

# IFB 2024-016 Fuel Station and Storage Facility Maintenance

## Supplemental Document for Amendment Routing

### Executed Agreement

## Agreement #IFB – 2020-016

THIS AGREEMENT FOR THE PROVISION OF GOODS AND SERVICES (the "Agreement"), is made as of this <sup>28<sup>th</sup></sup> day of <sup>September</sup>, 2020, between the City of Coral Gables (hereinafter called the "CITY"), and Advanced Petroleum Systems (hereinafter called the "Supplier").

In accordance with Section 2-685 of the City of Coral Gables' Procurement Code and in consideration of the promises and the mutual covenants contained herein, the CITY agrees to retain the Supplier for the term specified herein.

WHEREAS, Supplier is interested in supplying the following goods and services; and

WHEREAS, the City is interested in engaging the Supplier to provide the following services; and

WHEREAS, the City solicited bids from qualified suppliers pursuant to City IFB No. 2019-016, which is incorporated into this Agreement by reference (the "IFB"), and the Supplier submitted a response to the IFB dated July 6, 2020, which is incorporated into this Agreement as part of Exhibit "B" and made a part hereof; and

WHEREAS, the Supplier agrees to accept this Agreement upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants herein contained, the City agrees to retain the Supplier for a Three (3) year period to provide **Fuel Station and Storage Facility Maintenance**. However, this period may be extended at the sole discretion of the City (through the City Manager) for two (2) additional One (1) year periods, subject to negotiations of rates for each renewal term of the contract, pursuant to Procurement Code Section 2-685(i) entitled "Competitive sealed bidding (formal bids); Award."

### ARTICLE 1 THE CONTRACT DOCUMENTS

1.1 The following documents shall comprise the Contract Documents ("Contract Documents"):

- 1.) This Agreement;
- 2.) Bid Price Sheet – Exhibit "A"
- 3.) Original Invitation for Bid (IFB) and Supplier's Response to the IFB, attached hereto as composite Exhibit "B";
- 4.) The Supplier's Certificates of Insurance and Additional Insured Endorsements, attached hereto as Exhibit "C"; and

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1.2 Any of the Contract Documents listed above but not attached hereto are hereby incorporated by reference and shall be deemed to be of the same force and effect as if actually attached hereto. This Agreement incorporates all prior negotiations, agreements, and understandings applicable to the matters contained in this Agreement. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written. The Contract Documents shall be interpreted together and in harmony with one another. However, in the case of conflict between this Agreement and the other Contract Documents, this Agreement shall control. The Supplier must call any known conflict or discrepancy to the City's attention, in writing, prior to executing this Agreement. In the case of any conflict between the Contract Documents regarding the obligations or responsibilities of Supplier, whichever document imposes the greater obligation on the Supplier shall be controlling.

1.3 The Supplier shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the City of any inconsistency, ambiguity, error or omission, which the Supplier may discover with respect to these documents before proceeding with the production and/or delivery of the goods contemplated herein. The issuance or the express or implied approval by the City of the Contract Documents shall not relieve the Supplier of the continuing duties imposed hereby, nor shall any such approval be evidence of the Supplier's compliance with this Agreement.

1.4 By the execution of this Agreement, the Supplier acknowledges and represents that it has received, reviewed and carefully examined the Contract Documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient, and that the Supplier has not, does not, and will not rely upon any representations or warranties by the City concerning such Contract Documents as no such representations or warranties have been or are hereby made.

### **ARTICLE 2 SCOPE OF WORK**

This solicitation consists of providing Fuel Station and Storage Facility Maintenance. Vendors shall be required to provide repair, maintenance, and testing of service station equipment and fuel storage facilities on an as needed basis.

### **ARTICLE 3 PROFESSIONAL SERVICES**

3.1 Basic Services The duties and responsibilities are outlined in Article 2.

3.2 Reporting The Supplier shall comply with the necessary reporting requirements as outlined by the Director or designee for review. In addition, the Supplier shall submit a monthly report to the Director or designee, which shall include detailed information regarding the activities of the Supplier during the previous month.

3.3 Availability of Supplier The Supplier shall make all documents available 24 hours a day, 7 days a week, 365 days a year, in order to satisfy the City's emergency demands for continued, non-interrupted service.

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### ARTICLE 4 COMPENSATION

4.1 Basic Compensation. In full consideration of the services of the Supplier hereunder, the Supplier shall be paid an amount as described in the Bid Price Sheet in Exhibit “A”. The City reserves the right to contract with the Supplier for additional services. Any increase in the agreed upon amount shall be approved by City Manager or his designee and shall be in accordance with applicable City and State regulations.

4.2 Expenses. As part of, and in addition to the basic compensation described in this Agreement, the City shall provide the Supplier with no additional compensation for any services performed in fulfilling the requirements of this Agreement. All additional requested expenses must be pre-approved through the City Manager or his designee.

4.3 Confidential Information. The Supplier agrees that any information received by the Supplier for the City and in providing services in accordance with this Agreement which is not publicly available, shall not be revealed to any other persons, firm or organizations.

4.4 Most Favored Public Entity. The Supplier represents that the prices charged to City in this Agreement do not exceed existing prices to other customers for the same or substantially similar items or services for comparable quantities under similar terms and conditions. If Supplier's prices decline, or should Supplier, at any time during the term of this Agreement, provide the same goods or services to any other customer at prices below those set forth herein, then such lower prices shall be immediately extended to the City.

### ARTICLE 5 TERMINATION

5.1 Termination for Cause. If the Supplier breaches the conditions and obligations imposed by the Contract Documents, or if it makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which an extension of time is granted, to supply properly skilled workmen, or proper materials in accordance with the Contract Documents, or if it fails to make prompt payment to sub-Suppliers or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of any provision of the Contract Documents, then the City may, without prejudice to any right or remedy and after giving the Supplier five calendar days' written notice, terminate this Agreement and secure the goods contemplated herein by whatever method the City deems expedient. In such case, if applicable, the Supplier shall not be entitled to receive any further payment until the City receives, through alternate means, the goods and services contemplated herein. If any unpaid contract balance due and owing to the Supplier exceeds the costs of securing the goods and services contemplated herein (which costs shall include expenses made necessary thereby and all other damages incurred by the City), such excess shall be paid to the Supplier. If such costs and damages exceed the unpaid balance, the Supplier shall promptly pay the difference to the City. This provision shall in no way limit the City's right to claims for any additional damages, including but not limited to, liquidated damages, damages for defective or nonconforming goods, and all damages and setoffs allowable to the City in accordance with this Agreement, for which the Supplier shall be liable. If, after notice of termination for cause, it is determined for any reason that the Supplier was not in default, the rights and obligations of the City and Supplier shall be the same as though the termination had been a Termination for Convenience, as set forth herein.

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5.2 **Termination for Convenience.** The City may also terminate this Agreement for the City's convenience and without cause upon thirty (30) calendar days' written notice to the Supplier; except where the Supplier anticipatorily repudiates the Agreement, the City may immediately, without prior notice, terminate this Agreement for the City's convenience and without cause. If the Supplier is terminated for convenience, the Supplier shall be paid for actual and documented expenditures for labor, materials, sub-Suppliers, and the goods received and accepted by the City to the date of termination less payments made and damages for any defective or non-conforming goods, and less any amounts that the City is entitled to withhold pursuant to the terms of this Agreement and by law. The City shall not be liable to the Supplier for lost profits on any goods not provided and accepted by the City or any other type of consequential, special or indirect damages and Supplier hereby waives same. All costs must be fully supported by the Supplier's invoices and other documentation acceptable to the City, and shall be subject to the City's audit.

5.3 **Duty to Cure and/or Remedy Defective Goods.** The Supplier shall, within three (3) working days of written notice from City, proceed to commence and diligently proceed to provide the goods requested as specified in the City's purchase order and shall correct or remedy said goods as requested by the City including the correction of defects or damage from whatever cause. The Supplier shall bear all costs of correcting such defective goods. This obligation shall survive termination of this Agreement. If the Supplier fails to commence to correct defective or nonconforming goods within three (3) business days from written Notice to Supplier, the City may correct such defective or nonconforming goods and the City may deduct such costs from any monies due, or if the defective or nonconforming goods are discovered after final payment, then Supplier shall pay such cost and expense, including attorney's fees incurred, within fourteen (14) days of receipt of a written demand from the City for reimbursement.

5.4 Nothing contained in this Agreement shall be construed to establish a period of limitation with respect to any other obligation which the Supplier might have under the Contract Documents or law. The establishment of the time periods set forth above relates only to the specific obligation of the Supplier to correct defective goods, and has no relationship to the time within which its obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Supplier's liability with respect to its obligations and any damages caused by the Supplier, including but not limited to any action commenced by the City for negligence, strict liability, breach of this Agreement or any warranties.

5.5 **Termination by Supplier.** If the City fails to issue a payment for a period of thirty (30) days through no fault of the Supplier and there are no deficiencies with the invoice for payment as set forth in the Contract Documents, the Supplier may, after fourteen (14) calendar days' written notice to the City, terminate this Agreement and recover from the City, payment for actual and documented expenditures for labor, materials, and subcontractors to the date of termination, but which sum shall never exceed the amount due under the Contract Documents, less payments made, less the cost to complete any remaining, less the cost to correct any damaged, defective, or non-conforming goods, and any setoffs to which the City is entitled to under this Agreement. This sum shall be Supplier's sole remedy under this Agreement.

**Agreement #IFB – 2020-016****ARTICLE 6****INDEPENDENT CONTRACTOR,  
DEFENSE, INDEMNIFICATION, & HOLD HARMLESS,**

6.1 Independent Contractor and Supplier. The Supplier acknowledges entering into this Agreement as an independent contractor and Supplier, and that the Supplier shall therefore be responsible for the deposit and payment of any Federal Income Taxes, FICA, Unemployment Taxes or any similar fees or taxes that become due, and shall be responsible for the collection and payment of all withholdings, contributions and payroll taxes relating to Supplier's services, or those of employees of the Supplier. The City shall not withhold from sums payable to the Supplier, any amount whatsoever for Federal Income Taxes, FICA, Unemployment Insurance Taxes or any similar fees or taxes. The Supplier, their employees or agents, will not be considered an employee of the City or entitled to participate in plans, distributions, arrangements or other benefits extended to City employees.

6.2 Agency. Nothing herein shall imply or shall be deemed to imply an agency relationship between the City and Supplier.

6.3 Supplier warrants that it fully complies with all Federal statutes and regulations regarding the employment of undocumented workers and others and that all employees performing work under this Agreement meet the citizenship or immigration status requirements set forth in Federal statutes and regulations. Supplier shall indemnify, defend, and hold harmless City, its officers and employees from and against any sanctions and any other liability which may be assessed against Supplier or City in connection with any alleged violation of any Federal statutes or regulations pertaining to the eligibility for employment of any persons performing work hereunder.

6.4 The employees and agents of each party, shall while on the premises of the other party, comply with all rules and regulations of the premises, including, but not limited to, security requirements.

6.5 Defense, Indemnification, & Hold Harmless. To the fullest extent permitted by laws and regulations, the Supplier shall defend, indemnify, and hold harmless the City, its elected and appointed officials, attorneys, administrators, consultants, agents, and employees from and against all claims, damages, losses, and expenses direct, indirect, or consequential (including but not limited to fees and charges of attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of this Agreement and caused in whole or in part by either (i) any willful, intentional, reckless, or negligent act or omission of Supplier, any subconsultant or subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the goods and/or services or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder and regardless of the negligence of any such indemnified party, or (ii) any willful, intentional, reckless, or negligent act or omission of any individual or entity not a party to this agreement, or (iii) any negligent act or omission of the City or the City's officers, agents, or employees. The parties expressly agree that this provision shall be construed broadly, and Supplier's obligations to pay for the City's legal defense hereunder shall arise and be fully enforceable when Supplier (or any subconsultant or subcontractor or any person or organization directly or indirectly employed by Supplier) is alleged to have acted willfully, intentionally, recklessly, or negligently in the performance of this Agreement. Any failure of Supplier to comply with the terms of this provision shall be deemed a material breach of this Agreement and may

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subject Supplier to debarment from consideration for future award of city contracts pursuant to Section 2-912(4) of the City of Coral Gables Code of Ordinances. This provision shall survive termination of the Agreement.

6.5.1 In any and all claims against the City or any of its elected or appointed officials, consultants, agents, or employees by any employee of Supplier, any subconsultant, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the goods and/or services or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Supplier or any such subconsultant or other person or organization under workers’ or workman’s compensation acts, disability benefit acts, or other employee benefit acts. Moreover, nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes, case law, or any other source of law.

6.6 The indemnification and hold harmless provision shall include, but not be limited to, all of the following:

- a. Damages awarded to any person or party.
- b. Attorney’s fees and costs incurred in defending such claims. The CITY may use the attorney or law firm of its choice in which event the Supplier will pay such firm the fees it charges the CITY, provided such fees are reasonable in light of the prevailing market rate for similar legal services. Such fees shall be deemed reasonable if they are no greater than the fees that CITY pays other counsel for representation in similar cases. If the City Attorney’s Office provides the defense, Supplier will reimburse the CITY at the prevailing market rate for similar legal services.
- c. Attorney’s fees and cost of any party that a court orders the CITY to pay.
- d. Lost time that results from the CITY or its officials or employees responding to discovery or testifying by deposition or in court. In this regard, for any time the CITY spends in responding to document requests or public records requests relating to such claims whether from Supplier or any other party, Supplier will reimburse CITY \$50.00 for each employee work hour spent reviewing or responding to such requests. For any time spent testifying in court or in depositions, or preparing for such testimony, Supplier will reimburse CITY on a per hour basis as follows:
  - Mayor or City Commissioner ..... \$300.00 per hour
  - City Manager..... \$250.00 per hour
  - An Assistant City Manager or Department Director ..... \$250.00 per hour
  - An Assistant Department Director ..... \$100.00 per hour
  - City Attorney or Deputy City Attorney ..... Prevailing market rates
  - Other City employees..... \$50.00 per hour

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- e. The expenses incurred by CITY in complying with any administrative or court order that may arise from such claims.
- f. Miscellaneous expenses relating to such claims including expenses of hotels and transportation in trips relating to such claims; and
- g. Any other direct or indirect expense that CITY would not have incurred but for a claim that arises out of this agreement.

This Indemnification and Hold Harmless provision shall survive termination of the Agreement.

### ARTICLE 7 INSURANCE REQUIREMENTS

7.1 Pursuant to the City of Coral Gables Code, Section 2-1007, the Risk Management Division of the Office of Labor Relations and Risk Management has developed the following insurance requirements to protect the City of Coral Gables to the maximum extent feasible against any and all claims that could significantly affect the ability of the City to continue to fulfill its obligations and responsibilities to the taxpayers and the public. Consequently, prior to commencing work, the Supplier shall procure, and provide the City with evidence of insurance coverage as required herein and name the City as an Additional Insured on a primary and non-contributory basis. The Supplier shall secure and maintain, at its own expense, and keep in effect during the full period of the contract a policy or policies of insurance, and must submit these documents to the Risk Management Division of Office of Labor Relations and Risk Management for review and approval.

#### INSURER REQUIREMENTS

The Supplier shall maintain, at its own cost and expense, the following types and amounts of insurance with insurers with rating of "A-" "VI" or better according to the A.M. Best rating guide as a minimum standard. The insurers providing coverage must be approved by the State of Florida and hold all of the required licenses in good standing to conduct business within the State of Florida. In addition, they must be acceptable to the City of Coral Gables Risk Management Division and/or the City Attorney's Office.

#### TYPE OF COVERAGE & LIMIT OF LIABILITY REQUIREMENT

**Workers' Compensation and Employers Liability Insurance** covering all employees, subcontractors, and/or volunteers of the Supplier and/or Vendor engaged in the performance of the scope of work associated with this contract and/or agreement. The minimum limits of liability shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation insurance, with the following limits:

Workers' Compensation - Coverage A  
Statutory Limits (State of Florida or Federal Act)

Employers' Liability - Coverage B  
\$1,000,000 Limit - Each Accident  
\$1,000,000 Limit - Disease each Employee  
\$1,000,000 Limit - Disease Policy Limit

**Commercial General Liability Insurance** written on an occurrence basis, including but not limited to, coverage for contractual liability, products and completed operations, personal & advertising injury, bodily injury and property damage liabilities with limits of liability no less than:



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Each Occurrence Limit - \$1,000,000

Fire Damage Limit (Damage to rented premises) - \$100,000

Personal & Advertising Injury Limit - \$1,000,000

General Aggregate Limit - \$2,000,000

Products & Completed Operations Aggregate Limit - \$2,000,000

**Business Automobile Liability Insurance** covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Contract, with a combined single limit of liability for bodily injury and property damage of not less than:

Combined Single Limit (Each Accident) - \$1,000,000

Any Auto (Symbol 1)

Hired Autos (Symbol 8)

Non-Owned Autos (Symbol 9)

### **MINIMUM COVERAGE FORM (SHALL BE AT LEAST AS BROAD AS):**

#### **Workers Compensation**

The standard form approved by the State of Jurisdiction

#### **Commercial General Liability**

ISO (Insurance Services Office, Inc.) Commercial General Liability coverage ("occurrence" Form CG 0001) or its equivalent. "Claims made" form is unacceptable except for professional or environmental liability coverage.

#### **Commercial Auto Liability**

ISO (Insurance Services Office, Inc.) Commercial Auto Liability coverage (form CA 0001) or its equivalent.

### **REQUIRED ENDORSEMENTS**

**In addition to being stated on the Certificate of Insurance, the following endorsements with City approved language:**

Additional insured status provided on a primary & non-contributory basis (except for Workers Compensation Insurance)

Waiver of Subrogation on all required insurance coverages.

Notices of Cancellation/Non-renewal/Material Changes on any required insurance coverage must be sent directly to the City of Coral Gables by the Insurance Company.

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The City only requires the same statutory notice that an insurance company must provide to the insured, however this Notice may not be less than Thirty (30) Days, except a Ten (10) Day Notice of cancellation is acceptable for non-payment of premium.

Notices of Cancellation, Non-renewal or Material Change must be provided to the following address:

CITY OF CORAL GABLES  
INSURANCE COMPLIANCE  
P.O. Box 100085 – CE  
Duluth, GA 30096

**All policies shall contain a “severability of interest” or “cross liability” clause without obligation for premium payment of the City.**

### **HOW TO EVIDENCE COVERAGE TO THE CITY**

**The following documents must be provided to the City;**

A Certificate of Insurance containing the following information:

Issued to entity contracting with the City

Evidencing the appropriate Coverage

Evidencing the required Limits of Liability required

Evidencing that coverage is currently in force

Language provided in the Special Provision Section of the Certificate of Insurance affirming that all endorsements required by the City have been endorsed to all of the policies.

A copy of each endorsement that is required by the City

**All Certificates of Insurance must be signed by a person authorized by that insurer to bind or amend coverage on its behalf.**

**The City reserves the right to require a complete copy of any insurance policies required by the City. Should the City invoke this right, the policy must be provided directly to the City by the insurance agent or insurance company.**

**The city reserves the right to require additional insurance requirements at any time during the course of the agreement.**

### **WAIVER OF INSURANCE REQUIREMENTS**

Should a bidder not be able to comply with any insurance requirement, for any reason, the bidder must write a letter to the Risk Management Division on their letter head requesting that a waiver of a specific insurance requirement be granted. The requested waiver will be evaluated by the Risk Management Division. The Risk Management Division will approve or reject the requested waiver of insurance and will forward the waiver to the City Attorney's Office for further evaluation.

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Supplier is encouraged to review their individual insurance needs with their insurance agents/brokers regularly to determine the adequacy of the coverage and the limits of liability that are being purchased. In certain circumstances, the City of Coral Gables will require additional insurance to respond to the hold harmless and indemnification clauses executed with the City of Coral Gables. Based on the nature of the work performed, the City of Coral Gables will determine what additional types of insurance and/or higher limits of liability that must be obtained.

All insurance documents evidencing insurance to City of Coral Gables – Insurance Compliance should be sent via email to [cityofcoralgables@ebix.com](mailto:cityofcoralgables@ebix.com) and copy to [druiz@coralgables.com](mailto:druiz@coralgables.com). Should you require assistance, contact the dedicated Call Service Lines for City of Coral Gables:

Call Service Lines - Insurance Compliance

Phone: (951) 652-2883.

Fax: (770) 325-0417

Email: [cityofcoralgables@ebix.com](mailto:cityofcoralgables@ebix.com)

When submitting Professional, Supplier, Contractor and/or Vendor evidence of insurance to the City of Coral Gables, the Certificate Holder section of the Certificate of Insurance should read as follows:

City of Coral Gables  
Insurance Compliance  
P.O BOX 100085-CE  
Duluth, GA 30096

## ARTICLE 8 SOVEREIGN IMMUNITY

### 8.1 Sovereign Immunity.

The Supplier acknowledges that the Florida Doctrine of Sovereign Immunity bars all claims by Supplier against the City other than claims arising out of this Agreement. Specifically, the Supplier acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Agreement. The Supplier acknowledges that this Agreement in no way estops or affects the City's exercise of its regulatory authority. In addition, the City retains the full extent of its sovereign immunity in relation to the exercise of its regulatory authority. The Supplier acknowledges that it has no right and will not make claim based upon any of the following:

- (a) Claims based upon any alleged breach by the City of implied warranties or representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the City. All obligations of the City are only as set forth in this Agreement;
- (b) Claims based upon negligence or any tort arising out of this Agreement;
- (c) Claims upon alleged acts or inaction by any City Employee or Agent of the City; and

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- (d) Claims based upon an alleged waiver of any of the terms of this Agreement. The Supplier affirms that the provisions regarding notice to claims, and the requirement for a written change order cannot be waived and further, without timely notice of a claim or a written change order as required in this Agreement, the Supplier shall not be entitled to additional compensation or an extension of the Contract Time. Such claims for additional compensation or extensions of the Contract Time are waived if the Supplier has not given all required notices and obtained a written a change order when required.

### **ARTICLE 9 FLORIDA PUBLIC RECORDS LAW FLORIDA STATUTES CHAPTER 119, *et seq.***

9.1 Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Supplier acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. Supplier also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, Supplier agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated herein.

**IF THE SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUPPLIER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-460-5210, [cityclerk@coralgables.com](mailto:cityclerk@coralgables.com), 405 Biltmore Way, First Floor, Coral Gables, FL 33134.**

### **ARTICLE 10 WAIVER OF CONSEQUENTIAL DAMAGES**

10.1 The Supplier waives claims against the City for consequential damages arising out of or related to this Agreement or its performance, including but not limited to, damages for lost income, profit, lost bonding capacity, financing, business and reputation, or for loss of management or labor productivity, damages incurred for principal office expenses, including the compensation of personnel stationed there, and for anticipated profit on any Work not performed by Supplier.

**Agreement #IFB – 2020-016****ARTICLE 11  
RESOLUTION OF DISPUTES; GOVERNING LAW AND VENUE**

11.1 Supplier understands and agrees that all claims by Supplier against the City based upon an alleged violation of the terms of this Agreement by the City shall be submitted for resolution in the following manner. Any claims by Supplier arising under this Agreement shall be submitted in writing, with all supporting documentation, to the City Manager as identified in the Notice provisions herein with a copy to the City's Chief Procurement Officer. Upon receipt of said notification City Manager or his designee shall review the issues relative to the dispute or Claim, and issue a written finding within ninety (90) calendar days from the date of submission of the dispute or Claim consistent with Section 2-913 of the City of Coral Gables Code of Ordinances, unless the City Manager or his designee requires additional time to gather information or allow the parties to provide additional information. During the pendency of any dispute and after a determination thereof, the Supplier, City Manager, and City shall act in good faith to mitigate any potential damages. The decision of the City Manager shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not be supported by substantial evidence. A party may seek judicial relief pursuant to the Florida Rules of Appellate Procedure, provided that the claimant shall not be entitled to such judicial relief if they have not followed the procedure outlined herein. Indeed, the Parties hereto agree that a failure to comply with the dispute resolution procedures outlined in this Article shall constitute a failure to exhaust administrative remedies and, therefore, bar any potential judicial action related thereto.

11.2 This Agreement and the Contract Documents shall be construed under and in accordance with the laws of the State of Florida. Any legal proceeding arising from this Agreement and/or the Contract Documents shall be brought only in a court of competent jurisdiction in Miami-Dade County, Florida.

11.3 In connection with any litigation including appellate proceedings arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

**ARTICLE 12  
SUCCESSORS AND ASSIGNS**

12.1 The City and the Supplier each binds itself, its partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Supplier shall not assign this Agreement without the express prior written consent of the City, nor shall the Supplier assign any monies due or to become due to it hereunder, without the express prior written consent of the City.

**ARTICLE 13  
MODIFICATION**

13.1 No change or modification of this Agreement shall be valid unless in writing and signed by all parties hereto. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced.

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### **ARTICLE 14 RIGHTS AND REMEDIES**

14.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

### **ARTICLE 15 WAIVER**

15.1 A waiver by either the City or the Professional of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

### **ARTICLE 16 SEVERABILITY; SURVIVAL**

16.1 If any provision of this Agreement is found to be void and unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall nevertheless be binding upon the parties with the same effect as though the void or unenforceable provision had been severed and deleted.

### **ARTICLE 17 UNCONTROLLABLE FORCES**

17.1 Neither the City nor Supplier shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to, fire, flood, earthquake, storm, lighting, epidemic, war, riot, civil disturbance, sabotage, and governmental action.

17.2 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

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### **ARTICLE 18 WRITTEN NOTICE**

18.1 Any notice, request, instruction or other document required or permitted to be given hereunder by either party hereto to the other shall be in writing, and delivered personally, or sent by certified or registered mail, postage prepaid, return receipt requested, to the address set forth below for such party. Any notice so given shall be deemed received when personally delivered or three (3) business days after mailing. Any party may change the address to which notices are to be sent by giving notice of such change of address to the other party in the manner herein provided for giving notice.

For the City:  
City Manager  
City of Coral Gables  
405 Biltmore Way  
Coral Gables, Florida 33134

For Supplier: Percy Newland  
Advanced Petroleum Systems  
16600 NW 54<sup>th</sup> Ave, # 14  
Miami, FL 33014

cc: City Attorney

### **ARTICLE 19 AUDITS**

19.1 The Supplier shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. Supplier shall maintain adequate records to justify all charges and costs incurred in performing the services for at least three (3) years after completion of this Agreement. Supplier shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. Supplier agrees that City, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to this Agreement. All financial records, timecards and other employment records, and proprietary data and information shall be kept and maintained by Supplier and made available to the City during the terms of this Agreement and for a period of three (3) years thereafter unless City's written permission is given to dispose of any such material prior to such time. All such materials shall be maintained by Supplier at a location in Miami-Dade County, Florida, provided that if any such material is located outside Miami-Dade County, then, at City's option Supplier shall pay City for travel, per diem, and other costs incurred by City to examine, audit, excerpt, copy or transcribe such material at such other location. The City shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal working business hours at the Supplier's place of business.

In the event that an audit is conducted by Supplier specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by Supplier, then Supplier shall file a copy of the audit report with the City's Auditor within thirty (30) days of Supplier's receipt thereof, unless otherwise provided by applicable Federal or State law. City shall make a reasonable effort to maintain the confidentiality of such audit report(s).



## **Agreement #IFB – 2020-016**

Failure on the part of Supplier to comply with the provisions of this Paragraph shall constitute a material breach upon which the City may terminate or suspend this Agreement.

19.2 City Audit Settlements. If, at any time during or after the term of this Agreement, representatives of the City conduct an audit of Supplier regarding the work performed under this Agreement, and if such audit finds that City's dollar liability for any such work is less than payments made by City to Supplier, then the difference shall be either repaid by Supplier to City by cash payment upon demand or, at the sole option of City, deducted from any amounts due to Supplier from City. If such audit finds that City's dollar liability for such work is more than the payments made by City to Supplier, then the difference shall be paid to Supplier by cash payment.

### **ARTICLE 20 AVAILABILITY OF FUNDS**

20.1 The obligations of the City under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the City Commission.

### **ARTICLE 21 COMPLIANCE WITH LAWS**

21.1 In performance of the services, the Supplier will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards. It shall be the responsibility of the Supplier to obtain and maintain, at no cost to the City, any and all license and permits required to complete the services provided pursuant to this Agreement.

### **ARTICLE 22 CONFLICT OF INTEREST**

22.1 Supplier covenants that no person employed by the Supplier which exercises any functions or responsibilities in connection with this Agreement has any personal financial interests direct or indirect with the City. Supplier further covenants that, in the performance of this Agreement, no person having a conflicting interest shall be employed. Any such interests on the part of Supplier or its employees must be disclosed in writing to City.

22.2 Supplier is aware of the conflict of interest code of the City of Coral Gables, the Conflict of Interest and Code of Ethics of Miami-Dade County, Florida, Section 2-11.1 et seq., and the Ethics Laws of the State of Florida, and agrees that it shall fully comply in all respects with the terms of said laws.

22.3 The Supplier represents that it has provided a list of all current clients subject to the jurisdiction of the City. Any potential or actual conflict between private interests and responsibilities under this Agreement shall be immediately disclosed to the City. The Supplier agrees that it will not enter into any agreements during the term of this Agreement to provide services for any person or corporation who applies for a permit or other development approval from the City. Upon request of the Supplier, and full disclosure of the nature and extent of the proposed representation, the City Manager or his designee shall have the authority to authorize such representation during the term of this Agreement.

## **Agreement #IFB – 2020-016**

### **ARTICLE 23 FEDERAL AND STATE TAXES**

23.1 The City is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the City will provide an exemption certificate to the Supplier. The Supplier shall not be exempted from paying sales tax to its suppliers for materials to fulfill the contractual obligations with the City, nor shall the Supplier be authorized to use the City's Tax Exemption Number in securing such materials.

### **ARTICLE 24 CONTINGENT FEES**

24.1 The Supplier warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Supplier, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Supplier, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

### **ARTICLE 25 ENTIRETY OF AGREEMENT**

25.1 The City and the Supplier agree that this Agreement and the Contract Documents sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement and the Contract Documents supersede all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between the City and the Supplier pertaining to the services, whether written or oral. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

The following documents are made an integral part of this Agreement:

A. Insurance Certificates

### **ARTICLE 26 COUNTERPARTS**

26.1 This Agreement may be executed simultaneously in several counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

### **ARTICLE 27 CONFIDENTIALITY**

27.1 Subject to the requirements of Chapter 119 of the Florida Statutes, no reports, information, computer programs, documentation, and/or data given to or prepared or assembled by the Supplier under this Agreement shall be made available to any individual or organization by the Supplier without prior written approval of the City.

## **Agreement #IFB – 2020-016**

### **ARTICLE 28 OWNERSHIP OF DOCUMENTS**

28.1 Any and all documents, records, disks, or other information shall become the property of the City for its use and/or distribution as may be deemed appropriate by the City.

### **ARTICLE 29 TRUTH-IN-NEGOTIATION CERTIFICATE**

29.1 Execution of this Agreement by the Supplier shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

29.2 The said rates and costs shall be adjusted to exclude any significant sums should the City determine that the rates and costs were increased due to inaccurate, incomplete, or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The City shall exercise its rights under this "Certificate" within one (1) year following payment.

### **ARTICLE 30 STANDARD OF CARE**

30.1 The Supplier shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily provided by a comparable professional under similar circumstances, and the Supplier shall, at no additional cost to the City, re-perform services which fail to satisfy the foregoing standard of care.

30.2 The Supplier warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

### **ARTICLE 31 NON-DISCRIMINATION**

31.1 EEO and ADA. The Supplier must be and remain in compliance with all local, state and federal Equal Employment Opportunity (EEO) and American Disabilities Act (ADA) requirements.

31.2 It is understood that the Supplier shall not discriminate against any individual in the performance of the contract with respect to hire, tenure, conditions or privileges of employment, or any other matter directly or indirectly related to employment because of race, creed, color, national origin, age, disability, sex, gender identity, sexual orientation, or any other legally protected class.

31.2 City Policy Regarding Conduct. All contractors, their employees, agents and subcontractors must abide by the City's policies regarding conduct. Discrimination, harassment, and/or violations of this clause and City non-discrimination policies will not be tolerated and are grounds for termination of the Agreement without harm to the City or its employees.

**Agreement #IFB – 2020-016**

**ARTICLE 32  
WAIVER OF TRIAL BY JURY**

**32.1 THE PARTIES TO THIS AGREEMENT HEREBY AGREE TO EXHAUST ALL ADMINISTRATIVE REMEDIES BEFORE FILING A LAWSUIT IN CIVIL COURT TO RESOLVE THE DISPUTE. FURTHERMORE, CITY AND SUPPLIER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION, PROCEEDING, OR COUNTERCLAIM BASED UPON THE CONTRACT DOCUMENTS, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THE TRANSACTIONS CONTEMPLATED HEREIN, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY.**

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**Agreement #IFB – 2020-016**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective Date above written.

**Approved as to Insurance:**



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David J. Ruiz

Risk Management Division

**Approved by Department Head  
or head of negotiations team as to  
the negotiated business terms:**

DocuSigned by:



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Hermes Diaz

Public Works Director

**Approved as to compliance with applicable  
Procurement Requirements:**

DocuSigned by:



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Celeste S. Walker Harmon

Chief Procurement Officer

**Approved as to Funds Appropriation:**



DD086B973280431...

Diana M. Gomez

Finance Director

**AS TO CITY:**



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Peter J. Iglesias, P.E.

City Manager

DocuSigned by:



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Eduardo Santamaria

Assistant City Manager

**ATTEST:**

DocuSigned by:



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Billy Y. Urquia

City Clerk

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:**

DocuSigned by:



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Miriam Soler Ramos

City Attorney

**AS TO SUPPLIER:**



GENERAL MANAGER

Title:

**ATTEST:**

Name

Corporate Secretary

(SEAL)

(OR) WITNESSES (2):

Print Name: IVANA LUSHOVIC



Print Name: JACQUELINE MARTINEZ

