



GUNSTER
FLORIDA'S LAW FIRM FOR BUSINESS

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December 26, 2024

BY ELECTRONIC FILING

Mr. Adam Teitzman, Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 20240084-EI - Petition for approval of special contract with Agency for Persons with Disabilities for upgrading the electric distribution facilities at the Sunland Center in Marianna, Florida, by Florida Public Utilities Company.

Dear Mr. Teitzman:

Attached for electronic filing, on behalf of Florida Public Utilities Company and in accordance with Order No. PSC-2024-0372-PAA-EI, issued in the above-referenced docket, please find the attached executed contract between FPUC and the Agency for Persons with Disabilities.

As always, thank you for your assistance in connection with this filing. If you have any questions whatsoever, please do not hesitate to let me know.

Sincerely,

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

Cc: Office of General Counsel (Brownless)
Division of Economics (Hampson)



Contract No. LCY04
State Project No. 22FDM1020

Client Non-Client

FLORIDA AGENCY FOR PERSONS WITH DISABILITIES STANDARD CONTRACT

THIS CONTRACT is entered into between the Florida Agency for Persons with Disabilities, hereinafter referred to as the "Agency," and **Florida Public Utilities Company** hereinafter referred to as the "Utility Agency/Owner (UAO)." The Agency and UAO agree as follows:

1. Contract Document

This Contract and its attachments and any exhibits referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties, and such documents shall collectively constitute and be referred to as the "Contract."

2. Witnesseth

- a. The UAO is the owner of electric utility facilities for the distribution of electric energy in Marianna, Florida and desires to sell electric energy.
- b. The Agency is the owner, and will continue to own, electric utilities facilities and equipment which includes any equipment repaired or installed under this contract located at the Sunland Center, located in Marianna, Florida. The Agency is currently engaged in the repair and upgrade of these electric utilities facilities. The Agency currently purchases electric energy from the UAO under the formerly approved rate GSLD schedule.

3. Effective and Ending Dates

This Contract shall begin on, **04/01/2024** or on the date on which the Contract has been signed by the last party required to sign it, whichever is later. It shall end at midnight, local time at **11.59 PM**, Florida, on **06/30/2026**.

4. State of Florida Law

This Contract is executed and entered into in the State of Florida, and all claims, controversies and causes of action arising out of or relating to this Contract shall be construed, performed and enforced in all respects in accordance with Florida law, without regard to Florida provisions for conflict of laws that would result in the application of the laws of a different jurisdiction. Courts of competent jurisdiction in Florida shall have exclusive jurisdiction in any action regarding this Contract and venue shall be as provided in PUR 1000 (as defined in Section 19).

5. Contract Amount

The Agency shall pay for contracted services according to the terms and conditions of this Contract in an amount not to exceed **\$2,085,000.00** or the rate schedule, subject to the availability of funds and satisfactory performance of all terms and conditions by the UAO. The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature. Any costs or services paid for under any other contract or from any other source are not eligible for payment under this Contract.

6. Monitoring by the Agency

The UAO shall permit all persons who are duly authorized by the Agency to inspect and copy any records, papers, documents, facilities, goods and services of the UAO that are relevant to this Contract, and to interview any clients, employees and subcontractor employees of the UAO to assure the Agency of the satisfactory performance of the terms and conditions of this Contract. Following such review, the Agency will deliver to the UAO a written report of its findings, and may direct the development by the UAO of a corrective action plan. The UAO hereby agrees to timely correct all deficiencies identified in the corrective action plan.

This provision will not limit the Agency's termination rights under Section 27.d.

7. Indemnification

- a. The UAO shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and the Agency, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to any alleged act or omission by the UAO, its agents, employees, partners, or subcontractors alleged to be caused in whole or in part by UAO, its agents, employees, partners, or subcontractors, provided, however, that the UAO shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the Agency.
- b. The UAO shall fully indemnify, defend, and hold harmless the State and Agency from any suits, actions, damages, and costs of every name and description, including reasonable attorneys' fees, arising from or relating to violation or infringement by UAO's products of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to Agency's misuse or modification of UAO's products or a Agency's operation or use of UAO's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the UAO's opinion is likely to become the subject of such a suit, the UAO may at its sole expense procure for the Agency the right to continue using the product or to modify it to become non-infringing. If the UAO is not reasonably able to modify or otherwise secure the Agency the right to continue using the product, the UAO shall, without limiting the Agency's remedies at law for breach or nonperformance, remove the product and refund the Agency the amounts paid in excess of a reasonable rental for past use. The Agency shall not be liable for any royalties. The UAO's indemnification for violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right shall encompass all such items used or accessed by the UAO, its officers, agents or subcontractors in the performance of this Contract or delivered to the Agency for the use of the Agency, its employees, agents or contractors.
- c. The UAO shall protect, defend, and indemnify, including reasonable attorneys' fees and costs, the Agency for any and all claims and litigation (including litigation initiated by the Agency) arising from or relating to UAO's claim that a document contains proprietary or trade secret information that is exempt from disclosure or the scope of the UAO's redaction, as provided for under Section 34.
- d. The UAO shall not be liable for any cost, expense, or compromise incurred or made by the Agency in any legal action without the UAO's prior written consent, which shall not be unreasonably withheld. The UAO's inability to evaluate liability or its evaluation of liability shall not excuse its duty to defend and indemnify after receipt of notice. Only an adjudication or judgment after the highest appeal is exhausted finding the Agency negligent shall excuse the UAO of performance under this provision, in which case the Agency shall have no obligation to reimburse the UAO for the cost of its defense. If the UAO is an agency or subdivision of the State, its obligation to indemnify, defend and hold harmless the Agency shall be to the extent permitted by section 768.28, F.S. or other applicable law, and without waiving the limits of sovereign immunity.
- e. No provision in this Contract shall require the Agency to hold harmless or indemnify the UAO, insure or assume liability for the UAO's negligence, waive the Agency's sovereign immunity under the laws of Florida, or otherwise impose liability on the Agency for which it would not otherwise be responsible.

8. Insurance

Unless the UAO is a state agency or subdivision as defined by subsection 768.28(2), F.S., the UAO shall maintain continuous adequate liability insurance coverage during the existence of this Contract and during any renewal(s) and/or extension(s). By execution of this Contract, the UAO accepts full responsibility for identifying and determining the type(s) and extent of liability insurance necessary to provide reasonable financial protections for the UAO and the clients to be served under this Contract. The limits of coverage under each policy maintained by the UAO do not limit the UAO's liability and obligations under this Contract. Upon the execution of this Contract, the UAO shall furnish the Agency written verification supporting both the determination and existence of such insurance coverage. A current certificate of insurance, or such other documentation acceptable to the Agency, evidencing the type and extent of all insurance obtained pursuant to this Section 8 shall at all times be maintained by the UAO, and the UAO shall deliver a copy of such proof of

insurance and any renewal or replacement thereof to the Agency. The UAO shall cause the Agency to be named as a Certificate Holder under each policy of liability insurance maintained by the UAO pursuant to this Contract, unless the Agency waives in writing this requirement. Such coverage may be provided by a self-insurance program established and operating under the laws of the State of Florida. The Agency reserves the right to require additional insurance as specified in this Contract.

9. Public Records (Section 119.0701, F.S.)

- a. The UAO shall keep and maintain public records required by the Agency to perform the services specified in this Contract.
- b. Upon request from the Agency's Custodian of Public Records, the UAO shall provide the Agency 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.
- c. The UAO shall 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 UAO does not transfer the records to the Agency.
- d. Upon completion of the Contract, the UAO shall transfer, at no cost, to the Agency all public records in possession of the UAO or keep and maintain public records required by the Agency to perform the service. If the UAO transfers all public records to the Agency upon completion of the Contract, the UAO shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the UAO keeps and maintains public records upon completion of the Contract, the UAO shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Agency, upon request from the Agency's Custodian of Public Records, in a format that is compatible with the information technology systems of the Agency.
- e. A request to inspect or copy public records relating to the Agency Contract must be made directly to the Agency, except that as it relates to records required to be filed with the Florida Public Service Commission in order for UAO to seek approval of the Agency Contract, requests to inspect or copy public records shall be made to the Florida Public Service Commission. If the Agency does not possess the requested records, the Agency shall immediately notify the UAO of the request, and the UAO must provide the records to the Agency or allow the records to be inspected or copied within a reasonable time.
- f. If the UAO does not comply with the Agency's request for records, the Agency shall enforce the contract provisions in accordance with the Contract.
- g. If the UAO fails to provide the public records to the Agency within a reasonable time, the UAO may be subject to penalties under section 119.10, F.S.
- h. If a civil action is filed against the UAO to compel the production of public records relating to the Contract, the court shall assess and award against the UAO the reasonable costs of enforcement, including reasonable attorney fees, if (i) the court determines that the UAO unlawfully refused to comply with the public records request within a reasonable time; and (ii) at least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the UAO has not complied with the request, to the Agency and to the UAO. A UAO who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.
- i. **If the UAO has questions regarding the application of Chapter 119, F.S., to the UAO's duty to provide public records relating to this Contract, contact the Custodian of Public Records at:**

**Agency's Public Records Coordination Office
Agency for Persons with Disabilities**

**4030 Esplanade Way, Suite 335
Tallahassee, FL 32399-0950
(850) 410-1309
publicrecords@apdcares.org**

10. Assignments and Subcontracts

- a. The UAO shall not assign the responsibility for this Contract to another party without prior written approval of the Agency, and such approval shall only be granted upon the Agency's sole determination that such assignment will not adversely affect the public interest or the Agency; however, in no event may UAO assign or enter into any transaction having the effect of assigning or transferring any right to receive payment under this Contract which right is not conditioned on full and faithful performance of UAO's duties hereunder. Any sublicense, assignment, or transfer otherwise occurring without prior approval of the Agency shall be null and void. The UAO shall not subcontract for any of the work contemplated under this Contract without prior written approval of the Agency, which shall not be unreasonably withheld.
- b. To the extent permitted by Florida Law, and in compliance with Section 7 of this Contract, the UAO is responsible for all work performed and for all commodities produced pursuant to this Contract whether actually furnished by the UAO or its subcontractors. Any subcontracts shall be evidenced by a written document. The UAO further agrees that the Agency shall not be liable to the subcontractor in any way or for any reason. The UAO, at its expense, will defend the Agency against such claims.
- c. The UAO shall make payments to any subcontractor within seven (7) working days after receipt of full or partial payments from the Agency in accordance with section 287.0585, F.S., unless otherwise stated in the Contract between the UAO and subcontractor. Failure to pay within seven (7) working days will result in a penalty that shall be charged against the UAO and paid by the UAO to the subcontractor in the amount of one-half of one percent (.005) of the amount due per day from the expiration of the period allowed for payment. Such penalty shall be in addition to actual payments owed and shall not exceed fifteen percent (15%) of the outstanding balance due.
- d. The State of Florida shall at all times be entitled to assign or transfer, in whole or part, its rights, duties, or obligations under this Contract to another governmental agency in the State of Florida, upon giving prior written notice to the UAO. In the event the State of Florida approves transfer of the UAO's obligations, the UAO remains responsible for all work performed and all expenses incurred in connection with this Contract. This Contract shall remain binding upon the successors-in-interest of either the UAO or the Agency.
- e. The UAO shall include, or cause to be included, in all subcontracts (at any tier) the substance of all clauses contained in this Contract that mention or describe subcontract compliance.

11. Return of Funds

The UAO shall return to the Agency any balance of unobligated funds which has been advanced or paid, any funds paid in excess of the amount to which the UAO is entitled under the terms and conditions of this Contract, overpayments due to unearned funds or funds disallowed that were disbursed to the UAO by the Agency and any interest attributable to such funds pursuant to the terms and conditions of this Contract. In the event that the UAO or its independent auditor discovers that an overpayment has been made, the UAO shall repay said overpayment immediately without prior notification from the Agency. In the event that the Agency first discovers an overpayment has been made, the Contract Manager, on behalf of the Agency, will notify the UAO by letter of such findings. Should repayment not be made: (i) within two (2) business days after discovery by the UAO of the overpayment; or (ii) within ten (10) days after the notification letter is received from the Agency, then the UAO will be charged interest at the lawful rate of interest on the outstanding balance. Payments made for services subsequently determined by the Agency to not be in full compliance with Contract requirements shall be deemed overpayments. In the event UAO owes any amount to the Agency under this Contract and fails to pay such amount within thirty (30) days after written demand, the Agency may deduct such amount from payments due to UAO from the Agency pursuant to this Contract.

12. Civil Rights Requirements

In accordance with Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, or the Florida Civil Rights Act of 1992, as applicable, the UAO shall not discriminate against any employee (or applicant for employment) in the performance of this Contract because of race, color, religion, sex, national origin, disability, age, pregnancy, or marital status. Further, the UAO agrees not to discriminate against any applicant, client, or employee in service delivery or benefits in connection with any of its programs and activities in accordance with 45 CFR Parts 80, 83, 84, 90, and 91, Title VI of the Civil Rights Act of 1964, or the Florida Civil Rights Act of 1992, as applicable. UAO agrees that compliance with this section constitutes a condition of continued receipt of funds under this Contract, and that these requirements shall apply to all contractors, subcontractors, subgrantees or others with whom it arranges to provide services or benefits to clients or employees in connection with its programs and activities. The UAO, and any subcontractor, subgrantee, or other UAO of federal financial assistance pursuant to this Contract shall complete the Civil Rights Compliance Checklist, APD Form 946, in accordance with 45 CFR Part 80 and 45 CFR Part 84 within sixty (60) calendar days after execution of this Contract, and the UAO shall complete APD Form 946 on an annual basis thereafter during the term of this Contract. The Civil Rights Compliance Checklist is not required of UAOs that have less than fifteen (15) employees, unless they provide direct client services.

13. Publicity

Without limitation, the UAO and its employees, agents, and representatives shall not, without prior Agency written consent in each instance, use in advertising, publicity or any other promotional endeavor any State mark, the name of the State's mark, the name of the State or any State affiliate or any officer or employee of the State, or represent, directly or indirectly, that any product or service provided by the UAO has been approved or endorsed by the State, or refer to the existence of this Contract in press releases, advertising or materials distributed to the UAO's prospective customers.

14. Final Invoice

The final invoice for payment shall be submitted to the Agency no more than **45** days after the Contract ends or is terminated. If the UAO fails to do so, all rights to payment are forfeited and the Agency will not honor any requests submitted after the aforesaid time period. Any payment due under the terms of this Contract may be withheld until performance of services and all reports due from the UAO and necessary adjustments thereto, have been approved by the Agency.

15. Use of Funds for Lobby Prohibited

The UAO shall comply with the provisions of sections 11.062 and 216.347, F.S., which prohibit the expenditure of Contract funds for the purpose of lobbying the Legislature, judicial branch, or a state agency.

16. Public Entity Crime and Discriminatory Contractors

Pursuant to sections 287.133 and 287.134, F.S., the following restrictions are placed on the ability of persons convicted of public entity crimes to transact business with the Agency. When a person or affiliate has been placed on the Convicted Vendor List following a conviction for a public entity crime, or an entity or affiliate has been placed on the Discriminatory Vendor List, such person, entity or affiliate may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or the repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity; provided, however, that the prohibition on persons or affiliates placed on the Convicted Vendor List shall be limited to business in excess of the threshold amount provided in section 287.017, F.S., for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List. UAO warrants that neither it nor any affiliate is currently on the Convicted Vendor List maintained pursuant to Section 287.133, F.S., on the Discriminatory Vendor List maintained pursuant to Section 287.134, F.S., or any similar list maintained by the State of Florida or the federal government.

17. Gratuities

The UAO shall not offer to give or give any gift to any Agency employee. As part of the consideration for this Contract, the parties intend that this provision will survive the Contract for a period of two (2) years. In addition

to any other remedies available to the Agency, any violation of this provision will result in referral of the UAO's name and description of the violation of this term to the Department of Management Services for the potential inclusion of the UAO's name on the Suspended Vendor List for an appropriate period. The UAO shall ensure that its subcontractors, if any, comply with these provisions.

18. Patents, Copyrights, and Royalties

- a. It is agreed that all intellectual property, inventions, discoveries, written or electronically created materials, including manuals, presentations, films, or other copyrightable materials, arising in relation to UAO's performance under this Contract, and the performance of all of its officers, agents and subcontractors in relation to this Contract, are works for hire for the benefit of the Agency, fully compensated for by the Contract amount, and that neither the UAO nor any of its officers, agents nor subcontractors may claim any interest in any intellectual property rights accruing under or in connection with the performance of this Contract. Any intellectual property, inventions, discoveries, written or electronically created material or work of authorship produced or developed by UAO shall become the property of the Agency as part of delivering the required services under this Contract, and the Agency retains all rights of use associated with this ownership. It is specifically agreed that the Agency shall have exclusive rights to all data processing software falling within the terms of section 119.084, F.S., which arises or is developed in the course of or as a result of work or services performed under this Contract, or in any way connected herewith. Notwithstanding the foregoing provision, if the UAO is a university and a member of the State University System of Florida, then section 1004.23, F.S., shall apply.
- b. Except as provided in section 1004.23 F.S., to the extent that the Services provided by Contractor are generated by Contractor's proprietary software, created prior to the execution of this contract and not modified using funds from this contract, the Agency agrees that it has no claims of ownership, including copyrights, patents, or other intellectual property rights to Contractor's software. If the Contractor uses such proprietary software to provide the services required under this contract, Contractor grants the Agency a non-exclusive, perpetual right to use the software to access and view the Contractor's work."
- c. If the UAO uses or delivers to the Agency for its use or the use of its employees, agents or contractors, any design, device, or materials covered by letters patent, or copyright, it is mutually agreed and understood that, without exception, the compensation paid pursuant to this Contract includes all royalties or costs arising from the use of such design, device, or materials in any way involved in the work contemplated by this Contract.
- d. All applicable subcontracts shall include a provision that the Federal awarding agency reserves all patent rights with respect to any discovery or invention that arises or is developed in the course of or under the subcontract. Notwithstanding the foregoing provision, if the UAO or one of its subcontractors is a university and a member of the State University System of Florida, then section 1004.23, F.S., shall apply, but the Agency shall retain a perpetual, fully-paid, nonexclusive license for its use and the use of its contractors of any resulting patented, copyrighted or trademarked work products.

19. PUR (Purchasing) 1000 Form

The PUR 1000 Form dated 10/06, as amended from time to time, is hereby incorporated by reference and made a part hereof as if fully recited herein. Sections 1.d., 2-4, 6, 8-13, 19, 23, 27, 31, and 35 of the PUR 1000 Form are not applicable to this Contract. Other provisions of the PUR 1000 Form are clarified, revised or supplemented as set forth elsewhere in this Contract. In the event of any conflict between the PUR 1000 Form, and any terms or conditions of this Contract, the terms or conditions of this Contract shall take precedence over the PUR 1000 Form. Notwithstanding the foregoing, if the conflicting term in the PUR 1000 Form is required by any section of the Florida Statutes, the term in the PUR 1000 Form shall take precedence.

20. Notification of Legal Action

The UAO shall notify the Agency of potential or actual legal actions taken against the UAO related to services provided through this Contract or that may impact the UAO's ability to deliver the contractual services, or that may adversely impact the Agency. The Agency's Contract Manager will be notified within ten (10) calendar days of UAO becoming aware of such actions or from the day of the legal filing, whichever comes first.

21. Whistleblower's Act Requirements

In accordance with subsection 112.3187(2), F.S., the UAO and its subcontractors shall not retaliate against an employee for reporting violations of law, rule, or regulation that creates substantial and specific danger to the public's health, safety, or welfare to an appropriate agency. Furthermore, agencies or independent contractors shall not retaliate against any person who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee. The UAO and any subcontractor shall inform its employees that they and other persons may file a complaint with the Office of Chief Inspector General, Agency Inspector General, the Florida Commission on Human Relations or the Whistle-blower's Hotline number at 1-800-543- 5353.

22. Proprietary or Trade Secret Information

- a. Unless exempted by law, all public records are subject to public inspection and copying under Florida's Public Records Law, Chapter 119, F.S. Any claim by UAO of proprietary or trade secret confidentiality for any information contained in UAO's documents (reports, deliverables or work papers, etc., in paper or electronic form) submitted in connection with this Contract will be waived, unless the claimed confidential information is submitted in accordance with Section 22.b. below.
- b. In accordance with Section 215.985(14), F.S., this Contract, is subject to inclusion in the web-based system called the Florida Accountability Contract Tracking System (FACTS). A copy of this Contract, any amendments, renewals, and extensions thereof, and any associated procurement documents, are subject to posting in FACTS and made available to the public. Any claim by UAO that the Contract or procurement documents contain "confidential" or "exempt" material will be waived at the time of execution of this Contract, unless the claimed confidential information is submitted in accordance with Section 22.c. below.
- c. The UAO must clearly label any portion of the documents, data, or records submitted that it considers exempt from public inspection or disclosure pursuant to Florida's Public Records Law as confidential, exempt, proprietary or trade secret. The labeling will include a justification citing specific statutes and facts that authorize exemption of the information from public disclosure. If different exemptions are claimed to be applicable to different portions of the protected information, the UAO shall include information correlating the nature of the claims to the particular protected information. The UAO is deemed to have released the Agency from liability for disclosure of confidential, exempt, proprietary, or trade secret information if Provide fails to comply with this subsection at the time the Contract is executed.
- d. The Agency, when required to comply with a public records request including documents submitted by the UAO, may require the UAO to expeditiously submit redacted copies of documents marked as confidential, exempt, proprietary, or trade secret in accordance with Section 22.c. above. Accompanying the submission shall be an updated version of the justification under Section 22.c. above, correlated specifically to redacted information, either confirming that the statutory and factual basis originally asserted remain unchanged or indicating any changes affecting the basis for the asserted exemption from public inspection or disclosure. The redacted copy must exclude or obliterate only those exact portions that are claimed to be proprietary or trade secret. If the UAO fails to promptly submit a redacted copy, the Agency is authorized to produce the records sought without any redaction of proprietary or trade secret information.
- e. The UAO shall be responsible for defending its claim that each and every portion of the redactions of confidential, proprietary, or trade secret information are exempt from inspection and copying under Florida's Public Records Law.

23. Contract Payment

Pursuant to section 215.422, F.S., the Agency has five (5) working days to inspect and approve goods and services, unless the bid specifications, purchase order, or this Contract specify otherwise. With the exception of payments to health care UAOs for hospital, medical, or other health care services, if payment is not available within forty (40) days, measured from the latter of the date a properly completed invoice is received by the Agency or the goods or services are received, inspected, and approved, a separate interest penalty set

by the Chief Financial Officer pursuant to section 55.03, F.S., will be due and payable in addition to the invoice amount. Payments to health care UAOs for hospital, medical, or other health care services, shall be made not more than thirty-five (35) days from the date eligibility for payment is determined. Financial penalties will be calculated at the daily interest rate of .03333%. Invoice payment requirements do not start until a properly completed invoice is provided to the Agency. Interest penalties less than one (1) dollar will not be paid unless the UAO requests payment. Payment shall be made only upon acceptance by the Agency, but shall remain subject to subsequent audit or review to confirm Contract compliance and/or to the Return of Funds provision of Section 15 of this contract. Subject to the terms and conditions of UAO's Electric Tariff on file with the Florida Public Service Commission and Attachment 1, Section E.1.f., UAO may interrupt service to Agency's Facility as a result of Agency's failure to pay any properly completed invoice, as well as applicable interest penalties, from UAO within one hundred twenty (120) days following the payment due date.

24. Vendor Ombudsman

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422(7), F.S., which include disseminating information relative to prompt payment by the State and assisting vendors in receiving their payments in a timely manner from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or (800) 342-2762, the State of Florida Chief Financial Officer's Hotline.

25. Notice

Any notice that is required under this Contract shall be in writing and sent by U.S. Postal Service or any expedited delivery service that provides verification of delivery or by hand delivery. Said notice shall be sent to the representative of the UAO responsible for administration of the program, to the designated address contained in this Contract.

26. Financial Consequences for UAO's Failure to Perform or Failure to Comply with Requirement for Corrective Actions

- a. Corrective action plans and/or financial consequences must be required for noncompliance, nonperformance, unacceptable performance, or failure to meet the minimum level of service or performance under this Contract. Financial consequences must be imposed for failures to timely implement or to make acceptable progress on such corrective action plans.
- b. Financial consequences must include, but are not limited to, the financial consequences set forth in subsections c, d, and e below.
- c. The increments of financial consequences that shall apply must be based upon the severity of the noncompliance, nonperformance, or unacceptable performance that generated the need for a corrective action plan. The financial consequences shall not exceed ten percent (10%) of the total Contract payments during the period in which the corrective action plan has not been implemented or in which acceptable progress toward implementation has not been made. Noncompliance that is determined to have a direct effect on client health and safety shall result in the imposition of a ten percent (10%) financial consequence of the total Contract payments during the period in which the corrective action plan has not been implemented or in which acceptable progress toward implementation has not been made.
- d. Noncompliance involving the provision of service not having a direct effect on client health and safety must result in the imposition of a five percent (5%) financial consequence. Noncompliance as a result of unacceptable performance of administrative tasks must result in the imposition of a two percent (2%) financial consequence.
- e. The deadline for payment shall be as stated in the notification imposing the financial consequences. In the event of nonpayment, the Agency may deduct the amount of the financial consequences from invoices submitted by the UAO.
- f. Any payment made in reliance on the UAO's evidence of performance, which evidence is subsequently determined to be erroneous, will be immediately due as an overpayment in accordance with Section 11 above, titled "Return of Funds" to the extent of such error.
- g. If this Contract is funded with federal assistance, this provision can be excluded from the contract only if

financial consequences are prohibited by the federal agency awarding the funds.

27. Termination

- a. This Contract may be terminated by either party without cause upon no less than thirty (30) calendar days notice in writing to the other party unless a sooner time is mutually agreed upon in writing. Said notice shall be delivered by U.S. Postal Service or any expedited delivery service that provides verification of delivery or by hand delivery to the Contract Manager or the representative of the UAO responsible for administration of the program. The UAO shall not furnish any product after it receives the written notice of termination, except as necessary to complete the continued portion of the Contract, if any. The UAO shall be compensated for any work satisfactorily completed up to and including the date of termination, but shall not be entitled to recover any cancellation charges or lost profits.
- b. In the event funds for payment pursuant to this Contract become unavailable, the Agency may terminate this Contract upon no less than twenty-four (24) hours notice in writing to the UAO. Said notice shall be sent by U.S. Postal Service or any expedited delivery service that provides verification of delivery. The Agency shall be the final authority as to the availability and adequacy of funds. In the event of termination of this Contract, the UAO will be compensated for any work satisfactorily completed prior to the effective date of the termination.
- c. In the event the UAO fails to fully comply with the terms and conditions of this Contract, the Agency may terminate the Contract upon no less than twenty-four (24) hours (excluding Saturday, Sunday, and Holidays) notice in writing to the UAO after UAO's failure to fully cure such noncompliance within the time specified in a written notice of noncompliance issued by the Agency specifying the nature of the noncompliance and the actions required to cure such noncompliance. In addition, the Agency may, if applicable, employ the default provisions in Rule 60A-1.006(3), Florida Administrative Code (F.A.C.), but is not required to do so in order to terminate the Contract. The Agency's failure to demand performance of any provision of this Contract shall not be deemed a waiver of such performance. The Agency's waiver of any one breach of any provision of this Contract shall not be deemed to be a waiver of any other breach and neither event shall be construed to be a modification of the terms and conditions of this Contract. The provisions herein do not limit the Agency's right to remedies at law or in equity.
- d. Failure to have performed any contractual obligations under any other contract with the Agency in a manner satisfactory to the Agency will be a sufficient cause for termination. To be terminated as a UAO under this provision, the UAO must have: (i) previously failed to satisfactorily perform in a contract with the Agency, been notified by the Agency of the unsatisfactory performance, and failed to correct the unsatisfactory performance to the satisfaction of the Agency; or (ii) had a contract terminated by the Agency for cause. Termination pursuant to this Section 27.d., shall be upon no less than twenty-four (24) hours notice in writing to the UAO (excluding Saturday, Sunday, and State Holidays).

28. Renegotiations or Modifications

Modifications of provisions of this Contract shall be valid only when they have been reduced to writing and duly signed by both parties during the term of the Contract. The rate of payment and the total dollar amount may be adjusted retroactively to reflect price level increases and changes in the rate of payment when these have been established through the appropriations process and subsequently identified in the Agency's operating budget. If the services provided under this Contract are the same type of service that is offered under the Developmental Disabilities Home and Community Based Waiver Services (HCBS) and the established rates are adjusted, the rates of services under this Contract may be modified to be in alignment with the adjustment, which UAO shall not unreasonably withhold consent to such modification.

29. Dispute Resolution

Any dispute concerning performance of the Contract or payment hereunder shall be decided by the Agency's Contract Manager, who shall reduce the decision to writing and provide a copy to the UAO. The decision shall be final and conclusive unless within twenty-one (21) calendar days from the date of receipt of the Contract Manager's decision, the UAO delivers to the Contract Manager a petition for alternative dispute resolution. After receipt of a petition for alternative dispute resolution the Agency and the UAO shall attempt to amicably resolve the dispute through negotiations. Timely delivery of a petition for alternative dispute

resolution and completion of the negotiation process shall be a condition precedent to any legal action by the UAO concerning this Contract. After timely delivery of a petition for alternative dispute resolution, the parties may employ any dispute resolution procedures described in the **Attachment I** or other attachment, or mutually agree to an alternative binding or nonbinding dispute resolution process, the terms of which shall be reduced to writing and executed by both parties. Completion of such agreed process shall be deemed to satisfy the requirement for completion of the negotiation process. This provision shall not limit the parties' rights of termination under Section 39.d. above.

30. Background Screening

- a. The UAO shall ensure that all UAO's staff, and UAO's subcontractor's staff, meet Level Two Background Screening requirements in accordance with section 393.0655 and Chapter 435, F.S., as a condition of employment and continued employment. The screening includes fingerprinting for statewide criminal history records checks through the Department of Law Enforcement, national criminal history records checks through the Federal Bureau of Investigation, and local criminal records checks through local law enforcement agencies. The UAO must submit to the Contract Manager, a signed affidavit, attesting that all current employees have been screened and cleared. An updated affidavit must be sent to the Contract Manager annually. Documentation of background screening shall be maintained in the employee's personnel file. The UAO shall be responsible for ensuring UAO's subcontractor's compliance with this section.

31. Renewals

This Contract may be renewed, unless specifically stated otherwise in the **Attachment I**, for a term not to exceed three (3) years or for the term of the original Contract, whichever is longer. Such renewal shall be made by mutual agreement and shall be contingent upon satisfactory performance evaluations as determined by the Agency. Contracts procured by an exceptional purchase pursuant to Section 287.057 (3)(a) or (3)(c), F.S., may not be renewed. Any renewal shall be subject to the availability of funds and any costs for renewing the contract shall not be charged. Any renewal must be in writing and is subject to the same terms and conditions as set forth in the initial Contract and any written amendments signed by the parties.

32. Verification of Employment Status (E-Verify)

Pursuant to State of Florida Executive Order Number 11-116, the UAO and its subcontractors shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the UAO during the Contract term. The UAO shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to this contract utilize the E-Verify system to verify employment of all new employees hired by the subcontractor during the Contract term. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>. Evidence of the use of the E-Verify system shall be maintained in the employee's personnel file.

33. MyFloridaMarketPlace Registration

To comply with Rule 60A-1.033, F.A.C., each UAO doing business with the State of Florida for the sale of commodities or contractual services as defined in section 287.012, F.S., shall register in the MyFloridaMarketPlace system, unless exempted under Rule 60A-1.033(3), F.A.C. Information about the registration process is available, and registration may be completed, at the MyFloridaMarketPlace website (link under Business on the State portal at www.myflorida.com).

34. MyFloridaMarketPlace Transaction Fee

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement System. Pursuant to subsection 287.057(22), F.S., all payments shall be assessed a transaction fee of one percent (1.0%), which the UAO shall pay to the State unless exempt pursuant to 60A-1.031, F.A.C. For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the UAO. If automatic deduction is not possible, the UAO shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, UAO certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

The UAO shall receive a credit of any transaction fee paid by the UAO for the purchase of any item(s) if such item(s) are returned to the UAO through no fault, act, or omission of the UAO. A Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the UAO's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the UAO in default and recovering procurement costs from the UAO in addition to all outstanding fees. **VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.**

35. Scrutinized Companies

If this Contract is valued at \$1,000,000 (total Contract value) or more, awarded, extended, or renewed on or after July 1, 2011, the UAO agrees to refrain from any of the prohibited business activities with the Governments of Sudan and Iran as described in section 215.473, F.S. If this Contract is valued at \$1,000,000 (total Contract value) or more, awarded, extended, or renewed on or after July 1, 2012, the UAO also agrees to not engage in business operations in Cuba or Syria as described in section 287.135, F.S. If this Contract is valued at \$1,000,000 (total Contract value) or more, awarded, extended, or renewed on or after October 1, 2016, the UAO also agrees to refrain from the boycott of Israel as described in section 215.4725, F.S. Pursuant to section 287.135, F.S., the Agency may immediately terminate this Contract for cause if the UAO is found to have submitted a false certification required under Section 287.135(5), F.S., or the UAO is placed on the Scrutinized Companies that Boycott Israel List, or is engaged in the boycott of Israel as described in section 215.4725, F.S., or is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or engaged in business operations in Cuba or Syria during the term of the Contract. If this Contract is valued at \$1,000,000 (total Contract value) or more, in execution of this Contract, UAO certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, is not participating in a boycott of Israel, and has not engaged in business operations in Cuba or Syria.

36. Official Payee and Representatives (Names, Addresses, Telephone Numbers, E-mail addresses):

a. The UAO name, as shown on page 1 of this Contract, and mailing address of the official payee to whom the payment shall be made is:

Florida Public Utilities

2825 Penn Ave.

Marianna, FL 32448

904-430-4727

b. The name of the contact person and street address where financial and administrative records are maintained is:

Shane Magnus

2825 Penn Ave.

Marianna, FL 32448

904-557-1678

smagnus@chpk.com

c. The name, mailing address, telephone number, and e-mail address of the Contract Manager for the Agency for this Contract is:

Ryland Musick

4030 Esplande Way

Tallahassee, FL 32399-0950

850-558-9486

Ryland.Musick@apdcares.org

d. The name, mailing address, telephone number, and e-mail address of the representative of the UAO responsible for administration of the program under this Contract is:

Shane Magnus

2825 Penn Ave.

Marianna, FL 32448

904-557-1678

smagnus@chpk.com

Upon change of representative information (names, addresses, telephone numbers or e-mail addresses) by either party, notice shall be provided in writing to the other party and the notification attached to the originals of this Contract.

37. All Terms and Conditions Included

This Contract and its attachments, I. & II. and any exhibits referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions, terms, conditions, or obligations other than those contained herein, and this Contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties with respect to the subject matter hereof; however, this Contract shall not supersede or replace the Operations and Maintenance Agreement between the parties dated December 22, 2022, which shall remain in effect in accordance with its terms. UAO shall comply with all applicable federal, state, and local laws and regulations. If any term or provision of this Contract is legally determined unlawful or unenforceable, the remainder of the Contract shall remain in full force and effect and such term or provision shall be stricken. In the event of a conflict between the provisions of the documents, the documents shall be interpreted in the following order of precedence:

- a. **Attachment I** and other attachments, if any;
- b. Any documents incorporated into any attachment by reference;
- c. The Standard Contract; and
- d. Any documents incorporated in the Standard Contract by reference.

By signing this Contract, the parties acknowledge that they have read and agree to the entire Contract, as described in Section 37 above.

IN WITNESS THEREOF, the parties hereto have caused this 36-page Contract to be executed by their undersigned officials as duly authorized.

FLORIDA PUBLIC UTILITIES

FLORIDA AGENCY FOR PERSONS WITH DISABILITIES

SIGNATURE: Will Haffeccke

SIGNATURE: 

NAME: Will Haffeccke

NAME: Taylor N. Hatch

TITLE: General Manager - Florida Operations

TITLE: Director

DATE: December 16, 2024

DATE: 12/18/24

FEDERAL EID # (or SSN, if applicable): 59-0539080

UAO Fiscal Year Ending Date: 6/30

**ATTACHMENT I
(UTILITY WORK SERVICES)**

A. SERVICES TO BE PROVIDED

1. General Description

a. Scope of Work

The UAO shall provide the services as defined in Exhibit A, Schedule of Work and Budget Summary.

These services are expected to be in effect for the dates stated in the Standard Contract, Section 3, Effective and Ending Dates.

b. Authority

The Agency is authorized to enter into this Contract under the authority found in Chapter 255, Florida Statutes (F.S.).

c. Contract Limits

The services provided under this Contract are limited to the availability of funds and to approval of this contract by the Florida Public Service Commission. The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.

B. MANNER OF SERVICE PROVISION

1. Deliverables

Project Activities are defined in Exhibit A, Schedule of Work and Budget Summary.

2. Service Tasks

The UAO shall complete the following tasks during the term of this Contract.

a. Task List

1) Furnished Energy

- a. The UAO shall furnish and/or sell electric energy for use on the premises of the Sunland Center in Marianna, Florida.
- b. Energy shall be either single phase or three phase, 60 cycle alternating current delivered to various locations with the boundary of Sunland Center.
- c. Voltages may vary +/- 7.5% and will include single phase 120/240 volts or three phase 277/480 volts.
- d. Construct, and operate an underground electric distribution system within the boundaries of Sunland Center.

2) Points of Delivery

- a. Remove as much of the overhead distribution system as possible without impacting the existing overhead telephone and communication equipment/ conductors while minimizing any temporary power outages that may be

necessary during construction.

- b. Provide replacement of existing overhead facilities with new overhead facilities that meet NESC Storm Hardening Standards and provide an underground electric distribution system that shall consist of primary conductors/conduit, pad mounted transformers/switches, secondary conductors/conduit and service conductor/conduit.

- (1) This system will not include any telephone or communication equipment/conductors.

- c. Utilize primary overhead metering equipment which shall be designated as the point of delivery that will meter all energy used at Sunland Center.

- (1) The primary overhead metering equipment shall be installed, maintained and owned by UAO.

- (2) The meter will be placed in a locked and secure cabinet at that location.

- (3) Meter shall be manually read by UAO on a monthly basis.

- (4) UAO personnel entering Sunland Center to read, maintain, change, etc. the metering equipment must follow and comply with all access procedures required by Sunland Center.

- (5) If, at some future date, automated meter reading is employed, access times will be reduced but access procedures will still be followed when access to the meters is required.

3) Maximum Contracted Energy Capacity

- a. Maximum energy capacity available to Sunland Center measured at the point of delivery is 2,000 KVA.

- 4) The UAO shall select qualified, licensed contractor(s) and execute contract(s) with the selected contractor(s). The UAO shall ensure that each selected contractor possesses and maintains a current and valid occupational/business tax receipt issued for the type of services being performed.

- 5) The UAO must follow all applicable state, local, and federal laws, regulations, and requirements, and obtain and comply with all required permits and approvals.

- 6) The UAO shall monitor and manage utility activities in accordance with the scope of work and proposal submitted to the Agency. The UAO and contractor(s) shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all work staging areas in a neat and presentable condition.

- 7) Upon completion of the work, the UAO shall schedule and participate in a final inspection of the completed work by all approving officials, as applicable. The official shall inspect and certify all installations have been completed according to the manufacturers' specifications. The UAO shall ensure any deficiencies found during this inspection are corrected by the specified contractor(s).

b. Task Limits

The UAO is limited to receiving payment only for the tasks specified and performed in accordance with its proposal and this Contract, unless there is expressed written consent from the Agency for expansion. Such consent can only be authorized by a

formal contract amendment. The UAO's proposal and any subsequent updates are incorporated herein by reference and maintained in the Contract Manager's file.

3. Staffing Requirements

a. Staffing Levels

- 1) The UAO shall maintain an adequate and qualified administrative staff, qualified management staff, support staff and organizational structure to satisfactorily meet the Contract terms, conditions and deliverables, in accordance with the proposed budget submitted by the UAO which is incorporated herein by reference and maintained in the Contract Manager's file.
- 2) Staff selected by the UAO to conduct work identified in this Contract and the tasks for which they shall be responsible shall be identified to the Agency in writing, and such staff shall be accessible to the Agency upon request.
- 3) In the event the Agency determines the UAO's staffing levels are not adequate to successfully accomplish contract deliverables, the Agency shall advise the UAO in writing and the UAO shall have thirty (30) calendar days to remedy the identified staffing deficiencies.

b. Staffing Changes

- 1) The UAO shall notify the Contract Manager within two (2) business days of any changes in Executive Management, such as the Executive Director or equivalent and the Chief Financial Officer.

c. Subcontractors

This Contract allows the UAO to subcontract for the provision of all services under this Contract, subject to the provisions of Section 10 of the Standard Contract. Written requests by the UAO to subcontract for the provision of services under this Contract shall be routed through the Contract Manager for Agency approval. The UAO cannot subcontract with an employee of the Agency to provide services pursuant to this Contract.

d. Service and Equipment Delivery Location

- 1) Services shall be provided at Sunland Center located at 3700 Williams Road, Marianna, FL 32446

e. Changes in Location

The UAO shall notify the Contract Manager in writing a minimum of five (5) business days prior to changing the location of administrative services that will affect the Agency's ability to contact the UAO by telephone, email or facsimile transmission. Notice should specify the address of the location and telephone number where the UAO may be reached.

f. Equipment

- 1) The UAO shall be responsible for supplying all equipment necessary to perform, conduct and complete the terms and conditions of this Contract.
- 2) The UAO shall utilize its own vehicles for contract-related travel.

C. RECORDS AND DOCUMENTATION

1. The UAO shall maintain records in whatever reasonable format required by the Agency at the UAO's expense. Data files shall be provided in a format readable by the Agency.
2. The UAO shall maintain records and documentation as specified in this Contract to ensure an audit trail documenting service delivery is maintained.
3. The UAO shall maintain a separate, organized, individualized, and secure file to include applicable reporting forms, progress reports and all other required elements.
4. The UAO shall maintain copies of all invoices submitted to the Agency.
5. All records and documentation shall be made available to the Agency at any time, if requested.
6. The UAO shall insure its subcontractors maintain records and documentation of applicable reporting forms, progress reports and all other required elements.

D. REPORTS

All required reports and/or plans shall be in a format approved by the Agency and received by the required due dates stated in the Contract. If the dates fall on an established State holiday or weekend, such reports shall be due the next business day. If a natural disaster occurs, such reports shall be due when Agency administrative services are restored. The UAO must request prior approval, in writing, to submit required reports and/or plans after the due dates.

The UAO shall submit all reports and/or plans to the Contract Manager as indicated on Page 11, Section 36.c. of the Standard Contract.

1. **Monthly Project Progress Report:** The UAO shall submit a summary of activities and work accomplished during the month for this project to the Contract Manager by the 15th of each month, following the month of service delivery.
2. **Quarterly Expenditure Report:** This report shall document total expenditures for each quarter ending September 30, December 31, March 31, and June 30. The UAO shall provide the original budgeted amount for each category item as listed in the approved budget, expenditures during the contract period, and the remaining balance within fifteen (15) calendar days following the quarter ending date.

E. UAO RESPONSIBILITIES

1. UAO Unique Activities

- a. Upon six months written notification from the Agency for an increase in maximum energy capacity and upon mutual approval the UAO shall use its best efforts to make available the increase in capacity.
- b. The UAO shall manually read its primary overhead meter at intervals of approximately thirty (30) days to determine Sunland Center's maximum demand and energy consumed. Should automated or remote meter reading be installed in the future, only periodic manual inspections of the meter will be necessary.
- c. The UAO shall periodically inspect and test the primary overhead meter at intervals not exceeding two (2) years. Should the Agency request a test within twelve (12) months of the previous test, the cost of such additional tests shall be borne by the Agency if the percentage of error is found to be not more than two (2) percent slow

or fast.

- d. The UAO endeavors to provide the Agency with a continuous supply of energy to Sunland Center, however, uninterrupted services are not guaranteed.
- e. The UAO shall not be liable for any damage that the Sunland Center or any third person or persons may sustain by reason of interruption or failure of such service, whether caused by an act of God, accident, fire, flood, strike, explosion, or other acts beyond the control of UAO. To the extent this provision or application thereof conflicts with section 7.a. Indemnification, section 7.a. will take precedence over this section.
- f. The UAO shall give Sunland Center at least thirty (30) days' notice of any planned energy outage and as much notice as possible of any unplanned energy outage.
- g. The UAO shall coordinate construction activities with Sunland Center in order to minimize negative impacts related to transportation or electrical outages and both parties will perform all activities in a safe and efficient manner. Sunland will be responsible for modification to all service entrance equipment necessary to accept underground service from UAO. Existing or modified service entrance equipment shall meet the National Electrical Code and all local building codes prior to connection to the UAO underground system.
- h. The UAO warrants that all UAO owned equipment, apparatus and materials installed, operated and used to transmit and deliver electric energy to the Sunland Center, in a safe manner, is in good working order, installed safely according to applicable codes.
- i. The UAO shall not increase or modify its facilities to supply electrical energy herein contracted for by the Agency without prior written consent by the Agency.
- j. The UAO shall not use Agency owned distribution systems as a conduit to serve adjacent UAO customers without written prior approval by the Agency.
- k. The UAO shall obtain the approval of the Florida Public Service commission prior to execution of this contract.

F. AGENCY RESPONSIBILITIES

1. Agency Obligations

- a. The Agency grants the UAO the right and privilege of reasonable ingress and egress in, over and across its property at all times during the term of this contract or any extension thereof, for the purpose of constructing, maintaining, repairing and/or operating the Agency's lines and metering and/or all other equipment used in connection with the furnishing of said electric energy to Sunland Center. UAO shall notify the Agency of ingress onto its' property by providing a schedule of work times. Any deviation from the schedule shall require additional notice to the Agency or the Agency's designee.
- b. The Agency agrees to grant the UAO a suitable right-of-way, for the term of this agreement, for the location of UAO facilities on the property of Sunland Center.
- c. The Agency shall provide a suitable laydown yard for storing materials that

allows for easy access by heavy duty construction vehicles.

- d. The Agency shall not be liable for any damage that the UAO or any third person or persons may sustain by reason of interruption or failure of such service, whether caused by an act of God, accident, fire, flood, strike, explosion, or other acts beyond the control of UAO.
- e. The Agency may sign and return required city/county ROW permits (if needed), and sign, record and return any Easements (if needed).
- f. Upon request, the Agency can, without charge, request that the UAO test the accuracy of the primary overhead meter if the UAO does not periodically inspect and test within twelve (12) months.
- g. The Agency will be responsible for modification to all service entrance equipment necessary to accept underground service from the UAO. Existing or modified service entrance equipment shall meet the National Electrical Code and all local building codes prior to connection to the UAO underground system.
- h. The Agency warrants that all electrical wiring and installation of Sunland Center owned electrical equipment are completely installed safely according to applicable codes.
- i. The Agency shall maintain all electrical wiring, poles, circuit breakers, switches, lights, appliances and other equipment on the Sunland Center premises in a good state of repair and installed in such a manner as to enable Sunland Center to receive and utilize electric energy safely. All wiring and installation of electrical appliances and equipment shall be completed in such a manner as to not produce or introduce electrically related disturbances to the Agency's newly installed lines or equipment. For purposes of this paragraph electrical wiring means existing wiring previously installed and not related to the work in this contract.
- j. The Agency shall not resell nor permit the use of the electrical energy delivered by the UAO to persons, firms, or corporations without UAO prior written consent. Agency staff that live on the Sunland Center premises shall be allowed to remit payment to Sunland Center.

2. Agency Determinations

- a. The Agency has exclusive authority to determine the availability of funds, authorize and issue payment for services billed under this Contract, and to determine the satisfactory performance of the UAO in carrying out tasks and completing deliverables specified in this Contract through the review or inspection of reports and deliverables submitted by the UAO and through Agency monitoring.
- b. Final authority in all disputes related to this Contract rests solely with the Agency. The Agency agrees to make reasonable efforts to consult with the UAO and amicably resolve all disputes prior to such final determination.

3. Monitoring Requirements

The UAO shall be monitored in accordance with Agency requirements, as applicable.

G. METHOD OF PAYMENT

1. Payment Clause

This is a **Fixed Price contract**. The Agency shall pay the UAO for the delivery of service units at the rates specified in Exhibit A, Schedule of Work and Budget Summary, in accordance with the satisfactory completion of all terms and conditions of this Contract, for a total amount not to exceed the amount specified in the Standard Contract. The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature. The Agency's obligation to pay under this Contract is subject to the availability of funds.

2. Invoice Requirements and Documentation

- a. The UAO shall request payment on a monthly basis through the submission of a properly completed Request for Payment/Invoice within fifteen (15) calendar days following the month of service delivery. Payment cycles shall be from the first (1st) through the end of each month, unless specified otherwise in this Contract.
- b. The Request for Payment/Invoice shall include, at a minimum, the following information:
 - 1) UAO's Name.
 - 2) Contract Number.
 - 3) State Project Number.
 - 4) Vendor Identification Number (Federal Tax Identification Number).
 - 5) Invoice Number.
 - 6) Inclusive dates (for the month) of services covered by the invoice.
 - 7) Types of services, number of units, and price per unit.
 - 8) A listing of all invoiced costs to be accompanied by copies of supporting documentation and actual receipts, if applicable to this Contract.
 - 9) Invoice Total.
 - 10) Percent of Work Completed.
 - 11) The date on which the invoice was submitted to the Agency.
 - 12) Required reports or a concise, meaningful description of services rendered, with sufficient detail to enable the Agency to evaluate services rendered and costs; and
 - 13) A certification statement signed by the UAO's contract administrator or authorized representative that reads, "I certify that all items and amounts shown on the face of this request for payment are correct, that all backup information is attached, that all work has been performed and material supplied in full accordance with the terms and conditions of the Contract, and that all materialmen, laborers and subcontractors, as defined in section 713.01, Florida Statutes, have been paid the amounts due them per section 287.0585, Florida Statutes. Further, I agree to promptly pay each materialmen, laborer and subcontractor, as defined in Chapter 713.01, Florida Statutes, upon receipt of payment from the Agency, out of the amount paid to Florida Public Utilities on account of such materialman's, laborer's or subcontractor's work, the amount to which said materialman, laborer and subcontractor is entitled per section 287.0585, Florida Statutes, reflecting the percentage actually retained, if any, from payments to Florida Public Utilities on account of such materialman's,

laborer's and subcontractor's work.”

- c. The invoice shall be on the UAO's letterhead and contain a signature from an appropriate officer or authorized individual (with a Signature Authority Letter, if applicable).
- d. If applicable, the UAO shall submit to the Contract Manager all supporting documentation required for reimbursement of services rendered as stated in this Contract. This documentation shall accompany the monthly invoice.

3. Financial Consequences

The financial consequences as defined in Exhibit A, Schedule of Work and Budget Summary, shall apply to this Contract.

4. MyFlorida MarketPlace Transaction Fee

This Contract is exempt from the MyFloridaMarketPlace Transaction Fee in accordance with Rule 60A-1.032(1) (d), F.A.C.

H. LIST OF EXHIBITS

- 1. Exhibit A, Schedule of Work and Budget Summary
- 2. Exhibit B, General Service Large Demand Rate Schedule
- 3. Exhibit C, Rate Adjustment Rider- Northwest Florida Division
- 4. Exhibit D, Storm Recovery Surcharge

EXHIBIT A: Schedule of Work and Budget Summary

Enter UAO Name: Florida Public Utilities

Contract #: LCY04

Fiscal Year: 23-24

State Project #: 22FDM1020

Schedule of Work

Contractor(s) Execution Process:	6 months
Design and Engineering:	6 months
Permitting:	4 months
Installation:	6 months
Final Inspection and Invoicing, Closeout:	<u>2 months</u>
Total Contract Period	24 months

Budget Summary

TBN: To Be Negotiated as part of the Guaranteed Maximum Price.

Soft Costs:	\$0.00
Those costs not directly related to construction including, but not limited to, pre and post construction activities. Soft costs include, but are not limited to, permit fees; impact fees; utility purveyor fees, architecture, civil, structural, and mechanical & electrical engineering fees. Also, provision of engineered plans for construction, to include drawings for use in bidding and material list to be used for purchasing materials.	

General Conditions:	\$
Costs include, but are not limited to, industry standard costs for project management, supervision, reproduction expenses, temporary utilities, fire protection, clean-up, debris disposal, final cleaning, temporary fencing and general liability insurance. Ordering of necessary poles, underground equipment, overhead wire, underground cable, transformers (pad mounted and pole mounted), secondary circuits, associated devices, and other hardware to be able to complete the improvements as designed.	

Site Costs:	\$
Costs include, but are not limited to traditional site development, hardscapes, dumpster enclosure, fencing and bollards and interior demolition.	

Renovations/Construction:	\$2,085,000.00
Procurement of contractor support for the construction and replacement of existing facilities located at the Sunland Facility in Marianna, FL. The above shall be completed using a mixture of internal manpower and 3 rd party manpower. Construction shall meet or exceed NESC Construction Standards and the Florida Public Service Commission Storm Hardening Requirements. All Construction shall be within the scope of the current Operations and Maintenance Agreement between	

Total Cost: \$2,085,000.00

Total Cost:	\$2,085,000.00
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Financial Consequences:

1. If Florida Public Utilities fails to comply with any terms or conditions of the Contract, the Agency shall apply one or more of the following financial consequences during the term of the Contract:
 - a. Withhold final payment for \$208,500.00 renovations pending correction of all deficiencies by the UAO and approval by the Agency.
2. In addition to the foregoing, the Agency must implement financial consequences in accordance with Page 6, Section 26 of the Standard Contract and section 287.058(1)(h), F.S., if (UAO) does not perform in accordance with the terms and conditions of this Contract.

ATTACHMENT II

The administration of resources awarded by the Agency for Persons with Disabilities to the UAO may be subject to audits and/or monitoring by the Agency as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, Florida Statutes, the Agency for Persons with Disabilities (APD) or other State agencies may monitor or conduct oversight reviews to evaluate compliance with the contract, management and programmatic requirements. Such monitoring or other oversight procedures may include, but not be limited to, on-site visits by APD and/or other State agencies' staff, limited scope audits as defined by OMB Circular A-133, as revised or other procedures. By entering into this contract, the UAO agrees to comply and cooperate with any monitoring procedures deemed appropriate by APD and/or other State agencies. In the event that APD and/or another State agency determines that a limited scope audit of the UAO is appropriate, the UAO agrees to comply with any additional instructions provided by APD and/or other State agencies regarding such audit. The UAO further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the APD Inspector General, the state's Chief Financial Officer or the Auditor General.

AUDITS

PART I: FEDERAL REQUIREMENTS

This part is applicable if the UAO is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.

1. In the event that the UAO expends \$750,000 or more in Federal awards during its fiscal year, the UAO must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. In determining the Federal awards expended during its fiscal year, the UAO shall consider all sources of Federal awards, including Federal resources received from APD, Federal government (direct), other state agencies, and other non-state entities. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the UAO conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part. In connection with the above audit requirements the UAO shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

The schedule of expenditures should disclose the expenditures by contract number for each contract with APD in effect during the audit period. The financial statements should disclose whether or not the matching requirement was met for each applicable contract. All questioned costs and liabilities due APD shall be fully disclosed in the audit report package with reference to the specific contract number.

2. If the UAO expends less than \$750,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event the UAO expends less than \$750,000 in Federal awards during its fiscal year, the UAO agrees to provide certification to APD's Contract Administration and its Contract Manager that a single audit was not required. In the event that the UAO expends less than \$750,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised,

the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from UAO resources obtained from other than Federal entities).

3. The OMB Circular A-133 and compliance supplement are available at the following address: <http://www.whitehouse.gov/omb/circulars/>

PART II: STATE REQUIREMENTS

This part is applicable if the UAO is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event the UAO expends \$750,000 or more in state financial assistance during its fiscal year, the UAO must have a State single or project-specific audit conducted in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended during its fiscal year, the UAO shall consider all sources of state financial assistance, including state financial assistance received from APD, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

In connection with the audit requirements addressed in the preceding paragraph, the UAO shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 or 10.650, Rules of the Auditor General.

The schedule of expenditures should disclose the expenditures by contract number for each contract with APD in effect during the audit period. The financial statements should disclose whether or not the matching requirement was met for each applicable contract. All questioned costs and liabilities due APD shall be fully disclosed in the audit report package with reference to the specific contract number.

2. If the UAO expends less than \$750,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event the UAO expends less than \$750,000 in state financial assistance during its fiscal year, the UAO agrees to provide certification to APD's Contract Administration and its Contract Manager that a single audit was not required. In the event that the UAO expends less than \$750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the UAO's resources obtained from other than State entities).
3. The State Projects Compliance Supplement is available at the following address:

<https://apps.fldfs.com/fsaa/compliance.aspx>

PART III: REPORT SUBMISSION

Any reports, management letters, or other information required to be submitted to APD pursuant to this contract shall be submitted within 180 days after the end of the UAO's fiscal year or within 30 days of the UAO's receipt of the audit report, whichever occurs first, directly to each of the following unless otherwise required by Florida Statutes:

- A. The Contract Manager for this contract at the email address specified in the Standard Contract.
- B. The Agency for Persons with Disabilities Contract Administration at the following email address: apd.fsaa@apdcares.org.

- C. Reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Part I of this Attachment shall be submitted, when required by §__.320(d), OMB Circular A-133, as revised, by or on behalf of the UAO directly to the Federal Audit Clearinghouse using the Federal Audit Clearinghouse's Internet Data Entry System at: <http://harvester.census.gov/fac/collect/ddeindex.html> and other Federal agencies and pass-through entities in accordance with §__.320(e) and (f), OMB Circular A-133, as revised.
- D. Copies of reporting packages required by Part II of this agreement shall be submitted by or on behalf of the UAO directly to the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, Florida 32399-1450
Email address: flaudgen_localgovt@aud.state.fl.us

UAOs, when submitting audit report packages to Agencies for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit or for-profit organizations), Rules of the Auditor General, should include, when available, correspondence from the auditor indicating the date the audit report package was delivered to them. When such correspondence is not available, the date that the audit report package was delivered by the auditor to the UAO must be indicated in correspondence submitted to the Agency in accordance with Chapter 10.558(3) or Chapter 10.657(2), Rules of the Auditor General.

PART V: RECORD RETENTION

The UAO shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of six (6) years from the date the audit report is issued, and shall allow APD or its designee, Chief Financial Officer or Auditor General access to such records upon request. The UAO shall ensure that audit working papers are made available to APD, or its designee, Chief Financial Officer, or Auditor General upon request for a period of three years from the date the audit report is issued, unless extended in writing by APD.

PART VI: EXHIBITS

- Exhibit A: Post Award Notice
Exhibit B: UAO Determination

EXHIBIT A
POST AWARD NOTICE
UAO: Florida Public Utilities

Contract: # LCY04

**1. FEDERAL RESOURCES AWARDED TO THE UAO PURSUANT TO THIS CONTRACT
CONSIST OF THE FOLLOWING:**

Federal Program 1: _____

CFDA#: _____

Title: Florida Public Utilities

Amount: \$2,085,000.00

Federal Program 2: _____

CFDA#: _____

Title: _____

Amount: \$ _____

TOTAL FEDERAL AWARDS \$2,085,000.00

COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED
PURSUANT TO THIS CONTRACT CAN BE FOUND IN OMB CIRCULAR A-133, APPENDIX B:
COMPLIANCE SUPPLEMENT AT: <http://www.whitehouse.gov/omb/circulars>

**2. STATE RESOURCES AWARDED TO THE UAO PURSUANT TO THIS CONTRACT
CONSIST OF THE FOLLOWING:**

Matching resources for federal program(s): _____

CFDA#: _____

Title: _____

Amount: \$ _____

State financial assistance subject to Sec. 215.97, Florida Statutes:

CSFA#: _____

Title: _____

Amount: \$ _____

TOTAL STATE FINANCIAL ASSISTANCE AWARDED PURSUANT TO SECTION 215.97,
FLORIDA STATUTES \$ _____

State funds reported above may include Maintenance of Effort (MOE) funding. This occurs when a CFDA number is associated with State funds used to meet Federal maintenance of effort requirements

**COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED
PURSUANT TO THIS CONTRACT CAN BE FOUND IN PART FOUR: STATE PROJECT
COMPLIANCE REQUIREMENTS OF THE FLORIDA SINGLE AUDIT ACT AT:**

<https://apps.fldfs.com/fsaa/compliance.aspx>

EXHIBIT B
UAO DETERMINATION

PART I: AUDIT RELATIONSHIP DETERMINATION

UAOs who receive state or federal resources may or may not be subject to the audit requirements of OMB Circular A-133, as revised, and/or Section 215.97, Florida Statutes. UAOs who are determined to be UAOs or subUAOs of federal awards and/or state financial assistance may be subject to the audit requirements if the audit threshold requirements set forth in Part I and/or Part II of Attachment ___ are met. UAOs who have been determined to be vendors are not subject to the audit requirements of OMB Circular A-133, as revised, and/or Section 215.97, Florida Statutes. Regardless of whether the audit requirements are met, UAOs who have been determined to be UAOs or subUAOs of Federal awards and/or state financial assistance must comply with applicable programmatic and fiscal compliance requirements.

In accordance with Sec. 210 of OMB Circular A-133 and/or Rule 691-5.006, FAC, UAO has been determined to be:

_____ Vendor not subject to OMB Circular A-133 and/or Section 215.97, Florida Statutes

_____ UAO/Sub UAO subject to OMB Circular A-133 and/or Section 215.97, Florida Statutes

___ Exempt organization not subject to OMB Circular A-133 and/or Section 215.97, Florida Statutes. For Federal awards, for-profit organizations are exempt; for state financial assistance projects, public universities, community colleges, district school boards, branches of state (Florida) government, and charter schools are exempt. Exempt organizations must comply with all compliance requirements set forth within the contract or award document

NOTE: If a UAO is determined to be a UAO/subUAO of federal and or state financial assistance and has been approved by APD to subcontract, they must comply with Section 215.97(7), F.S., and Rule 691-5.006(2), FAC [state financial assistance] and §__ .400 OMB Circular A-133 [federal awards].

PART II: FISCAL COMPLIANCE REQUIREMENTS

FEDERAL AWARDS OR STATE MATCHING FUNDS ON FEDERAL AWARDS. UAOs who receive Federal awards, state MOE funds, or state matching funds on Federal awards and who are determined to be a UAO or subUAO, must comply with the following fiscal laws, rules and regulations:

STATES, LOCAL GOVERNMENTS AND INDIAN TRIBES MUST FOLLOW:

2 CFR 225 a/k/a OMB Circular A-87 – Cost Principles*

OMB Circular A-102 – Administrative Requirements**

OMB Circular A-133 – Audit Requirements

Reference Guide for State Expenditures

Other fiscal requirements set forth in program laws, rules and regulations

NON-PROFIT ORGANIZATIONS MUST FOLLOW:

2 CFR 230 a/k/a OMB Circular A-122 – Cost Principles*

2 CFR 215 a/k/a OMB Circular A-110 – Administrative Requirements

OMB Circular A-133 – Audit Requirements

Reference Guide for State Expenditures

Other fiscal requirements set forth in program laws, rules and regulations

EDUCATIONAL INSTITUTIONS (EVEN IF A PART OF A STATE OR LOCAL GOVERNMENT) MUST FOLLOW:

2 CFR 220 a/k/a OMB Circular A-21 – Cost Principles*

2 CFR 215 a/k/a OMB Circular A-110 – Administrative Requirements

OMB Circular A-133 – Audit Requirements

Reference Guide for State Expenditures

Other fiscal requirements set forth in program laws, rules and regulations

*Some Federal programs may be exempted from compliance with the Cost Principles Circulars as noted in the OMB Circular A-133 Compliance Supplement, Appendix 1.

**For funding passed through U.S. Health and Human Services, 45 CFR 92; for funding passed through U.S. Department of Education, 34 CFR 80.

STATE FINANCIAL ASSISTANCE. UAOs who receive state financial assistance and who are determined to be a UAO/subUAO, must comply with the following fiscal laws, rules and regulations:

Section 215.97, Florida Statutes

Chapter 69I-5, Florida Administrative Code

State Projects Compliance Supplement

Reference Guide for State Expenditures

Other fiscal requirements set forth in program laws, rules and regulations

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