

**RESOLUTION 22-26**

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH VYPER AUTOMATION, LLC FOR INTEGRATION OF A NEW SCADA SYSTEM FOR THE WASTEWATER TREATMENT PLANT, IN THE BASIC AMOUNT OF \$129,800.**

**BE IT RESOLVED** that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that Agreement between the City and Vyper Automation, LLC, relating to the integration of a new SCADA system, in the basic amount of One Hundred Twenty Nine Thousand, Eight Hundred Dollars and No Cents (\$129,800.00), in substantially the form **attached** and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

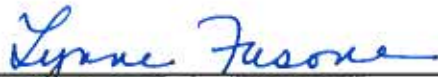
**THIS RESOLUTION** shall be effective immediately upon passage.

**PASSED, APPROVED AND ADOPTED** in special session this 10<sup>th</sup> day of November, 2021.

**CITY OF PANAMA CITY BEACH,  
FLORIDA**

By:   
\_\_\_\_\_  
Mark Sheldon, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Lynne Fasone, City Clerk

# SCADA SYSTEM INTEGRATION

## AGREEMENT

**THIS SCADA SYSTEM INTEGRATION AND \_\_\_\_\_ AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation (City) and \_\_\_\_\_ (Contractor).

### PREMISES

#### 1. SCOPE OF SERVICES

Contractor will provide SCADA SYSTEM INTEGRATION and ANNUAL MAINTENANCE AND SUPPORT for the City of Panama City Beach, as more particularly described in the Scope of Work.

If the Contractor believes that any particular work/service is not within the scope of work/service of the contract, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the City's Representative in writing of this belief. If the City's Representative believes that the particular work/service is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work/service as changed and at the cost stated for the work/service within the scope. The Contractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of this agreement.

#### 2. COMPENSATION

As compensation for the services contemplated herein and equipment and installation rendered by Contractor of its duties and obligations hereunder, City shall pay Contractor according to the lump sum cost of \$\_\_\_\_\_ submitted on PCB22-04 ITB SCADA System Integration bid form. This lump sum cost includes one (1) year of maintenance and support. The City and the Contractor will have the option to renew one (1) year renewals for maintenance and support if agreed upon by both parties at the cost set forth in the Contractor's cost proposal. The City shall pay to the Contractor as full consideration for the performance of the work required by this Agreement, at the UNIT PRICES contained in the Contractors's cost proposal, upon the basis of actual measured quantities as the same may be finally determined by the City Manager or his designee(s).

- A. Extra (Bid alternate #1) and/or Additional Work Changes. Should City at any time during the progress of said work request any alterations, deviations, additions or omissions from said specifications or other contract documents, it shall be at liberty to do so by written authorization to Contractor, and the same shall in no way affect or make void the Agreement. The value of such will be added to or deducted from the contract Bid price, as the case may be, by a fair and reasonable valuation.

#### 3. PAYMENT

The "closure date" for work to be invoiced for payment shall be the 30th of each calendar month, except February where it shall be the 28th. The Contractor shall submit an itemized invoice by building to the City for the amount of work satisfactorily completed as of the closure date. The invoice(s) shall be delivered to accounts payable at City Hall, 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413 no later than three days after the closure date of each calendar month.

#### **4. TERM**

Unless terminated sooner pursuant to the provision of the Termination clauses and subject to the availability of funds appropriated for this purpose, the term of this Agreement shall take effect on the executed date of award for the lump sum fee which includes one year of maintenance and support. The City and Contractor have option to renew the maintenance and support for additional one (1) year terms. An alternative bid for labor is awarded for a one (1) year term with an option to renew for two (2) one (1) year renewals at the hourly rate in the amounts stated in the bid form (alternate bid #1). The City will request a letter of intent to renew, signed by the Contractor. And can be further extended by the City as desired with approval of the City Manager.

#### **TERMINATION OF CONTRACT**

- A. City Termination for Cause. The Agreement may be terminated by the City for cause in the event of any breach hereof, including, but not limited to, Contractor's: (1) failing to carry forward and complete the Work as provided herein; (2) failing to comply with applicable laws, regulations, permits, or ordinances; (3) failing to timely correct defective Work; (4) making a general assignment for the benefit of its creditors; (5) having a receiver appointed because of insolvency; (6) filing bankruptcy or having a petition for involuntary bankruptcy filed against it; (7) failing to make payments when due to subcontractors, Contractors, or others for materials or labor used in the Work; (8) making a material misrepresentation to the City regarding the Work, (9) arrest or conviction of felony or fraud, or (10) any other material breach of this Agreement. In such event, the City shall provide Contractor with written notice of its intention to terminate this Agreement, stating the nature of the deficiency and the effective date of termination. At the City's sole judgment and discretion, the City may afford Contractor an opportunity to cure said deficiency, in which event the notice shall specify the time allowed. Upon termination, the City may take possession of the premises and of all materials thereon and finish the Work by whatever means it deems expedient.
- B. City Termination for Convenience. Notwithstanding any other provision hereof, the City may at any time terminate this Agreement or any Work issued under it, in whole or in part, without cause, upon thirty (30) days written notice to Contractor. In such event, Contractor shall be compensated for any Work performed prior to the date of termination and for materials that were ordered prior to receipt of notice of termination that cannot be returned to the Contractor, which shall become City property. Upon receipt of notice, Contractor shall discontinue the Work on the date

and to the extent specified therein and shall place no further orders for materials, equipment, services, or facilities, except as needed to continue any portion of the Work not terminated. Contractor shall also make every reasonable effort to cancel, upon terms satisfactory to the City, all orders or subcontracts related to the terminated Work. Contractor may not claim any compensation not specifically provided for herein, including, but not limited to loss of anticipated profits, idle equipment, labor, and facilities; any additional claims of subcontractors and Contractors.

## **5. COMPLIANCE WITH LAWS.**

The Contractor shall be responsible to know and to apply all applicable federal and state laws, all local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work. Contractor shall always observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees. The Contractor shall protect and indemnify City of Panama City Beach and all its officers, agents, servants, or employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by Contractor, its representatives, sub-contractors, sub-consultants, professional associates, agents, servants, or employees. Additionally, Contractor shall obtain and maintain at its own expense all licenses and permits to conduct business pursuant to this contract from the federal government, State of Florida, Bay County, or municipalities when legally required, and maintain same in full force and effect during the term of the contract.

## **6. WARRANTY**

The Contractor agrees that, unless otherwise specified, the product and/or service furnished as a result of this invitation and award thereto shall be covered by the most favorable commercial warranty the Contractor gives to any customer for comparable quantities of such products and/or services and that the right and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other provision of the invitation/offer.

A copy of the warranty shall be submitted with the bid. Indicate in offer if warranties commence with the purchase date, delivery date or the date of manufacturer. Include any information on a delayed warranty procedure to cover the interval between time of delivery of the complete solution and the actual date that the product is placed in service by the City.

## **7. INSURANCE AND INDEMNIFICATION**

- A. Contractor shall at its expense maintain in force during the Term the following described insurance on policies and insurers acceptable to the City. All such insurance shall name the City, its officers, employees and agents as additional insured:
  - 1) Workers Compensation and Employer's Liability Insurance Coverage. Limits of coverage shall not be less than \$1,000,000 each accident; \$1,000,000 disease each employee; and \$1,000,000 disease aggregate.

- 2) Commercial General Liability. Coverage shall include bodily injury; property damage and personal injury liability and limits of coverage shall not be less than \$1,000,000 combined single limit for each occurrence and \$2,000,000 aggregate.
  - 3) Business Automobile Liability Coverage. Coverage shall include bodily injury and property damage and limits shall not be less than \$1,000,000 combined single limit for each accident.
  - 4) Excess or Umbrella Liability Coverage. Coverage shall not be less than \$1,000,000 each occurrence and aggregate.
- B. City shall at its option and expense maintain in force during the Term such fire, casualty, and extended coverage insurance covering any City owned improvements on the Site as the City may desire.
  - C. Contractor shall at its option and expense maintain in force during the Term such fire, casualty and extended coverage insurance on Contractor's personal property located on the Site, including trade fixtures, equipment, machinery, inventory or other personal property belonging to or in the custody of Contractor, and all such policies may waive any right of subrogation against the City.
  - D. All coverage maintained by Contractor pursuant to Subparagraph (a) shall be provided by companies registered and licensed to sell insurance in the state of Florida and which may legally provide the coverage set forth herein, and shall be provided by companies reasonably satisfactory to the City and in form and substance reasonably satisfactory to the City, and shall provide that coverage will not be subject to cancellation, termination, revocation or material change except after thirty (30) days' prior written notice to the City.
  - E. Within thirty days of the date of this agreement, and thereafter upon the written request of the City, Contractor shall furnish to the City such certificates of coverage and certified copies of policies pursuant to subparagraph (a). In order to satisfy this provision, the documentation required by this part must be sent to the following address: Attn: City Clerk, 17007 Panama City Beach Parkway, Panama City Beach, FL 32413.
  - F. Contractor shall indemnify and hold harmless and defend the City and its officers, employees, agents and representatives from and against any and all damages, lawsuits, liabilities, claims, costs and expenses including reasonable attorney's fees ("Damages") arising in whole or in part from: (i) the occupation, use or maintenance of the Site by Contractor or anyone claiming by, through or under Contractor; or (ii) the breach of any of Contractor's representations, warranties, covenants or agreements hereunder, including any Damages arising from the combined fault of Contractor and City, but excluding any Damages arising solely from the negligence or willful misconduct of the City. The covenants contained in this paragraph shall survive the termination of this Agreement.



- G. If any third-party claim is made against the City that, if sustained, would give rise to indemnification liability of the Contractor under this Agreement, the City shall promptly cause notice of the claim to be delivered to the Contractor and shall afford the Contractor and its counsel, at the Contractor's sole expense, the opportunity to join in defending or compromising the claim. The covenants contained in this paragraph shall survive the termination of this Agreement.
- H. Due to the nature of the services to be provided and the potential impact to the City for loss of work supplies, the Contractor cannot disclaim consequential or inconsequential damages related to the performance of this contract. The Contractor shall be responsible and accountable for any and all damages, directly or indirectly, caused by the actions or inaction of its employees, staff, or sub-consultants. There are no limitations to this liability.

## **8. ATTORNEY'S FEES**

In the event of any litigation hereunder, each party shall be responsible for its own attorney's fees and court costs at all trial and appellate levels and at any mediation or arbitration.

## **9. TIME**

Time is of the essence in this Agreement.

## **10. FORCE MAJEURE**

The Contractor's failure or inability to perform the stated scope of services at any time as a result of circumstances beyond its control, such as, but not limited to, war, terrorism, strikes, fires, floods, hurricanes, acts of God, power failures, or damage or destruction of any facility related thereto, shall not be deemed a breach of this Agreement.

## **11. REMEDIES**

In the event of failure of the Contractor to deliver services in accordance with the contract terms and conditions, the City, after due written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the City may have. Failure to cure a breach of a material term hereunder within four (4) hours of Contractor's receipt of written notice thereof shall entitle the City to terminate this Agreement. All rights and remedies conferred upon the parties in this Agreement shall be cumulative and in addition to those available under the laws of the State of Florida.

## **12. ASSIGNMENT**

This Agreement is not assignable

## **13. SEVERABILITY**

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**14. MODIFICATIONS**

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City and Contractor.

**15. WAIVER**

Failure by the City to enforce any provision of this Agreement shall not be deemed a waiver of the provision or modification of this Agreement. A waiver by the City of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**16. NOTICES**

Any notice required by this Agreement shall be directed to the parties as follows:

A. As to City:

City Representative: \_\_\_\_\_

Title/Position: \_\_\_\_\_

17007 Panama City Beach Pkwy., PCB, FL 32413

Phone: \_\_\_\_\_

B. As to Contractor:

Contract Representative: \_\_\_\_\_

Title/Position: \_\_\_\_\_

Email address: \_\_\_\_\_

Mailing address: \_\_\_\_\_

\_\_\_\_\_

Phone/Cell: \_\_\_\_\_

**17. ENTIRE AGREEMENT**

This Agreement, and any exhibits or appendixes attached hereto and incorporated herein, constitutes the entire agreement between parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no representations, warranties, covenants or other agreements among them.

**IN WITNESS WHEREOF**, the Contractor has executed this Agreement as of the day and year first above written.

Signed in the presence of: Contractor

Witness 1 \_\_\_\_\_

(Print Name): \_\_\_\_\_ By: \_\_\_\_\_

Witness 2 \_\_\_\_\_

(Print Name): \_\_\_\_\_

ATTEST:

**THE CITY OF PANAMA CITY  
BEACH, FLORIDA,**

a municipal corporation

\_\_\_\_\_

City Clerk

By: \_\_\_\_\_

Drew Whitman , City Manager





PCB22-04 ITB SCADA SYSTEM INTEGRATION

to confirm normal and emergency operation shall be performed. The test shall be performed by the VENDOR as herein specified and at his cost.

- B. Any defects noted in the field-testing program shall be corrected immediately at the VENDOR's cost.

**SECTION IV**

**REQUIRED DOCUMENTS**

**BID FORM**

Page 1 of 2

This proposal of Vyper Automation, LLC, hereinafter called "BIDDER," organized and existing under the laws of the State of Florida doing business as a limited liability company

(Insert a corporation", "a partnership" or "an individual" as applicable), is hereby submitted to the City of Panama City Beach, hereinafter called "OWNER."

In compliance with the Advertisement for Bids, BIDDER hereby proposes to perform all work for **PCB22-04 ITB SCADA SYSTEM INTEGRATION**, as detailed in this solicitation.

Basis of Award: The contract(s) will be awarded to the lowest responsive and responsible Bidder.

**BASE BID**

BIDDER agrees to Furnish all labor, equipment, software licenses, materials, training, travel expenses, annual license and software, maintenance and support to provide a turn-key system integration to VTScada for the City of Panama City Beach, as described in the CONTRACT DOCUMENTS for the following lump sum price:

**SCADA System and Integrations** \$ 119,400

**Maintenance and Support (1-year)** \$ 10,400

*\*Includes license renewals and annual updates with 24 hours of integration support with each update.*

**TOTAL BID** \$ 129,800

**ALTERNATE BID # 1- Additional Costs** - Labor Rates for On-call assistance not covered in the annual maintenance and support (license renewal and updates).

**ITEM NO. DESCRIPTION On-site/Hour Remote/Hour Emergency/Hour**

**PCB22-04 ITB SCADA SYSTEM INTEGRATION**

4	Programmer	\$ <u>125</u>	\$ <u>125</u>	\$ <u>250</u>
5	Technician	\$ <u>125</u>	\$ <u>125</u>	\$ <u>250</u>
6	Engineer	\$ <u>125</u>	\$ <u>125</u>	\$ <u>250</u>

Additional Costs labor rates above will not be used for determination of the base bid nor for the additive alternate.

**SERVICE RESPONSE TIME** - Response time is a critical component of this bid. As part of the submission of the BID, The BIDDER agrees to meet the following response times for completion time for services, as applicable to this Solicitation. Hours requested for on-call services will be billed at the rates above.

Response Time:

- a. **On-Site for Service** – Standard contract hours: **72 hours** after receipt of request from the City for service.
- b. **Remote Service** – Standard contract hours: A response from the Vendor that includes acknowledgement of the Remote Service Call shall be provided within **2 hours** after receipt of request from the City for service. Resolution of the Remote Service Call item is expected within **72 hours**.
- c. **Emergency/After-hours/Holiday Service** – **24 hours** after receipt of request from the City for service. This could be either Remote or On-site depending on nature of emergency.

Specify terms of any deposit requirement:

No deposit required

---



---



---

**NOTE:**

1. BIDS shall NOT include State of Florida and Bay County sales tax but shall include all other applicable taxes and fees.
2. BIDS shall be based on a lump sum price and shall be the total compensation to be paid by OWNER for the complete WORK.

PCB22-04 ITB SCADA SYSTEM INTEGRATION

3. The OWNER reserves the right to reject any and all bids received.
4. **Failure to insert a bid amount for any item in the Bid Schedule will be considered grounds for the OWNER to determine the BID is non-responsive. Likewise, failure to complete the Bidder Qualification Form may be considered grounds for the Owner to deem the BID non-responsive.**

Submitted By: Vyper Automation, LLC  
Name of Firm/Contractor/Company Submitting This Bid

Bid Prepared By: Gregory Kumpula  
Name of Authorized Individual Who Prepared This Bid (printed)

Address: 1553 Cloverbay Ln, Casselberry, FL 32707

Phone: (407) 335-0311

  
Signature of Authorized Representative of Company

Oct. 13, 2021  
Date

SEAL: *(If Bid is by Corporation)*