

**AGREEMENT FOR GOODS AND SERVICES  
(145kV High Voltage Breakers)**

**THIS AGREEMENT FOR GOODS AND SERVICES** (hereinafter "Agreement") is made this \_\_\_\_\_ day, between the **City of Lake Worth Beach**, Florida, a municipal corporation (hereinafter the "CITY"), with its office located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460, and **Siemens Energy Inc.**, a company registered to do business in the State of Florida (hereinafter the "CONTRACTOR"), with its principal office located at 4400 Alafaya Trail, Orlando, FL 32826.

**RECITALS**

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

WHEREAS, the CITY issued Invitation for Bid #21-209 for 145kV High Voltage Breakers (hereinafter "IFB"), which IFB is incorporated by reference into this Agreement; and

WHEREAS, the City received two (2) responses to the IFB; and

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

WHEREAS, the CITY desires to accept the CONTRACTOR's bid in order for CONTRACTOR to render the goods and services to the CITY as provided therein pursuant to the terms and conditions of this Agreement; and

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

WHEREAS, the CITY finds entering this Agreement with the CONTRACTOR as described herein serves a valid public purpose.

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

**1. TERM**

1.1 The term shall commence upon the approval of this Agreement by the City Commission and the CITY's issuance of a Purchase Order. The CONTRACTOR agrees to provide all goods and services required under this Agreement for the period of up to three (3) consecutive years for the delivery of the 145kV High Voltage Breakers as further described in the IFB. The City reserves the right if agreed to with CONTRACTOR to renew this Agreement for two (2) additional one (1) year periods dependent on annual appropriation of the funds by the City Commission. During the renewal option(s), the CITY may utilize this Agreement to purchase additional 145kV High Voltage Breakers unit(s).

## **2. SCOPE OF WORK**

2.1 The scope of work specifications set forth in the IFB defines a high voltage, outdoor, SF6 gas-insulated, circuit breaker to be furnished in accordance with the requirements of applicable ANSI, NEMA, and IEEE standards. All materials and devices shall be in accordance with the applicable requirements of the Federal Occupational Safety and Health Standards". Specific Quantities of the materials are indicated in the IFB (including the IFB's "Scope of Work") and shall be used for the furnishing and delivery of 145kV high Voltage Breaker units. The CITY may request additional units and modifications to additional units the CITY desires to purchase and the CITY will seek a proposal from the CONTRACTOR based on such modifications.

2.2 The CONTRACTOR represents to the CITY that all work (inclusive of all goods and services identified in the IFB) to be performed under this Agreement shall be in accordance with accepted and established trade practices and procedures recognized in the CONTRACTOR's trade in general and that the materials shall conform to the highest standards and in accordance with this Agreement.

2.3 The CONTRACTOR represents that it is licensed to do business in the State of Florida and holds and will maintain all applicable licenses required for the work to be completed under this Agreement. The CONTRACTOR further warrants its capability and experience to perform the work provided for herein in a professional and competent manner.

2.4 The work shall be performed by the CONTRACTOR or under its supervision and all personnel engaged in performing the work shall be fully qualified and, if required, authorized or permitted under the state and local law to perform such work. All of the CONTRACTOR's personnel (and all Subsuppliers), while on CITY premises, shall comply with all CITY requirements governing safety, conduct and security.

2.5 The work shall be completed in accordance with the terms and conditions set forth in this Agreement.

## **3. INDEPENDENT CONTRACTOR; USE OF AGENTS OR ASSISTANTS**

3.1 The CONTRACTOR is and shall be, in the performance of the work under this Agreement, an independent contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR's sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work.

3.2 To the extent reasonably necessary to enable the CONTRACTOR to perform the Scope of Work hereunder, the CONTRACTOR shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance of its duties. All costs of the services of, or expenses incurred by, such agents or assistants shall be paid by the CONTRACTOR.

## **4. MATERIALS**

4.1 The CONTRACTOR shall provide all materials as more specifically set forth in the Scope of Work or as reasonably necessary to accomplish the work unless otherwise specified in writing by the CITY.

## **5. FEE AND ORDERING MECHANISM**

5.1 The CITY shall utilize a City Purchase Order for the ordering of the 145kV High Voltage Breaker unit(s) under this Agreement (not to exceed 10 units during the initial three (3) year term); however, the terms and conditions of the City Purchase Order shall not apply.

5.2 Should the CITY require additional 145kV High Voltage Breakers Unit(s), the CITY and CONTRACTOR will prepare and execute a written amendment to this Agreement setting forth the additional materials and/or work and the total cost for the same prior to any such additional materials or services being provided by the CONTRACTOR.

5.3 CONTRACTOR shall not exceed amounts expressed in any CITY issued Purchase Order or amendment to this Agreement for the purchase of the 145kV High Voltage Breaker Unit(s). The CITY's Fiscal Year ends on September 30<sup>th</sup> of each calendar year. Except for purchases authorized in a prior fiscal year and fully appropriated and funded, the CITY cannot authorize the purchase of additional goods or services beyond September 30<sup>th</sup> of each calendar year, prior to the annual budget being approved by the CITY's City Commission.

## **6. MAXIMUM COSTS**

6.1 The CITY shall compensate the CONTRACTOR in accordance with the CONTRACTOR's bid prices, which are attached hereto and incorporated herein as **Exhibit "A"**. The total cost to be paid by the CITY to the CONTRACTOR if the CITY orders the initial ten (10) 145kV High Voltage Breakers units shall not exceed \$503,600 (Five Hundred Three Thousand Six Hundred Dollars) ("Maximum Cost"). If the CITY purchases any additional unit(s) from the CONTRACTOR, the not to exceed amount for those additional units shall be by an amendment(s) to this Agreement and shall increase the Maximum Cost under this Agreement.

## **7. INVOICE**

7.1 The CONTRACTOR shall submit an itemized invoice to the CITY upon delivery and final acceptance of the 145kV High Voltage Breaker unit(s). Final acceptance occurs when all work (including punch-list items) has been completed by the CONTRACTOR and the unit(s) becomes fully operational and accepted by the CITY. The CONTRACTOR shall be paid by the CITY within thirty (30) days of receipt of an approved invoice for all work for the 145kV High Voltage Breaker unit(s). Invoicing for additional units shall be addressed for each additional unit(s) in the amendment to this Agreement.

7.2 If the CITY disputes any invoice or part of an invoice, CITY shall notify the CONTRACTOR within a reasonable time after receipt of the invoice. CITY reserves the right to off-set, reduce or withhold any payment to the CONTRACTOR until the dispute is resolved.

## **8. AUDIT BY CITY**

8.1 The CONTRACTOR shall permit the CITY, or any authorized representatives of the CITY, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the CONTRACTOR's performance under this Agreement including, but not

limited to, expenses for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such work performed or to be performed under this Agreement.

## **9. COPIES OF DATA/DOCUMENTS**

9.1 Copies or original documents prepared by the CONTRACTOR in relation to work associated with this Agreement shall be provided to the CITY. Data collected, stored, and/or provided shall be in a form acceptable to the CITY and agreed upon by the CITY.

## **10. OWNERSHIP**

10.1 Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONTRACTOR pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

## **11. WRITTEN AUTHORIZATION REQUIRED**

11.1 The CONTRACTOR shall not make changes in the Scope of Work or work or perform any additional work or provide any additional materials under this Agreement without first obtaining written authorization from the CITY for such additional services or materials. Additional services or materials provided without written authorization shall be done at the CONTRACTOR's sole risk and without payment from the CITY.

## **12. DEFAULTS, TERMINATION OF AGREEMENT**

12.1 If the CONTRACTOR fails to timely perform the work or has failed in any other respect to satisfactorily perform in accordance with this Agreement; or, is in material breach of a term or condition of this Agreement, the City Manager or designee may give written notice to the CONTRACTOR specifying the default(s) to be remedied. Such notice shall set forth a reasonable timeframe for correcting the default(s) and any suggested corrective measures. If the CONTRACTOR does not remedy the default(s) within the timeframe provided in the CITY's notice or commence good faith steps to remedy the default to the reasonable satisfaction of the CITY, the CITY may take such action to remedy the default and all expenses related thereto shall be borne by the CONTRACTOR including, without limitation, utilization of another contractor to provide for such work and all of the CITY's legal fees; and/or, the CITY may withhold any money due or which may become due to the CONTRACTOR for such expense and/or work related to the claimed default. Alternatively, or in addition to the foregoing, if after three (3) business days the CONTRACTOR has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the CITY, the CITY may elect to terminate this Agreement. No cancellation fee or other compensation shall be paid by the CITY for de-mobilization, take-down, disengagement, wind-down, lost profits, or other costs incurred due to termination of this Agreement under this paragraph.

12.2 Notwithstanding paragraph 12.1, the CITY reserves the right and may elect to terminate this Agreement at any time, with or without cause. At such time, the CONTRACTOR would be compensated only for that work which has been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement, wind-down, lost profits, or other costs incurred due to termination of this Agreement under this paragraph. However, CITY shall be responsible for the cancellation fee set forth in the CONTRACTOR's bid.

12.3 If the CITY fails to timely perform in accordance with this Agreement; or, is in material breach of a term or condition of this Agreement, the CONTRACTOR may give written notice to the CITY specifying the default(s) to be remedied. Such notice shall set forth a reasonable timeframe for correcting the default(s) and any suggested corrective measures. If the CITY does not remedy the default(s) within the timeframe provided in the CONTRACTOR's notice or commence good faith steps to remedy the default to the reasonable satisfaction of the CONTRACTOR, the CONTRACTOR may take such action to remedy the default and all expenses related thereto shall be borne by the CITY; and/or, the CONTRACTOR may withhold any work. Alternatively, or in addition to the foregoing, if after three (3) business days the CITY has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the CONTRACTOR, the CONTRACTOR may elect to terminate this Agreement.

### **13. INSURANCE**

13.1. Prior to commencing any work, the CONTRACTOR shall provide certificates evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the CONTRACTOR has obtained insurance of the type, amount, and classification as required for strict compliance with this Section and that no material change or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the CITY. Failure to comply with the foregoing requirements shall not relieve the CONTRACTOR of its liability and obligations under this Contract. All insurance, other than Workers' Compensation, required hereunder shall specifically include the "City of Lake Worth Beach" as an "Additional Insured" on a primary, non-contributing basis, and the CONTRACTOR shall provide additional insured endorsements section of Certificates of Insurance.

13.2. The CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$1,000,000 per occurrence (\$2,000,000 aggregate) to protect the CONTRACTOR from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the CONTRACTOR or by anyone directly employed by or contracting with the CONTRACTOR.

13.3. The CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect the CONTRACTOR from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

13.4. The CONTRACTOR shall maintain, during the life of this Contract, Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.

### **14. WAIVER OF BREACH**

14.1 The waiver by either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

### **15. INDEMNITY**

15.1 CONTRACTOR shall indemnify, hold harmless, and defend CITY, its officers, directors, and employees from and against any claims, demands, suits, liabilities, judgments, losses, damages, costs, or expenses (including reasonable attorney's fees at all trial and appellate levels) for personal injury, death, loss of and/or damage to third party property (except property of customers of CITY or property incorporated in or intended to be incorporated in the project) to the extent caused by or arising out of any negligent act or omission or willful misconduct of CONTRACTOR, its officers, directors, agents, employees, Subsuppliers, and/or any other person utilized by CONTRACTOR in connection with performance of any work under this Agreement or in connection with the equipment or materials provided by CONTRACTOR under this Agreement ("CITY Indemnity Claim"). CONTRACTOR's indemnification obligations under this paragraph are conditioned upon CITY providing CONTRACTOR with: (i) prompt notice of any CITY Indemnity Claim; (ii) the unrestricted right and obligation to defend any CITY Indemnity Claim; and (iii) reasonable cooperation and support in the investigation, defense, and/or settlement of the CITY Indemnity Claim.

15.2 To the extent permitted by applicable law, the CITY shall indemnify, hold harmless and defend CONTRACTOR, its officers, directors, and employees from and against any claims, demands, suits, liabilities, judgments, losses, damages, costs, or expenses (including reasonable attorney's fees at all trial and appellate levels) for personal injury, death, loss of and/or damage to third party property (except property of CONTRACTOR's Subsuppliers or property incorporated in or intended to be incorporated in the project) to the extent caused by or arising out of any negligent act or omission or willful misconduct of CITY, its officers, directors, or employees in connection with performance of work under the Agreement ("CONTRACTOR Indemnity Claim"). CITY's indemnification obligations under this Article are conditioned upon CONTRACTOR providing CITY with: (i) prompt notice of any CONTRACTOR Indemnity Claim; (ii) the unrestricted right to defend any Indemnity Claim; and (iii) reasonable cooperation and support in the investigation, defense and/or settlement of the CONTRACTOR Indemnity Claim. Notwithstanding the foregoing, this Agreement shall not be construed or interpreted as a waiver of the CITY's rights to sovereign immunity under the law including, without limitation, the CITY's right to the liability limits set forth in section 768.28, Florida Statutes. Nothing in this Agreement shall be construed as the CITY's or CONTRACTOR's consent to be sued by a third party.

## **16. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE**

16.1 This Agreement consists of the terms and conditions provided herein; the IFB (including all specifications, exhibits and addenda attached thereto or referenced therein); the CONTRACTOR's bid prices (Exhibit "A") and the CONTRACTOR's bid. However, except for the warranty provision in paragraph 7 of the CONTRACTOR's Standard Terms and Conditions of Sale for Product and Services included with the CONTRACTOR's bid, the CONTRACTOR's Standard Terms and Conditions of Sale for Product and Services shall not be considered and is not made a part of this Agreement. To the extent that there exists a conflict between the terms and conditions set forth in this Agreement and other documents specifically identified above, the terms and conditions of this Agreement shall prevail with the IFB (including all exhibits and addenda attached thereto) next taking precedence; however, the CONTRACTOR's bid prices (Exhibit "A") shall take precedence over the IFB for the pricing of the initial ten (10) 145kV High Voltage Breaker units and the CONTRACTOR's specifications in its bid shall take precedence over the specifications in the IFB. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

16.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement,

or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. This Agreement may be executed electronically.

## **17. ASSIGNMENT**

17.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the CITY and the CONTRACTOR. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the CITY and the CONTRACTOR and not for the benefit or any other party. The CONTRACTOR shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

17.2 In the event the CITY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

## **18. SUCCESSORS AND ASSIGNS**

18.1 Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

## **19. WAIVER OF TRIAL BY JURY**

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

## **20. GOVERNING LAW AND REMEDIES**

20.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be in Palm Beach County, Florida.

20.2 No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

## **21. TIME IS OF THE ESSENCE**

21.1 Time is important in the completion of the Scope of Work as specified herein. CONTRACTOR will coordinate the delivery dates with CITY and keep the CITY informed about the progress. In case of any delay except when excused under paragraph 24 below, CONTRACTOR will deduct or pay the CITY 0.5% of the Cost of product that is delayed as set forth in paragraph 6 above per week for delayed portion in up to maximum aggregated of 5% of the delayed product price as the sole remedy.

## **22. NOTICES**

22.1 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3<sup>rd</sup>) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the CITY or the CONTRACTOR have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the CONTRACTOR to the CITY shall be given to the CITY address as follows:

City Manager  
City of Lake Worth Beach  
7 North Dixie Highway  
Lake Worth Beach, Florida 33460

All notices, demands or requests from the CITY to the CONTRACTOR shall be given to the CONTRACTOR address as follows:

Siemens Energy Inc.  
4400 ALAFAYA TRAIL.  
Orlando, FL 32826

## **23. SEVERABILITY**

23.1 Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

## **24. DELAYS AND FORCES OF NATURE**

24.1 The CONTRACTOR shall not be considered in default by reason of a delay in timely performance if such delay and failure arise out of causes reasonably beyond the control of the CONTRACTOR or its Subsuppliers and without their fault or negligence. Upon the CONTRACTOR's request, the CITY shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the CONTRACTOR and, if the CONTRACTOR'S delay and failure to timely perform was without it or its Subsuppliers' fault or negligence, as determined by the CITY in its sole discretion, the time of completion shall be extended for any reasonable time that the CITY, in its sole discretion, may decide; subject to the CITY'S rights to change, terminate, or stop any or all of the work at any time. If the CONTRACTOR is delayed at any time in the progress of the work by any act or neglect of the CITY or its employees, or by any other contractor employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the CITY pending negotiation or by any cause which the CITY, in its sole discretion, shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY, in its sole discretion, may decide. No extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the CITY. In the case of continuing cause of delay, only one (1) claim is necessary. The CONTRACTOR's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and CONTRACTOR



specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by CONTRACTOR due to a delay in completion of the work.

24.2 As used above, "causes reasonably beyond the control of the CONTRACTOR or its Subsuppliers shall include, but is not limited to, the following: any act of God; act of civil or military authority; act of war whether declared or undeclared; act (including but not limited to delay, failure to act or priority, governmental allocations or restrictions upon the use of transportation, materials or labor, public curfews, shelters in place, shut-ins, or lock-downs) of any governmental authority; act of terrorism or threat thereof; civil disturbance, rebellion, insurrection, riot or sabotage; fire, inclement weather conditions, earthquake, flood or natural disaster; strike, work stoppage or other labor difficulty; embargo, public health event, contagion, epidemic, pandemic (whether known or unknown) or quarantine; breakdown or unavailability of telecommunication networks; attacks on CONTRACTOR's or a Subsuppliers' digital infrastructure (such as malware, virus attacks, hacker attacks, or exploitation of vulnerabilities); railroad car, fuel or energy shortage; major equipment breakdown; delay or accident in shipping or transportation; or failure or delay beyond its reasonable control in obtaining necessary manufacturing facilities, labor, work permits or working visas for CONTRACTOR's personnel or its Subsuppliers' personnel, necessary import or export licenses, or materials from usual sources

## **25. COUNTERPARTS**

25.1 This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. Each of the parties shall sign a sufficient number of counterparts, so that each party will receive a fully executed original of this Agreement.

## **26. LIMITATIONS OF LIABILITY**

26.1 UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR ANY OTHER FORM OF INDIRECT OR NON-COMPENSATORY DAMAGES.

26.2 EXCEPT FOR CONTRACTOR'S RESPONSIBILITY TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY UNDER PARAGRAPH 15 ABOVE AND EXCEPT FOR ANY CLAIMS, DAMAGES, OR EXPENSES COVERED BY THE CONTRACTOR'S INSURANCE REQUIRED HEREIN, CITY EXPRESSLY AGREES THAT NEITHER CONTRACTOR NOR ITS SUBSUPPLIERS WILL BE LIABLE TO THE CITY UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, FOR: ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OR PUNITIVE DAMAGES WHATSOEVER; DAMAGE TO OR LOSS OF ANY PROPERTY OR EQUIPMENT; LOSS OF INTEREST OR PROFITS OR REVENUE OR LOSS OF USE THEREOF; LOSS OF USE OF CITY'S MATERIAL, EQUIPMENT OR POWER SYSTEM; LOSS OF, ALTERATION OR INABILITY TO ACCESS OR USE INFORMATION OR DATA; LOSS OF PRODUCTION (INCLUDING LOSS OF HYDROCARBONS); LOSS OF POWER; INCREASED COSTS OF ANY KIND, INCLUDING BUT NOT LIMITED TO CAPITAL COST, FUEL COST AND COST OF PURCHASED OR REPLACEMENT POWER; OR ANY CLAIMS OR DAMAGES OF CUSTOMERS OF CITY.

26.3 EXCEPT FOR CONTRACTOR'S RESPONSIBILITY TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY UNDER PARAGRAPH 15 ABOVE AND EXCEPT FOR ANY CLAIMS, DAMAGES, OR EXPENSES COVERED BY THE CONTRACTOR'S INSURANCE REQUIRED HEREIN, THE CITY EXPRESSLY AGREES THAT UNDER NO CIRCUMSTANCES SHALL THE TOTAL AGGREGATE LIABILITY OF CONTRACTOR OR ITS SUBSUPPLIERS UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, EXCEED THE MAXIMUM COST SET FORTH IN PARAGRAPH 6 ABOVE.

THE CITY'S AND CONTRACTOR'S LIABILITY UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THEIR RESPONSIBILITY TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OTHER AND ANY CLAIMS, DAMAGES, OR EXPENSES COVERED BY THE CONTRACTOR'S INSURANCE REQUIRED HEREIN, SHALL TERMINATE UPON THE EXPIRATION OF THE WARRANTY PERIOD; PROVIDED THAT, THE PARTIES SHALL REMAIN RESPONSIBLE UNDER THIS AGREEMENT FOR THEIR RESPECTIVE LIABILITY THAT AROSE ON OR PRIOR TO THE DATE OF THE EXPIRATION OF THE WARRANTY PERIOD.

## **27. PUBLIC ENTITY CRIMES**

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

## **28. PREPARATION**

28.1 This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

## **29. PALM BEACH COUNTY INSPECTOR GENERAL**

29.1 In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

## **30. ENFORCEMENT COSTS**

30.1 All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution,

validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract.

### **31. PUBLIC RECORDS**

CONTRACTOR shall comply with Florida's Public Records Laws, Chapter 119, Florida Statutes, and, if it is acting on behalf of the CITY as provided under section 119.011(2), the CONTRACTOR specifically agrees to:

- (a) Keep and maintain public records required by the CITY to perform the services under this Agreement.
- (b) Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the CONTRACTOR does not transfer the records to the CITY.
- (d) Upon the completion of the Agreement, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the services. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the City.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.**

### **32. COPYRIGHTS AND/OR PATENT RIGHTS**

32.1 CONTRACTOR warrants that there has been no violation of copyrights and/or patent rights in the manufacturing, producing or selling of the goods, shipped or ordered, as a result of this Agreement and the CONTRACTOR agrees to hold the City harmless from any and all liability, loss, or expense occasioned by any such violation.

### **33. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH**

33.1 CONTRACTOR certifies that all material, equipment, etc., contained in this bid meets all OSHA requirements. CONTRACTOR further certifies that, if the material, equipment, etc., delivered is subsequently found to be deficient in any OSHA requirements in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the CONTRACTOR.

#### **34. FEDERAL AND STATE TAX**

34.1 The CITY is exempt from Federal Tax and State Tax for Tangible Personal Property. The Procurement Official will provide the CONTRACTOR with a signed exemption certificate submitted by the CONTRACTOR. CONTRACTOR shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the CITY, nor shall CONTRACTOR be authorized to use the City's Tax Exemption Number in securing such materials.

#### **35. PROTECTION OF PROPERTY**

35.1 The CONTRACTOR shall at all times guard against damage or loss to the property of the CITY or of other vendors or contractors and shall be held responsible for replacing or repairing any such loss or damage. The CITY may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the successful CONTRACTOR or its agents. The CONTRACTOR shall be responsible to safeguard all of their property such as tools and equipment while on site. The CITY will not be held responsible for any loss of CONTRACTOR property due to theft or vandalism.

#### **36. WARRANTY**

36.1 The CONTRACTOR shall provide all required and necessary services as set forth in the warranty provision in paragraph 7 of the CONTRACTOR's Standard Terms and Conditions of Sale for Product and Services, which was included with the CONTRACTOR's bid.

#### **37. SCRUTINIZED COMPANIES**

37.1 Contractor certifies that it and its Subsuppliers are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Agreement at its sole option if the Contractor or any of its Subsuppliers are found to have submitted a false certification; or if the Contractor or any of its Subsuppliers, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

37.2 If this Agreement is for one million dollars or more, the Contractor certifies that it and its Subsuppliers are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Agreement at its sole option if the Contractor, or any of its Subsuppliers are found to have submitted a false certification; or if the Contractor or any of its Subsuppliers are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

37.3 The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

37.4 The Contractor agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Agreement, including any and all renewals.

37.5 The Contractor agrees that if it or any of its Subsuppliers' status changes in regards to any certification herein, the Contractor shall immediately notify the City of the same.

37.6 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

### **38. E-VERIFY**

Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the CONTRACTOR shall:

38.1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all Subsuppliers (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the Subsuppliers' newly hired employees;

38.2. Secure an affidavit from all Subsuppliers (providing services or receiving funding under this Agreement) stating that the Subsupplier does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

38.3. Maintain copies of all Subsupplier affidavits for the duration of this Agreement and provide the same to the CITY upon request;

38.4. Comply fully, and ensure all of its Subsuppliers comply fully, with Section 448.095, Florida Statutes;

38.5. Be aware that a violation of section 448.09, Florida Statutes (Unauthorized Aliens; Employment Prohibited), shall be grounds for termination of this Agreement; and,

38.6. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the CONTRACTOR may not be awarded a contract for at least one (1) year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

### **39. SURVIVABILITY**

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

### **40. NO THIRD PARTY BENEFICIARIES**

40.1 There are no third party beneficiaries to this Agreement.

### **41. INFRINGEMENT INDEMNITY**

41.1 CONTRACTOR will defend or settle at its expense a claim or suit brought by a third

party against the CITY arising out of a claim asserting that the work, services, repair, equipment, materials or other deliverables ("deliverables" hereafter) provided by CONTRACTOR under this Agreement infringes any U.S. copyright or any U.S. patent or misappropriates a trade secret. CONTRACTOR will indemnify and hold harmless the CITY against and from damages, costs, and reasonable attorneys' fees, if any and at all levels of trial and appeal or mediation or arbitration, finally awarded in such suit or the amount of the settlement thereof; provided that (i) CONTRACTOR is promptly notified in writing of such claim or suit, (ii) CONTRACTOR will have the sole control of the defense and settlement thereof, and (iii) CITY furnishes CONTRACTOR, on reasonable request, information available to CITY for such defense. The CITY will not admit any such claim without prior consent of CONTRACTOR.

41.2 In the event of a claim of infringement, CONTRACTOR shall, at its option: procure for CITY the right to continue using the deliverables provided under this Agreement; or, replace or modify the deliverables so that the same becomes non-infringing but substantially equivalent in functionality and performance. If neither of the foregoing actions is reasonably feasible, CONTRACTOR will refund to CITY the fee actually paid by CITY under this Agreement (as amortized on a straight-line basis over the time in which the CITY was able to use the deliverables).

41.3 CONTRACTOR will have no obligation under this paragraph for infringement if and to the extent that such claim arises from: modification of the deliverables other than by CONTRACTOR or by its recommendation; or combination of the deliverables with products other than those supplied by CONTRACTOR; the alleged infringement or misappropriation relates to such modification or combination; and/or, the specifications or written direction of the CITY directs CONTRACTOR to construct, fabricate or otherwise provide the infringing deliverables, design, apparatus or, article, with CONTRACTOR's products, services, or work product. CONTRACTOR will also not have any indemnification obligation with respect to a claim: (i) if it has provided CITY with reasonable changes that would have avoided the problem and the reasonable changes are not fully implemented by CITY within a reasonable time or (ii) arising out use of the deliverables not in accordance with this Agreement.

41.4 CONTRACTOR's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon CONTRACTOR whether such injury or damage shall accrue, or may be discovered, before or after termination or expiration of the Contract Documents.

## **42. CONFIDENTIALITY**

42.1 Each party (the "Receiving Party") will keep confidential and not disclose to any other person or entity or use (except as expressly and unambiguously authorized by this Agreement) any information identified or marked as proprietary or confidential information ("Confidential Information") obtained from the other party (the "Disclosing Party"); provided, however, that the Receiving Party will not be prohibited from disclosing or using said proprietary information (i) that at the time of disclosure is publicly available or becomes publicly available through no act or omission of the Receiving Party, (ii) that is or has been disclosed to the Receiving Party by a third party who is not under, and to whom the Receiving Party does not owe, an obligation of confidentiality with respect thereto, (iii) that is or has been independently acquired or developed by the Receiving Party without access to the Disclosing Party's Confidential Information, (iv) that is already in the Receiving Party's possession at the time of disclosure, or (v) that is required to be released by law. The Receiving Party shall promptly notify the Disclosing Party of any unauthorized disclosure or use of the Confidential Information. The Receiving Party shall

cooperate and assist the Disclosing Party in preventing or remedying any such unauthorized use or disclosure.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**  
**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement for supply and delivery of 145kV High Voltage Breakers on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: \_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

By: \_\_\_\_\_  
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

APPROVED FOR FINANCIAL SUFFICIENCY

By: \_\_\_\_\_  
Bruce T. Miller, Financial Services Director

CONTRACTOR: Siemens Energy Inc

By: \_\_\_\_\_  
12/3/2021

[Corporate Seal]

Print Name: M. Naeem Siddiqui

Title: Director

STATE OF MS )  
COUNTY OF KZAKIN )



THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 3<sup>rd</sup> day of December 2021, by Naeem Siddiqui, as the Marketing Dir. [title] of Siemens Energy Inc, a Corporation authorized to do business in the State of Florida, who is personally known to me or who has produced known to me as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

\_\_\_\_\_  
Notary Public Signature



**Exhibit "A"**  
**Contractor's Bid Prices**

**IFB# 21-209 145kV High Voltage Breakers**

**SCHEDULE OF UNIT PRICES**

In order to evaluate the total bid amount, each Bidder must identify the unit prices for the materials set forth in the Scope of Services. The quantities below are estimated quantities. City does not guarantee a minimum order and reserves the right to adjust these quantities as considered in the best interest of the City. Prices shall be delivered FOB destination, City of Lake Worth Beach. The City will not accept bids that have no shipping prices included in their unit price. The bidder acknowledges that no additional payment will be made for adjustments in the quantities.

Unit firm price for ten (10) breakers, as specified,  
(F.O.B. destination, freight allowed and prepaid) \$ 50,360.00 / per unit

**DELIVERY**

Delivery of the items shall be no later than June 24, 2022. Bidder shall provide delivery details below:

Shipping is scheduled after receipt of order. 24-26 Weeks

Shipping is scheduled after drawing approval. 12-16 Weeks