

**CONTRACTOR AGREEMENT  
(ELECTRIC UTILITY STORM RESTORATION SERVICES)**

**THIS AGREEMENT** is made this \_\_\_\_\_, 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 **The L.E. Myers Co.**, a company authorized to do business in the State of Florida, hereinafter the "CONTRACTOR", with its office located at 24925 State Road 46, Sorrento, Florida 32776.

**RECITALS**

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

WHEREAS, the CITY issued Request for Proposals # 20-205 (hereinafter "RFP") for the Electric Utility Storm Restoration Services; and

WHEREAS, CONTRACTOR submitted a proposal to perform the services described and set out in the RFP which is incorporated herein by reference with the Scope of Services specifically attached as **Exhibit "A"**; and

WHEREAS, the CITY desires to accept the CONTRACTOR's proposal in order for CONTRACTOR to render the 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, this Agreement has been identified as providing essential services which is anticipated to be needed by the CITY in the event of a hurricane or other disaster in order to provide the services for the benefit of the public health, safety and welfare; and

WHEREAS, CONTRACTOR acknowledges and agrees that in such event, the CITY may apply to the State of Florida or the federal government for funds which will be used to pay CONTRACTOR or reimburse the CITY for payments made to CONTRACTOR, and that the federal government will only consider reimbursing for contracts which contain the requisite FEMA provisions; and

WHEREAS, CONTRACTOR acknowledges and agrees that any work performed under this Agreement and pursuant to the RFP will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives; and

WHEREAS, CONTRACTOR acknowledges and agrees to the terms laid out in RFP and **Exhibit "B"**, which are the provisions required to be included in contracts funded by federal grants, including FEMA Public Assistance (see 2 C.F.R. § 200.326 and applicable FEMA guidance); and

WHEREAS, the CITY finds making the non-exclusive award of the RFP 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 an initial term of three (3) years with two (2) additional 1-year renewal options unless earlier terminated in accordance with the terms of this Agreement.

Rates shall remain firm for the first three (3) years of the Agreement subject to terms and conditions to be negotiated on requests for consideration of a price adjustment after that term.

## **2. SCOPE OF WORK**

2.1 The scope of work includes all implements, machinery, equipment, transportation, tools, materials, supplies, labor and other things necessary to provide repairs to CITY's electrical transmission and distribution systems immediately after a hurricane or other disaster. CONTRACTOR represents that it is capable of efficiently repairing electrical transmission and distribution systems for a large CITY area in a timely and cost-effective manner. The CONTRACTOR is also capable of assembling, directing, and managing a work force that can complete the repairs in timely and efficient manner

2.2. The CONTRACTOR represents that it is experienced and proficient in all phases of construction and repairs of transmission and distribution systems, including but not limited to: substation build, pole setting, pole framing and insulation, transferring/replacing conductors, acquiring Maintenance of Traffic (MOT)s for both road work, railway work, etc.

2.2 The CONTRACTOR represents to the CITY that the Scope of Work provided under this Agreement and RFP 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 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 RFP 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.

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.

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

5.1 For services to be rendered under this Agreement, the CONTRACTOR shall be entitled to a billing rates set forth in CONTRACTOR's proposal for Equipment and Personnel Rate Schedule, which is attached hereto as **Exhibit "C"**. Billing rates shall remain fixed for the first three (3) years of this Agreement. After the first three (3) years of this Agreement, if due to applicable price escalations and/or reductions which impact the CONTRACTOR's Equipment and Personnel Rate Schedule, the CITY and CONTRACTOR may execute a written amendment to this Agreement to establish new Equipment and Personnel Rate Schedule for the renewal term(s). The City Manager may approve changes in the CONTRACTOR's Equipment and Personnel Rate Schedule based on the recommendation of the City's Electric Utility Director or designee.

5.2 Should the CITY require additional materials or services, not included in this Agreement, fees and payment for such work will be set forth in a separate amendment, as authorized in accordance with the CITY's procurement code prior to any such additional materials or 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 Work Order or 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 request a proposal from the CONTRACTOR to provide the services requested. The CITY will provide the CONTRACTOR with plans and/or specifications in order for the CONTRACTOR to develop its proposal. The CONTRACTOR's proposal shall be submitted in the format of the sample work order, attached hereto and incorporated herein as **Exhibit "D"** along with a copy of the CONTRACTOR's proposal and shall be based on the CONTRACTOR's Equipment and Personnel Rate Schedule attached hereto as **Exhibit "B"**. Upon receipt of the CONTRACTOR's proposed work order and proposal, the CITY shall decide in its sole discretion whether to award the work order to the CONTRACTOR. In an event of declared disaster, the work order or a Purchase Order may be awarded by the CITY's City Manager. If the work order is approved by the CITY, the CONTRACTOR shall commence the identified services upon the CITY's approval of the work order for the services and issuance of a notice to proceed. The CITY reserves the right to reject any and all proposals submitted by the CONTRACTOR. A CITY-approved work order shall include (by reference) the plans and/or specifications provided by the CITY to the CONTRACTOR.

## **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 RFP and this Agreement is not to exceed **the amount(s) set forth in the approved City work order or Purchase Order issued to the CONTRACTOR annually**, 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.

7.3 Payment to the Contractor shall be made pursuant Florida's Prompt Payment Act (for construction services), section 218.735, Florida Statutes, except as provided herein. Specifically, the City will withhold ten percent (10%) of each payment from a work order to the CONTRACTOR as retainage until fifty percent (50%) of the work order price is paid to the CONTRACTOR. Upon payment of fifty percent (50%) of the work order price to the CONTRACTOR, the City will withhold only five percent (5%) of each work order payment made to the CONTRACTOR. Upon written request from the CONTRACTOR, the Contract Administrator may agree in writing with the CONTRACTOR to release a portion of the retainage upon payment of fifty percent (50%) of the work order price being paid to the CONTRACTOR (not to exceed fifty percent (50%) of the total retainage amount).

7.4 Upon substantial completion, the CONTRACTOR shall establish a punch-list of items that must be completed by the CONTRACTOR. The punch-list shall be provided to the CITY within ten (10) days of substantial completion. The CITY shall have five (5) business days to review the punch-list and revise the same. The CITY shall return the punch-list to the CONTRACTOR. The CONTRACTOR shall complete all items identified on the punch-list prior to the CONTRACTOR submitting its final payment request including the request for all retainage.

7.5 Final Payment. Upon final completion and acceptance of the work in accordance with this Agreement (including all punch-list items) and final inspection by the appropriate agency with jurisdiction over the project (if other than the CITY), the CONTRACTOR shall submit a "final invoice" to the CITY. In order for both parties to close their books and records, the CONTRACTOR will clearly state "FINAL" on the CONTRACTOR's final invoice. This certifies that all work under the applicable work order has been properly completed and all charges have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the CONTRACTOR. If the CONTRACTOR's Final Invoice is approved as set forth above, the CITY shall pay the remainder of the work order price including any amount held as retainage.

7.6 Notwithstanding the foregoing, the CITY shall not be required to pay or release any amount of retainage that is subject of a good faith dispute, the subject of a claim brought pursuant to section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the CITY.

7.7 Final payment shall not become due until the CONTRACTOR and all of its subcontractors submit to the CITY releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of this Agreement or otherwise related to the Program.

7.8 Acceptance of final payment by the CONTRACTOR or a subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final invoice.

## **8. PUBLIC CONSTRUCTION BOND**

It is anticipated that work awarded under this Agreement may require a public construction bond under section 255.05, Florida Statutes. Due to the likelihood of services having to be performed on an emergency basis, the CONTRACTOR must provide the CITY with a public construction bond in amount of \$200,000 at the beginning of the hurricane season (no later than June 1 of each year) which is in accordance with section 255.05, Florida Statutes. Said bond shall remain in place until December 1 of each year. The bond must be recorded in the Official Records in and for Palm Beach County and a copy of the recorded bond must be provided to the CITY prior to the CONTRACTOR providing any services under this Agreement.

If the CITY approves a Purchase Order or a work order which exceeds \$200,000 in total construction cost, the CONTRACTOR must provide the CITY with an amendment to the bond which covers the amount in excess of \$200,000 . Said bond amendment must be recorded in the Official Records in and for Palm Beach County and a copy of the recorded bond amendment must be provided to the CITY prior to the CONTRACTOR providing any services under the Purchase Order or work order. The CITY reserves the right to request a separate public construction bond for any Purchase Order or work order which is less than \$200,000. The cost of the public construction bond(s) as required under this section shall be a direct pass through cost to the CITY without any mark-up by the CONTRACTOR.

The public construction bond shall be on forms attached hereto as **Exhibit "E"** or substantially similar as approved by the CITY and shall incorporate by reference the terms of this Agreement in its entirety.

To be acceptable to the CITY, a Surety Company shall comply with the following provisions:

The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida Department of Insurance, authorizing it to write surety bonds in the State of Florida.

(a) The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.

(b) The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.

(c) The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the CONTRACTOR submits its proposed work order for CITY approval.

(d) The Surety Company shall have at least the ratings of A-/Class V in the latest issue of Best's Key Rating Guide.

(e) The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

1. Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.

2. In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

## **9. AUDIT BY CITY**

9.1 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.

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

10.1 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.

## **11. OWNERSHIP**

11.1 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.

## **12. WRITTEN AUTHORIZATION REQUIRED**

12.1 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 materials. Additional services or materials provided without written authorization shall be done at the CONTRACTOR's sole risk and without payment from the CITY.

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

13.1 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.

13.2 Notwithstanding paragraph 13.1, 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.

## **14. INSURANCE**



14.1. 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.

14.2. 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.

14.3. 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.

14.4. 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.

## **15. WAIVER OF BREACH**

15.1 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.

## **16. INDEMNITY**

16.1 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.

16.2 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.

16.3 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.

16.4 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.

16.5 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.

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

17.1 This Agreement consists of the terms and conditions provided herein; the RFP (including all specifications, exhibits and addenda attached thereto or referenced therein and the Scope of Services attached as Exhibit "A"); all applicable federal grant requirements (Exhibit "B"); and, the CONTRACTOR's Equipment and Personnel Rate Schedule (Exhibit "C"). 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 "A" shall prevail with the RFP (including all specifications, exhibits and addenda attached thereto or referenced therein and the Scope of Services 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.

17.2 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.

## **18. ASSIGNMENT**

18.1 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.

18.2 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.

## **19. SUCCESSORS AND ASSIGNS**

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

## **20. OF TRIAL BY JURY**

20.1 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.

## **21. GOVERNING LAW AND REMEDIES**

21.1 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.

21.2 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.

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

22.1 Time is of the essence in the completion of the Scope of Work as specified herein.

## **23. NOTICES**

23.1 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:

Michael Bornstein, 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:

The L.E. Meyers Co.  
Attn. Raymond Richards  
24925 State Road 46  
Sorrento, Florida 32776

## **24. SEVERABILITY**

24.1 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.

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

25.1 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.

25.2 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.

## **26. COUNTERPARTS**

26.1 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.

## **27. LIMITATIONS OF LIABILITY**

27.1 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.

## **28. PUBLIC ENTITY CRIMES**

28.1 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.

## **29. PREPARATION**

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

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

30.1 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.

## **31. ENFORCEMENT COSTS**

31.1 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.

## **32. 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, [DANDREA@LAKEWORTHBEACHFL.GOV](mailto:DANDREA@LAKEWORTHBEACHFL.GOV), OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.**

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

33.1 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.

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

34.1 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.

### **35. FEDERAL AND STATE TAX**

35.1 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.

### **36. PROTECTION OF PROPERTY**

36.1 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.

### **37. DAMAGE TO PERSONS OR PROPERTY**

37.1 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.

### **38. WARRANTY**

38.1 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 materials 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.

### **39. SCRUTINIZED COMPANIES**

39.1 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.

39.2 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.

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

39.4 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.

39.5 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.

39.6 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.

#### **40. SURVIVABILITY**

40.1 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.

#### **41. WORK FOR HIRE**

41.1 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 reasonable 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 services. 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.

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

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement for Electric Utility Storm Restoration Services on the day and year first above written.

**CITY OF LAKE WORTH BEACH, FLORIDA**

ATTEST:

By: \_\_\_\_\_  
Pam Triolo, Mayor

By: \_\_\_\_\_  
Deborah M. Andrea, 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:

**The L.E. Myers Co.**

By: \_\_\_\_\_

Print Name: RAYMOND RICHARDS

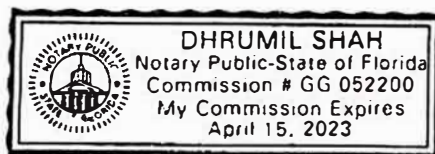
Title: DISTRICT MANAGER

[Corporate Seal]

STATE OF Florida  
COUNTY OF Lake

The foregoing instrument was acknowledged before me this 4 day of JUNE, 2020, by Raymond Richards who was physically present, as Notary Public (title), of The L.E. Myers Co., a company which is authorized to do business in the State of Florida, and who is personally known to me or who has produced the following F2/DL as identification.

Notary Public



Print Name: Dhrumil Shah  
My commission expires: 04/15/2023

## **Exhibit A**

### **RFP Scope of Services**

The City of Lake Worth Beach is expecting that the CONTRACTOR to provide repairs to City's electrical transmission and distribution systems immediately after a hurricane or other disaster. The objective of this Agreement is to secure the services of an experienced CONTRACTOR who is capable of efficiently repairing electrical transmission and distribution systems for a large City area in a timely and cost-effective manner. The CONTRACTOR should be experienced and proficient in all phases of construction and repairs of transmission and distribution systems, including but not limited to: substation build, pole setting, pole framing and insulation, transferring/replacing conductors, acquiring Maintenance of Traffic (MOT)s for both road work, railway work, etc. The CONTRACTOR must be capable of assembling, directing, and managing a work force that can complete the repairs in timely and efficient manner.

This is an acknowledgement that FEMA financial assistance will be used to fund the resulting contract. The CONTRACTOR shall perform all work in compliance with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives in order to maximize recovery of reimbursable expenses. This shall include the provision of audit quality documentation as required by and acceptable to FEMA for all work accomplished. This includes compliance with any disaster management or monitoring services the CITY may have under contract.

The CONTRACTOR may be required, at the CITY's discretion, to be under the direction of an agent of the CITY.

While intended to cover electrical transmission and distribution systems repair needs in any major disaster scenario, the primary focus is on the threat of hurricane damage to the City of Lake Worth Beach. The planning standards used for this project are based on the anticipated impacts of a named storm event or major flood impacting Palm Beach County, Florida.

If activation is required, the CITY intends to activate contracts on an as-needed basis as solely determined by the CITY. The CITY intends to activate the CONTRACTORS in the order of final ranking as best meets the needs of the CITY. The CITY reserves the sole right to assign/reassign any or all CONTRACTORS at any time as may be deemed appropriate depending upon the circumstance(s), the event, or any other condition which may warrant such action.

The CITY envisions the need for multiple contracts to carry out the electrical transmission and distribution systems work throughout the City. The CONTRACTOR must have the experience and capability to manage a major workforce with multiple subcontractors and

to cover the expenses associated with a major recovery operation prior to the initial CITY payment and between subsequent payments, as well as the capacity to provide the necessary insurance. The CONTRACTOR must also have an established management team, an established network of resources to provide the necessary equipment and personnel to complete comprehensive electrical transmission and distribution systems repairs and demonstrable experience in major disaster recovery projects.

This Agreement is a contingency contract that will be activated via purchase order or work order only in the case of an emergency or immediately after an emergency. As such, no compensation will accrue to the CONTRACTOR unless and until a purchase order or a work order is issued either in anticipation of a natural disaster or immediately after such disaster. Each purchase order/work order will contain a price ceiling (not-to-exceed amount) that the CONTRACTOR exceeds at its own risk.

The CITY does not guarantee a CONTRACTOR will be activated under this Agreement.

The CITY'S goal is to complete the electrical transmission and distribution systems repair process post-event in a timely and efficient manner. Due to the low elevation and potential for flooding, some areas of the work might not be accessible for several weeks after a major natural disaster. The CONTRACTOR must be aware that it might not be possible to initiate operations in all parts of the city simultaneously immediately after a storm.

In addition to using CITY forces and equipment, the CITY intends to award three (but reserves the right to execute more or less than three) electrical transmission and distribution systems repair contracts on a contingency basis for the purpose of having CONTRACTOR(S) immediately available and committed to assisting the CITY in the aftermath of an emergency or major disaster. Each CONTRACTOR awarded an electrical transmission and distribution repair contract will serve as a General Contractor for the purpose of electrical transmission and distribution systems repair operations, and will be able to use his/her own resources and subcontractor resources to meet the obligations of the contract and specific purchase order. It is anticipated that the CONTRACTOR will use both local and non-local subcontractors. Notwithstanding, the CONTRACTOR must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible.

When a major disaster or emergency occurs or is imminent, the CITY intends to contact the highest ranked CONTRACTORS awarded Electrical Transmission and Distribution Systems Repair contracts to advise them of the CITY's intent to activate the Contracts via purchase order.

When a major disaster or emergency occurs or is imminent, the CITY will initially send out an alert to the selected CONTRACTOR(S). This Alert will serve to activate the lines of communication between the CONTRACTOR representatives and the CITY.

Subsequently, the CITY will issue the first Purchase Order which will authorize the CONTRACTOR to send an Operations Manager to the CITY within 24 hours of receiving such Purchase Order to begin planning for the operations and mobilizing the personnel and equipment as necessary to perform the stipulated work. The CONTRACTOR should anticipate receiving this first Purchase Order 24 to 72 hours before projected landfall of a hurricane. Depending on the nature of the storm and circumstances, the CITY may activate more than one (1) Contractor. CONTRACTOR will generally be activated in order of final ranking.

Specific purchase orders will be issued to select CONTRACTORS based on the best interest of the City. The CITY reserves the right to assign purchase orders to various CONTRACTORS based on pricing submitted. The CITY does not guarantee a cradle to grave pricing arrangement but reserves the right to pick and choose CONTRACTORS based on ranking.

The general concept of electrical transmission and distribution systems repairs shall include but not limited to: substation build, pole setting, pole framing and insulation, transferring/replacing conductors, acquiring MOTs for both road work, railway work, etc. The CITY will prescribe the specific schedule to be used after ascertaining the scope and nature of the disaster's impacts.

#### Reporting

The CONTRACTOR shall submit a report to the CITY Emergency Management Coordinator or designee by close of business each day of the term of the Purchase Order. Each report shall contain, at a minimum, the following information:

1. Contractor's Name
2. Contract Number
3. Daily and cumulative hours for each piece of equipment, if appropriate
4. Daily and cumulative hours for personnel, by position, and tasks performed, if appropriate
5. Volumes of repairs handled

Failure to provide audit quality information by 5:00 p.m. of the following day of operation will subject CONTRACTOR to non-payment in each instance at the sole discretion of the CITY.

#### 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 Emergency Management Coordinator or designee, and reported to the CONTRACTOR shall be promptly resolved pursuant to the provisions of this Agreement.

The Emergency Management Coordinator or designee may levy administrative charges for the following infractions:

1. Failure to mobilize pre-storm identified sites within three (3) calendar days of after being tasked by the CITY. The City reserves the right to collect liquidated damages of \$500 per day for each day not started.
2. Inability to perform repairs due to CONTRACTOR equipment or operational failures liquidated damages of \$500 per day, for each day repair site must remain attended.

CONTRACTOR may also be subject to non-payment and liquidated damages of \$50 for each of the following infractions:

1. Failure to provide audit quality information by 5:00 p.m. of the following day of operation.

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

1. Starting repairs of any non-eligible, non-CITY approved areas.
2. Moving to another designated Work Area without prior CITY approval.
3. Failure to provide service in accordance to guidelines set forth by FEMA and the CITY.
4. Soliciting work from private citizens or others to be performed in the designated Service Area during the period of this Agreement.

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 SERVICES**

## **Exhibit B**

### **Federal Contract Provisions**

The Contractor hereby agrees that the following terms, at a minimum, are incorporated into this Agreement:

Equal Employment Opportunity. During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the



contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of

contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. FEMA, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

#### Clean Air Act.

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

2. The contractor agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### Federal Water Pollution Control Act.

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The contractor agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### Suspension and Debarment.

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### Byrd Anti-Lobbying Amendment.

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

#### Procurement of Recovered materials.

(i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

(ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

#### Access to Records.

(1) The Contractor agrees to provide the State of Florida, the CITY, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representative's access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the CITY and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

DHS Seal, Logo, and Flags. The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders. By signing this agreement, The CONTRACTOR acknowledges that FEMA financial assistance will be

used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

#### Affirmative Steps. Required Affirmative Steps

If the Contractor intends to subcontract any portion of the work covered by this Contract, the Contractor must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

**EXHIBIT C**

**CONTRACTOR'S EQUIPMENT AND PERSONNEL RATES**

Exhibit "K"  
RFP 20-205 ELECTRIC UTILITY STORM RESTORATION SERVICES

Equipment & Personnel Rate Schedule

Equipment Rate Schedule

Equipment Class:	Equipment type (or similar)	Hourly Rate:
Small Vehicles & Trucks	Pick-up Truck 1-Ton or Less/SUV	N/A
	Pickup 3/4T 4x4	N/A
	1/2 Ton Pickup - 4 Wheel Drive (T&E)	\$15.20
	3/4 ton Pickup - 4 Wheel Drive (T&E)	\$18.90
	1 to 1 1/2 ton Truck - 4 Wheel Drive (T&E)	\$23.40
	2 to 3 Ton Truck (T&E)	N/A
	5 Ton Truck - 4 or 6 Wheel Drive (T&E)	N/A
	3 Ton Material Truck w/ Knuckle Boom (T&E)	N/A
	5 ton Material truck w/ Knuckle Boom (T&E)	N/A
	10 Ton Tractor - Semi (T&E)	\$40.20
	Pick-up Truck >1-Ton	N/A
	All Terrain Vehicle (Gator or equal)	N/A
	Mechanics Truck	\$50.90
	Welding Truck	N/A
	Stake Body Truck	N/A
	Box Truck	N/A
	Tractor Trailer Dual-Axle	\$12.10
Trailers	Job/Equipment Trailer	\$9.70
	Tool/PPE Trailer	\$8.00
	Distribution Pole Trailer	\$13.90
	Transmission Pole Trailer	N/A
	LowBoy Equipment Hauling Trailer	N/A
	Low Boy (Semi Trailer)	\$17.40
Buckets	Boom trk 10-12T	\$42.20
	Boom Trk 12-15T	\$51.10
	Boom Trk 17T	\$56.80
	Boom Trk 22T	\$88.50
	Boom Trk 35T 4x6	\$177.20
	35-49' Flex Track Buckets	N/A
	50-60' Flex track Buckets	N/A
	61-72' Flex Track Buckets	N/A
	73-93' Flex Track Buckets	\$266.50
	94-100' Flex Tract Buckets	N/A
	101-125' Flex Bucket	\$286.50
	MH or non MH Bucket Truck < 50'	\$33.80



	MH or non MH Bucket Truck 50' to 60'	\$44.30
	MH or non MH Bucket Truck 61' to 74'	N/A
	MH or non MH Bucket Truck 75' to 90'	N/A
	MH or non MH Bucket Truck 91' to 99'	\$106.60
	MH or non MH Bucket Truck 100' to 110'	\$109.50
	MH or non MH Bucket Truck 111' to 125'	\$234.70
	Rear Lot Machine (Standard)	\$62.30
	Rear Lot Machine (Patriot)	N/A
	Track Machine/Bucket < 60'	\$231.20
	Track Machine/Bucket 61' to 80'	N/A
	Track Machine/Bucket 81' to 105'	N/A
<b>Diggers</b>	Digger Derrick < 50'	\$46.10
	Digger Derrick 51' to 65'	\$89.30
	Digger Derrick 66' to 80'	\$112.40
	Line trk/Digger Derrick	\$46.10
	Line Trk Commander II	\$89.30
	Line Trk/Digger Derrick 4x4	\$46.10
	20' to 35' - Yard Machine Pin-On Bucket	\$62.30
	36' to 43' - Yard Machine Pin-On Bucket	N/A
	20' to 35' - Yard Machine Digger	\$62.30
	36' to 43' - Yard Machine Digger	N/A
	41' to 50' Digger Derrick	\$46.10
	51' to 60' Digger Derrick	\$89.30
	61'to 70' Digger Derrick	\$112.40
	71' to 80' Digger Derrick	N/A
	41' to 50' Flex Track Digger Derrick	\$141.20
	51' to 60' Flex Track Digger Derrick	N/A
	61' to 70' Flex Track Digger Derrick	\$231.20
	71' to 80' Flex Track Digger Derrick	N/A
	Hydro - Excavation Truck	N/A
	Track Machine/Digger < 51'	\$141.20
	Track Machine/Digger 51' to 65'	\$231.20
	Track Machine/Digger 66' to 80'	N/A
	Pressure Digger Wheeled (Texoma 330)	\$110.30
	Pressure Digger Wheeled (Texoma 650/Watson 1100)	\$119.10
	Pressure Digger Wheeled (Texoma 800)	\$175.00
	Pressure Digger Tracked (Texoma 330)	\$175.00
	Pressure Digger Tracked (Lodril EDT-7)	\$238.60
	Production Digger 60"x20'	\$110.30
	Production Digger 60"x28'	\$119.10
<b>Cranes</b>	18-25 Ton Crane	\$88.50
	32-40 Ton Crane	\$177.20

	41-65 Ton Crane	\$221.50
	Mantis Crane 30T	\$213.20
<b>Lifts</b>	Manlift Straight or Articulating 40' to 52'	N/A
	Manlift Straight or Articulating 53' to 66'	N/A
	Manlift Straight or Articulating 67' to 92'	N/A
	Manlift Straight or Articulating 93' to 131'	N/A
	Manlift Straight or Articulating 131' to 150'	N/A
	Manlift Scissor 32' and below	N/A
	Manlift Scissor 33' to 46'	N/A
<b>Wire Handling/Pulling Equipment</b>	Single Reel Trailer Small	\$5.80
	Single Reel Trailer Large	\$7.70
	3 or 4 Reel Trailer Small	N/A
	3 or 4 Reel Trailer Large	\$14.70
	20,000-30,000# Reel Stand	\$20.60
	Single Drum Puller 4000#	\$46.50
	Single Drum Puller 10000#	\$81.80
	Single Drum Puller 30000#	\$158.80
	4 Drum Puller 2000#	\$50.00
	4 Drum Puller 3500# to 4000#	\$70.10
	4 Drum Rope Puller 3,000#	\$61.40
	Tensioner 3000# 36"/38" Bullwheel	\$21.50
	Tensioner 5000# 52" Bullwheel	\$25.50
	Tensioner 10000# 72" Bullwheel	\$64.00
	2-Bundle Hydraulic Transmisson Tensioner	\$98.60
	Spiders	N/A
	Wire Pulling Accessories (hot arms, rollers, set of 6)	\$15.00
	Wire Puller (Hardline)	\$120.10
	Wire Tensioner Sgl Cond. 48" Bull Wheels	N/A
	Wire Tensioner Sgl Cond. 60" Bull Wheels	\$35.10
	Wire Tensioner Bundle Cond.	\$106.60
	Towmotor	N/A
<b>Material Handling</b>	Telehandler <10,000#	N/A
	Telehandler 10,000# to 15,000#	N/A
	Telehandler 20,000#	N/A
	Backhoe	\$19.10
	Track Loader Bobcat 590 or Equivalent	\$26.30
	Track Loader Bobcat 650 or Equivalent	\$29.70
	Track Loader Bobcat 750 or Equivalent	\$41.40
	Mini Excavator CAT 303/303.5 or Equivalent	\$21.40
	Mini Excavator CAT 304 or Equivalent	\$35.30
	Mini Excavator CAT 305 or Equivalent	N/A
	Mini Excavator CAT 308 or Equivalent	N/A

	Excavator Komatsu PC138 or Equivalent	N/A
	Excavator Komatsu PC170 or Equivalent	N/A
	Excavator Komatsu PC228 or Equivalent	N/A
<b>Dirt/Construction Equipment</b>	D3/D4 Dozer or Equivalent	\$41.30
	D5 Dozer or Equivalent	\$65.50
	D6 Dozer or Equivalent	\$80.30
	D7 Dozer or Equivalent	N/A
	D8 Dozer or Equivalent	\$171.90
	Dump Bed Sgl. Axle 6-10 C.Y.	\$21.80
	Dump Bed Dbl Axle 6-10 C.Y.	\$69.30
	Flatbed 1-4T or 2 1/2T Crew Cab 4x4	\$27.60
	Wheel Loader 3.0 to 3.5 yard	\$58.20
	Wheel Loader 4.0 yard	\$75.20
	Compactor Roller	N/A
	Water Truck	\$69.30
	Dump Trailer	\$6.00
	Dump Truck 3 Yards	\$21.80
	Dump Truck Single Axle	\$21.80
	Dump Truck 5.0 cubic yards	\$21.80
	S Yard Dumbo Truck	\$21.80
	10 Yard Dump truck	\$69.30
	Dump Truck 10.0 cubic yards	\$69.30
	Flex Track With Dump Box	N/A
	Flex Track ATV (T&E)	N/A
	Track Dump Truck 14,000# and below	N/A
	Track Dump Truck 14,001# to 22,000#	N/A
	Track Dump Truck 22,001# to 33,100#	N/A
	ATV ( All Terrain Vehicle - Ranger, Prowler, etc.)	N/A
	Welder/Mechanic's Truck	\$50.90
	Trencher	\$38.80
	Trencher w/ Rock Wheel	N/A
	Water Truck - 4,000 Gallon	\$69.30
<b>Misc. Equipment</b>	Pole Jack	\$8.40
	Concrete Breaker	N/A
	Light Tower (used as Generator)	\$12.60
	Generator 15kW	N/A
	Air Compressor 185/210 CFM	\$7.60
	Air Compressor 375 CFM	N/A
	60-100 Ton Press	No Charge
	DMC Press 45 Ton	No Charge
	DMC Press 65 Ton	No Charge
	Arrow Board	N/A
	Portable Traffic Light System	N/A

	30 Yard dumpster (PER EXCHANGE)	\$1,500.00
	Port a John (MONTHLY RATE)	\$125.00
	66 - 80 Ton Crane	\$400.00
	80 - 120 Ton Crane	\$450.00
	Vacuum Truck	N/A
	Snow Plow Attachment	N/A
	Storage container (MONTHLY RATE)	\$150.00

### Personnel Rate Schedule

Standard Time	Billing Rate
General Foreman	\$196.29
Foreman	\$188.31
Small Job Foreman	N/A
Lineman, Journeyman	\$172.25
Apprentice 7th period	\$156.24
Apprentice 6th period	\$148.21
Apprentice 5th period	\$140.21
Apprentice 4th period	\$132.19
Apprentice 3rd period	\$124.17
Apprentice 2nd period	\$116.17
Apprentice 1st period	\$108.15
Equipment Operator A	\$172.25
Equipment Operator B	N/A
Equipment Operator	\$140.21
Vac Tr/Dir. Boring	N/A
Gr. Truck Driver (W)	N/A
Groundman Truck Driver	N/A
Groundman	\$88.93
Groundman - 1st Year	N/A
Flagman	N/A
Line Equip. Mech/Welder	\$108.15
Eq. Serv/Mech Helper	\$88.93

**EXHIBIT D**  
**SAMPLE WORK ORDER**

**CONTRACTOR AGREEMENT**  
**(ELECTRIC UTILITY STORM RESTORATION SERVICES)**  
**WORK ORDER NO. \_\_\_\_\_**

THIS WORK ORDER for Electric Utility Storm Restoration Services ("Work Order" hereafter) is made on the \_\_\_\_\_, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 ("City" hereafter) and The L.E. Myers Co. a Florida corporation ("Contractor" hereafter).

**1.0 Project Description:**

The City desires the Contractor to provide all goods, services, materials and equipment as identified herein related to the Electric Utility Storm Restoration Services project generally described as:

\_\_\_\_\_ (the "Project"). The Project is more specifically described in the plans prepared by \_\_\_\_\_, dated \_\_\_\_\_, and which are incorporated herein by reference.

**2.0 Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth with construction services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

**3.0 Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within \_\_\_\_\_ **calendar days** from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within \_\_\_\_\_ **calendar days** from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

**Liquidated Damages.** The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any

such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City \_\_\_\_\_ hundred dollars (\$ \_\_\_\_\_ .00) for each day that expires after the time specified in this Work Order.

#### **4.0 Compensation and Direct Purchases**

This Work Order is issued for a lump sum, not to exceed amount of \$\_\_\_\_\_ (\_\_\_\_\_). The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

#### **5.0 Project Manager**

The Project Manager for the Contractor is \_\_\_\_\_, phone: \_\_\_\_\_; email: \_\_\_\_\_; and, the Project Manager for the City is \_\_\_\_\_, phone: \_\_\_\_\_; email: \_\_\_\_\_.

#### **6.0 Progress Meetings**

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

#### **7.0 Contractor's Representations**

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the RFP; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or

contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

**8.0 Warranty.** The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

## **9.0 Authorization**

This Work Order is issued pursuant to the System Hardening and Reliability Improvements Contract for between the City of Lake Worth and the Contractor, dated [REDACTED], 2020 ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

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SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have made and executed this **Work Order** as of the day and year set forth above.

**CITY OF LAKE WORTH BEACH, FLORIDA**

By: \_\_\_\_\_  
Pam Triolo, Mayor

ATTEST:

By: \_\_\_\_\_  
Deborah M. Andrea, 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:      **The L.E. Myers Co.**

By: \_\_\_\_ (DO NOT SIGN – SAMPLE)

[Corporate Seal]

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, who was physically present, as \_\_\_\_\_ (title), of **The L.E. Myers, Co.**, a Company which is authorized to do business in the State of Florida, and who is personally known to me or who has produced the following \_\_\_\_\_ as identification.

Notary Public

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_



**EXHIBIT E**

**CITY OF LAKE WORTH BEACH**

**PAYMENT AND PERFORMANCE BOND**  
(Pursuant to secs. 255.05 and 337.18, Fla. Stat.)

Surety Bond No. \_\_\_\_\_

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR:**

Name:

Principal Business Address:

Telephone Number:

**SURETY:**

Name:

Principal Business Address

Telephone Number:

**OWNER:**

City of Lake Worth Beach

7 North Dixie Highway

Lake Worth Beach, FL 33460

(561) 586-1600

**CONTRACT:**

Date:

Amount:

Description (Name and Location):

## **BOND**

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

This Bond is issued in favor of the City of Lake Worth Beach/Owner conditioned on the full and faithful performance of the Contract.

1. Contractor has entered into Project No. \_\_\_\_\_ with the City for the project titled “\_\_\_\_\_” (the “Contract”), with conditions and provisions as are further described in the aforementioned Contract, which Contract, including all of its attachments, exhibits and incorporated documents (hereinafter, collectively, the “Contract Documents”) is by reference made a part hereof for the purposes of explaining this bond.
2. Principal and Surety are bound to the Owner in the sum of the Contract Amount set forth above for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.
3. THE CONDITION OF THIS BOND is that if Principal:
  - a. Performs the Work required of and in accordance with the Contract Documents at the times and in the manner prescribed in the Contract Documents, which are made a part of this bond by reference; and
  - b. In accordance with sec. 255.05 and sec. 337.18, Florida Statutes, promptly makes payments to all persons, defined in sec. 713.01, Florida Statutes, who furnish labor, services or materials for prosecution of the work set forth in the Contract Documents described above; and

c. Pays Owner all losses, damages (including liquidated damages), expenses, costs, and professional fees, including but not limited to attorneys' fees, including appellate proceedings, that Owner sustains because of a default by Principal under the Contract Documents; and

d. Performs the warranty and guarantee of all work and materials furnished under the Contract Documents for the time specified in the Contract Documents, then this bond is void; otherwise it remains in full force.

4. Section 255.05, Fla. Stat., as amended, together with all notice and time provisions contained therein, is incorporated herein by reference.

5. Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in secs. 255.05(2) and (10), Fla. Stat., and those of sec. 337.18, Fla. Stat.

6. Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract Documents or the changes does not affect Surety's obligation under this bond, and Surety waives notice of such changes.

7. Principal and Surety expressly acknowledge that any and all provisions relating to consequential, delay and liquidated damages contained in the contract are expressly covered by and made a part of this Performance, Labor and Material Payment Bond. Principal and Surety acknowledge that any such provisions lie within their obligations and within the policy coverages and limitations of this instrument.

8. Any action brought under this instrument shall be brought in the state court of competent jurisdiction in Palm Beach County, Florida, and not elsewhere.

Surety and Contractor, intending to be legally bound hereby, subject to the terms included herein and as required under Florida Statutes, do each cause this Performance and Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
(Corporate Seal)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Attach Power of Attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
(Corporate Seal)