

RESOLUTION NO. 22-112

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH SMITH INDUSTRIAL SERVICES, INC. FOR ANNUAL TANK CLEANING, SEWER CLEANING, AND BYPASS PUMPING SERVICES FOR THE UTILITY DEPARTMENT AT SET UNIT PRICES MORE FULLY SET FORTH IN THE BODY OF THE AGREEMENT.

BE IT RESOLVED that the appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain Agreement between the City and Smith Industrial Services, Inc., relating to Tank Cleaning, Sewer Cleaning, and Bypass Pumping Services for the Utility Department at the set unit prices as more fully set forth in the body of the Agreement, 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 in regular session this 24th day of March, 2022.

CITY OF PANAMA CITY BEACH

By: _____


Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

TANK, LIFT STATION AND SEWER CLEANING SERVICES

AGREEMENT

THIS TANK, LIFT STATION AND SEWER CLEANING SERVICES AGREEMENT is made and entered into this 25th day of March, 2022, by and between the **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation (City) and Smith Industrial Services, Inc. (Contractor).

PREMISES

1. SCOPE OF SERVICES

Contractor will provide an annual tank, lift station, and sewer cleaning and disposal services for multiple locations in the Panama City Beach utility system, as more particularly described in the Scope of Work described in PCB 22-48 ITB.

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 performance rendered by Contractor of its duties and obligations hereunder, City shall pay Contractor according to the Disposal Unit Price of \$320, per wet ton, hourly rate or day rate costs as outlined in the bid. The City shall also pay to the Contractor for the work needed in this Agreement, at the Hourly Rate Price or Day Rate Price contained in the Contractor'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).

3. PAYMENT

Monthly invoices shall be submitted to the City and City shall make payments in accordance with the Local Government Prompt Payment Act, Chapter 218, Florida Statutes. All invoices shall be delivered to City Hall, attention Accounts Payable, 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413.

4. TERM:

Unless terminated sooner pursuant to the provision of the Termination clauses and subject to the availability of funds appropriated for this purpose, this Agreement shall take effect on the executed date of award for a period of two (2) years. The Agreement may be extended for two, one-year optional periods, upon the written agreement of both parties.

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.

7. ATTORNEY'S FEES

Should either party institute any legal action or proceeding to enforce this Agreement, or for damages by reason of any alleged breach of this Agreement, or for a declaration of rights hereunder, the prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including without limitation reasonable attorneys' fees, incurred by the prevailing party in connection with such legal action or proceeding.

8. 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 twenty-four (24) 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.

9. ASSIGNMENT

This Agreement is not assignable.

10. CHOICE OF LAW & VENUE

This Agreement shall be governed by the laws of the State of Florida. Any legal proceeding regarding this Agreement shall be brought in the 14th Judicial Circuit in Bay County, Florida.

11. 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.

12. 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.

13. 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.

14. NOTICES

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

A. As to City:

City Representative: Jeff Crigler, P.E.
Title/Position: Asst. Utilities Director
17007 Panama City Beach Pkwy., PCB, FL 32413
Phone: (850)233-5100, Ext. 2404

B. As to Contractor:

Contract Representative: Jason Reagan
Title/Position: Regional Manager
Email address: jreagan@smithind.com
Mailing address: 2001 W. I-65 Service Road, Mobile, AL 36618

Phone/Cell: 850-784-6005

15. 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.

The term "Agreement" means and includes the following documents related to the PCB 22-48ITB, all of which are incorporated into this Agreement by this reference:

- ADVERTISEMENT FOR BIDS
- INFORMATION FOR BIDDERS
- BID PROPOSAL FORM
- TERMS AND CONDITIONS

STATEMENT UNDER SECTION 287.087, FLORIDA STATUTES, ON PREFERENCES TO
BUSINESSES WITH DRUG-FREE WORKPLACE PROGRAMS
PUBLIC ENTITY CRIME STATEMENT
NON-COLLUSION AFFADAVIT
E-VERIFY
CONFLICT OF INTEREST
NOTICE OF AWARD
AGREEMENT

ADDENDA [LIST ANY ADDENDA ISSUED PRIOR TO EXECUTION OF THE AGREEMENT.]

No. 1 , dated February 17 , 2022

No. 2 , dated February 24 , 2022

No. , dated , 20

No. , dated , 20

[Remainder of this page is intentionally left blank]

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: _____

Smith Industrial Services, Inc.

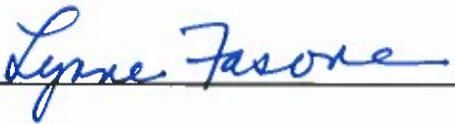
Witness 2 _____

(Print Name): _____

ATTEST:

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

a municipal corporation



City Clerk

By: 

Drew Whitman , City Manager