

**CONTRACT FOR SCADA SYSTEM PROGRAMMING SERVICES**  
**(WATER TREATMENT PLANT)**

THIS SERVICES CONTRACT ("Contract") is entered on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the **Town of Highland Beach**, a Florida municipal corporation ("Town"), with its office located at 3614 South Ocean Boulevard, Highland Beach, Florida 33487 and **Control Systems Design Inc.**, a Florida corporation, with its office located at 7282 55<sup>th</sup> Avenue East #200, Bradenton, Florida 34203 ("Contractor").

**RECITALS**

**WHEREAS**, the Town is need of a Contractor to provide SCADA system programming, instruments, and controls for the Town's water treatment plant; and

**WHEREAS**, Contractor implemented the current SCADA system and has been providing such services to the Town since 2020, and the Town determines that it is advantageous and in the best interests of the Town for Contractor to continue to provide such services; and

**WHEREAS**, Contractor has agreed to continue to perform such services in accordance with the terms and conditions of this Contract.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the Town and Contractor agree as follows:

**SECTION 1: INCORPORATION OF RECITALS.**

The foregoing Recitals are incorporated into this Contract as true and correct statements.

**SECTION 2: CONTRACTOR'S SERVICES.**

Contractor shall provide computer programming for the Town's water treatment plant Allen-Bradley/Rockwell equipment and Proficy HMI/SCADA-iFIX 5.8 software, Rosemount flow and pressure meters and transmitters, Great Lakes Instrumental and SWAN CL2 analyzers, and Hach pH and conductivity analyzers, both onsite and remotely.

**SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP.**

No relationship of employer or employee is created by this Contract, it being understood that Contractor will act hereunder as an independent contractor and none of Contractor's, officers, directors, employees, independent contractors, representatives, or agents performing services for Contractor pursuant to this Contract shall have any claim under this Contract or otherwise against the Town for compensation of any kind under this Contract. The relationship between the Town and Contractor is that of an independent contractor, and neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

**SECTION 4: TERM, TIME, AND TERMINATION.**

a. Term; Renewal. <sup>BY APRIL 30, 2024</sup> The term of this Contract shall commence upon the approval of this Contract by the Town Commission, and shall continue for two (2) years, or until such time as either party terminates this Contract as set forth herein. The Town shall have the option to renew this Contract for two (2) additional one (1) year terms, based upon the same terms and conditions contained herein. MB

b. Termination by the Town. The Town may terminate this Contract, with or without cause, upon giving thirty (30) days' written notice to the Contractor. At such time, the Town shall compensate Contractor for ~~which~~ <sup>work</sup> satisfactorily performed through the date of termination. MB

c. Termination by Contractor. Contractor may terminate this Contract in the event of a substantial failure by the Town to perform in accordance with the terms of this Contract through no fault of Contractor upon giving ninety (90) <sup>30</sup> days' written notice to the Town. MB

d. Force Majeure. Neither party shall be considered in default by reason of any failure in performance if such failure arises out causes reasonably beyond the control of the party and without the party's fault or negligence. Such causes include, but are not limited to: acts of God; public health emergencies; labor disputes; freight embargoes; or abnormally severe and unusual weather conditions.

#### SECTION 5: COMPENSATION AND METHOD OF PAYMENT.

a. Payments and Invoices. The Town agrees to compensate Contractor in accordance with the rates set forth in **Exhibit "A."** The Contractor shall invoice the Town for each payment to be paid by the Town. The invoices shall specify the services performed and the time expended on such services. All reimbursable expenses shall also be clearly identified on the invoice with supporting documentation. Contractor will ~~normally~~ be paid within thirty (30) days of receipt of an approved invoice. MB

b. No Increase in Compensation. Contractor shall not be entitled to an increase in the agreed to compensation in this Contract or payment or compensation of any kind from the Town for direct, indirect, consequential, impact or other costs, expenses, or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. Contractor waives consequential or incidental damages for claims, disputes, or other matters in question arising out of or related to this Contract.

c. Final Invoice. In order for both parties to close their books and records, Contractor shall clearly state "final invoice" on Contractor's final/last billing to the Town upon termination of the Contract. This certifies that all services have been properly performed and all charges have been invoiced to the Town. Since the account will thereupon be closed, any additional charges if not properly included in the final invoice are waived by Contractor.

#### SECTION 6: INDEMNIFICATION.

Contractor, its officers, employees, and agents shall indemnify and hold harmless the Town, including its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence, recklessness or intentionally wrongful conduct of Contractor and other persons employed or utilized by Contractor in the performance of the services under this Contract. The Town agrees to be responsible for its own negligence. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or Contractor, nor shall this Contract be construed as a waiver of sovereign immunity for the Town beyond the waiver provided in section 768.28, Florida Statutes.

#### SECTION 7: COMPLIANCE AND DISQUALIFICATION.

Each of the parties agrees to perform its responsibilities under this Contract in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Contract.



**SECTION 8: PERSONNEL.**

Contractor represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Town. All the services required hereunder shall be performed by Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and authorized or permitted under federal, state, and local law to perform such services.

**SECTION 9: SUBCONTRACTORS.**

The Town reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and approve all qualifications of any subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. All subcontractors providing services to Contractor under this Contract will also be required to provide their own insurance coverage identical to those contained in this Contract. If a subcontractor does not have insurance or does not meet the insurance limits as stated in this Contract, Contractor shall indemnify and hold harmless the Town for any claim in excess of the subcontractor's insurance coverage, arising out of the negligent acts, errors, or omissions of the subcontractor. ~~Contractor shall not charge an administrative fee or surcharge on any subcontractor's services; all sub-Contractor costs shall be a direct pass-through cost to the Town.~~ MB MB

**SECTION 10: FEDERAL AND STATE TAX.**

The Town is exempt from payment of Florida State Sales and Use Tax. Contractor is not authorized to use the Town's Tax Exemption Number and shall not be exempt from paying sales tax to its suppliers for materials used to fill its contractual obligations with the Town.

**SECTION 11: INSURANCE.**

- a. Certificates Required. Prior to commencing services pursuant to this Contract, Contractor shall provide certificates evidencing insurance coverage as required by this Section. All insurance policies shall be issued by companies authorized to do business in the State of Florida. The Certificates shall clearly indicate that Contractor has obtained insurance of the type, amount, and classification as required for strict compliance with this Section and that no material change or cancellation of the insurance shall be effective without thirty (30) days' written notice to the Town. Failure to comply with the foregoing requirements shall not relieve Contractor of its obligations under this Contract.
- b. Liability Insurance. Contractor shall maintain, during the life of this Contract, commercial general liability, including contractual liability, insurance in the amount of \$1,000,000 per occurrence to protect Contractor from claims for damages for bodily and personal injury, including wrongful death, as well as from claims for property damage which may arise from any operations under this Contract, which such operations be by Contractor or by anyone employed by or contracting with Contractor.
- c. Automotive Insurance. Contractor shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$500,000 combined single limit for bodily injuries and property damages liability to protect Contractor from claims for damages for bodily and personal injury, including death, as well as from claims for property damage which may arise from the ownership, use, or maintenance of owned or non-owned automobiles, whether such operations be by Contractor or by anyone directly or indirectly employed by Contractor.
- d. Workers' Compensation and Employer's Liability Insurance. Contractor shall maintain, during the life of this Contract, worker's compensation insurance and employer's liability insurance for all employees as required by Florida Statutes.

**SECTION 12: SUCCESSORS AND ASSIGNS.** The Town and Contractor each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as agreed in writing by all parties, this Contract is not assignable.

**SECTION 13: DISPUTE RESOLUTION, LAW, VENUE AND REMEDIES.**

All claims arising out of this Contract or its breach shall be submitted first to mediation. The parties shall share the mediator's fee equally. The mediation shall be held in Palm Beach County. Contracts reached in mediation shall be enforceable as settlement Contracts in any court having jurisdiction thereof. This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**SECTION 14: WAIVER OF JURY TRIAL.**

TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS CONTRACT.

**SECTION 15: ACCESS AND AUDITS.**

Contractor shall maintain adequate records to justify all payments made by the Town under this Contract for at least three (3) years after completion of this Contract and longer if required by applicable federal or state law. The Town shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at Contractor's place of business. In no circumstances will Contractor be required to disclose any confidential or proprietary information regarding its products and service costs.

**SECTION 16: NONDISCRIMINATION.**

Contractor warrants and represents that its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

**SECTION 17: AUTHORITY TO PRACTICE.**

Contractor hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the services required under this Contract, and that it will at all times conduct its business and provide the services under this Contract in a reputable manner and consistent with all applicable laws. Proof of such licenses and approvals shall be submitted to the Town upon request.

**SECTION 18: SEVERABILITY.**

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.



**SECTION 19: PUBLIC ENTITY CRIMES.**

Contractor acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or subcontractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the convicted vendor list. Contractor will advise the Town immediately if it becomes aware of any violation of this statute.

**SECTION 20: NOTICE.**

All notices required in this Contract shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier to the addresses set forth above. The addresses may be changed in such change is provided in writing to the other party. Notice shall be deemed given upon receipt.

**SECTION 21: ENTIRETY OF CONTRACT; WAIVER**

The Town and Contractor agree that this Contract sets forth the entire Contract between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto. Failure of a party to enforce or exercise any of its right(s) under this **Contract** shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

**SECTION 22: PREPARATION AND NON-EXCLUSIVE.**

This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation. This is a non-exclusive Contract and the Town reserves the right to contract with individuals or firms to provide the same or similar services.

**SECTION 23: MATERIALITY.**

All provisions of the Contract shall be deemed material. In the event Contractor fails to comply with any of the provisions contained in this Contract or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Contract and Town may at its option provide notice to the Contractor to terminate for cause.

**SECTION 24: LEGAL EFFECT.**

This Contract shall not become binding and effective until approved by the Town. The Effective Date is the date this Contract is executed by the Town.

**SECTION 25: NOTICE OF COMPLAINTS, SUITS, AND REGULATORY VIOLATIONS.**

Each party will promptly notify the other of any complaint, claim, suit, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Contract. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

**SECTION 26: SURVIVABILITY.**

Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

**SECTION 27: COUNTERPARTS.**

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Contract.

**SECTION 28: PALM BEACH COUNTY IG.**

In accordance with Palm Beach County Ordinance No. 2011-009, Contractor acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. Contractor has reviewed Palm Beach County Ordinance No. 2011-009 and is aware of its rights and/or obligations under such ordinance.

**SECTION 29: CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS.**

This Contract consists of this Contract and **Exhibit "A."** The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents.

**SECTION 30: REPRESENTATIONS AND BINDING AUTHORITY.**

By signing this Contract on behalf of Contractor, the undersigned hereby represents to the Town that he or she has the authority and full legal power to execute this Contract and any and all documents necessary to effectuate and implement the terms of this Contract on behalf of the Contractor for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Contract.

**SECTION 31: WARRANTY.**

Contractor warrants that all goods and services provided under this Contract will be free of defects in materials and workmanship for a period of one (1) year after completion of the services or as otherwise provided by the manufacturer, whichever is longer.

**SECTION 32: PUBLIC RECORDS.**

Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the Town as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- a. Keep and maintain public records required by the Town to perform the service.
- b. Upon request from the Town's custodian of public records or designee, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the Town.



d. Upon completion of this Contract, transfer, at no cost, to the Town all public records in possession of the Contractor or keep and maintain public records required by the Town to perform the service. If Contractor transfers all public records to the Town upon completion of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records or designee, in a format that is compatible with the information technology systems of the Town.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE TOWN OF HIGHLAND BEACH, ATTN: LANELDA GASKINS, AT (561) 278-4548, LGASKINS@HIGHLANDBEACH.US, 3614 SO. OCEAN BLVD., HIGHLAND BEACH, FL 33487.**

**SECTION 33: NO THIRD-PARTY BENEFICIARIES.**

There are no third-party beneficiaries under this Contract.

**SECTION 34: E-VERIFY.**

Pursuant to Section 448.095(2), Florida Statutes, Contractor shall:

- a. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees pursuant to Section 448.095(2), Florida Statutes, and require all subcontractors to do the same;
- b. Secure an affidavit from all subcontractors stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien as defined in Section 448.095(1)(f), Florida Statutes;
- c. Maintain copies of all subcontractor affidavits for the duration of this Contract and provide same to the Town upon request;
- d. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- e. Be aware that a violation of Section 448.09(1), Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Contract;
- f. Be aware that a violation of Section 448.095(5), Florida Statutes, by a subcontractor, and not Contractor, shall be grounds for the Town to order Contractor to immediately terminate the contract with the subcontractor; and
- g. Be aware that if the Town terminates this Contract under Section 448.095(2)(c), Florida Statutes, Contractor may not be awarded a public contract for at least one (1) year after the date

on which the Contract is terminated and will be liable for any additional costs incurred by the Town as a result of the termination of the Contract.

**SECTION 35: SCRUTINIZED COMPANIES.**

Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel list and are not engaged in a boycott of Israel. Pursuant to Section 287.135, Florida Statutes, the Town may immediately terminate this Contract at its sole option if Contractor or any of its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in a Boycott of Israel during the term of this Contract.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract for SCADA Programming Services as of the day and year set forth above.

**TOWN OF HIGHLAND BEACH, FLORIDA**

By: \_\_\_\_\_  
Natasha Moore, Mayor

ATTEST:

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Lanelda Gaskins, Town Clerk

\_\_\_\_\_  
Glen Torcivia, Town Attorney

**CONTROL SYSTEMS DESIGN INC.**

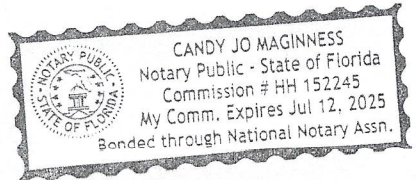
By: MB  
Print Name: MARK BIEHL  
Title: PRESIDENT

[Corporate Seal]

STATE OF Fl.  
COUNTY OF Duval

The foregoing instrument was acknowledged before me this 19 day of March, 2024, by Mark Biehl as President of Control Systems Design Inc., and who is personally known to me or who has produced the following Personally Known as identification.

[Signature]  
Notary Public





**EXHIBIT "A"**

**(Contractor's Rate Schedule)**