

**AGREEMENT FOR GOODS AND SERVICES  
(Three-Phase Manual Pad-Mounted Switch Gear (PME-11, PSE-11. OR S&C-11))**

**THIS AGREEMENT** is made as of \_\_\_\_\_, 2024, between the **City of Lake Worth Beach**, Florida, a municipal corporation (“CITY”), with its office located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460, and **Gresco Supply, Inc.**, a corporation authorized to do business in the State of Florida (“CONTRACTOR”) with their principal address located at 6421 CR 219, Wildwood, FL 34785.

**RECITALS**

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

**WHEREAS**, the CITY issued Invitation For Bid #24-113 for the purpose of obtaining Three-Phase Manual Pad-Mounted Switch Gear (PME-11, PSE-11. OR S&C-11) for the CITY’s Electric Utility Department (“IFB”), which IFB failed to obtain any qualifying bid responses after two (2) advertised attempts and the receipt and review of five (5) bids; and

**WHEREAS**, in accordance to the CITY’s Procurement Code and Policy, the CITY approached the market to directly obtain the required goods and services; and

**WHEREAS**, the City received one (1) proposal from the CONTRACTOR in response to the CITY’s market approach; and

**WHEREAS**, the CONTRACTOR’s proposal meets the IFB’s requirements; and

**WHEREAS**, the CITY desires to accept the CONTRACTOR’s proposal (attached hereto as **Exhibit “A”**) in order for CONTRACTOR to render the goods and services to the CITY as provided herein pursuant to the terms and conditions of this Agreement; and

**WHEREAS**, as there were no compliant bids in response to the IFB, the CITY is seeking to utilize the waiver process in accordance to the CITY’s Procurement Code Sec. 2-112 (g); and

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

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

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

**1. TERM**

1.1 The term shall commence upon the approval of this Agreement by the CITY’s City Commission and the CITY’s issuance of a Notice to Proceed. The CONTRACTOR agrees to provide all goods and services required under this Agreement within 365 days as per the terms and timelines provided in the IFB.

## **2. SPECIFICATIONS**

2.1 The specifications set forth in the IFB and the CONTRACTOR's proposal (Exhibit "A") detail the purchase and delivery of three (3) Three-Phase Manual Pad-Mounted Switch Gear (PME-11, PSE-11. OR S&c-11) described as PSE-11-54312-F4; Twelve (12) FP-Fuses and fittings; Twelve (12) SMU-20 Fuse units to be provided to the CITY. Specifically, the delivery shall be "FOB Destination" and no liquidated damages shall be imposed for delays in delivery.

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

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

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

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

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

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

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

## **4. MATERIALS**

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

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

5.1 The CITY shall utilize a CITY Purchase Order for the purchase and delivery of the three (3) Three-Phase Manual Pad-Mounted Switch Gear (PME-11, PSE-11. OR S&C-11) described as PSE-11-54312-F4; Twelve (12) FP-Fuse and fittings; Twelve (12) SMU-20 Fuse units under this Agreement; however, the terms and conditions of the CITY Purchase Order shall not apply.

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

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

## **6. MAXIMUM COSTS**

6.1 The CITY shall compensate the CONTRACTOR in accordance with the CONTRACTOR's prices, which are attached hereto and incorporated herein as **Exhibit "A"**. The total cost to be paid by the CITY to the CONTRACTOR for the purchase and delivery of three (3) Three-Phase Manual Pad-Mounted Switch Gear (PME-11, PSE-11. OR S&c-11) described as PSE-11-54312-F4; Twelve (12) FP-Fuse and fittings; Twelve (12) SMU-20 Fuse units, shall not exceed **One Hundred Eleven Thousand, Seven Hundred Sixty-Two Dollars (\$111,762)**

## **7. INVOICE**

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

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

## **8. AUDIT BY CITY**

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

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

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

## **10. OWNERSHIP**

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

## **11. WRITTEN AUTHORIZATION REQUIRED**

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

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

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

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

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

### **13. INSURANCE**

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

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

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

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

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

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

### **15. INDEMNITY**

15.1 The CONTRACTOR shall indemnify, defend and hold harmless, to the maximum extent permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all liability, suit, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death, patent infringement or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), costs and expenses (including attorney's fees, litigation, arbitration, mediation, appeal expenses) to the extent arising out of or alleged to have arisen out of the acts, omissions or neglect of the CONTRACTOR or any of its agents, employees, subcontractors or by anyone the CONTRACTOR directly or indirectly employed.

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

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

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

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

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

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

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

## **17. ASSIGNMENT**

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

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

## **18. SUCCESSORS AND ASSIGNS**

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

**19. WAIVER OF TRIAL BY JURY**

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

**20. GOVERNING LAW AND REMEDIES**

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

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

**21. TIME IS OF THE ESSENCE**

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

**22. NOTICES**

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

City of Lake Worth Beach  
Attn: City Manager/Financial Department/Purchasing Division  
7 North Dixie Highway  
Lake Worth Beach, Florida 33460

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

Gresco Supply, Inc.  
Attn: Anthony "TJ" Linley, Account Manager  
6421 CR 219  
Wildwood, FL 34785

**23. SEVERABILITY**

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

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

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

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

## **25. COUNTERPARTS**

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

## **26. PUBLIC ENTITY CRIMES**

26.1 CONTRACTOR acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in



excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. CONTRACTOR will advise the CITY immediately if it becomes aware of any violation of this statute.

## **27. PREPARATION**

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

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

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

## **29. ENFORCEMENT COSTS**

29.1 All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract.

## **30. PUBLIC RECORDS**

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

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

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

**31. COPYRIGHTS AND/OR PATENT RIGHTS**

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

**32. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH**

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

**33. FEDERAL AND STATE TAX**

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

**34. PROTECTION OF PROPERTY**

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

**35. DAMAGE TO PERSONS OR PROPERTY**

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

**36. WARRANTY**

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

### **37. SCRUTINIZED COMPANIES**

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

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

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

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

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

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

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

Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR shall:

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

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

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

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

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

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

**39. SURVIVABILITY**

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

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

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

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**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement for Goods and Services (Three-Phase Manual Pad-Mounted Switch Gear (PME-11, PSE-11. OR S&c-11)) on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

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

ATTEST:

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

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY

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

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

GRESKO SUPPLY, INC.

By: M. Williams

Print Name: Melissa Williams

Title: CFO



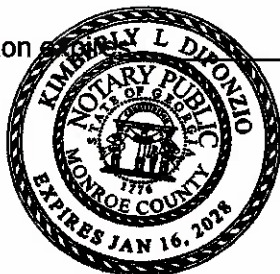
STATE OF Georgia )  
COUNTY OF Monroe )

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 22<sup>nd</sup> day of October 2024, by Melissa S. Williams as the CFO [title] of **Gresco Supply, Inc.** a company authorized to do business in the State of Florida, who is  personally known to me or  who has produced Drivers License as identification, and who did take an oath under penalty of perjury that the facts stated with regard to section 787.06, Florida Statutes, are true and correct, and that he or she is duly authorized to execute the foregoing instrument and bind **Gresco Supply, Inc.** to the same.

Kimberly L. DiPonzo  
Notary Public Signature

Notary Seal:

My Commission \_\_\_\_\_



**Exhibit "A"**  
**(Contractor's Proposal – 6 pages)**



Anthony "TJ" Linley  
 Account Manager  
[Anthony.linley@gresco.com](mailto:Anthony.linley@gresco.com)  
 O. 352-748-9550  
 C. 352-808-0371

**QUOTATION**

**TO:** City of Lake Worth Beach  
**DATE:** 9/6/2024  
**SUBJECT:** RFQ: City of Lake Worth Beach  
 FP Quotation: 548259-R4

**TOTAL NUMBER OF PAGES: 3** (including this sheet)

<u>Item</u>	<u>Qty</u>	<u>Description</u>
1	3	<b>PSE-11-54312-F4</b> 25KV, 125KV BIL, Dead-Front, Air Insulated, Pad-mounted Switchgear with three (3) 3-pole 600amp group operated Auto-Jet switches provided with dead break 600amp bushings (one (1) per phase) and one (1) 3-phase sets of fuse mountings for SMU-20 or DBU fuses provided with 200amp bushing wells (one (1) per phase). Included are: F4 - 304 Stainless Steel cabinet (exterior cabinet only) <b>Price.....\$ 34,794.00 each</b>

**Net Adders (If Required):**

1.	As Req'd	FP-Fuse end fittings <b>Price.....\$ 315.00 each</b>
2.		SMU-20 Fuse units <b>Price.....\$ 300.00 each</b>

- Notes:**
- Fuse information (size & speed) must be available either at time of order entry or in time to receive the fuses at FP prior to pad-mount shipment. Otherwise, fuses must be shipped short and the freight charges for the fuse shipment will be prepaid and added to the invoice.
  - If the fuse data is not available as outlined above, steps can be taken to expedite the fuses by shipping via air from emergency stock, if available at time required, at a premium adder of 25% plus \$150.00 plus cost of air shipment.

**Comments & Clarifications:**

**Three-Phase Manual Pad-mounted Switch Gear  
(PME-11, PSE-11, OR S&C-11)**

- 4.1. D** The pad mounted switchgear in our proposal has been designed and tested per applicable portions of IEEE, ANSI, NEMA and other industry standards including:
- IEEE C37.74 - Standard for Pad mounted Load-Interrupter Switchgear and Fuse Load-Interrupter Switchgear
  - ANSI C57.12.28 - Standard for Enclosure Integrity
  - IEEE C37.48C - Guide for Application of Expulsion Fuses in Enclosures
  - NEMA SG6 - Standard for Power Switching Equipment
  - ANSI/IEEE C29.1 - Test Methods for Electrical Power Insulators
  - IEEE C37.60 – Standard for re-closers and fault interrupters
  - IEEE-386 – IEEE Standard for Separable Insulated Connector Systems for Power Distribution Systems Rated 2.5 kV through 35 kV
- 7.0** Storage and handling are the Contractor’s responsibility.
- 8.0** The pad mounted switchgear in our proposal will be 11 Gauge stainless steel and has been designed and tested per applicable portions of IEEE, ANSI, NEMA and other industry standards including:
- 9.0** Based on the requirements of the IEEE C37.74 Standard, Federal Pacific performs the following production tests:
- Circuit Resistance Test
  - Power Frequency Withstand Voltage Test
- 10. C** By others.
- 10. D** **Federal Pacific will provide our standard aluminum adhesive backed unit nameplates**, ratings labels and connection diagrams. The outside of both the front and back shall be provided with nameplates indicating manufacturer’s name, catalog number, model number, and date of manufacture. The inside of each door shall be provided with a ratings label indicating the following: voltage ratings; main bus continuous rating; short-circuit ratings; the type of fuse and its ratings; and interrupter switch ratings. A three-line connection diagram showing interrupter switches, fuses and bus along with the manufacturer’s model number shall be provided on the inside of both the front and rear doors, and on the inside of each switch-operating hub access cover.
- 10. F** FP will provide our factory standard parking stands. Removable parking stands will not be provided.
- 10. G** By others.
- 11. A** Federal Pacific will provide our **standard NEMA Approved "Warning" and "Danger" labels**.
- 11. B** **Federal Pacific will provide our standard aluminum adhesive backed unit nameplates**, ratings labels and connection diagrams. The outside of both the front and back shall be provided with nameplates indicating manufacturer’s name, catalog number, model number, and date of manufacture. The inside of each door shall be provided with a ratings label indicating the following: voltage ratings; main bus continuous rating; short-circuit ratings; the type of fuse and its ratings; and interrupter switch ratings. A three-line connection diagram showing interrupter switches, fuses and bus along with the manufacturer’s model number shall be provided on the inside of both the front and rear doors, and on the inside of each switch-operating hub access cover.

This quotation is based upon information supplied to the Factory, which may or may not have been complete. Customer is responsible for reviewing this quotation for compliance, deviations, exclusions, and improper information supplied. If you feel an error or omission has been made, please contact Factory immediately.



**QUOTATION: 548259-R4**

**Dated: 9/6/2024**

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1. This quotation is valid for 90 days past 8/22/24 bid date. **Federal Pacific reserve the right to update our pricing at the time of order.** In the event you delay the Shipment Date for any reason, we reserve the right to revise the prices listed herein or revoke the quote in its entirety.
2. Payment Terms are NET 30
3. Elbows and inserts are not included as part of our proposal.

Normal shipments shall begin within approximately **45-47 weeks** after our acceptance of your formal purchase order so long as you have provided all technical details and data required to release the equipment for manufacture (the "Shipment Date"). If a better shipping schedule is required, please consult the Factory for review of our current manufacturing schedule. When drawing approval is required, the Shipment Date will be delayed by the time necessary for the drawing approval process. Approval drawings (if required) will be submitted within approximately 3-4 weeks after our acceptance of an order. Hold for approval orders not released within 30 days shall be reviewed and subject to price increases. The Shipment Date is subject to change at time of order release based on current production backlog.

**Freight Terms**

- (1) Freight will be **EXW Factory** with seller paying freight.
- (2) The seller will determine the method of transportation and the routing of the shipment. Where the purchaser requires shipment by a method of transportation or routing other than that of the seller's selection, any additional transportation and/or packing expense is to be borne by the purchaser.

All transactions are subject to EMC's Sales Terms and Conditions found at:

<https://www.electro-mechanical.com/sales-terms-and-conditions/>

Please contact your customer service representative if you are unable to access the site listed above.

## **ELECTRO-MECHANICAL, LLC SALES TERMS & CONDITIONS**

These terms shall control the sale of all products of Electro-Mechanical, LLC and its divisions, including, but not limited to: Federal Pacific and Line Power Manufacturing, (herein collectively the "Seller"). Purchaser's order is expressly subject hereto, and Purchaser accepts these Terms and Conditions which may not be changed except in writing signed by an authorized official of the Seller. Additional or different terms in any documents or communication from Purchaser are objected to by Seller and shall not be effective unless expressly agreed to in writing by an authorized official of Seller.

**Warranties:** Seller warrants that the product(s) to be delivered will be of the kind and quality described in its quotation and that Purchaser shall take good and merchantable title. Services rendered shall be performed in a workmanlike manner and shall comply with industry standards and/or customer specifications. No other warranties, express, or implied, shall arise from this transaction. If a deviation from the specifications in the quotation appears within the warranty period, the Purchaser shall notify the Seller immediately. Upon notice and confirmation of the defect, Seller agrees to remedy, EXW Seller's facility (Incoterms 2020), all such defects by repair or replacement of the defective parts without charge. The warranty shall not cover "in and out" charges, which shall remain the responsibility of the Purchaser. This warranty shall extend for a period of one (1) year from date of shipment unless otherwise mutually agreed by Seller and Purchaser. The warranty shall apply to products and parts manufactured or repaired by the Seller. Products which Seller furnishes, but does not manufacture, carry only the warranty of the original manufacturer of such products. Where other manufacturers' or suppliers' products used in Seller's products prove defective, Seller's liability shall exist only to the extent that Seller is able to recover for the defect from such manufacturers or suppliers.

THIS WARRANTY SHALL BE IN LIEU OF ALL OTHER WARRANTIES OF ANY SORT, EXPRESS OR IMPLIED, NOTWITHSTANDING ANY PURPORTED TERMS PRINTED ON ANY DOCUMENTS PREPARED BY PURCHASER IN CONNECTION WITH THE SALE.

The warranty shall not apply to, and Seller shall bear no responsibility for, any product:

- 1) that has been subject to accident, negligence or misuse, including the effects of transient voltage or attempts to operate the product above rated capacity;
- 2) that has not been properly installed; or
- 3) that has been the subject of repairs or modifications accomplished by other than the Seller's factory representative.

**Compliance with Standards and Regulations:** The Seller's products, as built, are intended to comply with applicable ANSI and NEMA standards, MSHA regulations, and other Federal laws and regulations as each may apply to the respective product(s). Seller is willing to comply with other local, state and foreign laws, regulations or standards that may be deemed applicable to the respective products, but will only accept this responsibility upon written notification from Purchaser, prior to order acceptance, of the existence and requirements of such laws, regulations, or standards and written acceptance from an authorized official of Seller setting forth the conditions, if any, for such compliance.

**Limitation of Liability:** Seller's liability for any claim of any kind shall not exceed the purchase price of the product(s) furnished or the purchase price of the portion of such product(s) which gives rise to the claim. In no event shall the Seller be liable for special, indirect, incidental, or consequential damages, including, but not limited to, loss of profits or revenue; loss of use of equipment or any associated equipment; cost of capital; cost of substitute equipment, facilities or services; or lost value added to the product(s) after receipt and acceptance by Purchaser. Seller shall have no responsibility for the cost of any repairs performed by persons other than a factory representative or such independent contractors as may be designated in writing in advance by an authorized official of the Seller.

UNDER NO CIRCUMSTANCES SHALL SELLER BEAR RESPONSIBILITY FOR ANY PENALTIES OR LIQUIDATED DAMAGES UNLESS THAT LIABILITY SHALL BE ACCEPTED IN WRITING THAT MAKES SPECIFIC REFERENCE TO THE TRANSACTION CONTEMPLATED,

## **ELECTRO-MECHANICAL, LLC SALES TERMS & CONDITIONS**

THAT ITEMIZES THE EXTENT OF THE PENALTY OR LIQUIDATED DAMAGES TO BE ACCEPTED, AND THAT IS SIGNED BY AN AUTHORIZED OFFICIAL OF THE SELLER. NOTWITHSTANDING THE EXISTENCE OF SUCH AN AGREEMENT ON LIQUIDATED DAMAGES, THE FORCE MAJEURE PROVISIONS OF THE FOLLOWING PARAGRAPH SHALL APPLY IN ALL EVENTS.

**Force Majeure:** Seller shall not be liable for loss, damage, detention and/or delay resulting from causes beyond its reasonable control or caused by fire, strike or other labor disturbances, civil or military authority, restrictions of any government or department, branch or representation thereof, insurrection or riot, embargoes, wrecks or delays in transportation, or inability to obtain necessary labor or materials due to failure of suppliers to perform or other causes beyond Seller's reasonable control. In the event of the occurrence of such events, extraordinary measures will be undertaken by Seller only upon Purchaser's written request and agreement to bear the extra expense incurred. Seller reserves the right to furnish suitable substitutes which cannot be obtained for any of the causes set forth above.

**Taxes:** Prices as quoted are exclusive of all taxes which may relate in any way to the transaction. In addition to any price specified, Purchaser shall pay any present or future sales, use, excise, value added or similar tax applicable to the price, sale or delivery of any products furnished.

**Cancellation:** An order may only be terminated upon written consent of the Seller and payment of reasonable termination charges.

**Pricing and Escalation Policies:** Published prices are subject to change without notice. Quoted prices are firm for acceptance within thirty (30) days from the date of quotation, or such longer period as may be specified in the quotation, but may be withdrawn upon notice. Prices quoted do not include costs of installation, training, start-up service, coordination, or other on-site services. Such items may be included or quoted separately upon request. All catalog and quoted pricing shall be in U.S. Dollars. If delay is requested beyond the normal delivery period, the price quoted shall escalate at the rate of 1-1/2% per month or prorated part of any month for the time of the delay. Orders amounting to less than \$100.00 net will be billed at \$100.00 PLUS TRANSPORTATION COSTS.

**Payment/Credit Terms:** Terms are net within thirty (30) days from date of invoice unless otherwise specifically agreed in writing. If, in the discretion of the Seller, the financial condition of the Purchaser does not justify the terms of payment specified, the Seller may require other conditions including but not limited to full or partial payment in advance. The product shall remain the personal property of the Seller until full payment is received. A late charge at the rate of one and one-half percent (1-1/2%) per month will be applicable to past due balances. If shipment is delayed by the Purchaser, the invoice shall issue when Seller is prepared to ship. In the event of default, the Purchaser shall be responsible for all collection costs and reasonable attorney's fees incurred by the Seller. If the Purchaser is not a corporation, the Homestead Exemption is hereby waived. Any disputed amount reflected on the invoice must be directed to the attention of: Controller, Electro-Mechanical, LLC, 101 Goodson Street, Bristol, VA 24201. Payment of other than the exact amount invoiced shall not be deemed satisfaction unless authorized in writing by the Controller and Purchaser shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller.

**Delivery and Storage:** Delivery shall be made EXW Seller's facility (Incoterms 2020) with freight prepaid and added to invoice unless otherwise specified in the quotation. Shipping dates in the quotation are approximate and are based upon prompt receipt of all necessary information from Purchaser. Any delay in receipt of complete information shall extend the delivery date for a reasonable time based on the condition of the factory. Risk of loss or damage shall pass to Purchaser at delivery to the carrier. The Seller takes great care in packing its products and shall not be responsible for breakage or damage in transit after having received "in good order" receipts. Seller will, however, give assistance to Purchaser in any effort to secure a satisfactory adjustment of any claim. Equipment on which manufacture or delivery is delayed due to any

## **ELECTRO-MECHANICAL, LLC SALES TERMS & CONDITIONS**

cause beyond Seller's control may be placed in storage by Seller for Purchaser's account. All risk of loss, charges, and expenses in connection therewith shall be borne by Purchaser. However, if in Seller's opinion, it is unable to obtain or continue with such storage, Purchaser will, upon notice, provide or arrange for suitable storage facilities and assume directly all costs and risk connected thereto.

**Changes In Specifications:** Changes or revisions from specifications upon which the quotation is issued shall be charged to and paid by the Purchaser at the Seller's applicable rates. The Seller's time for performance shall be extended to cover any additional design or production time necessitated by changes requested. Purchaser shall hold Seller harmless from any and all claims, liability, and damage arising from any such extension.

**Returns:** Products may be returned only with Seller's prior written consent. Only upon return, the material will be inspected and maximum possible credit — less allowance for freight, restocking, restoration to first-class condition, non-stock parts and obsolescence — will be allowed. Unauthorized returns shall remain the property of the Purchaser, and Seller shall have no responsibility for any loss or damage thereto. Only unused transformers as currently manufactured which have been invoiced to the Purchaser within one (1) year prior will be considered for return. For all other products this return consideration period shall be ninety (90) days from invoice. Seller reserves the right to refuse any material returned for credit if factory conditions warrant the refusal. Material built to order is not subject to return for credit. Full credit including all transportation charges will be allowed on returns caused through the fault of the Seller.

**Confidentiality:** Buyer acknowledges and agrees that proprietary or confidential information may be received from Seller, regardless of whether such information is marked or identified as confidential. Buyer agrees to keep all proprietary or confidential information of Seller in strictest confidence, and further agrees not to disclose or permit disclosure to others, or use for other than the purpose of the order, any proprietary or confidential information of Seller. Seller shall own all rights, title and interest in any and all intellectual property rights created in the performance of the order and Buyer will execute any assignments or other documents needed for Seller to perfect such rights.

**General:** All orders and contracts are subject to acceptance by Seller at its factory. Seller reserves the right to correct all clerical and stenographical errors or omissions in quotations, acknowledgments, invoices, and other documents of sale. Catalog-listed weights, dimensions, and other such specifications are approximate, subject to change without notice, and are not guaranteed.

Any controversy arising under this agreement shall be controlled by the law of the State of Virginia and the exclusive forum for the filing of any litigation shall be in the courts of the City of Bristol, Virginia. If otherwise applicable, the parties specifically exclude application of the United Nations Convention on Contracts for the International Sale of Goods.