

**CONSTRUCTION CONTRACT**  
**(Fleet Fuel System and Dispensers Replacement)**

**THIS CONSTRUCTION CONTRACT** (“Contract”) is dated on \_\_\_\_\_, by and between the **CITY OF LAKE WORTH BEACH**, a Florida municipal corporation (“City”) and **Spatco Energy Solutions, LLC**, a company authorized to do business in the State of Florida (“Contractor”).

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 an Invitation for Bid (IFB# 22-109) for the Fleet Fuel System and Dispensers Replacement (“IFB”), which IFB is not attached but incorporated by the reference into this Contract; and

WHEREAS, the City received one (1) response to the IFB from the Contractor before the deadline; and

WHEREAS, Contractor was found to be the responsive and responsible bidder and was recommended for the award; and

WHEREAS, the City desires to accept the Contractor’s bid in order for Contractor to replace the fleet fuel system and dispenser pursuant to the terms and conditions of this Contract; 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 Contract with the Contractor as described herein serves a valid public purpose.

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

**ARTICLE 1. RECITALS AND WORK.**

1.1 The Recitals set forth above are incorporated into this Contract as true and correct statements and incorporated herein as if set forth in the body of this Contract.

1.2 Contractor shall complete all Work as specified and indicated in the Contract Documents, as defined below and as set forth and according to the specifications provided in IFB and in **Exhibit “A”**. The Work is generally described as Fleet Fuel System and Dispenser Replacement project (“Project”).

**ARTICLE 2. CONTRACT TIME.**

2.1 The Work will be substantially completed within **220 calendar** days from the date of the Notice to Proceed. Final completion of the Work that includes final assembly of the railing and all punch-list items (if any) shall be within **240 calendar** days from the Notice to Proceed.

2.2 Time is of the essence under this Contract.

2.3 **LIQUIDATED DAMAGES.** The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss if the work described in the Contract Documents is not completed within the times specified in paragraph 2.1 above. 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 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 five hundred dollars (\$500.00) for each day that expires after the time specified in paragraph 2.1.

2.4 In the City's sole discretion, a requested extension of time may be denied for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last five (5) years of weather recorded or otherwise established by the City.

### **ARTICLE 3. CONTRACT PRICE.**

3.1 City shall pay Contractor for completion of the Work in accordance with the Contract Documents a lump sum, not to exceed amount of **Three Hundred Twenty-Four Thousand, Four Hundred Eighty Dollars (\$324,480)**, which shall be payable in accordance with Article 4 of this Contract. The Contract Price includes **Fifty-Four Thousand Eighty Dollars (\$54,080.00)** as a contingency for unforeseen changes and additional changes requested by the City ("Contingency"). The Contractor must submit a written request to the City prior to commencing any Work to be covered by the Contingency. The City's Contract Administrator is authorized to approve in writing the use of the Contingency by the Contractor.

### **ARTICLE 4. PAYMENT PROCEDURES.**

4.1 Generally. The Contractor shall submit invoices on a monthly basis detailing all Work accomplished in the prior month, which is installed and to be used in the Project. Contractor's invoices shall be submitted to:

City of Lake Worth Beach  
Attn: Financial Services Department  
7 N. Dixie Highway  
Lake Worth Beach, FL 33460

The City's Contract Administrator will review each invoice submitted by the Contractor. If approved by the City's Contract Administrator and the Financial Services Department, the City will make payment in accordance with the Contract Documents. If not approved, the City will notify the Contractor within twenty (20) business days of the City's receipt and identify the action necessary to correct the invoice or a deficiency.

4.2 Payment to the Contractor shall be made pursuant to the 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 to the Contractor as retainage until final work completion.

4.3 Final Payment. Upon final completion and acceptance of the Work in accordance with the Contract Documents (including completion of all punch-list items) and final inspection by the appropriate agencies with jurisdiction over the Project, 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 and the Project have been properly completed, all charges have been invoiced to the City and all material suppliers have been paid in full. If paid, 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 Contract Price including any amount held as retainage.

4.4 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.

4.5 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 the Contract Documents or otherwise related to the Project.

**4.6 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.**

#### **ARTICLE 5. INDEMNITY AND INSURANCE.**

5.1 The parties recognize that the Contractor is an independent contractor. The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor against the City and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to

cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

5.2 Prior to commencing any services, Contractor shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than “excellent” by A.M. Best or as mutually agreed upon by the City and Contractor. All such insurance policies may not be modified or terminated without the express written authorization of the City.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent Consultant, personal injury)	\$1, 000,000 per occurrence  \$2,000,000 annual aggregate
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker’s Compensation	\$ statutory limits

The commercial general liability and automobile liability policies will name the City as an additional insured on a primary, non-contributing basis, and proof of all insurance coverage shall be furnished to the City by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that Consultant has obtained insurance of the type, amount, and classification as required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve Consultant of its liability and obligations under this Agreement.

**ARTICLE 6. TERMINATION.**

6.1 TERMINATION BY CITY: The City (through its City Manager or designee) may terminate the Contract Documents if the Contractor:

1. refuses or fails to supply enough properly skilled workers or proper materials;
2. fails to prosecute the Work in a timely manner;
3. fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
4. disregards or takes action contrary to any laws, ordinances, or rules, regulations orders of a public authority having jurisdiction;
5. takes action, short of declaring bankruptcy, evidencing insolvency;
6. fails or refuses to provide and/or maintain insurance or proof of insurance or the public construction bond as required by the Contract Documents; or,
7. otherwise is in breach of a provision of the Contract Documents.

When any of the above reasons exist, the City, may without prejudice to any other rights or remedies of the City and after giving the Contractor written notice and five (5) days to cure, terminate the Contract and Contract Documents and may:

1. take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by or paid for by the City; and,
2. finish the Work by whatever reasonable method the City may deem expedient.

The Contractor shall be liable for any damage to the City, including additional attorney and engineering/architectural fees, resulting from the Contractor's termination under this provision by the City, including but not limited to, and any increased costs incurred by the City in completing the Work.

When the City terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment, if any, until the Work is finished.

Should it be determined by a mediator or a court of competent jurisdiction that the City wrongfully terminated the Contract, then the Contractor agrees to treat such termination as a termination for convenience.

**6.2 TERMINATION BY THE CITY FOR CONVENIENCE:** The City may, at any time, terminate the Contract Documents for the City's convenience and without cause. Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

1. cease operations as directed by the City in the notice;
2. take actions necessary, or that the City may direct, for the protection and preservation of the Work; and
3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the City's convenience, the Contractor shall be entitled to receive payment for Work executed and reasonable costs incurred by reason of such termination including termination payments to subcontractors and demobilization costs.

## **ARTICLE 7. CONTRACT DOCUMENTS.**

**7.1 Contract Documents.** The Contract Documents are incorporated herein by reference as if originally set forth in this Contract, and comprise the entire agreement between the City and Contractor. The Contract Documents consist of the terms and conditions set forth in this Contract, the IFB including all Project plans/drawings and issued addenda; the bid submitted by the Contractor; and any duly executed and City issued Change Orders, Work Directive Changes, Field Orders and amendments relating thereto. If, during the performance of the Work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, within five (5) business days and before proceeding shall obtain a written interpretation or clarification. Failure to obtain a written interpretation or clarification will be deemed a waiver of the ambiguity, error or discrepancy by the Contractor. The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

First Priority:	Change Orders, Work Directive Changes, Field Orders and Amendments approved and executed by the parties
Second Priority:	Terms and conditions of this Contract
Third Priority:	The IFB, addenda issued with the IFB, and Project plans
Fourth Priority:	Contractor's Bid

7.2 Contract Administrator. Whenever the term "Contract Administrator" is used herein, it is intended to mean the City Manager or designee, for the City of Lake Worth Beach, Florida. In the administration of this Contract, all parties may rely upon instructions or determinations made by the Contract Administrator except that all determinations that result in an increase in Contract Time and/or an increase in the Contract Price, shall require a formal Change Order executed by the City Manager or the City Commission (depending on the authority set forth in the City's Procurement Code).

## **ARTICLE 8. CONTRACTOR'S REPRESENTATIONS AND SCOPE OF WORK.**

8.1 In order to induce City to enter into this Contract, Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents and any data and reference items identified in the Contract Documents.
2. Contractor has visited the Project site ("Site"), conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress and performance of the Work.
3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress and performance of the Work.
4. Contractor has studied carefully all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Contract Documents, especially with respect to any technical data in such reports and drawings, and (2) reports and drawings related to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Contract Documents, especially with respect to technical data in such reports and drawings. Contractor accepts the determination set forth in the Contract Documents of the extent of the technical data contained in such reports and drawings upon which Contractor is entitled to rely, if any.
5. Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies, if any, (in addition to or to supplement those referred to in paragraph 7.4 above) which pertain to the subsurface or physical conditions at or adjacent 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 Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

6. Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents, if any, with respect to existing Underground Facilities at or adjacent 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 will be required by Contractor in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

7. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress and performance of the work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

8. 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 and based on the information and observations referred to above, the Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

9. Contractor has given the Contract Administrator written notice of all conflicts, errors or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by the Contract Administrator is acceptable to Contractor.

10. Contractor acknowledges that the Contract Documents are generally sufficient to indicate and convey an adequate understanding of all terms and conditions for performance and furnishing of the Work.

11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

12. Contractor is aware of the general nature of work to be performed by City and others at the Site that relates to the Work as indicated in the Contract Documents.

13. Contractor agrees to be solely responsible for compliance with all applicable environmental and safety laws and regulations, for any liability arising from non-compliance with the laws and regulations and to reimburse the City for any loss incurred in connection therewith. This compliance provision specifically includes the Contractor's compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

8.2 The Project and Work includes all materials and services and other things necessary for the Contractor to complete the Project as described the Contract Documents.

8.3 The Contractor represents to the City that the Work provided under the Contract Documents 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 the Contract Documents.

8.4 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 the Contract Documents. The Contractor further warrants its capability and experience to perform the work provided for herein in a professional and competent manner.

8.5 The Work shall be performed by the Contractor or under its supervision and all personnel engaged in performing the work shall be fully qualified and, if required, authorized or permitted under the state and local law to perform such Work. All of the Contractor's personnel (and all subcontractors), shall comply with all applicable laws and regulations governing safety and security.

8.6 Should the City require additional materials or services not included in the Contract Documents, fees and payment for such work will be set forth in a separate written amendment or change order prior to any such additional materials or services being provided by the Contractor. The Contractor has no authority to approve any changes to the Contract Documents without prior written authorization from the City's Contract Administrator.

8.7 The City's Fiscal Year ends on September 30<sup>th</sup> of each calendar year. 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 Commission or funds otherwise being available to pay the Contractor. 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 the remaining approved goods and/or services but the terms of such purchase order shall not apply; the Contract Documents shall control.

#### **ARTICLE 9. MISCELLANEOUS.**

9.1 *Assignment.* Unless expressly agreed to elsewhere in the Contract Documents, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.2 *Successors and assigns.* City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

9.3 *Severability.* Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor, who agree that the Contract Documents shall be reformed to replaced such stricken provision or part thereof with a valid and enforceable provisions that comes as close as possible to expressing the intention of the stricken provision.

9.4 *Public entity crimes.* 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 on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the



construction or repair of a public building or public work, may not be awarded or perform Work as a contractor, supplier, subcontractor, or consultant 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 from the date of being placed on the convicted vendor list.

9.5 *Inspector General.* In accordance with Palm Beach County ordinance number 2011-009, the Contract Documents may be subject to investigation and/or audit by the Palm Beach County Inspector General. Contractor should review such ordinance in order to be aware of its rights and/or obligations under such ordinance and as applicable.

9.6 *Waiver.* Failure of either party to enforce or exercise any right(s) under the Contract Documents shall not be deemed a waiver of either party's right to enforce said right(s) at any time thereafter.

9.7 *Waiver of jury trial.* 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 THE CONTRACT DOCUMENTS.

9.8 *Independent Contractor.* The Contractor is, and shall be, in the performance of all Work under the Contract Documents, an Independent Contractor, and not an employee, agent, or servant of the City. All persons engaged in any of the Work performed pursuant to the Contract Documents shall at all times and in all places be subject to the Contractor's sole direction, supervision and control.

9.9 *Access and audits.* The Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Work for at least five (5) years after final payment is made. The City shall have access to such books, records, and documents as required for the purpose of inspection or audit during normal business hours at the Contractor's place of business. Under no circumstances will Contractor be required to disclose any confidential or proprietary information regarding its products and service costs.

9.10 *Preparation.* The Contract Documents shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

9.11 *Public Records Law.* As applicable, the Contractor shall comply with Florida's Public Records Laws, and 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, 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 the contract term and following completion of the contract if the Contractor does not transfer the records to the City.
4. Upon completion of the contract, 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 contract, 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 Contract, 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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION CITY CLERK, (561) 586-1660 OR CITYCLERK@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.**

9.12 *Enforcement costs.* If any legal action or other proceeding is brought for the enforcement of the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of the Contract Documents, the parties agree that each party shall be responsible for its own attorney's fees.

9.13 *Binding authority.* Contractor's representative below has full power, authority and legal right to execute and deliver these Contract Documents and perform all of its obligations under the Contract Documents. By signing the Contract Documents, the representative hereby represents to the City that he/she has the authority and full legal power to execute the Contract Documents and any and all documents necessary to effectuate and implement the terms of the Contract Documents on behalf of the party for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in the Contract Documents.

9.14 *Assignment of warranties.* Contractor shall assign to City all warranties extended to Contractor by material suppliers. If an assignment of warranty requires the material supplier to consent to same, then Contractor shall secure the material supplier's consent to assign said warranties to City.

9.15 *Contractor's certifications.* Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract Documents. For the purposes of this paragraph:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract Documents to the detriment of City, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of City, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract Documents.

9.16 *Construction defects.* PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

9.17 *Delays; Contractor's remedies.* NOTWITHSTANDING ANY PROVISION ELSEWHERE IN THE CONTRACT DOCUMENTS, NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST CITY BY REASON OF ANY DELAYS. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance, be it reasonable or unreasonable, foreseeable or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delays, in accordance with and the extent specifically provided herein.

9.18 *Termination for failure to provide Public Construction Bond.* If a Public Construction Bond is required under the Construction Documents and the Contractor fails to provide the fully executed Public Construction Bond, including a certified copy of the Public Construction Bond as recorded in the Official Records for Palm Beach County, within fifteen (15) calendar days after the Contractor's and City's execution of this Contract, the City may immediately terminate this Contract upon written notice to the Contractor and the City shall have no further obligation to the Contractor under the Contract Documents. In the event of such termination, the Contractor shall also forfeit its bid security to the City.

9.19 *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 Contract 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 Contract.

2. If this Contract 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 Contract 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 Contract.

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

4. The Contractor agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Contract, 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.

9.20 *Counterparts*: This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument. Further, this Contract may be executed by electronic signature as authorized by the City.

9.21 *Entire Contract and Amendment*: This Contract (together with the other Contract Documents) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof.

9.22 *Governing Law; Consent to Jurisdiction*: This Contract (together with the other Contract Documents) shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and, to the extent permitted by applicable law, any claim that such suit, action or proceeding by any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

9.23 *Third Party Beneficiary rights*: This Contract shall create no rights or claims whatsoever in any person other than a party herein.

9.24 *Severability*: If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

9.25 *Effective date*: The effective date of this Contract is the date the Contract is approved by the City Commission or City Manager as appropriate.

9.26 *Compliance*: Each of the parties agrees to perform its obligations under the Contract Documents in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of the work and under the Contract Documents.

9.27 *Work for Hire*: 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 Contract 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 Project. 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.

9.28 *Continuing Obligations*: Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

9.29 *Notice*: Any notice required to be given under the Contract Documents shall be sent by certified mail (return receipt requested) or by nationally recognized overnight courier or by hand-delivery as follows to the City:

City of Lake Worth Beach  
Attn: City Manager  
7 N. Dixie Highway  
Lake Worth Beach, FL 33460

and to the Contractor as follows:

Spatco Energy Solutions LLC  
461 NW 6<sup>th</sup> Ave  
Florida City, FL 33034

Either party may amend this provision by written notice to the other party. Notice shall be deemed provided upon receipt of certified mail (signed receipt) or overnight courier (signed receipt) or hand-delivery (signed receipt).

9.30 *Warranty/Guaranty*: All Work, materials, labor, and equipment to be furnished and/or installed by the Contractor under the Contract Documents shall be guaranteed by the Contractor or manufacturer, if any, for a period of one year from the date of final approval of the Project against defective materials, design and workmanship. Upon receipt of notice from the City of failure of any part covered under such warranty/guaranty period, the affected Work, labor, materials, or equipment shall be repaired and/or replaced promptly by the Contractor or the manufacturer at no expense to the City. In the event the Contractor fails to make the necessary repairs or replacements within thirty (30) days after notification by the City, the City may accomplish the repairs and/or replacements at the expense of the Contractor.

9.31 *Protection of Work and Property*: The Contractor shall continuously maintain adequate protection of all Work from damage, and shall protect such Work and the City's property from injury or loss arising during the term of the Contract. Except for any such damage, injury, or loss which may be directly caused by the City or its employees, the Contractor shall adequately protect adjacent property, as provided by the law, and shall provide guard fences, lights, and any other necessary materials to carry out such protection.

Until final acceptance of the Project by the City, the Contractor shall take every necessary precaution against injury or damage to the Work by the action of the elements or from any other cause whatsoever, and the Contractor shall repair, restore and make good, without additional charge any work occasioned by any of the above causes before its completion and acceptance by the City.

9.32 *Subcontractors*: The total work to be accomplished by subcontractors is listed in the Contractor's bid (if any) and may not be changed unless approved in writing by the Contract Administrator. The balance of Work must be accomplished by the Contractor's own forces. The Contractor shall be responsible for the acts or omissions of its subcontractors. The subcontractors shall have insurance consistent with the insurance required of the Contractor as set forth in the Contract Documents unless otherwise agreed in writing by the Contract Administrator.

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

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

IN WITNESS WHEREOF, the City and Contractor have caused this Construction Contract for the Fleet Fuel System and Dispenser Replacement to be executed the day and year shown below.

**CITY OF LAKE WORTH BEACH, FLORIDA**

ATTEST:

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

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

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:

**SPATCO ENERGY SOLUTIONS LLC**

[Corporate Seal]

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

Print Name: Andy Adams

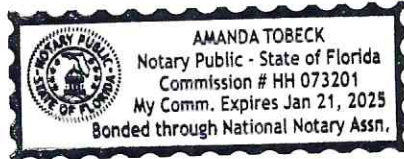
Title: VP of Florida

STATE OF Florida )  
COUNTY OF Pinellas )

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this 3 day of August 2022, by Andrew Adams, as the VP [title] of SPATCO ENERGY SOLUTIONS LLC, a Florida Corporation, 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.

Amanda Tobeck  
Notary Public Signature

Notary Seal:



**Exhibit "A"**

**BID**

**IFB # 22-109 FLEET FUEL SYSTEM AND DISPENSERS REPLACEMENT**

**Bid of:** **Spatco Energy Solutions, LLC**

(Write Dollar Figure Here)

**Total Bid Amount:** **\$138,700.00**

**Additive Alternate:** **\$131,700.00**

**Grand Total Inclusive  
of Additive Alternate:** **\$270,400.00**

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Time of Work:

Material Supply Time = 90 days  
Permitting = 120 days  
Construction = 10 days

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