



Emerson Process Management
Power & Water Solutions, Inc.
200 Beta Drive
Pittsburgh, PA 15238
Tel 1 (412) 983-4000

September 25, 2012

Nakia Johnson
City of North Miami
776 NE 125th Street
North Miami, FL 33181

Subject: Software Support and Services Contract Renewal for 2012 - 2013
Emerson Process Management Power & Water Solutions, Inc.
Offer No. WAM12080688

Dear Ms. Johnson,

Emerson Process Management Power & Water Solutions, Inc. is pleased to submit this offer to City of North Miami for 2012 - 2013 Software Support and Services Renewal. The maintenance support and software support (limited to application programming services) proposed herein will cover the period October 1, 2012 to September 31, 2013 and subject to attached agreement.

If you have any questions or require additional information please contact Roger Labrecque at (860) 778-3672.

Sincerely,

David Arias / Roger Labrecque

Emerson Process Management
Power & Water Solutions, Inc.

Attachments: Emerson Hardware Support Contract for City of North Miami

Software Support And Services Contract

This Contract entered into as of this 1st day of October 2012, between Emerson Process Management Power & Water Solutions, Inc. located at 200 Beta Drive, Pittsburgh, PA 15238 (hereinafter referred to as "Emerson") and City of North Miami (hereinafter referred to as Purchaser)

WITNESSETH

In consideration of the premises, the parties hereto agree as follows:

I. Scope of Work

Emerson will sell to the Purchaser and Purchaser will buy from Emerson the Software Support and/or Services as set forth in Emerson's offer WAM12080688 dated August 31st 2012 and Schedule A (attached hereto).

II Definitions

"Software Support" is defined as assistance rendered to the Purchaser's personnel in the installation, configuration or operation of the Software, via telephone, email, fax or other electronic services.

"Updates" copies of new releases, upgrades and patches to The Software which are released by Emerson during the period covered by this Contract.

"The Software" the software that is licensed to the Purchaser at the commencement of this Contract. A list of The Software covered by this Contract is attached as Schedule A.

"On Site Software Support" services beyond Software Support that require the presence of Emerson personnel at the Purchaser's location.

"Equipment" The equipment covered by this Contract as set forth in Schedule A.

"Services" The services including maintenance services covered by this Contract as set forth in Schedule A.

"Commencement Date" The date this Contract is entered into as set forth above or the date Emerson accepts a purchase order for the work to be performed under this Contract.

III. Price

The Contract price is \$23,832.00

IV. Terms of Payment

Emerson shall invoice Purchaser for installment Contract price within 30 days from the date of this Contract. For subsequent years, the invoices for annual payments will be

issued on the Contract renewal date. Payment(s) is due and payable net 30 days from the date of each invoice.

In the event "On Site Software Support" or onsite Services are not included in the Contract price then the price shall be agreed upon either before the work is performed, or if performed on a time and material basis, in accordance with Emerson's current published price policy in effect, plus travel and living expenses. Emerson will invoice the Purchaser for the labor and material as required,

When Service is provided on a per diem basis, invoices shall be rendered upon completion of the Services and payment of per diem charges, plus travel and living expenses shall be due net 30 days from the date of invoice at the price in effect when the services are provided.

Payment is due in 12 monthly installments \$1,986.00

V. Termination

The initial term of this Contract shall be for one (1) years from the Commencement Date. Thereafter, this Contract can be renewed through Emerson. Such renewals must be in place 30 days prior to the expiration date of this Contract to ensure continuous maintenance support without lapse. Within 60 days prior to the above date(s) Emerson will provide a price for the extension of the Contract including any revisions to the Software and/or Equipment list.

This Contract may be terminated for convenience by either party, provided thirty (30) days advance written notice of termination is given and upon payment to Emerson of reasonable and proper termination charges, including, but not limited to all costs identified to this Contract which have been incurred up to the date of notice of termination. Payment shall be made within 30 days from date of invoice.

This Contract may be terminated by Emerson upon written notice if it determines that Purchaser changes, additions, deletions, or misuse or misapplication of the Equipment have degraded the performance of the specified Equipment or Software.

In the event Purchaser or Emerson commits a material breach of its undertaking so as to prevent completion of this Contract and thereafter fails on not less than thirty (30) days written notice to take steps to remedy such breach, the other party may, by written notice, terminate this

Contract and recoveries of Purchaser and Emerson shall be determined by mutual agreement.

In the event that the Purchaser's equipment or software is altered, modified, changed, or, if any equipment or software is added or deleted, or moved within the premises, this Contract may be modified or terminated at Emerson's option. If, at any time, any such changes or attachments create a safety hazard, or interfere with the normal and satisfactory operation or maintenance of the Equipment, Emerson may, upon written notice to the Purchaser, require that such safety hazard or interference be promptly corrected at the Purchaser's expense. Emerson's continued maintenance of the Equipment and/or Software, which has been changed or, to which attachments have been made, does not constitute an approval of the change or attachment and at Emerson's option may be removed from the Equipment or Software listed in Schedule "A".

VI. Taxes

The price does not include any federal, state, or local property, license, privilege, sales, use, import duties, tariffs, fees, imposts, excise, turnover, added value, gross receipt, gross wages or similar taxes now or hereafter applicable in any manner to this transaction. Purchaser agrees to reimburse Emerson for any such taxes which Emerson is required to pay upon submission of Emerson invoice.

VII. Force Majeure

Emerson will not be liable for failure or delay in performance resulting from any cause beyond its reasonable control and for acts of God, the act or failure to act of Purchaser's customer, or other contractors. In the event of such delay, the time for performance/delivery will be extended by a period of time reasonably necessary to overcome the effect of the delay.

VIII. Warranties

1. Software Support

Emerson warrants to the Purchaser that the disk(s) on which the Updates are recorded is (are) free from defects in materials and workmanship under normal use and service for a period of ninety days from date of delivery. The Updates and any accompanying written materials (including instructions for use) are provided "as is" without warranty of any kind. Further, Emerson does not warrant, guarantee, or make any representations regarding the use, or the results of the use, of the Updates, The Software or written materials. The entire risk as to the results and performance of Updates and The Software is assumed by the Purchaser. Unless stated otherwise herein, third party software/ equipment shall be warranted and remedied on a pass through basis in the same manner and for the same period and extent

provided by the original software/ equipment manufacturer.

Unless otherwise provided within this Contract, there is no warranty of any kind included hereunder with respect to The Software. Applications software programs not provided by Emerson are not covered under this warranty. Problems related to applications software programs provided by Emerson, including, but not limited to, problems caused by operator errors or lack of security procedures, virus related problems, unqualified file deletions or modifications, or lack of proper observance of system backup file maintenance are not covered under the warranty scope.

If this Contract includes On Site Software Support Services, Emerson warrants that the Services provided will reflect competent knowledge and judgment.

The warranty period shall expire 12 months from completion of the Service. In the case of a nonconformity in the warranty set forth herein above, and if Emerson is notified in writing of such nonconformity during the applicable warranty period, it shall be corrected by reperformance of the nonconforming portion of the Service. If such remedies are impracticable, Emerson may refund the purchase price for the nonconforming Service.

2. Equipment and Services

Emerson warrants that during the term of this Contract, the Equipment listed in Schedule "A" will be free from defects in materials or workmanship under normal use and care and Services provided under this Contract will be performed by trained personnel using proper equipment and instrumentation as applicable for the particular Service provided.

If Purchaser discovers any such warranty defect(s) and notifies Emerson of the alleged defect(s) during the term of this Contract or the applicable warranty period as set forth below, Emerson shall, at its option, correct any errors that are found by Emerson in the Services or repair or replace F.O.B. point of manufacture that portion of the Equipment found by Emerson to be defective.

Equipment repaired or replaced by Emerson pursuant to this Contract is warranted for a period extending to the end of the term of this Contract or for 90 days from the date of delivery of repaired or replaced Equipment, whichever is

longer. Any Service provided pursuant to this Contract is warranted to the end of the term of this Contract or for 90 days from completion the Service, whichever is longer.

All replacements or repairs necessitated by any causes not the fault of Emerson, including but not limited to, unsuitable power sources or environmental conditions, lightning, fire, flood, earthquakes, vandalism, accident, or misuse, improper installation, unauthorized modification or repair, or improper storage or handling by Purchaser or any third party, are not covered by this warranty, and shall be at the Purchaser's expense. Emerson shall not be obligated to pay any costs or charges incurred by the Purchaser or any other party except as may be agreed upon in writing in advance by Emerson.

Materials and/or Services required due to actual environmental or process conditions beyond the specifications of the Equipment performance capabilities are not part of the warranty scope.

Emerson will invoice for Services provided per the Purchaser's request, which are beyond the scope of warranty coverage hereunder using its then-current pricing policy. Payments for such invoices shall be made within thirty days of rendering of such Services and expenses.

Materials and/or Services required for system changes and additional training are not part of the scope of the warranty services. THE WARRANTIES SET FORTH IN THIS CONTRACT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE). THE REMEDIES SET FORTH, FOR THE TIME AND IN THE MANNER PROVIDED ABOVE, SHALL BE PURCHASER'S EXCLUSIVE REMEDIES FOR FAILURE OF EMERSON TO MEET ITS WARRANTY OBLIGATIONS, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE.

IX. Limitation of Liability

EMERSON SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. EMERSON SHALL NOT BE LIABLE FOR FAILURES, REPAIRS OR DOWN TIME ON OR CAUSED BY EQUIPMENT OR SOFTWARE COVERED IN THIS CONTRACT. THE REMEDIES SET FORTH IN THIS CONTRACT ARE EXCLUSIVE AND UNDER NO THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT

LIABILITY), UNDER WARRANTY OR OTHERWISE WILL EITHER EMERSON OR ITS SUPPLIERS OF ANY TIER: (A) BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGE WHATSOEVER; DAMAGE TO OR LOSS OF PROPERTY OR EQUIPMENT; LOSS OF PROFITS OR REVENUE; LOSS OF USE OF PURCHASER'S PROPERTY, EQUIPMENT OR POWER SYSTEM; INCREASED COSTS OF ANY KIND, INCLUDING BUT NOT LIMITED TO CAPITAL COST, FUEL COST OR CLAIMS OF CUSTOMERS OF PURCHASER; AND (B) BE LIABLE FOR AN AGGREGATE LIABILITY EXCEEDING THE TOTAL PRICE PAID TO EMERSON UNDER THIS CONTRACT. THIS ARTICLE SHALL PREVAIL OVER ANY PROVISIONS IN THIS CONTRACT.

X. Governing Law

This Contract shall be governed by the laws of the State of Florida without regard to its choice or conflict of law.

XI. Survival

The Limitation of Liability and Intellectual Property Rights provisions shall survive termination, expiration or cancellation of this Contract or the purchase order to which these terms and conditions apply. No amendment, modification or alteration of these terms and conditions shall be binding unless the same shall be in writing and duly executed by the parties. If any term or condition is under any circumstances deemed invalid, the remaining terms and conditions shall be construed with the invalid provision(s) deleted.

XII. Intellectual Property Rights/ Software License

Emerson retains for itself all of its intellectual property rights in and to any Emerson product, software and supporting documentation furnished hereunder.

The Updates and The Software are only licensed for installation on that equipment on which The Software was installed at the commencement of this Contract. Updates may be transmitted to the Purchaser via email, on physical media or downloaded from Emerson's web site, at the discretion of Emerson. The Purchaser is responsible for the installation of all Updates supplied under this Contract. The Updates are subject to the terms and conditions set forth in Emerson's applicable standard software license agreements for The Software. Any Updates and other information provided by Emerson under this Contract are considered standard offerings of Emerson, and Emerson and/or any applicable third party supplier to Emerson shall retain all rights of ownership in their respective products included in such Updates or other information.

Notwithstanding any other provisions herein to the contrary, Emerson or applicable third party owner shall retain all exclusive rights, interest and title to its respective firmware, The Software and Updates. Purchaser's use of the firmware, Updates and The Software shall be governed

exclusively by Emerson's and/or third party owner's applicable license terms.

Information marked proprietary shall be disclosed in confidence on a need to know basis on the condition that it is not to be reproduced, copied or used for any other purpose than the purpose for which it is provided and shall not be disclosed to third parties without the written consent of Emerson.

XIII. Changes to Supply

~~In the event the Purchaser or Emerson request changes in the scope of supply, Emerson shall notify Purchaser of the effect on price, delivery, warranty, equipment performance or any other obligations assumed by Emerson under this Contract. Emerson will initiate work on any such changes upon receipt of an acceptable written change order.~~

All change orders shall indicate the adjustment to the Emerson scope of supply, the contract price and other relevant terms and conditions of the Contract.

XIV. Facilities and Access to Equipment

If this Contract includes Services to be performed on Purchaser's site, the Purchaser will furnish at no cost to Emerson suitable working space, storage space, adequate telephone, light, ventilation, regulated electric power, and outlets for testing purposes. These facilities will be within a reasonable distance from the Equipment covered by this Contract. Emerson shall have full and free access to Emerson-provided Equipment in order to provide the on-site Services provided under this Contract. Purchaser will identify person(s) who will interface with Emerson under the terms of this Contract. Any maintenance or repair services performed on the Emerson-provided Equipment by unauthorized personnel resulting in additional material or corrective support service requirements by Emerson will be invoiced at applicable time and material rates and conditions of service then in effect.

XV. Emerson Personnel

Emerson reserves the right to determine the qualifications of and the source of Emerson personnel required to fulfill its obligations under this Contract. Unless agreed upon otherwise, the Parties agree that the Purchaser may not hire a Emerson Field Service Engineer/Technician for two years following termination of this Contract.

XVI. Exclusions

Excluded from these contracts are obsolete software application programs and parts.

XVII. Scope Changes

All Emerson services or equipment requested by Purchaser that are not within the scope of this Contract shall be reimbursed by Purchaser in accordance with the then current Emerson published rates including, if applicable, travel and living expenses.

XVIII. Assignment Clause

Neither Emerson or Purchaser may assign this Contract in whole or in part without the prior written consent of the other Party.

XIX. Entire Agreement

This Contract, including the documents incorporated by reference herein and attachments hereto constitute the entire agreement between the parties. The terms hereof may not be modified or amended except in writing signed by the authorized representative of both Purchaser and Emerson.

IN WITNESS WHEREOF, the parties hereto have executed this Contract by their authorized representatives as of the date first set forth above.

CITY OF NORTH MIAMI

EMERSON PROCESS MANAGEMENT
POWER & WATER SOLUTIONS, INC.

BY: DocuSigned by: _____

BY: _____

Title: 253EA30BC4CB46C1
City Manager

Title: _____

Date: DocuSigned by: 3/17/2014

Date: _____

Title: 2C7010872EE8414
City Clerk

Date: 3/17/2014

Attachments

1. Emerson Offer # WAM12080688 dated 08/31/2012
2. Schedule A

SCHEDULE "A"
Hardware & Software List
For: City of North Miami

| | | | | | |
|----|------------------------------|---|------------------------|---|--------|
| | RTU2 - ControlWave Micro | 1 | A Station | - | Active |
| 2 | RTU3 - ControlWave Micro | 1 | A Station | - | Active |
| | RTU4 - ControlWave Micro | 1 | Alhambra Drive Station | - | Active |
| 4 | RTU6 - ControlWave Micro | 1 | Arch Creek Station | - | Active |
| | RTU7 - ControlWave Micro | 1 | B Station | - | Active |
| 6 | RTU8 - ControlWave Micro | 1 | Bellows Station | - | Active |
| | RTU9 - ControlWave Micro | 1 | Bellows West Station | - | Active |
| 8 | RTU11 - ControlWave Micro | 1 | C Station | - | Active |
| | RTU13 - ControlWave Micro | 1 | E Station | - | Active |
| 10 | RTU16 - ControlWave Micro | 1 | FIU East | - | Active |
| | RTU17 - ControlWave Micro | 1 | FIU West | - | Active |
| 12 | RTU18 - ControlWave Micro | 1 | Futura Station | - | Active |
| | RTU19 - ControlWave Micro | 1 | G Station | - | Active |
| 14 | RTU20 - ControlWave Micro | 1 | H Station | - | Active |
| | RTU21 - ControlWave Micro | 1 | I Station | - | Active |
| 16 | RTU22 - ControlWave Micro | 1 | Hospital Station | - | Active |
| | RTU23 - ControlWave Micro | 1 | J Station | - | Active |
| 18 | RTU25 - ControlWave Micro | 1 | Ixora Road Station | - | Active |
| | RTU26 - ControlWave Micro | 1 | L Station | - | Active |
| 20 | RTU28 - ControlWave Micro | 1 | K Industrial Station | - | Active |
| | RTU29 - ControlWave Micro | 1 | K1 Station | - | Active |
| 22 | RTU33 - ControlWave Micro | 1 | Lakeshore Station | - | Active |
| | RTU35 - ControlWave Micro | 1 | Palmer Grove Station | - | Active |
| 24 | RTU37 - ControlWave Micro | 1 | Pines Station | - | Active |
| | RTU39 - ControlWave Micro | 1 | Robin Station | - | Active |
| 26 | RTU40 - ControlWave Micro | 1 | San Souci 1 Station | - | Active |
| | RTU41 - ControlWave Micro | 1 | San Souci 2 Station | - | Active |
| 28 | OpenEnterprise Server | 2 | North Miami WTP | - | Active |
| 29 | RDI Device Drivers | 2 | North Miami WTP | - | Active |
| | OpenEnterprise Workstation | 1 | North Miami WTP | - | Active |
| 31 | OpenEnterprise WS w/ HW Key | 2 | North Miami WTP | - | Active |
| | OpenEnterprise Admin Package | 2 | North Miami WTP | - | Active |

| | | | | | |
|----|----------------------------------|---|-----------------|---|--------|
| 33 | OpenEnterprise Terminal Services | 5 | North Miami WTP | - | Active |
| 34 | OpenEnterprise Network Solutions | 2 | North Miami WTP | - | Active |
| 35 | ControlWave Designer | 2 | North Miami WTP | - | Active |

1. Scope

Emerson will provide Services for the Equipment listed in this Schedule "A" in accordance with the clauses set forth in this Contract.

2. Unscheduled Corrective Maintenance

- a. Unscheduled corrective maintenance service will be available during the normal working hours of 8:00 A.M. to 5:00 P.M. local time, Monday through Friday, excluding Emerson's observed holidays at a discounted rate equal to Emerson's then current hourly rate minus 10%, plus travel and living expenses at cost plus 10%. Emergency services outside normal working hours may be provided at a rate equal to Emerson's then current overtime rate minus 10%, plus travel and living expenses at cost plus 10%. Unscheduled corrective maintenance service activities will be mutually determined.

3. Software Support

- a. Emerson shall provide Software Updates which are release by Emerson during the period covered by this agreement. Such updates are only licensed for installation on that equipment on which Software was installed at the commencement of this agreement. Updates will be transmitted to the customer via email, physical media or downloaded from Emerson web site. The customer is responsible for installation of all Updates supplied under this agreement.
- b. Emerson shall provide one (1) software upgrade site visit, not to exceed five (5) man-day(s) (with 8 man-hours per man-day).
- c. If services are to be performed on the Purchaser's premises, the Purchaser will furnish, for the use of Emerson's service personnel, a working space containing suitable working facilities, storage space, adequate heat, light, ventilation, electric power and outlets for testing purposes. Emerson shall have full and free access to the equipment in order to provide the services under this Contract. Emerson shall not be liable for any expenses incurred by the Purchaser in removing, replacing or refurbishing any Purchaser equipment or any part of the Purchaser's building structure that restricts Emerson's access. The Purchaser will abide by OSHA regulations. The Purchaser shall inform Emerson of any known hazardous substance or condition at the site where services are to be performed (site), including, but not limited to, the presence of asbestos or asbestos containing materials. The Purchaser shall appoint a representative familiar with the site, and the nature of the services to be performed by Emerson, to be at the site during the times that Emerson's personnel are at the site. The Purchaser shall not require Emerson or its employees, as a condition to site access or otherwise, to further agree or enter into any agreement, which waives, releases, indemnifies or otherwise limits or expands any rights or obligations whatsoever. Any such agreements shall be null and void.
- d. Requests for Emerson to conduct safety tests, to install or upgrade software, to install new attachments or additional controls, or to make replacements with parts or devices of a different design, regardless of reason, are not included under this Contract. If such work is performed Emerson will invoice the Purchaser for the labor and material as required, in accordance with its current published price policy in effect when the work is performed.
- e. Software Support services are available five (5) days per week, eight (8) hours per day, with a phone or email response time by the next business day. Standard Software Support services are available between

8:00am and 4:30pm EST, Monday through Friday, except on Emerson Holidays. Emergency or additional service beyond these noted hours will be furnished at Emerson's then current premium rates less 10% discount. A list of scheduled Emerson Holidays for the period covered by this Contract will be made available upon request.

- f. Travel time and expenses in conjunction with such emergency or additional service shall be paid by Purchaser at cost plus 10%.
- g. Emerson will invoice the Purchaser for the labor and material as required, in accordance with Emerson's current published price policy in effect when "On Site Software Support" is performed. Such pricing is to be agreed upon before the work is performed.
- h. In the event that the Purchaser's equipment or software installation is altered, modified, changed, or if any equipment is added or deleted or moved within the premises, this Contract may be modified or terminated at Emerson's option. If, at any time, any such changes or attachments create a safety hazard, or interfere with the normal and satisfactory operation or maintenance of the equipment, Emerson may, upon written notice to the Purchaser, require that such safety hazard or interference be promptly corrected at Purchaser's expense.

4. Equipment Replacement/Repair/Troubleshooting

- a. The Purchaser must ship the defective Equipment to Emerson's Local Service Center or to Emerson's Watertown Repair Facilities. All instruments listed in Schedule "A", returned for repair will be restored to original mechanical and electrical operation specification at a 15% discount.
- b. Unserviceable parts for Equipment listed in Schedule "A" will be replaced by new parts at a 15% discount from current list price, or, at Emerson's option, by parts equivalent to new in performance. Such replacement parts will be furnished AS IS, on an exchange basis at a 15% discount. Parts that have been removed and replaced become the property of Emerson. This Contract does not cover expendable supply items such as printer ribbons, paper, paper tape, magnetic tape and diskettes, and paint or refinishing of the subject Equipment. If, in the joint opinion of Emerson and the Purchaser, any Equipment not within warranty of this Contract, and still within its operating performance specifications, is in need of factory reconditioning, an estimate of such costs will be submitted to the Purchaser for approval and payment.
- c. It is agreed that if Emerson is required to make replacements or repairs caused by negligence or misuse of Equipment, or by any other reason of any sort beyond Emerson's direct control, Emerson reserves the right to charge the Purchaser for labor and material as required. These charges would be in accordance with Emerson's current published price policy in effect when the work is performed. This Contract does not cover or include planning, installing, testing and documenting of expansions and modifications requested by the Purchaser, or maintenance services or parts required to maintain accessories, attachments, machines or devices not listed in Schedule "A".
- d. For equipment that is discontinued or obsolete, the maintenance support will be on a reasonable effort basis and any resulting unserviceable discontinued/obsolete hardware is excluded from this agreement.
- e. For equipment not manufactured by Emerson (and listed in Schedule "A"), Emerson will provide diagnostic support services. Any repair and replacement of equipment manufactured by others is not included hereunder.
- f. Requests for Emerson to conduct safety tests, to install new attachments or additional controls, or to make replacements with equipment of a different design, regardless of reason, are not included under this Contract.
- g. Emerson will trouble-shoot input/output problems to the Equipment listed in Schedule "A". If the problem is determined to be in equipment not covered under this Contract, Emerson will notify the Purchaser, and if requested by the Purchaser and agreed to by Emerson, Emerson will coordinate the repair or replacement of the equipment under a separate purchase order from the Purchaser, subject to Emerson's approval.