

Master Services Agreement

This Master Services Agreement is entered into on this 23rd day of June 2022, and is by and between Florida Municipal Power Agency, a governmental joint action agency organized and existing pursuant to Florida law, with its office located at 8553 Commodity Circle, Orlando, Florida 32819, ("FMPA") and Irby Construction Company, with its principle place of business located at 318 Old Highway 49 South, Richland, Mississippi 39218, ("Contractor").

FMPA is a municipal electric joint action agency formed pursuant to section 163.01, Florida Statutes, and exercises powers pursuant to section 163.01 and chapter 361, part II, Florida Statutes.

FMPA's members are 31 municipal electric systems within the state of Florida.

Contractor is a company offering construction and maintenance services.

The parties desire for Contractor to perform the services more fully described in this agreement and Schedule A.

Now therefore, for and in consideration of the premises and mutual covenants made herein, the parties agree as follows:

Section 1. Scope of Services

FMPA is entering into this Master Services Agreement on behalf of its members for Contractor to provide its services as described in Schedule A to this agreement, which is attached hereto and incorporated into this agreement by this reference (the "Services"). For FMPA's members that desire for Contractor to furnish Services under this agreement ("Participating Members"), FMPA is acting as a "Solicitation Agent" only. Each Participating Member will issue a Purchase Order with project- specific technical specifications. In addition, the Participating Member's Purchase Order may carry additional terms and conditions as required by the Participating Member. All project-specific direction, guidance and invoicing will be conducted between the Participating Member and Contractor.

In the event that any terms or conditions provided in Schedule A conflict with any terms or conditions of this agreement, or with the terms and conditions of a Participating Member's Purchase Order, the hierarchy will be as follows: 1) the terms of the Participating Member's Purchase Order, 2) the terms of this agreement, 3) the terms provided in Schedule A.

Section 2. Term & Termination

This agreement shall become effective upon the date stated in the introductory clause of this agreement and shall remain in effect for a period of four years from the effective date. Thereafter, this agreement may be renewed on an annual basis upon mutual consent of the parties, for up to four additional one-year terms. Either party wishing to extend this agreement must notify the other party in writing no later than 60 days prior to the end of the then-current contract term of its desire to renew. If the other party does not respond to the renewal notification within 30 days of receipt, it will be deemed that the party consents to the renewal of the agreement.

At any time, FMPA may terminate this contract, in whole or in part, for failure of Contractor to perform in accordance with the terms of this contract as written below, or for any reason, at FMPA's sole discretion, upon 30 days prior written notice as written below. Contractor may terminate this contract for cause upon 30 days prior written notice.

Any failure by Contractor to commence to perform or comply with the terms and conditions of a Purchase Order issued under this agreement within 10 calendar days after written notice from Participating Member to Contractor demanding that such failure to perform be cured, shall be deemed an event of default by Contractor. Upon the occurrence of any such event of default, Participating Member may terminate the Purchase Order and pursue any remedies available at law or in equity and shall pay Contractor for Services completed through the termination date. Participating Member shall have the right in its sole discretion to terminate by written notice, in whole or in part, the Purchase Order for its convenience. Participating Member shall pay Contractor for any Services performed under the Purchase Order, demobilization costs, equipment/materials ordered for which Participating Member has not paid and cannot be cancelled or all cancellation and/or restocking fees if cancellation is possible, and costs incurred for arrangements put in place with the expectation of completing the project, prior to the termination date.

Section 3. Compensation and Payment

Participating Members will through their own initiative issue project-specific Purchase Orders to Contractor. For those Participating Members, FMPA is acting as a "Solicitation Agent" only and shall not be held liable for any costs or damages incurred pursuant to any Purchase Order entered into by them with Contractor.

Prices as stated in Schedule A will be firm for the first two years of this agreement, with pricing updates considered for years thereafter. Any price changes must be agreed to in writing at least 60 days prior to becoming effective.

Section 4. Independent Contractor Status.

It is understood and agreed that Contractor is an independent contractor, is not an agent or employee of FMPA, and is not authorized to act on behalf of FMPA. Contractor agrees not to hold him or herself out as, or give any person any reason to believe that he or she is an employee, agent, or partner of FMPA. Contractor will not be eligible for any employee benefits, nor will FMPA make deductions from any amounts payable to Contractor for taxes or insurance. All payroll and employment taxes, insurance, and benefits shall be the sole responsibility of Contractor. Contractor retains the right to provide services for others during the term of this Agreement and is not required to devote his or her services exclusively for FMPA. Contractor agrees that it shall bear the responsibility for verifying the employment status, under all applicable immigration laws, of all persons it employs in the performance of this contract. For purposes of this Section 4, the term FMPA includes FMPA's Participating Members.

Section 5. Standard of Care.

The Services and any deliverables provided pursuant to this agreement shall be free from material defect. Contractor represents that the Services shall be performed with reasonable care in a diligent and competent manner and in accordance with generally accepted construction industry practices.

Section 6. Insurance

The Contractor shall acquire and maintain at all times during the performance of Services the insurance coverage set forth below. Insurance Carrier Rating Coverages provided by the contractor must be underwritten by an insurance company deemed acceptable by the Participating Member. Insurance coverage shall be provided by companies rated A- or better by Best's Insurance Rating. The Participating Member reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating. Contractor shall furnish Participating Members a copy of the insurance certificate prior to starting any work on site:

- (a) **Workers Compensation and Employers Liability.** This insurance shall protect the Contractor against all claims under applicable state workers' compensation laws. Contractor shall also be protected against claims for injury, disease, or death to employees which, for any reason, may not fall within the provisions of a state workers compensation law. The policy shall include an "all states" or "other states" endorsement. The liability limits shall be as follows: Workers' Compensation- Statutory; Employer's Liability- \$100,000 each.
- (b) **Commercial General Liability.** This insurance shall be written on an occurrence type policy and shall protect the Contractor and the Participating Member against claims for personal injury including bodily injury and death and property damage. This policy shall include a contractual liability endorsement to

insure the contractual liability assumed by the Contractor under the paragraph entitled "Indemnities" and a completed operations and products liability endorsement to remain in effect for 1 year after final payment. Limits of liability will be \$2 million combined single limit per occurrence / \$4 million general annual aggregate for bodily injury and property damage.

- (c) **Automobile Liability Policy.** This insurance shall be written on an occurrence type policy and shall protect the Contractor and the Participating Member against all claims for injuries arising out of use of any auto including own, hired, or non-owned autos. Limits of liability will be \$1 million in combined single limits for bodily injury and property damage.
- (d) **Reserved.**
- (e) **Additional Insured.** All insurance coverages furnished under this contract, with the exception of workers compensation and employer's liability shall include the Participating Member as an additional insured with respect to the activities of the Contractor except worker's compensation, professional liability and employer's liability, pursuant and subject to ISO Form CG 20 10 12 19 (ongoing operations) and, if applicable, CG 20 37 12 19 (completed operations), or equivalent forms for coverages other than Commercial General Liability. Any party named an additional insured pursuant to this Agreement shall be an additional insured where permissible by law but only to the extent the loss in question is caused by the negligent act or negligent omission of the Contractor in its operations in and during the performance of the Work, and only to the extent necessary to provide coverage for the indemnity obligations expressly assumed by Contractor under this Agreement, and not in respect to any act or omission or operation of the Participating Member. It is the express intent and understanding of the Parties that the insurance and indemnity obligations under this Agreement are dependent upon one another and are not separate and distinct.
- (f) **Waiver of Subrogation.** The Contractor shall require their insurance carrier to waive all rights of subrogation against the Participating Member, their employees, directors and officers, where and to the extent permissible by law except to the extent the loss is caused by the negligence, gross negligence or willful misconduct of the Participating Member, or any indemnitee.

Contractor shall furnish Participating Member with certificates of insurance as evidence that the policies required by this Agreement are in full force and effect.

Section 7. Indemnification

To the fullest extent permitted by law, the Contractor, its heirs, successors and assigns shall indemnify and hold harmless FMPA, its successors and assigns, and its employees, against any and all third-party claims, suits or actions at law, including the bodily injury or death of Contractor and/or all damages, costs and judgments (including

reasonable attorneys' fees), incurred by FMPA that were caused by the negligence, gross negligence, and/or intentional or willful misconduct of Contractor while performing work under this Agreement. The liability of the Contractor is full and complete in all respects and subcontracting any part of the work shall not relieve it of primary liability. The indemnity and hold harmless obligations, however, shall not apply to the extent of FMPA's or a Participating Member's negligence, gross negligence, and/or intentional or willful misconduct.

Section 8. General Terms and Conditions

- (a) Any notices given pursuant to this agreement shall be in writing, delivered to the address set forth in the introductory clause of this agreement, and shall be considered given when received.
- (b) No term of this agreement shall be deemed waived, and no breach of this agreement excused, unless the waiver or consent is in writing signed by the other party granting such waiver or consent.
- (c) If any provision of this agreement is determined to be illegal or unenforceable, such term or provision shall be deemed stricken, and all other terms and provisions shall remain in full force and effect.
- (d) This agreement shall be governed by the laws of the State of Florida. All controversies, claims or disputes arising out of this agreement shall be brought exclusively in appropriate court in Leon County, Florida.
- (e) In the event that either party is required to enforce the terms of this agreement by court proceedings or otherwise, the prevailing party of such proceedings shall be entitled to recover from the non-prevailing party all fees and costs incurred, including reasonable attorney's fees and costs and expenses for trial, alternative dispute resolution and appellate proceedings.
- (f) Irby Construction Company's Storm Policy, Labor Rates, and Equipment Rental Rates, attached as Exhibit "2", shall apply where and to the extent that the time and equipment rates in Exhibit "1" are silent or are incomplete. Otherwise, the terms and rates set forth in Exhibit "1" shall control. If both Exhibit "1" and Exhibit "2" are silent, the parties shall mutually agree upon a time and equipment price at the market rate when the work is performed.

Section 9. Limitation of Liability

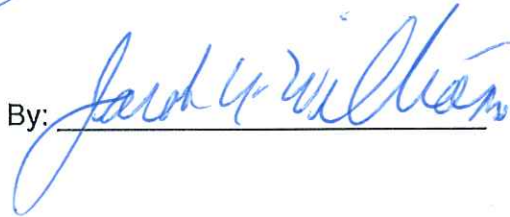
Notwithstanding anything to the contrary herein, except for indemnifiable Third-Party Claims ("Third-Party Claim" means a claim by any person other than (i) a Party, (ii) a Person Indemnified, or (iii) a third-party beneficiary to this Agreement) under Section 7 of this Agreement, or losses covered by policies of insurance that Contractor is required to obtain and maintain under Section 6 of this Agreement (which shall be limited to the

actual proceeds from the coverage amounts required under this Agreement for the policy covering such loss), Contractor's total liability for all damages relating to this Agreement, including claims for which insurance coverage is not required (e.g., for ordinary breach of contract), shall be limited to one hundred percent (100%) of the purchase order that pertains to the work for which the damage occurred.

Notwithstanding anything to the contrary in this Agreement, any purchase order, or otherwise, Contractor shall not be liable under this Agreement or under any cause of action related to the subject matter of this Agreement, whether in contract, tort (including negligence), strict liability, products liability, indemnity, contribution, or any other cause of action for loss of use, cost of capital, loss of goodwill, loss of reputation, lost revenues or loss of profit, loss of tax advantages, opportunities, diminution in value, or any consequential, special, exemplary, punitive, indirect or incidental losses, damages, costs and expenses, howsoever arising or manifested, and regardless of the foreseeability or Contractor having been advised of the possibility of any thereof.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date first stated in the introductory paragraph.

 FLORIDA MUNICIPAL POWER AGENCY

By: 

CONTRACTOR

By: 