

PROJECT DEVELOPMENT AGREEMENT

THIS IS AN AGREEMENT, dated the 17th day of June, 2022, by and between:

THE CITY OF COOPER CITY, a municipal corporation of the State of Florida with a business address of **9090 S.W. 50th Place, Cooper City, Florida 33328** (hereinafter referred to as the "CITY")

and

ENERGY SYSTEMS GROUP, LLC, an Indiana Limited Liability Company, authorized to do business in the State of Florida, with a business address of **9877 Eastgate Court, Newburgh, IN 47630**, (hereinafter referred to as the "CONSULTANT"). CITY and CONSULTANT may hereinafter be referred to collectively as the "Parties."

WITNESSETH:

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONSULTANT agree as follows:

ARTICLE 1
PREAMBLE

In order to establish the background, context and form of reference for this Agreement and to generally express the objectives, and intentions of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

1.1 On **August 12, 2021**, the CITY advertised its notice to bidders of the CITY's desire to hire a firm to provide **Energy Saving Performance Contractors Services** pursuant to §489.145, Florida Statutes as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof, for the said bid entitled:

RFQ 2022-1-UTL
ENERGY SAVINGS PERFORMANCE CONTRACTORS SERVICES.
(referred to herein as the "RFQ")

1.2 A Selection Committee was convened to review and rank the submittals. The Committee ranked the submittals and the City Manager authorized staff to negotiate an agreement with the top-ranked firm.

1.3 Negotiations pertaining to the services to be performed by the CONSULTANT were undertaken and this Agreement incorporates the results of such negotiation.

ARTICLE 2

SERVICES AND RESPONSIBILITIES

2.1 CONSULTANT hereby agrees to perform Scope of Services/Scope of Work for this Project Development Agreement (referred to as the "Agreement" or "PDA") defined in the Exhibit "C" attached hereto and made a part of this PDA, in accordance with the general requirements described in "RFQ 2022-1-UTL," attached hereto and made a part hereof as **Exhibit "A,"** CONSULTANT'S response thereto, attached hereto and made a part hereof as **Composite Exhibit "B"**. CONSULTANT agrees to do everything required by this Agreement, the Request for Qualifications 2022-1-UTL and Addenda to this Agreement which have been signed by both Parties. In the event of any conflicts between this Agreement, Exhibit A, Exhibit B, and Exhibit C, this terms of this Agreement and the scope in Exhibit C shall prevail, followed by Exhibit A and Exhibit B.

2.2 The Parties enter into this agreement to have the CONSULTANT prepare a report that identifies and summarizes the costs associated with the efficiencies including, but not limited to, energy, water, wastewater and conservation measures, capital improvements, and energy-related operational cost-saving measures, and the replacement of manually read water meters (known collectively as "ECMs"¹) and provides an estimate of the amount of the cost savings and enhanced revenue as required by §489.145, Florida Statutes for all City facilities and operations identified in **Exhibit "C."** The intent is for the report include efficiencies including, but not limited to, energy, water, wastewater and conservation measures, energy-related operational cost-saving measures, capital improvements, and services authorized by §489.145, Florida Statutes, which includes but is not limited to the identification of savings sources, enhancing revenue, and obtaining an energy/operational savings guarantee. The cost of the PDA shall be deferred through the Project Development phase and will be included in the cost of the project and paid in the first construction draw of the resultant Construction Phase contract.

2.3 The CITY's obligation to compensate the CONSULTANT shall be contingent on the projection of energy, water, wastewater and conservation measures' cost savings, or enhanced revenue, to the CITY being equal to or greater than the total projected costs of the design and installation of the ECMs improvements identified in the report.

2.3.1 The PDA shall provide a detailed analysis of the cost savings realized by the City for each ECM not to exceed a twenty (20) year period.

2.3.2 The PDA shall consider and provide a detailed analysis on how each ECM shall be calculated and shall only consider the cost savings provided by the life span of the initial ECM installation.

¹ ECMs shall include Energy, Operations and Capital Budget (EOCB) related capital improvements as described by Request for Qualifications 2022-1-UTL.

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2.4 The CITY and CONSULTANT may enter into a separate agreement for the construction or implementation of the ECM improvements identified during the Project Development Phase. CONSULTANT acknowledges and agrees that the CITY may, at its sole option, selectively determine which, if any, recommendations provided within the Project Development Phase are constructed or implemented.

2.5 CONSULTANT shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.

2.6 CONSULTANT hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONSULTANT, that CONSULTANT has the professional expertise, experience and manpower to perform the services to be provided by CONSULTANT pursuant to the terms of this Agreement.

2.7 CONSULTANT assumes professional and technical responsibility for performance of its services to be provided hereunder in accordance with recognized professional standards of good engineering practice. If within one year following completion of its services, such services fail to meet the aforesaid standards, and the CITY promptly advises CONSULTANT thereof in writing, CONSULTANT agrees to re-perform such deficient services without charge to the CITY.

2.8 CONSULTANT shall not utilize the services of any sub-consultant without the prior written approval of CITY.

ARTICLE 3
TERM AND TERMINATION

3.1 The CONSULTANT shall complete the Scope of Services/Scope of Work related to the Project Development Phase provided in the within ONE HUNDRED AND TWENTY (120) days following the execution of this Agreement.

3.2 This Agreement may be terminated by either party for cause, or by the CITY for convenience, upon fifteen (15) days written notice. In the event that the CONSULTANT determines that it is not feasible to develop a project meeting the requirements of this Agreement, CONSULTANT shall provide notice of termination to the CITY and shall not receive any compensation whatsoever under this Agreement. All finished documents, data, studies, plans, surveys, and reports prepared by CONSULTANT for the CITY shall become the property of CITY and shall be delivered by CONSULTANT to CITY immediately upon termination.

3.3 SCRUTINIZED COMPANIES. CONSULTANT certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, CONSULTANT agrees to observe the requirements of Section 287.135, F.S., for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, F.S., the CITY may immediately terminate this Agreement for cause if the CONSULTANT, its affiliates, or its subConsultants are found to have submitted a false certification; or if the CONSULTANT,

its affiliates, or its subConsultants are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

ARTICLE 4
COMPENSATION AND METHOD OF PAYMENT

4.1 CONSULTANTS's costs and expenses in developing the project shall be deferred through the Project Development phase as set forth in Exhibit "A," and will be included in the cost of the project and paid in the first construction draw of the resultant Construction Phase contract. In the event the City elects not to proceed, for any reason, with the negotiation of a Guaranteed Energy, Water and Wastewater Performance Savings Contract ("GPSC") after the completion of the Project Development phase, the City will compensate the CONSULTANT for all expenses and services provided in this Agreement in an amount that shall not exceed a total cost of SEVENTY EIGHT THOUSAND (\$78,000.00) DOLLARS. In the event the City terminates this Agreement for its convenience, the CITY shall pay CONTRACTOR all documented costs and expenses as determined by the City incurred by CONTRACTOR through and including the date of termination.

4.2 CITY will make its best efforts to pay CONSULTANT within thirty (30) days of receipt of proper invoice the total shown to be due on such invoice.

4.3 All payments shall be governed by the Florida Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

4.4 Payment, if necessary, will be made to CONSULTANT at:

ENERGY SYSTEMS GROUP, LLC
9877 Eastgate Court
Newburgh, IN 47630

ARTICLE 5
CHANGES TO SCOPE OF WORK AND ADDITIONAL WORK

5.1 CITY or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services, as described in the Exhibits to be provided under this Agreement as described in Article 2 of this Agreement. Such changes or additional services must be in accordance with the provisions of the Code of Ordinances of the CITY, and must be contained in a written amendment, executed by the Parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work.

5.2 In no event will the CONSULTANT be compensated for any work that has not been described in a separate written agreement executed by the parties hereto.

ARTICLE 6
INDEMNIFICATION

6.1 CONSULTANT shall indemnify and hold harmless and defend the CITY, its trustees, elected and appointed officials, agents, servants and employees from and against any and all liability, claims, demands, or causes of action of whatsoever kind or nature sustained by the CITY or any third party to the extent arising out of, or by reason of, or resulting from the error, omission, or negligent acts of CONSULTANT, its agents, servants, employees, or subconsultants in the performance under this Agreement, for all costs, losses and expenses, including but not limited to, damages to persons or third party property, judgments and reasonable attorneys' fees to the extent arising out of or in connection with the negligent performance by CONSULTANT under to this Agreement. The CONSULTANT shall pay all such claims and losses in connection therewith and shall investigate and defend all such claims, suits or actions in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which may issue thereon.

6.2 CONSULTANT shall indemnify CITY for all loss, damage, expense or liability including, without limitation, court costs and reasonable attorneys' fees that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right resulting from the services furnished to the CITY pursuant to this Agreement. CONSULTANT will defend and/or settle at its own expense any action brought against the CITY to the extent that it is based on a claim that products or services furnished to CITY by CONSULTANT pursuant to this Agreement, or if any portion of the services or goods furnished in the performance of the service becomes unusable as a result of any such infringement or claim.

6.3 The Parties recognize that various provisions of this Agreement, including but not necessarily limited to this Section, provide for indemnification by the CONSULTANT and that Florida Statutes §725.06 requires a specific consideration be given therefor. The parties therefore agree that the sum of **Ten Dollars and 00/100 (\$10.00)**, receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by CONSULTANT. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall serve the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify.

6.4 Nothing in this agreement shall be considered a waiver of the City's sovereign immunity as provided by §768.28, Florida Statutes.

ARTICLE 7
INSURANCE

7.1 Prior to the commencement of the Work under this agreement, Contractor shall provide the City with a certificate of insurance and a copy of the Additional Insured Endorsement naming the City of Cooper City its employees, directors, officers, agents, independent contractors, successors and assigns, and other authorized representatives as additional insured on a primary and non-contributory basis to the extent of the contractual obligation assumed by the Proposer. Additionally, the Contractor shall provide the City with a copy of the certificates of insurance and a copy of the Additional Insured Endorsement reflecting the same insurance coverage for all subcontractors utilized by Contractor pursuant to this agreement. The City shall be granted a Waiver of Subrogation on the Consultant's Workers' Compensation and General Liability insurance policy, and affirmed on the Certificate of Insurance. The Consultant waives, and the Consultant shall ensure that the Consultant's insurance carrier waives, all subrogation rights against the City, its officials, employees, agents and volunteers for all losses or damages.

7.2 CONSULTANT shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONSULTANT allow any subConsultant to commence work on his subcontract until all similar such insurance required of the subConsultant has been obtained and similarly approved.

7.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the City's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

7.4 Policies shall be endorsed to provide the CITY with notice of cancellation or the CONSULTANT shall obtain written agreement from its Agent to provide the CITY with notice of cancellation.

7.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the CONSULTANT shall furnish, as soon as reasonably practicable, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONSULTANT shall not commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONSULTANT shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

7.6 REQUIRED INSURANCE

7.6.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000
5. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for two (2) years after the final payment under this contract.

The City of Cooper City must be shown as an additional insured with respect to this coverage.

7.6.2 Worker's Compensation and Employers Liability Insurance covering all employees, and/or volunteers of the CONSULTANT engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONSULTANT shall require the subConsultants similarly to provide Workers Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONSULTANT. Coverage for the CONSULTANT and his subConsultants shall be in accordance with applicable state and or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident
\$500,000 Disease – Policy Limit
\$500,000 Disease – Each Employee

If CONSULTANT claims to be exempt from this requirement, CONSULTANT shall provide CITY proof of such exemption along with a written request for CITY to exempt CONSULTANT, written on CONSULTANT letterhead.

7.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) - \$1,000,000

3. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) - \$1,000,000

7.6.4 Professional Liability/Errors & Omissions Insurance, when applicable, with a limit of liability no less than \$1,000,000 per wrongful act. This coverage shall be maintained for a period of no less than two (2) years after final payment of the contract.

7.6.5 Sexual Abuse may not be excluded from any policy.

7.7 REQUIRED ENDORSEMENTS

7.7.1 The City of Cooper City shall be named as an Additional Insured on each of the General Liability policies required herein

7.7.2 Waiver of all Rights of Subrogation against the CITY

7.7.3 30 Day Notice of Cancellation or Non-Renewal to the CITY

7.7.4 CONSULTANTS' policies shall be Primary & Non-Contributory

7.7.5 All policies shall contain a "severability of interest" or "cross liability" liability clause without obligation for premium payment of the CITY

7.8 Any insurance required of the CONSULTANT pursuant to this Agreement must also be required by any subConsultant in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subConsultant is covered by the protection afforded by the CONSULTANT and provided proof of such coverage is provided to CITY. The CONSULTANT and any subConsultants shall maintain such policies during the term of this Agreement

7.9 Consultant agrees to waive all rights of subrogation against the City, members of the City Commission, boards, commissions and committees, officers, agents, employees and volunteers for losses arising from activities and operations of Contractor in the performance of its obligations under this agreement.

ARTICLE 8
INDEPENDENT CONSULTANT

8.1 This Agreement does not create an employee employer relationship between the parties. It is the intent of the parties that the CONSULTANT is an independent Consultant under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONSULTANT shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONSULTANT's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT, which policies of CONSULTANT shall not conflict with CITY, State, H.U.D. or

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United States policies, rules or regulations relating to the use of CONSULTANT's Funds provided for herein. The CONSULTANT agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONSULTANT and the CITY and the CITY will not be liable for any obligation incurred by CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.

ARTICLE 9
VENUE

9.1 This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this agreement shall be in Broward County, Florida.

ARTICLE 10
PUBLIC RECORDS

10.1 The City of Cooper City is public agency subject to Chapter 119, Florida Statutes. The CONSULTANT shall comply with Florida's Public Records Law. Specifically, the CONSULTANT shall:

10.1.1 Keep and maintain public records required by the CITY to perform the service:

10.1.2 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, Fla. Stat., or as otherwise provided by law;

10.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, CONSULTANT shall destroy all copies of such confidential and exempt records remaining in its possession after the CONSULTANT transfers the records in its possession to the CITY; and

10.1.4 Upon completion of the contract, CONSULTANT shall transfer to the CITY, at no cost to the CITY, all public records in CONSULTANT's possession. All records stored electronically by the CONSULTANT 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.

10.2 The failure of CONSULTANT to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement, for which, the City may terminate the Agreement.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT

**CITY CLERK
9090 S.W. 50th PLACE
COOPER CITY, FL 33328
(954) 434-4300
pr@coopercityfl.org**

**ARTICLE 11
FEMA REQUIREMENTS
(OMITTED)**

**ARTICLE 12
MISCELLANEOUS**

12.1 **Ownership of Documents.** Reports, surveys, plans, studies and other data provided to CONSULTANT by CITY in connection with this Agreement are and shall remain the property of CITY whether or not the project for which they are made is completed. City hereby agrees to use CONSULTANT's work product only for its intended purposes which is to evaluate proceeding to an GPSC with CONSULTANT.

12.2 **Records.** CONSULTANT shall keep such records and accounts and require any and all subConsultants to keep records and accounts as may be necessary in order to record, in accordance with its regular business practice, complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONSULTANT expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of ten (10) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries. All records shall be maintained and available for disclosure, as appropriate, in accordance with Chapter 119, F.S.

12.3 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONSULTANT shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns.

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It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

12.4 **No Contingent Fees.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT to solicit or secure this Agreement, 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 CONSULTANT any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

12.5 **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONSULTANT and CITY designate the following as the respective places for giving of notice:

CITY Joseph Napoli, City Manager
City of Cooper City
9090 S.W. 50th Place
Cooper City, Florida 33328
Telephone No. (954) 434-4300

Copy To: Jacob G. Horowitz, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Telephone No. (954) 771-4500 / Fax No: (954) 771-4923

Consultant ENERGY SYSTEMS GROUP, LLC
Attn: General Counsel
9877 Eastgate Court
Newburgh, IN 47630
E-mail:generalcounsel@esg.email Telephone No: (812) 471-5000

12.6 **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement 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 this Agreement.

12.7 **Headings.** Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

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12.8 **Exhibits.** Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

12.9 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

12.10 **Extent of Agreement.** This Agreement represents the entire and integrated agreement between the CITY and the CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral.

12.11 **Legal Representation.** It is acknowledged that each party was represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

12.12 **Counterparts and Execution.** This Agreement may be executed in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

[Remainder of page intentionally left blank; signature page to follow.]

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IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY:

CITY OF COOPER CITY, FLORIDA

ATTEST:

TEDRA ALLEN, CITY CLERK

By: _____
_____, CITY MANAGER

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

CONSULTANT:

ENERGY SYSTEMS GROUP, LLC

By: Erik W. Froehlich

Name: Erik W. Froehlich

STATE OF SC
COUNTY OF Charleston

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 17th day of June 2022, by Erik W. Froehlich of Energy Systems Group, LLC, a State of Indiana Limited Liability Company, on behalf of Energy Systems Group, LLC.

NOTARY PUBLIC

Personally Known OR
 Produced Identification

Driver License
Type of Identification Produced

Isaac Thornton
NOTARY PUBLIC
State of South Carolina
My Commission Expires 6/7/2031

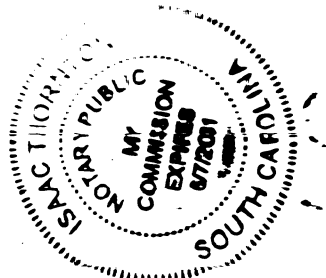


EXHIBIT C

SCOPE OF SERVICES/SCOPE OF WORK

PROJECT DEVELOPMENT PHASE

- A. Pursuant to Section V of the RFQ, entitled “Scope of Work/Technical Specifications,” the purpose of the Project Development Agreement (referred to as the “PDA”) is to identify the scope of work, enhanced revenue/savings sources, and energy/operational savings/revenue guarantee. The cost of the PDA will be deferred through the Project Development phase and will be rolled into the cost of the project and paid in the first construction draw of the resultant Construction Phase contract. In the event the City elects not to proceed, for any reason, with the negotiation of a guaranteed ECM savings contract (Construction Phase) after the completion of the PDA, the City will pay the cost of the PDA to the Contractor as set forth in Article 4 of the PDA. The result of the PDA will be a Contract for scope, schedule, budget and guarantees for the Construction Phase of the Project.
- B. The scope of services shall include a full range of Energy, Water, or Wastewater Efficiency and Conservation Measures (“ECMs²”) related to capital improvements to be implemented for the City of Cooper City facilities, including buildings, grounds, parks, water and wastewater facilities, and the replacement of all manually read water meters. In addition, ECM improvements shall include the upgrade of manual water meters to automated (AMI) and a review of all water meters for potential cost savings of a system wide improvements. The specific facilities and project scope will be determined in a co-authored, partnership approach with the City.
- C. As required by to §489.145(4), Florida Statutes, the CONSULTANT shall provide a report that summarizes the costs associated with the ECM improvements and provides an estimate of the amount of the cost savings or increased revenue.
- D. City of Cooper City facilities that shall be included are:
- a. City Hall/Community Development Building, 9090 SW 50th Street, Cooper City, 33328;
 - b. The Community Center, 9000 SW 50th Place, Cooper City, 33328;
 - c. George A. Haughney Utilities Complex, 11505-11791 SW 49 Street, Cooper City, including but not limited to;
 - i. The Water Treatment Plant Building and appurtenances
 - ii. High Service Pump Building and appurtenances
 - iii. The Generator Day Tank Room and appurtenances

² ECMs shall include Energy, Operations and Capital Budget (EOCB) related capital improvements as described by Request for Qualifications 2022-1-UTL.

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- iv. All Waste Water Treatment Plant Buildings, including the Blowers Building and appurtenances
 - v. The Field Crews Office/Work/Storage Building
 - vi. The Electricians Office
 - vii. The Foreman's Building
 - viii. The Chlorine Building
 - ix. The Centrifuge Building, and;
 - x. The Steel Storage Building
 - d. Public Works Compound, 9070 SW 51st Street, Cooper City, 33328;
 - e. The Pool & Tennis Center, 11600 Stonebridge Parkway, Cooper City, 33026;
 - f. Police Station/Broward Sheriff's Office substation, 10580 Stirling Rd, Cooper City, 33024;
 - i. This building is owned by the City of Cooper City;
 - ii. All contractors and subcontractors who enter this building must submit to and pass all Broward Sheriff's Office's security requirements, including background checks;
 - g. Fire Station, 10550 Sterling Rd, Cooper City, 33024.
 - h. Flamingo West Park, 6201 S. Flamingo Rd, Cooper City, 33330
 - i. Suellen H. Fardelmann Sports Complex, 10300 Stirling Rd, Cooper City, 33024;
 - j. Bill Lips Sports Complex (11700 SW 49th Street, Cooper City, 33030)
 - k. Repump Station 55 Building (9070 SW 51 St)
 - l. Pine Island Road Pump Station (2650 Pine Island Rd)
 - m. All sewer pumping stations within the City's sewer collection and transmission system as further described in "Chart 1," attached to hereto and incorporated herein.
 - n. Fleet Maintenance Facility and fleet ops/alternate fuel source.
- E. The manual water meters subject to this Agreement are all manually-read meters employed within the City's water distribution system. These meters are located throughout the City, and the City will provide Consultant with a list of these meter, including their location.

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CHART 1

STATION NUMBER	ADDRESS	LOCATION	CONST. TYPE	YEAR INST.	MANUFACT.	PUMP MODEL	P SIZE	GPM	TDH	PUMP RPM	IMP. SIZE	M.H .P.	M. RPM	VOLTS
1	9040 S.W. 51 Street	PUBLIC WORKS COMPOUND	SUBMERSIBLE	2013	WILO EMU	FA10.34E-242	4"	643	50	1700	246 MM	15.4	1700	480
2	9427 S.W. 52 Street	SUMMERTIME ISLES	ABOVE GROUND	2013	WILO EMU	FA10.34E-242	4"	706	46	1700	246 MM	15.4	1700	480
3	9469 S.W. 50 Court	SUMMERTIME ISLES	ABOVE GROUND	1974	CROWN	PO4LB-8D	4"	190	40	1500	8.25	*7.5	1750	240
4	9900 S.W. 57 Street	DAWN HOMES	ABOVE GROUND	1974	CROWN	PO4LB-8D	4"	250	50	1650	8.25	*10	1750	240
5	5613 S.W. 100 Avenue	STIRLING SPRINGS	ABOVE GROUND	1985	S&L	4B2B	4"	130	73	1750	8.5	10	1750	240
6	10300 S.W. 53 Street	*GUARDIAN ESTATES	ABOVE GROUND	1977	S&L	4B2B	4"	100	48	1745	8	10	1745	240
7	10215 S.W. 51 Street	*GUARDIAN ESTATES	ABOVE GROUND	1976	CROWN	PO3LB-7B	3"	60	1750	1750	*5	*5	1750	240
8	10450 Grove Lane	COOPERS GROVE	ABOVE GROUND	1974	HYDROMATIC	40MP	4"	200	50	1400	8.31 25	*7.5	1750	240
9	4070 S.W. 104 Avenue	THE COUNTRY CLUB	SUBMERSIBLE	1993	EMU	FA104-225	4"	220	65	1760	225 MM	10	1760	240
10	4070 S.W. 103 Avenue	PINE LAKE	ABOVE GROUND	1974	CROWN	PO4LB-8D	4"	225	40	1475	8.25	7.5	1750	240
11	4072 S.W. 101 Avenue	PINE LAKE	BELOW GROUND	1978	GORMAN-RUPP	T4A3-B	4"	100	57	1350	8.5	7.5	1750	240
12	4072 S.W. 101 Avenue	PINE LAKE	ABOVE GROUND	1978	DAVCO	22 URAI	4"	120	12	3550	BLO WER	*3	3550	240SF
13	1 Hawthorne Rd & Griffin Rd	WALMART CENTER	SUBMERSIBLE	1992	EMU	FA104-238	4"	120	86	1700	238 MM	7.5	1700	240
14	10000 S.W. 100th Avenue	COUNTRY CLUB	SUBMERSIBLE	1998	EMU	FA104-223	4"	110	40	1740	179 MM	7.5	1740	240

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14	5134 S.W. 122 Terrace	FLAMINGO TOWNHOMES	SUBMERSIBLE	2013	EMU	FA104-223	4"	110	40	1740	179 MM 223	7.5	1740
	4900 S.W. 118 Avenue(West Pit)	WEST PLANT	BELOW GROUND	2013	WILO EMU	FA10.33E	4"	250	40	1700	MM 223	10	1700
15				1979	CROWN	PO4LB-8D	4"	40	40	1700	MM	10	1700
16	5090 S.W. 116 Avenue	GRIFFIN ELEMENTARY	SUBMERSIBLE	1980	EMU	FA101-171	4"	100	40	1650	8.25	7.5	1750
17	5204 S.W. 118 Avenue	FLAMINGO GARDENS	ABOVE GROUND	1978	DAVCO EDUCTOR	22 URAI	4"	120	12	3550	171 MM	5.4	1700
18	11710 S.W. 53 Place	FLAMINGO GARDENS	BELOW GROUND	1977	CROWN	PO4LC- 10L	4"	300	60	1340	BLO WER	3	3550
19	11750 S.W. 57 Street	FLAMINGO GARDENS	ABOVE GROUND	1978	DAVCO EDUCTOR	22 URAI	4"	120	12	3550	BLO WER	3	3550
20	5851 S.W. 116 Avenue	FLAMINGO GARDENS	BELOW GROUND	1977	CROWN	PO4LC-10L	4"	300	60	1340	10	15	1750
21	6050 N. Lake Boulevard	ROCK CREEK	BELOW GROUND	1977	S & L	6C3	6"	1300	60	1760	9.5	30	1760
22	1405 Bridge Road	ROCK CREEK	ABOVE GROUND	1977	S & L	4B2B	4"	100	34	1170	8.75	5	1170
23	3900 W. Sailboat Drive	ROCK CREEK	ABOVE GROUND	1977	S & L	4B2B	4"	100	34	1170	8.75	5	1170
24	12201 Stonebridge Parkway	ROCK CREEK	ABOVE GROUND	1977	S & L	4B2B	4"	100	34	1200	8.75	5	1200
26	2000 Garden Drive	ROCK CREEK	ABOVE GROUND	1981	S & L	4B2B	4"	125	40	1200	9.37 5	5	1200
28	11000 H. Aviary Drive	ROCK CREEK	ABOVE GROUND	1981	S & L	4B2B	4"	52	48	1800	7.37 5	7.5	1800

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27	11950 Stonebridge Parkway	ROCK CREEK	ABOVE GROUND	1981	S & L	4B24	4"	100	57	1800	7.75	7.5	1800	240
28	11679 Stonebridge Parkway	ROCK CREEK	ABOVE GROUND	1982	S & L	4B24	4"	100	65	1750	8.12 5	7.5	1750	240
29	2671 Regalia Way	ROCK CREEK (REFL.)	SUBMERSIBLE	1992	EMU	FA104-249	4"	100	98	1740	249 MM	10	1740	240
30	3051 Stonebridge Parkway	ROCK CREEK	ABOVE GROUND	1982	S & L	4B2C	4"	215	53	1745	8.25	10	1745	240
31	3605 Stonebridge Parkway	ROCK CREEK	ABOVE GROUND	1981	S & L	4B2B	4"	160	39	1200	9.5	7.5	1200	240
32	11288 S.W. 59 Court	FOREST LAKE	SUBMERSIBLE	2014	WILO EMU	FA10.33E	4"			1700	223 MM	10.2	1700	240
33	11291 S.W. 55 Court	FOREST LAKE	SUBMERSIBLE	2014	WILO EMU	FA10.33E	4"			1700	223 MM	10.2	1700	240
34	2691 E. Saratoga Drive	EMBASSY LAKES	SUBMERSIBLE	2014	WILO EMU	FA10.33E	4"			1700	238 MM	10.2	1700	240
35	11070 Helena Drive	EMBASSY LAKES	SUBMERSIBLE	1990	EMU	FA104-223	4"	100	76	1750	223 MM	10	1750	240
36	11000 SF Lake Blvd	EMBASSY LAKES	SUBMERSIBLE	1990	EMU	FA101-179 FA10.51- 179	4"	173	44	1750	179 MM	7.5	1750	240
37	10210 Panama Ave	*EMBASSY LAKES	SUBMERSIBLE	2013	WILO EMU	FA107-245 FA10.33- 223	4"	660	67	1750	245 MM	7.4	1680	240
38	10300 Cumberland Ave	*EMBASSY LAKES	SUBMERSIBLE	2013	WILO EMU	*K87-F	4"	160	90	*3480	223 MM *VB1 160	10.2 *10	1700 *348 0	240
39		EMBASSY LAKES	SUBMERSIBLE	1990	EMU	FA104-223 FA10.33- 223	4"	110	71	1750	223 MM	7.5	1750	240
40		EMBASSY LAKES	SUBMERSIBLE	2012	WILO EMU		4"			1680	223 MM	7.4	1680	1680

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39	10702 NE Lake Blvd.	EMBASSY LAKES	SUBMERSIBLE	1989	EMU	FA101-171	4"	128	42	1700	179 MM	5.4	1700	240
40	2911 Heisinki Circle	EMBASSY LAKES	SUBMERSIBLE	1988	EMU	FA104-208	4"	145	75	1750	208 MM	7.5	1750	240
41	4141 Embassy Drive	EMBASSY LAKES	SUBMERSIBLE	1988	EMU	*FA102-270 FA10.65-318	4"	450	98	1760	270/250 M	*25	1760	480
42	5960 S.W. 106 Avenue	*HIGH POINT	SUBMERSIBLE	2013	WILO EMU	FA104-208	4"			1720	318 MM	25	1720	480
43	10640 Indian Trail	INDIAN POND	SUBMERSIBLE	1988	EMU	*FA102-318	4"	290	155	1760	318 MM	25	1760	208
44	4001 N.W. 97 Avenue	COLONY @STIRLING	SUBMERSIBLE	1990	DAVIS/EMU	FA107-245	4"	660	67	1750	245 MM	25	1750	
45	8675 S.W. 58 Street	COUNTRY ADDRESS	SUBMERSIBLE	1989	EMU	FA104-238	4"	240	51	1760	238 MM	10	1760	240
46	8797 S.W. 56 Place	*COUNTRY ADDRESS	BELOW GROUND	1980	CROWN	PO4LC-9D	4"	150	75	1650	194 MM	10	1750	240
47	5701 S.W. 89 Way	ENTRY ADD. ENCORE	SUBMERSIBLE	1980	DAVCO EDUCATOR	22 URAI	4"	200	12	1750	BLO WER	5	1750	240SF
48	6000 S.W. 85 Street	COOPER F.S.I. SEC-2	ABOVE GROUND	1980	CROWN	PO4LC-9D	4"	475	106	1755	9	*15	1750	240
49	6237 S.W. 90 Avenue	*COOPER COLONY F.S.I.	ABOVE GROUND	1987	FLYGT	3201.18	6"			1755	452	47	1755	240
50	6201 S.W. 90 Avenue	*COOPER COLONY F.S.I.	ABOVE GROUND	1974	CROWN	PO4LB-8D	4"	250	50	1650	8.25	7.5	1750	240
51	6201 S.W. 90 Avenue	*COOPER COLONY F.S.I.	ABOVE GROUND	1974	CROWN	PO4LB-8D	4"	350	43	1800	8.25	*10	1750	240
52	6200 S.W. 90 Terrace	*COOPER COLONY F.S.I.	ABOVE GROUND	1974	CROWN	PO4LB-8D	4"	325	50	1800	8.25	*10	1750	240
53	6136 S.W. 87 Terrace	EMERALD LAKE	BELOW GROUND	1973	CRANE DEMING	7182	4"	325	71	1750	9	15	1750	240

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53	5112 S.W. 87 Avenue	TIMBERLAKE	BELOW GROUND	1973	CROWN	PO4LB-8D	4"	225	30	1310	8.25	5	1750	240
54	4900 S.W. 87 Avenue	TIMBERLAKE	BELOW GROUND	1977	CROWN	PO4LB-8D	4"	125	30	1250	8.25	10	1750	240
55	9040 S.W. 51 Street	EAST PLANT (REPUMP STATION)	ABOVE GROUND MANIFOLD											
56	4902 S.W. 88 Terrace	*COOPER COLONY EST.	BELOW GROUND	1970	*CROWN	*PO4LB-8D	4"	*225	40	*1650	*8.25	*7.5	1750	240
57	12771 Country Glen Drive	COUNTRY GLENN (A)	SUBMERSIBLE	1994	EMU	FA09-232T	4"	135	25	1750	232	7.4	1790	240
58	3801 N.W. 89 Way	DIAMOND HEAD	SUBMERSIBLE	1995	EMU	FA104-238	4"	100	88	1750	238	10	1750	240
59	9191 Stirling Road	CHURCH OF GOD	SUBMERSIBLE	2013	WILO EMU	FA10.33-238	4"			1700	MM	10.2	1700	
60	5101 Waters Edge Way	COUNTRY GLENN (B)	SUBMERSIBLE	1994	EMU	FA102-234	4"	175	123	1750	234	15.4	1750	208
61	12005 S.W. 49th Court	NATALIE'S COVE	SUBMERSIBLE	2014	WILO EMU	FA10.33-208	4"			1700	MM	10.2	1700	
62	1401 S.W. 124 Avenue	MCCARTHY HIGH SCH.	SUBMERSIBLE	1994	EMU	FA1041-192	4"	135	25	1740	MM	4.4	1740	240
63	12401 Schott Circle	SCHOTT MEMORIAL	SUBMERSIBLE	1996	EMU	FA104-485	4"	100	53	1750	MM	10	1750	240
64	1401 Regency Isles Way	COUNTRY GLENN	SUBMERSIBLE	1988	EMU	FA104-238	4"	122	86	1740	238	7.5	1740	240
65	12401 Schott Circle	SCHOTT MEMORIAL	SUBMERSIBLE	1999	EMU	FA104-223	4"	115	74	1740	223	7.5	1740	240
66	11106 Harding Road	WALGREEN	SUBMERSIBLE	2000	EMU	FA101-171	4"	90	14	1140	171	2.3	1140	240
67	11106 Harding Road	WALGREEN	SUBMERSIBLE	2001	EMU	FA10.33-249	4"	80	100	1740	249	10	1740	240
68	12200 Sheridan Street	COUNTRY COMMONS	SUBMERSIBLE	2002	EMU	FA102-234	4"	178	56	1740	234	20	1740	240

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17	12401 Stirling Road	FLAMINGO ROAD CHURCH	SUBMERSIBLE	2002	EMU	FA10.03E-288	4"	608	73	1740	MM	20	1740	240
18	11551 S. W. 49th Street	HIBB'S GROVE	SUBMERSIBLE	2002	EMU	FA10.33E-191	4"	340	39	1740	MM	7.5	1740	480
19	4781 S. Flamingo Road	FLAMINGO PLAZA	SUBMERSIBLE	2004	EMU	FA08.3E-115	3"	250	39	3480	MM	54	3480	240
20	5790 S. W. 128th Avenue	STONE CREEK	SUBMERSIBLE	2004	WIL0 EMU	FA10.33E-210	4"	80	67	1740	MM	7.5	1185	240
21	10660 Griffin Road	COOPER OFFICE CENTER	SUBMERSIBLE	2004	WIL0 EMU	FA10.33E-208	4"	100	62	1740	MM	7.5	1740	240
22	9750 Darlington Park	DARLINGTON PARK	SUBMERSIBLE	2007	WIL0 EMU	FA10.33E-213	4"	160	61	1740	MM	7.5	1740	240
23	3855 N. W. 87th Avenue	MONTERRA WEST/ESTADA	SUBMERSIBLE	2006	WIL0 EMU	FA10.33E-212	4"	130	64	1740	MM	7.4	1740	240
24	10001 Sheridan Street	CVS & RENASSIANCE CHARTER SCHOOL	SUBMERSIBLE		WIL0 EMU		4"					6.2		240
25	3944 NW 85th Avenue (2B Corta Bella)	MONTERRA	SUBMERSIBLE	2009	WIL0 EMU	FA10.65E-279	4"	230	117	1740	MM	10	1740	240
26	8221 NW 39th Street (Monterra Blvd., near Cascada entrance)	MONTERRA	SUBMERSIBLE	2009	WIL0 EMU	FA10.33E-249	4"	200	90	1740	MM	20	1740	240
27	3262 NW 84 Terrace	MONTERRA	SUBMERSIBLE	2009	WIL0 EMU	FA10.34E-250	4"	356	87	1740	MM	10	1740	240
28	8197 NW 28th Place	MONTERRA	SUBMERSIBLE	2009	WIL0 EMU	FA15.66E-340	4"	780	122	1740	MM	54	1740	480

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79	11791 SW 49 Street	OFFICE	MAIN	SUBMERSIBLE	N/A	DAVIS/EMU	FA104-180	4"	N/A	N/A	1/40	N/A	0.4	1/40	400
80	11791 SW 49 Street	BEHIND JAKES OFFICE		SUBMERSIBLE	N/A										
81	10300 Stirling Road	Sports Complex modular bathroom (east side next to baseball field)		SUBMERSIBLE	2016	MOPS									
82	4795 S.W. 83 Terrace	*DAVIE INDUST. PARK		SUBMERSIBLE	N/A	ZOELLER/N/A	F6405-B	4"	N/A	N/A	N/A	N/A	3	N/A	200