

AGREEMENT

THIS AGREEMENT (“Agreement” or “Contract”) made this 18th day of August, 2022 by and between **ACF STANDBY SYSTEMS, LLC**, whose principle address is 5570 Florida Mining Blvd, Jacksonville, Florida 32257, hereinafter called “Contractor”, and **COLUMBIA COUNTY, FLORIDA**, a political subdivision of the State of Florida, with its mailing address at Post Office Box 1529 Lake City, Florida 32056-1529, hereinafter called “County”.

WITNESSETH:

WHEREAS, the County solicited bids for the provision of certain services to the County with accompanying instructions for the submission of bids under Bid No. 2022-AA “Generator Maintenance”; and

WHEREAS, the Contractor was determined as the most qualified responsive bidder to that solicitation for bids, and was selected as the prevailing bidder by the County on July 28, 2022; and

WHEREAS, the County and the Contractor desire to enter into an agreement for the provision of services by the Contractor to the County and the terms of payment by the County to the Contractor with other terms and conditions that shall govern the subject matter of this Contract;

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the parties agree as follows:

I. RECITALS INCORPORATED

The above recitals are true and correct and are incorporated here by reference.

The Contractor shall provide generator materials and labor as set forth in the bid documents for Bid No. 2022-AA , which are attached hereto and made a part hereof as is fully set forth herein.

II. FEES FOR PRODUCTS

The Contractor shall be compensated in accordance with the Bid Form submitted by the Contractor for **Bid No. 2022-AA**.

III. PERMITS AND INSURANCE

Prior to commencement pursuant to this Agreement, the Contractor shall provide the County copies of all current and applicable licenses and permits together with all insurance documents set forth in the bid documents.

IV. INVOICING AND PAYMENT

The County shall make payment of all approved invoices to the Contractor in accordance with the Local Government Prompt Payment Act, Fla. Stat. section 218.70 et seq.

V. TERM

The term of this agreement shall be effective beginning **October 1, 2022** for a period of three (3) years. Subject to approval at the sole discretion of the County's Board of Commissioners, this Agreement may renew for up to two (2) successive one (1) year terms, for a total of five (5) years. Up to ninety (90) days but not fewer than thirty (30) days prior to the end of the initial term of this Agreement, Contractor may notify the County of Contractor's desire not to renew this Agreement, such that on the last day of that term this Agreement shall terminate and no renewal shall occur. This provision shall not be construed in any manner to require either party to renew this Agreement.

VI. INDEMNITY

Contractor (as indemnitor) shall indemnify, save and hold County, its officers and employees, agents, successors, and assign(as indemnitee) harmless from and against and in respect of any act, judgement, claim, domain, suit, proceeding, expenses, orders, action, loss, damage, cost, charge, interest, fine, penalty, liability, reasonable attorney and expert fees, and related obligations (collectively, the "claims") arising from or related to any action, neglect or omission of Contractor in its performance under the Agreement, whether direct or indirect including but not limited to, liabilities, obligations, responsibilities, remedial actions, losses, damages, punitive damages, consequential damages to third parties, treble damages, costs and expenses, fines, penalties, sanctions, interest levied and other charges levied by other federal, state and local government agencies on County by reasons of Contractor's direct or indirect actions. This indemnity will survive and remain in force after the expiration or termination of the Agreement and is unlimited; provided, however that the indemnity is not intended to cover claims against County arising out of County's own negligence or intentional misconduct. Nothing herein shall be interpreted by the parties or any third party that County waives its sovereign immunity otherwise provided by law. For purposes of this section, the term County shall include County, officers, and its employees.

VII. INTEGRATION

This written instrument and the attachments to which reference is made constitute the entire Agreement between the County and the Contractor. All prior and contemporaneous agreements and understandings, whether oral or written, are without effect in the construction of any provision if they alter or otherwise vary any term or condition set forth in this instrument.

VIII. RIGHT TO REQUIRE PERFORMANCE

The failure of the County at any time to require performance by the Contractor of any provision of this Agreement shall in no way affect the right of the County thereafter to enforce such provision. Nor shall waiver by the County of any material breach of any terms of this Agreement be taken or held to be a waiver of any subsequent material breach of such term or as a waiver of any provision of this Agreement.

IX. AMENDMENT

This Agreement may be altered, amended, or repealed only by a written instrument signed by authorized representatives of the parties.

X. LAW TO GOVERN AND VENUE

The laws of the State of Florida shall govern the validity, construction, interpretation, and effect of this Agreement. The state courts situated within Columbia County, Florida, shall be the exclusive venue for any legal proceeding concerning this Agreement.

XI. ASSIGNMENT

The Contractor shall not assign any portion of the agreement for services to be rendered hereunder without written consent first obtained from the County and any assignment made contrary to the provisions of this section may be deemed a default of the Agreement and shall not convey any rights to the assignee. Any change in Contractor's ownership shall, for purposes of the Agreement, be considered a form of assignment. The County shall not unreasonably withhold its approval of a requested change in ownership, so long as the transferee is of known financial and business integrity for the undertaking and can conclusively demonstrate the ability to perform all terms and conditions and obligations of this agreement.

XII. PRODUCT ENDORSEMENT/ADVERTISING

Contractor shall not use the name of the County for the endorsement of any commercial products or services or Contractor's logo or brand name without the expressed written permission of the County. This shall not prevent Contractor from informing third parties of Contractor's contract with County and naming County as a business reference for Contractor.

XIII. WARRANTY REGARDING CONSIDERATION AND PROCUREMENT

Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Contractor to procure or solicit any agreement under this procurement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or other consideration contingent upon or resulting from this procurement. Further, Contractor represents that its pricing has been independently arrived at without collusion. It has not knowingly influenced and promises that it will not knowingly influence a County employee or former County employee to breach any ethical standards. It has not violated, and is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks. Violation of this warranty shall constitute default of this Agreement.

XIV. RELATIONSHIP OF THE PARTIES

Contractor is an independent contractor. Nothing in the Agreement shall be construed to create a relationship of employer and employee or principal and agent, partnership, joint venture, or any other relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of the Agreement. Nothing in the Agreement shall create any right or remedies in any third party, it being solely for the benefit of the County and the Contractor.

XV. AGREEMENT TO PAY ATTORNEY'S FEES AND EXPENSES

In the event either party should default under any of the provisions of this agreement and the other party should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of any obligation or agreement on the part of either party, the prevailing party shall recover from the other party the reasonable fee for such attorneys and such other reasonable expenses and costs so incurred.

XVI. BINDING EFFECT

This agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and permitted assigns.

XVII. SEVERABILITY

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this agreement shall as so amended, modified, supplemented, or otherwise affected by such action, remain in full force and effect.

XVIII. PUBLIC RECORDS

The parties acknowledge County is a political subdivision of the State of Florida and is required to comply with the Public Record Act of the State of Florida, Chapter 119, Florida Statutes, and all other public entity provision required of the County as a political subdivision of the State of Florida as provided by the Constitution and laws of the State of Florida. Contractor will maintain original or copies of its records regarding or arising out of this agreement for a minimum of five (5) years after the termination of this agreement, and shall make such records reasonably available to the County upon request.

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 COUNTY'S CUSTODIAN OF PUBLIC RECORDS: P.O. Box 1529, Lake City, Florida 32056-1529, (386) 752-1326, bccadmin@columbiacountyfla.com.

XIX. ADDITIONAL CONVENANTS

Contractor hereby agrees that it will not bring an action in any court or other forum seeking to void, nullify, terminate or set aside this Agreement on the grounds that the Agreement does not comply with the laws of Florida, including the Constitution of the State of Florida as revised in 1968 and subsequently amended (the "Constitution"). For clarification, the parties agree that the foregoing is not an acknowledgement by either party that this agreement does not comply with the laws of the State of Florida, including the Constitution, and that the foregoing statement does not amend, modify or limit the parties' respective representations herein. Notwithstanding anything in this Agreement to the contrary,

neither party will be liable to the other party for any indirect, incidental, loss of profits, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement to the extent and in the event a court of competent jurisdiction should declare all or any material portion of this Agreement contrary to law or otherwise invalid.

XX. SURVIVAL OF REPRESENTATIONS AND WARRANTIES

All representations, warranties and indemnities, and the covenants and agreements to be performed subsequent to the execution hereof by the parties contained in this Agreement, or in any document delivered in contemplation hereof shall survive the execution of this agreement and the termination, either voluntarily or involuntarily, of this Agreement.

XXI. BID DOCUMENTS INCORPORATED

This Agreement, to the extent applicable, shall include the terms, conditions, scope of work, and specifications of County's Bid No. 2022-AA. However, the foregoing agreement shall govern and take precedence in the event of any conflict between the foregoing agreement and the bid documents.

XXII. PERFORMANCE IN CASE OF SUBSEQUENT AWARD TO THIRD PARTY

Should Contractor fail to prevail in a future procurement cycle, Contractor shall provide all services required in and under this Agreement until the ending date of this Agreement or any agreed extension of this Agreement. To ensure continued performance fully consistent with the requirements of this Agreement through any such period, the Contractor shall continue all operations and support services at the same level of effort and performance as were in effect prior to the award of the subsequent agreement to a competing organization, and shall fully cooperate with the County in providing non-proprietary data and information which will assist in an orderly transition of the service to the new contractor. Contractor shall make no changes in methods of operation which could reasonably be considered to be aimed at cutting Contractor's service and operating cost to maximize profits during the final stages of the Agreement. However, County recognizes that if a competing organization should prevail in a future procurement cycle, Contractor may reasonably begin to prepare for transition of service to the new Contractor. County shall not unreasonably withhold its approval of Contractor's request to begin an orderly transition process, including reasonable plans to relocate staff, scale down certain inventory items, etc., as long as such transition activity does not impair Contractor's performance during this period.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals the day and year first above written.

Signed, sealed and delivered in the
presence of:

Contractor: ACF STANDBY SYTEMS, LLC

Witness

By:

Print or type name

Witness

Print or type name

State of Florida
County of Columbia

The foregoing instrument was acknowledged before me this ____ day of _____, _____
by _____ who is personally known to me or who provided _____
_____ as identification.

(NOTARIAL SEAL)

Notary Public, State of Florida

(Print or Type Name)
My Commission Expires:

**BOARD OF COUNTY COMMISSIONERS
COLUMBIA COUNTY, FLORIDA**

By: Robby Hollingsworth, Chairman

ATTEST: _____
James M. Swisher, Clerk of Court

(Seal)

Approved as to form:

Joel F. Foreman, County Attorney