

**CONTRACTOR AGREEMENT**  
**(Transportation and Delivery of Ductile Iron Utility Poles)**

**THIS CONTRACTOR AGREEMENT** ("Agreement") is made this \_\_\_\_\_, between the **City of Lake Worth Beach**, Florida, a municipal corporation with its office located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460 ("CITY"), and **Blackwood Solutions, LLC**, a Limited Liability Company authorized to do business in the State of Florida, with its office located at 1901 S. Liberty Drive, Bloomington, IN 47403 ("CONTRACTOR").

**RECITALS**

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

**WHEREAS**, the CITY issued Invitation for Bids # 24-110R for Transportation and Delivery of Ductile Iron Utility Poles originating from McWane, Inc., 2266 6<sup>th</sup> Street, Coshocton, Ohio 43812 ("IFB"); and

**WHEREAS**, CONTRACTOR submitted a bid to perform the services described and set out in the IFB's Scope of Work which is attached hereto and incorporated herein by reference as **Exhibit "A"**; and

**WHEREAS**, the CITY desires to accept the CONTRACTOR's bid for the CONTRACTOR to render the required services to the CITY as provided herein; 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 awarding the IFB to 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**

The initial term of this non-exclusive Agreement shall be from the date of execution by the CITY for a period of two (2) years unless earlier terminated in accordance with the terms of this Agreement. The City Manager may approve extension of this agreement in the case City's poles supply agreement extends beyond the term of two (2) years and to complete the delivery of poles under that agreement. The CONTRACTOR's rates shall remain firm for the two (2) year initial term of the Agreement subject to terms and conditions to be negotiated on requests for consideration of a price adjustment after the initial term.

**2. SCOPE OF WORK**

2.1 The scope of work includes transportation and delivery of ductile iron utility poles to the CITY as described in IFB and Scope of Work attached hereto as an **Exhibit "A"**. The CONTRACTOR understands that the objective of this Agreement is to secure the services of an experienced CONTRACTOR who is capable of efficiently providing transportation and delivery of ductile iron utility poles in a timely and cost-effective manner and that the CONTRACTOR must be capable of assembling, directing, and managing the

delivery service and provide a work force that can start operations within one (1) week of notification of an upcoming scheduled delivery.

2.2. The CONTRACTOR represents that it is experienced and proficient in all phases of providing transportation and delivery of ductile iron utility poles services to the CITY.

2.2 The CONTRACTOR represents to the CITY that the Scope of Work provided under this Agreement and IFB shall be in accordance with accepted and established trade practices, standards and procedures recognized in the CONTRACTOR's trade in general and that the supplied services 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 scope of work shall be performed by the CONTRACTOR or under its supervision and all personnel engaged in performing the Scope of Work shall be fully qualified and, if required, authorized or permitted under the state and local law to perform such Scope of Work. 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 scope of work shall be completed in accordance with the terms and conditions set forth in the IFB and this Agreement.

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

3.1 The CONTRACTOR is and shall be, in the performance of the scope of work under this Agreement, an independent contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the scope of 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 scope of work. Nothing herein shall be deemed as the CONTRACTOR being an agent of the CITY.

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. SERVICES**

4.1 The CONTRACTOR shall provide all services as more specifically set forth in the scope of work.

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

5.1 For services to be rendered under this Agreement, the CONTRACTOR shall be entitled to compensation at the amount set forth in CONTRACTOR's rate attached hereto as **Exhibit "B"**.

5.2 Should the CITY require additional services, not included in this Agreement, fees and payment for such additional services will be set forth in a separate amendment, as authorized in accordance with the CITY's procurement code prior to any such additional services being provided by the CONTRACTOR.

5.3 The CITY's ordering mechanism for the scope of work performed under this Agreement may be a City Purchase Order; however, the terms and conditions stated in a City Purchase Order shall not apply. CONTRACTOR shall not exceed amounts expressed on any Purchase Order. The CITY's Fiscal Year ends on September 30<sup>th</sup> of each calendar year and the CITY cannot authorize the purchase of 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. Additionally, the CITY must have budgeted appropriate funds for the goods and services in any subsequent Fiscal Year. If the budget is approved for said goods and services, the CITY will issue a new Purchase Order for required and approved goods and/or services.

5.4 This Agreement does not guarantee that the CITY will utilize the CONTRACTOR in any capacity or for any services hereunder. When the CITY identifies a need for the CONTRACTOR's services, the CITY will issue the CONTRACTOR with a Purchase Order specifying the work required. The CONTRACTOR shall commence the identified services upon the CITY's approval of the Purchase Order for the services and issuance of a notice to proceed.

## 6. MAXIMUM COSTS

6.1 The CONTRACTOR expressly acknowledges and agrees that the total cost to complete the scope of work in accordance with the IFB and this Agreement is not to exceed **the amount(s) set forth in the approved Purchase Order(s) issued to the CONTRACTOR on case by case basis. The total amount of this Agreement shall not exceed One Million Dollars (\$1,000,000.00)**, and no additional costs shall be authorized without prior written approval from the CITY.

## 7. INVOICE & PAYMENT

7.1 The CONTRACTOR shall submit an itemized invoice to the CITY for approval prior to receiving compensation. The CONTRACTOR shall be paid within thirty (30) days of receipt of an approved invoice for work.

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 perform any additional services or provide any additional material under this Agreement without first obtaining written

authorization from the CITY for such additional services or goods. Additional services or goods 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 scope of 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 defaults to be remedied. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the CONTRACTOR does not remedy defaults within the allotted time or commence good faith steps to remedy the default to the reasonable satisfaction of the City Manager or designee, 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/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) days the CONTRACTOR has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the City Manager or designee, the CITY may elect to terminate this Agreement. 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.

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.

## **13. INSURANCE**

13.1. Prior to commencing the scope of 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-contributory 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 Agreement, 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 \$5,000,000 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. Coverage shall include passenger liability.

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 attached thereto or referenced therein); the scope of work attached as Exhibit "A"; and, the CONTRACTOR's rate attached as 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 along with Exhibit "B" shall prevail with the IFB (including all specifications, exhibits and addenda attached thereto or referenced therein) and the scope of work attached as Exhibit "A" 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.

#### **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 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 (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 of Lake Worth Beach  
Attn: City Manager/ Financial Department/Procurement Division  
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:

Blackwood Solutions, LLC  
Attn: Nathan Broadfoot, V. P.  
1901 Liberty Drive  
Bloomington, IN 47403

**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. This Agreement may be executed with electronic signatures.

**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.

**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. RECITALS AND PREPARATION**

28.1 The Recitals set out at the beginning of this Agreement are incorporated as true and correct statements of the CITY and CONTRACTOR.

28.2 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 Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement.

## **31. PUBLIC RECORDS**

31.1 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 CONSULTANT'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 proposal 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 sign an exemption certificate submitted by the successful CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the CITY, nor shall the 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. DAMAGE TO PERSONS OR PROPERTY**

36.1 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 the CONTRACTOR shall save the CITY harmless from all claims made on account of such damages.

**37. WARRANTY**



37.1 CONTRACTOR warrants and guarantees to the CITY that the Scope of Work provided under this Agreement shall be in accordance with the Agreement and the other documents specifically included in this Agreement. CONTRACTOR warrants that all goods and parts supplied under the Scope of Work and this Agreement shall be free from defects for a minimum of one (1) year from the final completion of the Scope of Work. CONTRACTOR guarantees that all services and labor performed under the Scope of Work and this Agreement will be free from defects for a minimum of one (1) year from the final completion of the Scope of Work. CONTRACTOR shall provide to the CITY any and all manufacturers' warranties for the goods and services being provided under the Scope of Work. CONTRACTOR agrees to pay for all transportation and handling costs of returning the boilers, if required, for repair or replacement. If a boiler(s) must be returned, CONTRACTOR, shall provide a replacement boiler(s) for the duration.

**38. SCRUTINIZED COMPANIES.**

38.1. 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.

38.2. 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 the Scrutinized Companies with Activities in Iran Terrorism Sectors 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 the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

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

38.4. 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.

38.5. The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regard to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

38.6. 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.

**39. E-VERIFY.** Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR shall:

39.1. 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;

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

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

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

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

39.6. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded an agreement for at least 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. WORK FOR HIRE**

40.1 All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the CONTRACTOR or its subcontractors under this Agreement shall be considered a "Work for Hire" and the exclusive property of the CITY. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, CONTRACTOR and CONTRACTOR's Subcontractors will assign to the CITY all right, title and interest in and to CONTRACTOR and/or CONTRACTOR's Subcontractors' copyright(s) for such Documents. CONTRACTOR shall execute and deliver to CITY such instruments of transfer and take such other action that CITY may reasonably request, including, without limitation, executing and filing, at CITY's expense, copyright applications, assignments and other documents required for the protection of CITY's right to such Documents. The CONTRACTOR shall retain copies of the Documents for a period of three (3) years from the date of completion of the scope of work. The CITY grants to the CONTRACTOR and CONTRACTOR's Subcontractors the right and/or limited license to use a portion of the Documents prepared by the CONTRACTOR or the CONTRACTOR's Subcontractors in future projects of the CONTRACTOR or CONTRACTOR's Subcontractors with said right and/or limited license to use a portion at CONTRACTOR's or CONTRACTOR's Subcontractor's own risk and without any liability to CITY. Any modifications made by the CITY to any of the Contractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the CONTRACTOR will be at the CITY's sole risk and without liability to the CONTRACTOR.

**42. COMPLIANCE WITH SECTION 787.06, FLORIDA STATUTES (2024)**

By signing this Agreement before a notary public and taking an oath under the penalty of perjury, the CONTRACTOR attests and warrants that the CONTRACTOR does not use coercion for labor or services as defined in section 787.06, Florida Statutes (2024).

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

IN WITNESS WHEREOF the parties hereto have made and executed this Contractor Agreement (Transportation and Delivery of Ductile Iron Utility Poles) on the day and year first above written.

**CITY OF LAKE WORTH BEACH, FLORIDA**

ATTEST:

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

By: \_\_\_\_\_  
Melissa Ann Coyne, MMC, 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: BLACKWOOD SOLUTIONS, LLC**

By: MB

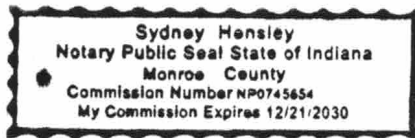
Print Name: Nathan Broadfoot

Title: VP

[Corporate Seal]

STATE OF Indiana )  
COUNTY OF Monroe )

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 27 day of August 2024, by Nathan Broadfoot, as the VP [title] of **Blackwood Solutions, LLC**, a Limited Liability Company authorized to do business in the State of Florida, who is  personally known to me or  who has produced \_\_\_\_\_ as identification, and who did take an oath under penalty of perjury that the facts stated with regard to section 787.06, Florida Statutes, are true and correct, and that he or she is duly authorized to execute the foregoing instrument and bind **Blackwood Solutions, LLC** to the same.



Notary Seal:

Sydney Hensley  
Notary Public Signature

My Commission expires 12/21/2030

## **EXHIBIT "A"**

### **SCOPE OF WORK**

The CONTRACTOR shall be capable of assembling, directing, and managing the delivery service and provide a work force that can start operations within one (1) week of notification of an upcoming scheduled delivery.

#### **SCOPE OF REQUIREMENT**

The following specifications describe Ductile Iron Utility Poles Delivery Services for the City.

CONTRACTOR shall provide the ductile iron utility poles transportation and delivery services for ductile iron utility poles originating at McWane, Inc., 2266 6<sup>th</sup> Street, Coshocton, Ohio 43812 and delivering to various sites in Lake Worth Beach, Florida and Palm Springs, Florida. The delivery shall be FOB City of Lake Worth Beach, delivered & unloaded. The delivery service shall include safely unloading the associated ductile iron utility poles at the destination without assistance or equipment from the City of Lake Worth Beach.

CONTRACTOR shall furnish all equipment and personnel necessary for an efficient delivery and unloading service for ductile iron utility poles. The poles will be various sizes between 45' – 65' long, and between ratings of H3 – H8. The weight per pole will be between 4,000 – 6,000 lbs. The CONTRACTOR will have to determine how many poles that they can deliver on a case-by-case basis based upon any DOT weight restrictions. The City has no min/max that will be imposed per load.

CONTRACTOR shall be able to provide ductile iron utility poles delivery services, including drivers and associated fuel without requirements for the assistance of the City.

CONTRACTOR shall provide all phases of service in compliance with, State, and Local guidelines governing the movement of people and goods.

CONTRACTOR shall only utilize equipment that is in good condition, safe to operate and meets industry standards.

#### **PERSONNEL REQUIREMENTS**

The CONTRACTOR shall adhere to the adequate number of personnel and other rules and regulations appurtenant to regulated transportation services.

#### **SERVICE CANCELLATION**

The City reserves the right to cancel any and all deliveries, without penalty, by notification to the CONTRACTOR twelve (12) hours in advance of the next scheduled delivery. The CONTRACTOR shall provide specific cancellation criteria and/or cost to be incurred in the event delivery service is cancelled with less than twelve (12) hours' notice. The City reserves the right to immediately cancel the vendor's contract without penalty if the services provided do not meet the requirements specified by the contract.

#### **PERFORMANCE OF CONTRACTOR**

It is the intent of the Agreement is to ensure that the CONTRACTOR provides a quality level of services. To this end, all complaints received by the City or designee, and reported to the CONTRACTOR shall be promptly resolved pursuant to the provisions of this Agreement.

The City or designee may levy administrative charges for the following infractions:

1. Failure to mobilize and be available to provide after being tasked by the CITY liquidated damages of \$500 per day for each day not started.
2. Inability to perform services due to CONTRACTOR equipment or operational failures liquidated damages of \$500 per day, for each day that services are unable to be performed.

CONTRACTOR may be immediately terminated and may not paid for the following:

1. Substandard ductile iron poles delivery services
2. Failure to provide service in accordance with guidelines set forth by the CITY.

The City reserves the right to delete or amend any of the services as listed and described herein in negotiations with the selected CONTRACTOR(S) or in specific purchase orders.

**END OF SCOPE OF WORK**



**Exhibit "B"**  
**(Schedule of Unit Prices)**

(B4)

**IFB #24-110R TRANSPORTATION AND DELIVERY  
OF DUCTILE IRON UTILITY POLES (Re-Bid)**

**SCHEDULE OF UNIT PRICES**

In order to evaluate the total bid amount, each Bidder must identify price per load as set forth in the Scope of Services and as listed below. In the event additional work is added to the contract by Change Order, the following unit prices will be utilized (as applicable).

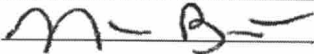
**PRICING**

**Transportation and Delivery Service of Ductile Iron Utility Poles including loading at manufacturer's facility and unloading at City's facility**

Description – Pole Length	Estimated Quantity	Price Per Load	Total Cost
55 feet and less than 55 feet	40	\$ <u>7,047.70</u>	\$ _____
60 feet and greater than 60 feet	3	\$ <u>7,047.70</u>	\$ _____
<b>Total Bid Amount:</b>			\$ _____

Estimated number of poles per load is from 5 to 10 poles, from 20,000 lbs. to 40,000 lbs. Those numbers may vary. These numbers are based on the last years shipments. Bidder must provide flat rate price per pole.

Cost of cancellation in the event delivery service is cancelled with less than twelve (12) hours' notice: \$ 500.00 per T.O.N.U

Name of Bidder: Blackwood Solutions LLC  
 Address: 1901 Liberty Drive  
 City: Bloomington ST IN Zip 47403  
 Phone: (812) 676-8770 Email: nathan@bwoodolutions.com  
 Print Name: Nathan Broadfoot Title: V.P  
 SIGNATURE:  Date: 07/15/24