

GENERAL SERVICES CONTRACT CONTRACT NO. 2334

THE PARTIES TO THIS CONTRACT are the City of Daytona Beach, a Florida municipal corporation (the "CITY"), and U.S. Submergent Technologies, LLC. a Florida Limited Liability Company ("CONTRACTOR").

In consideration of the mutual covenants herein contained, the Parties agree as follows:

Section 1. Scope of Services. CONTRACTOR will provide Utilities Structure Cleaning Services to the CITY as further described in **Exhibit A**, attached hereto and incorporated herein by reference.

Section 2. Services Must Be Authorized in Writing. This Contract, in and of itself, does not require the CONTRACTOR to perform any services or obligate the CITY to pay for any services rendered. No services will be provided under this Contract, and no payment obligation will arise for performance of services, except when specifically authorized by work authorization issued in accordance with the CITY's procurement policies. A work authorization may consist of a contract document, signed by both the CITY and CONTRACTOR; or it may consist of CONTRACTOR's written quotation/proposal and the CITY's written document (such as a CITY Resolution or CITY purchase order) accepting such quotation/proposal. In either instance the work authorization should specifically reference and incorporate this Contract. No work authorization may alter the terms and conditions of this Contract. In case of a conflict with a work authorization this Contract will govern. The work authorization may provide more detailed parameters for the services to be provided, such as deliverables, deadlines, etc., consistent with the provisions of this Contract.

No claim for services furnished by the CONTRACTOR not specifically provided for herein will be honored by the CITY.

If CONTRACTOR is providing services under a work authorization at the time that this Contract expires or terminates for any reason other than CONTRACTOR's material breach, CONTRACTOR will continue to provide such services unless and until the CITY provides CONTRACTOR a notice suspending or terminating such services. If CONTRACTOR is providing services under a work authorization at the time that the CITY terminates this Contract due to CONTRACTOR's material breach, CONTRACTOR will immediately cease performing all services unless the notice of termination specifically provides otherwise.

Section 3. Compensation and Payments; Limitations.

(a) **Fees.** Each work authorization will set forth the Fee to be paid to CONTRACTOR. The Fee will be established as either a not-to-exceed or fixed fee. In either instance the work authorization will include sufficient documentation to describe the basis on which the fee has been calculated.

(1) Except as provided below, the Fees for a work authorization will be based on the Fee Schedule. The Initial Fee Schedule is attached hereto and incorporated herein as **Exhibit B**. The parties may agree to amend the then current Fee Schedule only through formal amendment to this Agreement.

(2) A fixed Fee will be construed to be based on the Fee Schedule only where documentation is included that sets forth a good-faith estimate of the time required by CONTRACTOR to complete the work, at commercially reasonable hourly rates; provided, however, that in such instances neither CONTRACTOR's obligation to perform the work nor the fixed Fee will be altered merely based on the need to spend more or less time than shown on the estimate to complete the work.

(b) **Reimbursement of Expenses.** In addition to the Fee, the work authorization may provide for reimbursement of certain types of expenditures that CONTRACTOR may incur in providing the service required. An expense will be reimbursed only if specifically identified as reimbursable by the work authorization. In addition:

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(1) An expense will be subject to CITY reimbursement only when the CITY determines that the expense is reasonably necessary for CONTRACTOR's performance of the work. If the work authorization does not specifically identify when such expenses are necessary, CONTRACTOR may request the CITY's project representative to approve the expense, in writing, in advance of incurring the expense; and the project representative's written approval will be binding on the CITY as to the determination of such necessity.

(2) Where the expense subject to reimbursement is a cost or expense for goods or services provided to or on behalf of CONTRACTOR by a third party, reimbursement will be limited to the actual costs billed by the third party, without markup by CONTRACTOR.

(3) Where reimbursement is specifically authorized for travel, the following limitations apply:

i. As to use of vehicles, per diem rates for use of owned vehicles will be in accordance with then-current IRS business related mileage rate and in such cases; rental of vehicles will be limited to economy or mid-size sedans and will require prior written approval; and reimbursement for vehicular travel will only be made for travel in excess of 50 miles round trip in any event.

ii. Air fare must be at the coach rate unless the CITY approves otherwise in advance.

iii. As to meals, reimbursement will be limited the lower of the actual cost incurred of the meal or the following amounts unless approved in advance by the CITY:

Breakfast \$ 6.00 includes tip & tax
Lunch \$ 9.00 includes tip & tax
Dinner \$15.00 includes tip & tax

(4) Subcontractor expenses will be subject to the same limitations as those that apply to CONTRACTOR.

In all instances, the work authorization will specifically identify the types of expenses that may be reimbursed, and will specifically state an upset limit, either by category of expense or by total; and if no limit is stated, the upset limit for all permitted reimbursables will not exceed 5% of the fixed or not-to-exceed Fee stated in the work authorization. Any additional conditions set forth in **Exhibit B** will apply.

(c) **The hourly rates** shall remain firm for the first year of the initial term of the agreement. Upon written request from CONTRACTOR no less than thirty (30) days prior to each anniversary date of the initial term of the agreement and any extension years, an annual price increase may be negotiated. It is the intent of the CITY not to allow a price increase greater than the Consumer Price Index for All Consumers (CPI-U) for the latest twelve-month period reported at the time of request. All price increases shall be at the sole discretion of the CITY.

(d) **Limitation on Compensation.** No additional compensation will be due LTANT for any reason.

Section 4. Billing; Manner of Payment. In addition to requirements for payment established by applicable federal, state, or local law including the City Code, payment terms are as follows:

(a) No payment will be due for services performed until CONTRACTOR submits a proper invoice. CONTRACTOR will submit invoices only for services provided and accepted in accordance with the requirements of this Contract. CONTRACTOR may invoice the CITY no more frequently than weekly and no sooner than 7 days after the Effective Date

(b) The CITY will pay based on the unit prices set forth in the Exhibits for work completed by CONTRACTOR during the period billed, provided that such work is reflected on CONTRACTOR's invoice.

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(c) In order to be considered proper, the invoice must include all information and documentation that the CITY may need to verify the accuracy of the invoice and the amount of payment due based on the specific requirements of this Contract. Where payment is for the cost incurred for certain reimbursables (such as for subcontractors or air travel), the invoice must include proof that CONTRACTOR has paid such costs.

(d) The CITY will, within 30 days after receipt of an invoice, notify the CONTRACTOR that the invoice is improper or pay CONTRACTOR the amount due.

Section 5. Standard of Performance. CONTRACTOR's services will at a minimum meet the level of care and skill ordinarily used by members of CONTRACTOR's profession performing the type of services provided herein within the State of Florida.

Section 6. Relationship between Parties. This Contract does not create an employee-employer relationship between the CITY and CONTRACTOR. CONTRACTOR is an independent contractor of the CITY and will be in control of the means and the method in which the requested work is performed. As an independent contractor, CONTRACTOR will be solely responsible for payment of all federal, state and local income tax, and self-employment taxes, arising from this Contract; and CONTRACTOR agrees to indemnify and hold harmless the CITY from any obligations relating to such taxes. The CITY will not make deductions from payments due, for such taxes, or for social security, unemployment insurance, worker's compensation, or other employment or payroll taxes. CONTRACTOR will also be responsible for the performance of CONTRACTOR's subcontractors.

Section 7. Documents. All reports, estimates, logs, original drawings, and other materials furnished, prepared or executed by CONTRACTOR during the term of and in accordance with the provisions of this Contract will be the property of the CITY and delivered to the CITY upon demand or, if no demand has previously been made, upon completion of the particular task for which such materials were prepared, executed, or otherwise required, or upon termination or expiration of this Contract.

Section 8. Public Records.

(a) To the extent applicable, CONTRACTOR will comply with the requirements of Florida Statutes Section 119.0701, which include the following:

(1) Keeping and maintaining public records that the CITY requires for performance of the service provided herein.

(2) Upon the request of the City Clerk of the CITY, (i) providing the City Clerk with a copy of requested public records or (ii) allowing inspection or copying of the records, within a reasonable time after receipt of the City Clerk's request, at a cost that does not exceed the cost provided in Ch. 119, Florida Statutes, or as otherwise provided by law.

(3) Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law until completion of this Contract, and following such completion if CONTRACTOR fails to transfer such records to the CITY.

(4) Upon completion of this Contract, keep and maintain public records required by the CITY to perform the service. CONTRACTOR will meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY upon request from the City Clerk, in a format that is compatible with the CITY's information technology systems.

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, CONTRACTOR MUST CONTACT THE CITY CLERK,
WHOSE CONTACT INFORMATION IS AS FOLLOWS:

(Phone)	386 671-8023
(Email)	clerk@codb.us
(Address)	301 S. Ridgewood Avenue Daytona Beach, FL 32114

(b) Nothing herein will be deemed to waive CONTRACTOR's obligation to comply with Section 119.0701(3)(a), Florida Statutes, as amended by Chapter 2016-20, Laws of Florida (2016).

Section 9. Effective Date and Term.

The Effective Date of this Contract is on the day the last party signs it. The Term of this Contract is three (3) years, commencing on the Effective Date. The CITY will have the option to renew this Contract for up to two (2) terms of one (1) year each, by providing CONTRACTOR written notice. Such notice must be provided at least 30 days before the end of the current Term, unless waived by CONTRACTOR.

Section 10. Termination of Contract.

(a) The CITY may by written notice to CONTRACTOR terminate this Contract, in whole or in part, at any time, either for the CITY's convenience or because of the failure of the CONTRACTOR to fulfill its contractual obligations.

(1) Before terminating for convenience, CITY must provide CONTRACTOR at least 30 day's advance notice of termination. This Contract will terminate automatically and without need for further notice upon the expiration of the notice period.

(2) Except as provided in Section 10(a)(3), before terminating due to CONTRACTOR's material breach of its contractual obligations, CITY must provide CONTRACTOR prior written notice, specifying the breach and demanding CONTRACTOR remedy the breach within 10 days of the notice, or within such longer period as may be reasonably required if the nature of the breach is that it cannot be remedied within 10 days of notice. This Contract will terminate automatically and without need for further notice if CONTRACTOR fails to remedy the material breach within the period described in the CITY's notice of breach.

(3) The CITY may terminate this Contract upon CONTRACTOR's breach without providing CONTRACTOR an opportunity to remedy the breach as referenced immediately above, if CONTRACTOR or any of CONTRACTOR'S personnel, in connection with the services or rights provided herein, commit a criminal act or engage in activity that poses a material risk of injury to persons or damage to property. Such termination will be effective immediately upon providing CONTRACTOR written notice.

(b) If the termination is for convenience, CONTRACTOR will be paid compensation for authorized services performed to the date of termination. If termination is due to CONTRACTOR's material breach, the CITY reserves all rights and remedies it may have under law due to such breach. Among other things, the CITY may take over the work and prosecute the same to completion by other agreements or otherwise; and in such case, the CONTRACTOR will be liable to the CITY for all reasonable additional costs occasioned to the CITY thereby.

(c) If after notice of termination for the CONTRACTOR's failure to fulfill contractual obligations, it is judicially determined by a court of law that the CONTRACTOR had not so failed, the termination will be conclusively deemed to have been affected for the CITY's convenience. In such event, adjustment in payment to CONTRACTOR will be made as provided in Section 10(b) for a termination for convenience.

(d) The rights and remedies of CITY provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Contract.

Section 11. Suspension of Services. The CITY may suspend CONTRACTOR's services if the notice of material breach provided pursuant to Section 10(a)(2) so directs. The CITY may also suspend CONTRACTOR's services in lieu of termination, under the conditions set forth in Section 10(a)(3), by providing CONTRACTOR with written notice of suspension. CONTRACTOR will suspend activities immediately upon receipt thereof; and in such instance CONTRACTOR's rights to provide services referenced herein will also automatically be suspended for the period of such suspension.

Section 12. Indemnification. The Contractor hereby indemnifies and holds harmless the City from and against, all liabilities, damages, losses, and costs, including but not limited to reasonable attorneys' fees, arising out of or resulting from the Work provided that the liabilities, damages, losses, and costs are caused in whole or in part by any negligence, recklessness, or intentional wrongful misconduct of the Contractor, any subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Contract or otherwise.

Section 13. Insurance. CONTRACTOR will provide and maintain at CONTRACTOR's own expense, insurance of the kinds of coverage and in the amounts set forth in this Section. All such insurance will be primary and non-contributory with the CITY's own insurance. In the event any request for the performance of services presents exposure to the CITY not covered by the requirements set forth below, the CITY reserves the right to add insurance requirements that will cover such an exposure.

(a) **Coverage and Amounts.**

(1) **Workers Compensation Insurance** as required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of CONTRACTOR, employed at the site of the service or in any way connected with the work, which is the subject of this service. The insurance required by this provision will comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage.

(2) **Liability Insurance**, including (i) **Commercial General Liability coverage** for operations, independent contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring CONTRACTOR and any other interests, including but not limited to any associated or subsidiary companies involved in the work; and (ii) **Automobile Liability Insurance**, which will insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the CONTRACTOR in the performance of this Contract.

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE CITY AS ADDITIONAL INSURED. CONTRACTOR'S Commercial General Liability insurance policy shall provide coverage to CONTRACTOR, and CITY when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent Contractors, Property of CITY in Contractor's Care, Custody or Control or Property of CITY on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds). When CITY is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used to provide such Additional Insured status.

The limit of liability for each policy will be a combined single limit for bodily injury and

property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate will be in an amount of no less than \$2,000,000. The Risk Manager may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.

(3) **Contractors Pollution Liability** in the amount of \$1,000,000 Per Loss, \$2,000,000 Annual Aggregate. Such coverage will include bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; coverage for losses caused by pollution conditions that arise from the operations of the contractor including transportation and spillage. Coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date equal to at least the first date of this Contract and with a three-year reporting option beyond the Annual expiration date of the policy.

Unless specifically waived hereafter in writing by the Risk Manager, CONTRACTOR agrees that the Insurer will waive its rights of subrogation, if any, against the CITY on each of the types of required insurance coverage listed above Section 13.

(b) **Proof of Insurance.** CONTRACTOR will furnish proof of insurance acceptable to the CITY prior to or at the time of execution of this Contract. CONTRACTOR will not commence work until all proof of such insurance has been filed with and approved by the CITY. CONTRACTOR will furnish evidence of all required insurance in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, and the expiration dates.

If requested by the CITY, CONTRACTOR will furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the CITY.

(c) **Cancellation; Replacement Required.** CONTRACTOR will file replacement certificates 30 days prior to expiration or termination of the required insurance occurring prior to the acceptance of the work by the CITY. If a required policy is canceled without CONTRACTOR's prior knowledge CONTRACTOR will immediately notify the CITY immediately upon becoming aware that a required insurance coverage has been canceled for any reason, and promptly replace the canceled policy. The CITY expressly reserves the right to replace the canceled policy at CONTRACTOR's expense if CONTRACTOR fails to do so.

(d) **Termination of Insurance.** CONTRACTOR may not cancel the insurance required by this Contract until the work is completed, accepted by the CITY and CONTRACTOR has received written notification from the Risk Manager that CONTRACTOR may cancel the insurance required by this Contract and the date upon which the insurance may be canceled. The Risk Management Division of the CITY will provide such written notification at the request of CONTRACTOR if the request is made no earlier than two weeks before the work is to be completed.

(e) **Liabilities Unaffected.** CONTRACTOR's liabilities under this Contract will survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Similarly, CONTRACTOR's liabilities under this Contract will not be limited to the extent of the existence of any exclusions or limitations in insurance coverage, or by CONTRACTOR's failure to obtain insurance coverage.

CONTRACTOR will not be relieved from responsibility to provide required insurance by any failure of the CITY to demand such coverage, or by CITY's approval of a policy submitted by CONTRACTOR that does not meet the requirements of this Contract.

(f) **Risk Manager.** All references to the Risk Manager will be deemed to include the Risk Manager's designee.

Section 14. Bonds. There will be no bonding required for this project.

Section 15. Notice. Unless otherwise expressly agreed herein, all notices, requests, and demands to or upon the Parties will be delivered by hand, delivered by a courier service, provided to a nationally recognized delivery service for overnight delivery, transmitted to a receiving fax machine followed by hard copy within two days, or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the addresses set forth herein:

To the CITY:

ATTN: Eric Smith, Deputy Utilities Director
The City of Daytona Beach
125 Basin St.
Daytona Beach, FL 32114
PHONE: 386.671-8829
EMAIL: smitheric@codb.us

To CONTRACTOR:

ATTN: Matt Nestor
2201 Cantu Ct, Ste 116
Sarasota, FL 34232
PHONE: 904.477.3902
EMAIL: mnestor@ussubmergent.com

provided, however, that either Party may change the person or address designated for receipt of the Party's notices, by providing written notice to the other Party.

Section 16. Personnel.

(a) CONTRACTOR represents that CONTRACTOR has or will secure at CONTRACTOR's own expense all personnel required in performing the services under this Contract. Such personnel will not be employees of or have any contractual relationship with the CITY.

All personnel engaged in the work will be fully qualified and will be authorized under state and local law to perform such services.

(b) **E-Verify.** - The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By executing this Contract, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of section 448.095, F.S., and maintain a copy of such affidavit for the duration of the Contract.

This section serves as notice to the Contractor regarding the requirements of section 448.095, F.S., specifically sub-paragraph (2)(c)1, and the City's obligation to terminate the Contract if it has a good faith belief that the Contractor has knowingly violated section 448.09(1), F.S. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one year after the date of such termination. The City reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the City develop a good faith belief that the subcontractor has knowingly violated section 448.095(1), F.S.

Section 17. CITY's Responsibilities. The CITY agrees to make available for review and use by the CONTRACTOR, reports, studies, and data relating to the services required. The CITY will establish a project manager to meet periodically with the CONTRACTOR to facilitate coordination and ensure expeditious review of work product.

Section 18. Limitation on Waivers. Neither the CITY's review, approval, or acceptance of, or payment for, any of the services provided by CONTRACTOR, will be construed to operate as a waiver of the CITY's rights under this Contract. CONTRACTOR will be and always remain liable to the CITY in accordance with applicable law for any and all damages to the CITY caused by the CONTRACTOR's negligent or wrongful provision of any of the services furnished under this Contract.

Failure of the CITY to exercise any right or option arising out of a breach of this Contract will not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach. Furthermore, the failure of the CITY at any time to insist upon strict performance of any condition, promise, agreement or understanding set forth herein will not be construed as a waiver or relinquishment of the CITY's right to insist upon strict performance of the same condition, promise, agreement or understanding at a future time.

Section 19. Dispute Resolution. If a dispute exists concerning this Contract, the Parties agree to use the following procedure prior to pursuing any judicial remedies.

(a) **Negotiations.** A Party will request in writing that a meeting be held between representatives of each Party within 14 calendar days of the request or such later date that the Parties may agree to. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. The purpose of this meeting is to negotiate in the matters constituting the dispute in good faith. The Parties may mutually agree in writing to waive this step and proceed directly to mediation as described below.

(b) **Non-Binding Mediation.** Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described in Subsection (a) proves unsuccessful or the Parties mutually waive the subsection (a) procedure, the Parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all Parties for the exchange of points of view and (iii) separate meetings between the mediator and each Party to the dispute for the formulation of resolution alternatives. The Parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist with resolution of the dispute. The Parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Contract prevents the Parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a contract interpretation expert. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization.

If the Parties fail to reach a resolution of the dispute through mediation, then the Parties are released to pursue any judicial remedies available to them.

Section 20. General Terms and Conditions.

(a) **Amendments.** Except as otherwise provided herein, no change or modification of this Contract will be valid unless the same is in writing and signed by both Parties.

(b) **Assignments and Subcontracting.** No assignment or subcontracting will be permitted without the CITY's written approval.

(c) **Compliance with Laws and Regulations.** In providing all services pursuant to this Contract, CONTRACTOR will abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations will constitute a material breach of this Contract and will entitle the CITY to terminate this Contract immediately upon delivery of written notice of termination to the CONTRACTOR.

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LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

(m) **Authority to Bind CONTRACTOR.** The undersigned representative of CONTRACTOR represents and warrants that he or she is fully authorized to bind CONTRACTOR to the terms and conditions of this Contract.

(n) **Incorporation of ITB and Bid.** The CITY's Invitation to Bid 2334, and the CONTRACTOR's responsive proposal are incorporated herein by reference as **Composite Exhibit C**. **Composite Exhibit C** is not attached but will remain on file with the CITY's Purchasing Agent and will be available upon request made to the City Clerk. In case of conflicts between the ITB and Proposal, the ITB will govern. In case of conflicts between **Composite Exhibit C** and other provisions of this Contract, including **Exhibits A and B**, this Contract will govern.

(o) **Integration.** This Contract represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by either Party except as expressly set forth herein, or in other contemporaneous written agreements.

IN WITNESS WHEREOF, the Parties through their undersigned representatives have caused this Contract to be executed in duplicate original.

THE CITY OF DAYTONA BEACH

By: _____

Derrick L. Henry
Derrick L. Henry, Mayor

Date: _____

Attest: _____

Letitia LaMagna
Letitia LaMagna, City Clerk

Approved as to legal form:

By: _____

Ben Gross
Ben Gross, City Attorney

CONTRACTOR

By: _____

Printed Name: Denver J Stutler, Jr

Title: CEO

Date: MAY 19, 2023

(d) **Truth in Negotiations Certificate.** CONTRACTOR hereby certifies that the wages and other factual unit costs supporting the compensation herein are accurate, complete, and current at the time of this Contract.

(e) **No Third Party Beneficiaries.** There are no third party beneficiaries of CONTRACTOR's services under this Contract.

(f) **Contingency Fee.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(g) **Nondiscrimination.** CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their sex, race, creed, color, or national origin. Further, CONTRACTOR agrees to comply with all local, state, and federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical or mental impairment, or age. In particular, CONTRACTOR agrees to comply with the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable executive orders including, but not limited to, Executive Order No. 11246.

(h) **Principles in Construing Contract.** This Contract will be governed by and construed in accordance with the laws of the State of Florida. Captions and paragraph headings used herein are for convenience only, are not a part of this Contract and will not be deemed to limit or alter any provisions hereof or to be relevant in construing this Contract. The use of any gender herein will be deemed to be or include the other genders, and the use of the singular herein will be deemed to be or include the plural (and vice versa), wherever appropriate. If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding will only effect such word, phrase, clause, sentence or provision, and such finding will not affect the remaining portions of this Contract; this being the intent of the Parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

(i) **Venue.** The exclusive venue for any litigation arising out of this Contract will be Volusia County, Florida if in state court, or the U.S. District Court, Middle District of Florida if in federal court.

(j) **Litigation Costs.** Except where specifically provided herein, in case of litigation between the Parties concerning this Contract, each party will bear all of its litigation costs, including attorney's fees.

(k) **Force Majeure.** A force majeure event is an act of God or of the public enemy, riots, civil commotion, war, acts of government or government immobility (whether federal, state, or local) fire, flood, epidemic, quarantine restriction, strike, freight embargo, or unusually severe weather; provided, however, that no event or occurrence will be deemed to be a force majeure event unless the failure to perform is beyond the control and without any fault or negligence of the Party charged with performing or that Party's officers, employees, or agents. Whenever this Contract imposes a deadline for performing upon a Party, the deadline will be extended by one day for each day that a Force Majeure event prevents the Party from performing; provided, however, that the Party charged with performing and claiming delay due to a Force Majeure event will promptly notify the other Party of the Event and will use its best efforts to minimize any resulting delay.

(l) **Jury Trial Waived.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS CONTRACT, OR ANY DEALINGS BETWEEN THE PARTIES. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY DISPUTES BETWEEN THE PARTIES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER, INCLUDING WITHOUT

Composite Exhibit C is not attached. It will be kept on file with the Purchasing Agent, and will be made available upon request made to the City Clerk

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EXHIBIT A

2334ITB UTILITIES STRUCTURE CLEANING SERVICES

SCOPE OF SERVICES

GENERAL

Contractor will provide emergency and non-emergency sediment and debris removal and disposal services on an as-needed basis. The use of a closed loop system that pumps the solids to a sealed, pressurized debris collection container which decants the liquid back into the pipeline or structure without emitting significant noise and odor is safer and more efficient for large diameter structures. The Contractor will be responsible for proper removal, hauling, and disposal of sediment and debris collected from various structures anywhere in the City as required for each project assignment.

DETAILS

- The Contractor shall furnish all labor, materials and equipment necessary for properly cleaning various size structures. Types of structures shall include both Sanitary Sewer and Stormwater systems. Structures shall be cleaned using hydraulically propelled, and/or high velocity water jet sewer cleaning equipment capable of removing sand and/or debris in surcharged conditions. Structures shall be defined as a tank, basin, pond and other types of structures including, but not limited to channels, equalization tanks, clarifiers, aeration basins, oxidation ditches, anoxic tanks, filter media bays, contact basins, digesters, headworks, grit chambers, containment units, thermal process tanks, package plants, reject ponds, lift stations, backwash basins, splitter boxes, baffle boxes, manholes, sumps or sediment traps.
- Debris shall be defined as sand, silt, solids, rags, sludge, rocks, bricks, loose gaskets, pieces of broken pipe and other foreign objects encountered in structures. The cleaning process shall be able to remove all debris from each structure that is identified by the City. The selection of cleaning equipment and method shall be based on the structure type, amounts of debris anticipated, and the known condition of the structure and will be subject to the City's approval for the method used and the applicable pay item. All cleaning equipment and devices shall be operated by personnel who are properly trained and qualified in using that type of equipment or device.
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- Satisfactory precautions shall be taken to protect structures, equipment and adjacent facilities from damage that might be caused by improper use of the cleaning equipment or method. Any damage resulting from Contractor negligence shall be repaired by Contractor at no cost to and to the satisfaction of the City.

EQUIPMENT

All cleaning equipment shall include an extraction device that removes all solids and decants water back into the structure without the release of debris. The cleaning equipment shall have an approximately 49-foot boom crane with telescoping tubes and shall have a downhole system that enables the removal of debris from deep or submerged conditions. The equipment shall have a minimum 10 cubic yard debris tank, capable to be pressurized for debris and water separation. If the site conditions are such that large debris amounts are anticipated, then the equipment shall be capable to operate in conjunction with pressurized roll off containers.

The cleaning equipment shall include a debris extraction device that does not release particulate matter into the atmosphere and does not allow the debris being removed to pass downstream from the access point or back into the system being cleaned. The cleaning equipment shall be able to operate without the need of bypass pumping during the cleaning operations.

High Velocity Water Jet Cleaning:

- The jetting equipment must be specifically designed and controlled to thoroughly clean the structure without damage. A working pressure gauge shall be used on the discharge of all high

pressure water pumps. The jet nozzles shall be adjustable from an upward angle used to clean loose debris underneath the top of the structure, to a downward angle in order to clean the bottom or sides depending on the structure needs and corrosion conditions. The pressure and flow rate shall also be adjustable and controlled to an appropriate level for the cleaning requirements, so as to prevent further damage to the structure.

- The primary water pump should be rated at least 140 gpm at 2000 psi and have additional capacity as needed to perform the work. To take full advantage of the Closed-Loop capabilities and increase production, the Closed-Loop system equipment shall have a hose reel and hose that is capable of cleaning at least 1000 LF from one access point.

Hydraulically Propelled Cleaning Equipment:

- The hydraulically propelled equipment must be specifically designed to remove large amounts of debris and sediment under surcharged conditions. Hydraulically propelled equipment must be capable of properly functioning without the use of additional water.

Debris Collection:

- The debris collection system shall include both vacuum and pumping capability with a sealed containment unit that must be able to safely transport sanitary.
- sewer or storm system debris to a legal disposal site without leakage or emitting any significant amount of odor. The system must have the capacity to keep up with the cleaning operation and be able to handle a high percentage of solids. The debris collection system shall be capable of capturing 99% of the solids and debris and decanting only water back into the collection system downstream of the debris collection point or into a discharge point designated and approved by the City.
- The debris collection system shall have a telescoping boom and tube system that is capable of reaching approximately 49 feet from the center of the debris collection vehicle into the structure for effective placement of the vacuum/pumping tube.
- Sand and sediment collected during operations must be able to pass the paint filter dry test to be eligible to collect pay items for debris disposal. All sanitary sewage or wastewater treatment plant structures will be eligible for the pay item for Disposal of Sanitary Sewer Solid Waste Material. All Stormwater systems or structures will be eligible for the pay item for Disposal of Stormwater System Solid Waste Material.

EXECUTION

- All equipment and devices shall be operated by experienced operators so that cleaning process is efficient and effective, and the pipe or structure is not damaged during the cleaning process. The cleaning process shall include a multi-step cleaning procedure until the entire structure is clean and has been approved by the City Representative. The Contractor shall only use biodegradable materials which will not create hazards to health or property or affect stormwater receiving bodies or sewage treatment plant processes.
- The jetting action from the nozzle will propel the cleaning head to a chosen point (depending on the amount of sediment) to loosen the sludge, sediment and debris. The operator shall retract the nozzle to the access point, where a submersible pump or vacuum suction line will transport the collected solids and water to the debris collection container. The operator will extend the nozzle to further points in the structure and repeat this procedure until the furthest point has been reached and is clean of all sediment and debris. The Contractor is responsible to use whatever means necessary to remove all sediment and debris from the structure or system without damage to the facility. The debris collection system shall separate the solids and return only liquid back into the system or structure.
- The Contractor shall be responsible for obtaining a water meter and pay all related costs as necessary. All expenses shall be considered incidental to the cleaning of the structure. No fire hydrant shall be obstructed or used when there is a fire in the area.
- In addition to the requirements herein, the Contractor shall maintain a safe and clean work area so as to comply with Federal, State, and local environmental and anti-pollution laws, ordinances, codes, and regulations when cleaning structures and disposing of waste debris. The Contractor

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shall also keep the work area and surrounding area free of accumulations of dirt, dust, waste materials, rubbish and debris. Suitable containers for storage of waste materials, debris and rubbish shall be provided by the contractor until time of disposal. It is the sole responsibility of the Contractor to secure a licensed legal disposal site for the disposal of the debris material. Under no circumstances shall sewage or solids removed from a sanitary sewer system be spilled or dumped in streets, ditches, catch basins, or storm drainage systems.

- The Contractor shall be required to have all materials, water source, equipment, and labor necessary to complete the work on the jobsite prior to beginning the cleaning process and starting the clock regarding payment. Partial days of work will be prorated for payment if a minimum of 8 hours of work has not been performed during a day.

POLLUTION AND NOISE CONTROL

Contractor shall minimize noise, vibration and pollution caused by their activities, and control the removal and disposal of solid and hazardous wastes according to the following Performance Criteria:

- Noise Control shall be in accordance with Federal, State, and City regulations. The equipment's noise level shall not exceed 75 Db measured at a distance of 50 feet, during normal operating conditions. The Contractor shall comply with all City Ordinances and regulations dealing with noise abatement.
- Vibration Control shall be in accordance with Federal, State, and City regulations. It is the Contractor's sole responsibility to prevent damage from vibrations to adjacent structures and property.
- Air Pollution Control shall be in accordance with Federal, State, and City regulations.
- Fugitive Dust:
 - Do not cause or allow the emissions of from any transport, handling, construction or storage activity to remain visible in the atmosphere beyond the property line of the emission source.
 - Take precautions to minimize dust emissions from operations involving demolition, excavation, grading, clearing of land and disposal of solid waste.
 - Do not cause or allow particulate matter to exceed 100 mg/m³ when determined as the difference between upwind and downwind samples collected on high volume samples at the property line for a minimum of five hours.
 - Take precautions to prevent visible particulate matter from being deposited upon public roadways as a direct result of construction or hauling operations. Precautions shall include the removal of particulate matter from equipment before movement to paved streets, or the prompt removal of material from paved streets onto which such material has been deposited.
 - The cleaning equipment shall include a debris extraction device that does not release particulate matter into the atmosphere.
- Solid and Hazardous Waste
- Solid and Hazardous Waste Control shall be in accordance with Federal, State, and City regulations. The Contractor is solely responsible for the disposal of any waste that is generated by the Contractor's operation using a licensed transporter authorized by FDEP.

Execution: In order to implement these regulations, the Contractor shall use the following procedures and techniques:

- Dust Control
 - Cover loads of materials, debris and soil transported from construction sites.
 - Daily water down and sweep streets which have heavy volumes of construction vehicles carrying debris and excavated materials.
 - Establish regular cycles and locations for washing trucks which haul soil from the site.
 - Water down construction sites as needed to suppress dust, during handling of excavation soil or debris or during demolition.
 - Burning of wastes on site is prohibited. Remove scrap and waste material and dispose of in accordance with laws, codes, regulations, ordinances and permits.
 - Use construction equipment which has been designed and equipped to prevent or control air pollution in conformance with the regulations of the EPA, state and local

authorities. The Contractor shall have available evidence of such design and equipment shall be maintained and made available for inspection by the City Representative.

- Establish and maintain records of the routine maintenance program for internal combustion engine powered vehicles and equipment used on the project. These records shall be held available for inspection by the City Representative.

Solid and Hazardous Waste Disposal:

- Solid wastes may be disposed of in a number of ways, including legal land spreading, controlled incineration, public or private dump sites, either free or for a fee. The method of disposal is restricted according to the classification of the waste material by the CFR 40 – 190 to 399, and by local requirements.
- Hazardous wastes are wastes listed in 40 CFR Part 261, Subpart D as hazardous or they are wastes characterized in 40 CFR Part 261, Subpart C as hazardous by exhibiting one of four characteristics: ignitability (i.e., an oxidizer or flash point < 140°F), corrosivity (i.e., Ph < 2 or > 12.5), reactivity, or toxicity.
- A hazardous waste determination must be made of any waste material. If the material is hazardous, then it must be recycled, treated, stored, or disposed at a Hazardous Waste facility authorized by DEP, EPA or another state. Hazardous Waste cannot be disposed on or in the ground, or in local landfills, septic tanks, or injection wells. Regardless of quantity, the generator of Hazardous Waste is ultimately responsible for the waste, and can be held liable for improper management of Hazardous Waste even though it may have been sent to an authorized Hazardous Waste management facility using a licensed transporter authorized by DEP.
- Haul routes for transporting sediment and debris solids or hazardous wastes are subject to the approval of the City Representative.

Exhibit B



2334ITB Utilities Structure Cleaning Services - Fee Schedule

Line Item	Description	Unit of Measure	Unit Cost	Extended Cost
1	MOBILIZATION AND DEMOBILIZATION NON-EMERGENCY BASIS	LS	\$6,500.00	\$6,500.00
2	MOBILIZATION AND DEMOBILIZATION EMERGENCY BASIS	LS	\$9,500.00	\$9,500.00
3	BASELINE SERVICE EQUIPMENT AND QUALIFIED CREW (VAC ONLY)	DAYS	\$4,250.00	\$4,250.00
4	ADDITIONAL FEATURE-JETTING (AS REQUIRED)	DAYS	\$1,200.00	\$1,200.00
5	ADDITIONAL FEATURE-49' KNUCKLE BOOM CRANE WITH TELESCOPING TUBES	DAYS	\$2,000.00	\$2,000.00
6	ADDITIONAL FEATURE-DOWNHOLE PUMPING WET SYSTEM CLEANING	DAYS	\$2,500.00	\$2,500.00
7	ADDITIONAL FEATURE-CONFINED SPACE ENTRY WITH CERTIFIED CREW	DAYS	\$3,000.00	\$3,000.00
8	ADDITIONAL FEATURE-CONFINED SPACE ENTRY WITH CERTIFIED CREW (SUPPLIED AIR REQUIRED)	DAYS	\$4,000.00	\$4,000.00
9	ADDITIONAL FEATURE-HEAVY DEBRIS JETTING (GREATER THAN 500GPM)	DAYS	\$2,500.00	\$2,500.00
10	ADDITIONAL FEATURE- ONSITE DISPOSAL USING AUXILLARY PRESSURE BOX CONTAINMENT SYSTEM	DAYS	\$1,200.00	\$1,200.00
11	ADDITIONAL FEATURE - OFFSITE DISPOSAL USING AUXILLARY PRESSURE BOX CONTAINMENT SYSTEM.	DAYS	\$2,000.00	\$2,000.00
12	DISPOSAL OF SANITARY SEWER SOLID WASTE MATERIAL OFFSITE (INCLUDES TRANSPORTATION)	TON	\$125.00	\$125.00
13	DISPOSAL OF SANITARY SEWER SOLID WASTE MATERIAL AT CITY FACILITY 3651 LPGV BLVD (INCLUDES TRANSPORTATION)	TON	\$35.00	\$35.00

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