



CITY OF COLUMBIA
AGENDA MEMORANDUM

MEETING DATE: June 7, 2016

DEPARTMENT: Assistant City Manager for Operations

FROM: *Missy Gentry, Assistant City Manager*

SUBJECT: Contract for Interim Services for the Hydroelectric Project with Lockhart Power

PRESENTER: Missy Gentry, Assistant City Manager

FINANCIAL IMPACT: This contract will be funded from the operating budget of the Utilities and Engineering Department, under professional Services, funding source 5511706 636600.

ORIGINAL BUDGET: \$52,000.00

The subject contract is presented to you for approval and signature.

The City currently owns a hydroelectric facility located on the Broad and Congaree Rivers in the City of Columbia and Richland County, and contracted with Lockhart Power Company on May 31, 2011 to operate the facility. The City was severely and catastrophically affected by record level rain in early October 2015 causing a breach of the canal dike and consequently suspended of the operations at the hydroelectric plant. Even though the Hydro Plant is not operational, there are activities currently being performed by Lockhart Power Company that are essential services for the continued operation of the Canal as a water source. The subject contract allows for Lockhart Power Company to continue providing those services (routine inspections and maintenance items) while the Canal Embankment Design and Reconstruction Project progresses forward and a determination is made regarding the long term future of the Hydro Plant. This contract reflects a cost of \$1,000.00 per week for a minimum of 12 months. The contract will be active for the 2016 calendar year and may automatically be renewed on a month to month basis.

This contract was drafted by the Legal Department and will be funded from operating budget of the Utilities and Engineering Department, under Professional Services, funding source 5511706 636600.

ATTACHMENTS:

- Lockhart Power Services Agreement Interim Final Executed by Lockhart Onl... (PDF)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

CONTRACT FOR INTERIM SERVICES

THIS CONTRACT FOR INTERIM SERVICES (this "Contract") entered into this 26th day of May, 2016, between the City of Columbia, South Carolina (hereinafter referred to as the "City") and Lockhart Power Company (hereinafter referred to as "Lockhart" or the "Contractor"), for Lockhart to provide the Services (as defined herein).

WITNESSETH:

WHEREAS, the City was severely and catastrophically affected by record levels of rain from Saturday, October 3, 2015 through Tuesday, October 6, 2015, which the City maintains was a 1000 year rain event; and

WHEREAS, this catastrophic rain event resulted in widespread flooding throughout the City of Columbia causing fatalities, injuries, and the loss of homes, businesses, potable water and food supplies; and

WHEREAS, the President of the United States, Barack Obama, at the request of South Carolina Governor Nikki Haley, declared a Major Disaster pursuant to 42 U.S.C. Section 5170 for the City of Columbia and the County of Richland; and

WHEREAS, Governor Haley declared a state of emergency for the State of South Carolina and activated the National Guard for assistance due to the rainfall and resulting flooding; and

WHEREAS, when the Hydro Plant began experiencing flooding into the facility, Lockhart suspended operations of the Hydro Plant; and

WHEREAS, during the flood event of October 2015, the wall of the Columbia Canal was breached and, as a result, there was insufficient water flow in the Canal to support the operation of the City's water treatment plant or its hydroelectric plant located on the Columbia Canal (the "Hydro Plant"); and

WHEREAS, a temporary earthen wall was built upstream of the Columbia Canal breach in order to restore water availability for the water treatment plant intake (but not the hydroelectric plant) until the breach is repaired; and

WHEREAS, on May 31, 2011, Lockhart and the City entered into a Services Agreement ("Services Agreement") wherein the City contracted with Lockhart to act as operator and perform specific services related to the operation of the Hydro Plant (and Lockhart has continuously operated the Hydro Plant under the Services Agreement since its execution in 2011); and

WHEREAS, the City desires to retain the services of Lockhart, more fully enumerated in Exhibit A attached hereto, in connection with the operation of the Columbia Canal during the time that the canal is undergoing repairs; and

WHEREAS, the Parties intend that this is a "stand alone" contract for interim services to be performed by Lockhart, and it is expressly understood that this Contract does not in any way, change, modify, or amend the Services Agreement;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES

The City hereby engages Lockhart to perform the interim services set forth on Exhibit A (the "Services") and Lockhart hereby agrees to perform the Services, all in accordance with the terms hereof.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the City, Lockhart, or any other party pertaining to any matter resulting from the Contract.

2. PERFORMANCE OF SERVICES

Lockhart shall perform the Services in a non-negligent, workmanlike manner, in accordance with standards prevailing in the industry under similar situations, and in material compliance with all applicable laws. Lockhart acknowledges that it has sufficient knowledge to perform the Services without any training or oversight from the City and shall perform the Services without any such training or oversight.

3. TERM OF CONTRACT

The Contract shall be for a period of twelve (12) months and will automatically renew month-to-month unless terminated by either party as provided herein.

The decision whether to extend the Contract, upon written request, shall be in the sole and exclusive discretion of the party receiving the request and neither party shall be under any obligation to agree to an extension of the initial term or any additional term.

4. ACCESS TO RECORDS

Lockhart shall make available for examination by the City all of its records with respect to all matters covered by this Contract and shall maintain such records for a period not less than three (3) years after receipt of final payment under the Contract. In the event that the City submits this Contract as a project worksheet for FEMA reimbursement or other federal aid, Lockhart agrees to assist the City during the FEMA closeout process or federal audit process as requested by the City, regardless of whether or not this Contract has terminated.

In addition, the following access to records requirements apply to the Contract:

- A. Lockhart agrees to provide the City, and if at City's discretion, the FEMA Administrator, the Comptroller General of the United States, or other third party access to any books, documents, papers, and records of the Contract that are directly pertinent to the Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. Lockhart agrees to permit any of the foregoing parties to reproduce, at the expense of the requestor, by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. All requests for access to Lockhart's records shall be made in writing.

5. AMENDMENTS

The parties may amend the Contract at any time provided that such Amendments are executed in writing, signed by a duly authorized representative of both parties, and approved, where applicable, by the City's governing body.

The City may, in its discretion, and with 30 days prior notice, amend the Contract to conform with federal, state, or local governmental guidelines or policies.

6. ASSIGNABILITY/SUBCONTRACTING

Lockhart shall not assign or subcontract any interest in the Contract and shall not transfer any interest in the same without the prior written consent from the City. Lockhart shall be as fully responsible to the City for the acts and omission of its subcontractors, as it is for the acts and omissions of persons directly employed by Lockhart.

Lockhart shall furnish and cause each of its subcontractors to furnish all information and reports required hereunder. For purpose of this Contract, the term "subcontractor" shall mean sub-consultants.

7. BREACH/WAIVER

The failure of either Lockhart or the City to insist upon the strict performance of any provision of the Contract shall not be deemed to be a waiver of the right to insist upon strict performance of such provision or of any other provision of the Contract at any time. Partial payment by the City shall not be construed as a waiver. Waiver of any breach of the Contract shall not constitute waiver of a subsequent breach.

8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

Lockhart will comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §7401-7671(q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §1251-1387).

Lockhart will report each violation to the City, Federal Emergency Management Agency (FEMA) and the appropriate Environmental Protection Agency Regional Office (EPA).

Lockhart agrees to include these requirements in each subcontract exceeding Twenty Five Thousand Dollars (\$25,000.00) financed in whole or in part with federal assistance provided by FEMA.

9. COMPENSATION

Lockhart acknowledges that federal financial assistance may be used to fund the Contract. Lockhart will comply will all applicable federal law, regulations, executive orders, federal policies, procedures, and directives.

- A. The total fixed compensation to be paid by the City to Lockhart under this Contract shall be for services rendered at a rate of One Thousand and No/100 Dollars (\$1,000.00) per week, beginning January 1, 2016. The Parties acknowledge that this amount of compensation is adequate only to cover the routine inspections and maintenance items as described in Exhibit A. For any non-routine issues (as determined mutually by the parties) that arise for which the estimated expense is \$500 or greater, Lockhart shall first receive approval from the City's designated representative to address the issue, and Lockhart shall bill the City its associated actual cost, without any markup for profit. Lockhart shall provide appropriate documentation of such actual cost with its associated invoice. In the event that the City does not grant such approval, Lockhart may give notice of termination under Section 30 (A)(3) and shall not be required to perform the repair.
- B. Lockhart shall submit invoices no less frequently than monthly for services rendered during the term. Each invoice submitted must describe the Services for which payment is requested, show payment calculations and specify the person(s) rendering such Services. Each invoice shall bear the authorized signature of a Lockhart representative, which signature shall certify that the information contained in the invoice is true and accurate and that the invoice amount is currently due and owing. The City will not pay interest or penalty on any past due amount. Each invoice must also clearly identify any portion of the fee invoiced for subcontractor services specified in the Contract, and identify if the subcontractor is a Minority Owned Business Enterprise, Small Business Enterprise, Disabled Veterans Owned Business Enterprise and Women Owned Business Enterprise.

If Lockhart elects to subcontract any provision of Services hereunder, Lockhart shall make such subcontracting opportunities available to a broad base of qualified subcontractors to ensure broad participation from Disadvantaged Business Enterprises (DBE), to include but not limited to Minority Owned Business Enterprise, Small Business Enterprise, Disabled Veterans Owned Business Enterprise, and Women Owned Business Enterprise.

- C. Lockhart shall, in performance of the Contract, only use those subcontractors which have been approved by the City.
- D. Invoicing Procedure:
1. All invoices will be sent by Lockhart to the City's Project manager or his/her designee.
 2. Lockhart's invoice must contain sufficient detail by task and resource and should be easily traceable to the work completed
 3. The work completed by Lockhart must be the basis for full or percentage of completion payment on Lockhart's invoice.
 4. Lockhart will not request payment for taxes on professional services, labor or installation fees.
 5. Lockhart will not invoice, or request payment for any equipment or services that may be specified in this Contract prior to the delivery of said equipment or performance of said services.

6. All invoices shall include a valid Purchase Order number on the bill; if emergency purchases are required for any reason before a purchase order number is available, a copy of the emergency request for purchase should accompany Lockhart's invoice. Emergency purchases may not exceed one thousand dollars (\$1,000), in total and information as to that emergency purchase shall be provided to the City's project manager, within five (5) days of the same.
7. Lockhart shall name a representative that will be responsible for reviewing all invoicing concerns that the City may have concerning this project.

Failure of Lockhart to follow these invoice requirements will result in the delay of payment of the invoices. For avoidance of doubt, the compensation to be paid by the City to Lockhart under the terms of this Agreement is payable by the City regardless of whether it is ultimately reimbursed by FEMA.

10. COMPLIANCE WITH THE CONTRACT / CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

For purposes of this Section 10, "contractor" shall refer to Lockhart.

- A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.
- C. Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such Contract or any other Federal Contract with the same prime contractor, or any other federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.

- D. Subcontracts. Lockhart or subcontractors shall insert in any subcontracts the clauses set forth in paragraph (A) through (D) of this section and also a clause requiring the sub consultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this section.

11. COPELAND "ANTI-KICKBACK" ACT AND DAVIS BACON ACT

Lockhart must comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145) as supplemented by the Department of Labor regulations (29 C.F.R. Part 3 Lockhart and subcontractors on public building or public work financed in whole or in part by loans or grants from the United States). The Act provides that each Lockhart or subrecipient is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he/she is otherwise entitled. The City will report all suspected for reported violations to the federal awarding agency.

The Davis-Bacon Act applies to all projects applicable for Federal-aid construction projects exceeding \$2,000 and to all related subcontracts (regardless of subcontract size). Lockhart must comply with the 29 C.F.R. 5.5 "Agreement provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

12. DUTIES UPON TERMINATION

At termination of this Contract, Lockhart shall promptly provide the City with all records and data related to the Services in any format Lockhart is capable of producing and at no cost to the City, which were generated, created or received by Lockhart in performance of the Services or as the City may deem necessary to perform the required services by the City or Lockhart's successor. All records shall be free from any proprietary claims or interest. Lockhart agrees to fully cooperate with the City and any successor to ensure an effective transition to continuously provide the required services.

13. EQUAL EMPLOYMENT OPPORTUNITY (EEOC)

During the performance of this Contract, Lockhart agrees as follows:

- A. Lockhart will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, or national origin. Lockhart will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Lockhart agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. Lockhart will, in all solicitations or advertisements for employees placed by or on behalf of Lockhart, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, or national origin.

- C. Lockhart will send to each labor union or representative of workers with which it has a collective bargaining Contract or other Contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Lockhart's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. Lockhart will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. Lockhart will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of Lockhart's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and Lockhart may be declared ineligible for further Government Contracts or federally assisted construction.

Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- G. Lockhart will include the portion of the sentence in the immediately preceding paragraph and the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Lockhart will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Lockhart becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency Lockhart may request the United States to enter into such litigation to protect the interests of the United States.

14. ETHICS

Lockhart and any Subcontractor is subject to the provisions of the 1991 Ethics Reform Act (S.C. Code Ann. §8-13-100, *et seq.*, as amended). Under this Act, a person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:

- A. Influence the discharge of a public official's, public member's, or public employee's official responsibilities;
- B. Influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or

- C. Induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities. "Anything of value" includes, but is not limited to, lodging, transportation, entertainment, food, meals, beverages, money, gifts, honorariums, discounts and interest-free loans.

15. FINDINGS CONFIDENTIAL

All of the reports, information, data, records or documents of any kind, prepared or assembled by Lockhart under the Contract are confidential and Lockhart agrees that they shall not be made available to any individual or organization without the prior written approval of the City.

In the event that the City receives a Freedom of Information Act request to provide confidential or proprietary information of Lockhart, the City will notify Lockhart as soon as practicable of such request.

16. INDEMNIFICATION, HOLD HARMLESS AND INSURANCE

Lockhart shall continue to maintain the insurance required under the Services Agreement for the term hereof, and Lockhart acknowledges that such insurance shall cover the provision of Services under this Contract. In the event that the Services Agreement terminates or is terminated by either party or otherwise, Lockhart shall continue to maintain the kinds and amounts of insurance required under the Services Agreement to cover any work done by Lockhart under this Contract.

Lockhart shall hold harmless, defend and indemnify the City from any and all claims, actions, suits, charges and judgments whatsoever that arise out of Lockhart's performance or non-performance of the services or subject matter called for in the Contract.

17. INDEPENDENT CONSULTANT/CONTRACTOR

Nothing contained in the Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Lockhart shall at all times remain an independent contractor with respect to the services to be performed under the Contract. The City shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance on behalf of Lockhart employees.

18. INTEREST OF CONSULTANT

As it relates to this Contract, Lockhart represents that it presently has no interest and agrees that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services or which is (or would be) adverse to the interests of the City. Lockhart further covenants that in the performance of the Contract no person having such interest shall be employed by Lockhart or a Lockhart subcontractor.

Lockhart is expected to make its services available to other entities but agrees to refrain from representing other entities in matters where the position of the City conflicts with that of the other entity. The City may at its discretion, waive this provision. Lockhart has provided a list of all of its clients

with whom there may be potential conflicts with the City. This list shall be supplemented throughout the duration of the Contract.

19. LICENSES, PERMITS AND TAXES

- A. Lockhart shall be responsible for obtaining any federal, state and/or local approvals, permits and/or licenses as may be required of Lockhart in performing the Services. Lockhart shall be responsible for any costs relating to same.
- B. Lockhart shall be responsible for identifying and providing any applications and supporting documentation to the City for any approvals and/or permits required of the City in order for Lockhart to perform the Services. Such approvals and/or permits may include, but not necessarily be limited to, SCDHEC Construction Permits, SCDHEC Stormwater Management for Construction Sites Permits, SCDHEC Water Resources Permits, Corps of Engineers Permits, City/County/SCDOT Encroachment Permits, Encroachment Permits for other utility rights-of-way and Railroad Right-of-Way Encroachment Permits/Contracts. The City shall obtain the approvals and/or permits identified by Lockhart and pay any costs relating to same.
- C. Lockhart shall answer questions and consult with the City and/or appropriate authorities as necessary to assist the City's efforts in obtaining required permits/approvals.
- D. Lockhart shall procure a City of Columbia business license while performing the Services.

20. NOTICE

- A. Written notice to the City shall be made by placing by registered mail, return receipt in the United States Mail, postage prepaid and addressed to: Director of Utilities and Engineering, c/o City of Columbia, Post Office Box 147, Columbia, South Carolina 29217.
- B. Written notice to Lockhart shall be made by registered mail, return receipt in the United States Mail, postage prepaid and addressed to it.

21. COMMUNICATION PROTOCOLS

- A. City shall designate a City point of contact to coordinate all tasks and invoicing with Lockhart. Lockhart shall submit all invoices to such designated point of contact.
- B. Lockhart shall direct any questions, inquiries and requests for interviews from the media to the City's Public Relations Department. Lockhart shall not issue any press releases, hold briefings, conduct interviews or conduct any other public relations functions regarding any matter covered by this Contract without prior written consent of the City.

22. OVERSIGHT

- A. The City will maintain oversight to ensure Lockhart performs in accordance with terms, conditions and specifications per (2 C.F.R. §200.318(b)).
- B. Lockhart shall not act as the City's agent.

23. OWNERSHIP OF PROJECT DOCUMENTS

All data, documents or other information of any description generated by or used by Lockhart or any subcontractor retained by Lockhart and related to the Services shall be the property of the City and shall not be used by Lockhart for any purpose whatsoever except to perform the Services.

24. REMEDIES

Lockhart shall only be entitled to the actual direct costs of all labor and material expended on the Services prior to the effective date of the termination. In no event shall Lockhart be entitled to anticipatory profit or damages for any termination under the Contract. In no event shall Lockhart be entitled to assert a claim in *quantum meruit* or any other measure of damages other than that stated herein.

25. SCHEDULE OF COMPLETION OF ACTIVITIES

Time is of the essence. Lockhart shall complete any and all services performed under the Contract within the timeframes as outlined in the Contract.

26. SEVERABILITY

If any provision of the Contract is held invalid, the remainder of the Contract shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of Applicable law.

27. STATE LAW APPLICABLE

The Contract shall be construed in accordance with applicable federal, state, local laws, ordinances and codes in performing the work provided under the Contract. Lockhart agrees to subject itself to the jurisdiction and venue of the Circuit Courts of Richland County, State of South Carolina as to all matters and disputes arising or to arise under the Contract and the performance thereof. The prevailing party in any litigation may be awarded reasonable costs and attorney's fees.

Lockhart acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Lockhart's actions pertaining to this Contract.

28. SUCCESSORSHIP

The Contract shall be binding upon Lockhart and upon its successors and assignees.

29. SUSPENSION AND DEBARMENT

Lockhart is subject to non-procurement Debarment and Suspension Regulations implementing Executive Orders 12549 and 12689, 2 C.F.R. pt. 180 (2 C.F.R. §200.212). The Contract is a covered transaction for the purposes of C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Lockhart is required to verify that none of

Lockhart(s), its principals (defined at 2 C.F.R. §180.995), or its affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. §180.935).

Lockhart must comply 2 C.F.R. 180, sub-part C and 2 C.F.R. pt. 3000, sub-part C and must include a requirement to comply with these regulations in any lower-tier covered transaction it enters into.

Execution of the Contract is a material representation of fact relied upon by the City. If it is later determined that Lockhart did not comply with 2 C.F.R. pt. 180, sub-part C and 2 C.F.R. pt. 3000, sub-part C in addition to remedies available to the State of South Carolina Emergency Management Division and the City of Columbia, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

Lockhart agrees to comply with the requirements of 2 C.F.R. pt. 180, sub-part C and 2 pt. 3000, sub-part C during the duration of the project and throughout the period of any Contract that may arise from this project.

Lockhart further agrees to include a provision requiring such requirements in its lower-tier covered transactions.

Lockhart shall notify the City in accordance with Notice, if your firm or sub consultant becomes suspended or debarred during the course of this project. In the event that a sub consultant becomes suspended or debarred during the course of this project, the parties will work together to determine what, if any, course of action to be taken with regard to the suspended or debarred sub consultant.

30. TERMINATION OF CONTRACT

A. This Contract may be terminated upon any of the following grounds:

1. Non Appropriation: By the City, upon 45 days' notice, in the event of the failure by the City to appropriate funds for the performance of any of the Services in any annual budget;
2. Termination of Contract for Cause: By a non-defaulting party hereunder, upon the other party's failure to cure any material default hereunder after written notice of default and 15 business days opportunity to cure.
3. Termination for Convenience: Either Party may terminate this Contract at any time by giving written notice to the other Party of such termination and specifying the effective date thereof, at least 45 days before the effective date of such termination.
4. Force Majeure;
5. upon its expiration as provided in Section 3 above; or
6. by mutual agreement.

B. Upon termination, all finished or unfinished documents, data studies, surveys and reports prepared under the Contract shall become the property of the City.

- C. Notwithstanding anything to the contrary herein, no termination shall be construed to relieve any party of liability associated with breaches of the Contract prior to the effective date of such termination.
- D. A termination for default under this Contract, if wrongfully made, shall be treated as a termination for convenience under this clause;
- E. Termination of this Contract shall not terminate the Services Agreement; nor shall the termination of the Services Agreement terminate this Contract.

31. USE OF RECOVERED MATERIALS

- A. Lockhart shall comply with Section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (2 C.F.R. §200.322). In performance of the Contract, Lockhart shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired:
 - 1. competitively within a timeframe providing for compliance with the Contract performance schedule;
 - 2. meeting Contract performance requirements; or
 - 3. at a reasonable price.
- B. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.

32. WHOLE CONTRACT

The Contract represents the entire agreement between the City and Lockhart regarding the Services and compensation for Lockhart's performance of the Services. This Contract supersedes all prior communications, negotiations, representations or agreements, either written or oral, regarding the subject matter hereof (the Services provided on an interim basis). Only written amendments signed by both the City and Lockhart may amend this Contract. For avoidance of doubt, this Agreement shall not be deemed to supersede the Services Agreement.

33. MISCELLANEOUS

- A. Nothing in this Contract shall be construed to give any rights or benefits to anyone other than the City and Lockhart. Ambiguities in the terms of this Contract, if any, shall not be construed against either party.
- B. This Contract is subject to City Council approval.

- C. Lockhart and subcontractors shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- D. Lockhart acknowledges that 31 U.S.C. chapter 38 (Administrative Remedies for False Claims and Statements) applies to Lockhart's and subcontractors' actions pertaining to the Contract.
- E. The Uniform Rules authorize Federal Emergency Management Agency (FEMA) to require addition provisions for non-federal entity agreements. FEMA, pursuant to its authority, requires the following;
 - 1. To be eligible for FEMA assistance under the City's FEMA grant or cooperative agreement, the cost of the change, modification, contract amendment, or constructive change must be allowable, allocable, with the scope of its grant or cooperative agreement, and reasonable for the completion of the Project scope in accordance with Section B, Amendments, above.
 - 2. The Consultant and its successors, transferees, assignees, and subcontractors (in accordance with Section U., Ownership of Project Documents, herein) acknowledge and agree to comply with applicable provisions governing department and FEMA access to records, accounts, documents, information, facilities, and staff (per department of Homeland Security standards terms and conditions, v. 3.0 ¶ XXVI. (2013) and (in accordance with Section. A., Access to Records, herein.)

F. Buy American Act (41 U.S.C. 10a et seq.)

The Buy American Act applies to any contract that is funded in whole or in part by funds under the Disaster Mitigation Act of 2000. The Contractor must comply with the requirements of the Buy American Act and require that all sub-contractors also comply with this Act.

IN WITNESS WHEREOF, the City and Lockhart have entered into this Contract as of the date first above written.

CITY OF COLUMBIA, SOUTH CAROLINA

Witness

By: _____
Teresa Wilson, City Manager

Rebecca M. Chavis

Witness

Lockhart Power Company
By: *Bryan D. Stone*

Title: *C.O.O.*

RECOMMENDED BY: _____
Joseph D. Jaco, P.E., Director of Utilities

RECOMMENDED BY: _____
Melissa A. Gentry, P.E., Assistant City Manager for Operations

FINAL

Exhibit A - Services

Lockhart Power Services during interim period of Columbia Canal repairs

- Canal Water Regulation
 - Continuous off-site regulation and monitoring of the canal water level
 - Call-out response to critical alarms, and next business day response to non-critical alarms and unusual conditions
 - Control system maintenance
- Canal Spill/Drain Gates
 - Daily inspection of cables, motors and controls, and resulting maintenance
 - Flushing floating debris through both gates
 - Weekly operational test for both gates
 - Weekly inspection and test of emergency generator (future)
- Headgate structure at the Dam
 - Daily inspection of 12 headgates for leakage
 - Maintenance and monitoring of security cameras and controls
- Minimum Flow Gate
 - Continuous operations
 - Daily inspection of gate
 - Daily inspection of air compressors
 - Routine maintenance of compressors and controls
 - Log and debris removal as required from gate
- Upstream Fish Passage
 - Continuous operations
 - Daily inspections
 - Routine maintenance of valves, gates, vfd's, etc.
 - Annual one-week maintenance overhaul
- Maintain buildings and grounds at the Hydro Plant
 - Daily inspections
 - Daily cleaning
 - Routine maintenance of buildings and equipment
 - Mow grass and maintain grounds
 - Respond to and mitigate future minor flood events
- Upon request by the City, provide City's representative with advisory services related to Hydro Plant project flood repairs
 - Attend key meetings with City staff related to engineering, FERC, or construction issues
 - Provide advice to City with respect to licensing, design, operations, and maintenance issues

Note: "Daily" as used above means normal business days.