

**AGREEMENT FOR PURCHASE OF SUBSTATION TRANSFORMERS**  
**(Utilizing JEA Contract # 168953)**

THIS AGREEMENT (“Agreement” hereafter) is made as of the \_\_\_\_\_, by and between the **CITY OF LAKE WORTH BEACH**, 7 N. Dixie Highway, Lake Worth Beach, FL 33460, a municipal corporation organized and existing under the laws of the State of Florida, (“CITY” hereafter), and **SPX Transformer Solutions, Inc.** with its principal office located at 400 South Prairie Avenue, Waukesha, WI 53186, a corporation authorized to do business in the State of Florida (“CONTRACTOR” hereafter).

**RECITALS**

WHEREAS, the CITY’s Electric Utility desires to purchase two (2) new substation transformers; and

WHEREAS, the Electric Utility also desires to create some consistency and standardization among its substation transformers for purposes of safety, training, and system design; and

WHEREAS, on or about February 21, 2019, the CITY purchased a substation transformer from the CONTRACTOR due to an emergency need for the same; and

WHEREAS, the Electric Utility has determined that the CONTRACTOR’s substation transformers are a high quality product and desirable addition to the Electric Utility system; and

WHEREAS, the CITY is authorized to procure goods through “piggybacking” other governmental, competitively procured agreements under the CITY’s Procurement Code section 2-112(e)(3); and

WHEREAS, on or about October 18, 2017, the JEA, a body politic and corporate, in Duval County, Florida, awarded a contract (JEA Contract # 168953) for purchase of substation transformers (under JEA ITN solicitation # 062-17) to the CONTRACTOR valid until October 18, 2022 with the option to renew for one (1) additional one (1) year period (“JEA Contract” hereafter); and

WHEREAS, Electric Utility has determined in conjunction with the CITY Attorney that the terms and conditions of the JEA Contract are favorable to the CITY and desire to utilize the JEA Contract for the purchase of its substation transformers; and

WHEREAS, the Electric Utility has requested and the CONTRACTOR and JEA have agreed to extend the terms and conditions of the JEA Contract to the CITY for purchase of the substation transformers; and

WHEREAS, in further discussion with the CONTRACTOR, the CONTRACTOR disclosed that the unit prices for the desired transformers under the JEA Contract must be increased due to various market conditions; and

WHEREAS, the CONTRACTOR and Electric Utility recognize that the increased unit prices exceed the allowable price escalation provision in the JEA Contract; and

WHEREAS, the Electric Utility has engaged in extensive due diligence of the CONTRACTOR’s proposed increased unit prices and determined that the increased unit prices are still competitive in the market place and that a separate competitive procurement process by the CITY will not likely result in lower unit prices, a better product, or more favorable contractual terms and conditions; and

WHEREAS, the purchase of the substation transformers from the CONTRACTOR will further assist in the Electric Utility's goal of creating standardization amongst its substation transformers; and

WHEREAS, pursuant to section 2-112(g), the City Commission may authorize a waiver of the competitive procurement procedures upon the recommendation of the procurement division and/or the City Manager that it is not practicable or advantageous for the City to pursue a separate competitive procurement process; and

WHEREAS, based upon the Electric Utility's due diligence and other factors, the procurement division and the City Manager have determined that it is not advantageous for the City to pursue a separate competitive procurement process for the purchase of the desired substation transformers at the proposed increased unit prices; and

WHEREAS, the CITY finds it in the best interests of the City to utilize the terms and conditions of the JEA Contract to purchase the substation transformers from the CONTRACTOR at the proposed increased unit prices and to waive the competitive procurement process for the same; and,

WHEREAS, the CITY finds entering this Agreement with the CONTRACTOR in order to utilize the terms and conditions of the JEA Contract to purchase the substation transformers at the proposed increased unit prices serves a valid public purpose.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The parties agree that the recitals set forth above are true and correct and are fully incorporated herein by reference.
2. JEA Contract. The JEA Contract (which includes the amendments executed by JEA, a body politic and corporate, in Duval County, Florida) is hereby incorporated by reference into and expressly made a part of this Agreement as if set forth at length herein. The term of this Agreement shall be consistent with the term of the JEA Contract valid until October 18, 2022 unless extended in accordance with the JEA Contract terms.
3. Not to Exceed Amount. The not to exceed amount for this Agreement shall be Three Million Five Hundred Thousand Dollars (\$3,500,000.00). The parties specifically agree that the unit price for each substation transformer provided by the CONTRACTOR shall be \$1,088,227.00 (One Million Eighty-Eight Thousand, Two Hundred Twenty-Seven Dollars and 00/100 Cents), subject to any mutually agreed upon change orders and subject to CONTRACTOR's Quotation #70010853 Rev 5, dated 6/29/2021 (the "CONTRACTOR's Quotation").
4. Purchase Orders. The CITY's ordering mechanism for the JEA Substation Transformers under this Agreement shall be a CITY issued Purchase Order; however, in the event of a conflict, all contractual terms and conditions stated herein and as stated in the JEA Contract shall take precedence over the terms and conditions stated in the CITY Purchase Order. The CONTRACTOR shall not provide any goods or services under this Agreement without a CITY issued Purchase Order specifically for this purpose, which shall include the applicable statement of work or services or other. The CONTRACTOR shall not perform work which is outside the scope of an issued Purchase Order and the CONTRACTOR shall not exceed the expressed amounts stated in the Purchase Order to be paid to the CONTRACTOR. The pricing in each Purchase Order shall be consistent with the pricing set forth in this Agreement and CONTRACTOR's Quotation. Each issued Purchase Order shall be incorporated into this Agreement and made a part hereof.

5. Conflict of Terms and Conditions. Conflicts between documents that make up this Agreement shall be resolved in the following order of precedence:

- a. This Agreement;
- b. The JEA Contract #168953, except as to Unit Price and price adjustment;
- c. The Contractor's Quotation; and,
- d. The City issued Purchase Order.

6. Compensation to CONTRACTOR. CONTRACTOR shall submit invoices to the CITY for review and approval by the CITY's representative, indicating that all goods and services have been provided and rendered in conformity with this Agreement and then will be sent to the Finance Department for payment. Invoices will be paid within thirty (30) days following the CITY representative's electronic receipt of CONTRACTOR's invoice. In order for both parties herein to close their books and records, CONTRACTOR will clearly state "final invoice" on the CONTRACTOR's final/last billing to the CITY. This certifies that all services have been properly performed 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, except for those claims previously submitted in writing and which remain unresolved at the time of final payment under this Agreement. The CITY will not be liable for any invoice from the CONTRACTOR submitted sixty (60) days after the provision of all services.

7. Miscellaneous Provisions.

- A. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in Palm Beach County, Florida. 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.
- B. Except for any obligation of the CONTRACTOR to indemnify the CITY, if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall be liable and responsible for their own attorney's fees incurred in that enforcement action, dispute, breach, default or misrepresentation. FURTHER, 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.
- C. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- D. All notices required in this Agreement shall be sent by certified mail, return receipt requested or by nationally recognized overnight courier, and sent to the addresses appearing on the first page of this Agreement.
- E. The CITY and the CONTRACTOR agree that this Agreement (and the other documents described herein) sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained

in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. 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.

- F. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement. This Agreement may be executed electronically.
- G. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.
- H. 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.
- I. PUBLIC RECORDS. The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:
  - 1. Keep and maintain public records required by the City to perform the service.
  - 2. Upon request from the City's custodian of public records or designee, 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 Chapter 119, Florida Statutes, or as otherwise provided by law.
  - 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the Contractor does not transfer the records to the City.
  - 4. Upon completion of this 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 service. 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 or designee, 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, PLEASE CONTACT THE**

**CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE CITY OF LAKE WORTH BEACH, ATTN: DEBBIE ANDREA, AT (561) 586-1662, CITYCLERK@LAKEWORTHBEACHFL.GOV, 7 N. DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.**

J. SCRUTINIZED COMPANIES.

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.

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.

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

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.

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.

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.

L. E-VERIFY.

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

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

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

3. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;
4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,
6. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded a contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

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

IN WITNESS WHEREOF, the CITY and CONTRACTOR hereto have made and executed this Agreement for Purchase of Substation Transformers as of the day and year first above written.

**CITY OF LAKE WORTH BEACH, FLORIDA**

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

ATTEST:

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

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY:

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

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

**CONTRACTOR: SPX Transformer Solutions, Inc.**

[Corporate Seal]

By: Mark A. Ritcher

Print Name: Mark A. Ritcher

Title: Application Engineer Manager

STATE OF FLORIDA )  
COUNTY OF PALM BEACH)

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 6<sup>th</sup> day of July 2021, by Mark A. Ritcher, as the Application Eng Mgr [title] of SPX Transformer Solutions, Inc., A Wisconsin Corporation, which is authorized to do business in the State of Florida, who is personally known to me ~~or who has produced \_\_\_\_\_ as identification~~, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Jim Spills  
\_\_\_\_\_  
Notary Public Signature  
Notary Seal: