

**AGREEMENT FOR GOOD AND SERVICES
(Magnetically Actuated 38kV 1200/2000A Outdoor Vacuum Circuit Breaker)**

THIS AGREEMENT FOR GOODS AND SERVICES (“Agreement”) is made on this _____, between the **City of Lake Worth Beach**, Florida, a municipal corporation (“CITY”) with its office located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460, and **ABB, Inc.**, a Delaware Corporation with its principal office located at 305 Gregson Dr., North Carolina, 27511 (“CONTRACTOR”).

RECITALS

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

WHEREAS, the CITY issued Invitation for Bid # 23-105 for Magnetically Actuated 38kV 1200/2000A Outdoor Vacuum Circuit Breaker (“IFB”) for City of Lake Worth Beach Electric Utility, which IFB is incorporated by the reference into this Agreement; and

WHEREAS, the CITY received two (2) responses to the IFB including one (1) from the CONTRACTOR before the deadline; and

WHEREAS, the CONTRACTOR submitted the lowest, responsive and compliant bid; and

WHEREAS, the CITY requested minor changes in CONTRACTOR’s specifications and the CONTRACTOR submitted a revised specification under the same bid price with the revised specifications attached hereto as an Exhibit “B”; and

WHEREAS, the CITY desires to accept the CONTRACTOR’s revised bid specifications 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 services of the CONTRACTOR, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

1. TERM

1.1 The term shall commence upon the approval of this Agreement for initial period of one (1) year for a supply of Magnetically Actuated 38kV 1200/2000A Outdoor Vacuum Circuit Breaker with the option to renew for four (4) additional one (1) year periods for the supply of multiple units depending on an annual appropriation of the funds by the City Commission and mutual agreement by both parties. Rates shall remain firm for the 6 months of the Agreement subject to terms and conditions to be negotiated on requests for consideration of a price adjustment after that term. During the renewal option(s), the City may utilize this Agreement to purchase additional Magnetically Actuated 38kV 1200/2000A Outdoor Vacuum Circuit Breakers. Should the City

require additional Magnetically Actuated 38kV 1200/2000A Outdoor Vacuum Circuit Breakers, the CITY and successful bidder will prepare and execute a written amendment to the Agreement setting forth the additional materials and/or services and the total not to exceed cost for the same prior to any such additional materials or services being provided by the successful bidder.

2. SPECIFICATIONS

2.1 The specifications set forth in the IFB details the Magnetically Actuated 38kV 1200/2000A Outdoor Vacuum Circuit Breakers to be provided to the CITY. The CONTRACTOR's revised bid specifications, attached hereto as **Exhibit "B"** and incorporated herein, set forth further details for the furnishing of full engineering specifications, fabrication, testing, and delivery of the Magnetically Actuated 38kV 1200/2000A Outdoor Vacuum Circuit Breakers for the City's Electric Utility department.

2.2 The CONTRACTOR represents to the CITY that all goods and services provided under this Agreement shall be in accordance with accepted and established trade practices and procedures recognized in the CONTRACTOR's trade in general and that the materials shall conform to the highest standards and in accordance with this Agreement.

2.3 The CONTRACTOR further warrants its capability and experience to perform the services provided for herein in a professional and competent manner.

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

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

3. INDEPENDENT CONTRACTOR; USE OF AGENTS OR ASSISTANTS

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

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

4. MATERIALS

4.1 The CONTRACTOR shall provide all materials as more specifically set forth in the IFB and its specifications and Exhibit "A" unless otherwise specified in writing by the CITY.

5. FEE AND ORDERING MECHANISM

5.1 The CITY shall utilize a City Purchase Order for the ordering of the Magnetically Actuated 38kV 1200/2000A Outdoor Vacuum Circuit Breaker under this Agreement; however, the terms and conditions of the City Purchase Order shall not apply.

5.2 Should the CITY require additional goods and services, which additional goods and services are not included in this Agreement (but authorized by the IFB), the CITY and CONTRACTOR will prepare and execute a written amendment setting forth the additional goods and services and the total cost for the same prior to any such additional goods or services being provided by the CONTRACTOR.

5.3 The CITY's ordering mechanism is a CITY issued Purchase Order; however, the terms and conditions stated in this Agreement and any amendment thereto will apply. CONTRACTOR shall not exceed amounts expressed herein or in any CITY issued Purchase Order. The CITY's Fiscal Year ends on September 30th of each calendar year. Except for purchases authorized in a prior fiscal year and fully appropriated and funded, the CITY cannot authorize the purchase of additional goods or services beyond September 30th of each calendar year, prior to the annual budget being approved by the CITY's City Commission.

6. MAXIMUM COSTS

6.1 The CITY shall compensate the CONTRACTOR in accordance with the CONTRACTOR's bid pricing, which is attached hereto and incorporated herein as **Exhibit "A"**. The total cost to be paid by the CITY to the CONTRACTOR shall not exceed \$250,000.00 (Two Hundred Fifty Thousand Dollars) annually. The maximum price change during the semiannual review shall be no more than 10% of the previous price.

7. INVOICE

7.1 The CONTRACTOR shall submit an itemized invoice to the CITY for the goods and services upon delivery, and final acceptance of the goods and all services by the CITY. Final acceptance occurs when the unit becomes fully operational and accepted by the CITY. The CONTRACTOR shall be paid by the CITY within thirty (30) days of receipt of an approved invoice for all goods and services.

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

8. AUDIT BY CITY

8.1 The CONTRACTOR shall permit the CITY, or any authorized representatives of the CITY, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the CONTRACTOR's performance under this Agreement including, but not limited to, expenses for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such work performed or to be performed under this Agreement.

9. COPIES OF DATA/DOCUMENTS

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

10. OWNERSHIP

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

11. WRITTEN AUTHORIZATION REQUIRED

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

12. DEFAULTS, TERMINATION OF AGREEMENT

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

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

12.3 If the CITY fails to timely perform in accordance with this Agreement; or, is in material breach of a term or condition of this Agreement, the CONTRACTOR may give written notice to the CITY specifying the default(s) to be remedied. Such notice shall set forth a reasonable timeframe for correcting the default(s) and any suggested corrective measures. If the CITY does

not remedy the default(s) within the timeframe provided in the CONTRACTOR's notice or commence good faith steps to remedy the default to the reasonable satisfaction of the CONTRACTOR, the CONTRACTOR may take such action to remedy the default and all expenses related thereto shall be borne by the CITY; and/or, the CONTRACTOR may withhold any work. Alternatively, or in addition to the foregoing, if after three (3) business days the CITY has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the CONTRACTOR, the CONTRACTOR may elect to terminate this Agreement.

13. INSURANCE

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

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

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

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

14. WAIVER OF BREACH

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

15. INDEMNITY

15.1 The CONTRACTOR shall indemnify, defend and hold harmless, to the maximum extent permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all liability, suit, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death, patent infringement or property damage, and regardless, of whether the allegations are false, fraudulent

or groundless), costs and expenses (including attorney's fees, litigation, arbitration, mediation, appeal expenses) to the extent arising out of or alleged to have arisen out of the acts, omissions or neglect of the CONTRACTOR or any of its agents, employees, subcontractors or by anyone the CONTRACTOR directly or indirectly employed.

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

15.3 Compliance with any insurance requirements required elsewhere in this Agreement shall not relieve CONTRACTOR of its liability and obligation to defend, hold harmless and indemnify the CITY as set forth in this section.

15.4 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CITY or CONTRACTOR. Further, nothing contained in this Agreement shall be construed or interpreted as consent by the CITY to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in section 768.28, Florida Statutes, as amended from time to time.

15.5 The CONTRACTOR's failure to comply with this section's provisions shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

16. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

16.1 This Agreement consists of the terms and conditions provided herein; the IFB (including all specifications, exhibits and addenda attached thereto or referenced therein); and, the CONTRACTOR's revised bid specifications and bid pricing (Exhibit "A" and Exhibit "B"). To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with the IFB (including all specifications, exhibits and addenda attached thereto) next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

16.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. This Agreement may be executed electronically and such electronic signature shall be treated as an original signature of the party executing this Agreement electronically.

17. ASSIGNMENT

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

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

18. SUCCESSORS AND ASSIGNS

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

19. WAIVER OF TRIAL BY JURY

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

20. GOVERNING LAW AND REMEDIES

20.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and exclusive 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 of the essence in the completion of the Scope of Work as specified herein.

22. NOTICES

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

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

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

ABB, Inc.

Attn: Konrad Izbinski, Sales Support Manager
305 Gregson Drive
Cary, NC 27511
United States

23. SEVERABILITY

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

24. DELAYS AND FORCES OF NATURE

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

24.2 Neither party shall be considered in default in the performance of its obligations hereunder or any of them, if such obligations were prevented or delayed by any cause, existing or future beyond the reasonable control of such party which include but are not limited to acts of God, labor disputes or civil unrest.

25. COUNTERPARTS

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

26. PUBLIC ENTITY CRIMES

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

27. PREPARATION

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

28. PALM BEACH COUNTY INSPECTOR GENERAL

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

29. ENFORCEMENT COSTS

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

30. PUBLIC RECORDS

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

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

exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the City.

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

31. COPYRIGHTS AND/OR PATENT RIGHTS

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

32. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH

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

33. FEDERAL AND STATE TAX

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

34. PROTECTION OF PROPERTY

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

35. DAMAGE TO PERSONS OR PROPERTY

35.1 The responsibility for all damage to person or property arising out of or on account of work done under this Agreement shall rest upon the CONTRACTOR, and he/she shall save the CITY and political unit thereof harmless from all claims made on account of such damages.

36. WARRANTY

36.1 CONTRACTOR warrants and guarantees to the CITY that goods and services provided under this Agreement shall be in accordance with the Agreement and the other documents specifically included in this Agreement. CONTRACTOR warrants that all materials and parts supplied under this Agreement shall be free from defects for a minimum of 18 months from the final acceptance of the work. CONTRACTOR guarantees that all goods and services provided under this Agreement will be free from defects for a minimum of 18 months from the final acceptance of the work. CONTRACTOR shall provide to the CITY any and all manufacturers' warranties for the goods and services being provided under this Agreement.

37. SCRUTINIZED COMPANIES

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

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

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

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

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

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

38. E-VERIFY

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

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

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

38.3 Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the City upon request;

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

38.5 Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,

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

39. SURVIVABILITY

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

40. PRICE ESCALATION CLAUSE

40.1 The baseline prices are the prices in effect on the Effective Date of a Blanket Purchase order. The baseline pricing that will be used for the semiannual price review will refer to the prices established at the start of the contract or the most recently revised pricing if a price change had been triggered per the stipulations below. For example, if the contract starts in January 2023, this will be the baseline pricing used when evaluating the pricing in July 2023.

- (a) For the BLS indices, a minimum threshold of 1% must be reached before a price change is initiated.
- (b) BLS data is from the Bureau of Labor Statistics website: <https://data.bls.gov/pdq/querytool.jsp?survey=pc>
- (c) The below shows the actual baseline price composition of the R-MAG product offering. The baseline will be calculated based on the three (3) month average BLS index value. The change will be calculated based on the indices three (3) month value from the same month term as the baseline. The variation from the base multiplied by the material cost listed in the table below. A spreadsheet with the matrix and calculation for new pricing will be supplied by ABB one (1) month prior to the price change.

Basic R-MAG

BLS Series ID	Description	% of total cost
PCU335313335313A	PPI industry data for Switchgear and switchboard apparatus <u>mfg</u> -Switchgear, excluding ducts and relays	100%

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement for Goods and Services for Magnetically Actuated 38kV 1200/2000A Outdoor Vacuum Circuit Breaker on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: **ABB, INC.**

By: *Konrad Izbinski*

[Corporate Seal]

Print Name: Konrad Izbinski

Title: Sales Support Manager

STATE OF Texas
COUNTY OF Montgomery

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 2nd day of May 2023, by Konrad Izbinski, as the Sales Support Manager [title] of **ABB, Inc.** a North Carolina, corporation, who is personally known to me or who has produced TX DL as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

[Signature]

Notary Public Signature

Notary Seal:

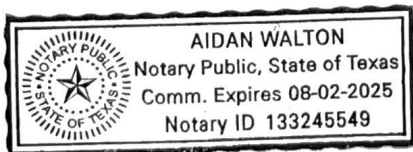


Exhibit "A"

Bid Pricing

**IFB#23-105 MAGNETICALLY ACTUATED 28 TO 38kV 1200/2000A OUTDOOR VACUUM
CIRCUIT 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 Specifications. City does not guarantee a minimum order and City intends to purchase these items on as needed basis during the contract duration. **Prices shall be delivered FOB destination, City of Lake Worth Beach, freight allowed and pre-paid.** The Bidder shall maintain fixed pricing for the initial period of the contract. The City will not accept bids that have no shipping prices included in their unit price.

Description	Part#	Unit Price
Magnetically Actuated 28 to 38kV 1200A Outdoor Vacuum Circuit Breaker (as specified in Exhibit "A")	MB3015DMMSH5KBZ4	\$ 53,708.85 /per item
Magnetically Actuated 28 to 38kV 2000A Outdoor Vacuum Circuit Breaker (as specified in Exhibit "A")	MB3025DUUSH5KBZ4	\$ 57,034.58 /per item

Delivery: 196 Days (28 Weeks) calendar days

Failure to supply Manufacturer's Data Sheet may result in rejection of the Bid.

Name of Bidder: ABB Inc

Address: 680 Century Point Suite 1050 ST FL Zip 32746

Phone: (346) 236-7878 Email: konrad.izbinski@us.abb.com

Print Name: Konrad Izbinski Title: Sales Support Manager

SIGNATURE:  Date: 03/09/2023

Exhibit "B"

Technical Specifications



Technical Data Sheet

Item 1 (Standard Line Item)

ABB Product ID: MB3015DMMSH5KBZ4

Type	R-MAG
Types Rating	MB3015 - 38 kV 1250 Amp 200 kV BIL 31.5 kA
Voltage	38 kV
BIL	200 kV BIL
Current	1250A
Interrupting Current	31.5
Power Frequency	60 Hz
Auxiliary Switches	D - (2) 16 deck snap action rotary switch
CTs 1-3-5	M - 2 Set 1200/5 C400 TR 2.00 (8.24")
CTs 2-4-6	M - 2 Set 1200/5 C400 TR 2.00 (8.24")
Material Type	Stainless Steel
Enclosure Material	S - Standard R-MAG Stainless Steel Cabinet with galvanized legs & provisions for ground lugs (38kV, 1200A/2000A)
BCT Shorting Type	G.E. EB27 shorting type terminal blocks
BCT Wiring	#10 AWG; All taps wired to term block
ED2.0 board	H - 85-264 VAC or 77-280 VDC High Voltage Board (38 kV)
Control Voltage	5 - 125 VDC Operating Voltage
Circuit Protection	K - Fused knife switches provided for control circuits
Bushing Creep	Standard Creep Bushing
Bushing Type	Standard Bushing (38 kV, 1200/1250 Amp, 200 kVBIL)
Bushing Terminal Connectors	4 - 4 Hole NEMA Pad (1200/1250 Amp)
Control Type	B - Basic Unit
Panel Configuration	Z - Special panel
Control Wiring	#14 AWG; Control Wire (Standard)
Control Wiring Lugs	Insulated Lugs (Standard)
Control Terminal Blocks	Standard terminal blocks as required.
Heaters	Special Heater Two 100W, 230 VAC continuously operated cabinet heaters
Local/Remote Switch	(1) Standard local/remote switch provided
Test Switches	No test switches provided
Digital Meters	No digital meters provided
Thermostats	(1) Standard thermostat included. Operating Range: 70°F to 80°F
Wire Markers	Brady wire marker sleeves as required.
Control Switch	No Control Switch Provided
Legacy Material	No
Special Final Assembly	Special Final Assembly None
Shipping Special	Special Shipping Requirements No
Seismic Option	No Seismic qualification is being provided

**DYNAMIC ACCESSORIES**

Dynamic Accessories	Copper ground bus bar (Qty 1)
Dynamic Accessories	Loss of DC supply voltage (Qty 1)
Dynamic Accessories	Cap discharge switch (Qty 1)
Dynamic Accessories	Loss of AC Relay (240 VAC) (Qty 1)
Dynamic Accessories	Device Nameplates (Qty 1)
Dynamic Accessories	120 VAC, 1 phase GFI utility outlet mounted inside the relay control cabinet. (Qty 1)
Dynamic Accessories	120 VAC relay cabinet light mounted inside relay control cabinet (Qty 1)
Dynamic Accessories	Ground Clamps (#4 - 4/0) (Qty 1)
Dynamic Accessories	Special Accessory 1 (Qty 1) No vented door

Accessories**ABB Internal Order Entry Information**

CID Code: 9AAC30400486

Source Location [Code](#): 9AAE324912 [Manufacturing](#): 3407, Mexico - San Luis Potosi



Item 2 (Standard Line Item)

ABB Product ID: MB3025DUUSH5KBZ4

Type	R-MAG
Types Rating	MB3025 - 38 kV 2000 Amp 200 kV BIL 31.5 kA
Voltage	38 kV
BIL	200 kV BIL
Current	2000A
Interrupting Current	31.5
Power Frequency	60 Hz
Auxiliary Switches	D - (2) 16 deck snap action rotary switch
CTs 1-3-5	U - 2 Sets 2000/5 C400 TR 2.00(4.76")
CTs 2-4-6	U - 2 Sets 2000/5 C400 TR 2.00(4.76")
Material Type	Stainless Steel
Enclosure Material	S - Standard R-MAG Stainless Steel Cabinet with galvanized legs & provisions for ground lugs (38kV, 1200A/2000A)
BCT Shorting Type	G.E. EB27 shorting type terminal blocks
BCT Wiring	#10 AWG; All taps wired to term block
ED2.0 board	H - 85-264 VAC or 77-280 VDC High Voltage Board (38 kV)
Control Voltage	5 - 125 VDC Operating Voltage
Circuit Protection	K - Fused knife switches provided for control circuits
Bushing Creep	Standard Creep Bushing
Bushing Type	Standard Bushing (38 kV, 2000 Amp, 200 kVBIL)
Bushing Terminal Connectors	4 - 4 Hole NEMA Pad (2000 Amp)
Control Type	B - Basic Unit
Panel Configuration	Z - Special panel Provide cutout only for Qty. 1 (One) SEL-351S relay 3U and Qty. 2 (Two) FT style isolation switches
Control Wiring	#14 AWG; Control Wire (Standard)
Control Wiring Lugs	Insulated Lugs (Standard)
Control Terminal Blocks	12 point G.E. EB25 type terminal blocks
Heaters	Special Heater Two 100W, 230 VAC continuously operated cabinet heaters
Local/Remote Switch	(1) Standard local/remote switch provided
Test Switches	No test switches provided
Digital Meters	No digital meters provided
Thermostats	(1) Standard thermostat included. Operating Range: 70°F to 80°F
Wire Markers	Brady wire marker sleeves as required.
Control Switch	No Control Switch Provided
Legacy Material	Yes 1VAS000742-0001
Special Final Assembly	Special Final Assembly None
Shipping Special	Special Shipping Requirements No
Seismic Option	No Seismic qualification is being provided

**DYNAMIC ACCESSORIES**

Dynamic Accessories	120 VAC relay cabinet light mounted inside relay control cabinet (Qty 1)
Dynamic Accessories	External Bushing Identification Stickers (Qty 1)
Dynamic Accessories	120 VAC, 1 phase GFI utility outlet mounted inside the relay control cabinet. (Qty 1)
Dynamic Accessories	Cap discharge switch (Qty 1)
Dynamic Accessories	Ground Clamps (#4 - 4/0) (Qty 1)
Dynamic Accessories	Seal and Gasket Procedure (Qty 1)
Dynamic Accessories	Copper ground bus bar (Qty 1)
Dynamic Accessories	Loss of AC Relay (240 VAC) (Qty 1)
Dynamic Accessories	Special Accessory 1 (Qty 1) No vented door
Dynamic Accessories	Device Nameplates (Qty 1)
Dynamic Accessories	Loss of DC supply voltage (Qty 1)

Accessories**ABB Internal Order Entry Information**

CID Code: 9AAC30400486

Source Location Code: 9AAE324912 ~~Manufacturing: 3407, Mexico - San Luis Potosi~~