If the work order is approved by the City, the Contractor shall commence the identified services upon the City's approval of the work order for the services and issuance of a notice to proceed. The City reserves the right to reject any and all proposals submitted by the Contractor. A City-approved work order shall include (by reference) the plans and/or specifications provided by the City to the Contractor. The Contractor shall not provide services under this Contract without a City issued Work Order (or Purchase Order as discussed below) specifically for the stated services.

1.5 **Purchase Order(s).** The City's ordering mechanism for individual projects involving urgently required work and/or repairs in the amount of \$15,000 or less under this Contract will be by a City issued Purchase Order(s); however, the terms and conditions stated in a City Purchase Order(s) shall not apply; the terms and conditions set forth in this Contract shall apply. The Contractor shall not provide services under this Contract without a City Purchase Order specifically for the stated services. The Contractor shall provide the amount of requested services and price listed in each Purchase Order and not exceed amounts expressed on any Purchase Order. CONTRACTOR shall be liable for any excess services or costs not specifically stated in the Purchase Order(s). Services provided pursuant to a City issued Purchase Order(s) under this Contract shall not exceed \$50,000 per year without additional City Commission approval.

1.6 **FISCAL YEAR.** The City's Fiscal Year ends on September 30th of each calendar year. The City cannot authorize the purchase of services beyond September 30th of each calendar year, prior to the annual budget being approved by the City Commission. Additionally, the City must have budgeted appropriate funds for the goods and services in any subsequent Fiscal Year. If the budget is approved for said goods and services, the City will issue a new Work Order(s) or Purchase Order(s) each Fiscal Year for required and approved services.

1.7 **Term.** The term of this Contract shall be for three (3) consecutive years, with possibility of extension for additional two (2), one (1) year renewal terms upon the mutual agreement of both parties. The renewal term(s) may be approved by the City Manager on behalf of the CITY. Notwithstanding the foregoing, this Contract may be terminated as set forth in the Contract Documents.

1.8 **Hourly Billing Rates.** The Hourly Billing Rates set forth as **Exhibit "B"** shall remain fixed for the first three (3) years of this Contract. If due to applicable price escalations and/or reductions which impact the Contractor's Hourly Billing Rates, the City and Contractor may execute a written amendment to this Contract to establish new Hourly Billing Rates for the renewal term(s). The City Manager may approve changes in the Hourly Billing Rates based on the recommendation of the City's Electric Utility Director or designee.

Article 2. CONTRACT TIME.

2.1 All services and work to be provided under a City-approved work order shall be provided in a timely

manner as time is of the essence under this Contract.

2.2 The Contractor shall not be considered in default by reason of a delay in timely performance if such delay and failure arise out of causes reasonably beyond the control of the Contractor or its subcontractors (if authorized) and without the Contractor's or subcontractor's fault or negligence. Upon the Contractor's request, the City shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the Contractor and, if the Contractor's delay and failure to timely perform was without it or its subcontractors' fault or negligence, as reasonably determined by the City, the time of completion shall be extended for any reasonable time that the City may reasonably decide; subject to the City's rights to change, terminate, or stop any or all of the work at any time. If the Contractor is delayed at any time in the progress of the work by any act or neglect of the City or its employees, by an approved written change in the scope from the original Contract Documents, or by any other contractor employed by the City, or by changes ordered by the City or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Contractor's reasonable control, or by delay authorized by the City pending negotiation or by any cause which the City shall reasonably decide justifies the delay, then the time of completion shall be extended for any reasonable time the City may reasonably decide. The Contractor must provide the City with written notice of any delay claims and no extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) claim is necessary. With the exception of an approved written change in the scope from the original Contract Documents, the Contractor's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and Contractor specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by Contractor due to a delay in completion of the work. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery or damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the City. Otherwise, the Contractor shall be entitled only to extensions of the Contract Times as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

Article 3. PAYMENT PROCEDURES

3.1 Generally. The Contractor shall submit invoices on a monthly basis detailing all work accomplished in the prior month and all materials installed and used in the work pursuant to City approved work order or Contractor's invoices shall be submitted to:

City of Lake Worth Beach
Attn: Finance Department
7 N. Dixie Highway
Lake Worth Beach, FL 33460

The City's Contract Administrator or designee will review each invoice submitted by the Contractor. If approved, the City will make payment in accordance with the Contract Documents. If not approved, the City will notify the Contractor within twenty (20) business days of the City's receipt and identify the action necessary to correct the invoice or a deficiency.

3.2 Payment to the Contractor shall be made pursuant Florida's Prompt Payment Act (for construction services), section 218.735, Florida Statutes (2023), except as provided herein. Specifically, the City will withhold five percent (5%) of each payment from a City issued work order to the Contractor as retainage until fifty percent (50%) of the work is completed by the Contractor. After fifty percent (50%) of the work is completed, upon written request from the Contractor, the Contract Administrator may agree in writing with the Contractor to release a portion of the retainage not to exceed fifty percent (50%) of the total retainage amount.

Within twenty (20) business days of the finalization of the punch-list described below and upon receipt of a payment request from the Contractor, the City will pay the Contractor all retainage held less an amount equal to 150% of the estimated cost to complete the items on the list. Upon completion of all items on the finalized punch-list, the Contractor may submit a request for release of all retainage.

3.3 In accordance with section 218.735(7), Florida Statutes (2023), at least five (5) days prior to reaching substantial completion, the Contractor shall create a proposed punch-list of items that must be completed by the Contractor prior to the Contractor submitting its final payment request. The Contractor's proposed punch-list must include all items of work which remain to be completed and the estimated cost to complete each work item on the list. Upon receipt of the Contractor's proposed punch-list, the City will have ten (10) days to review, make modifications, or agree to the proposed punch-list. If the City does not make any modifications to the Contractor's proposed punch-list within ten (10) days of receipt, the proposed punch-list will be deemed accepted by the City. The City's Contract Administrator or designee will resolve any disputes in the punch-list and determine the final punch-list for the parties within 30-days of the Contractor reaching substantial completion. Once the punch-list is accepted by the City and finalized by the City's Contract Administrator or designee, the Contractor shall have five (5) days to complete all items on the finalized punch-list. The failure of either party to include any corrective work or pending items on the finalized punch-list does not alter the responsibility of the Contractor to complete all construction services purchased under the applicable work order. The Contractor's proposed punch-list and modifications by the City may be by informal written notice (e.g., email, fax, or hand-delivery); however, proof of delivery shall be kept by the party providing the informal written notice to the other party.

3.4 Final Payment. Upon final completion and acceptance of the work in accordance with the Contract Documents (including all punch-list items) and final inspection by the appropriate agency with jurisdiction over the project (if other than the City), the Contractor shall submit a "final invoice" to the City. In order for both parties to close their books and records, the Contractor will clearly state "FINAL" on the Contractor's final invoice. This certifies that all work under the applicable work order has been properly completed and all charges have been invoiced to the City. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the Contractor. If the Contractor's Final Invoice is approved as set forth above, the City shall pay the remainder of the work order price including any amount held as retainage.

3.5 Notwithstanding the foregoing, the City shall not be required to pay or release any amount of retainage that is subject of a good faith dispute made in writing, the subject of a claim brought pursuant to section 255.05, Florida Statutes, or otherwise the subject of a written claim or demand by the City.

3.6 Final payment shall not become due until the Contractor and all of its subcontractors submit to the City releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract Documents or otherwise related to the Program.

3.7 Acceptance of final payment by the Contractor or a subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final invoice.

Article 4. SUBCONTRACTS

The Contractor represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The Contractor shall furnish

services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. The Contractor shall comply with all applicable laws in the provision of services under this Contract. The Contractor agrees that it is fully responsible to the City for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City. All of the Contractor's personnel (and all subcontractors) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of subcontractor or subcontractor's personnel furnished by the Contractor upon written notice by City to Contractor of the cause for such replacement. All work performed by a subcontractor will be at cost to the City without any mark-up by the Contractor. All subcontractors must provide the same level and type of insurance as required of the Contractor under this Contract prior to commencing any services. The Contractor shall submit the subcontractors' proof of insurance upon receipt of a notice to proceed.

Article 5. INDEMNITY AND INSURANCE.

5.1 The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, Contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor against the City and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third-party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. The Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification or any other provision in the Contract Documents shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

5.2 INSURANCE: Prior to commencing any work, the Contractor shall provide proof of insurance coverage

as required in the RFP. All such insurance policies may not be modified or terminated without the express written authorization of the City. Failure to comply with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this Contract. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the Contract Documents and/or performance of the work. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

Article 6. REIMBURSEMENT OF ENGINEER EXPENSES.

Should the completion of a work order be delayed beyond the specified or adjusted time limit, Contractor shall reimburse the City for all expenses of engineering and inspection incurred by the City during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the City will be charged to Contractor and be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for in an applicable Work Order.

Article 7. TERMINATION.

7.1 **TERMINATION BY CITY:** The City may terminate any work order, the Contract and/or the Contract Documents if the Contractor is in default as follows:

- (a) refuses or fails to supply enough properly skilled workers or proper materials to timely and competently complete the work;
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- (c) disregards or takes action contrary to any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- (d) takes action, short of declaring bankruptcy, evidencing insolvency;
- (e) fails to prosecute the services or work in a timely manner and reasonably be unable to reach substantial completion and/or final completion within the timeframe(s) required;
- (f) fails or refuses to provide and/or maintain insurance or proof of insurance as required by the Contract Documents; **or,**
- (g) otherwise is in breach of a provision of the Contract Documents.

When any of the above reasons exist, the City, may without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety (if applicable), written notice and five (5) days to cure, terminate the work order, Contract and/or Contract Documents and may:

- (a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by or paid for by the City; and,
- (b) finish the work by whatever reasonable method the City may deem expedient.

The Contractor and its surety (if any) shall be liable for any damage to the City, including additional attorney and engineering/architectural fees, resulting from the Contractor's termination under this provision by the City, including but not limited to, and any increased costs incurred by the City in completing the work.

When the City terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment, if any, until the work is finished.

Should it be determined by a mediator or a court of competent jurisdiction that the City wrongfully terminated the Contract, then the Contractor agrees to treat such termination as a termination for convenience.

7.2 **TERMINATION BY THE CITY FOR CONVENIENCE**

The City may, at any time, terminate the Contract and Contract Documents for the City's convenience and without cause. Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

- (a) cease operations as directed by the City in the notice;
- (b) take actions necessary, or that the City may direct, for the protection and preservation of the work; and
- (c) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the City's convenience, the Contractor shall be entitled to receive payment for work executed, and costs incurred by reason of such termination including termination payments to subcontractors and demobilization costs.

Article 8. TAXES AND DIRECT PURCHASES.

8.1 **TAXES:** The City is exempt from payment of Florida State Sales and Use Tax. The Contractor is not authorized to use the City's Tax Exemption Number unless approved in writing.

8.2 **DIRECT PURCHASES:** For certain projects, the City may seek to make direct purchases of equipment or materials to be used by the Contractor. Pursuant to Section 212.08(6), Florida Statutes, and the Fla. Admin. Code Ann. R. 12A-1.094 and 12A-1.038, the Parties agree to the following procedure regarding the City's direct-purchase from vendors of certain equipment and materials to be used in specific projects:

8.2.1 The City reserves the right, at the City's option, to direct purchase equipment and materials involved in a specific project, including subcontracts, if any so as to save the sales tax which would otherwise have been due with regard to the same. The Contractor and its subcontractors shall comply with the City's direct purchase procedures, including but not limited to those listed below.

8.2.2 As specifically set forth in a City issued work order, within 30 days (or other time as specified in the work order), the Contractor will present a list of direct purchase equipment for the City's consideration which will include the recommended vendors' name; the price quotes from all vendors provided to the Contractor; and, any terms and conditions the Contractor has negotiated with the recommended vendors. The City will then inform the Contractor as to which equipment it will direct purchase. In the event the City fails to exercise its option to direct purchase equipment and identify which equipment is to be purchased by the City within thirty (30) calendar days of receipt of the list from the Contractor, the City shall waive its right to direct purchase any and all equipment to be used in completion of the work under the applicable work order.

8.2.3 The Contractor is responsible for selecting each direct purchase vendor, subject to City approval. The Contractor is responsible for specifications, equipment receipt, inspecting shipments, and assuring that the equipment is in accordance with the work order and the Contractor's specifications. The Contractor is also responsible for providing the City with enough advance notice of when the direct purchase equipment will need to be ordered and delivered. In absence of the Contractor's receipt of a written notice of City's disapproval of a vendor within thirty (30) calendar days of City's receipt of the vendor/material list referenced in 9.2.2, the City shall be deemed to have

waived any and all objections thereto.

8.2.4 The Contractor shall retain all responsibility for installing all equipment relating to the work and for maintaining the construction schedule so long as the City timely orders and pays for the correct direct purchase equipment. The City's direct purchase mechanism to effectuate tax savings in no way effects the obligation of the Contractor to meet all of the terms and conditions and all provisions and technical specifications of the Contract Documents. The Contractor shall be responsible for insuring all equipment once the equipment is in its care, custody and control, regardless of whether directly purchased by City.

8.2.5 The City will issue a direct purchase order to the vendor of the direct purchase equipment at the price proposed in the Contractor's or its subcontractor's bid, less sales tax. The City will promptly send a copy of the issued purchaser order to the Contractor.

8.2.6 It will be the Contractor's primary responsibility to properly expedite and follow up on direct purchase orders, thereby assuring delivery of the equipment as ordered and at the time and place needed by the Contractor to complete the work in accordance with the work order and construction schedule. To the extent required by the Contractor, the City shall cooperate with all requests of the Contractor related to the expedition of and follow up on direct purchase orders.

8.2.7 The Contractor shall take delivery, unload, and install the equipment purchased on the direct purchase order in accordance with the work order and the Contract Documents with the vendor to repair, replace, and make good any defect without cost to the City, until such time as the work has been completed and accepted by City in accordance with the Contract Documents. The City, with assistance from the Contractor, will be responsible for undertaking and completing any returns of direct purchase equipment as requested by the Contractor and working with the vendor to effectuate any credits or warranties for the returned equipment (if applicable). Any returns not replaced shall be credited to City and acknowledged by a supplement to the direct purchase order and, if applicable, amendment to the Contract Sum. The Contractor shall not be responsible for warranting the direct purchase equipment to the City; however, the Contractor shall be responsible for facilitating the vendor's warranty of the direct purchase equipment and the Contractor shall be responsible for warranting the work to install and/or incorporate the equipment. The Contractor shall maintain records of all direct purchases received and incorporated into the work and provide the City with a monthly accounting until all direct purchase items that are received and accepted for inclusion in the specific project.

8.2.8 When delivery of a direct purchase order is complete, or a payment is to be made on a partial shipment, the Contractor will timely submit to City the documentation supporting the equipment received. Invoices for direct purchase orders will be sent by the direct purchase vendor directly to City's Finance Department, with all such invoices addressed to and in the name of the City. The City's Finance Department will forward invoices to the City's Contract Administrator. The City's Contract Administrator will forward the invoices to the Contractor to verify delivery and sign the invoice and associated documentation supporting the amount of the payment. The City will make timely payment to all vendors in compliance with each vendor's payment procedures. The City will take title to all equipment ordered through direct purchase upon or at the time of purchase. The Contractor will assist City in assuring prompt payment by supplying the vendor's FEI numbers, addresses, phone numbers, etc. All payments will be made in accordance with the Florida Prompt Payment Act.

Article 9. CONTRACTOR'S REPRESENTATIONS AND AGREEMENTS.

In order to induce the City to enter into this Contract, the Contractor makes the following representations:

9.1 Contractor has or will familiarize itself with the nature and extent of the Contract Documents, work,

site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work prior to commencing the work under an applicable Work Order. All work shall be performed consistent with all applicable laws and regulations.

9.2 Contractor agrees to be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with the regulations and to reimburse the City for any loss incurred in connection therewith. This compliance provision specifically includes the Contractor's compliance with all applicable standards, orders or regulations including, without limitation, those issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

9.3 Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract.

9.4 The Contractor represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the work required under the Contract Documents. Proof of such licenses and approvals shall be submitted to the City upon request.

Article 10. INFRINGEMENT INDEMNITY.

10.1 The Contractor will defend or settle at its expense a claim or suit brought by a third party against the City arising out of a claim asserting that the services, work, repair, materials or other deliverables ("deliverables" hereafter) provided by the Contractor under the Contract Documents (if any) infringes any U.S. copyright or any U.S. patent or misappropriates a trade secret. The Contractor will indemnify and hold harmless the City against and from damages, costs, and attorneys' fees, if any and at all levels of trial and appeal or mediation or arbitration, finally awarded in such suit or the amount of the settlement thereof; provided that (i) the Contractor is promptly notified in writing of such claim or suit, (ii) the Contractor will have the sole control of the defense and settlement thereof, and (iii) City furnishes the Contractor, on reasonable request, information available to City for such defense. The City will not admit any such claim without prior consent of the Contractor.

a. In the event of a claim of infringement, the Contractor shall, at its option:

1. procure for City the right to continue using the deliverables provided under the Contract Documents; or
2. replace or modify the deliverables so that the same becomes non-infringing but substantially equivalent in functionality and performance.
3. If neither of the above actions is reasonably feasible, the Contractor will refund to City the fee actually paid by City under the Contract Documents (as amortized on a straight-line basis over the time in which the City was able to use the deliverables.

b. The Contractor will have no obligation under this section for infringement if and to the extent that such claim arises from:

1. modification of the deliverables other than by the Contractor or by its recommendation; or
 2. combination of the deliverables with products other than those supplied by the Contractor;
- and,
3. the alleged infringement or misappropriation relates to such modification or

combination.

c. The Contractor will also not have any indemnification obligation with respect to a claim: (i) if it has provided City with reasonable changes that would have avoided the problem and the reasonable changes are not fully implemented by City within a reasonable time or (ii) arising out use of the deliverables not in accordance with the Contract Documents.

d. The Contractor's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the Contractor whether such injury or damage shall accrue, or may be discovered, before or after termination or expiration of the Contract Documents.

Article 11. MISCELLANEOUS.

11.1 The City and Contractor each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

11.2 Additional work and/or changes to a work order's price and/or time, is subject to the City's prior written approval. Only the City Manager and City Commission (based on the procurement code) have the authority to approve such additional work and changes.

11.3 The headings contained in this Contract are inserted for convenience of reference only and shall not be a part or control or affect the meaning hereof.

11.4 This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

11.5 This Contract (together with the other Contract Documents) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Contract.

11.6 This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

11.7 This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and (c) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

11.8 This Contract shall create no rights or claims whatsoever in any third party.

11.9 If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

11.10 The effective date of this Contract is the date the Contract is approved by the City Commission.

11.11 Public Records: The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the City.
- (d) Upon completion of this Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION CITY CLERK, (561) 586-1660 OR CITYCLERK@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.

11.12 This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

11.13 In accordance with Palm Beach County ordinance number 2011-009, the Contractor acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

11.14 If any legal action or other proceeding is brought for the enforcement of this Contract or the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract or the Contract Documents, each party shall be responsible for their own attorney's fees at all levels. EACH PARTY ALSO AGREES AND VOLUNTARILY WAIVES ANY RIGHT TO A JURY TRIAL ARISING OUT OF ALLEGED DISPUTE, BREACH, DEFAULT, MISREPRESENTATION OR ANY OTHER CLAIM IN CONNECTION WITH OR ARISING FROM ANY PROVISION OF THIS CONTRACT OR THE CONTRACT DOCUMENTS

11.15 Each of the parties agrees to perform its obligations under the Contract Documents in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of the work and under the Contract Documents.

11.16 All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the Contractor or its subcontractors under this Contract shall be considered a "Work for Hire" and the exclusive property of the City. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, Contractor and Contractor's Subcontractors will assign to the City all right, title and interest in and to Contractor and/or Contractor's Subcontractors' copyright(s) for such Documents. Contractor shall execute and deliver to City such instruments of transfer and take such other action that City may reasonable request, including, without limitation, executing and filing, at City's expense, copyright applications, assignments and other documents required for the protection of City's right to such Documents. The Contractor shall retain copies of the Documents for a period of three (3) years from the date of completion of the Program. The City grants to the Contractor and Contractor's subcontractors the right and/or limited license to use a portion of the Documents prepared by the Contractor or the Contractor's subcontractors in future projects of the Contractor or Contractor's subcontractors with said right and/or limited license to use a portion at Contractor's or Contractor's subcontractor's own risk and without any liability to City. Any modifications made by the City to any of the Contractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the Contractor will be at the City's sole risk and without liability to the Contractor.

11.17 Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

11.18 Any notice required to be given under the Contract Documents shall be sent by certified mail (return receipt requested) or by nationally recognized overnight courier as follows to the City:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and to the Contractor as follows:

Nucat Corporation
657 Rambling Dr. Cir.
Wellington, FL 33414
Attn: David A. Bernier, President

Either party may amend this provision by written notice to the other party.

11.19 The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided

for in Section 112.311, Florida Statutes. The Contractor further represents that no person having any such conflicting interest shall be employed for said performance. The Contractor shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Contractor. The City agrees to notify the Contractor of its opinion within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the City shall so state in the notification and the Contractor shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Contractor under the terms of this Contract.

11.20 The Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, Contractor shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

11.21 This Contract is not intended to be and shall not be construed as an exclusive agreement, and the City may employ additional or other contractors to perform services contemplated by this Contract without liability to the City.

11.22 PUBLIC ENTITY CRIMES. The Contractor acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The Contractor will promptly advise the City if it becomes aware of any violation of this statute.

11.23 PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

11.24 The Contract shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of all services and work. This includes being responsible for all precautions for safety of, and reasonable protection to prevent damage, injury or loss to employees performing the services and work and other persons who may be affected thereby; the work, materials and equipment incorporated therein; and other property, equipment or materials at the site or adjacent thereto including, without limitation, trees, shrubs, lawns, sidewalks, pavements, roadways or structures and utilities not designated for removal, relocation or replacement in the course of the work. The Contractor shall comply with and give all notices required by applicable laws, statutes, ordinances, rules and regulations bearing on safety of persons or property, or their protection from damage, injury or loss. The Contractor shall implement, erect and maintain reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards reasonably related to the work or which could arise therefrom. The Contractor shall promptly remedy damage and loss (other than covered by applicable insurance) caused in whole or in part by the Contractor or anyone directly or indirectly employed by or utilized by the Contractor in the performance

of the work, which is not attributable to the City's negligence.

11.25 The Contractor agrees that, in all matters relating to this Contract, it will be acting as an independent contractor with exclusive control of the manner and means of performing the work, its obligations and tasks in accordance with the requirements of this Contract and the Contract Documents. The Contractor has no authority to act or make any agreements or representations on behalf of the City. This Contract is not intended, and shall not be construed to create, between the City and the Contractor, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of City.

Article 12. SCRUTINIZED COMPANIES

12.1 CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Contract at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Contract.

12.2 If this Contract is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Contract at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Contract.

12.3 The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.

12.4 The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Contract, including any and all renewals.

12.5 The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

12.6 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

Article 13. E-VERIFY

Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR shall:

13.1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Contract) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

13.2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Contract) stating that the subcontractor does not employ, Contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

- 13.3. Maintain copies of all subcontractor affidavits for the duration of this Contract and provide the same to the CITY upon request;
- 13.4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- 13.5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Contract; and,
- 13.6. Be aware that if the CITY terminates this Contract under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded a contract for at least 1 year after the date on which the Contract is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Contract.

Remainder of this page intentionally left blank
Signature page follows

IN WITNESS WHEREOF, the City and Contractor have caused this Contract for Electrical Equipment, Testing, Repair, and Maintenance to be executed the day and year shown below.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

By: _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

NUCAT CORPORATION

By: _____

Print Name: DAVID BERNIER

Title: PRESIDENT

[Corporate Seal]

STATE OF Florida
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of a physical presence or • online notarization on this 15th day of August 2023, by David Bernier, as the Resident [title] of Nucat, Corporation, a Corporation, who is personally known to me or who has produced Drivers license as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Public Signature


 **RASHAD HEWITT**
Notary Public
State of Florida
Comm# HH373405
Expires 3/14/2027

EXHIBIT "A"
SAMPLE WORK ORDER

**CONTRACT FOR ELECTRICAL EQUIPMENT INSPECTION,
TESTING, REPAIR, AND MAINTENANCE
WORK ORDER NO. _____**

THIS WORK ORDER for System Electrical Equipment Inspection, Testing, Repair and Maintenance ("Work Order" hereafter) is made on the _____, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460 ("City" hereafter) and **Nucat Corporation**, a corporation authorized to do business in State of Florida ("Contractor" hereafter).

1.0 Project Description:

The City desires the Contractor to provide all goods, services, materials and equipment as identified herein related to the Electrical Equipment Inspection, Testing, Repair and Maintenance described as: _____ (the "Project"). The Project is more specifically described in the plans prepared by _____, dated _____, and which are incorporated herein by reference.

2.0 Scope

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with construction services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 Schedule and Liquidated Damages

Substantial completion of all services and work under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City _____ hundred dollars (\$ _____ .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation and Direct Purchases

This Work Order is issued for a lump sum, not to exceed amount of \$_____ (_____). The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City: _____

_____.

5.0 Project Manager

The Project Manager for the Contractor is _____, phone: _____; email: _____; and, the Project Manager for the City is _____, phone: _____; email: _____.

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or

discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor’s warranties or the Contractor discovers any failure or breach of the Contractor’s warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor’s sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor’s receipt of the City’s notice or the Contractor’s discovery of the same, the City may undertake such corrective action at the Contractor’s expense.

9.0 Authorization

This Work Order is issued pursuant to the Electrical Equipment Inspection, Testing, Repair and Maintenance Contract for between the City of Lake Worth Beach and the Contractor, dated , (“Contract” hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

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SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order No. ___ as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

By: DO NOT SIGN – SAMPLE ONLY _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: **NUCAT CORPORATION**

By: DO NOT SIGN – SAMPLE ONLY _____

[Corporate Seal]

Print Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____ 2023, by _____, as the _____ [title] of **Nucat Corporation** a Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Public Signature

Notary Seal:

EXHIBIT "B"
HOURLY BILLING RATES

Tab 4. Cost Effectiveness

NuCAT CORPORATION employs a staff of qualified engineers and technicians who are specifically trained to perform electrical maintenance and testing on power transmission and distribution products. Installation, start-up, and turnkey projects are also supplied by our qualified staff. NuCAT's capabilities include working with all manufacturers' equipment.

PRICING RATES

Hourly Rates:

Engineer (Straight time) -----\$ 125.00 /hr.

Technician (Straight time) -----\$ 95.00 / hr.

DEFINITION

Routine Service:
(Normal hours) Work accomplished during normal hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except for holidays.
(Overtime hours and Holidays) are billed at 1 ½ times the normal hour rate.

Emergency work is billed as Routine Service.

Travel time is not billed.

Expenses will be billed at cost plus 20%

MATERIALS

Materials, Special tools and equipment not owned by NuCAT CORPORATION will be billed at cost plus 20%

EQUIPMENT

Trailer-mounted high vacuum oil purification system -----\$ 150.00 Per Hr.

Portable Oil Filter Press-\$ 100.00 Per Day

**ELECTRICAL EQUIPMENT INSPECTION, TESTING,
REPAIR, AND MAINTENANCE CONTRACT**
RFP #23-206

THIS CONTRACT for Electrical Equipment Inspection, Testing, Repair, and Maintenance (“Contract”) is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **TEAMWORKnet, Inc.**, a corporation authorized to do business in the State of Florida (“Contractor”) with its principal office located at 4265 New Tampa Hwy, Ste. 1, Lakeland, FL 33815

WHEREAS, the City issued Request for Proposals #23-206 for the Electrical Equipment Inspection, Testing, Repair, and Maintenance (“RFP”); and

WHEREAS, the Contractor submitted its proposal in response to the RFP; and

WHEREAS, the City desires to award the RFP to the Contractor on a non-exclusive basis for the Electrical Equipment Inspection, Testing, Repair, and Maintenance; and

WHEREAS, the City finds awarding the RFP to the Contractor as described herein serves a valid public purpose.

NOW THEREFORE, the City hereby engages the services of the Contractor, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

Article 1. GENERAL INFORMATION.

1.1 **Scope of Services/Work.** The Contractor shall provide the services and work requested by the City and required under a City approved work order or purchase order as described herein. The general nature of the services and work to be provided by the Contractor under this Contract are the electrical Equipment Inspection, Testing, Repair, and Maintenance.

1.2 **Contract Documents.** The Contract Documents are incorporated herein by reference as if set forth in this Contract and comprise the entire agreement between the City and Contractor. The Contract Documents consist of this Contract, the RFP (including, but not limited to, the documents issued with the RFP as the scope and specifications, the drawings, addenda, attachments and exhibits); and, any duly executed and City issued work orders, purchase orders, and change orders, and any Contract amendments signed by the parties. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, within five (5) business days and before proceeding shall obtain a written interpretation or clarification. Failure to obtain a written interpretation or clarification will be deemed a waiver of the ambiguity, error or discrepancy by the Contractor. The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

First Priority:	Fully executed Change Orders or Contract amendments
Second Priority:	This Contract
Third Priority:	Fully executed and City issued Work Orders or Purchase Orders
Fourth Priority:	RFP

1.3 **Contract Administrator.** Whenever the term Contract Administrator is used herein, it is intended to mean **the City Manager or designee, City of Lake Worth Beach, Florida.** In the administration of this

Contract, all parties may rely upon instructions or determinations made by the Contract Administrator except that all requests and/or determinations that result in an increase in change in time of completion and/or an increase in the contract price shall require a formal change order or contract amendment executed by the City Manager or the City Commission (depending on the authority set forth in the City's Procurement Code).

1.4 **Work Orders.** This Contract does not guarantee that the City will utilize the Contractor in any capacity or for any services hereunder. When the City identifies a need for the Contractor's services, the City will request a proposal from the Contractor to provide the services requested. The City will provide the Contractor with plans and/or specifications in order for the Contractor to develop its proposal. The Contractor's proposal shall be submitted in the format of the sample work order, attached hereto and incorporated herein as **Exhibit "A"** along with a copy of the Contractor's proposal and shall be based on the Hourly Billing Rates attached hereto and incorporated herein as **Exhibit "B"**. Upon receipt of the Contractor's proposed work order and proposal, the City shall decide in its sole discretion whether to award the work order to the Contractor. Depending on the lump sum amount of each work order, the work order may be awarded by the City Manager (if within City Manager's purchasing authority (currently not to exceed \$50,000)) or the City Commission. If the work order is approved by the City, the Contractor shall commence the identified services upon the City's approval of the work order for the services and issuance of a notice to proceed. The City reserves the right to reject any and all proposals submitted by the Contractor. A City-approved work order shall include (by reference) the plans and/or specifications provided by the City to the Contractor. The Contractor shall not provide services under this Contract without a City issued Work Order (or Purchase Order as discussed below) specifically for the stated services.

1.5 **Purchase Order(s).** The City's ordering mechanism for individual projects involving urgently required work and/or repairs in the amount of \$15,000 or less under this Contract will be by a City issued Purchase Order(s); however, the terms and conditions stated in a City Purchase Order(s) shall not apply; the terms and conditions set forth in this Contract shall apply. The Contractor shall not provide services under this Contract without a City Purchase Order specifically for the stated services. The Contractor shall provide the amount of requested services and price listed in each Purchase Order and not exceed amounts expressed on any Purchase Order. CONTRACTOR shall be liable for any excess services or costs not specifically stated in the Purchase Order(s). Services provided pursuant to a City issued Purchase Order(s) under this Contract shall not exceed \$50,000 per year without additional City Commission approval.

1.6 **FISCAL YEAR.** The City's Fiscal Year ends on September 30th of each calendar year. The City cannot authorize the purchase of services beyond September 30th of each calendar year, prior to the annual budget being approved by the City Commission. Additionally, the City must have budgeted appropriate funds for the goods and services in any subsequent Fiscal Year. If the budget is approved for said goods and services, the City will issue a new Work Order(s) or Purchase Order(s) each Fiscal Year for required and approved services.

1.7 **Term.** The term of this Contract shall be for three (3) consecutive years, with possibility of extension for additional two (2), one (1) year renewal terms upon the mutual agreement of both parties. The renewal term(s) may be approved by the City Manager on behalf of the CITY. Notwithstanding the foregoing, this Contract may be terminated as set forth in the Contract Documents.

1.8 **Hourly Billing Rates.** The Hourly Billing Rates set forth as **Exhibit "B"** shall remain fixed for the first three (3) years of this Contract. If due to applicable price escalations and/or reductions which impact the Contractor's Hourly Billing Rates, the City and Contractor may execute a written amendment to this Contract to establish new Hourly Billing Rates for the renewal term(s). The City Manager may approve changes in the Hourly Billing Rates based on the recommendation of the City's Electric Utility Director or designee.

Article 2. CONTRACT TIME.

2.1 All services and work to be provided under a City-approved work order shall be provided in a timely

manner as time is of the essence under this Contract.

2.2 The Contractor shall not be considered in default by reason of a delay in timely performance if such delay and failure arise out of causes reasonably beyond the control of the Contractor or its subcontractors (if authorized) and without the Contractor's or subcontractor's fault or negligence. Upon the Contractor's request, the City shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the Contractor and, if the Contractor's delay and failure to timely perform was without it or its subcontractors' fault or negligence, as reasonably determined by the City, the time of completion shall be extended for any reasonable time that the City may reasonably decide; subject to the City's rights to change, terminate, or stop any or all of the work at any time. If the Contractor is delayed at any time in the progress of the work by any act or neglect of the City or its employees, by an approved written change in the scope from the original Contract Documents, or by any other contractor employed by the City, or by changes ordered by the City or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Contractor's reasonable control, or by delay authorized by the City pending negotiation or by any cause which the City shall reasonably decide justifies the delay, then the time of completion shall be extended for any reasonable time the City may reasonably decide. The Contractor must provide the City with written notice of any delay claims and no extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) claim is necessary. With the exception of an approved written change in the scope from the original Contract Documents, the Contractor's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and Contractor specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by Contractor due to a delay in completion of the work. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery or damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the City. Otherwise, the Contractor shall be entitled only to extensions of the Contract Times as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

Article 3. PAYMENT PROCEDURES

3.1 Generally. The Contractor shall submit invoices on a monthly basis detailing all work accomplished in the prior month and all materials installed and used in the work pursuant to City approved work order or Contractor's invoices shall be submitted to:

City of Lake Worth Beach
Attn: Finance Department
7 N. Dixie Highway
Lake Worth Beach, FL 33460

The City's Contract Administrator or designee will review each invoice submitted by the Contractor. If approved, the City will make payment in accordance with the Contract Documents. If not approved, the City will notify the Contractor within twenty (20) business days of the City's receipt and identify the action necessary to correct the invoice or a deficiency.

3.2 Payment to the Contractor shall be made pursuant Florida's Prompt Payment Act (for construction services), section 218.735, Florida Statutes (2023), except as provided herein. Specifically, the City will withhold five percent (5%) of each payment from a City issued work order to the Contractor as retainage until fifty percent (50%) of the work is completed by the Contractor. After fifty percent (50%) of the work is completed, upon written request from the Contractor, the Contract Administrator may agree in writing with the Contractor to release a portion of the retainage not to exceed fifty percent (50%) of the total retainage amount.

Within twenty (20) business days of the finalization of the punch-list described below and upon receipt of a payment request from the Contractor, the City will pay the Contractor all retainage held less an amount equal to 150% of the estimated cost to complete the items on the list. Upon completion of all items on the finalized punch-list, the Contractor may submit a request for release of all retainage.

3.3 In accordance with section 218.735(7), Florida Statutes (2023), at least five (5) days prior to reaching substantial completion, the Contractor shall create a proposed punch-list of items that must be completed by the Contractor prior to the Contractor submitting its final payment request. The Contractor's proposed punch-list must include all items of work which remain to be completed and the estimated cost to complete each work item on the list. Upon receipt of the Contractor's proposed punch-list, the City will have ten (10) days to review, make modifications, or agree to the proposed punch-list. If the City does not make any modifications to the Contractor's proposed punch-list within ten (10) days of receipt, the proposed punch-list will be deemed accepted by the City. The City's Contract Administrator or designee will resolve any disputes in the punch-list and determine the final punch-list for the parties within 30-days of the Contractor reaching substantial completion. Once the punch-list is accepted by the City and finalized by the City's Contract Administrator or designee, the Contractor shall have five (5) days to complete all items on the finalized punch-list. The failure of either party to include any corrective work or pending items on the finalized punch-list does not alter the responsibility of the Contractor to complete all construction services purchased under the applicable work order. The Contractor's proposed punch-list and modifications by the City may be by informal written notice (e.g., email, fax, or hand-delivery); however, proof of delivery shall be kept by the party providing the informal written notice to the other party.

3.4 Final Payment. Upon final completion and acceptance of the work in accordance with the Contract Documents (including all punch-list items) and final inspection by the appropriate agency with jurisdiction over the project (if other than the City), the Contractor shall submit a "final invoice" to the City. In order for both parties to close their books and records, the Contractor will clearly state "FINAL" on the Contractor's final invoice. This certifies that all work under the applicable work order has been properly completed and all charges have been invoiced to the City. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the Contractor. If the Contractor's Final Invoice is approved as set forth above, the City shall pay the remainder of the work order price including any amount held as retainage.

3.5 Notwithstanding the foregoing, the City shall not be required to pay or release any amount of retainage that is subject of a good faith dispute made in writing, the subject of a claim brought pursuant to section 255.05, Florida Statutes, or otherwise the subject of a written claim or demand by the City.

3.6 Final payment shall not become due until the Contractor and all of its subcontractors submit to the City releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract Documents or otherwise related to the Program.

3.7 Acceptance of final payment by the Contractor or a subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final invoice.

Article 4. SUBCONTRACTS

The Contractor represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The Contractor shall furnish

services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. The Contractor shall comply with all applicable laws in the provision of services under this Contract. The Contractor agrees that it is fully responsible to the City for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City. All of the Contractor's personnel (and all subcontractors) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of subcontractor or subcontractor's personnel furnished by the Contractor upon written notice by City to Contractor of the cause for such replacement. All work performed by a subcontractor will be at cost to the City without any mark-up by the Contractor. All subcontractors must provide the same level and type of insurance as required of the Contractor under this Contract prior to commencing any services. The Contractor shall submit the subcontractors' proof of insurance upon receipt of a notice to proceed.

Article 5. INDEMNITY AND INSURANCE.

5.1 The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, Contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor against the City and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third-party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. The Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification or any other provision in the Contract Documents shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

5.2 INSURANCE: Prior to commencing any work, the Contractor shall provide proof of insurance coverage

as required in the RFP. All such insurance policies may not be modified or terminated without the express written authorization of the City. Failure to comply with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this Contract. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the Contract Documents and/or performance of the work. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

Article 6. REIMBURSEMENT OF ENGINEER EXPENSES.

Should the completion of a work order be delayed beyond the specified or adjusted time limit, Contractor shall reimburse the City for all expenses of engineering and inspection incurred by the City during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the City will be charged to Contractor and be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for in an applicable Work Order.

Article 7. TERMINATION.

7.1 TERMINATION BY CITY: The City may terminate any work order, the Contract and/or the Contract Documents if the Contractor is in default as follows:

- (a) refuses or fails to supply enough properly skilled workers or proper materials to timely and competently complete the work;
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- (c) disregards or takes action contrary to any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- (d) takes action, short of declaring bankruptcy, evidencing insolvency;
- (e) fails to prosecute the services or work in a timely manner and reasonably be unable to reach substantial completion and/or final completion within the timeframe(s) required;
- (f) fails or refuses to provide and/or maintain insurance or proof of insurance as required by the Contract Documents; **or,**
- (g) otherwise is in breach of a provision of the Contract Documents.

When any of the above reasons exist, the City, may without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety (if applicable), written notice and five (5) days to cure, terminate the work order, Contract and/or Contract Documents and may:

- (a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by or paid for by the City; and,
- (b) finish the work by whatever reasonable method the City may deem expedient.

The Contractor and its surety (if any) shall be liable for any damage to the City, including additional attorney and engineering/architectural fees, resulting from the Contractor's termination under this provision by the City, including but not limited to, and any increased costs incurred by the City in completing the work.

When the City terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment, if any, until the work is finished.

Should it be determined by a mediator or a court of competent jurisdiction that the City wrongfully terminated the Contract, then the Contractor agrees to treat such termination as a termination for convenience.

7.2 TERMINATION BY THE CITY FOR CONVENIENCE

The City may, at any time, terminate the Contract and Contract Documents for the City's convenience and without cause. Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

- (a) cease operations as directed by the City in the notice;
- (b) take actions necessary, or that the City may direct, for the protection and preservation of the work; and
- (c) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the City's convenience, the Contractor shall be entitled to receive payment for work executed, and costs incurred by reason of such termination including termination payments to subcontractors and demobilization costs.

Article 8. TAXES AND DIRECT PURCHASES.

8.1 TAXES: The City is exempt from payment of Florida State Sales and Use Tax. The Contractor is not authorized to use the City's Tax Exemption Number unless approved in writing.

8.2 DIRECT PURCHASES: For certain projects, the City may seek to make direct purchases of equipment or materials to be used by the Contractor. Pursuant to Section 212.08(6), Florida Statutes, and the Fla. Admin. Code Ann. R. 12A-1.094 and 12A-1.038, the Parties agree to the following procedure regarding the City's direct-purchase from vendors of certain equipment and materials to be used in specific projects:

8.2.1 The City reserves the right, at the City's option, to direct purchase equipment and materials involved in a specific project, including subcontracts, if any so as to save the sales tax which would otherwise have been due with regard to the same. The Contractor and its subcontractors shall comply with the City's direct purchase procedures, including but not limited to those listed below.

8.2.2 As specifically set forth in a City issued work order, within 30 days (or other time as specified in the work order), the Contractor will present a list of direct purchase equipment for the City's consideration which will include the recommended vendors' name; the price quotes from all vendors provided to the Contractor; and, any terms and conditions the Contractor has negotiated with the recommended vendors. The City will then inform the Contractor as to which equipment it will direct purchase. In the event the City fails to exercise its option to direct purchase equipment and identify which equipment is to be purchased by the City within thirty (30) calendar days of receipt of the list from the Contractor, the City shall waive its right to direct purchase any and all equipment to be used in completion of the work under the applicable work order.

8.2.3 The Contractor is responsible for selecting each direct purchase vendor, subject to City approval. The Contractor is responsible for specifications, equipment receipt, inspecting shipments, and assuring that the equipment is in accordance with the work order and the Contractor's specifications. The Contractor is also responsible for providing the City with enough advance notice of when the direct purchase equipment will need to be ordered and delivered. In absence of the Contractor's receipt of a written notice of City's disapproval of a vendor within thirty (30) calendar days of City's receipt of the vendor/material list referenced in 9.2.2, the City shall be deemed to have

waived any and all objections thereto.

8.2.4 The Contractor shall retain all responsibility for installing all equipment relating to the work and for maintaining the construction schedule so long as the City timely orders and pays for the correct direct purchase equipment. The City's direct purchase mechanism to effectuate tax savings in no way effects the obligation of the Contractor to meet all of the terms and conditions and all provisions and technical specifications of the Contract Documents. The Contractor shall be responsible for insuring all equipment once the equipment is in its care, custody and control, regardless of whether directly purchased by City.

8.2.5 The City will issue a direct purchase order to the vendor of the direct purchase equipment at the price proposed in the Contractor's or its subcontractor's bid, less sales tax. The City will promptly send a copy of the issued purchaser order to the Contractor.

8.2.6 It will be the Contractor's primary responsibility to properly expedite and follow up on direct purchase orders, thereby assuring delivery of the equipment as ordered and at the time and place needed by the Contractor to complete the work in accordance with the work order and construction schedule. To the extent required by the Contractor, the City shall cooperate with all requests of the Contractor related to the expedition of and follow up on direct purchase orders.

8.2.7 The Contractor shall take delivery, unload, and install the equipment purchased on the direct purchase order in accordance with the work order and the Contract Documents with the vendor to repair, replace, and make good any defect without cost to the City, until such time as the work has been completed and accepted by City in accordance with the Contract Documents. The City, with assistance from the Contractor, will be responsible for undertaking and completing any returns of direct purchase equipment as requested by the Contractor and working with the vendor to effectuate any credits or warranties for the returned equipment (if applicable). Any returns not replaced shall be credited to City and acknowledged by a supplement to the direct purchase order and, if applicable, amendment to the Contract Sum. The Contractor shall not be responsible for warranting the direct purchase equipment to the City; however, the Contractor shall be responsible for facilitating the vendor's warranty of the direct purchase equipment and the Contractor shall be responsible for warranting the work to install and/or incorporate the equipment. The Contractor shall maintain records of all direct purchases received and incorporated into the work and provide the City with a monthly accounting until all direct purchase items that are received and accepted for inclusion in the specific project.

8.2.8 When delivery of a direct purchase order is complete, or a payment is to be made on a partial shipment, the Contractor will timely submit to City the documentation supporting the equipment received. Invoices for direct purchase orders will be sent by the direct purchase vendor directly to City's Finance Department, with all such invoices addressed to and in the name of the City. The City's Finance Department will forward invoices to the City's Contract Administrator. The City's Contract Administrator will forward the invoices to the Contractor to verify delivery and sign the invoice and associated documentation supporting the amount of the payment. The City will make timely payment to all vendors in compliance with each vendor's payment procedures. The City will take title to all equipment ordered through direct purchase upon or at the time of purchase. The Contractor will assist City in assuring prompt payment by supplying the vendor's FEI numbers, addresses, phone numbers, etc. All payments will be made in accordance with the Florida Prompt Payment Act.

Article 9. CONTRACTOR'S REPRESENTATIONS AND AGREEMENTS.

In order to induce the City to enter into this Contract, the Contractor makes the following representations:

9.1 Contractor has or will familiarize itself with the nature and extent of the Contract Documents, work,

site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work prior to commencing the work under an applicable Work Order. All work shall be performed consistent with all applicable laws and regulations.

9.2 Contractor agrees to be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with the regulations and to reimburse the City for any loss incurred in connection therewith. This compliance provision specifically includes the Contractor's compliance with all applicable standards, orders or regulations including, without limitation, those issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

9.3 Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract.

9.4 The Contractor represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the work required under the Contract Documents. Proof of such licenses and approvals shall be submitted to the City upon request.

Article 10. INFRINGEMENT INDEMNITY.

10.1 The Contractor will defend or settle at its expense a claim or suit brought by a third party against the City arising out of a claim asserting that the services, work, repair, materials or other deliverables ("deliverables" hereafter) provided by the Contractor under the Contract Documents (if any) infringes any U.S. copyright or any U.S. patent or misappropriates a trade secret. The Contractor will indemnify and hold harmless the City against and from damages, costs, and attorneys' fees, if any and at all levels of trial and appeal or mediation or arbitration, finally awarded in such suit or the amount of the settlement thereof; provided that (i) the Contractor is promptly notified in writing of such claim or suit, (ii) the Contractor will have the sole control of the defense and settlement thereof, and (iii) City furnishes the Contractor, on reasonable request, information available to City for such defense. The City will not admit any such claim without prior consent of the Contractor.

a. In the event of a claim of infringement, the Contractor shall, at its option:

1. procure for City the right to continue using the deliverables provided under the Contract Documents; or
2. replace or modify the deliverables so that the same becomes non-infringing but substantially equivalent in functionality and performance.
3. If neither of the above actions is reasonably feasible, the Contractor will refund to City the fee actually paid by City under the Contract Documents (as amortized on a straight-line basis over the time in which the City was able to use the deliverables).

b. The Contractor will have no obligation under this section for infringement if and to the extent that such claim arises from:

1. modification of the deliverables other than by the Contractor or by its recommendation; or
2. combination of the deliverables with products other than those supplied by the Contractor; and,
3. the alleged infringement or misappropriation relates to such modification or combination.

c. The Contractor will also not have any indemnification obligation with respect to a claim: (i) if it has provided City with reasonable changes that would have avoided the problem and the reasonable changes are not fully implemented by City within a reasonable time or (ii) arising out use of the deliverables not in accordance with the Contract Documents.

d. The Contractor's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the Contractor whether such injury or damage shall accrue, or may be discovered, before or after termination or expiration of the Contract Documents.

Article 11. MISCELLANEOUS.

11.1 The City and Contractor each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

11.2 Additional work and/or changes to a work order's price and/or time, is subject to the City's prior written approval. Only the City Manager and City Commission (based on the procurement code) have the authority to approve such additional work and changes.

11.3 The headings contained in this Contract are inserted for convenience of reference only and shall not be a part or control or affect the meaning hereof.

11.4 This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

11.5 This Contract (together with the other Contract Documents) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Contract.

11.6 This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

11.7 This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and (c) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

11.8 This Contract shall create no rights or claims whatsoever in any third party.

11.9 If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

11.10 The effective date of this Contract is the date the Contract is approved by the City Commission.

11.11 Public Records: The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

(a) Keep and maintain public records required by the City to perform the service.

(b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the City.

(d) Upon completion of this Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION CITY CLERK, (561) 586-1660 OR CITYCLERK@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.

11.12 This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

11.13 In accordance with Palm Beach County ordinance number 2011-009, the Contractor acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

11.14 If any legal action or other proceeding is brought for the enforcement of this Contract or the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any

provisions of this Contract or the Contract Documents, each party shall be responsible for their own attorney's fees at all levels. EACH PARTY ALSO AGREES AND VOLUNTARILY WAIVES ANY RIGHT TO A JURY TRIAL ARISING OUT OF ALLEGED DISPUTE, BREACH, DEFAULT, MISREPRESENTATION OR ANY OTHER CLAIM IN CONNECTION WITH OR ARISING FROM ANY PROVISION OF THIS CONTRACT OR THE CONTRACT DOCUMENTS

11.15 Each of the parties agrees to perform its obligations under the Contract Documents in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of the work and under the Contract Documents.

11.16 All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the Contractor or its subcontractors under this Contract shall be considered a "Work for Hire" and the exclusive property of the City. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, Contractor and Contractor's Subcontractors will assign to the City all right, title and interest in and to Contractor and/or Contractor's Subcontractors' copyright(s) for such Documents. Contractor shall execute and deliver to City such instruments of transfer and take such other action that City may reasonable request, including, without limitation, executing and filing, at City's expense, copyright applications, assignments and other documents required for the protection of City's right to such Documents. The Contractor shall retain copies of the Documents for a period of three (3) years from the date of completion of the Program. The City grants to the Contractor and Contractor's subcontractors the right and/or limited license to use a portion of the Documents prepared by the Contractor or the Contractor's subcontractors in future projects of the Contractor or Contractor's subcontractors with said right and/or limited license to use a portion at Contractor's or Contractor's subcontractor's own risk and without any liability to City. Any modifications made by the City to any of the Contractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the Contractor will be at the City's sole risk and without liability to the Contractor.

11.17 Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

11.18 Any notice required to be given under the Contract Documents shall be sent by certified mail (return receipt requested) or by nationally recognized overnight courier as follows to the City:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and to the Contractor as follows:

TEAMWORKnet, Inc.
4265 New Tampa Hwy, Ste. 1
Lakeland, FL 33815
Attn: Paul D. Gates, CEO

Either party may amend this provision by written notice to the other party.

11.19 The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes. The Contractor further represents that no person having any such conflicting interest shall be employed for said performance. The Contractor shall promptly notify the City's

representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Contractor. The City agrees to notify the Contractor of its opinion within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the City shall so state in the notification and the Contractor shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Contractor under the terms of this Contract.

11.20 The Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, Contractor shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

11.21 This Contract is not intended to be and shall not be construed as an exclusive agreement, and the City may employ additional or other contractors to perform services contemplated by this Contract without liability to the City.

11.22 PUBLIC ENTITY CRIMES. The Contractor acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The Contractor will promptly advise the City if it becomes aware of any violation of this statute.

11.23 PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

11.24 The Contract shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of all services and work. This includes being responsible for all precautions for safety of, and reasonable protection to prevent damage, injury or loss to employees performing the services and work and other persons who may be affected thereby; the work, materials and equipment incorporated therein; and other property, equipment or materials at the site or adjacent thereto including, without limitation, trees, shrubs, lawns, sidewalks, pavements, roadways or structures and utilities not designated for removal, relocation or replacement in the course of the work. The Contractor shall comply with and give all notices required by applicable laws, statutes, ordinances, rules and regulations bearing on safety of persons or property, or their protection from damage, injury or loss. The Contractor shall implement, erect and maintain reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards reasonably related to the work or which could arise therefrom. The Contractor shall promptly remedy damage and loss (other than covered by applicable insurance) caused in whole or in part by the Contractor or anyone directly or indirectly employed by or utilized by the Contractor in the performance of the work, which is not attributable to the City's negligence.

11.25 The Contractor agrees that, in all matters relating to this Contract, it will be acting as an independent contractor with exclusive control of the manner and means of performing the work, its obligations and tasks in accordance with the requirements of this Contract and the Contract Documents. The Contractor has no authority to act or make any agreements or representations on behalf of the City. This Contract is not intended, and shall not be construed to create, between the City and the Contractor, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of City.

Article 12. SCRUTINIZED COMPANIES

12.1 CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Contract at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Contract.

12.2 If this Contract is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Contract at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Contract.

12.3 The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.

12.4 The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Contract, including any and all renewals.

12.5 The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

12.6 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

Article 13. E-VERIFY

Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR shall:

13.1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Contract) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

13.2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Contract) stating that the subcontractor does not employ, Contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

13.3. Maintain copies of all subcontractor affidavits for the duration of this Contract and provide the same to the CITY upon request;

- 13.4 Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- 13.5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Contract; and,
- 13.6. Be aware that if the CITY terminates this Contract under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded a contract for at least 1 year after the date on which the Contract is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Contract.

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Signature page follows

IN WITNESS WHEREOF, the City and Contractor have caused this Contract for Electrical Equipment, Testing, Repair, and Maintenance to be executed the day and year shown below.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

By: _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director



CONTRACTOR:

TEAMWORKnet, INC.

By: _____
[Signature]

Print Name: Robert "Bo" Farkas, Jr.

Title: VP East Coast Eng & Ops

STATE OF Florida)
COUNTY OF Polk)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 29th day of August 2023, by Robert Farkas, as the VP East Coast Eng. ops [title] of **TEAMWORKnet, Inc.**, a Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

[Signature]
Notary Public Signature

Notary Seal:

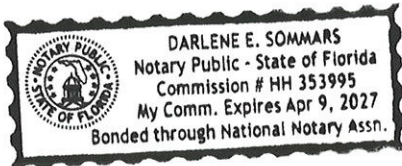


EXHIBIT "A"
SAMPLE WORK ORDER

**CONTRACT FOR ELECTRICAL EQUIPMENT INSPECTION,
TESTING, REPAIR, AND MAINTENANCE
WORK ORDER NO. _____**

THIS WORK ORDER for System Electrical Equipment Inspection, Testing, Repair and Maintenance ("Work Order" hereafter) is made on the _____, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460 ("City" hereafter) and **TEAMWORKnet, Inc.**, a corporation authorized to do business in State of Florida ("Contractor" hereafter).

1.0 Project Description:

The City desires the Contractor to provide all goods, services, materials and equipment as identified herein related to the Electrical Equipment Inspection, Testing, Repair and Maintenance described as: _____ (the "Project"). The Project is more specifically described in the plans prepared by _____, dated _____, and which are incorporated herein by reference.

2.0 Scope

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with construction services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 Schedule and Liquidated Damages

Substantial completion of all services and work under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City _____ hundred dollars (\$ _____ .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation and Direct Purchases

This Work Order is issued for a lump sum, not to exceed amount of \$ _____ (_____). The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City: _____

_____.

5.0 Project Manager

The Project Manager for the Contractor is _____, phone: _____; email: _____; and, the Project Manager for the City is _____, phone: _____; email: _____.

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor’s Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City’s Contract Administrator written notice of all conflicts, errors or

discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is issued pursuant to the Electrical Equipment Inspection, Testing, Repair and Maintenance Contract for between the City of Lake Worth Beach and the Contractor, dated _____, ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

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SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have made and executed this **Work Order No. ___** as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

By: ___ DO NOT SIGN – SAMPLE ONLY ___
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: TEAMWORKnet, INC.

By: ___ DO NOT SIGN – SAMPLE ONLY ___

[Corporate Seal]

Print Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ___ day of _____ 2023, by _____, as the _____ [title] of **TEAMWORKnet Inc.**, a Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Public Signature

Notary Seal:

EXHIBIT "B"
HOURLY BILLING RATES

JULY 2023

DOMESTIC PROFESSIONAL FEE SCHEDULE

GENERAL

TEAMWORKnet, Inc. will provide professional engineering, consulting engineering, testing, and field services in accordance with the following fee schedule. Should you have any questions or require further details, please contact us.

	<u>Regular</u>	<u>Field Services</u>
SENIOR CONSULTING ENGINEER	\$275 /hour	\$325 /hour
PRINCIPAL ENGINEER	\$210 /hour	\$260 /hour
SENIOR ENGINEER	\$195 /hour	\$240 /hour
SENIOR PROJECT ENGINEER	\$170 /hour	\$225 /hour
PROJECT ENGINEER	\$160 /hour	\$210 /hour
ASSOCIATE ENGINEER	\$135 /hour	\$175 /hour
SENIOR PROJECT MANAGER	\$150 /hour	\$185 /hour
PROJECT MANAGER	\$135 /hour	\$175 /hour
FIELD SERVICE SPECIALIST	\$170 /hour	\$225 /hour
SENIOR TECHNICIAN (L3)	\$155 /hour	\$175 /hour
TECHNICIAN (L2)	\$110 /hour	\$135 /hour
TECHNICIAN (L1)	\$100 /hour	\$125 /hour
SENIOR DESIGNER	\$150 /hour	\$175 /hour
DESIGNER	\$130 /hour	\$155 /hour
SENIOR SAFETY COORDINATOR	\$140 /hour	\$175 /hour
SAFETY COORDINATOR	\$130 /hour	\$155 /hour
ENGINEERING ASSISTANT	\$85 /hour	\$95 /hour
CAD DRAFTING	\$85 /hour	\$95 /hour
CLERICAL	\$60 /hour	\$65 /hour

EXPENSES AND CONSIDERATIONS

- Services over 8 hours per day and Saturdays or in excess of 40 hours per week will be billed at 1.5 times the Applicable Service hourly rate. Sundays, Holidays, Emergency Call-Outs and hours over 12 hours per day will be billed at 2.0 times the Applicable Service rate.
- Time includes travel time at regular rates to and from the Lakeland, Florida home office.
- Expenses will be billed at cost.
- Field technician team shall be a two-person minimum.
- Test equipment cost is \$500/day and truck fees are \$125/day. All other tool costs are included in the fee schedule.
- Cancellations after mobilization will be charged for mobilization and time onsite.

FIRM CONTRACTS

TEAMWORKnet, Inc. will provide fixed fee bids for any job having a clearly defined scope or work definition.

**ELECTRICAL EQUIPMENT INSPECTION, TESTING,
REPAIR, AND MAINTENANCE CONTRACT**
RFP #23-206

THIS CONTRACT for Electrical Equipment Inspection, Testing, Repair, and Maintenance("Contract") is entered on _____, by and between the **City of Lake Worth Beach**, a Florida municipal corporation ("City") and **Powerserve Technologies, Inc.**, a corporation authorized to do business in the State of Florida ("Contractor") with its principal office located at 15074 Park of Commerce Blvd. #4, Jupiter, FL 33478.

WHEREAS, the City issued Request for Proposals #23-206 for the Electrical Equipment Inspection, Testing, Repair, and Maintenance ("RFP"); and

WHEREAS, the Contractor submitted its proposal in response to the RFP; and

WHEREAS, the City desires to award the RFP to the Contractor on a non-exclusive basis for the Electrical Equipment Inspection, Testing, Repair, and Maintenance; and

WHEREAS, the City finds awarding the RFP to the Contractor as described herein serves a valid public purpose.

NOW THEREFORE, the City hereby engages the services of the Contractor, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

Article 1. GENERAL INFORMATION.

1.1 **Scope of Services/Work.** The Contractor shall provide the services and work requested by the City and required under a City approved work order or purchase order as described herein. The general nature of the services and work to be provided by the Contractor under this Contract are the electrical Equipment Inspection, Testing, Repair, and Maintenance.

1.2 **Contract Documents.** The Contract Documents are incorporated herein by reference as if set forth in this Contract and comprise the entire agreement between the City and Contractor. The Contract Documents consist of this Contract, the RFP (including, but not limited to, the documents issued with the RFP as the scope and specifications, the drawings, addenda, attachments and exhibits); and, any duly executed and City issued work orders, purchase orders, and change orders, and any Contract amendments signed by the parties. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, within five (5) business days and before proceeding shall obtain a written interpretation or clarification. Failure to obtain a written interpretation or clarification will be deemed a waiver of the ambiguity, error or discrepancy by the Contractor. The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

First Priority:	Fully executed Change Orders or Contract amendments
Second Priority:	This Contract
Third Priority:	Fully executed and City issued Work Orders or Purchase Orders
Fourth Priority:	RFP

1.3 **Contract Administrator.** Whenever the term Contract Administrator is used herein, it is intended to

mean the City Manager or designee, City of Lake Worth Beach, Florida. In the administration of this Contract, all parties may rely upon instructions or determinations made by the Contract Administrator except that all requests and/or determinations that result in an increase in change in time of completion and/or an increase in the contract price shall require a formal change order or contract amendment executed by the City Manager or the City Commission (depending on the authority set forth in the City's Procurement Code).

1.4 **Work Orders.** This Contract does not guarantee that the City will utilize the Contractor in any capacity or for any services hereunder. When the City identifies a need for the Contractor's services, the City will request a proposal from the Contractor to provide the services requested. The City will provide the Contractor with plans and/or specifications in order for the Contractor to develop its proposal. The Contractor's proposal shall be submitted in the format of the sample work order, attached hereto and incorporated herein as **Exhibit "A"** along with a copy of the Contractor's proposal and shall be based on the Hourly Billing Rates attached hereto and incorporated herein as **Exhibit "B"**. Upon receipt of the Contractor's proposed work order and proposal, the City shall decide in its sole discretion whether to award the work order to the Contractor. Depending on the lump sum amount of each work order, the work order may be awarded by the City Manager (if within City Manager's purchasing authority (currently not to exceed \$50,000)) or the City Commission. If the work order is approved by the City, the Contractor shall commence the identified services upon the City's approval of the work order for the services and issuance of a notice to proceed. The City reserves the right to reject any and all proposals submitted by the Contractor. A City-approved work order shall include (by reference) the plans and/or specifications provided by the City to the Contractor. The Contractor shall not provide services under this Contract without a City issued Work Order (or Purchase Order as discussed below) specifically for the stated services.

1.5 **Purchase Order(s).** The City's ordering mechanism for individual projects involving urgently required work and/or repairs in the amount of \$15,000 or less under this Contract will be by a City issued Purchase Order(s); however, the terms and conditions stated in a City Purchase Order(s) shall not apply; the terms and conditions set forth in this Contract shall apply. The Contractor shall not provide services under this Contract without a City Purchase Order specifically for the stated services. The Contractor shall provide the amount of requested services and price listed in each Purchase Order and not exceed amounts expressed on any Purchase Order. CONTRACTOR shall be liable for any excess services or costs not specifically stated in the Purchase Order(s). Services provided pursuant to a City issued Purchase Order(s) under this Contract shall not exceed \$50,000 per year without additional City Commission approval.

1.6 **FISCAL YEAR.** The City's Fiscal Year ends on September 30th of each calendar year. The City cannot authorize the purchase of services beyond September 30th of each calendar year, prior to the annual budget being approved by the City Commission. Additionally, the City must have budgeted appropriate funds for the goods and services in any subsequent Fiscal Year. If the budget is approved for said goods and services, the City will issue a new Work Order(s) or Purchase Order(s) each Fiscal Year for required and approved services.

1.7 **Term.** The term of this Contract shall be for three (3) consecutive years, with possibility of extension for additional two (2), one (1) year renewal terms upon the mutual agreement of both parties. The renewal term(s) may be approved by the City Manager on behalf of the CITY. Notwithstanding the foregoing, this Contract may be terminated as set forth in the Contract Documents.

1.8 **Hourly Billing Rates.** The Hourly Billing Rates set forth as **Exhibit "B"** shall remain fixed for the first three (3) years of this Contract. If due to applicable price escalations and/or reductions which impact the Contractor's Hourly Billing Rates, the City and Contractor may execute a written amendment to this Contract to establish new Hourly Billing Rates for the renewal term(s). The City Manager may approve changes in the Hourly Billing Rates based on the recommendation of the City's Electric Utility Director or designee.

Article 2. CONTRACT TIME.

2.1 All services and work to be provided under a City-approved work order shall be provided in a timely manner as time is of the essence under this Contract.

2.2 The Contractor shall not be considered in default by reason of a delay in timely performance if such delay and failure arise out of causes reasonably beyond the control of the Contractor or its subcontractors (if authorized) and without the Contractor's or subcontractor's fault or negligence. Upon the Contractor's request, the City shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the Contractor and, if the Contractor's delay and failure to timely perform was without it or its subcontractors' fault or negligence, as reasonably determined by the City, the time of completion shall be extended for any reasonable time that the City may reasonably decide; subject to the City's rights to change, terminate, or stop any or all of the work at any time. If the Contractor is delayed at any time in the progress of the work by any act or neglect of the City or its employees, by an approved written change in the scope from the original Contract Documents, or by any other contractor employed by the City, or by changes ordered by the City or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Contractor's reasonable control, or by delay authorized by the City pending negotiation or by any cause which the City shall reasonably decide justifies the delay, then the time of completion shall be extended for any reasonable time the City may reasonably decide. The Contractor must provide the City with written notice of any delay claims and no extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) claim is necessary. With the exception of an approved written change in the scope from the original Contract Documents, the Contractor's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and Contractor specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by Contractor due to a delay in completion of the work. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery or damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the City. Otherwise, the Contractor shall be entitled only to extensions of the Contract Times as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

Article 3. PAYMENT PROCEDURES

3.1 Generally. The Contractor shall submit invoices on a monthly basis detailing all work accomplished in the prior month and all materials installed and used in the work pursuant to City approved work order or. Contractor's invoices shall be submitted to:

City of Lake Worth Beach
Attn: Finance Department
7 N. Dixie Highway
Lake Worth Beach, FL 33460

The City's Contract Administrator or designee will review each invoice submitted by the Contractor. If approved, the City will make payment in accordance with the Contract Documents. If not approved, the City will notify the Contractor within twenty (20) business days of the City's receipt and identify the action necessary to correct the invoice or a deficiency.

3.2 Payment to the Contractor shall be made pursuant Florida's Prompt Payment Act (for construction services), section 218.735, Florida Statutes (2023), except as provided herein. Specifically, the City will withhold five percent (5%) of each payment from a City issued work order to the Contractor as retainage until

fifty percent (50%) of the work is completed by the Contractor. After fifty percent (50%) of the work is completed, upon written request from the Contractor, the Contract Administrator may agree in writing with the Contractor to release a portion of the retainage not to exceed fifty percent (50%) of the total retainage amount. Within twenty (20) business days of the finalization of the punch-list described below and upon receipt of a payment request from the Contractor, the City will pay the Contractor all retainage held less an amount equal to 150% of the estimated cost to complete the items on the list. Upon completion of all items on the finalized punch-list, the Contractor may submit a request for release of all retainage.

3.3 In accordance with section 218.735(7), Florida Statutes (2023), at least five (5) days prior to reaching substantial completion, the Contractor shall create a proposed punch-list of items that must be completed by the Contractor prior to the Contractor submitting its final payment request. The Contractor's proposed punch-list must include all items of work which remain to be completed and the estimated cost to complete each work item on the list. Upon receipt of the Contractor's proposed punch-list, the City will have ten (10) days to review, make modifications, or agree to the proposed punch-list. If the City does not make any modifications to the Contractor's proposed punch-list within ten (10) days of receipt, the proposed punch-list will be deemed accepted by the City. The City's Contract Administrator or designee will resolve any disputes in the punch-list and determine the final punch-list for the parties within 30-days of the Contractor reaching substantial completion. Once the punch-list is accepted by the City and finalized by the City's Contract Administrator or designee, the Contractor shall have five (5) days to complete all items on the finalized punch-list. The failure of either party to include any corrective work or pending items on the finalized punch-list does not alter the responsibility of the Contractor to complete all construction services purchased under the applicable work order. The Contractor's proposed punch-list and modifications by the City may be by informal written notice (e.g., email, fax, or hand-delivery); however, proof of delivery shall be kept by the party providing the informal written notice to the other party.

3.4 Final Payment. Upon final completion and acceptance of the work in accordance with the Contract Documents (including all punch-list items) and final inspection by the appropriate agency with jurisdiction over the project (if other than the City), the Contractor shall submit a "final invoice" to the City. In order for both parties to close their books and records, the Contractor will clearly state "FINAL" on the Contractor's final invoice. This certifies that all work under the applicable work order has been properly completed and all charges have been invoiced to the City. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the Contractor. If the Contractor's Final Invoice is approved as set forth above, the City shall pay the remainder of the work order price including any amount held as retainage.

3.5 Notwithstanding the foregoing, the City shall not be required to pay or release any amount of retainage that is subject of a good faith dispute made in writing, the subject of a claim brought pursuant to section 255.05, Florida Statutes, or otherwise the subject of a written claim or demand by the City.

3.6 Final payment shall not become due until the Contractor and all of its subcontractors submit to the City releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract Documents or otherwise related to the Program.

3.7 Acceptance of final payment by the Contractor or a subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final invoice.

Article 4. SUBCONTRACTS

The Contractor represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual

relationship with the City. All of the services required hereunder shall be performed by the Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The Contractor shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. The Contractor shall comply with all applicable laws in the provision of services under this Contract. The Contractor agrees that it is fully responsible to the City for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City. All of the Contractor's personnel (and all subcontractors) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of subcontractor or subcontractor's personnel furnished by the Contractor upon written notice by City to Contractor of the cause for such replacement. All work performed by a subcontractor will be at cost to the City without any mark-up by the Contractor. All subcontractors must provide the same level and type of insurance as required of the Contractor under this Contract prior to commencing any services. The Contractor shall submit the subcontractors' proof of insurance upon receipt of a notice to proceed.

Article 5. INDEMNITY AND INSURANCE.

5.1 The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, Contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor against the City and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third-party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. The Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification or any other provision in the Contract Documents shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section

768.28, Florida Statutes.

5.2 **INSURANCE:** Prior to commencing any work, the Contractor shall provide proof of insurance coverage as required in the RFP. All such insurance policies may not be modified or terminated without the express written authorization of the City. Failure to comply with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this Contract. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the Contract Documents and/or performance of the work. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

Article 6. REIMBURSEMENT OF ENGINEER EXPENSES.

Should the completion of a work order be delayed beyond the specified or adjusted time limit, Contractor shall reimburse the City for all expenses of engineering and inspection incurred by the City during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the City will be charged to Contractor and be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for in an applicable Work Order.

Article 7. TERMINATION.

7.1 **TERMINATION BY CITY:** The City may terminate any work order, the Contract and/or the Contract Documents if the Contractor is in default as follows:

- (a) refuses or fails to supply enough properly skilled workers or proper materials to timely and competently complete the work;
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- (c) disregards or takes action contrary to any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- (d) takes action, short of declaring bankruptcy, evidencing insolvency;
- (e) fails to prosecute the services or work in a timely manner and reasonably be unable to reach substantial completion and/or final completion within the timeframe(s) required;
- (f) fails or refuses to provide and/or maintain insurance or proof of insurance as required by the Contract Documents; or,
- (g) otherwise is in breach of a provision of the Contract Documents.

When any of the above reasons exist, the City, may without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety (if applicable), written notice and five (5) days to cure, terminate the work order, Contract and/or Contract Documents and may:

- (a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by or paid for by the City; and,
- (b) finish the work by whatever reasonable method the City may deem expedient.

The Contractor and its surety (if any) shall be liable for any damage to the City, including additional attorney and engineering/architectural fees, resulting from the Contractor's termination under this provision by the City, including but not limited to, and any increased costs incurred by the City in completing the work.

When the City terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment, if any, until the work is finished.

Should it be determined by a mediator or a court of competent jurisdiction that the City wrongfully terminated the Contract, then the Contractor agrees to treat such termination as a termination for convenience.

7.2 TERMINATION BY THE CITY FOR CONVENIENCE

The City may, at any time, terminate the Contract and Contract Documents for the City's convenience and without cause. Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

- (a) cease operations as directed by the City in the notice;
- (b) take actions necessary, or that the City may direct, for the protection and preservation of the work; and
- (c) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the City's convenience, the Contractor shall be entitled to receive payment for work executed, and costs incurred by reason of such termination including termination payments to subcontractors and demobilization costs.

Article 8. TAXES AND DIRECT PURCHASES.

8.1 TAXES: The City is exempt from payment of Florida State Sales and Use Tax. The Contractor is not authorized to use the City's Tax Exemption Number unless approved in writing.

8.2 DIRECT PURCHASES: For certain projects, the City may seek to make direct purchases of equipment or materials to be used by the Contractor. Pursuant to Section 212.08(6), Florida Statutes, and the Fla. Admin. Code Ann. R. 12A-1.094 and 12A-1.038, the Parties agree to the following procedure regarding the City's direct-purchase from vendors of certain equipment and materials to be used in specific projects:

8.2.1 The City reserves the right, at the City's option, to direct purchase equipment and materials involved in a specific project, including subcontracts, if any so as to save the sales tax which would otherwise have been due with regard to the same. The Contractor and its subcontractors shall comply with the City's direct purchase procedures, including but not limited to those listed below.

8.2.2 As specifically set forth in a City issued work order, within 30 days (or other time as specified in the work order), the Contractor will present a list of direct purchase equipment for the City's consideration which will include the recommended vendors' name; the price quotes from all vendors provided to the Contractor; and, any terms and conditions the Contractor has negotiated with the recommended vendors. The City will then inform the Contractor as to which equipment it will direct purchase. In the event the City fails to exercise its option to direct purchase equipment and identify which equipment is to be purchased by the City within thirty (30) calendar days of receipt of the list from the Contractor, the City shall waive its right to direct purchase any and all equipment to be used in completion of the work under the applicable work order.

8.2.3 The Contractor is responsible for selecting each direct purchase vendor, subject to City approval. The Contractor is responsible for specifications, equipment receipt, inspecting shipments, and assuring that the equipment is in accordance with the work order and the Contractor's specifications. The Contractor is also responsible for providing the City with enough advance notice

of when the direct purchase equipment will need to be ordered and delivered. In absence of the Contractor's receipt of a written notice of City's disapproval of a vendor within thirty (30) calendar days of City's receipt of the vendor/material list referenced in 9.2.2, the City shall be deemed to have waived any and all objections thereto.

8.2.4 The Contractor shall retain all responsibility for installing all equipment relating to the work and for maintaining the construction schedule so long as the City timely orders and pays for the correct direct purchase equipment. The City's direct purchase mechanism to effectuate tax savings in no way effects the obligation of the Contractor to meet all of the terms and conditions and all provisions and technical specifications of the Contract Documents. The Contractor shall be responsible for insuring all equipment once the equipment is in its care, custody and control, regardless of whether directly purchased by City.

8.2.5 The City will issue a direct purchase order to the vendor of the direct purchase equipment at the price proposed in the Contractor's or its subcontractor's bid, less sales tax. The City will promptly send a copy of the issued purchaser order to the Contractor.

8.2.6 It will be the Contractor's primary responsibility to properly expedite and follow up on direct purchase orders, thereby assuring delivery of the equipment as ordered and at the time and place needed by the Contractor to complete the work in accordance with the work order and construction schedule. To the extent required by the Contractor, the City shall cooperate with all requests of the Contractor related to the expedition of and follow up on direct purchase orders.

8.2.7 The Contractor shall take delivery, unload, and install the equipment purchased on the direct purchase order in accordance with the work order and the Contract Documents with the vendor to repair, replace, and make good any defect without cost to the City, until such time as the work has been completed and accepted by City in accordance with the Contract Documents. The City, with assistance from the Contractor, will be responsible for undertaking and completing any returns of direct purchase equipment as requested by the Contractor and working with the vendor to effectuate any credits or warranties for the returned equipment (if applicable). Any returns not replaced shall be credited to City and acknowledged by a supplement to the direct purchase order and, if applicable, amendment to the Contract Sum. The Contractor shall not be responsible for warranting the direct purchase equipment to the City; however, the Contractor shall be responsible for facilitating the vendor's warranty of the direct purchase equipment and the Contractor shall be responsible for warranting the work to install and/or incorporate the equipment. The Contractor shall maintain records of all direct purchases received and incorporated into the work and provide the City with a monthly accounting until all direct purchase items that are received and accepted for inclusion in the specific project.

8.2.8 When delivery of a direct purchase order is complete, or a payment is to be made on a partial shipment, the Contractor will timely submit to City the documentation supporting the equipment received. Invoices for direct purchase orders will be sent by the direct purchase vendor directly to City's Finance Department, with all such invoices addressed to and in the name of the City. The City's Finance Department will forward invoices to the City's Contract Administrator. The City's Contract Administrator will forward the invoices to the Contractor to verify delivery and sign the invoice and associated documentation supporting the amount of the payment. The City will make timely payment to all vendors in compliance with each vendor's payment procedures. The City will take title to all equipment ordered through direct purchase upon or at the time of purchase. The Contractor will assist City in assuring prompt payment by supplying the vendor's FEI numbers, addresses, phone numbers, etc. All payments will be made in accordance with the Florida Prompt Payment Act.

Article 9. CONTRACTOR'S REPRESENTATIONS AND AGREEMENTS.

In order to induce the City to enter into this Contract, the Contractor makes the following representations:

9.1 Contractor has or will familiarize itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work prior to commencing the work under an applicable Work Order. All work shall be performed consistent with all applicable laws and regulations.

9.2 Contractor agrees to be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with the regulations and to reimburse the City for any loss incurred in connection therewith. This compliance provision specifically includes the Contractor's compliance with all applicable standards, orders or regulations including, without limitation, those issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

9.3 Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract.

9.4 The Contractor represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the work required under the Contract Documents. Proof of such licenses and approvals shall be submitted to the City upon request.

Article 10. INFRINGEMENT INDEMNITY.

10.1 The Contractor will defend or settle at its expense a claim or suit brought by a third party against the City arising out of a claim asserting that the services, work, repair, materials or other deliverables ("deliverables" hereafter) provided by the Contractor under the Contract Documents (if any) infringes any U.S. copyright or any U.S. patent or misappropriates a trade secret. The Contractor will indemnify and hold harmless the City against and from damages, costs, and attorneys' fees, if any and at all levels of trial and appeal or mediation or arbitration, finally awarded in such suit or the amount of the settlement thereof; provided that (i) the Contractor is promptly notified in writing of such claim or suit, (ii) the Contractor will have the sole control of the defense and settlement thereof, and (iii) City furnishes the Contractor, on reasonable request, information available to City for such defense. The City will not admit any such claim without prior consent of the Contractor.

a. In the event of a claim of infringement, the Contractor shall, at its option:

1. procure for City the right to continue using the deliverables provided under the Contract Documents; or
2. replace or modify the deliverables so that the same becomes non-infringing but substantially equivalent in functionality and performance.
3. If neither of the above actions is reasonably feasible, the Contractor will refund to City the fee actually paid by City under the Contract Documents (as amortized on a straight-line basis over the time in which the City was able to use the deliverables).

b. The Contractor will have no obligation under this section for infringement if and to the extent that such claim arises from:

1. modification of the deliverables other than by the Contractor or by its recommendation; or
2. combination of the deliverables with products other than those supplied by the

Contractor; and,

3. the alleged infringement or misappropriation relates to such modification or combination.

c. The Contractor will also not have any indemnification obligation with respect to a claim: (i) if it has provided City with reasonable changes that would have avoided the problem and the reasonable changes are not fully implemented by City within a reasonable time or (ii) arising out use of the deliverables not in accordance with the Contract Documents.

d. The Contractor's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the Contractor whether such injury or damage shall accrue, or may be discovered, before or after termination or expiration of the Contract Documents.

Article 11. MISCELLANEOUS.

11.1 The City and Contractor each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

11.2 Additional work and/or changes to a work order's price and/or time, is subject to the City's prior written approval. Only the City Manager and City Commission (based on the procurement code) have the authority to approve such additional work and changes.

11.3 The headings contained in this Contract are inserted for convenience of reference only and shall not be a part or control or affect the meaning hereof.

11.4 This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

11.5 This Contract (together with the other Contract Documents) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Contract.

11.6 This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

11.7 This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and (c) to the extent permitted by applicable law, any claim that such suit, action or proceeding by

any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

11.8 This Contract shall create no rights or claims whatsoever in any third party.

11.9 If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

11.10 The effective date of this Contract is the date the Contract is approved by the City Commission.

11.11 Public Records: The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

(a) Keep and maintain public records required by the City to perform the service.

(b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the City.

(d) Upon completion of this Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION CITY CLERK, (561) 586-1660 OR CITYCLERK@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.

11.12 This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

11.13 In accordance with Palm Beach County ordinance number 2011-009, the Contractor acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The

Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

11.14 If any legal action or other proceeding is brought for the enforcement of this Contract or the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract or the Contract Documents, each party shall be responsible for their own attorney's fees at all levels. EACH PARTY ALSO AGREES AND VOLUNTARILY WAIVES ANY RIGHT TO A JURY TRIAL ARISING OUT OF ALLEGED DISPUTE, BREACH, DEFAULT, MISREPRESENTATION OR ANY OTHER CLAIM IN CONNECTION WITH OR ARISING FROM ANY PROVISION OF THIS CONTRACT OR THE CONTRACT DOCUMENTS

11.15 Each of the parties agrees to perform its obligations under the Contract Documents in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of the work and under the Contract Documents.

11.16 All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the Contractor or its subcontractors under this Contract shall be considered a "Work for Hire" and the exclusive property of the City. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, Contractor and Contractor's Subcontractors will assign to the City all right, title and interest in and to Contractor and/or Contractor's Subcontractors' copyright(s) for such Documents. Contractor shall execute and deliver to City such instruments of transfer and take such other action that City may reasonable request, including, without limitation, executing and filing, at City's expense, copyright applications, assignments and other documents required for the protection of City's right to such Documents. The Contractor shall retain copies of the Documents for a period of three (3) years from the date of completion of the Program. The City grants to the Contractor and Contractor's subcontractors the right and/or limited license to use a portion of the Documents prepared by the Contractor or the Contractor's subcontractors in future projects of the Contractor or Contractor's subcontractors with said right and/or limited license to use a portion at Contractor's or Contractor's subcontractor's own risk and without any liability to City. Any modifications made by the City to any of the Contractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the Contractor will be at the City's sole risk and without liability to the Contractor.

11.17 Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

11.18 Any notice required to be given under the Contract Documents shall be sent by certified mail (return receipt requested) or by nationally recognized overnight courier as follows to the City:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and to the Contractor as follows:

Powerserve Technologies, Inc.
15074 Park of Commerce Blvd. #4
Jupiter, FL 33478
Attn: Leonardo Velosa, President

Either party may amend this provision by written notice to the other party.

11.19 The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes. The Contractor further represents that no person having any such conflicting interest shall be employed for said performance. The Contractor shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Contractor. The City agrees to notify the Contractor of its opinion within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the City shall so state in the notification and the Contractor shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Contractor under the terms of this Contract.

11.20 The Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, Contractor shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

11.21 This Contract is not intended to be and shall not be construed as an exclusive agreement, and the City may employ additional or other contractors to perform services contemplated by this Contract without liability to the City.

11.22 PUBLIC ENTITY CRIMES. The Contractor acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The Contractor will promptly advise the City if it becomes aware of any violation of this statute.

11.23 PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

11.24 The Contract shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of all services and work. This includes being responsible for all precautions for safety of, and reasonable protection to prevent damage, injury or loss to employees performing the services and work and other persons who may be affected thereby; the work, materials and equipment incorporated therein; and other property, equipment or materials at the site or adjacent thereto including, without limitation, trees, shrubs, lawns, sidewalks, pavements, roadways or structures and utilities not designated for removal, relocation or replacement in the course of the work. The Contractor shall comply with and give all notices required by applicable laws, statutes, ordinances, rules and regulations bearing on safety of persons or property, or their protection from damage, injury or loss. The Contractor shall implement, erect and maintain reasonable safeguards for safety and protection, including posting danger signs and other

warnings against hazards reasonably related to the work or which could arise therefrom. The Contractor shall promptly remedy damage and loss (other than covered by applicable insurance) caused in whole or in part by the Contractor or anyone directly or indirectly employed by or utilized by the Contractor in the performance of the work, which is not attributable to the City's negligence.

11.25 The Contractor agrees that, in all matters relating to this Contract, it will be acting as an independent contractor with exclusive control of the manner and means of performing the work, its obligations and tasks in accordance with the requirements of this Contract and the Contract Documents. The Contractor has no authority to act or make any agreements or representations on behalf of the City. This Contract is not intended, and shall not be construed to create, between the City and the Contractor, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of City.

Article 12. SCRUTINIZED COMPANIES

12.1 CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Contract at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Contract.

12.2 If this Contract is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Contract at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Contract.

12.3 The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.

12.4 The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Contract, including any and all renewals.

12.5 The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

12.6 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

Article 13. E-VERIFY

Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR shall:

13.1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Contract) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

- 13.2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Contract) stating that the subcontractor does not employ, Contract with, or subcontract with an “unauthorized alien” as defined in Section 448.095(1)(k), Florida Statutes;
- 13.3. Maintain copies of all subcontractor affidavits for the duration of this Contract and provide the same to the CITY upon request;
- 13.4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- 13.5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Contract; and,
- 13.6. Be aware that if the CITY terminates this Contract under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded a contract for at least 1 year after the date on which the Contract is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Contract.

Remainder of this page intentionally left blank
Signature page follows

IN WITNESS WHEREOF, the City and Contractor have caused this Contract for Electrical Equipment, Testing, Repair, and Maintenance to be executed the day and year shown below.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

By: _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

POWERSERVE TECHNOLOGIES, INC.

[Corporate Seal]



By: _____

Print Name: Leonardo Velosa

Title: President

STATE OF Florida)
COUNTY OF Palm Beach)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 22 day of August 2023, by Leonardo Velosa, as the President [title] of **Powerserve Technologies, Inc.**, a Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Public Signature

Notary Seal:



EXHIBIT "A"
SAMPLE WORK ORDER

**CONTRACT FOR ELECTRICAL EQUIPMENT INSPECTION,
TESTING, REPAIR, AND MAINTENANCE
WORK ORDER NO. _____**

THIS WORK ORDER for System Electrical Equipment Inspection, Testing, Repair and Maintenance ("Work Order" hereafter) is made on the _____, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460 ("City" hereafter) and **Powerserve Technologies, Inc.**, a corporation authorized to do business in State of Florida ("Contractor" hereafter).

1.0 Project Description:

The City desires the Contractor to provide all goods, services, materials and equipment as identified herein related to the Electrical Equipment Inspection, Testing, Repair and Maintenance described as: _____ (the "Project"). The Project is more specifically described in the plans prepared by _____, dated _____, and which are incorporated herein by reference.

2.0 Scope

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with construction services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 Schedule and Liquidated Damages

Substantial completion of all services and work under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City _____ hundred dollars (\$ _____ .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation and Direct Purchases

This Work Order is issued for a lump sum, not to exceed amount of \$ _____ (_____). The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City: _____

_____.

5.0 Project Manager

The Project Manager for the Contractor is _____, phone: _____; email: _____; and, the Project Manager for the City is _____, phone: _____; email: _____.

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or

discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is issued pursuant to the Electrical Equipment Inspection, Testing, Repair and Maintenance Contract for between the City of Lake Worth Beach and the Contractor, dated _____, ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

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SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order No. ___ as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

By: DO NOT SIGN – SAMPLE ONLY _____
Betty Resch, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

POWERSERVE TECHNOLOGIES, INC.

By: DO NOT SIGN – SAMPLE ONLY _____

[Corporate Seal]

Print Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____ 2023, by _____, as the [title] of **Powerserve Technologies, Inc.**, a Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Public Signature

Notary Seal:

EXHIBIT "B"
HOURLY BILLING RATES

Powerserve Technologies, Inc.
Hourly Labor Rates

Position Description	Hourly rate	OT hourly rate
Substation helper	\$ 72.80	\$ 105.56
Substation General Foreman	\$ 109.20	\$ 158.34
P & C Station Wireman/Foreman	\$ 100.80	\$ 146.16
Relay Technician helper	\$ 81.20	\$ 117.74
P&C Fld engineer 3 or Relay Technician 2	\$ 100.80	\$ 146.16
P & C Fld engineer 2 or Relay technician 1	\$ 114.80	\$ 166.46
P & C Field Engineer 1	\$ 135.70	\$ 196.77
P & C Senior Engineer	\$ 181.70	\$ 263.47

Powerserve Technologies, Inc.
Testing Equipment Rates

Equipment Costs	Cost/Day	Cost/Week
Doble F6000 Power System Simulator	\$ 145.25	\$ 581.00
Doble F2000 Power System Simulators (obsolete)	\$ 93.75	\$ 375.00
Megger MRCT/Vanguard EZCT200B Auto CT Tester	\$ 200.00	\$ 800.00
AC Highpot (High Voltage)	\$ 102.50	\$ 410.00
DC Hipot (Haefly/Hipotronics)	\$ 124.56	\$ 498.25
VLF Hipot (Megger)	\$ 174.97	\$ 699.89
TDR900	\$ 112.50	\$ 450.00
Alber Cellcorder (Battery tester)	\$ 31.25	\$ 125.00
Megger Micro-ohmmeter	\$ 131.25	\$ 525.00
Power Comm	\$ 272.72	\$ 1,090.88
15kV Megger	\$ 46.97	\$ 187.88
TTR	\$ 127.83	\$ 511.30
Transformer Ohm Meter (MRO)	\$ 203.19	\$ 812.78
Frequency Sweep Tester (FRAX)	\$ 127.05	\$ 508.19
Powerfactor Test Set (Doble M7100)	\$ 270.72	\$ 1,082.88
Transformer Oil Analyzer (Myrkos)	\$ 354.50	\$ 1,418.00

Notes:

- 1) Minimum charge for labor is 8 hours.
- 2) Minimum charge for testing equipment is 1 day.
- 3) Hours are start/end based on portal-to-portal

City of Lake Worth Beach
Evaluation Matrix

RFP 23-206 Electrical Equipment Inspection, Testing, Repair and Maintenance

		RANKED:	5	2	4	1	3
Evaluation Criteria Score Sheet:		Weight	ABB Inc.	Powerserve Technologies, Inc.	HVA P&C	NuCAT Corporation	TEAMWORKnet, Inc.
1	Responsiveness & Methodology	15	38	59	46	48	53
2	Cost Effectiveness	30	72	107	88	108	78
3	Successful Experience and Qualification of Firm & Staff	30	85	100	87	118	110
4	Similar Projects and References	15	41	54	51	60	52
5	Veteran Business Enterprise, Small Business and Local Business Preference	5	0	0	0	20	20
6	Default, Termination, Litigation, Debarment, etc.	5	0	20	20	20	20
Total Points Received:			236	340	292	374	333
Exhibit "B" - City's Campaign Contribution Statement			submitted	submitted	submitted	submitted	submitted
Exhibit "C" - Respondant Information Form			not included	submitted	submitted	submitted	submitted
Exhibit "D" - Similar Projects			submitted	submitted	submitted	submitted	submitted
Exhibit "E" - References			submitted	submitted	submitted	submitted	submitted
Exhibit "F" - Drug Free Workplace Form			submitted	submitted	submitted	submitted	submitted
Exhibit "G" - Scrutinized Companies Certification			submitted	submitted	submitted	submitted	submitted
Exhibit "H" - Veteran Bus. Enterprise, Small Bus. Local Bus. Preference			N/A	N/A	N/A	Veteran Business	Small Business
default, termination, litigation statement			not included	submitted	submitted	submitted	submitted

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Electric Utility

TITLE:

Agreement with Bermex, Inc. for the reading of electric and water utility meters during emergency situations

SUMMARY:

Agreement with Bermex, Inc. for the reading of electric and water utility meters associated with potential future emergency situations including disaster recovery, electric utility restoration situations and/or Advanced Metering Infrastructure (AMI) hardware or software failure.

BACKGROUND AND JUSTIFICATION:

The City issued a Request for Proposals (23-203R) seeking bids from qualified vendors for emergency, as-needed, electric and water utility meter reading services. Bermex, Inc. was the sole vendor to submit a proposal, was found to be a responsive and responsible bidder and was recommended for the award.

The City currently utilizes an AMI system for its electric and water utility meter reading, which allows internal staff to focus on other tasks on a daily basis. In the unlikely event that the said AMI systems were to become inoperable or fail, the City would need to rely on the services described within this document to revert to manual meter reads on an as-needed basis. These services would be utilized until the AMI System was back online and operational. The duration of the Agreement is three (3) years, with the option to renew for two (2) additional one (1) year periods.

MOTION:

Move to approve/disapprove Agreement with Bermex, Inc. for the reading of electric and water utility meters on an as-needed basis.

ATTACHMENT(S):

Agreement

**AGREEMENT FOR GOODS AND SERVICES
(ELECTRIC AND WATER UTILITY METER READING SERVICES)**

THIS AGREEMENT is made August 29, 2023, between the **City of Lake Worth Beach**, Florida, a municipal corporation ("CITY"), with its office located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460, and **Bermex, Inc.**, an Ohio corporation authorized to do business in the State of Florida ("CONTRACTOR") with its office located at 4500 Courthouse Blvd. Suite #150, Stow, Ohio 44224.

RECITALS

WHEREAS, the CITY is a municipal corporation organized and existing pursuant to the Charter and the Constitution of the State of Florida; and

WHEREAS, the CITY issued Request for Proposals #23-203R to provide the City with Electric and Water Utility Meter Reading Service on an as needed basis ("RFP"); and

WHEREAS, CONTRACTOR submitted a proposal to provide Electric and Water Utility Meter Reading services as described and set out in the RFP; and

WHEREAS, the CITY desires to accept the CONTRACTOR's proposal in order for CONTRACTOR to render the goods and services to the CITY as provided herein; and

WHEREAS, the CONTRACTOR further warrants that it is experienced and capable of performing the tasks hereunder in a professional and competent manner; and

WHEREAS, the CITY finds awarding the RFP to the CONTRACTOR as described herein serves a valid public purpose.

NOW THEREFORE, the CITY hereby engages the services of the CONTRACTOR, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

1. TERM

1.1 The term of this Agreement for Goods and Services ("Agreement") shall be for three (3) years, with the option to renew for two (2) additional one (1) year renewals periods upon the mutual agreement of both parties and dependent on the annual appropriation of funds by the CITY's City Commission. The renewal terms may be approved by the City Manager upon the same terms, conditions and pricing. Notwithstanding the foregoing, this Agreement may be earlier terminated as set forth in this Agreement.

2. SCOPE OF SERVICES

2.1 The Scope of Services for the Electric and Water Utility Meter Reading Services shall include all aspects of obtaining and recording daily electric and water utility meter reads and related services on as needed basis as more specifically set forth in the RFP's Scope of Services, which is attached hereto as **Exhibit "B"** and incorporated herein by the reference. The described services would primarily be requested by the City as a result of the City's existing automated, remote electric and water utility meter reading system becoming temporarily or permanently inoperable. The City already owns an AMI system, which is currently installed, and uses FCS

platform for meter reading. The service shall be initiated and provided by the CONTRACTOR within seventy-two (72) hours of receiving a notification of request by the CITY for such service, and shall continue to be provided until the CITY requests the service to cease. Work shall commence upon the issuance of a Purchase Order by the CITY.

2.2 The CONTRACTOR represents to the CITY that the materials and services provided under this Agreement shall be in accordance with accepted and established trade practices and procedures recognized in the CONTRACTOR's trade in general and that the CONTRACTOR's work shall conform to the highest standards and in accordance with this Agreement.

2.3 The CONTRACTOR represents that it is licensed to do business in the State of Florida and holds and will maintain all applicable licenses required for the work to be completed under this Agreement. The CONTRACTOR further warrants its capability and experience to perform the work provided for herein in a professional and competent manner.

2.4 The Scope of Services shall be completed in accordance with the CITY issued Purchase Order, the terms and conditions set forth in the RFP and this Agreement.

3. INDEPENDENT CONTRACTOR; USE OF AGENTS OR ASSISTANTS

3.1 The CONTRACTOR is and shall be, in the performance of the Scope of Services under this Agreement, an independent contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the Scope of Services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR's sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the Scope of Services.

3.2 To the extent reasonably necessary to enable the CONTRACTOR to perform the Scope of Services hereunder, the CONTRACTOR shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance of its duties. All costs of the services of, or expenses incurred by, such agents or assistants shall be paid by the CONTRACTOR.

4. SERVICES

4.1 The CONTRACTOR shall provide all services as more specifically set forth in a CITY issued Purchase Order, the RFP and this Agreement.

5. FEE AND ORDERING MECHANISM

5.1 For goods and services to be rendered under this Agreement, the CONTRACTOR shall be entitled to a fee for the goods and services provided and accepted by the CITY at the rates set forth in CONTRACTOR's proposed rates which are attached as Exhibit "A". The rates set forth in Exhibit "A" shall remain fixed for the first three (3) years of this Agreement. If due to applicable price escalations and/or reductions which impact the CONTRACTOR's rates in Exhibit "A", the CITY and CONTRACTOR may execute a written amendment to this Agreement to establish new rates for the renewal term(s). The City Manager may approve changes in the CONTRACTOR's rates based on the recommendation of the City's Electric Utility Director or designee

5.2 Should the CITY require additional services, not included in this Agreement, rates and payment for such work will be set forth in a separate amendment, as authorized in accordance with the CITY's procurement code and policy prior to any such additional services being provided by the CONTRACTOR.

5.3 The CITY's ordering mechanism for the Scope of Services (including each order of specific services) under this Agreement will be by a CITY issued Purchase Order(s); however, the terms and conditions stated in a CITY issued Purchase Order(s) shall not apply. CONTRACTOR shall not provide services under this Agreement without a CITY issued Purchase Order specifically for the stated services requested. Each Purchase Order shall be approved in accordance to the CITY's procurement code and policy. CONTRACTOR shall provide the amount of requested goods and services listed in each CITY issued Purchase Order and not exceed amounts expressed on any Purchase Order. CONTRACTOR shall be liable for any excess goods, services or costs not specifically stated in the Purchase Order(s). The City's Fiscal Year ends on September 30th of each calendar year. The CITY cannot authorize the purchase of goods or services beyond September 30th of each calendar year, prior to the annual budget being approved by the CITY's City Commission. Additionally, the CITY must have budgeted appropriate funds for the goods and services in any subsequent Fiscal Year. If the budget is approved for said goods and services, the CITY will issue a new Purchase Order(s) each Fiscal Year for required and approved goods and services.

6. MAXIMUM COSTS

6.1 The CONTRACTOR expressly acknowledges and agrees that the total cost to complete the Scope of Services in accordance with the RFP and this Agreement will be set in each CITY issued Purchase Order and no additional costs shall be authorized without prior written approval from the CITY.

7. INVOICE

7.1 The CONTRACTOR shall submit an itemized invoice to the CITY for approval prior to receiving compensation. The CONTRACTOR shall be paid within thirty (30) days of receipt of an approved invoice for the provided goods and services.

7.2 If the CITY disputes any invoice or part of an invoice, CITY shall notify the CONTRACTOR within a reasonable time after receipt of the invoice. CITY reserves the right to off-set, reduce or withhold any payment to the CONTRACTOR until the dispute is resolved.

8. AUDIT BY CITY

8.1 The CONTRACTOR shall permit the CITY, or any authorized representatives of the CITY, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the CONTRACTOR's performance under this Agreement including, but not limited to, expenses for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such work performed or to be performed under this Agreement.

9. COPIES OF DATA/DOCUMENTS

9.1 Copies or original documents prepared by the CONTRACTOR in relation to work associated with this Agreement shall be provided to the CITY. Data collected, stored, and/or provided shall be in a form acceptable to the CITY and agreed upon by the CITY.

10. OWNERSHIP

10.1 Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONTRACTOR pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

11. WRITTEN AUTHORIZATION REQUIRED

11.1 The CONTRACTOR shall not make changes in the Scope of Services or perform any additional services or provide any additional material under this Agreement without first obtaining written authorization from the CITY for such additional services or materials. Additional services or materials provided without written authorization shall be done at the CONTRACTOR's sole risk and without payment from the CITY.

12. DEFAULTS, TERMINATION OF AGREEMENT

12.1 If the CONTRACTOR fails to timely perform the Scope of Services or has failed in any other respect to satisfactorily perform in accordance with this Agreement; or, is in material breach of a term or condition of this Agreement, the City Manager or designee may give written notice to the CONTRACTOR specifying defaults to be remedied. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the CONTRACTOR does not remedy defaults within the allotted time or commence good faith steps to remedy the default to the reasonable satisfaction of the City Manager or designee, the CITY may take such action to remedy the default and all expenses related thereto shall be borne by the CONTRACTOR including, without limitation, utilization of another contractor to provide for such work; and/or, the CITY may withhold any money due or which may become due to the CONTRACTOR for such expense and/or work related to the claimed default. Alternatively, or in addition to the foregoing, if after three (3) days the CONTRACTOR has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the City Manager or designee, the CITY may elect to terminate this Agreement. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

12.2 Notwithstanding paragraph 12.1, the CITY reserves the right and may elect to terminate this Agreement at any time, with or without cause. At such time, the CONTRACTOR would be compensated only for that work which has been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

13. INSURANCE

13.1. Prior to commencing the Scope of Services, the CONTRACTOR shall provide certificates evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the CONTRACTOR has obtained insurance of the type, amount, and classification as required for strict compliance with this Section and that no material change or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the CITY. Failure to comply with the foregoing requirements shall not relieve the CONTRACTOR of its liability and obligations under this Contract. All insurance, other than Workers' Compensation, required hereunder shall specifically include the "City of Lake Worth Beach" as an "Additional

Insured", on a primary, non-contributing basis and the CONTRACTOR shall provide additional insured endorsements section of Certificates of Insurance.

13.2. The CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$1,000,000 per occurrence (\$2,000,000 aggregate) to protect the CONTRACTOR from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the CONTRACTOR or by anyone directly employed by or contracting with the CONTRACTOR.

13.3. The CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect the CONTRACTOR from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

13.4. The CONTRACTOR shall maintain, during the life of this Contract, Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.

14. WAIVER OF BREACH

14.1 The waiver by either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

15. INDEMNITY

15.1 The CONTRACTOR shall indemnify, defend and hold harmless, to the maximum extent permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all liability, suit, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death, patent infringement or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), costs and expenses (including attorney's fees, litigation, arbitration, mediation, appeal expenses) to the extent arising out of or alleged to have arisen out of the acts, omissions or neglect of the CONTRACTOR or any of its agents, employees, subcontractors or by anyone the CONTRACTOR directly or indirectly employed.

15.2 The CONTRACTOR's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the CONTRACTOR whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.

15.3 Compliance with any insurance requirements required elsewhere in this Agreement shall not relieve CONTRACTOR of its liability and obligation to defend, hold harmless and indemnify the CITY as set forth in this section.

15.4 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CITY or CONTRACTOR. Further, nothing contained in this Agreement shall be construed or interpreted as consent by the CITY to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in section 768.28, Florida Statutes, as amended from time to time.

15.5 The CONTRACTOR's failure to comply with this section's provisions shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

16. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

16.1 This Agreement consists of the terms and conditions provided herein; **Exhibit "A"** (the Contractor's rates); **Exhibit "B"** (the Scope of Services); any CITY issued Purchase Orders; and, the RFP (including all specifications, exhibits and addenda attached thereto or referenced therein). To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with any CITY issued Purchase Order(s) and the RFP next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

16.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

17. ASSIGNMENT

17.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the CITY and the CONTRACTOR. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the CITY and the CONTRACTOR and not for the benefit or any other party. The CONTRACTOR shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

17.2 In the event the CITY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

18. SUCCESSORS AND ASSIGNS

18.1 Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

19. OF TRIAL BY JURY

19.1 TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

20. GOVERNING LAW AND REMEDIES

20.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be exclusively in Palm Beach County, Florida.

20.2 No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

21. TIME IS OF THE ESSENCE

21.1 Time is of the essence in all respects under this Agreement.

22. NOTICES

22.1 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the CITY or the CONTRACTOR have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the CONTRACTOR to the CITY shall be given to the CITY address as follows:

City Manager
City of Lake Worth Beach
7 North Dixie Highway
Lake Worth Beach, Florida 33460

All notices, demands or requests from the CITY to the CONTRACTOR shall be given to the CONTRACTOR address as follows:

Bermex, Inc.
2880 W. Oakland Blvd. Suite 119
Fort Lauderdale, FL 33311

23. SEVERABILITY

23.1 Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

24. DELAYS AND FORCES OF NATURE

24.1 The CONTRACTOR shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Upon the CONTRACTOR's request, the CITY shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the CONTRACTOR and, if the CONTRACTOR'S delay and failure to timely perform was without it or its subcontractors' fault or

negligence, as determined by the CITY in its sole discretion, the time of completion shall be extended for any reasonable time that the CITY, in its sole discretion, may decide; subject to the CITY'S rights to change, terminate, or stop any or all of the work at any time. If the CONTRACTOR is delayed at any time in the progress of the work by any act or neglect of the CITY or its employees, or by any other contractor employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the CITY pending negotiation or by any cause which the CITY, in its sole discretion, shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY, in its sole discretion, may decide. No extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the CITY. In the case of continuing cause of delay, only one (1) claim is necessary. The CONTRACTOR's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and CONTRACTOR specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by CONTRACTOR due to a delay in completion of the work.

25. COUNTERPARTS

25.1 This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. This Agreement may be executed electronically.

26. LIMITATIONS OF LIABILITY

26.1 Under no circumstances shall either party be liable to the other for any consequential, incidental, special, punitive, or any other form of indirect or non-compensatory damages.

27. PUBLIC ENTITY CRIMES

27.1 CONTRACTOR acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. CONTRACTOR will advise the CITY immediately if it becomes aware of any violation of this statute.

28. PREPARATION

28.1 This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

29. PALM BEACH COUNTY INSPECTOR GENERAL

29.1 In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

30. ENFORCEMENT COSTS

30.1 All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract.

31. PUBLIC RECORDS

31.1 CONTRACTOR shall comply with Florida's Public Records Laws, Chapter 119, Florida Statutes, and, if it is acting on behalf of the CITY as provided under section 119.011(2), the CONTRACTOR specifically agrees to:

- (a) Keep and maintain public records required by the CITY to perform the services under this Agreement.
- (b) Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the CONTRACTOR does not transfer the records to the CITY.
- (d) Upon the completion of the Agreement, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the services. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660,

CITYCLERK@LAKEWORTHBEACHFL.GOV, OR BY MAIL AT CITY OF LAKE WORTH BEACH, ATTN: City Clerk, 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

32. COPYRIGHTS AND/OR PATENT RIGHTS

32.1 CONTRACTOR warrants that there has been no violation of copyrights and/or patent rights in the manufacturing, producing or selling of the goods, shipped or ordered, as a result of this Agreement and the CONTRACTOR agrees to hold the City harmless from any and all liability, loss, or expense occasioned by any such violation.

33. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH

33.1 CONTRACTOR certifies that all material, equipment, etc., contained in this proposal meets all OSHA requirements. CONTRACTOR further certifies that, if the material, equipment, etc., delivered is subsequently found to be deficient in any OSHA requirements in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the CONTRACTOR.

34. FEDERAL AND STATE TAX

34.1 The CITY is exempt from Federal Tax and State Tax for Tangible Personal Property. The Procurement Official will sign an exemption certificate submitted by the successful Proposer. Vendors or contractors doing business with the CITY shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the CITY, nor shall any Vendor/Contractor be authorized to use the CITY's tax Exemption Number in securing such materials.

35. PROTECTION OF PROPERTY

35.1 The CONTRACTOR shall at all times guard against damage or loss to the property of the CITY or of other vendors or contractors and shall be held responsible for replacing or repairing any such loss or damage. The CITY may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the successful CONTRACTOR or its agents. The CONTRACTOR shall be responsible to safeguard all of their property such as tools and equipment while on site. The CITY will not be held responsible for any loss of CONTRACTOR property due to theft or vandalism.

36. DAMAGE TO PERSONS OR PROPERTY

36.1 The responsibility for all damage to person or property arising out of or on account of work done under this Contract shall rest upon the CONTRACTOR, and he/she shall save the CITY and political unit thereof harmless from all claims made on account of such damages.

37. SAFETY: ACCIDENT PREVENTION

37.1 In the performance of this Agreement, the CONTRACTOR shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation including without limitation Chapter 23 CFR 635. The CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the CITY, may

determine to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

37.2 It is a condition of this Agreement, and shall be made a condition of each subcontract, which the CONTRACTOR enters into pursuant to this Agreement (if authorized), that the CONTRACTOR and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

37.3 Pursuant to 29 CFR 1926.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

38. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (Applicable to all federally funded contracts and any subcontracts of \$100,000 or more).

38.1 By execution of this Agreement, CONTRACTOR, if applicable, will be deemed to have stipulated as follows:

- (a) Any CITY facility or property that is or will be utilized in the performance of this Agreement, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
- (b) CONTRACTOR agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
- (c) CONTRACTOR shall promptly notify the CITY of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a CITY facility or property that is or will be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities.

39. SCRUTINIZED COMPANIES

39.1 CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

39.2 If this Agreement is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

39.3 The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

39.4 The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

39.5 The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

39.6 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

40. E-VERIFY

Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR shall:

40.1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

40.2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

40.3. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;

40.4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;

40.5. Be aware that a violation of section 448.09, Florida Statutes (Unauthorized Aliens; Employment Prohibited), shall be grounds for termination of this Agreement; and,

40.6. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the CONTRACTOR may not be awarded a contract for at least one (1) year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

41. SURVIVABILITY

41.1 Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement for Goods and Services (Electric and Water Utility Meter Reading Services) on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo , Financial Services Director

CONTRACTOR: BERMEX, INC.

DocuSigned by:

By: Kenny Murphy

C98CAD7CE2EC497...

Print Name: Kenny Murphy

Title: President

STATE OF Ohio)
COUNTY OF Summit)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 29 day of August 2023, by Kenny Murphy, as the President [title] of Bermex, Inc., a corporation authorized to do business in the State of Florida, who is personally known to me or who has produced (personally known by me) as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

DocuSigned by:

[Signature]

ABF029BD961546A

Notary Public Signature

Notary Seal



EXHIBIT "A"

CONTRACTOR'S RATE SCHEDULE

Electric and Water Utility Meter Reading Services

Service Requirements.

2- Meter Reading Technicians

**Work Plan: Provide Full Time Technicians Dedicated to the City
Production- Complete all Meter Reads and Billing Service Orders Daily**

Bermex will provide our services with experienced trained staff from our existing team or hire local talent where necessary to build a team that meets or exceeds project standards Employees will be sourced from the local area and trained by our experience managers.

Services- Bermex will provide daily meter reading support to the city. Additionally, as a way to continue to provide value to the city our technicians will be available to the city for 8 hours per day, Monday through Friday. The city may use these technicians for Meter Reading Support, Turn On/Turn Off Services, Billing Support, Rereads and other support functions that provide value to the city.

Pricing

This project will be bid using an hourly rate.

Price per hour is \$54.00

Invoicing will be provided to the city on a monthly basis.

Projected Budget for 1 year of Service utilizing approx. 4,160 hours per year is \$224,640

EXHIBIT "B"

RFP#23-203R Electric and Water Utility Meter Reading Services

SCOPE OF SERVICES

The CONTRACTOR shall be responsible for all aspects of obtaining and recording daily electric and water utility meter reads on as needed basis. The described services would primarily be requested by the City as a result of the City's existing automated, remote electric and water utility meter reading system becoming temporarily or permanently inoperable. The City already owns an AMI system, which is currently installed, and uses FCS platform for meter reading. The service shall be initiated and provided by the CONTRACTOR within seventy-two (72) hours of receiving a notification of request by the City for such service, and shall continue to be provided until the City requests the service to cease. The purpose of the service would be to provide the following activities including, but not limited to:

- Supplying staff and transportation for daily electric and water utility meter read collection. Contractor is responsible for providing all of their workforce.
- Ensuring provided staff are equipped with and utilizing necessary personal protective equipment (PPE).
- Ensuring provided staff and transportation is easily identifiable as an approved utility meter reading contractor for the City.
- Utilizing up to five (5) City-provided Itron FC300 handheld computers, or equivalent, (handheld collection device) in the collection and recording of daily electric and water utility meter reads.
- Obtaining all assigned electric and water utility meter reads, entering said reads into above-stated handheld collection device and submitting such device to City Meter Shop personnel for upload by 2:00pm (Eastern) daily.
- Accessing customer's property to obtain electric and water utility meter reads.
- When necessary, attempting to contact customer to request access to electric and/or water utility meter when such access is not readily available due to locked gates, loose dogs on property, etc.
- Utilizing City-provided binoculars to obtain electric utility meter reads when meter is visible from a distance, but immediate access is not available.
- Utilizing City-provided Bite Terminator® Dog Bite Protection System while carrying out assigned duties.
- Properly closing and seating all water utility meter box covers, caps and/or lids after obtaining associated read.
- Immediately identifying and reporting any and all safety-related concerns to City Meter Shop personnel. These concerns could include issues or situations related to the theft of utilities.
- Understanding and entering various skip and trouble codes within the handheld collection device on a per account basis including, but not limited to:
 - Broken Register
 - Obscured Register
 - Broken or Inoperable Meter
 - Locked Gate
 - Meter Missing
 - Bad Dog on Property
 - Bees in Box

- Meter Box Missing Lid
- Meter Box Unsealed

1. GENERAL STANDARDS OF WORK

1.1 Schedule of Work: The standard hours of utility meter reading services shall be Monday through Friday, 7:30am to 2:00pm (Eastern). The City reserves the right to direct the CONTRACTOR to rearrange the schedule to meet the needs of the City. Schedule flexibility can be reviewed and accommodated on a case-by-case basis. The City does not expect any utility meter reading services to be conducted on dates that are recognized as observed Holidays by the City. A calendar which details the required cycles and routes to be read each day is available prior to the beginning of each calendar month. This calendar will be provided to the CONTRACTOR for additional guidance.

1.2 Training: Any and all training of CONTRACTOR staff shall be completed by the CONTRACTOR. This includes, but is not limited to, the following:

- Handheld Collection Device use
- Accurately reading electric and/or water utility meters
- Identifying safety or theft-related situations and hazards
- Providing courteous customer service

1.3 Appearance and Dress: The clothing of the CONTRACTOR'S provided staff shall be maintained in good repair, clean and pressed. The clothing should consist of footwear that is fully enclosed, supports the ankle and has a defined heel. Additionally, long pants or equivalent are required, as well as a plain colored top with no logos or wording aside from the CONTRACTOR'S name. Regardless of hair length, hair should be clean and combed and/or neatly trimmed or arranged. Any facial hair shall be neatly kept.

1.4 Electric Utility Meters: The electric utility meters to be read include digital and analog registers. It will be necessary to obtain both kilowatt-hour (kWh) and kilowatt (kW) reads on many electric utility meters. Additionally, it will be necessary to physically view each electric utility meter register to obtain the associated read as remote frequency (RF) and/or Encoder Receiver Transmitter (ERT) technology is unavailable on the City's electric utility meters. The electric utility meters that will be required to be read includes, but is not limited to, the following:

- Itron Centron
- Itron Sentinel
- Landis+Gyr Focus
- Westinghouse Single-Stator

1.5 Water Utility Meters: The water utility meters to be read include digital and analog registers. It may be necessary to physically view each water utility meter register to obtain the associated read, in the event that the existing ERT signal is unable to be collected by the handheld collection device. The water utility meters that will be required to be read includes, but is not limited to, the following:

- Badger E-Series
- Badger Disc Series

1.6 Billing Cycle, Route and Geographic Territory: In total, the City has approximately 28,600 electric utility meters and 15,000 water utility meters spread across its nearly 13 square mile utility territory. These 43,000+ utility meters are broken out into 21 separate cycles, which are typically read across 20 business days. The CONTRACTOR will be responsible for reading utility meters in residential, commercial and industrial settings. The City can provide daily detailed reports for reader auditing and payroll purposes. It is estimated that approximately 75% of water meters are installed in alleys or near the street with easy access. The routes are in sequential order for optimum efficiency, with the exception of one (1) cycle and route that is spread across the territory to contain all City-owned accounts. The electric and water routes are mixed. The associated approximate breakdown of meters per route is illustrated below:

Cycle	Approximate Quantity of Electric Utility Meters	Approximate Quantity of Water Utility Meters
1	1406	130
2	2784	295
3	2665	5
4	1278	431
5	783	1636
6	1519	809
7	1724	915
8	1626	966
9	1443	986
10	1443	986
11	1443	986
12	1443	986
13	1369	732
14	1311	672
15	1064	634
16	1291	884
17	1305	726
18	1103	691
19	716	658
20	688	675
21	198	192

1.7 Additional: The City can allow alternative dog bite preventative measures, and approve them on a case-by-case basis. The City can provide a small office/desk area for the contractor.

END OF SCOPE OF SERVICES

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Electric Utility

TITLE:

Waiver of Procurement Process and Agreement with Gresco Utility Supply, Inc., for the purchase and delivery of 27 kV Capacitor Banks

SUMMARY:

This item seeks authorization to waive the competitive procurement process and enter into an agreement with Gresco Utility Supply, Inc., to provide and deliver 27 kV, 4 MVAR 2-STEP Shunt Capacitor Banks to the City at a cost not to exceed \$581,523.

BACKGROUND AND JUSTIFICATION:

Capacitor Banks are a component in substations to stabilize voltage variations and improve power delivery efficiency. Currently, the City has a need for new 27 kV capacitor banks at the City's electrical distribution substations and the new Canal 8-Bay Distribution Substation. The City issued an Invitation for Bid (IFB) (IFB#22-113) for the purchase and delivery of the capacitor banks, which the City canceled due to a lack of responsive bids. The City then issued a second IFB (IFB #23-114) for the purchase and delivery of capacitor banks. After the bid deadline, due to materials price volatility and supply chain issues, the City requested and accepted bid revisions from the bidders. Two (2) bidders responded with bid revisions with Gresco Utility Supply recommended for the award. The initial Term of the Agreement is for one (1) year with four (4) additional one (1) year extensions. The total cost of the capacitor banks under this initial agreement is in the amount not to exceed \$581,524.

Since the bid process for IFB#22-113 did not strictly adhere to the technical competitive procurement process, the City's Electric Utility Department is seeking a procurement waiver. Pursuant to section 2-112(g) of the City's Procurement Code, the City Commission may authorize the waiver of the competitive solicitation process upon the recommendation of the procurement division that it is not practicable or advantageous for the City to acquire the goods through the normal competitive selection process. In this case, the revised bids were necessary due to the current price volatility and supply chain issues. Accordingly, the City's procurement division recommends the procurement waiver.

The City's Electrical Engineering team is preparing for the construction of the new Canal 8-Bay Distribution Substation. The 27 kV capacitor banks are an essential component of the new substation builds. This project has been identified as an element of the City's electric utility System Hardening and Reliability Improvement Project (SHRIP) and for which bonds were sold in November 2020 and May of 2022.

MOTION:

Move to approve/disapprove the waiver of procurement and agreement with Gresco Utility Supply, Inc., to provide and deliver 27 kV, 4 MVAR 2-STEP Shunt Capacitor Banks to the City at a cost not to exceed \$581,523.

ATTACHMENT(S):

Fiscal Impact Analysis
Agreement
Bid Tab

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2024	2025	2026	2027	2028
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Current Appropriation	\$581,523	0	0	0	0
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions					
	0	0	0	0	0

Contract Award - Existing Appropriation	
	Expenditure
Department	Electric
Division	T & D
GL Description	Improve Other than Build/Infrastructure
GL Account Number	421-6034-531.63-15
Project Number	SH2113
Requested Funds	\$581,523

**AGREEMENT FOR GOODS AND SERVICES
(27 KV, 4 MVAR 2-STEP SHUNT CAPACITOR BANK)**

THIS AGREEMENT FOR GOODS AND SERVICES ("Agreement") is made on this _____, between the **City of Lake Worth Beach**, Florida, a municipal corporation ("CITY") with its office located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460, and **Gresco Supply, Inc**, a Florida corporation with its principal office located at 6421 CR 219, Wildwood, FL 34785("CONTRACTOR").

RECITALS

WHEREAS, the CITY is a municipal corporation organized and existing pursuant to the Charter and the Constitution of the State of Florida; and

WHEREAS, the CITY issued Invitation for Bid #23-114 for supply and delivery of 27 KV, 4MVAR 2-Step Shunt Capacitor Banks for City of Lake Worth Beach Electric Utility ("IFB"), which IFB is incorporated by the reference into this Agreement; and

WHEREAS, the CITY received two (2) timely bids in response to the IFB; and

WHEREAS, the CONTRACTOR was found to be the responsive and responsible bidder and was recommended for the award; and

WHEREAS, due to price volatility and supply chain issues with the manufacturer, the CONTRACTOR submitted a revised bid to meet the manufacturer's pricing and order requirements; and

WHEREAS, normally, the CITY would not agree to accept a revised bid; and

WHEREAS, this ITB was the CITY's second effort to competitively bid this project and the CONTRACTOR's bid was the most responsive bid and, even as revised, the bid still remains the lowest bid; and

WHEREAS, the City's procurement code, section 2-112(g), authorizes a waiver of procurement procedure because goods and/or services cannot reasonably be acquired through the normal competitive selection due to certain factors and in this case due to manufacturing delays and supply chain problems; and

WHEREAS, the CITY desires to accept the CONTRACTOR's revised bid for the CONTRACTOR to render the goods and services to the CITY as provided therein pursuant to the terms and conditions of this Agreement; and

WHEREAS, the CONTRACTOR further warrants that it is experienced and capable of performing the tasks hereunder in a professional and competent manner; and;

WHEREAS, the CITY finds entering this Agreement with the CONTRACTOR as described herein serves a valid public purpose.

NOW THEREFORE, the CITY hereby engages the services of the CONTRACTOR, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

1. TERM

1.1 The term shall commence upon the approval of this Agreement by the CITY's City Commission and the CITY's issuance of a Notice to Proceed. The CONTRACTOR agrees to provide all goods and services required under this Agreement as per the terms and timelines provided in the IFB and for the initial period of one (1) year for a supply of 27 KV, 4MVAR 2-Step Shunt Capacitor Banks with the option to renew for four (4) additional one (1) year periods for the supply of additional units; dependent on annual appropriation of the funds by the City Commission and mutual agreement by the both parties. Rates shall remain firm for the first year of the Agreement subject to terms and conditions to be negotiated on requests for consideration of a price adjustment after that term. During the renewal option(s), the City may utilize this Agreement to purchase additional 27 KV, 4MVAR 2-Step Shunt Capacitor Banks. Should the City require additional 27 KV, 4MVAR 2-Step Shunt Capacitor Banks, the CITY and a CONTRACTOR will prepare and execute a written amendment to the Agreement setting forth the additional materials and/or services and the total cost for the same prior to any such additional materials or services being provided by the CONTRACTOR.

2. SPECIFICATIONS

2.1 The specifications set forth in the IFB details the 27 KV, 4MVAR 2-Step Shunt Capacitor Banks to be provided to the CITY. The CONTRACTOR's bid specifications, attached hereto as **Exhibit "A"** and incorporated herein, set forth further details for the furnishing of the goods and services under this Agreement.

2.2 The CONTRACTOR represents to the CITY that all goods and services provided under this Agreement shall be in accordance with accepted and established trade practices and procedures recognized in the CONTRACTOR's trade in general and that the materials shall conform to the highest standards and in accordance with this Agreement.

2.3 The CONTRACTOR further warrants its capability and experience to perform the services provided for herein in a professional and competent manner.

2.4 The goods and services shall be provided by the CONTRACTOR or under its supervision and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under the state and local law to perform such services. All of the CONTRACTOR's personnel (and all subcontractors), while on CITY premises, shall comply with all CITY requirements governing safety, conduct and security.

2.5 The goods and services shall be provided and completed in accordance with the terms and conditions set forth in this Agreement.

3. INDEPENDENT CONTRACTOR; USE OF AGENTS OR ASSISTANTS

3.1 The CONTRACTOR is and shall be, in the provision of all goods and services under this Agreement, an independent contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR's sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work.

3.2 To the extent reasonably necessary to enable the CONTRACTOR to perform the goods and services hereunder, the CONTRACTOR shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance of its duties. All costs of the services of, or expenses incurred by, such agents or assistants shall be paid by the CONTRACTOR.

4. MATERIALS

4.1 The CONTRACTOR shall provide all materials as more specifically set forth in the ITB and its specifications and **Exhibit "A"** unless otherwise specified in writing by the CITY.

5. FEE AND ORDERING MECHANISM

5.1 The CITY shall utilize a City Purchase Order for the ordering of the 27 KV, 4MVAR 2-Step Shunt Capacitor Banks under this Agreement; however, the terms and conditions of the City Purchase Order shall not apply.

5.2 Should the CITY require additional goods and services, which additional goods and services are not included in this Agreement (but authorized by the IFB), the CITY and CONTRACTOR will prepare and execute a written amendment setting forth the additional goods and services and the total cost for the same prior to any such additional goods or services being provided by the CONTRACTOR.

5.3 The CITY's ordering mechanism is a CITY issued Purchase Order; however, the terms and conditions stated in this Agreement and any amendment thereto will apply. CONTRACTOR shall not exceed amounts expressed herein or in any CITY issued Purchase Order. The CITY's Fiscal Year ends on September 30th of each calendar year. Except for purchases authorized in a prior fiscal year and fully appropriated and funded, the CITY cannot authorize the purchase of additional goods or services beyond September 30th of each calendar year, prior to the annual budget being approved by the CITY's City Commission.

6. MAXIMUM COSTS

6.1 The CITY shall compensate the CONTRACTOR in accordance with the CONTRACTOR's bid prices, which are attached hereto and incorporated herein as **Exhibit "A"**. The total cost to be paid by the CITY to the CONTRACTOR shall not exceed \$581,523.00 (Five Hundred Eighty One Thousand Five Hundred Twenty Three Dollars) for the initial term of this Agreement. If this Agreement is extended beyond the initial one (1) year term, a new not to exceed amount shall be agreed upon by the parties.

7. INVOICE

7.1 The CONTRACTOR shall submit an itemized invoice to the CITY for the goods and services upon delivery, and final acceptance of the goods and all services by the CITY. Final acceptance occurs when the unit becomes fully operational and accepted by the CITY. The CONTRACTOR shall be paid by the CITY within thirty (30) days of receipt of an approved invoice for all goods and services.

7.2 If the CITY disputes any invoice or part of an invoice, CITY shall notify the CONTRACTOR within a reasonable time after receipt of the invoice. CITY reserves the right to off-set, reduce or withhold any payment to the CONTRACTOR until the dispute is resolved.

8. AUDIT BY CITY

8.1 The CONTRACTOR shall permit the CITY, or any authorized representatives of the CITY, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the CONTRACTOR's performance under this Agreement including, but not limited to, expenses for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such work performed or to be performed under this Agreement.

9. COPIES OF DATA/DOCUMENTS

9.1 Copies or original documents prepared by the CONTRACTOR in relation to work associated with this Agreement shall be provided to the CITY. Data collected, stored, and/or provided shall be in a form acceptable to the CITY and agreed upon by the CITY.

10. OWNERSHIP

10.1 Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONTRACTOR pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

11. WRITTEN AUTHORIZATION REQUIRED

11.1 The CONTRACTOR shall not make changes in the specifications or goods and services to be provided or perform any additional work or provide any additional materials under this Agreement without first obtaining written authorization from the CITY for such additional services or materials. Additional services or materials provided without written authorization shall be done at the CONTRACTOR's sole risk and without payment from the CITY.

12. DEFAULTS, TERMINATION OF AGREEMENT

12.1 If the CONTRACTOR fails to timely provide the goods and services or has failed in any other respect to satisfactorily perform in accordance with this Agreement; or, is in material breach of a term or condition of this Agreement, the City Manager or designee may give written notice to the CONTRACTOR specifying the default(s) to be remedied. Such notice shall set forth a reasonable timeframe for correcting the default(s) and any suggested corrective measures. If the CONTRACTOR does not remedy the default(s) within the timeframe provided in the CITY's notice or commence good faith steps to remedy the default to the reasonable satisfaction of the CITY, the CITY may take such action to remedy the default and all expenses related thereto shall be borne by the CONTRACTOR including, without limitation, utilization of another contractor to provide for such work and all of the CITY's legal fees; and/or, the CITY may withhold any money due or which may become due to the CONTRACTOR for such expense and/or work related to the claimed default. Alternatively, or in addition to the foregoing, if after three (3) business days the CONTRACTOR has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the CITY, the CITY may elect to terminate this Agreement. No cancellation fee or other compensation shall be paid by the CITY for de-mobilization, take-down,

disengagement, wind-down, lost profits, or other costs incurred due to termination of this Agreement under this paragraph.

12.2 Notwithstanding paragraph 12.1, the CITY reserves the right and may elect to terminate this Agreement at any time, with or without cause. At such time, the CONTRACTOR would be compensated only for that work which has been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement, wind-down, lost profits, or other costs incurred due to termination of this Agreement under this paragraph. However, CITY shall be responsible for the cancellation fee set forth in the CONTRACTOR's quote.

12.3 If the CITY fails to timely perform in accordance with this Agreement; or, is in material breach of a term or condition of this Agreement, the CONTRACTOR may give written notice to the CITY specifying the default(s) to be remedied. Such notice shall set forth a reasonable timeframe for correcting the default(s) and any suggested corrective measures. If the CITY does not remedy the default(s) within the timeframe provided in the CONTRACTOR's notice or commence good faith steps to remedy the default to the reasonable satisfaction of the CONTRACTOR, the CONTRACTOR may take such action to remedy the default and all expenses related thereto shall be borne by the CITY; and/or, the CONTRACTOR may withhold any work. Alternatively, or in addition to the foregoing, if after three (3) business days the CITY has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the CONTRACTOR, the CONTRACTOR may elect to terminate this Agreement.

13. INSURANCE

13.1. Prior to commencing any work, the CONTRACTOR shall provide certificates evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the CONTRACTOR has obtained insurance of the type, amount, and classification as required for strict compliance with this Section and that no material change or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the CITY. Failure to comply with the foregoing requirements shall not relieve the CONTRACTOR of its liability and obligations under this Contract. All insurance, other than Workers' Compensation, required hereunder shall specifically include the "City of Lake Worth Beach" as an "Additional Insured" on a primary, non-contributing basis, and the CONTRACTOR shall provide additional insured endorsements section of Certificates of Insurance.

13.2. The CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$1,000,000 per occurrence (\$2,000,000 aggregate) to protect the CONTRACTOR from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the CONTRACTOR or by anyone directly employed by or contracting with the CONTRACTOR.

13.3. The CONTRACTOR shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect the CONTRACTOR from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

13.4. The CONTRACTOR shall maintain, during the life of this Agreement, Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.

14. WAIVER OF BREACH

14.1 The waiver by either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

15. INDEMNITY AND LIMITATION OF LIABILITY

15.1 The CONTRACTOR shall indemnify, defend and hold harmless, to the maximum extent permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all liability, suit, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death, patent infringement or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), costs and expenses (including attorney's fees, litigation, arbitration, mediation, appeal expenses) to the extent arising out of or alleged to have arisen out of the negligence of the CONTRACTOR or any of its agents, employees, subcontractors or by anyone the CONTRACTOR directly or indirectly employed.

15.2 The CONTRACTOR's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the CONTRACTOR whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.

15.3 Compliance with any insurance requirements required elsewhere in this Agreement shall not relieve CONTRACTOR of its liability and obligation to defend, hold harmless and indemnify the CITY as set forth in this section.

15.4 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CITY or CONTRACTOR. Further, nothing contained in this Agreement shall be construed or interpreted as consent by the CITY to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in section 768.28, Florida Statutes, as amended from time to time. The CITY shall not be required to indemnify, defend, or hold harmless the CONTRACTOR under this Agreement and any exhibit to this Agreement.

15.5 The CONTRACTOR's failure to comply with this section's provisions shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

15.6 Neither party shall be liable to the other party for special, indirect, incidental or consequential damages, whether in contract, warranty, tort, negligence, strict liability or otherwise. This provision shall be the only limitation of liability under this Agreement and any exhibit to this Agreement.

16. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

16.1 This Agreement consists of the terms and conditions provided herein; the IFB (including all specifications, exhibits and addenda attached thereto or referenced therein); the CONTRACTOR's specifications, terms, pricing, and warranty (attached as Exhibit "A"). To the

extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with the IFB (including all specifications, exhibits and addenda attached thereto) next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

16.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. This Agreement may be executed electronically and such electronic signature shall be treated as an original signature of the party executing this Agreement electronically.

17. ASSIGNMENT

17.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the CITY and the CONTRACTOR. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the CITY and the CONTRACTOR and not for the benefit or any other party. The CONTRACTOR shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

17.2 In the event the CITY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

18. SUCCESSORS AND ASSIGNS

18.1 Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

19. WAIVER OF TRIAL BY JURY

19.1 TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

20. GOVERNING LAW AND REMEDIES

20.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue for all disputes related to or arising from this Agreement shall exclusively be in Palm Beach County, Florida.

20.2 No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or

otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

21. TIME IS OF THE ESSENCE

21.1 Time is of the essence in the completion of the Scope of Work as specified herein.

22. NOTICES

22.1 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the CITY or the CONTRACTOR have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the CONTRACTOR to the CITY shall be given to the CITY address as follows:

City of Lake Worth Beach
Attn: City Manager
7 North Dixie Highway
Lake Worth Beach, Florida 33460

All notices, demands or requests from the CITY to the CONTRACTOR shall be given to the CONTRACTOR address as follows:

Gresco Utility Supply, Inc.
Attn: Roy Lumsden, Account Manager
6421 CR 219
Wildwood, FL 34785

23. SEVERABILITY

23.1 Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

24. DELAYS AND FORCES OF NATURE

24.1 The CONTRACTOR shall not be considered in default by reason of a delay in timely performance if such delay and failure arise out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Upon the CONTRACTOR'S request, the CITY shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the CONTRACTOR and, if the CONTRACTOR'S delay and failure to timely perform was without it or its subcontractors' fault or negligence, as determined by the CITY in its sole discretion, the time of completion shall be extended for any reasonable time that the CITY, in its sole discretion, may decide; subject to the

CITY'S rights to change, terminate, or stop any or all of the work at any time. If the CONTRACTOR is delayed at any time in the progress of the work by any act or neglect of the CITY or its employees, or by any other contractor employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the CITY pending negotiation or by any cause which the CITY, in its sole discretion, shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY, in its sole discretion, may decide. No extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the CITY. In the case of continuing cause of delay, only one (1) claim is necessary. The CONTRACTOR's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and CONTRACTOR specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by CONTRACTOR due to a delay in completion of the work.

24.2 Neither party shall be considered in default in the performance of its obligations hereunder or any of them, if such obligations were prevented or delayed by any cause, existing or future beyond the reasonable control of such party which include but are not limited to acts of God, labor disputes or civil unrest.

25. COUNTERPARTS

25.1 This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. Each of the parties shall sign a sufficient number of counterparts, so that each party will receive a fully executed original of this Agreement.

26. PUBLIC ENTITY CRIMES

26.1 CONTRACTOR acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. CONTRACTOR will advise the CITY immediately if it becomes aware of any violation of this statute.

27. PREPARATION AND RECITALS

27.1 This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

27.2 The Recitals set forth at the beginning of this Agreement are incorporated into this Agreement as true and correct statements.

28. PALM BEACH COUNTY INSPECTOR GENERAL

28.1 In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

29. ENFORCEMENT COSTS

29.1 All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement.

30. PUBLIC RECORDS

CONTRACTOR shall comply with Florida's Public Records Laws, Chapter 119, Florida Statutes, and, if it is acting on behalf of the CITY as provided under section 119.011(2), the CONTRACTOR specifically agrees to:

- (a) Keep and maintain public records required by the CITY to perform the services under this Agreement.
- (b) Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the CONTRACTOR does not transfer the records to the CITY.
- (d) Upon the completion of the Agreement, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the services. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

31. COPYRIGHTS AND/OR PATENT RIGHTS

31.1 CONTRACTOR warrants that there has been no violation of copyrights and/or patent rights in the manufacturing, producing or selling of the goods, shipped or ordered, as a result of this Agreement and the CONTRACTOR agrees to hold the City harmless from any and all liability, loss, or expense occasioned by any such violation.

32. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH

32.1 CONTRACTOR certifies that all material, equipment, etc., contained in this bid meets all OSHA requirements. CONTRACTOR further certifies that, if the material, equipment, etc., delivered is subsequently found to be deficient in any OSHA requirements in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the CONTRACTOR.

33. FEDERAL AND STATE TAX

33.1 The CITY is exempt from Federal Tax and State Tax for Tangible Personal Property. The Procurement Official will provide the CONTRACTOR with a signed exemption certificate submitted by the CONTRACTOR. CONTRACTOR shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the CITY, nor shall CONTRACTOR be authorized to use the City's Tax Exemption Number in securing such materials.

34. PROTECTION OF PROPERTY

34.1 The CONTRACTOR shall at all times guard against damage or loss to the property of the CITY or of other vendors or contractors and shall be held responsible for replacing or repairing any such loss or damage. The CITY may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the successful CONTRACTOR or its agents. The CONTRACTOR shall be responsible to safeguard all of their property such as tools and equipment while on site. The CITY will not be held responsible for any loss of CONTRACTOR property due to theft or vandalism.

35. DAMAGE TO PERSONS OR PROPERTY

35.1 The responsibility for all damage to person or property arising out of or on account of work done under this Agreement shall rest upon the CONTRACTOR, and he/she shall save the CITY and political unit thereof harmless from all claims made on account of such damages.

36. WARRANTY

36.1 The warranty for the goods and services under this Agreement are set forth in Exhibit "A".

37. SCRUTINIZED COMPANIES

37.1 CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false

certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

37.2 If this Agreement is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

37.3 The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

37.4 The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

37.5 The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

37.6 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

38. E-VERIFY

Pursuant to Section 448.095(2), Florida Statutes, CONTRACTOR shall:

38.1 Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

38.2 Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

38.3 Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;

38.4 Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;

38.5 Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,

38.6 Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded a contract for at least one (1) year after the date

on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

39. SURVIVABILITY

39.1 Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement for Goods and Services for 27 KV, 4 MVAR 2-STEP SHUNT CAPACITOR BANKS on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: GRESKO UTILITY SUPPLY, INC

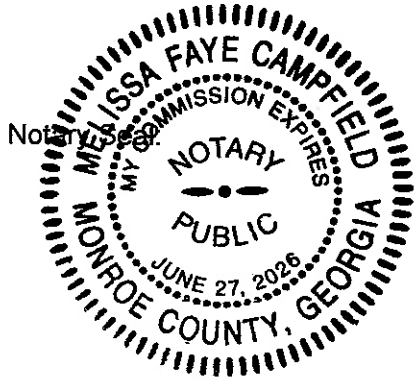
By: M S Williams
Print Name: Melissa Williams
Title: CFO

[Corporate Seal]

STATE OF Georgia
COUNTY OF Monroe

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 22nd day of August 2023, by Melissa Campfield, as the Administrative Assistant [title] of Gresko

Supply, Inc. a corporation who is personally known to me or who has produced Drivers License as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.



Melissa Campfield
Notary Public Signature

Exhibit "A"

Contractor's Bid Prices and Specifications

(B4)

IFB #23-114 27 KV, 4 MVAR 2-STEP SHUNT CAPACITOR BANKS

SCHEDULE OF UNIT PRICES

In order to evaluate the total bid amount, each Bidder must identify the unit prices for the materials set forth in the Specifications. City does not guarantee a minimum order and reserves the right to adjust these quantities as considered in the best interest of the City. Prices shall be delivered FOB destination, City of Lake Worth Beach, freight allowed and pre-paid. In the event additional quantity is added to the contract by the Amendment, the following unit prices will be utilized (as applicable). The Bidder shall maintain fixed pricing for the initial period of the contract. The City will not accept bids that have no shipping prices included in their unit price. The bidder acknowledges that no additional cost increase will be made for adjustments in the quantities.

1. PRICING

- 1.1 Unit price per one capacitor bank delivered f.o.b. destination \$ 290,762.00
- 1.2 Total price of complete capacitor banks set delivered f.o.b. destination \$ 581,524.00
- 1.3 Field engineering cost, beyond contract requirements (including per Diem) Contact Eaton's Engineering Services group for pricing.
- 1.4 Is Field Engineer necessary to install? Yes No
- 1.5 Are field installation costs included? Yes No

2. DELIVERY

- 2.1 Shipment after receipt of order within 60 weeks
- 2.2 Shipping will be by;
 Truck
 NA Train
 Other (specify): _____
- 2.3 Is entire cap bank shipped in units or separately? separately
- 2.4 If separately, how? See the notes on Eaton proposal B23783879P.

3. DRAWINGS & INSTRUCTION BOOKS
(Refer to Section 13)

- 3.1 Schematics, outline and general assembly drawings will be sent 4 weeks ARO
- 3.2 Final construction drawings will be sent 60 weeks ARO
- 3.3 Installation, operation and maintenance instruction books will be sent 60 weeks ARO

4. DEVIATIONS/EXCEPTIONS

4.1 Are there any deviations or exceptions to this Specification?
If yes, attach explanation.

Yes No

4.2 Is Manufacturer's Warranty Policy attached?
If not, what is Warranty Policy and term

Yes No

4.3 Is Manufacturer's Field Service Policy attached?
If not, what is Field Service Policy and terms

Yes No

Contact Eaton's Engineering Services group for the terms.

5. MANUFACTURER'S POINT OF CONTACT

5.1 Contact for technical information
(Name, address and telephone number)

Roger Munay

RogerGMunay@Eaton.com

(878) 545-8722

5.2 Contact for commercial information
(Name, address and telephone number)

See below

(B4A)

APPENDIX B – MANUFACTURER'S BID DATA SHEET		
DESCRIPTION	VALUE	UNIT
CAPACITOR UNIT DESIGN		
Rated Voltage	15.8	kV
Rated Capacitance	2.13	μF
Rated Current	12.7	A
Basic Impulse Level	150	kV BIL
Var Rating	200	kVar
Operating Temperature Range	-40 to +46	°C
Type of major insulation	Kraft paper	
No. of sheets of major insulation	12	
Type of all-film dielectric	polypropylene	
No. of sheets of all-film dielectric	2	
Maximum dielectric temperature rise	12°C above ambient	°C
Rated dielectric stress (not including fluid)	1795	V/mil
Dielectric Fluid Specific Gravity	1.0	s.g.
Dielectric Fluid Flash Point	139	°C
Foil design type	laser cut edge	
Foil thickness	0.004	mm
No. of series sections	8	
No. of parallel elements per series section	2	
Voltage stress	1596	V/mil
Weight of each capacitor unit	54	lbs.
Maximum sustained overvoltage capability	19.75	kV
Maximum sustained overcurrent capability	17.09	A
Capacitor fuse type	Expulsion	
Capacitor fuse manufacturer	Eaton	
Capacitor fuse model number	tbd	
CAPACITOR BANK CHARACTERISTICS		
Number of racks per phase	1	
Insulation between racks in each phase	n/a	kV BIL
Height of each rack	See Drawing	in.
Width of each rack		in.
Length of each rack		in.
No. of series groups of capacitors per phase	1	
No. of parallel capacitor units per series group	4	
No. of series group of capacitors per rack	1	
Rack and Structure Material	galvanized steel	
UNBALANCE PROTECTION POTENTIAL TRANSFORMER CHARACTERISTICS		
No. of PTs provided per 3-phase bank	1	
Manufacturer	Arteche	
Catalog Number	757868300	
Primary Voltage	20125/34857GY V	

33

Secondary Voltage	115/67.08	V
Winding Ratio	175:300.1	
Basic Impulse Level	200	kV BIL
Accuracy Class	0.3 W,X,M,Y	
Burden	1000	VA
UNBALANCE PROTECTION – NEUTRAL CT CHARACTERISTICS		
Manufacturer	n/a	
Catalog Number		
Applied Voltage		kV
Winding Ratio		
Basic Impulse Level		kV BIL
STAGE SWITCHING DEVICE CHARACTERISTICS		
Rated Voltage	38	kV
Rated Current	400	A
Rated Capacitive Switching Current	400	A
IPO or 3-Pole Gang Operated	3-pole ganged	
Short-Circuit Interrupting Current (symmetrical)	n/a	kARMS
Rated short-time current	32.5	kARMS
Power Frequency Withstand	70	kV
Rated Impulse Withstand Voltage	200	kVBIL
Interrupting Time	n/a	ms
Rated Closing Time	tbd	ms
Bushing Insulator Type	cycloaliphatic epoxy	

GROUND SWITCH CHARACTERISTICS		
Rated Voltage	38	kV
Rated Continuous Current	n/a	A
Short-Circuit Interrupting Current (symmetrical)	n/a	kARMS
Rated short-time current	40	kARMS
Power Frequency Withstand Voltage	n/a	kV
Rated Impulse Withstand Voltage	200	kV BIL
Disconnect Switch Contact Material	n/a	
Ground Switch Contact Material	tbd	

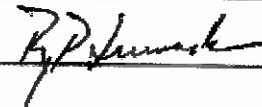
Failure to fully complete and sign this Manufacturer's Bid Data Sheet may result in rejection of the Bid.

Name of Bidder: GRESKO

Address: 6421 County Road 219, Wildwood ST FL Zip 34785

Phone: (813) 378-2840 Email: roy.lumsden@gresco.com

Print Name: Roy Lumsden Title: Account Manager

SIGNATURE:  Date: 5/5/2023



City of Lake Worth Beach

IFB#23-114 27 KV, 4 MVAR 2-STEP SHUNT CAPACITOR BANK

Bid Tab

			Gresco		Hitachi Energy USA Inc	
ITEM #	DESCRIPTION	QTY	Unit Price	TOTAL	Unit Price	TOTAL
1	27 KV, 4 MVAR 2-STEP SHUNT CAPACITOR BANK delivered f.o.b. destination	2	\$ 232,608.00	\$465,216.00	\$ 474,660.00	\$949,320.00
Rank:						
Bid Form (B1)			submitted		submitted	
Bidder's Minimum Qualifications (B2)			submitted		submitted	
Bid (B3)			submitted		submitted	
Schedule of Unit Prices & Delivery Details (B4)			submitted		submitted	
Manufacturer Data Sheet/Technical Specifications/Technical Drawings			submitted		submitted	
Substitution Sheet (B5)			submitted		submitted	
Manufacturer Verification Form (B6)			submitted		submitted	
Reference List (B7)			submitted		submitted	
Affidavit Non-Collusion (B8)			submitted		submitted	
Drug Free Certification (B9)			submitted		submitted	
Campaign Contribution Statement (B10)			submitted		submitted	
Scrutinized Companies Certification (B11)			submitted		not submitted	
Veteran Business Enterprise, Small Business and/or Local Business Preference Claimed (B12)			n/a		n/a	
BID COMPLIANCE			Compliant		Compliant	

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 29, 2023

DEPARTMENT: Water Utilities

TITLE:

Resolution No. 47-2023 - Designate Vaughn Hayduk as the City's Board Member for the East Central Regional Water Reclamation Facility (ECR) as Sam Heady's alternate member representing Lake Worth Beach

SUMMARY:

Designate Vaughn Hayduk, the new Assistant Water Utilities Director, as the Alternate Board Member representing the City of Lake Worth Beach at the ECR board, replacing Julie Parham.

BACKGROUND AND JUSTIFICATION:

The City of Lake Worth Beach and its seven sub-regional partners send their wastewater to the ECR facility, which is operated and maintained by the City of West Palm Beach through an Interlocal Agreement. The City of Lake Worth Beach has appointed Vaughn Hayduk as the Assistant Water Utilities Director, as the alternate member representing the City for the ECR Board.

MOTION:

Approve/disapprove Resolution No. 47-2023 designating Vaughn Hayduk as an Alternate Board Member for ECR representing Lake Worth Beach.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
Resolution 47-2023

RESOLUTION NO. 47-2023 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, APPOINTS VAUGHN HAYDUK AS THE EAST CENTRAL REGIONAL WATER RECLAMATION FACILITY ALTERNATE BOARD MEMBER REPRESENTING THE CITY OF LAKE WORTH BEACH AS CURRENT ALTERNATE BOARD MEMBER JULIE PARHAM HAS RESIGNED FROM THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Lake Worth Beach ("CITY") is a partner of the East Central Regional Water Reclamation Facility ("ECR") and has been sending its wastewater to the facility for over 30 years now as part of an Interlocal Agreement with the City of West Palm Beach, who owns and maintains the facility; and

WHEREAS, the City of Lake Worth Beach is one of five partners that have members on the board represented by each entity with an alternate member as well that attends monthly board meetings and other special meetings to approve budgets, procurements and keep abreast of projects and operating and maintenance work; and

WHEREAS, Sam Heady is the current City of Lake Worth Beach board member, and Vaughn Hayduk serves as Assistant Water Utility Director and Alternate Board Member at ECR.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF LAKE WORTH BEACH, FLORIDA, that:

SECTION 1: Sam Heady will be the ECR Board Member representing the City of Lake Worth Beach and Vaughn Hayduk will be the Alternate Member.

SECTION 2: This resolution shall become effective upon adoption.

The passage of this resolution was moved by Commissioner _____, seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch
Vice Mayor Christopher McVoy
Commissioner Sarah Malega
Commissioner Kimberly Stokes
Commissioner Reinaldo Diaz

The Mayor thereupon declared this resolution duly passed and adopted on the _____ day of _____, 2023.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Water Utilities

TITLE:

Piggyback agreement with Tripp Electric, Inc. for pump, motor, and equipment services

SUMMARY:

Tripp Electric Motor, Inc. has a contract with Palm Beach County (IFB #23-011/MB) for pump, motor, and equipment service. The City of Lake Worth Beach Water Utilities will piggyback this contract for the same services.

BACKGROUND AND JUSTIFICATION:

The Water Treatment Plant and Master Pump Station in the City of Lake Worth Beach have a variety of pumps and motors that require periodic repairs to maintain the Water Utility. To fulfill these specialized equipment needs, the City of Lake Worth Beach has entered into a piggyback contract with Tripp Electric Motor, Inc. This agreement permits the City to access the unit pricing and terms of the Palm Beach County contract. Tripp Electric Motor, Inc. has agreed to extend its specifications and pricing to the City of Lake Worth Beach, which goes beyond the capabilities of the City's staff.

MOTION:

Move to approve/disapprove the piggyback agreement with Tripp Electric Motor, Inc. for motor and pump repairs for an amount not to exceed \$150,000.00.

ATTACHMENT(S):

Fiscal Impact Analysis
Agreement

FISCAL IMPACT ANALYSIS

Five-Year Summary of Fiscal Impact:

Fiscal Years	2024	2025	2026	2027	2028
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In-Kind	0	0	0	0	0
Outflows					
Current Appropriation	\$150,000.00	0	0	0	0
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions					
	0	0	0	0	0

Contract Award - Existing Appropriation		
	Expenditure	Expenditure
Department	Water Utility	Water Utility
Division	Water Production	Water Production
GL Description	Repair/Maintenance Wells	Repair and Maintenance
GL Account Number	402-7021-533-4646	402-7022-533-4621
Project Number	N/A	N/A
Requested Funds	\$50,000.00	\$25,000.00

Contract Award - Existing Appropriation	
	Expenditure
Department	Sewer
Division	Pumping
GL Description	Repair/Maintenance
GL Account Number	405-7421-535-46-21
Project Number	N/A
Requested Funds	\$75,000.00

AGREEMENT FOR PUMP, MOTOR AND EQUIPMENT SERVICES
(Utilizing the Palm Beach County Board of County Commissioners Contract No. 23011)

THIS AGREEMENT FOR PUMP, MOTOR AND EQUIPMENT SERVICES (“Agreement”) is made as of the _____, by and between the **CITY OF LAKE WORTH BEACH**, 7 N. Dixie Highway, Lake Worth Beach, FL 33460, a municipal corporation organized and existing under the laws of the State of Florida, (“CITY”), and **Tripp Electric Motors, Inc.**, a Florida Corporation authorized to do business in the State of Florida, located at 1225 N.W. Avenue L, Belle Glade, FL 33430 (“CONTRACTOR”).

RECITALS

WHEREAS, the CITY’s Water Utility Services Department is in need of a company to provide Pump, Motor and Equipment Services; and,

WHEREAS, the CITY’s Procurement Policy and Code authorizes the purchases of goods and services through “piggybacking” other governmental competitively procured Agreements; and

WHEREAS, on May 27, 2023, Palm Beach County competitively awarded the Agreement for Pump, Motor and Equipment Services based on the Palm Beach County Invitation for Bid (IFB #23-011/MB) to the CONTRACTOR (“Palm Beach County Contract”) valid for twelve (12) months until April, 18 2024; with the option to renew for four (4) additional twelve (12) month period (s), and

WHEREAS, the Palm Beach County Contract authorizes the CONTRACTOR to extend the terms and conditions of the Palm Beach County Board of County Commissioners Agreement to other government entities at the discretion of the CONTRACTOR; and

WHEREAS, the CITY has requested and the CONTRACTOR has agreed to extend the terms and conditions of the Palm Beach County Contract to the CITY; and

WHEREAS, the CITY has reviewed the unit prices from the Palm Beach County Contract, as provided in **Exhibit “A”**, and determined that the unit prices are competitive and will result in the best value to the CITY; and

WHEREAS, the CITY finds entering this Agreement with the CONTRACTOR serves a valid public purpose.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The parties agree that the recitals set forth above are true and correct and are fully incorporated herein by reference.
2. **Contract.** The Palm Beach County Contract is hereby incorporated by reference into and expressly made a part of this Agreement as if set forth at length herein. The CITY shall have all rights and obligations of Palm Beach County under the Palm Beach County Contract except as specifically modified herein. The term of this Agreement shall be consistent with the term of the Palm Beach County Contract and valid until April 18, 2024 unless earlier terminated in accordance with the Agreement terms.
3. **Not to Exceed Amount.** While the CONTRACTOR is not guaranteed that the CITY will utilize this Agreement for any services, if the CITY utilizes this Agreement for services, the not to exceed amount for this Agreement shall be \$150,000 each fiscal year.

4. Purchase Orders. The CITY's ordering mechanism for the work under this Agreement shall be a CITY issued Purchase Order; however, in the event of a conflict, all contractual terms and conditions stated herein and as stated in the Palm Beach County Contract shall take precedence over the terms and conditions stated in the CITY issued Purchase Order. The CONTRACTOR shall not provide any work under this Agreement without a CITY issued Purchase Order specifically for this purpose. The CONTRACTOR shall not perform work which is outside the scope of an issued Purchase Order and the CONTRACTOR shall not exceed the expressed amounts stated in the Purchase Order to be paid to the CONTRACTOR. The pricing in each Purchase Order shall be consistent with the pricing set forth in the Palm Beach County Contract. Each issued Purchase Order shall be incorporated into this Agreement and made a part hereof.

5. Conflict of Terms and Conditions. Conflicts between documents that make up this Agreement shall be resolved in the following order of precedence:

- a. This Agreement (including its exhibits);
- b. The Palm Beach County Contract; and,
- c. The CITY issued Purchase Order.

6. Compensation to CONTRACTOR. CONTRACTOR shall submit invoices to the CITY for review and approval by the CITY's representative, indicating that all goods and services have been provided and rendered in conformity with this Agreement and then will be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the CITY representative's approval. CONTRACTOR waives consequential or incidental damages for claims, disputes or other matters in question arising out of or relating to this Agreement. In order for both parties herein to close their books and records, CONTRACTOR will clearly state "final invoice" on the CONTRACTOR's final/last billing to the CITY. This certifies that all services have been properly performed and all charges have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the CONTRACTOR. The CITY will not be liable for any invoice from the CONTRACTOR submitted thirty (30) days after the provision of all services.

7. Miscellaneous Provisions.

A. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held exclusively in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

B. Except for any obligation of the CONTRACTOR to indemnify the CITY, if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall be liable and responsible for their own attorney's fees incurred in that enforcement action, dispute, breach, default or misrepresentation. FURTHER, TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

C. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

- D. All notices required in this Agreement shall be sent by certified mail, return receipt requested or by nationally recognized overnight courier, and sent to the addresses appearing on the first page of this Agreement.
- E. The CITY and the CONTRACTOR agree that this Agreement (and the other documents described herein) sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.
- F. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement. This Agreement may be executed electronically.
- G. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.
- H. PUBLIC RECORDS. The CONTRACTOR shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the CITY as provided under section 119.011(2), Florida Statutes, specifically agrees to:
1. Keep and maintain public records required by the CITY to perform the service.
 2. Upon request from the CITY's custodian of public records or designee, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the CONTRACTOR does not transfer the records to the CITY.
 4. Upon completion of this Agreement, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records or designee, in a format that is compatible with the information technology systems of the CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF

**PUBLIC RECORDS OR DESIGNEE AT THE CITY OF LAKE WORTH
BEACH, ATTN: CITY CLERK, AT (561) 586-1662, CITY
CLERK@LAKEWORTHBEACHFL.GOV, 7 N. DIXIE HIGHWAY, LAKE
WORTH BEACH, FL 33460.**

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the CITY and CONTRACTOR hereto have made and executed this Agreement for Pump, Motor and Equipment Services as of the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: **TRIPP ELECTRIC MOTORS, INC.**

[Corporate Seal]

By: _____

Print Name: Jimmy L. Tripp

Title: President

STATE OF Florida
CITY OF Belle Glade

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 7 day of September 2023, by Jimmy L. Tripp, as the President [title] of **Tripp Electric Motors, In.**, A Florida Corporation, who is personally known to me or who has produced n/a as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Loures T. Young
Notary Public Signature
Notary Seal:

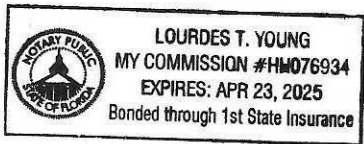


EXHIBIT "A"

IFB #23-011/MB

PUMP, MOTOR AND EQUIPMENT SERVICES, TERM CONTRACT

LOT #1: PALM BEACH COUNTY (EXCLUDING GLADES AREA)

ITEM NO.	DESCRIPTION	STANDARD RATE	WEIGHT FACTOR	FACTORED RATE
1.	HOURLY RATE FOR PUMP, MOTOR AND EQUIPMENT MAINTENANCE AND REPAIRS, AS SPECIFIED HEREIN	\$ <u>56.35</u> /hr	X .85 =	\$ <u>47.90</u>
2.	CRANE TRUCK, ON AS NEEDED BASIS, ON-SITE, HOURLY RATE, AS SPECIFIED HEREIN	\$ <u>160.00</u> /hr	X .05 =	\$ <u>8.00</u>
3.	FLAT RATE FOR EQUIPMENT PICK-UP AND DELIVERY, ROUND TRIP, AS SPECIFIED HEREIN	\$ <u>20.00</u> /ea	X .05 =	\$ <u>1.00</u>
4.	PUMP OR MOTOR, REMOVE AND REINSTALL, ON-SITE SERVICE, IF NECESSARY	\$ <u>101.00</u> /hr	X .05 =	\$ <u>5.05</u>
LOT #1 TOTAL FACTORED RATE (Items 1 through 4)				\$ <u>61.95</u>

All unit prices bid should be within two (2) decimal points. If bidder's pricing exceeds two (2) decimal points, Purchasing reserves the right to round up or down accordingly.

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Water Utilities

TITLE:

Third Amendment to Agreement with Allied Universal Corporation to purchase Sodium Hypochlorite (Bleach) for water treatment and odor control

SUMMARY:

This Third Amendment authorizes the purchase of bulk Sodium Hypochlorite for the City of Lake Worth Beach Water Utilities for Fiscal Year 2024 from Allied Universal Corporation.

BACKGROUND AND JUSTIFICATION:

Sodium Hypochlorite is a necessary chemical which is added to the finished water supply and is used for the disinfection of drinking water, killing germs, micro-organisms, algae, etc. Sodium Hypochlorite is also necessary for odor control at the Reverse Osmosis Water Treatment Plant and Master Pump Station.

On October 20, 2020, the City awarded the contract under the IFB # 20-107 for the purchase of bulk Sodium Hypochlorite needed for the Water Treatment Plant and Master Pump Station. This agreement was issued for the initial term of one (1) year with an option for three (3) additional one (1) year renewals. Third Amendment to the Agreement allows for the new pricing and renews the Agreement for the period of one year.

MOTION:

Move to approve/disapprove the Third Amendment to Agreement for purchasing bulk Sodium Hypochlorite from Allied Universal Corporation for an amount not to exceed \$250,000.00 for Fiscal Year 2024.

ATTACHMENT(S):

Fiscal Impact Analysis
3rd Amendment

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2024	2025	2026	2027	2028
Inflows					
Current appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Current appropriation	\$250,000.00	0	0	0	0
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions					
	0	0	0	0	0

Contract Award - Existing Appropriation		
	Expenditure	Expenditure
Department	Sewer	Regional Sewer
Division	Sewer Collection	Pumping
GL Description	Operating Supplies / Chemicals	Operating Supplies / Chemicals
GL Account Number	403-7231-535-52-30	405-7421-535-52-30
Project Number	N/A	N/A
Requested Funds	\$20,000.00	\$20,000.00

Contract Award - Existing Appropriation	
	Expenditure
Department	Water Utility
Division	Water Utility
GL Description	Operating Supplies / Chemicals
GL Account Number	402-7022-533-52-30
Project Number	N/A
Requested Funds	\$210,000.00

**THIRD AMENDMENT TO CONTRACTOR AGREEMENT
(Liquid Sodium Hypochlorite)**

THIS THIRD AMENDMENT to the Contractor Agreement (for Liquid Sodium Hypochlorite) (“Third Amendment”) is made as of _____, 2023, by and between the **City of Lake Worth Beach**, Florida, a municipal corporation of the State of Florida (“CITY”) and **Allied Universal Corp.**, a corporation authorized to do business in the State of Florida (“CONTRACTOR”).

WHEREAS, the City issued Invitation for Bid #20-107 (“IFB”) for the procurement of Liquid Sodium Hypochlorite; and

WHEREAS, on October 20, 2021, the CITY and CONTRACTOR entered into the Contractor Agreement for Liquid Sodium Hypochlorite (“Agreement”); and

WHEREAS, the term of the Agreement was for one (1) year with three (3) single year renewal options; and

WHEREAS, the CITY and the CONTRACTOR exercised the first option and renewed the Agreement through October 19, 2022 (“First Amendment”); and

WHEREAS, the CITY and the CONTRACTOR exercised the second option and renewed the Agreement through October 19, 2023 (“Second Amendment”) and increased annual not to exceed amount to Two Hundred Seventy-Five Thousand Dollars (\$275,000.00); and

WHEREAS, the CITY and the CONTRACTOR wish to amend the Agreement to exercise the third option and renew the Agreement for an additional one (1) year; and

WHEREAS, the CONTRACTOR submitted a revised rate schedule for the pricing to be provided under this Third amendment, which rates are attached hereto as **Exhibit “A”** and incorporated herein; and

WHEREAS, the CITY has reviewed the increased rate schedule and determined that the increase is fair and reasonable; and

WHEREAS, the CITY finds amending the Agreement as set forth herein is in the best interest of the CITY and serves a valid public purpose.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged by each party hereto, the CITY and the CONTRACTOR agree to amend the Agreement, as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.
2. **Term of Agreement.** The parties agree that the term of the Agreement is hereby renewed and extended to October 19, 2024.

3. **Compensation.** The parties agree that the CITY shall compensate the CONTRACTOR under this Third Amendment based on the rates set forth in **Exhibit "A"**, which is attached hereto and incorporated herein. The rates shall be paid upon completion of services for each project but not based upon mobilization.

4. **Entire Agreement.** The CITY and the CONTRACTOR agree that the Agreement (as previously amended) and this Third Amendment set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated therein and herein. None of the provisions, terms and conditions contained in this Third Amendment may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. All other terms and conditions of the Agreement (as previously amended) except as amended herein remain in full force and effect.

5. **Counterparts.** This Third Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Either or both parties may sign this Third Amendment digitally or electronically and such signature is as valid as the original signature of such party.

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SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have made and executed this Third Amendment to the Contractor Agreement (Liquid Sodium Hypochlorite) on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: Allied Universal Corp.

[Corporate Seal]

By: _____
[Signature]

Print Name: Jim Palmer

Title: President / CEO

STATE OF Florida
COUNTY OF Miami-Dade

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 7 day of September 2023, by Jim Palmer, as the President / CEO [title] of Allied Universal Corp. authorized to do business in the State of Florida, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

[Signature]
Notary Public Signature

Notary Seal:

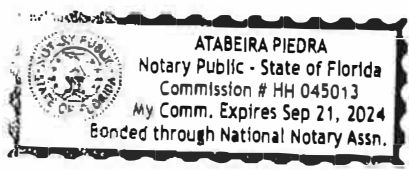


Exhibit "A"

Item	Description	Unit of Measure	Unit Price
	Liquid Sodium Hypochlorite		
	Full Truckload Price	1 Gal	<u>\$ 1.49 /Gal</u>
	Partial Truckload Price (Up to 30,000 Gallons)	1 Gal	<u>\$ 1.54 /Gal</u>

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Water Utilities

TITLE:

Piggyback Agreement with Miller Pipeline, LLC for the provision of Wastewater Collection System Rehabilitation Services

SUMMARY:

Miller Pipeline, LLC has a contract with Lee County Solicitation No. B230154DWJ to provide services for rehabilitating the wastewater collection system. Lake Worth Beach will piggyback this contract for the same services.

BACKGROUND AND JUSTIFICATION:

The city is responsible for maintaining 150 miles of wastewater lines that carry wastewater to lift stations in Lake Worth Beach and unincorporated areas. However, these lines become fragile over time, leading to infiltration and joint issues. Miller Pipeline can provide professional services to address these problems and prevent the release of untreated sewage, which poses significant risks to public health and the environment. The term of this Agreement is consistent with the term of the Lee County Contract and valid until June 19, 2026 with renewal option not to exceed three (3) years. City's Procurement Code and Policy authorizes the purchases of goods and services through "piggybacking" other governmental competitively procured Agreements.

MOTION:

Move to approve/disapprove the piggyback agreement with Miller Pipeline, LLC pipeline contractor services.

ATTACHMENT(S):

Fiscal Impact Analysis
Agreement

FISCAL IMPACT ANALYSIS

Five-Year Summary of Fiscal Impact:

Fiscal Years	2024	2025	2026	2027	2028
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In-Kind	0	0	0	0	0
Outflows					
Current Appropriation	150,000	150,000	150,000	0	0
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

Contract Award - Existing Appropriation	
	Expenditure
Department	Sewer
Division	Collection
GL Description	Other Contractual Services
GL Account Number	423-7231-535.63-15
Project Number	LS2106
Requested Funds	\$150,000

AGREEMENT FOR WASTEWATER COLLECTION SYSTEM REHABILITATION SERVICES
(Utilizing the Lee County Contract No. B230154DWJ)

THIS AGREEMENT FOR WASTEWATER COLLECTION SYSTEM REHABILITATION (“Agreement”) is made as of the _____, by and between the **CITY OF LAKE WORTH BEACH**, 7 N. Dixie Highway, Lake Worth Beach, FL 33460, a municipal corporation organized and existing under the laws of the State of Florida, (“CITY”), and **Miller Pipeline, LLC**, an Indiana Limited Liability Company authorized to do business in the State of Florida, located at 8850 Crawfordsville Road, Indianapolis, IN 46234 (“CONTRACTOR”).

RECITALS

WHEREAS, the CITY’s Water Utility Department is in need of a company to provide Wastewater Collection System Rehabilitation Services; and

WHEREAS, the CITY’s Procurement Policy and Code authorizes the purchases of goods and services through “piggybacking” other governmental competitively procured Agreements; and

WHEREAS, on June 20, 2023, Lee County, a political subdivision of the State of Florida, competitively awarded the Agreement for Wastewater Collection System Rehabilitation Services (Contract # B230154DWJ) based on the Lee County Solicitation No. B230154DWJ to the CONTRACTOR (“County Lee Contract”), which is valid until June 19, 2026; and

WHEREAS, the Lee County Contract authorizes the CONTRACTOR to extend the terms and conditions of the Lee County Contract to other government entities at the discretion of the CONTRACTOR; and

WHEREAS, the CITY has requested and the CONTRACTOR has agreed to extend the terms and conditions of the Lee County Contract to the CITY; and

WHEREAS, the CITY has reviewed the unit prices from the Lee County Contract, which unit prices are set forth as **Exhibit “A”** attached hereto, and determined that the unit prices are competitive and will result in the best value to the CITY; and,

WHEREAS, the CITY finds entering this Agreement with the CONTRACTOR serves a valid public purpose.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The parties agree that the recitals set forth above are true and correct and are fully incorporated herein by reference.
2. Contract. The Lee County Contract is hereby incorporated by reference into and expressly made a part of this Agreement as is set forth at length herein. The CITY shall have all rights and obligations of Lee County under the Lee County Contract except as specifically modified herein. The term of this Agreement shall be consistent with the term of the Lee County Contract and valid until June 19, 2026 with renewal option not to exceed three (3) years unless earlier terminated in accordance with the Agreement terms.
3. Not to Exceed Amount. While the CONTRACTOR is not guaranteed that the CITY will utilize this Agreement for any services, if the CITY utilizes this Agreement for services, the not to exceed amount for this Agreement shall be \$750,000 each fiscal year.

4. Work Orders. When the CITY identifies a need for the CONTRACTOR's services, the CITY will request a proposal from the CONTRACTOR to provide the services requested at the unit prices set forth in **Exhibit "A"**. The CITY will provide the CONTRACTOR with plans and/or specifications in order for the CONTRACTOR to develop its proposal. The CONTRACTOR's proposal shall be submitted in the format of the sample work order, attached hereto and incorporated herein as **Exhibit "B"** along with a copy of the CONTRACTOR's proposal. Upon receipt of the CONTRACTOR's proposed work order and proposal, the CITY shall decide in its sole discretion whether to award the work order to the CONTRACTOR. Depending on the lump sum amount of each work order, the work order may be awarded by the City Manager, if within their purchasing authority (currently not to exceed \$50,000), or the City Commission. If the work order is approved by the CITY, the CONTRACTOR shall commence the identified services upon the CITY's approval of the work order for the services and issuance of a notice to proceed. The CITY reserves the right to reject any and all proposals submitted by the CONTRACTOR. A CITY-approved work order shall include (by reference) the plans and/or specifications provided by the CITY to the CONTRACTOR.

5. Conflict of Terms and Conditions. Conflicts between documents that make up this Agreement shall be resolved in the following order of precedence:

- a. This Agreement (including its exhibits);
- b. The Lee County Contract; and,
- c. The CITY issued Work Order.

6. Compensation to CONTRACTOR. CONTRACTOR shall submit invoices to the CITY for review and approval by the CITY's representative, indicating that all goods and services have been provided and rendered in conformity with this Agreement and then will be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the CITY representative's approval. CONTRACTOR waives consequential or incidental damages for claims, disputes or other matters in question arising out of or relating to this Agreement. In order for both parties herein to close their books and records, CONTRACTOR will clearly state "final invoice" on the CONTRACTOR's final/last billing to the CITY. This certifies that all services have been properly performed and all charges have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the CONTRACTOR. The CITY will not be liable for any invoice from the CONTRACTOR submitted thirty (30) days after the provision of all services.

7. Miscellaneous Provisions.

- A. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held exclusively in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
- B. Except for any obligation of the CONTRACTOR to indemnify the CITY, if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall be liable and responsible for their own attorney's fees incurred in that enforcement action, dispute, breach, default or misrepresentation. FURTHER, TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

- C. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- D. All notices required in this Agreement shall be sent by certified mail, return receipt requested or by nationally recognized overnight courier, and sent to the addresses appearing on the first page of this Agreement.
- E. The CITY and the CONTRACTOR agree that this Agreement (and the other documents described herein) sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.
- F. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement. This Agreement may be executed electronically.
- G. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.
- H. In accordance with the Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed the Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.
- I. PUBLIC RECORDS. The CONTRACTOR shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the CITY as provided under section 119.011(2), Florida Statutes, specifically agrees to:
1. Keep and maintain public records required by the CITY to perform the service.
 2. Upon request from the CITY's custodian of public records or designee, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the CONTRACTOR does not transfer the records to the CITY.
 4. Upon completion of this Agreement, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and

maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records or designee, in a format that is compatible with the information technology systems of the CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE CITY OF LAKE WORTH BEACH, ATTN: CITY CLERK, AT (561) 586-1662, CITY CLERK@LAKEWORTHBEACHFL.GOV, 7 N. DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.

J. SCRUTINIZED COMPANIES.

1. CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

2. If this Agreement is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

3. The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

4. The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

5. The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

6. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

L. E-VERIFY.

Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR shall:

1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;
2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, Agreement with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
3. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;
4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,
6. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded an Agreement for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the CITY and CONTRACTOR hereto have made and executed this Agreement for Wastewater Collection System Rehabilitation Services (utilizing the Lee County Contract) as of the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

MILLER PIPELINE, LLC

[Corporate Seal]

By: Chris Schuler

Print Name: Chris Schuler

Title: Vice President

STATE OF Indiana
CITY OF Indianapolis

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 8th day of September 2023, by Chris Schuler, as the Vice President [title] of **Miller Pipeline, LLC.**, A Florida Limited Liability Company, who is personally known to me or who has produced personally known as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Shelley L. Rardon

Notary Public Signature Shelley L. Rardon

Notary Seal:

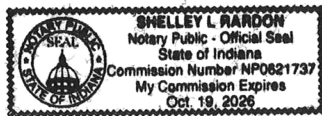


EXHIBIT "A"
Unit Price Schedule from Lee County Contract

FEE SCHEDULE

GROUP A - EXCAVATED POINT REPAIRS			
Item No.	Description	Unit	Unit Price Bid
A1	Point repair <u>lateral</u> , 4-inch and 6-inch gravity pipe (up to 6 feet in depth)	EA	\$9,156.25
A2	Point repair <u>lateral</u> , 4-inch and 6-inch gravity pipe (6 to 8 feet in depth)	EA	\$9,812.50
A3	Point repair <u>lateral</u> , 4-inch and 6-inch gravity pipe (8 to 10 feet in depth)	EA	\$16,875.00
A4	Point repair <u>lateral</u> , 4-inch and 6-inch gravity pipe (10 to 12 feet in depth)	EA	\$20,000.00
A5	Point repair <u>lateral</u> , 4-inch and 6-inch gravity pipe (12 to 14 feet in depth)	EA	\$25,625.00
A6	Point repair <u>lateral</u> , 4-inch and 6-inch gravity pipe (14 to 16 feet in depth)	EA	\$28,687.50
A7	Point repair <u>main</u> , 8-inch and 10-inch gravity pipe (up to 6 feet in depth)	EA	\$9,312.50
A8	Point repair <u>main</u> , 8-inch and 10-inch gravity pipe (6 to 8 feet in depth)	EA	\$9,750.00
A9	Point repair <u>main</u> , 8-inch and 10-inch gravity pipe (8 to 10 feet in depth)	EA	\$16,250.00
A10	Point repair <u>main</u> , 8-inch and 10-inch gravity pipe (10 to 12 feet in depth)	EA	\$20,312.50
A11	Point repair <u>main</u> , 8-inch and 10-inch gravity pipe (12 to 14 feet in depth)	EA	\$26,437.50
A12	Point repair <u>main</u> , 12-inch and 15-inch gravity pipe (up to 6 feet in depth)	EA	\$10,000.00
A13	Point repair <u>main</u> , 12-inch and 15-inch gravity pipe (6 to 8 feet in depth)	EA	\$10,625.00
A14	Point repair <u>main</u> , 12-inch and 15-inch gravity pipe (8 to 10 feet in depth)	EA	\$17,500.00
A15	Point repair <u>main</u> , 12-inch and 15-inch gravity pipe (10 to 12 feet in depth)	EA	\$21,250.00
A16	Point repair <u>main</u> , 12-inch and 15-inch gravity pipe (12 to 14 feet in depth)	EA	\$27,687.50
A17	Point repair <u>main</u> , 12-inch and 15-inch gravity pipe (14 to 16 feet in depth)	EA	\$30,000.00
A18	Point repair <u>main</u> , 18-inch through 24-inch gravity pipe (up to 8 feet in depth)	EA	\$14,375.00
A19	Point repair <u>main</u> , 18-inch through 24-inch gravity pipe (8 to 12 feet in depth)	EA	\$25,312.50
A20	Point repair <u>main</u> , 18-inch through 24-inch gravity pipe (12 to 16 feet in depth)	EA	\$32,812.50
A21	Install polyethylene fused-on saddle (open trench)	EA	\$437.50
A22	Work in rear-yard easement (Items A1 through A20)	EA	\$1,250.00
A23	Cleanout installation in grass area (up to 5 feet in depth)	EA	\$2,812.50
A24	Cleanout installation in asphalt area (up to 5 feet in depth)	EA	\$2,843.75
A25	Cleanout installation in concrete area (up to 5 feet in depth)	EA	\$2,968.75
A26	Cleanout installation (beyond 5 feet in depth)	V.F.	\$187.50
A27	Work in rear-yard easement (Items A23 to A26)	EA	\$843.75
A28	Cleanout installation (open trench)	EA	\$437.50
A29	Lateral T / Y replacement (open trench)	EA	\$343.75
A30	Asphalt roadway replacement	S.Y.	\$204.00
A31	Asphalt pavement overlay (1-inch thick)	S.Y.	\$62.50
A32	Concrete sidewalk replacement	S.Y.	\$131.25
A33	Concrete curb and gutter replacement	L.F.	\$116.00
A34	Asphalt driveway replacement	S.Y.	\$118.75
A35	Concrete driveway replacement	S.Y.	\$122.00
A36	Sod replacement	S.F.	\$5.00
A37	Bypass pumping (8-inch and 10-inch sewer)	DAY	\$1,875.00
A38	Bypass pumping (12-inch and 15-inch sewer)	DAY	\$5,625.00
A39	Bypass pumping (18-inch through 24-inch sewer)	DAY	\$11,875.00
A40	Sewer <u>main cleaning and TV inspection</u> (8-inch through 12-inch)	L.F.	\$2.35
A41	Sewer <u>main cleaning and TV inspection</u> (15-inch through 21-inch)	L.F.	\$5.00
A42	Sewer <u>main cleaning and TV inspection</u> (21-inch through 24-inch)	L.F.	\$6.25
A43	Traffic control - flagman, each	HOUR	\$100.00
A44	Traffic control - arrow board, each	DAY	\$937.50
A45	Traffic control - barricade, each	DAY	\$18.75
A46	Expedited mobilization	EA	\$6,875.00

GROUP B - CHEMICAL GROUTING			
Item No.	Description	Unit	Unit Price Bid
B1	Test joints, 8-inch and 10-inch gravity pipe	EA	\$50.00
B2	Test joints, 12-inch and 15-inch gravity pipe	EA	\$50.00
B3	Test joints, 18-inch and 21-inch gravity pipe	EA	\$62.50
B4	Test and seal joints, 8-inch and 10-inch gravity pipe	EA	\$50.00
B5	Test and seal joints, 12-inch and 15-inch gravity pipe	EA	\$50.00
B6	Test and seal joints, 18-inch and 21-inch gravity pipe	EA	\$62.50
B7	Work in rear-yard easement (items B1 to B6)	EA	\$312.50
B8	Chemical grout for sealing sewer joints	GAL	\$27.50
B9	Chemical root removal (8-inch through 12-inch)	L.F.	\$3.75
B10	Chemical root removal (15-inch through 21-inch)	L.F.	\$4.50
B11	Grout / Seal lateral connection 8 & 10 main, 4&6-inch laterals (3' minimum)	EA	\$343.75
B12	Grout / Seal lateral connection 12 & 15 main, 4&6-inch laterals (3' minimum)	EA	\$375.00
B13	Grout / Seal lateral connection 18 & 24 main, 4&6-inch laterals (3' minimum)	EA	\$500.00
B14	Work in rear-yard easement (items B11 to B13)	EA	\$312.50
B15	Mechanical root or grease removal (12-inch and smaller)	L.F.	\$4.50
B16	Mechanical root or grease removal (15-inch through 21-inch)	L.F.	\$6.25
B17	Sewer <u>main cleaning and TV inspection</u> (8-inch through 12-inch)	L.F.	\$2.35
B18	Sewer <u>main cleaning and TV inspection</u> (15-inch through 21-inch)	L.F.	\$5.00
B19	Sewer <u>main cleaning and TV inspection</u> (21-inch through 24-inch)	L.F.	\$6.25
B20	Bypass pumping (8-inch and 10-inch sewer)	DAY	\$1,875.00
B21	Bypass pumping (12-inch and 15-inch sewer)	DAY	\$5,625.00
B22	Bypass pumping (18-inch and 21-inch sewer)	DAY	\$11,675.00
B23	Expedited mobilization	EA	\$6,875.00

GROUP C - MANHOLE REPAIRS AND REPLACEMENT

Item No.	Description	Unit	Unit Price Bid
C1	Replace Manhole Ring and Cover (in paved area)	EA	\$2,625.00
C2	Replace Manhole Ring and Cover (in unpaved area)	EA	\$2,125.00
C3	Realign Manhole Ring and Cover (in paved area)	EA	\$1,125.00
C4	Realign Manhole Ring and Cover (in unpaved area)	EA	\$750.00
C8	Repair Manhole bench and invert	EA	\$875.00
C9	Replace Manhole bench and invert	EA	\$1,875.00
C12	Repair Defect/Leak (4 to 8 feet in depth)	EA	\$1,125.00
C13	Repair Defect/Leak (8 to 16 feet in depth)	EA	\$2,000.00
C14	Work in rear-yard easement (items C1 through C13)	EA	\$1,250.00
C15	Install new drop connection precast concrete 48-inch-diameter sewer manhole (up to 4 feet in depth)	EA	\$1,250.00
C16	Install new drop connection precast concrete 48-inch-diameter sewer manhole (4 to 6 feet in depth)	EA	\$1,500.00
C17	Install new drop connection precast concrete 48-inch-diameter sewer manhole (6 to 8 feet in depth)	EA	\$1,750.00
C18	Install new drop connection precast concrete 48-inch-diameter sewer manhole (8 to 10 feet in depth)	EA	\$2,000.00
C19	Install new drop connection precast concrete 48-inch-diameter sewer manhole (10 to 12 feet in depth)	EA	\$2,250.00
C20	Install new drop connection precast concrete 48-inch-diameter sewer manhole (12 to 14 feet in depth)	EA	\$2,500.00
C21	Install new drop connection precast concrete 48-inch-diameter sewer manhole (14 to 16 feet in depth)	EA	\$2,500.00
C22	Work in rear-yard easement (items C15 through C24)	EA	\$625.00

C23	Asphalt roadway replacement	S.Y.	\$204.00
C24	Asphalt pavement overlay (1-inch thick)	S.Y.	\$62.50
C25	Concrete sidewalk replacement	S.Y.	\$131.25
C26	Concrete curb and gutter replacement	L.F.	\$131.25
C27	Asphalt driveway replacement	S.Y.	\$118.75
C28	Concrete driveway replacement	S.Y.	\$121.88
C29	Sod replacement	S.F.	\$5.00
C30	Bypass pumping (8-inch and 10-inch sewer)	DAY	\$1,875.00
C31	Bypass pumping (12-inch and 15-inch sewer)	DAY	\$5,625.00
C32	Bypass pumping (18-inch and 21-inch sewer)	DAY	\$11,875.00
C33	Traffic control - flagman, each	hour	\$100.00
C34	Traffic control - arrow board, each	DAY	\$937.50
C35	Traffic control - barricade, each	DAY	\$18.75
C36	Expedited mobilization	EA	\$6,875.00

GROUP D - SECTIONAL AND LATERAL LINERS

Item No.	Description	Unit	Unit Price Bid
D1	Install cured-in-place <u>sectional pipe</u> liners, 6-inch to 12-inch diameter (up to 6 feet in length, all depths)	L.F.	\$4,431.25
D2	Install cured-in-place <u>sectional pipe</u> liners, 6-inch to 12-inch diameter (per linear foot beyond 6 feet in length, all depths)	L.F.	\$131.25
D3	Install cured-in-place <u>sectional pipe</u> liners, 15-inch to 18-inch diameter (up to 6 feet in length, all depths)	L.F.	\$9,856.25
D4	Install cured-in-place <u>sectional pipe</u> liners, 15-inch to 18-inch diameter (per linear foot beyond 6 feet in length, all depths)	L.F.	\$181.25
D5	Install cured-in-place <u>sectional pipe</u> liners, 21-inch diameter (up to 6 feet in length, all depths)	L.F.	\$11,962.50
D6	Install cured-in-place <u>sectional pipe</u> liners, 21-inch diameter (per linear foot beyond 6 feet in length, all depths)	L.F.	\$210.00
D7	Work in rear-yard easement (Items E1 through E6)	EA	\$562.50
D8	Reinstate laterals and grout annular space	EA	\$560.00
D9	Sewer <u>main cleaning and TV inspection</u> (8-inch through 12-inch)	L.F.	\$2.35
D10	Sewer <u>main cleaning and TV inspection</u> (15-inch through 21-inch)	L.F.	\$5.00
D11	Sewer <u>main cleaning and TV inspection</u> (21-inch through 24-inch)	L.F.	\$6.25
D12	FCLRL – Cured-in-Place <u>Lateral Liner</u> 6-inch to 10-inch main, 4 & 6-inch lateral pipe, up to 15 linear feet. (all depths)	EA	\$4,743.75
D13	FCLRL – Cured-in-Place <u>Lateral Liner</u> 12-inch to 15-inch main, 4 & 6-inch lateral pipe, up to 15 linear feet. (all depths)	EA	\$5,281.25
D14	FCLRL – Cured-in-Place <u>Lateral Liner</u> 18-inch to 21-inch main, 4 & 6-inch lateral pipe, up to 15 linear feet. (all depths)	EA	\$7,368.75
D15	FCLRL – Cured-in-Place <u>Lateral Liner</u> 24-inch main, 4 & 6-inch lateral pipe, up to 15 linear feet. (all depths)	EA	\$8,906.25
D16	FCLRL – Cured-in-Place <u>MH Drop Liner</u> 8-inch to 15-inch main, 8-inch to 10-inch manhole drop connection, up to 12 linear feet of drop. (all depths)	EA	\$4,562.50
D17	Lateral Liner 4 & 6-inch pipe, greater than 15 linear feet all depths. (all depths)	L.F.	\$112.50
D18	Install CIP liner in 4-inch to 6-inch laterals, all depths (includes 15 feet of lateral)	L.F.	\$4,431.25
D19	Install CIP liner in 4-inch to 6-inch laterals, all depths (per linear foot beyond 15 feet of lateral pipe)	L.F.	\$131.25
D20	Install Full-Circle CIP mainline/lateral connection interface seal (minimum 3') in 6 - 10-inch main with 4-inch to 6-inch laterals, all depths.	L.F.	\$4,431.25
D21	Install Full-Circle CIP mainline/lateral connection interface seal (minimum 3') in 12 - 21-inch main with 4-inch to 6-inch laterals, all depths.	L.F.	\$11,962.50

D22	Install Full-Circle CIP mainline/lateral connection interface seal 6-inch to 10-inch main, 4-inch & 6-inch lateral pipe, up to 6-inches of lateral piping, all depths.	L.F.	\$7,437.50
D23	Install Full-Circle CIP mainline/lateral connection interface seal 12-inch to 21-inch main, 4-inch & 6-inch lateral pipe, up to 6-inches of lateral piping, all depths.	L.F.	\$15,000.00
D24	Transitional Liner 6-inch to 4-inch.	EA	\$437.50
D26	Work in rear-yard easement (items D12 through D21)	EA	\$625.00
D27	Sewer Lateral TV inspection from main w/ P&T Camera (up to 30 feet)	EA	\$375.00
D28	Sewer Lateral TV inspection from main (beyond 30 feet)	L.F.	\$3.50
D29	Sewer Lateral TV inspection from cleanout w/P&T Camera (up to 30 feet)	EA	\$375.00
D30	Sewer Lateral TV inspection from cleanout (beyond 30 feet)	L.F.	\$3.50
D31	Cleanout installation in grass area (up to 5 feet in depth)	EA	\$2,812.50
D32	Cleanout installation in asphalt area (up to 5 feet in depth)	EA	\$2,843.75
D33	Cleanout installation in concrete area (up to 5 feet in depth)	EA	\$2,968.75
D34	Cleanout installation (beyond 5 feet in depth)	V.F.	\$312.50
D35	Work in rear-yard easement (items D25 through D32)	EA	\$562.50
D36	Lateral Pipe Grouting, to facilitate proper lateral liner installation.	EA	\$1,875.00
D37	Lateral Pipe Testing. (10% of installations)	EA	\$593.75
D38	Mechanical Root or Grease Removal (10-inch and smaller)	L.F.	\$11.25
D39	Mechanical Tuberculation Removal (10-inch or smaller)	L.F.	\$22.50
D40	Bypass pumping (8-inch and 10-inch sewer)	DAY	\$1,875.00
D41	Bypass pumping (12-inch and 15-inch sewer)	DAY	\$5,625.00
D42	Bypass pumping (18-inch and 24-inch sewer)	DAY	\$11,875.00
D43	Traffic control - flagman, each	Hour	\$100.00
D44	Traffic control - arrow board, each	Day	\$937.50
D45	Traffic control - barricade, each	Day	\$18.75
D46	Expedited mobilization	EA	\$6,875.00

GROUP E - CIP MAINLINE PIPE LINING

Item No.	Description	Unit	Unit Price Bid
E1	Install cured-in-place liner, 18-inch diameter gravity mains (8 to 12 feet in depth)	L.F.	\$152.00
E2	Install cured-in-place liner, 18-inch diameter gravity mains (12 to 16 feet in depth)	L.F.	\$152.00
E3	Install cured-in-place liner, 21-inch diameter gravity mains (8 to 12 feet in depth)	L.F.	\$215.00
E4	Install cured-in-place liner, 21-inch diameter gravity mains (12 to 16 feet in depth)	L.F.	\$215.00
E5	Install cured-in-place liner, 24-inch diameter gravity mains (8 to 12 feet in depth)	L.F.	\$227.00
E6	Install cured-in-place liner, 24-inch diameter gravity mains (12 to 18 feet in depth)	L.F.	\$227.00
E7	Install cured-in-place liner, 30-inch diameter gravity mains (8 to 12 feet in depth)	L.F.	\$283.00
E8	Install cured-in-place liner, 30-inch diameter gravity mains (12 to 18 feet in depth)	L.F.	\$283.00
E9	Work in Rear-Yard Easement (items E1 to E8)	EA	\$1,083.00
E10	Reinstate Laterals and Grout annular space	EA	\$560.00
E11	Protruding service connection removed by internal means	EA	\$331.25
E12	Mechanical Root or Grease Removal (12-inch and smaller)	L.F.	\$4.50
E13	Mechanical Root or Grease Removal (15-inch through 24-inch)	L.F.	\$11.25
E14	Mechanical Tuberculation Removal (12-inch or smaller)	L.F.	\$22.50
E15	Mechanical Tuberculation Removal (15-inch through 18-inch)	L.F.	\$25.00
E16	Mechanical Tuberculation Removal (21-inch through 30-inch)	L.F.	\$37.50
E17	Sewer main cleaning and TV inspection (6-inch through 12-inch)	L.F.	\$2.35
E18	Sewer main cleaning and TV inspection (15-inch through 18-inch)	L.F.	\$5.00
E19	Sewer main cleaning and TV inspection (21-inch through 30-inch)	L.F.	\$6.25
E20	Bypass Pumping (6-inch through 12-inch sewer)	Day	\$1,875.00

E21	Bypass Pumping (15-inch and 18-inch sewer)	Day	\$5,625.00
E22	Bypass Pumping (18-inch through 30-inch sewer)	Day	\$11,875.00
E23	Traffic control - flagman, each	Hour	\$100.00
E24	Traffic control - arrow board, each	Day	\$937.50
E25	Traffic control - barricade, each	Day	\$18.75
E26	Expedited mobilization	EA	\$6,875.00
E27	Consideration for Indemnification	L.S.	\$1,875.00

GROUP F - FOLD AND FORM PIPE LINING

Item No.	Description	Unit	Unit Price Bid
F1	Install Fold and Form liner, 8-inch diameter gravity mains (all depths)	L.F.	\$41.75
F2	Install Fold and Form liner, 10-inch diameter gravity mains (all depths)	L.F.	\$46.50
F3	Install Fold and Form liner, 12-inch diameter gravity mains (all depths)	L.F.	\$51.00
F4	Install Fold and Form liner, 15-inch diameter gravity mains (all depths)	L.F.	\$105.00
F5	Reinstate Laterals and Grout annular space	Each	\$560.00
F6	Work in Rear-Yard Easement (items F1 & F4)	Each	\$1,000.00
F7	Protruding service connection removed by internal means	Each	\$331.25
F8	Sewer main cleaning and TV inspection (8-inch through 12-inch)	L.F.	\$2.35
F9	Sewer main cleaning and TV inspection (15-inch through 21-inch)	L.F.	\$5.00
F10	Sewer main cleaning and TV inspection (21-inch through 24-inch)	L.F.	\$6.25
F11	Mechanical Root or Grease Removal (12-inch or smaller)	L.F.	\$4.50
F12	Mechanical Tuberculation Removal (12-inch or smaller)	L.F.	\$22.50
F13	Bypass Pumping (8-inch through 10-inch sewer)	Day	\$1,875.00
F14	Bypass Pumping (12-inch and 15-inch sewer)	Day	\$5,625.00
F15	Bypass Pumping (18-inch and 24-inch sewer)	Day	\$11,875.00
F16	Traffic control - flagman, each	Hour	\$100.00
F17	Traffic control - arrow board, each	Day	\$937.50
F18	Traffic control - barricade, each	Day	\$18.75
F19	Expedited mobilization	EA	\$7,577.15

EXHIBIT “B”

SAMPLE WORK ORDER
AGREEMENT FOR WASTEWATER COLLECTION SYSTEM REHABILITATION
SERVICES

THIS WORK ORDER for Wastewater Collection System Rehabilitation Services (“Work Order” hereafter) is made on the _____, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 (“City” hereafter) and **Miller Pipeline, LLC.**, an Indiana Limited Liability Company (“Contractor” hereafter).

1.0 Project Description:

The City desires the Contractor to provide all goods, services, materials and equipment as identified herein related to the Wastewater Collection System Rehabilitation Services project generally described as: _____ (the “Project”). The Project is more specifically described in the plans prepared by _____, dated _____, and which are incorporated herein by reference.

2.0 Scope

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with construction services for the Project as specified in the **Contractor’s proposal attached hereto and incorporated herein as Exhibit “1”.**

3.0 Schedule and Liquidated Damages

Substantial completion of all services and work under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties’ execution of this Work Order and the City’s delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City _____ hundred dollars (\$ _____ .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation and Direct Purchases

This Work Order is issued for a lump sum, not to exceed amount of \$ _____ (_____). The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

_____.

5.0 Project Manager

The Project Manager for the Contractor is _____, phone: _____; email: _____; and, the Project Manager for the City is _____, phone: _____; email: _____.

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Public Construction Bond

If the total cost of this Work Order is anticipated to exceed \$200,000, the Contractor shall provide a public construction bond for the total cost, which bond shall be in a standard City format and issued by a company authorized to do business in the State of Florida. The bond must be recorded in the official records in and for Palm Beach County, Florida, and a copy of the recorded bond provided to the City prior to any work commencing.

8.0 Contractor's Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

8.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

8.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

8.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

8.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

8.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

9.0 Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

10.0 Authorization

This Work Order is issued pursuant to the Wastewater Collection System Rehabilitation Agreement for between the City of Lake Worth Beach and the Contractor, dated [REDACTED], ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
Signature Page Follows**

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order No. XXX as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor or Carmen Y. Davis, City Manager

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: MILLER PIPELINE, LLC.

[Corporate Seal]

By: **DO NOT SIGN – SAMPLE ONLY** _____

Print Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____ 2023, by _____, as the _____ Miller Pipeline, LLC an Indiana Limited Liability Company, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Public Signature

Notary Seal:

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Water Utilities

TITLE:

Agreement for On-Call Large Pipeline Contractor Services with Amici Engineering Contractors, LLC

SUMMARY:

Amici Engineering Contractors, LLC has a contract with Tampa Bay Water, Contract #2021-046, to provide on-call services for large pipeline repair. Lake Worth Beach will piggyback this contract for the same services.

BACKGROUND AND JUSTIFICATION:

The city is responsible for the sub-regional partners' 14 miles of large-diameter pipe. This pipe carries 8-10 million gallons of sewage daily to the East Central Waste Water Facility (ECR). The absence of an on-call contractor in the event of a large sewage pipe rupture in town can lead to dire consequences. Without a readily available professional to address the issue, the release of untreated sewage poses significant health and environmental risks. Additionally, the longer the pipe remains unrepaired, the greater the potential for property damage and disruptions to daily life. An on-call contractor equipped with the expertise and resources to manage such emergencies swiftly is essential to mitigate the immediate hazards and prevent long-term harm to public health and the environment. City's Procurement Policy and Code authorizes the purchases of goods and services through "piggybacking" other governmental competitively procured Agreements. The term of this Agreement is consistent with the term of the Tampa Bay Water Contract and valid until September 30, 2025. The City will be issuing Work Orders under this Agreement on as needed basis. Depending on the lump sum amount of each work order, the work order may be awarded by the City Manager or City Commission in accordance with the City's approval thresholds.

MOTION:

Move to approve/disapprove the piggyback agreement with Amici Engineering Contractor, LLC for on-call large pipeline contractor services.

ATTACHMENT(S):

Agreement

AGREEMENT FOR ON-CALL LARGE PIPELINE CONTRACTOR SERVICES
(Utilizing the Tampa Bay Water Contract No. 2021-046)

THIS AGREEMENT FOR ON-CALL LARGE PIPELINE CONTRACTOR SERVICES (“Agreement”) is made as of the _____, by and between the **CITY OF LAKE WORTH BEACH**, 7 N. Dixie Highway, Lake Worth Beach, FL 33460, a municipal corporation organized and existing under the laws of the State of Florida, (“CITY”), and **AMICI Engineering Contractors, LLC**, a Florida Limited Liability Company authorized to do business in the State of Florida, located at 28947 SR 54, Wesley Chapel, Florida 33543 (“CONTRACTOR”).

RECITALS

WHEREAS, the CITY’s Water Utility Department is in need of a company to provide on-call large pipeline contractor services; and,

WHEREAS, the CITY’s Procurement Policy and Code authorizes the purchases of goods and services through “piggybacking” other governmental competitively procured Agreements; and

WHEREAS, on August 16, 2021, Tampa Bay Water, a Regional Water Supply Authority competitively awarded the Agreement for On-Call Large Pipeline Contractor Services, Contract # 2021-046 based on Tampa Bay Water’s Invitation To Bid (ITB #2021-004, 2021-045, 2021-046 & 2021-047) to the CONTRACTOR (“Tampa Bay Water Contract”) valid until September 30, 2025; and

WHEREAS, the Tampa Bay Water Contract authorizes the CONTRACTOR to extend the terms and conditions of the Tampa Bay Water Contract to other government entities at the discretion of the CONTRACTOR; and

WHEREAS, the CITY has requested and the CONTRACTOR has agreed to extend the terms and conditions of the Tampa Bay Water Contract to the CITY; and

WHEREAS, the CITY has reviewed the unit prices from the Tampa Bay Water Contract, which unit prices are set forth as **Exhibit “A”** attached hereto, and determined that the unit prices are competitive and will result in the best value to the CITY; and

WHEREAS, the CITY finds entering this Agreement with the CONTRACTOR serves a valid public purpose.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The parties agree that the recitals set forth above are true and correct and are fully incorporated herein by reference.
2. Contract. The Tampa Bay Water Contract is hereby incorporated by reference into and expressly made a part of this Agreement as is set forth at length herein. The CITY shall have all rights and obligations of Tampa Bay Water under the Tampa Bay Water Contract except as specifically modified herein. The term of this Agreement shall be consistent with the term of the Tampa Bay Water Contract and valid until September 30, 2025 unless earlier terminated in accordance with the Agreement terms.

3. Not to Exceed Amount. While the CONTRACTOR is not guaranteed that the CITY will utilize this Agreement for any services, if the CITY utilizes this Agreement for services, the not to exceed amount for this Agreement shall be \$500,000 each fiscal year.

4. Work Orders. When the CITY identifies a need for the CONTRACTOR's services, the CITY will request a proposal from the CONTRACTOR to provide the services requested at the unit prices set forth in **Exhibit "A"**. The CITY will provide the CONTRACTOR with plans and/or specifications in order for the CONTRACTOR to develop its proposal. The CONTRACTOR's proposal shall be submitted in the format of the sample work order, attached hereto and incorporated herein as **Exhibit "B"** along with a copy of the CONTRACTOR's proposal. Upon receipt of the CONTRACTOR's proposed work order and proposal, the CITY shall decide in its sole discretion whether to award the work order to the CONTRACTOR. Depending on the lump sum amount of each work order, the work order may be awarded by the City Manager, if within their purchasing authority (currently not to exceed \$50,000), or the City Commission. If the work order is approved by the CITY, the CONTRACTOR shall commence the identified services upon the CITY's approval of the work order for the services and issuance of a notice to proceed. The CITY reserves the right to reject any and all proposals submitted by the CONTRACTOR. A CITY-approved work order shall include (by reference) the plans and/or specifications provided by the CITY to the CONTRACTOR.

5. Conflict of Terms and Conditions. Conflicts between documents that make up this Agreement shall be resolved in the following order of precedence:

- a. This Agreement (including its exhibits);
- b. The Tampa Bay Water Contract; and,
- c. The CITY issued Work Order.

6. Compensation to CONTRACTOR. CONTRACTOR shall submit invoices to the CITY for review and approval by the CITY's representative, indicating that all goods and services have been provided and rendered in conformity with this Agreement and then will be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the CITY representative's approval. CONTRACTOR waives consequential or incidental damages for claims, disputes or other matters in question arising out of or relating to this Agreement. In order for both parties herein to close their books and records, CONTRACTOR will clearly state "final invoice" on the CONTRACTOR's final/last billing to the CITY. This certifies that all services have been properly performed and all charges have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the CONTRACTOR. The CITY will not be liable for any invoice from the CONTRACTOR submitted thirty (30) days after the provision of all services.

7. Miscellaneous Provisions.

A. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held exclusively in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

B. Except for any obligation of the CONTRACTOR to indemnify the CITY, if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall be liable and responsible for their own attorney's fees incurred in that enforcement action, dispute, breach, default or misrepresentation. FURTHER, TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF

ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

- C. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- D. All notices required in this Agreement shall be sent by certified mail, return receipt requested or by nationally recognized overnight courier, and sent to the addresses appearing on the first page of this Agreement.
- E. The CITY and the CONTRACTOR agree that this Agreement (and the other documents described herein) sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.
- F. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement. This Agreement may be executed electronically.
- G. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.
- H. In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.
- I. PUBLIC RECORDS. The CONTRACTOR shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the CITY as provided under section 119.011(2), Florida Statutes, specifically agrees to:
 - 1. Keep and maintain public records required by the CITY to perform the service.
 - 2. Upon request from the CITY's custodian of public records or designee, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the CONTRACTOR does not transfer the records to the CITY.

4. Upon completion of this Agreement, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records or designee, in a format that is compatible with the information technology systems of the CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE CITY OF LAKE WORTH BEACH, ATTN: CITY CLERK, AT (561) 586-1662, CITY CLERK@LAKEWORTHBEACHFL.GOV, 7 N. DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.

J. SCRUTINIZED COMPANIES.

1. CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

2. If this Agreement is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

3. The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

4. The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

5. The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

6. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

L. E-VERIFY.

Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR shall:

1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;
2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, Agreement with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
3. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;
4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,
6. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded a Agreement for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the CITY and CONTRACTOR hereto have made and executed this Agreement for On Call Large Pipeline Contractor Services as of the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

AMICI ENGINEERING CONTRACTORS, LLC.

[Corporate Seal]



By: _____

Print Name: Juan Barreneche

Title: Managing Member

STATE OF Florida
CITY OF Miami

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 17th day of August 2023, by Juan Barreneche, as the Managing Member [title] of **Amici Engineering Contractors, LLC.**, A Florida Limited Liability Company, who is personally known to me or who has produced Personally Known as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Public Signature
Notary Seal:

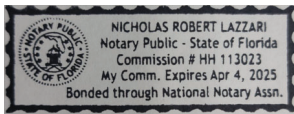


EXHIBIT A
Unit Price Schedule from Tampa Bay Water Contract

CONTRACT #'s 2021-044, 2021-045, 2021-046 & 2021-047

PART B - LARGE PIPELINE CONTRACTOR BID PRICE FORM

ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE
Labor				
1	Foreman	Hour	1	300.00
2	Operator	Hour	1	150.00
3	Truck Driver	Hour	1	150.00
4	Pipe Layer - For Pipes ≤ 84" Dia.	Hour	1	150.00
5	Laborer	Hour	1	150.00
Equipment				
6	Foreman P/U with hand tools	Hour	1	100.00
7	Job truck with mandatory tools *note*	Hour	1	150.00
8	Crane (20 Ton)	Hour	1	280.00
9	Crane (60 Ton)	Hour	1	400.00
10	Tractor & Trailer (Transport)	Hour	1	260.00
11	Track Hoe (to 100 HP)	Hour	1	210.00
12	Track Hoe (101 HP to 170 HP)	Hour	1	240.00
13	Track Hoe (171 HP and up)	Hour	1	210.00
14	Rubber Tired Backhoe	Hour	1	160.00
15	Wheel Loader (to 150 HP)	Hour	1	184.00
16	Wheel Loader (151 HP and up)	Hour	1	220.00
17	Track Type Tractors (to 100 HP)	Hour	1	210.00
18	Track Type Tractors (101 HP up)	Hour	1	240.00
19	Dump Truck (Tandem Axle)	Hour	1	240.00
20	Plate Tamp	Hour	1	123.00
21	3" Trash Pump	Hour	1	140.00
22	4" Double Diaphragm Pump	Hour	1	124.00
23	Air Compressor (125 SCFM)	Hour	1	123.00
24	Well Point Pump	Day	1	630.00
25	4" Jet Pump	Day	1	340.00
Material				
26	2500psi Concrete (Un-formed)	Cu. Yd.	1	130.00
27	Off Site Select Fill	Cu. Yd.	1	14.00
28	Limerock Base Material	Ton	1	33.00
29	#57 Washed Stone	Ton	1	55.00
30	Asphalt Paving (1½" Thick; Type S-3)	Sq. Yd.	1	17.00
31	Bahia Sod	Sq. Yd.	1	4.40
32	Sheeting to Depths of 25'	20 Sheets	1	3,000.00
Sub-Contractor				
33	Welder with Truck	Hour	1	170.00
34	Line Clearance Chlorinate/Dechlorinate	1MG	1	10.00
PROPOSED TOTAL CONTRACT BID PRICE (Basis of Award):				\$ 8,917.40
Note Job truck with mandatory tools to include all items listed on Table 1 in the specifications.				

EXHIBIT “B”

SAMPLE WORK ORDER
AGREEMENT FOR ON CALL LARGE PIPELINE CONTRACTOR SERVICES

THIS WORK ORDER for On Call Large Pipeline Contractor Services (“Work Order” hereafter) is made on the _____, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 (“City” hereafter) and **AMICI Engineering Contractor, LLC.**, a Florida limited liability company (“Contractor” hereafter).

1.0 Project Description:

The City desires the Contractor to provide all goods, services, materials and equipment as identified herein related to the On Call Large Pipeline Contractor Services project generally described as: _____ (the “Project”). The Project is more specifically described in the plans prepared by _____, dated _____, and which are incorporated herein by reference.

2.0 Scope

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with construction services for the Project as specified in the **Contractor’s proposal attached hereto and incorporated herein as Exhibit “1”.**

3.0 Schedule and Liquidated Damages

Substantial completion of all services and work under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within _____ **calendar days** from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties’ execution of this Work Order and the City’s delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City _____ hundred dollars (\$ _____ .00) for each day that expires after the time specified in this Work Order.

4.0 Compensation and Direct Purchases

This Work Order is issued for a lump sum, not to exceed amount of \$ _____ (_____). The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

_____.

5.0 Project Manager

The Project Manager for the Contractor is Juan Barreneche, phone: 954-650-4699; email: juanb@amiciec.com; and, the Project Manager for the City is _____, phone: _____; email: _____.

6.0 Progress Meetings

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Contractor’s Representations

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations,

explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

8.0 Warranty. The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

9.0 Authorization

This Work Order is issued pursuant to the On Call Large Pipeline Contractor Services Contract for between the City of Lake Worth Beach and the Contractor, dated [REDACTED], ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

Signature Page Follows

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order No. XX as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

Contractor: AMICI Engineering Contractors, LLC

By: _____ [Do Not Sign – Sample] _____
Name:

[Corporate Seal]

Title:

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____, as _____ of **Amici Engineering Contractors, LLC.**, a
Florida company, and who is personally known to me or who has produced the following
_____ as identification.

Notary Public



FINANCE & ADMINISTRATION DIVISION
CHRISTINA SACKETT, CFO

PURCHASING DEPARTMENT
STACY GUNDRY, PURCHASING SPECIALIST II

WEBSITE: <http://www.tampabaywater.org>
E-MAIL: purchasing@tampabaywater.org
2575 ENTERPRISE ROAD
CLEARWATER, FLORIDA 33763-1102

CONTRACT NO. 2021-046

FOR

ON CALL LARGE PIPELINE CONTRACTOR SERVICES

WITH

AMICI ENGINEERING CONTRACTORS, LLC

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CONTRACT FORM

CONTRACT

This CONTRACT is made this 16 day of August, 2021, by and between **TAMPA BAY WATER, A Regional Water Supply Authority**, an interlocal governmental agency of the State of Florida, created and existing pursuant to Sections 163.01, 373.713 and 373.715, Florida Statutes, ("TAMPA BAY WATER"), and **Amici Engineering Contractors, LLC** ("CONTRACTOR"), a corporation in the State of Florida.

WITNESSETH:

WHEREAS, TAMPA BAY WATER desires to retain CONTRACTOR to provide On Call Large Pipeline Contractor Services, as further described herein, and as more particularly described in the SPECIFICATIONS attached hereto and made a part hereof (the "GOODS AND/OR SERVICES"); and

WHEREAS, TAMPA BAY WATER has selected CONTRACTOR in accordance with TAMPA BAY WATER'S procurement policy and applicable law; and

WHEREAS, CONTRACTOR agrees to serve as TAMPA BAY WATER'S contractor for GOODS AND/OR SERVICES based upon the terms and conditions set forth in this CONTRACT, which includes the GENERAL CONTRACT CONDITIONS, the SUPPLEMENTAL GENERAL CONDITIONS, the SPECIFICATIONS, and the EXHIBITS, all of which are attached hereto and made a part hereof, and all formal changes thereto by addendum, change order, or written modification executed by both parties hereto (collectively, the "CONTRACT").

NOW, THEREFORE, in consideration of the premises set forth hereinabove, and of the mutual promises hereinafter set forth, and other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1.0 RETENTION

TAMPA BAY WATER does hereby retain and engage the CONTRACTOR and the CONTRACTOR does hereby accept said engagement and agrees to provide the GOODS AND/OR SERVICES.

2.0 TERM

This CONTRACT shall commence on the date of execution and terminate on September 30, 2025. To the extent CONTRACTOR is required to continue to provide GOODS AND/OR SERVICES under any Assignment given hereunder, this CONTRACT shall remain in full force and until the completion of full performance of that Assignment. This CONTRACT may be terminated as provided in article 5.0. No Assignment shall be given after termination of this CONTRACT.

3.0 GOODS AND/OR SERVICES

The CONTRACTOR shall provide the GOODS AND/OR SERVICES in a manner satisfactory to TAMPA BAY WATER. Said GOODS AND/OR SERVICES shall commence upon written notice to proceed from TAMPA BAY WATER, which is subject to

the CONTRACTOR providing the FLORIDA PERFORMANCE BOND attached hereto and made a part hereof, as required.

4.0 COMPENSATION

TAMPA BAY WATER shall pay the CONTRACTOR for those GOODS AND/OR SERVICES provided for in article 3.0 above, the amount budgeted for these GOODS AND/OR SERVICES on a monthly basis as provided for in the BID PRICE FORM attached hereto and made a part hereof. The CONTRACTOR will invoice TAMPA BAY WATER monthly, or at such other period as agreed to by the parties, and TAMPA BAY WATER shall make payment of approved invoices within thirty (30) days. Invoices shall meet all requirements of TAMPA BAY WATER and shall be subject to cost substantiation. The total contract value shall not exceed \$2,000,000.00.

5.0 TERMINATION OF CONTRACT

- 5.1. TAMPA BAY WATER may terminate or cancel this CONTRACT at its discretion and said termination shall be effective, with or without cause, after written notice has been provided to the CONTRACTOR.
- 5.2. Following termination, TAMPA BAY WATER shall make a settlement with the CONTRACTOR upon a pro rata basis as determined by TAMPA BAY WATER, which shall fix the value of the GOODS AND/OR SERVICES performed by the CONTRACTOR prior to the termination or cancellation of this CONTRACT.

6.0 SUBCONTRACTORS

The CONTRACTOR shall not sublet, assign, or transfer any GOODS AND/OR SERVICES specifically set forth under this CONTRACT without the prior written consent of TAMPA BAY WATER. All persons used by the CONTRACTOR for fulfilling the requirements of this CONTRACT must be employees of the CONTRACTOR, unless otherwise approved by TAMPA BAY WATER.

7.0 INDEMNIFICATION

In consideration of the first \$100.00 paid by TAMPA BAY WATER to the CONTRACTOR, the receipt and sufficiency of which is hereby acknowledged, the CONTRACTOR shall indemnify, defend, or at the option of TAMPA BAY WATER pay the cost of defense, and hold harmless TAMPA BAY WATER from any and all claims, expenses and damages, including, but not limited to reasonable attorneys' fees on account of a demand or claim, or assertion of liability, or any claim or action arising or alleged to have arisen out of or to the extent caused by use of CONTRACTOR's products, or CONTRACTOR's performance of this CONTRACT in a negligent, reckless, or intentionally wrongful manner, including performance by any subcontractor, agent or representative of CONTRACTOR, or as a result of any defaults by the CONTRACTOR under this CONTRACT for breach of any representation or warranty by CONTRACTOR either expressed or implied. However, neither the CONTRACTOR nor any of its subcontractors will be liable under this paragraph for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of TAMPA BAY WATER or any of its officers, agents or employees.

8.0 CONTRACTOR'S INSURANCE-GENERAL REQUIREMENT

- 8.1. The CONTRACTOR shall purchase and maintain the following described insurance on policies and with insurers acceptable to TAMPA BAY WATER. The insurance

policy shall be written for not less than the limits of coverage specified in articles 9.0 through 10.0 below.

The CONTRACTOR shall submit certificates itemizing the policies issued, limits of coverage, expirations dates and endorsements provided to TAMPA BAY WATER, using the TAMPA BAY WATER CERTIFICATE OF INSURANCE form, attached hereto and made a part hereof.

- 8.2. These insurance requirements shall not limit the liability of the other party. TAMPA BAY WATER does not represent these types or amounts of insurance to be sufficient or adequate to protect the other party's interests or liabilities but are merely minimums.
- 8.3. CONTRACTOR shall not commence or continue to provide any GOODS AND/OR SERVICES unless CONTRACTOR has in full force and effect all required insurance, and until all correct and complete insurance certificates have been provided to TAMPA BAY WATER evidencing the specific insurance coverage required and indicating TAMPA BAY WATER as additional insured, unless TAMPA BAY WATER approves commencement or continuation of GOODS AND/OR SERVICES, nor shall any payment for GOODS AND/OR SERVICES performed become due and payable until such certificates have been provided to TAMPA BAY WATER. If the use of subcontractors is authorized by TAMPA BAY WATER pursuant to article 6.0 above, CONTRACTOR shall not permit any subcontractor, supplier or other person or organization to provide the GOODS AND/OR SERVICES unless the insurance requirements set forth in this CONTRACT have been complied with by such subcontractor, supplier or other person or organization.
- 8.4. All above-referenced policies of insurance, except worker's compensation insurance, shall be endorsed to include as additional insured: TAMPA BAY WATER, its contractors, subsidiaries or affiliates, and each of TAMPA BAY WATER's directors, officers, employees, representatives, agents or volunteers. Such insurance policies shall include or be enforced to include a cross liability clause so the additional insured will be treated as if a separate policy were in existence and issued to them. If the additional insureds have other insurance which might be applicable to any loss, the insurance required of the CONTRACTOR shall be considered primary, and all other insurance shall be considered excess.
- 8.5. All above-referenced policies of insurance (and the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, adversely changed or renewal refused until at least thirty (30) days prior written notice has been given to TAMPA BAY WATER and the CONTRACTOR by certified mail.
- 8.6. The CONTRACTOR shall be responsible for all deductibles under such policies of insurance.

9.0 LIABILITY INSURANCE

- 9.1. CONTRACTOR shall purchase and maintain such commercial (occurrence form) or comprehensive general liability, automobile and other appropriate insurance for the GOODS AND/OR SERVICES being performed and furnished which shall provide protection from claims set forth below which may arise out of or result from CONTRACTOR'S performance and furnishing of the GOODS AND/OR SERVICES and CONTRACTOR'S other obligations under this CONTRACT.
 - 9.1.1. Minimum limits of \$2,000,000 per occurrence for all liability must be provided, with excess or umbrella insurance making up the difference, if any, between

the policy limits of underlying policies (including employers liability required in the Worker's Compensation coverage section) and the total amount of coverage required. Limits of coverage shall not be less than the following for Bodily Injury, Property Damage and Personal Injury, Combined Single Limits:

General Aggregate	\$5,000,000
Each Occurrence	\$2,000,000
Personal Injury/Advertising Injury	\$2,000,000
Products Comp/Operations Aggregate	\$2,000,000

- 9.1.2. The CONTRACTOR'S liability insurance shall include contractual liability coverage sufficient to cover the CONTRACTOR'S indemnification obligations under this CONTRACT. The CONTRACTOR agrees to pay on behalf of TAMPA BAY WATER, and to provide and pay for a defense for all claims covered by the CONTRACTOR'S obligations under the indemnification provisions.
- 9.2. Excess or Umbrella Liability
 - 9.2.1. Umbrella liability insurance is preferred, but an Excess Liability equivalent may be allowed. Whichever type of coverage is provided, it shall not be more restrictive than the underlying insurance policy coverages.
- 9.3. Automobile Liability
 - 9.3.1. Coverage shall be maintained as to the business use of all its owned, non-owned, leased or hired vehicles with limits of not less than: Bodily Injury & Property Damage Liability \$500,000, Combined Single Limit Each Accident.
 - 9.3.2. If CONTRACTOR has no owned autos, a letter from the CONTRACTOR so stating must be included with the certificates of insurance.

10.0 WORKERS COMPENSATION COVERAGE

- 10.1. CONTRACTOR shall purchase and maintain workers compensation insurance for all workers compensation obligations imposed by Florida statutes. As of the date of this CONTRACT, these statutes require employers' liability limits of at least \$100,000 each accident and \$100,000 each employee, \$500,000 policy limit for disease.
- 10.2. TAMPA BAY WATER requires CONTRACTOR employers to purchase workers' compensation insurance for all their employees and sub-contractors regardless of the number of employees they have and regardless of any other exemptions. Florida law permits employers who may be exempt from purchase of coverage to waive their exemptions and purchase the coverage. TAMPA BAY WATER will expect CONTRACTOR to purchase said coverage.
- 10.3. CONTRACTOR shall also purchase any other coverages required by law for the benefit of employees.

11.0 CERTIFICATES OF INSURANCE

- 11.1. Required insurance shall be documented in the certificates of insurance which provide that TAMPA BAY WATER shall be notified by certified mail at least 30 days in advance of cancellation, non-renewal or adverse change.
- 11.2. New certificates of insurance are to be provided to TAMPA BAY WATER on the TAMPA BAY WATER CERTIFICATE OF INSURANCE form at least 15 days prior to coverage renewals.

- 11.3. If requested by TAMPA BAY WATER, the CONTRACTOR shall furnish complete copies of the CONTRACTOR'S insurance policies, forms and endorsements.
- 11.4. For Commercial General Liability coverage, the CONTRACTOR shall, at the option of TAMPA BAY WATER, provide an indication of the amount of claims payments or reserves chargeable to the aggregate amount of liability coverage.
- 11.5. Receipt of certificates or other documentation of insurance or policies or copies of policies by TAMPA BAY WATER, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the CONTRACTOR's obligation to fulfill the insurance requirements herein.
- 11.6. Before providing services, CONTRACTOR shall provide TAMPA BAY WATER with an acceptable certificate of insurance on the TAMPA BAY WATER CERTIFICATE OF INSURANCE form included herein. Only certificates of insurance provided on TAMPA BAY WATER CERTIFICATE OF INSURANCE form will be accepted.

12.0 INSURANCE OF THE CONTRACTOR PRIMARY

- 12.1. Insurance required of the CONTRACTOR, or any other insurance of the CONTRACTOR shall be considered primary, and the insurance of TAMPA BAY WATER shall be considered excess, as may be applicable to claims which arise out of the hold harmless, payment on behalf of TAMPA BAY WATER, insurance, additional insurance and certificates of insurance provisions of this CONTRACT.

13.0 LOSS CONTROL/SAFETY

- 13.1. Precaution shall be exercised at all times by the CONTRACTOR for the protection of all persons, including employees, and property. The CONTRACTOR shall be expected to comply with all laws, regulations or ordinances related to safety and health, shall make special effort to detect hazardous conditions and shall take prompt action where loss control/safety measures should reasonably be expected.
- 13.2. TAMPA BAY WATER may order GOODS AND/OR SERVICES to be stopped if conditions exist that present immediate danger to persons or property. The CONTRACTOR acknowledges that such stoppage will not shift responsibility for any damages from the CONTRACTOR to TAMPA BAY WATER.

14.0 MISCELLANEOUS PROVISIONS

- 14.1. CONTRACTOR shall provide GOODS AND/OR SERVICES under this CONTRACT as an independent contractor. CONTRACTOR shall not be considered an agent of TAMPA BAY WATER nor shall CONTRACTOR'S subcontractors, suppliers, experts, or other persons, or organizations retained or utilized by the CONTRACTOR be considered agents of TAMPA BAY WATER.
- 14.2. This CONTRACT shall constitute the entire agreement between the parties hereto and this CONTRACT shall not be amended or modified except in writing executed by both parties hereto.
- 14.3. This CONTRACT shall be governed by and construed under the laws of the State of Florida.
- 14.4. Venue for any action arising under this CONTRACT shall lie in Pinellas County, Florida.

- 14.5. Any notices or other writings permitted or required to be delivered as described and required under the provisions of this CONTRACT shall be delivered by sending the notice by certified mail, return receipt requested, and addressed as follows:

If to TAMPA BAY WATER:

TAMPA BAY WATER
2575 Enterprise Road
Clearwater, Florida 33763-1102
727-796-2355
Attention: Teresa Collins, Purchasing Manager

If to the CONTRACTOR:

Amici Engineering Contractors, LLC
28947 SR 54
Wesley Chapel, Florida 33543
954-895-0741
Attention: Christopher Lazzari, Managing Member

15.0 SCRUTINIZED COMPANIES AND PUBLIC ENTITY CRIMES STATEMENT

- 15.1. Pursuant to Subsections 287.133(2) and (3), Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases or real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO, for a period of 36 months following the date of being placed on the convicted vendor list.
- 15.2. Pursuant to Subsection 287.134(2)(a), Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- 15.3. Pursuant to Section 287.135, Florida Statutes, a company that has been placed on the Scrutinized Companies with Activities in Sudan List; the Scrutinized Companies with Activities in the Iran Petroleum Energy Section List; the Scrutinized Companies that Boycott Israel List or is engaged in a Boycott of Israel is ineligible and may not submit a bid, proposal, or enter into or renew a contract with an agency for goods or services of \$1 million or more. At the time of submission of a bid or proposal for a contract or contract renewal for goods or services of \$1 million or more, the company must certify that it is not on either such List and further that it does not

have business operations in Cuba or Syria as required by Section 287.135(5), Florida Statutes.

15.3.1 Pursuant to Section 287.135, Florida Statutes, Tampa Bay Water reserves the right to terminate any contract for goods or services of \$1 million or more if the awarded CONTRACTOR:

- a. Has been found to have submitted a false Scrutinized Vendor List certification as provided under Section 287.135 subsection (5); or
- b. Has been placed on the Scrutinized Companies Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Section List or
- c. Has been engaged in business operations in Cuba or Syria.

15.3.2 Pursuant to Section 287.135, Florida Statutes, Tampa Bay Water reserves the right to terminate any contract for goods or services of any amount if the awarded CONTRACTOR has been placed on the Scrutinized Companies that Boycott Israel List or are engaged in a boycott of Israel.

16.0 PUBLIC RECORDS AND AUDIT RIGHTS

CONTRACTOR shall keep all books, records, files, drawings, plans and other documentation, including all electronically stored items, which concern or relate to the services required hereunder (collectively referred to as "Records"), for a minimum of three (3) years from the date of expiration or termination of this Agreement, or as otherwise required by any applicable law, whichever date is later. TAMPA BAY WATER, or any duly authorized agents or representatives of TAMPA BAY WATER, shall have the right to order, inspect and copy all such Records as often as they deem necessary during any such period of time. This right to audit, inspect and copy the Records shall include all of the Records of the Subcontractors.

16.1 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE AGENCY'S CUSTODIAN OF PUBLIC RECORDS VIA PHONE (727) 796-2355 x 2401; EMAIL RECORDS@TAMPABAYWATER.ORG; OR MAIL AT 2575 ENTERPRISE ROAD, CLEARWATER, FLORIDA 33763.**

- 16.2 Contractor must keep and maintain all public records required by the Agency in order to perform services under this Contract.
- 16.3 Upon request from the Agency's custodian of public records, Contractor shall provide the Agency with a copy of the requested public records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provide in Chapter 119, Florida Statutes, or as otherwise provided by law.
- 16.4 Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the Agency.

- 16.5 Upon completion of the contract, Contractor shall transfer, at no cost, to the Agency all public records in the possession of the Contractor or keep and maintain public records required by the Agency to perform the service under this contract. If the Contractor transfers all public records to the Agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Agency, upon request from the Agency's custodian of public records, in a format that is compatible with the information technology systems of the Agency.

IN WITNESS WHEREOF, the parties hereto, have caused these presents to be executed by their duly qualified representatives on the day and year first written above.

WITNESS:

[Signature]

Amici Engineering Contractors, LLC

By: [Signature]

Date: 07/09/21

CHRISTOPHER LAZZARI
Name



ATTEST:

TAMPA BAY WATER, A Regional
Water Supply Authority

[Signature]
Secretary

By: [Signature]

Its: Chairman

Date: 8/16/21

APPROVED AS TO FORM:

[Signature]
General Counsel

(SEAL)

GENERAL CONTRACT CONDITIONSNon-Construction

1. Definitions

The following definitions are applicable to this CONTRACT:

- (a) "Day" means calendar days, unless otherwise stated.
- (b) "Assignment" means and includes Orders placed for the supply and delivery of Goods, and Tasks for the performance of Services.

2. Priority

In resolving inconsistencies among two or more sections of the CONTRACT, the CONTRACTOR shall be obliged to comply with the more costly or stringent requirement as determined by TAMPA BAY WATER in its sole discretion.

Inconsistencies shall otherwise be determined by order with the first listed controlling the following in the event of a conflict:

- (a) CONTRACT
- (b) SPECIFICATIONS
- (c) SUPPLEMENTARY CONDITIONS
- (d) GENERAL CONTRACT CONDITIONS
- (e) EXHIBITS

3. Change Orders

- (a) TAMPA BAY WATER may at anytime, by written order, and without notice to the sureties, if any, make changes within the general scope of the CONTRACT in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the CONTRACT, or the time required for performance of any part of the good and/or services under the CONTRACT, whether or not changed by the order, or otherwise affects the conditions of the CONTRACT, TAMPA BAY WATER shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the CONTRACT accordingly.
- (c) The CONTRACTOR must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if TAMPA BAY WATER decides that the facts justify it, TAMPA BAY WATER may receive and act upon a proposal submitted before final payment of the CONTRACT.
- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the CONTRACTOR from proceeding with the CONTRACT as changed.
- (e) No services for which an additional cost or fee will be charged by the CONTRACTOR shall be furnished without the prior written consent of TAMPA BAY WATER.

4. Disputes

- (a) All disputes arising under or relating to the CONTRACT, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall

be resolved under this clause.

- (b) All claims by the CONTRACTOR shall be made in writing and submitted to TAMPA BAY WATER. A claim by TAMPA BAY WATER against the CONTRACTOR shall be subject to a written decision by TAMPA BAY WATER.
- (c) TAMPA BAY WATER shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the CONTRACTOR, within 30 days after receipt of TAMPA BAY WATER's decision, shall notify TAMPA BAY WATER in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the CONTRACTOR has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against TAMPA BAY WATER not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the CONTRACTOR has had a reasonable time to respond to a written request by TAMPA BAY WATER that it submit a final voucher and release, whichever is earlier, then TAMPA BAY WATER's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The CONTRACTOR shall proceed diligently with performance of the CONTRACT, pending final resolution of any request for relief, claim, appeal, or action arising under the CONTRACT, and comply with any decision of TAMPA BAY WATER.

5. Termination for Convenience and Default

- (a) TAMPA BAY WATER may terminate the CONTRACT in whole, or from time to time in part, for TAMPA BAY WATER's convenience (without cause) or the failure of the CONTRACTOR to fulfill the CONTRACT obligations (default). TAMPA BAY WATER shall terminate by delivering to the CONTRACTOR a written notice of termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the CONTRACTOR shall: (i) immediately discontinue all services affected (unless the notice directs otherwise), and (ii) deliver to TAMPA BAY WATER all information, reports, papers, and other materials accumulated or generated in performing the CONTRACT, whether completed or in process.
- (b) If the termination is for the convenience (without cause) of TAMPA BAY WATER, TAMPA BAY WATER shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the CONTRACTOR to fulfill its obligations under the CONTRACT (default), TAMPA BAY WATER may (i) require the CONTRACTOR to deliver to it, in the manner and to the extent directed by TAMPA BAY WATER, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause; (ii) take over the good and/or services under the CONTRACT and prosecute the same to completion by contract or otherwise, and the CONTRACTOR shall be liable for any additional cost incurred by TAMPA BAY WATER; and (iii) withhold any payments to the CONTRACTOR, for the purpose of set-off or partial payment, as the case may be, of amounts owed TAMPA BAY WATER by the CONTRACTOR.
- (d) If, after termination for failure to fulfill the CONTRACT obligations (default), it is determined that the CONTRACTOR had not failed, the termination shall be deemed to have been effected for the convenience of TAMPA BAY WATER, and the

CONTRACTOR shall be entitled to payment as described in paragraph (b) above.

- (c) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

6. Assignment of Contract

The CONTRACTOR shall not assign or transfer any interest in the CONTRACT; except that claims for monies due or to become due from TAMPA BAY WATER under the CONTRACT may be assigned to a bank, trust company, or other financial institution. If the CONTRACTOR is a partnership, the CONTRACT shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by TAMPA BAY WATER.

7. Certificate and Release

Prior to final payment under the CONTRACT, or prior to settlement upon termination of the CONTRACT, and as a condition precedent thereto, the CONTRACTOR shall execute and deliver to TAMPA BAY WATER a certificate and release, in a form acceptable to TAMPA BAY WATER, of all claims against TAMPA BAY WATER by the CONTRACTOR under and by virtue of the CONTRACT, other than such claims, if any, as may be specifically excepted by the CONTRACTOR in stated amounts set forth therein.

8. Organizational Conflicts of Interest

- (a) The CONTRACTOR warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of good and/or services under the CONTRACT and the CONTRACTOR's organizational, financial, contractual or other interests are such that:
 - (i) Award of the CONTRACT may result in an unfair competitive advantage; or
 - (ii) The CONTRACTOR's objectivity in performing the good and/or services under the CONTRACT may be impaired.
- (b) The CONTRACTOR agrees that if after award it discovers an organizational conflict of interest with respect to the CONTRACT or any task/delivery order under the CONTRACT, the CONTRACTOR shall make an immediate and full disclosure in writing to TAMPA BAY WATER which shall include a description of the action which the CONTRACTOR has taken or intends to take to eliminate or neutralize the conflict. TAMPA BAY WATER may, however, terminate the CONTRACT or task/delivery order for the convenience of TAMPA BAY WATER if it would be in the best interest of TAMPA BAY WATER.
- (c) In the event the CONTRACTOR was aware of an organizational conflict of interest before the award of the CONTRACT and intentionally did not disclose the conflict to TAMPA BAY WATER, TAMPA BAY WATER may terminate the CONTRACT for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the GOODS AND/OR SERVICES provided by the CONTRACTOR. The CONTRACTOR shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

9. Inspection and Acceptance

- (a) Unless otherwise provided by warranty conditions, TAMPA BAY WATER has the right to review, require correction, if necessary, and accept the GOODS AND/OR SERVICES produced by the CONTRACTOR. Such review(s) shall be carried out within 30 days so as to not impede the GOODS AND/OR SERVICES of the CONTRACTOR. Any product of GOODS AND/OR SERVICES shall be deemed accepted as submitted if TAMPA BAY WATER does not issue written comments and/or require corrections within 30 days from the date of receipt of such product from the CONTRACTOR.
- (b) The CONTRACTOR shall make any required corrections promptly at no additional charge and return a revised copy of the product to TAMPA BAY WATER within 7 days of notification or a later date if extended by TAMPA BAY WATER.
- (c) Failure by the CONTRACTOR to proceed with reasonable promptness to make necessary corrections shall be a default. If the CONTRACTOR's submission of corrected GOODS AND/OR SERVICES remains unacceptable, TAMPA BAY WATER may terminate the CONTRACT (or the task order involved) or reduce the CONTRACT price or cost to reflect the reduced value of services received.

10. Rights In Data (Ownership and Proprietary Interest).

TAMPA BAY WATER shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by CONTRACTOR pursuant to the terms of the CONTRACT, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of the CONTRACT.

11. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by TAMPA BAY WATER.

12. Contractor's Status

It is understood that the CONTRACTOR is an independent contractor and is not to be considered an employee of TAMPA BAY WATER, or assume any right, privilege or duties of an employee, and shall save harmless TAMPA BAY WATER and its employees from claims suits, actions and costs of every description resulting from the CONTRACTOR's activities on behalf of TAMPA BAY WATER in connection with the CONTRACT.

13. Other Contractors

TAMPA BAY WATER may undertake or award other contracts for additional work at or near the site(s) of the GOODS AND/OR SERVICES under the CONTRACT. The CONTRACTOR shall fully cooperate with the other contractors and with TAMPA BAY WATER and TAMPA BAY WATER's employees and shall carefully adapt scheduling and performing the GOODS AND/OR SERVICES under the CONTRACT to accommodate the additional work, heeding any direction that may be provided by TAMPA BAY WATER. The CONTRACTOR shall not commit or permit any act that will interfere with the performance of work by any other contractor or TAMPA BAY WATER's employee.

14. Liens

The CONTRACTOR is prohibited from placing a lien on TAMPA BAY WATER's property. This prohibition shall apply to all subcontractors.

15. Equal Opportunity

- (a) At all times during the performance of the GOODS AND/OR SERVICES under the CONTRACT, the CONTRACTOR shall comply with Title VII of the Civil Rights Act of 1964, and the Florida Civil Rights Act of 1992. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, handicap, or marital status. The CONTRACTOR shall take affirmative action to ensure that employment applications are used and that employees are treated without regard to their race, color, religion, sex, national origin, age, handicap or marital status for employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth, the provisions of this non-discrimination clause.
- (b) The CONTRACTOR shall state in all solicitations or advertisements for employment placed by or on behalf of the CONTRACTOR that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, handicap, or marital status.

16. Taxes and Charges

The CONTRACTOR shall pay any and all sales and use taxes and all withholding taxes, whether State or Federal, and pay all Social Security charges and also all State Unemployment Compensation charges, and pay or cause to be withheld, as the case may be, any and all taxes, charges, fees, or sums whatsoever, which are now required to be paid or withheld under any laws, unless otherwise modified in the SUPPLEMENTAL GENERAL CONDITIONS.

17. Responsibility of Contractor to Act in Emergency

In case of an emergency which threatens loss or injury to persons or property, the CONTRACTOR shall take appropriate remedial action, without previous instructions from TAMPA BAY WATER, as the situation may warrant, and immediately provide notice to TAMPA BAY WATER of its action. Any claim for compensation by the CONTRACTOR, together with substantiating documentation in regard to expense caused by emergency acts, shall be submitted to TAMPA BAY WATER and the amount of compensation if any, shall be determined by mutual agreement.

18. Cost Substantiation

Any cost reasonably incurred by the CONTRACTOR which is directly chargeable in whole or in part to TAMPA BAY WATER under the CONTRACT shall be subject to the cost substantiation. Accordingly, the CONTRACTOR shall deliver to TAMPA BAY WATER a certificate signed by the CONTRACTOR's financial officer for the CONTRACT, setting forth the amount of such cost and the provisions of the CONTRACT under which such cost is properly chargeable to TAMPA BAY WATER, stating that such cost is a fair market price for the service or materials to be supplied and that such services and materials are reasonably required pursuant to the CONTRACT, and accompanied by copies of such

documentation as shall be necessary to reasonably demonstrate that the cost, as to which cost substantiation is required, has been paid or incurred. Such documentation shall include reasonably detailed information concerning: (i) all subcontracts; (ii) the amount and character of materials furnished, the persons from whom purchased, the amounts payable therefore and related delivery and transportation costs and any sales or personal property taxes, if any; (iii) a statement of the equipment used and any rental payable therefor; (iv) the CONTRACTOR employee and contractor hours, duties, wages, salaries, fees, benefits, assessments, taxes and premiums; and (v) any of the CONTRACTOR expenses that are chargeable to TAMPA BAY WATER pursuant to the CONTRACT. The CONTRACTOR's entitlement to reimbursement of costs shall be calculated in accordance with and subject to the limitations set forth in the CONTRACT.



www.altersurety.com

June 8, 2021

Tampa Bay Water
2575 Enterprise Road
Clearwater, FL 33763

RE: Amici Engineering Contractors, LLC
Project: ON CALL GENERAL CIVIL & LARGE PIPELINE CONTRACTOR
SERVICES, CONTRACT #'s 2021-044, 2021-045, 2021-046 & 2021-047
Bond No. PB12159900296


To Whom It May Concern:

We have executed the enclosed bonds on behalf of the above captioned contractor in favor of the Tampa Bay Water. Please note that we have not dated the bonds or the Power of Attorney. The copy of the contract we received was not dated and as the bonds follow the contract they should not be dated prior to the contract.

Please accept this letter as authorization to date the enclosed Performance bond(s), Payment bond(s), and the attached Power of Attorney for the captioned project. Please date these items concurrently with the contract date and fax a copy to our office at 305-328-4838 or email lily@altersurety.com **so that we can activate the bond coverage.**

Please do not hesitate to contact our office should you have any questions in this regard. Thank you.

Yours truly,
Philadelphia Indemnity Insurance Company



Warren M. Alter,
Attorney-in-Fact

ALTER SURETY GROUP, INC.

Bond Department - Public Works Bond

In compliance with Florida Statute Chapter 255.05, the provisions and limitations of section 255.05 Florida Statutes, including but not limited to, the notice and time limitations in Sections 255.05(2) and 255.05(10) are incorporated in this bond by reference.

Bond Number: PB12159900296

Contractor: Amici Engineering Contractors, LLC
Address & 10621 SW 139th Street, Miami, FL 33176
Phone No.: 954-650-4699

Surety: Philadelphia Indemnity Insurance Company
Address & One Bala Plaza, Suite 100, Bala Cynwyd, PA 19004-1403
Phone No.: 610-206-7836

Owner Name: Tampa Bay Water
Address & 2575 Enterprise Road, Clearwater, FL 33763
Phone No.: 727-796-2355

Contracting Public Entity
(if different from the owner)
Address &
Phone No.:

Contract/Project Number: 2021-044, 2021-045, 2021-046 & 2021-047

Project Name: ON CALL GENERAL CIVIL & LARGE PIPELINE CONTRACTOR SERVICES

Project Location:

Legal Description
And Street Address:

Description of Improvement:

This bond is given to comply with section 255.05 Florida Statutes and any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2) and (10), Florida Statutes. Any provision of this bond which conflict with or purports to grant broader or more expanded coverage in excess of the minimum requirements of the applicable statute shall be deemed deleted herefrom. This bond is a statutory bond, not a common law bond.

This is the *front page* of the bond.

All other page(s) are deemed subsequent to this page regardless of any page number(s) that may be pre-printed thereon.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That Amici Engineering Contractors, LLC as Principal, located at 10621 SW 139th Street, Miami, FL 33176 (Business Address) and Philadelphia Indemnity Insurance Company as Surety, located at One Bala Plaza, Suite 100, Bala Cynwyd, PA 19004 (Business Address) are held and firmly bound to the TAMPA BAY WATER, A Regional Water Supply Authority as Obligee in the sum of Two Million and No/100 Dollars (\$ 2,000,000.00) for the payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and assigns, jointly and severally.

Whereas, Principal has entered into a contract dated as of the _____ day of _____, 20____, with Obligee for ON CALL GENERAL CIVIL & LARGE PIPELINE CONTRACTOR SERVICES, **Project No.:** 2021-044, 2021-045, 2021-046 & 2021-047 in accordance with drawings and specifications, which contract is incorporated by reference and made a part hereof, and is referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract; and
2. Pays Obligee any and all losses, damages, costs and attorneys' fees, including appellate proceedings, that Obligee sustains because of any default by Principal under the Contract, including, but not limited to, all delay damages, whether liquidated or actual, suffered by Obligee; and
3. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract,

then this bond is void; otherwise it remains in full force.

BE IT FURTHER KNOWN:

1. Any changes, regardless of scope or amount, in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Surety's obligation under this Bond.
2. The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the specifications referred to therein shall in anyway affect its obligations under this bond, and it does hereby waive notice of any such

changes, extensions of time, alterations or additions to the terms of the Contract or to work or to the specifications.

3. This Performance Bond is issued in compliance with the terms and conditions set forth in Florida Statute 255.05, however, it is intended to exceed the minimal coverage requirements established by that statute. The Notice and time limitations of Florida Statute 255.05 (2) are also, to the extent applicable, if any, incorporated herein by reference and made a part hereof.
4. In no event will the Surety be liable in the aggregate to Obligee for more than the penal sum of this Performance Bond regardless of the number of suits that may be filed by Obligee.
5. Whenever the CONTRACTOR shall be, and is declared by TAMPA BAY WATER to be in default under the CONTRACT, TAMPA BAY WATER having performed TAMPA BAY WATER'S obligations thereunder, the SURETY shall promptly remedy the default, as set forth below and at the sole option of TAMPA BAY WATER, by promptly:
 - (1) Completing the CONTRACT in accordance with its terms and conditions and paying TAMPA BAY WATER all of its losses, damages, costs and attorneys' and legal assistants' fees, whether at trial, on appeal or in bankruptcy, that TAMPA BAY WATER sustains because of any default by Principal under the CONTRACT, including, but not limited to, all delay damages, whether liquidated or actual. In the event SURETY takes over and completes the CONTRACT, then in such event it shall be entitled to receive the balance of the CONTRACT PRICE, as defined in subparagraph 2 below; or
 - (2) Indemnifying TAMPA BAY WATER for all of its damages, expenses, costs, delay damages, attorneys' and legal assistant's fees, including appellate and bankruptcy proceedings, that TAMPA BAY WATER has incurred, suffered or sustained as a result of TAMPA BAY WATER'S completion of the CONTRACT or the Principal's default under the CONTRACT, less the remaining unpaid balance of the CONTRACT PRICE, if any. The term "balance of the CONTRACT PRICE", as used in this Performance Bond, shall mean the total amount payable by TAMPA BAY WATER to the CONTRACTOR under the CONTRACT and any amendments thereto, less the amount previously paid by TAMPA BAY WATER to the CONTRACTOR.

IN WITNESS WHEREOF, the above parties have executed this instrument this ____ day of _____, 20__, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered
in the presence of:

Witnesses as to Principal

PRINCIPAL:

Amici Engineering Contractors, LLC

By:

Name: Christopher Lazzari

Its: Managing Member



STATE OF Florida

COUNTY OF Pasco

Subscribed and sworn before me by means of physical presence or online notarization, this 9th day of June, 2021, by Christopher Lazzari, as managing member of Amici Engineering Contractors LLC, Florida

____ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced

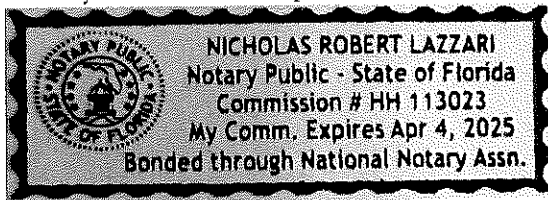
____ as identification and ~~did~~ (did not) take an oath.

Notary Public Signature

Nicholas Lazzari

Print Name

My Commission Expires: 04/04/2025



ATTEST:

SURETY:

Philadelphia Indemnity Insurance Company
(Printed Name)

(Business Address)

Witness as to Surety

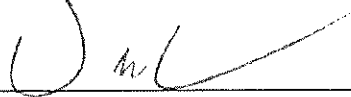
(Authorized Signature)

(Printed Name)

Doreen Shearin

Doreen Shearin
Witness

OR



Florida Resident Agent and As Attorney in Fact
(Attach Power of Attorney)

5979 NW 151st Street
Suite 202
Miami Lakes, FL 33014
(Business Address)

Warren M. Alter
(Printed Name)
305-517-3803
(Telephone Number)

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

Subscribed and sworn before me by means of physical presence or online notarization, this
8th day of June, 2021, by Warren M. Alter
_____, as Attorney-in-Fact of _____
Philadelphia Indemnity Insurance Company, a Pennsylvania corporation, on
behalf of the corporation. He/she is personally known to me OR has produced N/A
as identification and did (did not) take an oath.

L Rafford

Notary Public Signature

Lilia Rafford

Print Name



Lilia Rafford
Commission # GG166409
Expires: December 7, 2021
Bonded thru Aaron Notary

My Commission Expires: 12/7/2021

(AFFIX NOTARY SEAL)

PHILADELPHIA INDEMNITY INSURANCE COMPANY
One Bala Plaza, Suite 100
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That PHILADELPHIA INDEMNITY INSURANCE COMPANY (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint David T. Satine, Warren M. Alter and Jonathan A. Bursevich of Alter Surety Group, Inc., its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed \$50,000,000.

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14th of November, 2016.

RESOLVED: That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

FURTHER RESOLVED: That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

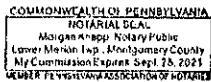
IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 27th DAY OF OCTOBER, 2017.



(Seal)

Robert D. O'Leary Jr., President & CEO
Philadelphia Indemnity Insurance Company

On this 27th day of October, 2017, before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the PHILADELPHIA INDEMNITY INSURANCE COMPANY; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.



(Notary Seal)

Notary Public: _____

residing at: _____

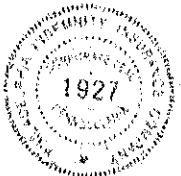
Bala Cynwyd, PA _____

My commission expires: _____

September 25, 2021 _____

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 27th day of October, 2017 are true and correct and are still in full force and effect. I do further certify that Robert D. O'Leary Jr., who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this _____ day of _____, 20 _____.



Edward Sayago, Corporate Secretary
PHILADELPHIA INDEMNITY INSURANCE COMPANY

EXHIBIT A
TAMPA BAY WATER DOCUMENTS



Board of Directors

Dave Eggers
Ron Oakley
Harry Cohen
Rob Marlowe
Charlie Miranda
Kathleen Peters
Darden Rice
Mariella Smith
Kathryn Starkey

Interim General Manager
Charles H. Carden

General Counsel
Barrie S. Buenaventura
Conn & Buenaventura, P.A.

ADDENDUM NUMBER ONE
TO
CONTRACT DOCUMENTS
FOR
ON CALL GENERAL CIVIL & LARGE PIPELINE
CONTRACTOR SERVICES
CONTRACT NO. 2021-044, 2021-045, 2021-046 & 2021-047

RE: REMINDERS & INQUIRIES

This addendum consists of four (4) 8-1/2 by 11-inch sheets.

The following changes, additions, and/or deletions are hereby made a part of the Invitation to Bid for Tampa Bay Water's On Call General Civil & Large Pipeline Contractor Services Contract No's.: 2021-044, 2021-045, 2021-046 & 2021-047 as fully and completely as if the same were fully set forth therein:

REMINDERS:

BID DUE DATE: 3:00 p.m. Eastern Daylight Time (EDT), on May 11, 2021

QUESTIONS:

Q1: What is the term of the contract?

A1: Tampa Bay Water intends to award up to four (4) contracts with a term of four (4) years. There will be no renewal options for the awarded contracts. Section 2.0 Term of the contract is hereby revised and reads as follows:

2.0 TERM

This CONTRACT shall commence on the date of execution and terminate on September 30, 2025. To the extent CONTRACTOR is required to continue to provide GOODS AND/OR SERVICES under any Assignment given hereunder, this CONTRACT shall remain in full force and until the completion of full performance of that Assignment. This CONTRACT may be terminated as provided in article 5.0. No Assignment shall be given after termination of this CONTRACT.



Board of Directors

Dave Eggers

Ron Oakley

Harry Cohen

Rob Marlowe

Charlie Miranda

Kathleen Peters

Darden Rice

Mariella Smith

Kathryn Starkey

Interim General Manager

Charles H. Carden

General Counsel

Barrie S. Buenaventura

Conn & Buenaventura, P.A.

Q2: Are there any planned tasks for these contracts?

A2: No. Contractors will be assigned tasks on an As Needed/On Call basis under the awarded contracts.

Q3: Will payment be made by increments of 1 MG or fractional portions of 1 MG?

A3: The bid pricing is for 1MG. Actual in the field payment would be in fractions of 1MG.

Q 4 Is it the intention that all pipelines disinfected no matter how small in diameter or how short in length will be paid under this bid item?

A 4: Yes.

Q5: Is it the intention that all pipelines disinfected no matter how small in diameter or short in length will require a specialty subcontractor to perform the disinfection?

A5: No. The contractor can self-perform as long as all aspects of AWWA C-651-14 are met.

Q6: If this item is paid in fractional portions, is for all sizes and lengths of pipelines and will require a specialty subcontractor would you consider adding an item for mobilization of the specialty contractor?

A6: No. There is no need for a chlorination/disinfection specialty contractor, see questions five above. So, no specialty mobilization is needed.

Q7: Can you send a copy of the itemized bid tabs from the previous on call general civil & large pipeline contractor services?

A7: Please see Attachment 1 to this Addendum for the previous Bid Tabulation sheet. Any additional information regarding the previous solicitation for these services should be directed to the Tampa Bay Water Records Department at records@tampabaywater.org.

Q8: Will there be mobilization fees for emergency callout work?

A8: Tampa Bay Water does not pay mobilization fees for emergency callout work other than the time and a half for off hours and 4-hour minimum for a callout. Tampa Bay Water has had no emergency callouts in the last three years.

END OF ADDENDUM NO. 1

Board of Directors Karl Nurse, Sandra Murman, Dave Eggers, Pat Gerard, Ken Hagan, Jack Mariano,
 Rob Marlowe, Charlie Miranda, Ron Oakley
 General Manager Matthew W. Jordan
 General Counsel Barrie S. Buenaventura, Conn & Buenaventura, P.A.
 2575 Enterprise Road, Clearwater, FL 33763-1102
 Phone: 727.796.2355 / Fax: 727.791.2388
 www.tampabaywater.org



2022-044 - 047 ADDENDUM ONE - ATTACHMENT ONE

BID OPENING TABULATION

BID TITLE:	ON-CALL CIVIL & LARGE PIPELINE CONTRACTOR SERVICES Contract	
NUMBER:	2018-002; 2018-003; 2018-012 and 2018-013	
PROJECT MANAGER:	SOLOMON KANG	
BID OPENING DATE:	July 12, 2017 at 3:00 p.m.	
CIVIL CONTRACTOR	BASE BID	RANKING
- Part A		
Kimmins	3,602.70	5
Granger maintenance & Construction	1,514.00	2
Woodruff & Sons	3,560.00	4
Trias Construction	4,346.50	6
QRC, Inc	1,783.50	3
Rawland	1,336.00	1

Board of Directors Karl Nurse, Sandra Murman, Dave Eggers, Pat Gerard, Ken Hagan, Jack Mariano,
 Rob Marlowe, Charlie Miranda, Ron Oakley
 General Manager Matthew W. Jordan
 General Counsel Barrie S. Buenaventura, Conn & Buenaventura, P.A.
 2575 Enterprise Road, Clearwater, FL 33763-1102
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2022-044 - 047 ADDENDUM ONE - ATTACHMENT ONE

BID OPENING TABULATION

BID TITLE:	ON-CALL CIVIL & LARGE PIPELINE CONTRACTOR SERVICES Contract	
NUMBER:	2018-002; 2018-003; 2018-012 and 2018-013	
PROJECT MANAGER:	SOLOMON KANG	
BID OPENING DATE:	July 12, 2017 at 3:00 p.m.	
LARGE PIPELINE CONTRACTOR - Part B	BASE BID	RANKING
Kimmins	6,258.70	5-4
Woodruff & Sons	4,525.00	4-3
Trias Construction Trias Construction Bid rejected and deemed incomplete	1,372.50	1
QRC, Inc.	3,723.50	3-2
Rowland	1,506.00	2-1

**BID DATA PAGE
KEY DATES AND IMPORTANT INFORMATION**

BID TITLE: ON CALL GENERAL CIVIL & LARGE PIPELINE CONTRACTOR SERVICES

BID NUMBER: 2021-044, 2021-045, 2021-046 & 2021-047

DESCRIPTION OF BID:

Tampa Bay Water is a Regional Water Supply Authority with buildings, pipelines, property, and water treatment facilities located in Pasco, Pinellas, and Hillsborough County, Florida. The intent and purpose of this Invitation to Bid (ITB) is to provide On Call Contractor Services for Large Pipeline Contractor (12 to 84-inch Diameter Potable Water Mains) and General Civil Contractor Services as described in this ITB.

BID SUBMITTAL DEADLINE: May 11, 2021, at 3:00 p.m. (EDT)

BID SUBMITTAL LOCATION: Bidder is directed to deliver its sealed Bid to the following address *no later than* the above-referenced Bid Submittal Deadline:

Tampa Bay Water
Records Department – Attention: Purchasing
2575 Enterprise Road
Clearwater, FL 33763

All Bids should be labeled with the Bidder's name and marked:

“SEALED BID FOR ON CALL GENERAL CIVIL & LARGE PIPELINE CONTRACTOR SERVICES #'s 2021-044, 2021-045, 2021-046 & 2021-047”.

OPENING OF BIDS: Bids will be publicly opened at the above address on the date of the Bid Submittal Deadline at 3:00 p.m. (EDT)

PRE-BID CONFERENCE: April 21, 2021, 10:00 a.m. (EDT). This meeting will be held virtually through GoTo Meeting. Please see Part I, Section 11 for attendance information.

BID BOND/SECURITY REQUIRED: No: _____ Yes: X

The Bond/security shall be in the amount of Amount **\$5,000.00**. Bidder is hereby directed to Part II General Conditions, Section 10 Bid Bond portion of this ITB for more information regarding the required Bond/security.

FOR ADDITIONAL INFORMATION CONTACT:

Name of Purchasing Representative: Stacy Gundry

Title: Purchasing Specialist II

Telephone: 727-669-4825

E-Mail: sgundry@tampabaywater.org and purchasing@tampabaywater.org

PART I - GENERAL INFORMATION AND INSTRUCTIONS

1. **BACKGROUND**

Tampa Bay Water, A Regional Water Supply Authority, is requesting sealed Bids for On Call General Civil & Large Pipeline Contractor Services.

Tampa Bay Water is Florida's largest provider of wholesale drinking water. Our mission is to reliably provide clean, safe water to the Tampa Bay region now and for future generations. We are a regional agency created by an inter-local agreement among our member governments through state enabling legislation. We have a nine-member Board of Directors made up of representatives from the three counties and three cities we serve: Hillsborough County, Pasco County, Pinellas County, New Port Richey, St. Petersburg and Tampa.

Respondents can familiarize themselves with our agency at www.tampabaywater.org. Tampa Bay Water was recreated in 1998 as the out-growth of a two-year negotiation process that changed the name, structure and operations of the West Coast Regional Water Supply Authority. Our predecessor, the West Coast Regional Water Supply Authority, was created in 1974. Tampa Bay Water is now a multi-source provider of drinking water including groundwater, surface water, and desalinated seawater. Tampa Bay Water is a non-profit governmental agency funded through wholesale water rates by its member governments. Our member governments serve more than 2.5 million residents in the Tampa Bay area.

2. **BID OVERVIEW AND BACKGROUND**

Tampa Bay Water is a Regional Water Supply Authority with buildings, pipelines, property, and water treatment facilities located in Pasco, Pinellas, and Hillsborough County, Florida. The intent and purpose of this Invitation to Bid (ITB) is to provide On Call Contractor Services for Large Pipeline Contractor (12 to 84-inch Diameter Potable Water Mains) and General Civil Contractor Services as described in this ITB.

The **Large Pipeline Contractor** scope includes but is not limited to installation, repair, servicing, and providing underground water distribution lines and related pipeline appurtenances, including provision for installation of pilot plants or temporary small water treatment facilities.

The **General Civil Contractor** scope includes installation, repair and replacement of stormwater pipes, culverts, driveways, sidewalks, paving, sod, and other as-needed civil contracting work at plants and facilities owned by Tampa Bay Water.

3. **BID PRICE FORM**

Quotations for services are to be provided on the Bid Price Form included herein and shall be completed in ink or typewritten. Bidder must fill in all blank spaces on the Bid Price Form included herein in ink. No changes shall be made in the wording or format of the forms. In case of a discrepancy between unit prices and extended totals, unit prices shall prevail. No addition or deletion of the terms or conditions included with the Bid response shall be evaluated or considered and any and all such revisions shall have no force or effect and are inapplicable to this Bid. No submission by the Bidder, whether purposely or inadvertently in any transmittal letters, specifications, literature, price lists or warranties may constitute a revision to these Instructions. It is understood and agreed that the instructions and the general and special

conditions in this Bid solicitation are the only conditions applicable to this Bid and Bidder's authorized signature affixed to the Bid response constitutes acknowledgment of this fact.

Any Bid may be deemed non-responsive which contains omissions, erasures, alterations, or additions of any kind, or prices uncalled for, or which may be obviously unbalanced, or which in any manner shall fail to conform to the requirements provided for herein.

4. ADDITIONAL INFORMATION REQUIREMENTS

Prior to a recommendation for award, Tampa Bay Water will require the apparent low Bidder to demonstrate qualifications to furnish the specified goods and/or services under the Contract. Bidders must be prepared to submit written information requested by Tampa Bay Water within five (5) business days of a request. Tampa Bay Water may review Bidder's prior experience, references and previous contracts for similar goods and/or services. In addition, Tampa Bay Water may request the Bidder's: three (3) most recent audited financial statements; unaudited financial statements if audited statements are not available; Balance Sheets; Income Statements; Statements of Cash Flows; or other documents approved by Tampa Bay Water which establish the financial health of the Bidder. As an alternative method of providing financial assurance of the Bidder's ability to perform, Tampa Bay Water may consider a letter of credit issued by an acceptable surety in an amount sufficient to secure the Bidder's completion of the work.

5. BID DOCUMENTS NECESSARY FOR SUBMITTAL

The Bid Price Form, all requested attachments, and the bid security (if applicable) shall be included in the submittal package containing the Bid. The following documents, together, comprise a Bid.

- Addenda Acknowledgement Form
- Bid Price Form
- Signature Form
- Non-Collusion Affidavit Form
- E-Verify Affidavit Form
- Bid Bond or Cashier's Check
- Bidder's Reference List

6. SALES AND USE TAXES

Tampa Bay Water is exempt from State sales tax on equipment or materials purchased directly from the Bidder. Such taxes should not be included in the quoted prices.

7. COMPLETE PRICING

All prices quoted must reflect delivered cost which includes all packing, handling, shipping charges, taxes, discounts and delivery to Tampa Bay Water. It is understood and agreed that all items offered or shipped as a result of this Bid shall be new, current, standard model available at the time of the Bid. All containers shall be suitable for storage or shipment and all prices shall include standard commercial packing.

8. MULTIPLE BIDS PROHIBITED

Only one Bid from any individual, firm, partnership, or corporation, under the same or different names, shall be considered. Should it appear to Tampa Bay Water that any Bidder has an interest

in more than one Bid for the goods and/or services under the Contract, all Bids in which such Bidder has an interest shall be rejected.

9. AUTHORIZED SIGNATURE

The Bidder shall sign its Bid in the appropriate blank space provided therefor. If Bidder is a corporation, the legal name of the corporation shall be set forth above the signature, together with the signature of an officer(s) or agent(s) authorized to sign contracts accompanied by evidence of authority to sign on behalf of the corporation. If Bidder is a partnership, the true name of the firm shall be set forth above, together with the signature of the partner or partners authorized to sign contracts accompanied by evidence of authority to sign on behalf of the partnership. If signature is by an agent, other than an officer of the corporation or a member of a partnership, a notarized power-of-attorney must accompany the Bid.

Failure to provide evidence of authority may cause the Bid to be regarded as not properly authorized and may subject it to rejection (disqualification).

10. SUBMITTAL DATE AND PACKAGE REQUIREMENTS

Sealed Bids for goods and/or services under the Contract must be received in Tampa Bay Water's office located at 2575 Enterprise Road, Clearwater, Florida 33763-1102 no later than 3:00 p.m. (EDT), May 11, 2021. A signed original, one digital copy on a CD or flash drive and one (1) copy of the Bid response must be received on or before this deadline. Responses will be retained as property of Tampa Bay Water. As such, all responses are public record, subject to public review. The Bid response marked "original" must contain a manual signature of the authorized representative of the Bidder; all others may be photocopies.

Sealed Bids must be submitted in accordance with the deadline and clearly marked "Sealed Bid" and addressed as follows:

TAMPA BAY WATER
2575 Enterprise Road
Clearwater, Florida 33763-1102
Attention: Records Department

TAMPA BAY WATER CONTRACT #'s 2021-044, 2021-045, 2021-046 & 2021-047

Tampa Bay Water continues to monitor the information and recommendations regarding COVID-19 as the health and safety of Tampa Bay Water's guests and staff members are a top priority. With the current COVID-19 progression, Tampa Bay Water has activated the Agency's Water Emergency Incident Command Systems (WEICS) and is working with the state and county command centers to be sure we are doing our best to keep everyone safe and healthy. As part of this implementation the following changes apply to this ITB.

Respondents will have the option to submit their Bid electronically to Tampa Bay Water's Citrix Sharefile. For those Respondents opting to submit Bids electronically to Tampa Bay Water, please upload your document using the following link.

File Link: <https://tampabaywater.sharefile.com/r-r8a7845784a3e405786e517aa6e8352c6>

Please be sure to include the name of submitting firm, submittal and contract 2021-044, 2021-045, 2021-046 & 2021-047 in the title. File Name Example: Company Submittal 2021-044, 2021-045, 2021-046 & 2021-047. File submittal must be received by Tampa Bay Water no later than 3:00 p.m. (EDT) on May 11, 2021.

Bid submittal deliveries or drop-offs will also be accepted at Tampa Bay Water's administrative office located at 2575 Enterprise Road, Clearwater, FL 33763 as outlined in the ITB requirements.

If Respondents choose to submit Bids electronically, Tampa Bay Water is not responsible for any technical problems in the electronic transmission and/or delay in receipt due to technical problems. Such electronic transmittal errors will not alter or effect the deadline date and time for receipt of Bids.

11. PRE-BID CONFERENCE AND INQUIRIES

A Pre-Bid Conference will be held on April 21, 2021 at 10:00 a.m. (EDT). Attendance at the Pre-Bid Conference is not mandatory but highly encouraged and all prospective Bidders are strongly encouraged to attend. To attend this conference please use the following instructions:

Please join my meeting from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/247823317>

You can also dial in using your phone.

United States (Toll Free): [1 866 899 4679](tel:18668994679)

United States: [+1 \(571\) 317-3116](tel:+15713173116)

Access Code: 247-823-317

Join from a video-conferencing room or system.

Dial in or type: 67.217.95.2 or inroomlink.goto.com

Meeting ID: 247 823 317

Or dial directly: [247823317@67.217.95.2](tel:247823317@67.217.95.2) or [67.217.95.2###247823317](tel:67.217.95.2###247823317)

Any questions concerning this Bid solicitation process, required submittals, evaluation criteria, Bid Price Form, selection process or any other matter regarding this procurement should be directed to Stacy Gundry at Tampa Bay Water, 727-669-4825, or sgundry@tampabaywater.org.

All questions received prior to the Pre-Bid Conference will be discussed at the Pre-Bid Conference. Anyone requiring reasonable accommodations for this conference should contact Tampa Bay Water's Human Resources Department at 727/796-2355 at least three working days prior to this conference. If additional questions arise after the pre-bid conference, the Bidder must submit a written inquiry to request information or clarifications. Tampa Bay Water will accept additional written inquiries at the email address above until the **close of business on April 26, 2021**. If additional information is provided, it will be provided to all Bidders via a written addendum. All addenda will be published via Tampa Bay Water's online provider, DemandStar and accessible via link on Tampa Bay Water's website.

12. DESIGNATED CONTACT

Tampa Bay Water is committed to a fair, open process for interested parties to receive information about the Bid and/or award of the Contract. All questions concerning this Bid and/or the procurement process must be directed in writing to the Tampa Bay Water Purchasing Representative as designated below or via the general purchasing email address below.

Stacy Gundry, CPSM, CPPB, CPCP
 Purchasing Specialist II
 Tampa Bay Water
 2575 Enterprise Road
 Clearwater, FL 33763

sgundry@tampabaywater.org
purchasing@tampabaywater.org

All inquiries or requests for clarification must be submitted in writing and are subject to distribution to all Bidders. Any contact with Tampa Bay Water staff, Board members, Tampa Bay Water Advisors (other than listed above), and other key Project stakeholders by a Bidder concerning any matter relating to this procurement is prohibited and is grounds for disqualification of the Bidder.

13. ADDENDA

Tampa Bay Water reserves the right to revise or amend this ITB. Such revisions and amendments, if any, shall be announced by Addenda to this ITB and posted via Tampa Bay Water's online provider, DemandStar and available via link on Tampa Bay Water's website. The Bid opening shall be at least five (5) working days after the last Addenda.

14. ACCEPTANCE AND RIGHT OF REJECTION

Bidder understands that Bids are to remain open for an acceptance period of ninety (90) days after the bid opening date for evaluation purposes. Tampa Bay Water reserves the right to reject all bids.

15. WAIVER OF MINOR IRREGULARITIES OR ERRORS

Tampa Bay Water reserves the right to either (1) waive any minor irregularities or clerical errors which are not material to the ITB or which do not prejudice other Bidders; or (2) to reject any and all Bids submitted as non-responsive. Conditional Bids or those which take exception to any provision of the ITB may be considered non-responsive and may be rejected.

16. AWARD

Tampa Bay Water will award up to four (4) contracts included herein to the lowest responsive, responsible Bidders deemed most qualified to provide the specified goods and/or services under the Contract included herein. The successful bidders must be registered to do business in the State of Florida. Information regarding registration can be found at the Florida Department of State, Division of Corporations website at <http://dos.myflorida.com/sunbiz>.

Notification of Tampa Bay Water's award resulting from this solicitation will be posted through Tampa Bay Water's on-line provider, DemandStar and accessible via link on Tampa Bay Water's website.

PART II GENERAL CONDITIONS:

BIDDER'S ACKNOWLEDGEMENTS

1. EXPENSES

Tampa Bay Water accepts no responsibility for any expenses incurred in the Bidders' preparation of the Bids; such expenses are to be borne exclusively by the Bidders. All costs and expenses incurred by a Bidder, or any person working on behalf of a Bidder, in connection with the ITB, including the preparation and submission of a Bid, providing additional information, attendance at meetings, and any other actions taken by a Bidder in response to the ITB shall be the sole responsibility of the Bidder. Tampa Bay Water and its agents, officers and directors shall have no responsibility or liability for any costs, damages or expenses incurred by Bidder, team members or any other person as a result of this ITB.

2. INTERPRETATION

By submitting a Bid, Bidders acknowledge that Tampa Bay Water is the interpreter of these Goods And/Or Services Contract Documents.

3. PUBLIC RECORDS

- 3.1.** Each Bidder, by submitting a Bid, acknowledges the agency's legal obligation in accordance with Chapter 119 of the Florida Statutes, to respond to all public records requests in a timely manner and expressly waives any right to contest, impede, prevent or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing or delaying such disclosure, unless the Bidder establishes its right to a public records exception. It is the responsibility of the Bidder alone to establish its right to any such exception. Under no circumstances will Tampa Bay Water be responsible or liable to a Bidder or any other party as a result of disclosing any such information or materials.
- 3.2.** Each Bidder may clearly mark each page of the Bid that contains trade secrets or other confidential commercial or financial information which the Bidder believes should not be disclosed outside of the agency. Disclosure of requested information will be determined in accordance with Florida laws, rules and regulations. Bidders are informed that Tampa Bay Water is subject to the Florida Public Records and Sunshine Laws.
- 3.3.** Each Bidder, by submitting a bid acknowledges and agrees that if awarded a contract as a result of this Bid the following conditions will be made a part of the contract.
- a.** Contractor must keep and maintain all public records required by the Agency in order to perform services under this Contract.
 - b.** Upon request from the Agency's custodian of public records, Contractor shall provide the Agency with a copy of the requested public records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provide in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - c.** Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the Agency.
 - d.** Upon completion of the contract, Contractor shall transfer, at no cost, to the Agency all public records in the possession of the Contractor or keep and maintain public

records required by the Agency to perform the service under this contract. If the Contractor transfers all public records to the Agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Agency, upon request from the Agency's custodian of public records, in a format that is compatible with the information technology systems of the Agency.

- 3.4. Each BIDDER, by submitting a bid further understands that if awarded a contract, the following instructions will apply throughout the life of the contract.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE AGENCY'S CUSTODIAN OF PUBLIC RECORDS VIA PHONE (727) 796-2355 x 2401; EMAIL RECORDS@TAMPABAYWATER.ORG; OR MAIL AT 2575 ENTERPRISE ROAD, CLEARWATER, FLORIDA 33763.

4. CONTRACT FORM AND ACCEPTANCE

The Bidder has familiarized itself with the nature and extent of the Contract Forms included herein, the sites, the localities and all local conditions and laws and regulations that may in any manner affect cost, schedule, progress, performance or furnishing of the goods and/or services under the Contract included herein. Bidder accepts the terms and conditions of the Contract. The Bidder proposes and agrees that if this Bid is accepted it shall enter into a contract with Tampa Bay Water in the form included herein as the Contract and perform and furnish all goods and/or services under the Contract for the Contract price, within the Contract time, and in accordance with the other terms and conditions of the Contract included herein.

5. CONTRACT EXECUTION, INSURANCE FORMS, AND BONDS

The Successful Bidder agrees that, upon receipt of the Notice Of Award, it shall execute and deliver to Tampa Bay Water two (2) copies of the Contract and the required Certificates Of Insurance which are included herein, within 15 business days of receipt of the Notice Of Award. No work can begin, or goods delivered prior to Tampa Bay Water's receipt and approval of the insurance.

6. PROVISION FOR OTHER AGENCIES

Unless otherwise stipulated by the Bidder, the Bidder agrees to make available to all Government agencies, departments, and municipalities the Bid prices submitted in accordance with said Bid terms and conditions therein, should any said governmental entity desire to buy under this proposal. Eligible Users shall mean all state of Florida agencies, the legislative and judicial branches, political subdivisions (counties, local district school boards, community colleges, municipalities, or other public agencies or authorities), which may desire to purchase under the terms and conditions of the contract. Tampa Bay Water shall not be liable for the obligations of any other agency which uses this contract under this provision.

7. CONVICTED VENDOR, DISCRIMINATORY VENDOR LISTS, AND SCRUTINIZED COMPANIES LIST

- 7.1. Pursuant to Subsections 287.133(2) and (3), Florida Statutes, Bidder acknowledges that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a Bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a Bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit Bids, proposals, or replies on leases or real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO, for a period of 36 months following the date of being placed on the convicted vendor list.
- 7.2. Pursuant to Subsection 287.134(2)(a), Florida Statutes, Bidder acknowledges that an entity or affiliate who has been placed on the discriminatory vendor list may not submit a Bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a Bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit Bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- 7.3. Pursuant to Section 287.135, Florida Statutes, Bidder acknowledges that a company that has been placed on the Scrutinized Companies with Activities in Sudan List; the Scrutinized Companies with Activities in the Iran Petroleum Energy Section List; or the Scrutinized Companies that Boycott Israel List or a company that engages in a boycott of Israel, is ineligible and may not submit a bid, proposal, or enter into or renew a contract with an agency for goods or services of \$1 million or more. At the time of submission of a Bid or proposal for a contract or contract renewal for goods or services of \$1 million or more, the company must certify that it is not on either such List and further that it does not have business operations in Cuba or Syria as required by Section 287.135(5), Florida Statutes.
- 7.4. Pursuant to Section 287.135, Florida Statutes, Bidder acknowledges that Tampa Bay Water has the option to terminate any contract for goods or services of \$1 million or more if the awarded company is found to have submitted a false certification as provided under Section 287.235 (5), been placed on the Scrutinized Companies with Activities in the Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria
- 7.5. Pursuant to Section 287.135, Florida Statutes, Bidder acknowledges that Tampa Bay Water has the option to terminate any contract for goods or services of any amount if the awarded company is found to have or been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

8. NOTIFICATION OF RIGHT TO PROTEST

Notification of Tampa Bay Water's decision regarding this solicitation will be posted on DemandStar on-line service and accessible via the link on Tampa Bay Water's website.

9. FAILURE TO FILE A PROTEST

Failure to file a protest within the time prescribed in section 120.57(3), Florida statutes, or failure to post a bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. This includes, but is not limited to, any objection to or protest of this Invitation to Bid, Notice of Award, the form and content of the Bids, and/or the actions of Tampa Bay Water.

10. BID BOND

Sealed Bids must be accompanied by a certified check, or cashier's check drawn on a bank in good standing, or the Florida Bid Bond included herein must be issued by a surety authorized to issue such bonds in the State of Florida, in the amount of \$5,000.00. The Florida Bid Bond included herein shall be given as a guarantee that the Bidder will not withdraw its Bid for a period of ninety (90) days after the opening of Bids.

11. STATEMENT OF NON-COLLUSION

The undersigned, hereinafter called the Bidder, declares that the only person(s) or party(s) interested in this Bid are those named herein, that this Bid is, in all respects, fair and without fraud, that it is made without collusion with any official of Tampa Bay Water and that the Bid is made without any connection or collusion with any person submitting another Bid on the Contract included herein.

12. EMPLOYEE VERIFICATION

In accordance with Section 448.095 Florida Statutes, the Awardee/Contractor/Consultant agrees to register with and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of the award/contract for the services specified in the award/contract. The Awardee/Contractor/Consultant must also include a requirement in subcontracts that the subcontractor must register with and utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the award/contract term.

If the Awardee/Contractor/Consultant enters into a contract with a subcontractor, the subcontractor must provide the Awardee/Contractor/Consultant with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Awardee/Contractor/Consultant shall maintain a copy of such affidavit for the duration of the award/contract.

If Tampa Bay Water has a good faith belief that the Awardee/Contractor/Consultant has knowingly violated Section 448.09(1), Florida Statutes, Tampa Bay Water shall terminate the Contract with the Awardee/Contractor/Consultant, and the Contractor may not be awarded a contract with Tampa Bay Water for at least 1 year after the date on which the award/contract was terminated. The Awardee/Contractor/Consultant is liable for any additional costs incurred by Tampa Bay Water as a result of the termination of the award/contract.

If Tampa Bay Water has a good faith belief that a subcontractor knowingly violated the law, but the Awardee/Contractor/Consultant has otherwise complied with the law, Tampa Bay Water shall promptly notify the Awardee/Contractor/Consultant and order the Awardee/Contractor/Consultant to immediately terminate the award/contract with the subcontractor.

13. CONSUMPTION ESTIMATES

The quantities appearing in the Bid Price Form are based on historical usage and Tampa Bay Water's anticipated needs at the time of the solicitation. However, since changes can occur, they should be considered approximate and are intended for the solicitation of bids. Payment to the Successful Bidder will be made only for the actual quantities of items furnished in accordance with the bid and it is understood that the scheduled quantities of items to be furnished may be increased, decreased, or omitted without in any way invalidating bid prices.

14. F.O.B. DESTINATION – FREIGHT PRE-PAID

Successful bidder shall pay all shipping and/or freight charges. The Successful Bidder shall file all claims and bear responsibility for the products from the point of origin all the way to Tampa Bay Water's specified delivery location(s). Bid prices shall be **inclusive of all shipping and freight charges, prepaid, and unloaded to location(s) specified in the bid documents.** Actual delivery addresses are in the Technical Specifications section or shall be identified at time of order.

15. SIMILAR SERVICES

The Bidder acknowledges and agrees that the separate prices on the Bid Price Form, where they are applicable and deemed acceptable by Tampa Bay Water, will be used by Tampa Bay Water and the Bidder, if awarded the Contract included herein, whenever similar service is added to the Contract.

16. FORCE MAJEURE

The Successful Bidder shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining, delivering or performing in the customary manner, by acts of God, declared disaster, fire, loss or shortage of transportation facilities, lockout or commandeering of raw materials, products, plants or facilities by the government. The Successful Bidder shall provide Owner satisfactory evidence that non-performance is due to cause other than fault or negligence on its part.

17. NEW PRODUCT(S)

The Successful Bidder shall guarantee that the product(s) provided under this contract shall be new and shall be of first quality as to the raw materials and methods of manufacture used for said product(s). If circumstance arise causing the Successful Bidder to offer reconditioned, used or refurbished product, the Successful Bidder must first obtain permission in writing from Tampa Bay Water and shall resume providing new products at the earliest possible time.

18. VENDOR'S STOCK

The Successful Bidder shall agree to hold or maintain access to adequate stock of any item awarded in this Bid. The lead time(s) for such stock shall not exceed the lead time or maximum delivery time period(s) as specified in this bid. Should product not be available, Tampa Bay Water reserves the right to procure product from another source and charge any additional costs for such procurement including expedited shipping to the Successful Bidder.

19. WARRANTY

The Successful Bidder shall guarantee that all product supplied shall meet specifications upon delivery and be free from defects in material, composition or performance for a period of one-

year after acceptance by Tampa Bay Water, or the manufacturer's standard warranty period, whichever is greater. Acceptance shall be defined as 30 days after delivery. Successful Bidder shall bear all costs to replace goods, their spare parts or components in full and/or repair defects within this timeframe, including transportation of goods to and from a designated repair facility and shipping costs of replacement parts.

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PART III ADDITIONAL CONDITIONS

1. OWNER'S RIGHTS

Tampa Bay Water reserves the right to reject any and all Bids, to waive any and all minor irregularities and technicalities, to negotiate terms with the successful Bidder, and reserves the right to disregard all nonconforming, non-responsive or conditional Bids and to re-solicit Bids, as maybe deemed to be in the best interests of Tampa Bay Water. Tampa Bay Water further reserves the right to delete line items from consideration. The decision made by Tampa Bay Water in selection of the successful Bidder and award of the Contract included herein will be final. Tampa Bay Water reserves the right, in its sole and absolute discretion, to:

- a. Amend, suspend, or terminate this ITB;
- b. Revise and modify, at any time prior to the Bid due date, factors it will consider in evaluating Bids and to otherwise revise its evaluation methodology;
- c. Extend dates, time periods or deadlines in this ITB;
- d. Reject any and all Bids in whole or in part which are non-conforming, non-responsive, or conditional Bids;
- e. Waive minor deficiencies, informalities, irregularities or defects in a Bid;
- f. Suspend and/or terminate this procurement process at any time;
- g. Reissue the same ITB or a different ITB for this project;
- h. Hold meetings and conduct discussions and issue correspondence with one or more of the Bidders to seek an improved understanding and evaluation of the Bids;
- i. Use assistance of outside advisors (e.g., technical, financial, procurement and legal advisors) in the evaluation process;
- j. Accept Bids that in its judgment will be in the best interest of Tampa Bay Water;
- k. Suspend, discontinue and/or terminate Contract negotiations with any Bidder at any time prior to the actual authorized execution of such Contract by all parties; and/or
- l. Exercise all rights available to it under this ITB and other provisions of applicable Florida law pertaining to this ITB without incurring any liability for costs, expenses or damages of any nature whatsoever suffered or incurred by any Bidder, team member or any other person.

2. DISQUALIFICATION

Without limiting the foregoing, Tampa Bay Water may disqualify and reject any Bidder (including its sub-consultants, affiliates, partners and parent organizations) that:

- a. Fails to include information in its Bid required by this ITB;
- b. Engages in conduct prohibited by this ITB;
- c. Fails to obtain the agency's consent for any action when required by this ITB;
- d. Is involved in pending litigation concerning Tampa Bay Water or its Member Governments;
- e. Submits false or misleading information in its Bid;
- f. Has a conflict of interest;
- g. Fails to disclose any information which, if disclosed, would materially adversely affect Tampa Bay Water's evaluation of the Bid; or
- h. Otherwise fails to comply with or breaches any material requirement of this ITB.

3. NON-BINDING

The issuance of this ITB does not bind or obligate Tampa Bay Water to enter into a Contract with any person or legal entity, nor does the ITB constitute an offer to enter into a Contract

with any person or entity. Tampa Bay Water and its agents and representatives are not liable for any delays, interruptions, failure or irregularities in sending or receipt of any communications or submissions, or for the loss, misdirection or corruption of any such communication by Bidder with the agency. Bidder is solely responsible for meeting all deadlines and submission requirements of this ITB.

4. INITIAL TERM

The initial term of this contract shall be from date of award through September 30, 2025.

5. SUPPLEMENTAL CONTRACT EXTENSION PERIOD

Tampa Bay Water has the option and reserves the right to unilaterally extend the original contract term or any renewal term for up to ninety (90) days period, at the same terms and conditions. Notice of Tampa Bay Water's intent to extend shall be provided in writing to the Awardee thirty (30) days prior to the expiration of the contract, or the renewal period if the contract has been previously renewed.

6. PRICE ESCALATION/DE-ESCALATION

Tampa Bay Water will allow a price escalation/de-escalation provision within this award. The original bid prices shall be firm for a minimum period of 12 months from the date of the contract execution. A price escalation/de-escalation will be allowed only once per calendar year. The Successful Bidder must notify Tampa Bay Water, in writing, of the pending price escalation/de-escalation a minimum of 30 days prior to the effective date of the price escalation/de-escalation. In the case of a price escalation/de-escalation, said notification shall include, the amount of the price escalation, and suitable proof such as documentation of the manufacturer's price increase (or insert the appropriate index reference CPI, PPI, etc). Increases will apply only to products and/or services affected by an increase in a raw material, ingredient, labor, or another significant like cost factor. The proof must substantiate the increase and be approved by the Purchasing Manager. The price increase shall not change the Awardee's profit margin. **Failure to comply with these instructions shall be grounds for disallowance of a price escalation as allowed herein.**

The Successful Bidder agrees to monitor market indicators and ensure that if market prices have decreased for like factors above, affecting supply and demand; that a price decrease is offered to Tampa Bay Water for the same period. Successful Bidder further agrees to provide a market evaluation to Tampa Bay Water once per calendar year as market conditions may dictate, but no later than 60 calendar days prior to each period expiration) to provide justification for a request for either an Escalation or a De-Escalation.

7. NON-APPROPRIATION OF FUNDS

In the event no funds or insufficient funds are appropriated for expenditures under this award, Tampa Bay Water will notify the Awardee in writing of such occurrence and the award shall terminate without penalty or expense to Tampa Bay Water on the last day of the fiscal year in which sufficient funds have been appropriated.

PART IV – BID FORMS

[SEE EXHIBIT B FOR BIDDER'S RESPONSE FORMS]

PART V – TECHNICAL SPECIFICATIONS

TECHNICAL SPECIFICATIONS

1. GENERAL

Tampa Bay Water is a Regional Water Supply Authority with buildings, pipelines, property, and water treatment facilities located in Pasco, Pinellas, and Hillsborough County, Florida. The intent of this specification document is to provide On Call Contractor Services for Large Pipeline Contractor (12 to 84-inch Diameter Potable Water Mains) and General Civil Contractor Services at Tampa Bay Water’s facilities.

2. PURPOSE

The Large Pipeline Contractor scope includes but is not limited to installation, repair, servicing, and providing underground water distribution lines and related pipeline appurtenances, including provision for installation of pilot plants or temporary small water treatment facilities.

The General Civil Contractor scope includes installation, repair and replacement of stormwater pipes, culverts, driveways, sidewalks, paving, sod, and other as-needed civil contracting work at plants and facilities owned by Tampa Bay Water.

The Large Pipeline Contractor may be called upon to perform work listed in the Civil contractor scope, depending upon the needs of the agency. However, the Civil Contractor will not be called upon to perform Large Pipeline work.

3. PERSONNEL AND CONTACTS

- 3.1. Key personnel contact numbers for Emergency Response shall be provided to Tampa Bay Water in document form within 15 days of contract execution with preferred points of contact identified and prioritized for Tampa Bay Water’s use. Contractor shall provide Tampa Bay Water a list of proposed sub-contractors Contractor proposes for pre-approval by Tampa Bay Water within 15 days of contract execution.
- 3.2. As mutually agreeable between Contractor and Tampa Bay Water, the Contractor is only to use the necessary personnel that are trained and certified to work on the infrastructure listed in the scope of the emergency response, project, task or assignment to assure competent work in a safe environment. Only these personnel are to respond and correct the cause of an emergency call-out or complete a project, task, or assignment.
- 3.3. Labor, equipment, and parts for all services within the scope and provisions of this agreement shall be billed at the rates listed in the Bid Price Form where applicable, or a cost reimbursement basis as defined in these specifications.
- 3.4. Tampa Bay Water staff shall contact the following designated representative and telephone number to coordinate all emergency and non-emergency services.

Name: _____

Title: _____

Phone Number: _____

4. BACKGROUND AND IDENTIFICATION

- 4.1. The contractor shall not assign any employee to work, related to this contract that has a criminal background.

- 4.2. The contractor must ensure that any employee assigned to work at any of the Tampa Bay Water locations that are near or adjacent to a school or other location where children congregate, comply with the requirements noted within the Jessica Lunsford Act.
- 4.3. The contractor shall provide information required by the Florida Department of Law Enforcement for "Request for Background Check" at least fourteen (14) days prior to start of work. The required information for each person working at the site is as follows:

- Company Name
- Name: (Name on Birth Certificate)
- Government Issued Identification
- Must have company issued ID card at all times.

5. SCHEDULED SERVICE COORDINATION

For Routine services and projects such as scheduled work requests, road repair, equipment installation, corrective repairs, and other work required to improve or maintain the system, Tampa Bay Water will contact the Contractor to prepare an estimate, schedule a crew, and address the request. Contractor shall respond via phone within two hours and be on location, if needed, no later than seventy-two (72) hours from the time of a routine call for service. Contractor acknowledges that multiple routing and emergency call outs could occur in all areas of the Tampa Bay Water region to include Hillsborough County, Pasco County and Pinellas County locations, potentially occurring at the same time, on the same day.

6. EMERGENCY RESPONSE PROCEDURES

In case of an emergency condition such as a large pipe rupture or road washout, Contractor will respond to trouble calls and provide on-demand emergency response assistance to Tampa Bay Water. They will be required to have crews on location in accordance with these specifications as follows:

Normal Business Hours Emergency Response

- 6.1. During normal business hours (Monday through Friday from 8:00 a.m. to 5:00 p.m., Contractor will respond to telephone calls as initiated by Tampa Bay Water within thirty (30) minutes and have crews on location, if needed, no later than two (2) hours from notification of an emergency call-out.
- 6.2. Contractor may utilize Contractor's crews or pre-approved sub-contractor crews to perform system repairs. Tampa Bay Water requires the Contractor to respond per the specifications, to the first emergency call out. If additional callouts occur while the first call-out work is being performed, Tampa Bay Water will either go to another On Call Contractor on the list, or agree with the already-engaged Contractor on an acceptable response time for the sequential call-out. However, nothing in this section shall relieve the On Call Contractor from using all reasonable efforts in responding to a sequential emergency call-out(s).

Off Hours Emergency Response

- 6.3. During off hours (Monday through Friday from 5:00 p.m. to 8:00 a.m. or all day on Saturday, Sunday, and Holidays) Contractor will respond to telephone calls as initiated by Tampa Bay Water within thirty (30) minutes and have crews on location, if needed, no later than two (2) hours from notification of an emergency call-out..
- 6.4. Contractor may utilize Contractor's crews or pre-approved sub-contractor crews to perform system repairs. Tampa Bay Water requires the Contractor to respond per the

specifications, to the first emergency call out. If additional callouts occur while the first call-out work is being performed, Tampa Bay Water will either go to another On Call Contractor on the list, or agree with the already-engaged Contractor on an acceptable response time for the sequential call-out. However, nothing in this section shall relieve the On Call Contractor from using all reasonable efforts in responding to a sequential emergency call-out(s).

- 6.5. Work performed during the off-hour periods will be compensated at a rate of one and one-half (1.5) the Hourly Base Rates as adjusted by contract. Compensation for trouble calls outside of normal working hours shall be a minimum of four hours per call out.

7. MAJOR EVENT EMERGENCY RESPONSE

Tampa Bay Water requires prompt Emergency Response to maintain the integrity of public water supply system, ensure the consistent delivery of potable water, and maintain public health and safety at all times. Restoration of pipeline integrity is critical to system reliability and may require additional communication and coordination during interruptions affecting large portions of a service area. When requesting service during Major Events (or interruptions) in service such as major storms, damage from digging activities, sinkholes, or traffic accidents, the following procedures will be followed:

- 7.1. Contractor will coordinate response to calls by Tampa Bay Water using the following criteria during major outage situations. The Contractor will determine when Contractor's personnel can be available to address Tampa Bay Water's requests for repairs. This schedule will be communicated to Tampa Bay Water in a timely manner. If the schedule for availability is acceptable to Tampa Bay Water, Contractor will start repair efforts per the agreed upon schedule.
- 7.2. Contractor may utilize Contractor's crews or pre-approved subcontractor crews to perform repairs or other as-needed work.
- 7.3. Items which do not require immediate attention, or that can be rendered safe and secure for the time being, will be placed on a follow-up list for scheduled repair service.

8. OTHER AS NEEDED SERVICES

Tampa Bay Water may request, and Contractor shall provide As-Needed services for special projects and work as needed to maintain or improve the integrity of the infrastructure at Tampa Bay Water facilities. All such projects shall be initiated and approved by Tampa Bay Water prior to commencement. Upon request, Contractor shall provide written estimates of work to be performed.

9. SAFETY

- 9.1. The contractor shall abide by all safety rules and publications issued by Tampa Bay Water, NFPA, OSHA and other regulatory agencies.
- 9.2. Precaution shall be exercised at all times by the Contractor for the protection of all persons, including employees, and property. The Contractor shall be expected to comply with all laws, regulations or ordinances related to safety and health, shall make special effort to detect hazardous conditions and shall take prompt action where loss control/safety measures should reasonably be expected.
- 9.3. Tampa Bay Water may order work to be stopped if conditions exist that present immediate danger to persons or property. The Contractor acknowledges that such stoppage will not shift responsibility for any damages from the Contractor to Tampa Bay Water.

- 9.4. The contractor shall provide Tampa Bay Water with Safety Data Sheet (SDS) books for all chemicals used in the scope of this contract, including those used by subcontractors. The SDS books shall be kept up to date with new SDS sheets added as new materials are used within the scope of this contract.
- 9.5. The agency reserves the right to review and approve all materials and chemicals used on assignments.

10. PAYMENT

- 10.1. Tampa Bay Water will reimburse Contractor for its costs for labor, materials, replacement parts and Subcontract services at actual cost plus a fixed cost fee as outlined below for all As-Needed projects. All parts and equipment costs will be noted and reported to Tampa Bay Water through approved invoices.
- 10.2. Any item used on the work which is not covered on the Bid Price Form and for which the contractor seeks payment will be considered “cost reimbursement work”. The term “cost reimbursement work” shall be for work performed and compensated on a time and expense basis, that is, on an accounting of the contractor's forces, materials, equipment, and other items of cost as required and used to do the work.
- 10.3. The contractor shall furnish labor, equipment, and materials necessary to complete the work in a satisfactory manner and within a reasonable period of time. For the work performed, payment shall be made for the documented actual cost of the following:

10.3.1. LABOR

For those hours they are assigned and participating in the cost reimbursement work (actual payroll cost, including wages, fringe benefits as established by negotiated labor agreements, labor insurance and labor taxes as established by law). No other fixed labor burdens will be considered, unless approved in writing by Tampa Bay Water.

10.3.2. Specific Sub Contractors to the Large Pipeline Contractor

The Large Pipeline Contractor shall include rates in their quote for the following two sub-contracted specialties:

10.3.2.1. Welder – The hourly rate shall include a certified welder and a truck fully equipped with an engine driven welder, oxygen and acetylene cylinders and other accessories as would be necessary to weld or cut carbon steel pipelines on site.

10.3.2.2. Disinfection - Water main disinfection to AWWA standards of 50 PPM chlorine residual shall be added at a cost per 1 Million Gallons of water introduced into the pipeline, then subsequently flushed from the pipeline and de-chlorinated for disposal. Assume no cost to purchase the water. Assume contractor cost to provide the chlorination chemical, whether Calcium or Sodium Hypochlorite. Assume contractor cost to provide the de-chlorination chemical.

10.3.3. EQUIPMENT

Equipment is to include trucks, tractors, cranes, lifts, hand tools, and specialty tools, fuel, supplies, maintenance, renewals and depreciation when equipment is owned by Contractor or an approved sub-contractor. When equipment is rented, it will include rental, or equivalent rental cost of equipment, including specialty labor that may be required for transportation of items having a rental value in excess of \$100.00.

10.3.4. TOOLS

- 10.3.4.1. Contractor will not use Tampa Bay Water Tools or Equipment.
- 10.3.4.2. The item on the bid schedule for "job truck with tools" shall include all tools listed in Table 1 below.
- 10.3.4.3. The cutting torch, stick welder and accessories may be on a separate truck if necessary.
- 10.3.4.4. Tampa Bay Water will not pay hourly rates for any delays caused by Contractor for improper tools or equipment to perform the required work.

	Tool	Minimum size	Quantity
1	Air compressor	20 CFM @ 90PSI	1
2	3/4 " drive ratchet and socket set		1
3	1 inch drive air impact wrench		1
4	1 inch drive sockets	1 1/2" to 3"	1 each
5	Slug wrenches	1 1/2" to 3"	1 each
6	End wrenches	7/16" to 1 1/2"	2 each
7	Porta band saw w spare blades	4" opening	1
8	Sawzall w spare blades		1
9	Nylon slings 5,000 and 10,000 pound rated (vertical)	2" 2 ply/4" 2 ply	2 each
10	Grade 80 Chain 10,000 pound rated	1/2" X 10 ft	2
11	Clevis or Shackles 5 ton rated	5/8" alloy	4
12	Porta power 10 ton		1
13	Shovels - round and square point		3 each
14	Cutting torch set *see note*		1
15	Gas or diesel stick welder and accessories *see note*		1
16	Small diaphragm pump and accessories	2" suction	1
17	Tap and die set	1/2" to 2" NPT	1
18	Drill and bits for steel or ductile	1/2" to 2" NPT size	1 set
19	Pry bar	5 foot	1
20	Come along	2 ton	2
21	Circular Saw and blades for cribbing/forms	7 1/2 inch	2
22	Generator 120/240 volt	3500 watt	1
23	Framing hammer and nails for forms		2
24	Screw gun and screws for forms and cribbing		1
25	Gas powered cutoff saw (K-12)	12 inch	1
26	Chain saw for cribbing and forms	14 inch bar	1
27	Sledge hammers	4# and 6#	1 each
28	Crew PPE to include Hard hat and gloves at minimum	as needed	per person

10.3.5. PARTS AND MATERIALS

10.3.5.1. Items - This includes parts, consumables, and whole items including for example, valves, spool pieces, culverts, air releases, or concrete. All items shall include applicable transport and delivery costs and taxes. Payment shall be based on in-place measurements and delivery tickets.

10.3.6. PERMITS

10.3.6.1. This includes all costs associated with the filing, pulling, inspections, and closing of any required work permits and notifications.

10.3.6.2. This excludes any design or engineering costs.

10.3.7. RENTALS

10.3.7.1. Rental cost shall be allowed for only those days or hours during which the equipment is in actual use.

10.3.7.2. Rental and transportation costs shall not exceed the current rental rates prevailing in the locality.

10.3.7.3. The rentals allowed for equipment shall, in all cases, be understood to cover all fuel, supplies, repairs, and renewals, and no further costs shall be allowed for those items, unless specific agreement to that effect is made.

10.3.8. To the cost reimbursement work, there shall be added the following for the contractor or subcontractor actually performing the work.

10.3.8.1. A fixed fee of fifteen percent (15%) of the cost of item 10.3.1. LABOR above.

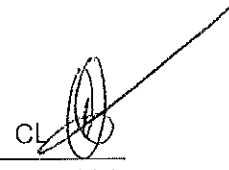
10.3.8.2. A fixed fee of ten percent (10%) will be added to the cost of items 10.3.3. EQUIPMENT, 10.3.5. PARTS AND MATERIALS, and 10.3.6. PERMITS above.

10.3.8.3. For costs incurred for work performed by sub-contractors, the contractor's pass-through fee shall not exceed ten percent (10%) of the sub-contractor actual cost.

**EXHIBIT B
BIDDER'S RESPONSE FORMS**

ADDENDA ACKNOWLEDGMENT FORM

The Bidder acknowledges that he has received Addenda Number(s): 1

1	Reminders & Inquires	CL 
Number	Addendum Title	Bidder Initials
<hr/>		
Number	Addendum Title	Bidder Initials
<hr/>		
Number	Addendum Title	Bidder Initials

Bidder shall insert number and name of each addendum received and agrees that all addenda issued are hereby made a part of the proposed Contract Forms, and the Bidder further agrees that its Bid is submitted after consideration of said addenda.

PART A - CIVIL CONTRACTOR BID PRICE FORM

ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE
Labor				
1	Foreman	Hour	1	300.00
2	Operator	Hour	1	150.00
3	Truck Driver	Hour	1	150.00
4	Pipe Layer - For Pipes ≤ 48" Dia.	Hour	1	150.00
5	Laborer	Hour	2	150.00
Equipment				
6	Foreman P/U with hand tools	Hour	1	100.00
7	Job truck with mandatory tools *note*	Hour	1	150.00
8	Crane (20 Ton)	Hour	1	150.00
9	Crane (60 Ton)	Hour	1	200.00
10	Tractor & Trailer (Transport)	Hour	1	260.00
11	Track Hoe (to 100 HP)	Hour	1	210.00
12	Track Hoe (101 HP to 170 HP)	Hour	1	240.00
13	Rubber Tired Backhoe	Hour	1	210.00
14	Wheel Loader (to 150 HP)	Hour	1	160.00
15	Wheel Loader (151 HP and up)	Hour	1	184.00
16	Track Type Tractors (to 100 HP)	Hour	1	210.00
17	Track Type Tractors (101 HP up)	Hour	1	240.00
18	Dump Truck (Tandem Axle)	Hour	1	240.00
19	Plate Tamp	Hour	1	123.00
20	3" Trash Pump	Hour	1	114.00
21	4" Double Diaphragm Pump	Hour	1	124.00
22	Air Compressor (125 SCFM)	Hour	1	123.00
23	Well Point Pump	Day	1	630.00
24	4" Jet Pump	Day	1	340.00
Material				
25	2500psi Concrete (Un-formed)	Cu. Yd.	1	130.00
26	Off Site Select Fill	Cu. Yd.	1	14.00
27	Limerock Base Material	Ton	1	33.00
28	#57 Washed Stone	Ton	1	55.00
29	Asphalt Paving (1½" Thick; Type S-3)	Sq. Yd.	1	17.00
30	Bahia Sod	Sq. Yd.	1	4.40
Sub-Contractor				
31	Welder with Truck	Hour	1	170.00
32	Tractor with 7' Bush Hog	Hour	1	330.00
PROPOSED TOTAL CONTRACT BID PRICE (Basis of Award):				\$ 5,661.40
Note Job truck with mandatory tools to include all items listed on Table 1 in the specifications.				

PART B - LARGE PIPELINE CONTRACTOR BID PRICE FORM

ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE
Labor				
1	Foreman	Hour	1	300.00
2	Operator	Hour	1	150.00
3	Truck Driver	Hour	1	150.00
4	Pipe Layer - For Pipes ≤ 84" Dia.	Hour	1	150.00
5	Laborer	Hour	1	150.00
Equipment				
6	Foreman P/U with hand tools	Hour	1	100.00
7	Job truck with mandatory tools *note*	Hour	1	150.00
8	Crane (20 Ton)	Hour	1	280.00
9	Crane (60 Ton)	Hour	1	400.00
10	Tractor & Trailer (Transport)	Hour	1	260.00
11	Track Hoe (to 100 HP)	Hour	1	210.00
12	Track Hoe (101 HP to 170 HP)	Hour	1	240.00
13	Track Hoe (171 HP and up)	Hour	1	210.00
14	Rubber Tired Backhoe	Hour	1	160.00
15	Wheel Loader (to 150 HP)	Hour	1	184.00
16	Wheel Loader (151 HP and up)	Hour	1	220.00
17	Track Type Tractors (to 100 HP)	Hour	1	210.00
18	Track Type Tractors (101 HP up)	Hour	1	240.00
19	Dump Truck (Tandem Axle)	Hour	1	240.00
20	Plate Tamp	Hour	1	123.00
21	3" Trash Pump	Hour	1	140.00
22	4" Double Diaphragm Pump	Hour	1	124.00
23	Air Compressor (125 SCFM)	Hour	1	123.00
24	Well Point Pump	Day	1	630.00
25	4" Jet Pump	Day	1	340.00
Material				
26	2500psi Concrete (Un-formed)	Cu. Yd.	1	130.00
27	Off Site Select Fill	Cu. Yd.	1	14.00
28	Limerock Base Material	Ton	1	33.00
29	#57 Washed Stone	Ton	1	55.00
30	Asphalt Paving (1 1/2" Thick; Type S-3)	Sq. Yd.	1	17.00
31	Bahia Sod	Sq. Yd.	1	4.40
32	Sheeting to Depths of 25'	20 Sheets	1	3,000.00
Sub-Contractor				
33	Welder with Truck	Hour	1	170.00
34	Line Clearance Chlorinate/Dechlorinate	1MG	1	10.00
PROPOSED TOTAL CONTRACT BID PRICE (Basis of Award):				\$ 8,917.40
Note Job truck with mandatory tools to include all items listed on Table 1 in the specifications.				

PART A - PROPOSED TOTAL CONTRACT BID PRICE

Five thousand Six hundred Sixty one^{dollars} and forty cents
(Amount Written in Words)

PART B - PROPOSED TOTAL CONTRACT BID PRICE

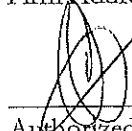
Eight thousand nine hundred seventeen dollars and forty cents
(Amount Written in Words)

Amici Engineering Contractors, LLC

Firm Name

28947 SR 54 Wesley Chapel, Florida 33543

Firm Address



Authorized Signature

Christopher Lazzari

Printed Name

954-895-0741

Phone Number

chrisl@amiciec.com

E-Mail Address

FOR A CORPORATION OR A LIMITED LIABILITY CORPORATION

STATE OF Florida
COUNTY OF Pasco

SWORN TO and subscribed before me by means of physical presence or online notarization, this

11th day of May, 2021, by Christopher Lazzari

, who is Managing Member (Title) of

Amici Engineering Contractors, LLC

(Corporation Name) a corporation under the laws of the State of Florida

, on behalf of the said corporation. He/she is personally known to me OR has produced

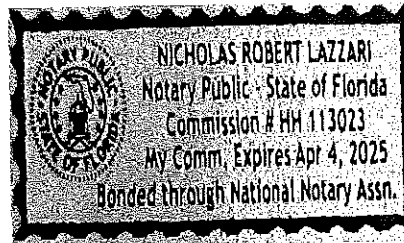
as identification and (did not) take an oath.

Notary Public Signature

Nicholas Lazzari

Print Name

My Commission Expires: 04/04/2025



NON-COLLUSION AFFIDAVIT

STATE OF Florida
COUNTY OF Pasco

Christopher Lazzari ("Affiant"), being first duly sworn, deposes and says that:

1. Affiant is Managing Member of Amici Engineering Contractors, LLC, (the "Bidder") and has submitted the attached Bid;
2. Affiant has personal knowledge of the matters set forth herein and is competent to testify;
3. Affiant is fully informed respecting the preparation and contents of the attached Bid and all pertinent circumstances respecting the Bid;
4. The Bid is genuine and is not a collusive or sham Bid;
5. Neither the Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including Affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm, or person to submit a collusive or sham Bid, or has in any manner, directly or indirectly, sought by contract or collusion or communication or conference with any other Bidder, firm, or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit, or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or any lawful agreement any advantage against Tampa Bay Water or any person interested in the

By: [Signature]
Title: Managing Member



Subscribed and sworn before me by means of physical presence or online notarization, this 1st day of May, 2021, by Christopher Lazzari, as Managing Member of Amici Engineering Contractors, LLC, a Florida corporation, on behalf of the corporation. He/she is personally known to me OR has produced [Signature] as identification and did (did not) take an oath.

[Signature]
Notary Public
My commission expires: 04/04/2025

Nicholas Lazzari

60 (June 2018)

TAMPA BAY WATER
CONTRACTOR/CONSULTANT/VENDOR
E-VERIFY AFFIDAVIT

STATE OF Florida
COUNTY OF Pasco

BEFORE ME, the undersigned authority, appeared Christopher Lazzari, who first being duly sworn hereby swears or affirms as follows:

1. I make this affidavit on personal knowledge.

2. I am over the age of 18 years and otherwise confident to make this Affidavit.

3. I am the Managing Member of
Amici Engineering Contractors, LLC (the
"Contractor/Consultant/Vendor").

4. I am authorized by Amici Engineering Contractors, LLC to make this Affidavit on behalf of Contractor/Consultant/Vendor.

5. Contractor/Consultant/Vendor acknowledges that Section 448.09, Florida Statutes, makes it unlawful for any person to knowingly employ, hire, recruit, or refer, for private or public employment, an alien who is not duly authorized to work in the United States.

6. Contractor/Consultant/Vendor acknowledges that Section 448.095, Florida Statutes, prohibits public employers, contractors, and subcontractors from entering into a contract unless each party to the contract registers and uses E-Verify.

7. Contractor/Consultant/Vendor is in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes.

8. Contractor/Consultant/Vendor understands it shall remain in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes, during the term of any contract with Tampa Bay Water.

9. Contractor/Consultant/Vendor's subcontractors are in compliance with the requirements of Sections 448.09 and 448.095, Florida Statutes.

10. Contractor/Consultant/Vendor shall ensure compliance with the requirements of Sections 448.09 and 449.095, Florida Statutes, by any and all of its subcontractors.

11. Neither the Contractor/Consultant/Vendor, nor any subcontractor of Contractor/Consultant/Vendor, has had a contract terminated by a public employer for violating Section 448.095, Florida Statutes, within the year preceding the date of this Affidavit.

12. If the Contractor/Consultant/Vendor, or any subcontractor of Contractor/Consultant/Vendor, has a contract terminated by a public employer for any such violation during the term of any contract with Tampa Bay Water, it shall provide immediate notice thereof to Tampa Bay Water.



Signature of Affiant
on behalf of Contractor/Vendor

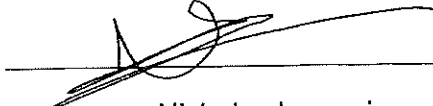
By: Christopher Lazzari

As its: Managing Member

Dated: 05/11/2021

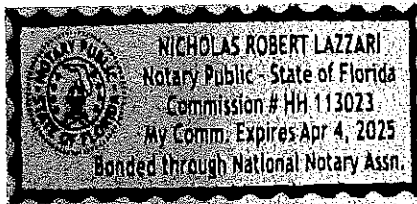
STATE OF Florida
COUNTY OF Pasco

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this 11th day of May, 2021, by Christopher Lazzari, on behalf of Amici Engineering Contractors, LLC, who is personally known to me or who has produced _____ as identification.



Print Name: Nicholas Lazzari
Notary Public of the State of Florida

My Commission Expires: 04/04/2025



FLORIDA BID BOND

Know all men by these presents:

That the "Bidder", Amici Engineering Contractors, LLC, a corporation X, individual _____, partnership _____, of the state of Florida, qualified to do business in this State, as principal, and the "Surety", Philadelphia Indemnity Insurance Company, a corporation of the state of Pennsylvania, authorized to do business as a surety in this State, as surety, are hereby held and firmly bound unto Tampa Bay Water, A Regional Water Supply Authority ("Tampa Bay Water"), as obligee, in the sum Five Thousand and No/100, lawful money of the United States of America for the payment of which the Bidder and the Surety hereby bind ourselves, our respective heirs, successors, legal representatives and assigns, jointly, and severally, firmly by these presents.

WHEREAS, the Bidder has submitted to Tampa Bay Water, its Bid to which this Florida Bid Bond ("Bond") is attached to enter into the Contract with Tampa Bay Water for ON CALL GENERAL CIVIL & LARGE PIPELINE CONTRACTOR SERVICES, Project No.: **, which Contract is incorporated herein by this reference: **2021-044, 2021-045, 2021-046 & 2021-047

NOW, THEREFORE: The condition of this obligation is that, the Bidder And Surety are jointly and severally bound by all of the provisions of this Bond, and if the Bidder faithfully performs and fulfills all the understandings, covenants, terms, conditions and requirements of the Contract (including Addenda issued before the date of the opening of the Bid) within the time specified or any extension thereof, with or without notice to the Surety, or if the Bidder fails to comply with all requirements of the Contract (as modified) within the time specified or any extension thereof, with or without notice to the SURETY, but pays Tampa Bay Water the full amount of the sum set forth in this Bond as liquidated damages, then this obligation shall be null and void, otherwise to remain in full force and effect.

A. If Tampa Bay Water makes demand on the Surety to perform in accordance with the Surety's obligations under this Bond, then the full amount of this Bond shall be immediately due and payable to Tampa Bay Water, and the Surety shall pay that sum without delay. Additionally, the Surety shall reimburse Tampa Bay Water for all costs of collection (including but not limited to attorney's fees).

B. The Surety, for value received, stipulates and agrees that the obligations of the Surety and this Bond shall be in no way impaired or affected by any extension of the time within which Tampa Bay Water may accept the Bid, and the Surety does, by this agreement, waive notice of any such extension.

C. The term this "State" means the State of Florida. Other defined terms (i.e., capitalized terms) used in this Bond have the intent and meanings assigned to them in the Contract.

IMPORTANT: Sureties executing this Bond shall be currently authorized to do business in the State as surety and, except as otherwise provided by the Florida Statutes, be on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies. Bonds cannot be in excess of the amount indicated as approved by that list.

Philadelphia Indemnity Insurance Company
(Name of Surety)

One Bala Plaza, Ste 100, Bala Cynwyd, PA 19004
(Address)

610-206-7836
(Telephone Number)

Warren M. Alter
(Name of Duly Authorized Florida Agent)


5979 NW 151st Street, Ste 202, Miami Lakes, FL 33014
(Address)

305-517-3803
(Telephone Number)

Signed and sealed this 11th day of May, 2021.

Bidder/ Principal: Amici Engineering Contractors, LLC

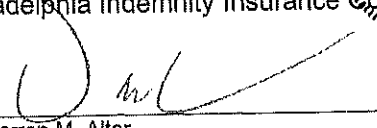
Witness

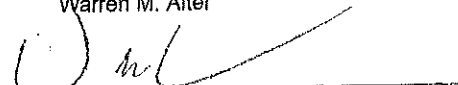

By: 
CHRISTOPHER LAZZARI, Managing Director
Name and Title



Surety: Philadelphia Indemnity Insurance Company

Witness


By Agent: 
Warren M. Alter

By Attorney-In-Fact 
Warren M. Alter
(Attach Certified Copy of Power of Attorney)

PHILADELPHIA INDEMNITY INSURANCE COMPANY
One Bala Plaza, Suite 100
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That PHILADELPHIA INDEMNITY INSURANCE COMPANY (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint David T. Satine, Warren M. Alter and Jonathan A. Bursevich of Alter Surety Group, Inc., its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of Indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed \$50,000,000.

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14th of November, 2016.

RESOLVED: That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

FURTHER RESOLVED: That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

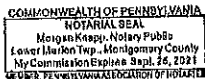
IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 27TH DAY OF OCTOBER, 2017.



(Seal)

Robert D. O'Leary Jr., President & CEO
Philadelphia Indemnity Insurance Company

On this 27th day of October, 2017, before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the PHILADELPHIA INDEMNITY INSURANCE COMPANY; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.



Notary Public: Morgan Knapp
residing at: Bala Cynwyd, PA
My commission expires: September 25, 2021

(Notary Seal)

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 27th day of October, 2017 are true and correct and are still in full force and effect. I do further certify that Robert D. O'Leary Jr., who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 11th day of May, 2021.



Edward Sayago, Corporate Secretary
PHILADELPHIA INDEMNITY INSURANCE COMPANY



Project Experience of Key Personnel

- *J - Juan Barreneche's Project Experience (as Southern Underground Industries Owner, Globetec PM or DMSI PM)
- *C - Chris Lazzari's Project Experience (as DMSI PM/Estimator)
- *N - Nelson Liberti's Project Experience (as DMSI Superintendent)
- *CC - Cody Cook Project Experience (as DMSI or Felix Assoc Superintendent)
- *A - Amici Engineering Contractors, LLC Project

PROJECT NAME	OWNER	CONTACT INFORMATION	CONTRACT AMOUNT	DESCRIPTION OF WORK	COMPLETION DATE
WM Replacement Phases V & VI	City of Lake Worth Beach, 7 N Dbdw Highway Lake Worth Beach, FL 33480	Giles Rhoads, PE - (561) 889-3688 grhoads@lakeworthbeachfl.gov	\$3,678,888.00	Furnish and install 9,907 linear feet of 6" PVC WM, 2,536 LF of 4" DIP WM and rear to front service connections. Includes all restoration and MOT.	Approx. 0% Complete
Fair Oaks Wm Replacement	City of Tampa 306 E Jackson Street, 4N Tampa, FL 33602	James King, PE (813) 781-7023 James.King@tampagov.net	\$3,896,013.80	furnish and install approximately 87 linear feet of 4-inch, 14,423 linear feet of 8-inch, 1,145 linear feet of 8-inch ductile iron, and 530 linear feet of 6-inch HDPE water main with all required appurtenances and fittings, cutting and plugging existing pipes, roadway and roadside restoration, maintenance of traffic, tree protection, grouting of abandoned pipe, valve adjustment and removal, and incidental video photography; In addition to the rehabilitation of 13,120 LF of 8-inch diameter gravity sewers by Cured-In-Place Pipe including detuberculation, cleaning and inspection, sewage bypass pumping, re-establishing service connections, chemical grouting laterals, manhole rehabilitation by application of structural coating system, with all associated work required for a complete project in accordance with the Contract Documents.	Approx. 1% Complete
Sunset Park Distribution Line Replacement (East) (*A)	City of Tampa 306 E Jackson Street, 4N Tampa, FL 33602	James King, PE (813) 781-7023 James.King@tampagov.net	\$1,933,000.00	Installing approximately 4,576 linear feet of 6-inch and 5,806 linear feet of 8-inch ductile iron pipe water main with all required appurtenances and fittings, cutting and plugging, roadway restoration, sidewalks, driveways, traffic control, sodding, tree protection, and grouting of abandoned pipe.	Approx. 70% Complete
Boyette Road Reclaimed Water Main Extension (*A)	Fasco County Purchasing Department 8919 Government Drive New Port Richey, FL 34654	Ivan Martinez (813) 235-6189 imartinez@pascocountyfl.net	\$624,639.00	The construction of 104 linear feet of 8-inch PVC, 965 linear feet of 12-inch PVC and 3705 linear feet of HDPE reclaimed water main beginning at the Wesley Chapel District Park and continuing south along Boyette Road terminating at the intersection of Boyette Road and Merilee Place.	Approx. 99% Complete
SR 52 Force Main Extension (*A)	Metro Development Group 2502 N. Rocky Point Drive, Ste 1050, Tampa, FL 33607	Mr. Randy Appenzeller randy@metrodg.com office: 813-288-8078	\$2,480,751.16	Installation of approximately 8,140 linear feet of 16-inch HDPE Force Main via HDD and 6,540 linear feet of 16-inch PVC Force main via open cut along an FDOT corridor.	Approx. 95% Complete
River Landing - Offsite Utilities Project (*A)	Taylor Morrison of Florida 501 N Cattlemen Road, Suite 100 Sarasota, FL 34224	Bryan Jackson, P.E. (805)748-8675 Bryan.Jackson@valdipengineering.com Andrew Miller (727)647-0666 drew.miller63@gmail.com	\$9,269,917.00	Installation of approx. 50,000 LF of 12" to 24" (PVC/HDPE) Water Main, Force Main, and Reclaimed Water Main via Open Cut and Directional Drill	Approx. 90% Complete
Emergency Repair of 36" Force Main at 72nd Street Parking Lot (*A)	City of Miami Beach Public Works Department - 451 Dade Blvd., Miami Beach, FL 33139	Rudy De La Torre (305)987-0768 RodolfoDeLaTorre@miamibeachfl.gov	\$237,752.00	Removal and replacement of ruptured 36-inch DIP force main and installation of a 36" butterfly valve	3/20/2020
48" PCCP Water Main (Area N) Project (*N,C)	Miami Dade Water & Sewer 3071 SW 38th Ave Miami, FL 33146	Dan Smolik (407) 832-2291 dsmolik@gamey.com	\$9,800,000.00	Design Build - Subcontractor to Gamey Construction to install 16,000 LF of 48" PCCP Water Main (Labor/Equipment Only Contract)	1/1/2020

**EXHIBIT C
INSURANCE FORMS**

**Tampa Bay Water
General Insurance Requirements Matrix**

Contract Type	Up to \$100,000	\$100,001 to \$1,000,000	\$1,000,001 & Over
Agreement for Professional Services	Tier 1	Tier 2	Tier 3
As-Needed Professional Services	Tier 1	Tier 2	Tier 3
Goods & Services Contract	Tier 1	Tier 2	Tier 3
Construction Contract	N/A	N/A	Tier 3

Insurance Type	Tier 1	Tier 2	Tier 3
General Liability	\$1,000,000	\$2,000,000	\$5,000,000
Automobile	\$300,000	\$500,000	\$1,000,000
Workers Compensation	Statutory	Statutory	Statutory
Umbrella/Excess	Up to GL	Up to GL	Up to GL
Professional Liability	\$1,000,000	\$1,000,000	\$1,000,000



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
7/8/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Frank H. Furman, Inc. 1314 East Atlantic Blvd. P. O. Box 1927 Pompano Beach FL 33061	CONTACT NAME: Caroline Abel	FAX (A/C, No): (954) 942-6310	
	PHONE (A/C, No, Ext): (954) 943-5050	E-MAIL ADDRESS: caroline@furmaninsurance.com	
INSURED Amici Engineering Contractors LLC 10621 SW 139 Street Miami FL 33176	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: FCCI Insurance Co		10178
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		

COVERAGES CERTIFICATE NUMBER: 2021 Master REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X	Y	GL10006440900	1/1/2021	1/1/2022	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
	PRODUCTS - COMP/OP AGG	\$ 2,000,000						
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X	Y	CA10005453701	1/20/2021	1/20/2022	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
							FL Basic PIP	\$ 10,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$ 10,000			UMB10006441000	1/1/2021	1/1/2022	EACH OCCURRENCE	\$ 10,000,000
							AGGREGATE	\$ 10,000,000
								\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC010006441101	1/1/2021	1/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: On call large pipeline contractor services. Tampa Bay Water, its engineers, architects, consultants, subsidiaries or affiliates and each of the Tampa Bay Water Directors, officers, employees, representatives, agents or volunteers are included as additional insured for general liability & auto liability on a primary and non contributory basis as required by written contract. Waiver of subrogation is provided in favor of Tampa Bay Water on all policies.

CERTIFICATE HOLDER Tampa Bay Water 2575 Enterprise Rd Clearwater, FL 33763	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Dirk DeJong/CBA <i>Dirk D. DeJong</i>

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS –
AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION
AGREEMENT WITH YOU – ONGOING OPERATIONS AND
PRODUCTS-COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE (OPTIONAL)

Name of Additional Insured Persons or Organizations
(As required by written contract or agreement per Paragraph A. below.)

Locations of Covered Operations
(As per the written contract or agreement, provided the location is within the "coverage territory".)

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

A. **Section II – Who Is An Insured** is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement in effect during the term of this policy that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above; and

3. The particular person or organization, if any, scheduled above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" occurring after the execution of the contract or agreement described in Paragraph 1. above and caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf in the performance of your ongoing operations for the additional insured; or
3. "Your work" performed for the additional insured and included in the "products-completed operations hazard" if such coverage is specifically required in the written contract or agreement.

However, the insurance afforded to such additional insured(s) described above:

1. Only applies to the extent permitted by law;
 2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured;
 3. Will not be broader than that which is afforded to you under this policy; and
 4. Nothing herein shall extend the term of this policy.
- B. The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 2. Supervisory, inspection, architectural or engineering activities.
- C. This insurance is excess over any other valid and collectible insurance available to the additional insured whether on a primary, excess, contingent or any other basis; unless the written contract or agreement requires that this insurance be primary and non-contributory, in which case this insurance will be primary and non-contributory relative to insurance on which the additional insured is a Named Insured.
- D. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph A.1.; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

E. **Section IV – Commercial General Liability Conditions** is amended as follows:

The Duties In The Event of Occurrence, Offense, Claim or Suit condition is amended to add the following additional conditions applicable to the additional insured:

An additional insured under this endorsement must as soon as practicable:

1. Give us written notice of an "occurrence" or an offense which may result in a claim or "suit" under this insurance, and of any claim or "suit" that does result;
2. Send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions; and
3. Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover the additional insured for a loss we cover under this endorsement and agree to make available all such other insurance. However, this condition does not affect Paragraph C. above.

We have no duty to defend or indemnify an additional insured under this endorsement until we receive from the additional insured written notice of a claim or "suit".

- F. This endorsement does not apply to any additional insured or project that is specifically identified in any other additional insured endorsement attached to the Commercial General Liability Coverage Form.

STAFF REPORT UTILITY MEETING

AGENDA DATE: September 26, 2023

DEPARTMENT: Water Utilities

TITLE:

Purchase Order with PSI Technologies, Inc. for a Wilo Sewage Pump for the Regional Master Pump Station

SUMMARY:

The Purchase Order with PSI Technologies Inc. authorizes purchasing a Wilo Sewage Pump for the Water Utilities Department at a cost not exceeding \$251,100.00.

BACKGROUND AND JUSTIFICATION:

The Sewer Pumping Division of the Water Utilities Department has the important responsibility of maintaining and supervising the Regional Master Lift Station. This lift station is critical in ensuring the proper functioning of the Regional Sewer Infrastructure by moving untreated sewage through a 14-mile force main to the East Central Wastewater Facility, managing a daily volume of approximately 8 million gallons of sewage.

To ensure the lift station's continued reliability, the Sewer Pumping Division has decided to purchase a new sewage pump from PSI Technologies Inc., the sole supplier of the pumps needed for the original design of the Master Pump Station. The City's Procurement Code, section 2-112 (e) and City Procurement Policy authorize a single source procurement without competition if the single source is the only practical source or in the best interest of the City. The acquisition is subject to a procurement limit of \$251,100.00.

MOTION:

Move to approve/disapprove Purchase Order with PSI Technologies Inc. for a Wilo Sewage Pump for the Water Utilities Department for a cost not to exceed \$251,100.00.

ATTACHMENT(S):

Fiscal Impact Analysis

Quote

Sole Source Documentation

FISCAL IMPACT ANALYSIS

Five-Year Summary of Fiscal Impact:

Fiscal Years	2024	2025	2026	2027	2028
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In-Kind	0	0	0	0	0
Outflows					
Current Appropriation	\$251,100.00	0	0	0	0
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	0	0	0
No. of Addn'l Full-Time Employee Positions					
	0	0	0	0	0

Contract Award - Existing Appropriation	
	Expenditure
Department	Sewer
Division	Pumping Regional
GL Description	Capital Improvement
GL Account Number	426-7490-535.63-15
Project Number	RS2301
Requested Funds	\$250,000.00

Contract Award - Existing Appropriation	
	Expenditure
Department	Sewer
Division	Pumping Regional
GL Description	Capital Improvement
GL Account Number	426-7490-535.63-15
Project Number	RS2202
Requested Funds	\$1,100.00



PSI Technologies Inc

3520 Investment Lane Unit #3
Riviera Beach, Florida 33404

Phone: 561-660-0022 Email: tom@psi-techinc.com

Master Lift Station Pump (SS Impeller) Quotation

Company:	City of Lake Worth	Date:	08-18-2023
Contact:	Judy Love	Quote#:	TK0815-2023
Street:	1820 2 nd Ave. North	Quote Valid:	30 Days
CSZ:	Lake Worth Beach, FL 33460	Terms:	30 Days
Phone:	(561) 586-1719	Shipping:	Included
Email:	jlove@lakeworthbeachfl.gov	Prepared By:	Thomas Kalinski

Quantity	Description	Unit Price	Total Price
1	<p>WILO pump model # FA30.78D-740/FKT 57-8/76GEx-E3.</p> <ul style="list-style-type: none"> • Impeller diameter: 740.00 mm – 12” discharge • duty point - volume flow Q: 5000 - head H: 176 • discharge connection pump: DN300 PN10 • material hydraulic casing: GGG 50 (0.7050) • material impeller: <u>1.4517</u> • material casing wear ring: 1.4462/1.4470 • material impeller ring: 1.4308 • motor description: FKT 57-8/76GEx-E3 • efficiency class: IE3 based on IEC 60034-30 - approval: FM • voltage V: 460 ~3 - rated current: 475.00 a - starting current: 2,710.00 a • rated power: 280.00 KW - frequency: 60 Hz • full load speed: 894 RPM • type of starting: direct - parallel • service factor: 1.15 • max. power input: 300.0 KW • monitoring windings internal: 3 BI-130°+3 BI-140°C • mon.motor/sealing chamber int.: motor chamber • monitoring terminal chamber: terminal chamber • monitoring leakage chamber: float switch for leakage chamb • material motor casing parts: GG 25 (0.6025) material sealing casing: GG 25 (0.6025) • material motor shaft: 1.7225 • cable length: 15.0 m protection hose length: 0.0 m • cable 1: number: 2 • power supply 1: NSSHÖU-J RU 3x95/50 • cable4: number: • 1 control cable: NSSHÖU-J RU 7x1,5 	\$251,100.00	\$251,100.00
	Lead Time = 36 - 40 Weeks		
	Delivery Included		
	Total Cost		\$251,100.00

Accepted By / Date: _____

PSI TECHNOLOGIES INC - STANDARD TERMS OF SALE - PARTS & SERVICE

1. **Applicable Terms.** These terms govern the purchase and sale of the equipment and related services, if any (collectively, "Equipment"), referred to in Seller's purchase order, quotation, proposal or acknowledgment, as the case may be ("Seller's Documentation"). Whether these terms are included in an offer or an acceptance by Seller, such offer or acceptance is conditioned on Buyer's assent to these terms. Seller rejects all additional or different terms in any of Buyer's forms or documents.
2. **Payment.** Buyer shall pay Seller the full purchase price as set forth in Seller's Documentation. Unless Seller's Documentation provides otherwise, freight, storage, insurance and all taxes, duties or other governmental charges relating to the Equipment shall be paid by Buyer. If Seller is required to pay any such charges, Buyer shall immediately reimburse Seller. All payments are due within 30 days after receipt of invoice, unless other terms are agreed upon by both parties. Buyer shall be charged the lower of 1 ½% interest per month or the maximum legal rate on all amounts not received by the due date and shall pay all of Seller's reasonable costs (including attorneys' fees) of collecting amounts due but unpaid. All orders are subject to credit approval.
3. **Delivery.** Delivery of the Equipment shall be in material compliance with the schedule in Seller's Documentation. Unless Seller's Documentation provides otherwise, Delivery terms are F.O.B. Prepaid and Add Destination.
4. **Ownership of Materials.** All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information prepared or disclosed by Seller, and all related intellectual property rights, shall remain Seller's property. Seller grants Buyer a non-exclusive, non-transferable license to use any such material solely for Buyer's use of the Equipment. Buyer shall not disclose any such material to third parties without Seller's prior written consent.
5. **Changes.** Seller shall not implement any changes in the scope of work described in Seller's Documentation unless Buyer and Seller agree in writing to the details of the change and any resulting price, schedule or other contractual modifications. This includes any changes necessitated by a change in applicable law occurring after the effective date of any contract including these terms.
6. **Warranty.** Subject to the following sentence, "Supplier warrants to Purchaser that the Equipment shall materially conform to the description in Supplier's RFP and shall be free from defects in material and workmanship. Supplier shall have no other liability to Purchaser under warranty, tort or any other legal theory. If Purchaser gives Supplier prompt written notice of breach of this warranty within ninety days (90) on electrical supplies, one (1) year on mechanical supplies from delivery, (the "Warranty Period"). Supplier shall, at its sole option and as Purchaser's sole remedy, repair or replace the subject parts or refund the purchase price thereof. If Supplier determines that any claimed breach is not, in fact, covered by this warranty, Purchaser shall pay Supplier its then customary charges for any repair or replacement made by Supplier and there shall be a thirty-five percent (35%) re-stocking charge. Supplier's warranty is conditioned on Purchaser's (a) operating and maintaining the Equipment in accordance with Supplier's instructions, (b) not making any unauthorized repairs or alterations, and (c) not being in default of any payment obligation to Supplier. Supplier's warranty does not cover damage caused by chemical action or abrasive material, misuse or improper installation. THE WARRANTIES SET FORTH IN THIS SECTION ARE SUPPLIER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITATION OF LIABILITY BELOW. SUPPLIER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE."
7. **Indemnity.** Seller shall indemnify, defend and hold Buyer harmless from any claim, cause of action or liability incurred by Buyer as a result of third party claims for personal injury, death or damage to tangible property, to the extent caused by Seller's negligence. Seller shall have the sole authority to direct the defense of and settle any indemnified claim. Seller's indemnification is conditioned on Buyer (a) promptly, within the Warranty Period, notifying Seller of any claim, and (b) providing reasonable cooperation in the defense of any claim.
8. **Force Majeure.** Neither Seller nor Buyer shall have any liability for any breach (except for breach of payment obligations) caused by extreme weather or other act of God, strike or other labor shortage or disturbance, fire, accident, war or civil disturbance, delay of carriers, failure of normal sources of supply, act of government or any other cause beyond such party's reasonable control.
9. **Cancellation.** If Buyer cancels or suspends its order for any reason other than Seller's breach, Buyer shall promptly pay Seller for work performed prior to cancellation or suspension and any other direct costs incurred by Seller as a result of such cancellation or suspension. Certain Products and Materials are "Made to Order" therefore cancellation will not be allowed, and Buyer takes full responsibility of total costs of such items if cancelled
10. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, AND SELLER'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE EQUIPMENT SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE EQUIPMENT. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY.
11. **Miscellaneous.** If these terms are issued in connection with a government contract, they shall be deemed to include those federal acquisition regulations that are required by law to be included. These terms, together with any quotation, purchase order or acknowledgement issued or signed by the Seller, comprise the complete and exclusive statement of the agreement between the parties (the "Agreement") and supersede any terms contained in Buyer's documents, unless separately signed by Seller. No part of the Agreement may be changed or cancelled except by a written document signed by Seller and Buyer. No course of dealing or performance, usage of trade or failure to enforce any term shall be used to modify the Agreement. If any of these terms is unenforceable, such term shall be limited only to the extent necessary to make it enforceable, and all other terms shall remain in full force and effect. Buyer may not assign or permit any other transfer of the Agreement without Seller's prior written consent. The Agreement shall be governed by the laws of the State of Florida without regard to its conflict of law provisions.



WILO USA LLC, 9550 W. Higgins Rd. #300, Rosemont, IL 60018
Wilo USA LLC, 86 Genesis Parkway, Thomasville, GA 31792

06/21/2023

June 21, 2023

Judy Love - City of Lake Worth Beach

1820 2nd Ave North

Lake Worth Beach, FL 33460

561-586-1716

Attn: Judy Love

Subject: Exclusive Distributor

Dear Mrs Love:

Wilo USA LLC, a subsidiary of Wilo SE, is the sole provider in the United States of pumps and mixers manufactured under the Wilo brand.

This letter confirms that PSI Technologies, Inc. is our exclusive sales distributor for Wilo USA LLC. [Previously known as EMU until purchased by Wilo AG in 2003] water & wastewater pump and mixer sales for your served area as of October 1, 2018. This responsibility includes purchase of new products, OEM repair parts, repairs and maintenance.

No other distributor is authorized to sell products, repair/replacement parts, maintenance, repair/replacement services, field services and technical support for Wilo-USA in your served area.

Your contact is:

PSI Technologies, Inc.
Address 3520 Investment Lane, Unit #3
Phone 305-998-1371
www.psi-tech.com

For questions regarding this issue, please contact Harold Adams at Harold.adams@wilo-usa.com or the contact information listed below.

Joseph Jackson
Water Management
Director of Sales
Wilo USA LLC

CC: Harold Adams, SE Sales Manager
Stacy Curti