

AGREEMENT FOR SOUND SYSTEM UPGRADES AT CITY AQUATIC CENTERS

THIS AGREEMENT FOR SOUND SYSTEM UPGRADES AT CITY AQUATIC CENTERS ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City"), and **SYSTEMWERX TECHNOLOGIES, INC.**, a for-profit corporation duly organized and authorized to do business in the State of Florida (EIN: 13-4281589) ("Vendor").

WHEREAS, on February 8, 2021, City issued a Request for Quotation ("RFQ") for the upgrade of sound systems at the City's aquatic centers, RFQ No.: REC/210016 (the "Solicitation"); and

WHEREAS, five (5) firms responded to the Solicitation and, after consideration of price and other evaluation factors set forth in the Solicitation, Vendor was chosen as the intended awardee to provide the sound system upgrades at the City's aquatic centers (the "Project"); and

WHEREAS, Vendor certifies that Vendor and its subcontractors are qualified and possess the requisite experience in sound system installation; and

NOW THEREFORE, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Vendor agree as follows:

1. **RECITALS.** City and Vendor hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The Contract Documents which comprise the entire understanding between City and Vendor shall only include: (a) this Agreement; (b) those documents listed in this section as Exhibits to this Agreement; and (c) the City's Solicitation for the Project and the bid submitted by Vendor in response to same (the "Solicitation Documents"). Each of these documents are incorporated herein by reference for all purposes.

If there is a conflict between the terms of this Agreement and the other Contract Documents, then the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the remaining Contract Documents.

A. **Exhibits to Agreement:** The Exhibits to this Agreement are as follows:

- Exhibit A: Scope of Work (A-1 through A-2)
- Exhibit B: Photos of Jervey Gantt (B-1 through B-3)
- Exhibit C: Photos of Hampton Aquatic Center (C-1 through C-3)

If there is a conflict between the individual Exhibits regarding the scope of work to be performed, then any identified inconsistency shall be resolved by giving precedence in the following order: (1) Exhibit A, then (2) Exhibit B, then (3) Exhibit C.

3. **SCOPE OF SERVICES.** Vendor shall provide all materials, labor, supervision, tools, accessories, equipment, permits, fees, testing, inspections, certifications, and all other things necessary for Vendor to perform its obligations under this Agreement as set forth in the attached **Exhibit A**

- **Scope of Work** and the Solicitation Documents. In the event of a conflict between this Agreement and the Solicitation Documents, this Agreement and all of its Exhibits shall be given precedence to resolve any identified inconsistency. The Scope of Work and/or pricing under this Agreement may only be adjusted by written amendment executed by both parties.

4. **COMPENSATION.** City shall pay Vendor a lump sum amount of **EIGHT THOUSAND, SEVEN HUNDRED SIXTY-FOUR AND NO/100 DOLLARS (\$8,764)** (the "Contract Sum") as full and complete compensation for the timely and satisfactory completion of the work.
 - A. **Invoice Submission.** All invoices submitted by Vendor shall include the City Contract Number, an assigned Invoice Number, and an Invoice Date. Vendor shall submit the original invoice through the responsible City Project Manager at: **City of Ocala Recreation and Parks Department**, Attn: **John Spencer, 828 NE 8th Avenue, Ocala, Florida 34470**, E-Mail: jspencer@ocalafl.org.
 - B. **Progress Report and Progress Schedule.** A progress report and updated project schedule must be submitted with each monthly pay request indicating the Percent of Services Completed to date. This report will serve as support for payment to Vendor and the basis for payment in the event project is suspended or abandoned.
 - C. **Payment of Invoices by City.** The City Project Manager must review and approve all invoices prior to payment. City Project Manager's approval shall not be unreasonably withheld, conditioned, or delayed. Payments by City shall be made no later than the time periods established in section 218.735, Florida Statutes.
 - D. **Withholding of Payment.** City reserves the right to withhold, in whole or in part, payment for any and all work that: (i) has not been completed by Vendor; (ii) is inadequate or defective and has not been remedied or resolved in a manner satisfactory to the City Project Manager; or (iii) which fails to comply with any term, condition, or other requirement under this Agreement. Any payment withheld shall be released and remitted to Vendor within thirty (30) calendar days of the Vendor's remedy or resolution of the inadequacy or defect.
 - E. **Excess Funds.** If due to mistake, or any other reason, Vendor receives payment under this Agreement in excess of what is provided for by the Agreement, Vendor shall promptly notify City upon discovery of the receipt of the overpayment. Any overpayment shall be refunded to City within thirty (30) days of Vendor's receipt of the overpayment or must also include interest calculated from the date of the overpayment at the interest rate for judgments at the highest rate as allowed by law.
 - F. **Tax Exemption.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification

Number is 59-60000392. Vendor shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will Vendor be authorized to use City's Tax Exemption Number for securing materials listed herein.

5. **TIME FOR PERFORMANCE.** Time is of the essence with respect to the performance of all duties, obligations, and responsibilities set forth in this Agreement and the Contract Documents.
 - A. Vendor shall commence work no later than **THREE (3)** working days from the date of issuance of a Notice to Proceed for the Project by City.
 - B. **All work shall be substantially completed by Vendor in a manner satisfactory to the City Project Manager within FOURTEEN (14) DAYS of the City-issued Notice to Proceed. All work under this Agreement must be completed no later than APRIL 15, 2021.**
 - C. The Time for Performance under this Agreement may only be adjusted by Change Order, in the sole and absolute discretion of City. Any request for an extension of the Time for Performance must be submitted in a writing delivered to the City Project Manager, along with all supporting data, within **SEVEN (7)** calendar days of the occurrence of the event giving rise to the need for adjustment unless the City allows an additional period of time to ascertain more accurate data. All requests for adjustments in the Contract Time shall be determined by City.
 - D. As to any delay, inefficiency, or interference in this performance of this Agreement caused by any act or failure to act by City, the Vendor's sole remedy shall be the entitlement of an extension of time to complete the performance of the affected work in accordance with the Contract Documents. Vendor agrees to make no claim for extra or additional costs attributable to said delays, inefficiencies or interference, except as provided in this Agreement.
 - E. None of the provisions of this section shall exclude City's right of recovery for damages caused by delays or inefficiencies caused by any act or failure to act by Vendor, to include costs incurred by City for the procurement of additional professional services.
6. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, pandemics, acts or delays in acting of the government of the United States or the several states, pandemics, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party ("Force Majeure"). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.

The party affected by force majeure shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof, as soon as it becomes aware.

When force majeure circumstances arise, the parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution. Vendor performance shall be extended for a number of days equal to the duration of the force majeure. Contractor shall be entitled to an extension of time only and, in no event, shall Contractor be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.

7. **INSPECTION AND ACCEPTANCE OF THE WORK.** All services, work, and materials provided by Vendor under this Agreement shall be provided under the direction and to the satisfaction and approval of the Project Manager.

A. The Project Manager shall decide all questions regarding the quality, acceptability, or workmanship performed, the rate of progress of the work, and the acceptable fulfillment of the Agreement, in his or her sole discretion, based upon both the requirements set forth by City and the information provided by Vendor in its bid. The authority vested in the Project Manager pursuant to this paragraph shall be confined to the direction or specification of what is to be performed under this Agreement and shall not extend to the actual execution of the work.

B. Neither the Project Manager's review of Vendor's work nor recommendations made by Project Manager pursuant to this Agreement will impose on Project Manager any responsibility to supervise, direct, or control Vendor's work in progress or for the means, methods, techniques, sequences, procedures or safety precautions or programs incident Vendor's furnishing and performing the work

8. **TERMINATION AND DEFAULT.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Documents, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.

A. **Termination by City for Cause.** City shall have the right to terminate this Agreement immediately, in whole or in part, upon the failure of Vendor to carry out any obligation, term, or condition of this Agreement. City's election to terminate the Agreement for default shall be communicated by providing Vendor written notice of termination in the manner

specified for the giving of notices herein. Any notice of termination given to Vendor by City shall be effective immediately, unless otherwise provided therein, upon the occurrence of any one or more of the following events:

- (1) Vendor fails to timely and properly perform any of the services set forth in the specifications of the Agreement;
- (2) Vendor provides material that does not meet the specifications of the Agreement;
- (3) Vendor fails to complete the work required within the time stipulated in the Agreement;
or
- (4) Vendor fails to make progress in the performance of the Agreement and/or gives City reason to believe that Vendor cannot or will not perform to the requirements of the Agreement.

B. **Vendor's Opportunity to Cure Default.** City may, in its sole discretion, provide Vendor with an opportunity to cure the violations set forth in City's notice of default to Vendor. Vendor shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Vendor to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.

C. **City's Remedies Upon Vendor Default.** In the event that Vendor fails to cure any default under this Agreement within the time period specified in this section, City may pursue any remedies available at law or equity, including, without limitation, the following:

- (1) City shall be entitled to terminate this Agreement without further notice;
- (2) City shall be entitled to hire another contractor to complete the required work in accordance with the needs of City;
- (3) City shall be entitled to recover from Vendor all damages, costs, and attorney's fees arising from Vendor's default prior to termination; and
- (4) City shall be entitled to recovery from Vendor any actual excess costs by: (i) deduction from any unpaid balances owed to Vendor; or (ii) any other remedy as provided by law.

9. **VENDOR WARRANTY.** Vendor warrants to City that all labor, materials, and equipment furnished under the Agreement shall be new, of the type and quality required for the Project, and installed in a good and workmanlike manner in accordance with the Contract Documents. Contractor shall guarantee that the work and materials shall be free from any defects in

workmanship and faulty design for a period of not less than **ONE (1)** year from the date of Final Completion. Any and all written manufacturers' warranties for materials supplied must be provided to the City Project Manager before final payment will be authorized.

10. **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Vendor's performance. Any such evaluation will become public record.
11. **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Any contractor who enters into an Agreement with the City of Ocala and fails to complete the contract term, for any reason, shall be subject to future bidding suspension for a period of **ONE (1)** year and bid debarment for a period of up to **THREE (3)** years for serious contract failures.
12. **CONTRACTOR REPRESENTATIONS.** Vendor expressly represents that:
 - A. Vendor has read and is fully familiar with all of the terms and conditions of this Agreement, the Contract Documents, and other related data and acknowledges that they are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of the work to be performed by Vendor under this Agreement.
 - B. Vendor has disclosed, in writing, all known conflicts, errors, inconsistencies, discrepancies, or omissions discovered by Vendor in the Contract Documents, and that the City's written resolution of same is acceptable to Vendor.
 - C. Vendor has had an opportunity to visit, has visited, and has had an opportunity to examine and ask questions regarding the sites upon which the work is to be performed and is satisfied with the site conditions that may affect cost, progress, and performance of the work, as observable or determinable by Vendor's own investigation.
 - D. Vendor is familiar with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement whatsoever.
 - E. **Public Entity Crimes.** Vendor represents that neither Vendor, its parent corporations, subsidiaries, members, shareholders, partners, officers, directors or executives, nor any of its affiliates, contractors, suppliers, subcontractors, or consultants under this Agreement have been placed on the convicted vendor list following a conviction of a public entity crime. Vendor understands that a "public entity crime" as defined in section 287.133(1)(g), Florida Statutes, is "a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States..." Vendor further understands that any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime (1) may not submit a bid, proposal, or reply on a contract:

(a) to provide any goods or services to a public entity; (b) for the construction or repair of a public building or public work; or (c) for leases of real property to a public entity; (2) may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and (3) may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

13. **CONTRACTOR RESPONSIBILITIES.** Except as otherwise specifically provided for in this Agreement, the following provisions are the responsibility of the Vendor:

- A. Vendor shall competently and efficiently supervise, inspect, and direct all work to be performed under this Agreement, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract Documents.
- B. Vendor shall be solely responsible for the means, methods, techniques, sequences, or procedures of installation and safety precautions or programs incident thereto.
- C. Vendor shall be responsible to see that the finished work complies accurately with the contract and the intent thereof.
- D. Vendor shall comply with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement, to include obtaining all permits, licenses, and other authorizations necessary for the prosecution of the work, and be responsible for all costs associated with same.
- E. Vendor shall operate and cause all equipment and materials supplied for or intended to be utilized in the Project to be operated and stored in only those areas prescribed by City. This includes the operations of workers.
- F. Vendor shall be fully responsible for receipt, inspection, acceptance, handling, and storage of all equipment and materials supplied for or intended to be utilized in the Project, whether furnished by Vendor or City. Vendor shall be responsible for providing adequate safeguards to prevent loss, theft, damage, or commingling with other materials or projects.
- G. Vendor shall continue its performance under this Agreement during the pendency of any dispute or disagreement arising out of or relating to this Agreement, except as Vendor and City may otherwise agree in writing.

14. **NO EXCLUSIVITY.** It is expressly understood and agreed by the parties that this is not an exclusive agreement. Nothing in this Agreement shall be construed as creating any exclusive

arrangement with Vendor or as prohibit City from either acquiring similar, equal, or like goods and/or services or from executing additional contracts with other entities or sources.

15. **STORAGE OF MATERIALS/EQUIPMENT.** Vendor shall be fully responsible for receipt, inspection, acceptance, handling, and storage of equipment and materials (whether furnished by Vendor or City) to be utilized in the performance of or incorporated into the work.
16. **RESPONSIBILITIES OF CITY.** City or its Representative shall issue all communications to Vendor. City has the authority to request changes in the work in accordance with the terms of this Agreement and with the terms in **Exhibit A**. City has the authority to stop work or to suspend any work.
17. **COMMERCIAL AUTO LIABILITY INSURANCE.** Vendor shall procure and maintain, for the life of this Agreement, commercial auto liability insurance covering all automobiles owned, non-owned, hired, and scheduled by Vendor with a combined limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage for each accident. Vendor shall name City as an additional insured under the insurance policy.
18. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Vendor shall procure and maintain, for the life of this Agreement, commercial general liability insurance with minimum coverage limits not less than:
 - A. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for bodily injury, property damage, and personal and advertising injury; and
 - B. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for products and completed operations.
 - C. Coverage for contractual liability is also required.
 - D. City, a political subdivision of the State of Florida, and its officials, employees, and volunteers shall be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage regarding liability arising out of activities performed by or on behalf of Vendor. The coverage shall contain no special limitation on the scope of protection afforded to City, its officials, employees, or volunteers.
19. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY.** Vendor shall procure and maintain, for the life of this Agreement, Workers' Compensation insurance and employer's liability insurance in amounts required by applicable statutes. Vendor shall ensure any and all subcontractors have coverage as required by applicable statutes. Vendor is not required to name City as an additional insured under the policies, but a subrogation waiver endorsement is

required. Exceptions and exemptions may be allowed by City's HR/Risk Director, so long as they are in accordance with Florida Statute.

20. **MISCELLANEOUS INSURANCE PROVISIONS.**

- A. Insurance Requirements. These insurance requirements shall not relieve or limit the liability of Vendor. City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect Vendor's interests or liabilities but are merely minimums. No insurance is provided by the City under this contract to cover Vendor. **No work shall be commenced under this contract until the required Certificate(s) of Insurance have been provided.** Work shall not continue after expiration (or cancellation) of the Certificates of Insurance and shall not resume until new Certificate(s) of Insurance have been provided. Insurance written on a "Claims Made" form is not acceptable without consultation with City of Ocala Risk Management.
- B. Deductibles. Vendor's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by City. Vendor is responsible for the amount of any deductible or self-insured retention.
- C. Certificates of Insurance. Vendor shall provide a Certificate of insurance, issued by an agency authorized to do business in the State of Florida and with an A.M. Best rating* of at least an A, showing the "City of Ocala" as an Additional Insured for General Liability, and Business Automobile Liability insurance. Shown on the certificate as the certificate holder should be: **City of Ocala, Contracting Department, 3rd Floor, 110 SE Watula Ave, Ocala, FL 34471; E-Mail: vendors@ocalafl.org.** Renewal certificates must also be forwarded to the Contracting Department prior to the policy expiration. **TEN (10)** days written notice must be provided to the City in the event of cancellation.

*Non-rated insurers must be pre-approved by the City Risk Manager.
- D. Failure to Maintain Coverage. In the event Vendor fails to disclose each applicable deductible/self-insured retention or obtain or maintain in full force and effect any insurance coverage required to be obtained by Vendor under this Agreement, Vendor shall be considered to be in default of this Agreement.
- E. Severability of Interests. Vendor shall arrange for its liability insurance to include General Liability, Business Automobile Liability, and Excess/Umbrella Insurance, or to be endorsed to include a severability of interests/cross liability provision so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.

21. **SAFETY/ENVIRONMENTAL.** Vendor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. Vendor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

- A. All employees on the work and other persons that may be affected thereby;
- B. All work, materials and equipment to be incorporated therein, whether in storage on or off the site; and
- C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of installation.

All, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Vendor, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by Vendor. Vendor's duties and responsibilities for the safety and protection of the work shall continue until such time as the work is completed and accepted by City.

22. **WORK SITE AND CLEANUP.** Daily, during the progress of the work, Vendor shall keep the premises free from accumulations of waste materials, rubbish, and all other debris resulting from the work. At the completion of the work, Vendor shall remove all waste materials, rubbish, and debris from and about the premises, as well as all tools, appliances, equipment, machinery, and surplus materials, and shall leave the site clean and ready for occupancy by City. Vendor shall provide an inventory listing of all surplus materials in an area designated by City. Vendor shall restore to their original condition those portions of the site not designated or alteration by this Agreement.

23. **NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** During the performance of the contract, the Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, sexual orientation, gender identity, marital or domestic partner status, familial status, or veteran status and shall take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.

24. **SUBCONTRACTORS.** Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by City or its representatives to any subcontractor of Vendor or any other persons or organizations having a direct contract with Vendor, nor shall it create any obligation

on the part of City or its representatives to pay or seek payment of any monies to any subcontractor of Vendor or any other persons or organizations having a direct contract with Vendor, except as may otherwise be required by law. City shall not be responsible for the acts or omissions of any Vendor, subcontractor, or of any of their agents or employees. nor shall it create any obligation on the part of City or its representatives to pay or to seek the payment of any monies to any subcontractor or other person or organization, except as may otherwise be required by law.

25. **DELAYS AND DAMAGES.** The Vendor agrees to make no claim for extra or additional costs attributable to any delays, inefficiencies, or interference in the performance of this contract occasioned by any act or omission to act by the City except as provided in the Agreement. The Vendor also agrees that any such delay, inefficiency, or interference shall be compensated for solely by an extension of time to complete the performance of the work in accordance with the provision in the standard specification.

26. **EMERGENCIES.** In an emergency affecting the welfare and safety of life or property, Vendor, without special instruction or authorization from the City Project Manager, is hereby permitted, authorized and directed to act at its own discretion to prevent threatened loss or injury. Except in the case of an emergency requiring immediate remedial work, any work performed after regular working hours, on Saturdays, Sundays or legal holidays, shall be performed without additional expense to the City unless such work has been specifically requested and approved by the City Project Manager. Vendor shall be required to provide to the City Project Manager with the names, addresses and telephone numbers of those representatives who can be contacted at any time in case of emergency. Vendor's emergency representatives must be fully authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice by City or public inspectors.

27. **INDEPENDENT CONTRACTOR STATUS.** Vendor acknowledges and agrees that under this Agreement, Vendor and any agent or employee of Vendor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services and work required under this Agreement. Neither Vendor nor its agents or employees shall represent or hold themselves out to be employees of City at any time. Neither Vendor nor its agents or employees shall have employee status with City. Nothing in this Agreement shall constitute or be construed to create any intent on the part of either party to create an agency relationship, partnership, employer-employee relationship, joint venture relationship, or any other relationship which would allow City to exercise control or discretion over the manner or methods employed by Vendor in its performance of its obligations under this Agreement.

28. **ACCESS TO FACILITIES.** City shall provide Vendor with access to all City facilities as is reasonably necessary for Vendor to perform its obligations under this Agreement.
29. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement to any third party without the prior express approval of the other party, which shall not be unreasonably withheld.
30. **RIGHT OF CITY TO TAKE OVER CONTRACT.** Should the work to be performed by Vendor under this Agreement be abandoned, or should Vendor become insolvent, or if Vendor shall assign or sublet the work to be performed hereunder without the written consent of City, the City Project Manager shall have the power and right to hire and acquire additional men and equipment, supply additional material, and perform such work as deemed necessary for the completion of this Agreement. Under these circumstances, all expenses and costs actually incurred by City to accomplish such completion shall be credited to City along with amounts attributable to any other elements of damage and certified by the Project Manager. The City Project Manager's certification as to the amount of such liability shall be final and conclusive.
31. **PUBLIC RECORDS.** Vendor shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, Vendor shall:
- A. Keep and maintain public records required by the public agency to perform the service.
 - B. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Vendor does not transfer the records to the public agency.
 - D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of Vendor or keep and maintain public records required by the public agency to perform the service. If Vendor transfers all public records to the public agency upon completion of the contract, Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Vendor keeps and maintains public records upon completion of the contract, Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public

records, in a format that is compatible with the information technology systems of the public agency.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: clerk@ocalafl.org; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.

32. **AUDIT.** Vendor shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
33. **PUBLICITY.** Vendor shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
34. **E-VERIFY.** In accordance with Executive Order 11-116, Vendor shall utilize the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Vendor shall also require all subcontractors performing work under this Agreement to utilize the E-Verify system for any employees they may hire during the term of this Agreement.
35. **CONFLICT OF INTEREST.** Vendor is required to have disclosed, with the submission of their bid, the name of any officer, director, or agent who may be employed by the City. Vendor shall further disclose the name of any City employee who owns, directly or indirectly, any interest in Vendor's business or any affiliated business entity. Any additional conflicts of interest that may occur during the contract term must be disclosed to the City of Ocala Procurement Department.
36. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.

37. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
38. **INDEMNITY.** Vendor shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of the activities contemplated by this Agreement including, without limitation, harm or personal injury to third persons during the term of this Agreement to the extent attributable to the actions of Vendor, its agents, and employees.
39. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
40. **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by email. All notices shall be addressed to the respective parties as follows:

If to Vendor: Systemwerx Technologies, Inc.
Attention: Blaine Taylor
386 Hatteras Avenue
Clermont, Florida 34711
Phone: 407-765-0101
E-mail: btaylor@systemwerx.com

If to City of Ocala: Tiffany Kimball, Contracting Officer
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Phone: 352-629-8366
Fax: 352-690-2025
E-mail: tkimball@ocalafl.org

Copy to:

Robert W. Batsel, Jr.
Gilligan, Gooding, Batsel, Anderson, & Phelan P.A.
1531 SE 36th Avenue
Ocala, Florida 34471
Phone: 352-867-7707
Fax: 352-867-0237
Email: rbatsel@ocalalaw.com

41. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.
42. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
43. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.

44. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
45. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
46. **MUTUALITY OF NEGOTIATION.** Vendor and City acknowledge that this Agreement is a result of negotiations between Vendor and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.
47. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
48. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
49. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
50. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
51. **ELECTRONIC SIGNATURE(S).** Vendor, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.

52. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

53. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on 03 / 22 / 2021.

ATTEST:

CITY OF OCALA

Angel B. Jacobs

Angel B. Jacobs
City Clerk

Ken Whitehead

Ken Whitehead
Assistant City Manager

Approved as to form and legality:

SYSTEMWERX TECHNOLOGIES, INC.

/s/ Robert W. Batsel, Jr.

Robert W. Batsel, Jr.
City Attorney

Blaine Taylor

By: Blaine Taylor
(Printed Name)

Title: President
(Vice President or higher)

Vendor shall provide and install new audio equipment at Jervey Gantt Aquatic Fun Center and Hampton Aquatic Fun Center. A total of two (2) new sound systems shall be purchased and installed.

- Jervey Gantt Aquatic Fun Center, 2390 SE 36th Ave., Ocala, Florida 34471
- Hampton Aquatic Fun Center, 255 NW Martin Luther King, Jr. Blvd. Ocala, Florida 34475

Audio equipment will replace inadequate equipment currently on-site. Audio components shall be placed inside the staff office. New speakers shall be mounted in the same locations as current speakers. An AM/FM antenna shall be installed at a location for best radio reception (which may be on the roof or the exterior of the building).

At each pool, Vendor shall remove the following:

1. Existing pole mounted speakers
2. Disconnect and remove existing audio equipment (mixer, CD player, amplifier, etc.).

At each pool, Vendor shall provide and install the following:

1. Two (2) 70-volt type weatherproof *Atlas 12" 2-Way Multi-Purpose Horn Speaker*, or equivalent product.
2. One (1) 70-volt type *Crown CDi DriveCore 2/1200 Power Amplifier*, or equivalent product.
3. One (1) *ART MX821S Rackmount Mic/Line Mixer*, or equivalent product.
 - a. Mixer must have minimal inputs for a microphone, AM/FM tuner, Bluetooth, and 1/8" headphone jack (for MP3 player or smartphones).
 - b. Preferred option: automatically mute the system's music (other channels) when making announcements.
 - c. Label the Mic/Line Mixer with the channel/device input labels.
4. One (1) *Denon DN-300Z CD/Media Player with Bluetooth Receiver and AM/FM Tuner*, or equivalent product.
5. One (1) Bluetooth receiver (if not incorporated into other products)
6. One (1) AM/FM outdoor antennae (if not incorporated into other products)
7. One (1) 1/8" headphone jack for MP3 player or smartphones (if not incorporated into other products)
8. One (1) Desktop Push to Talk PTT Paging Microphone, or equivalent product.

9. One (1) Gator desktop-style rack case
10. Related or additional wiring, conduit, and other components needed to connect and operate the audio equipment.

Requirements

- Vendor must be able to provide and install commercial-grade audio equipment. Vendor must comply with all current commercial audio and electrical standards.
- The City shall coordinate access into the aquatic facilities and pool staff offices for installation of the equipment.
- Vendor shall supply and provide its own hand tools, ladders, or other needed installation equipment.
- Vendor shall provide all safety-related personal protection equipment.
- Vendor shall set a "normal operating volume" level for all channels/devices.
- Vendor shall comply will all current COVID-19 City safety guidelines and procedures, which shall be provided to Vendor prior to the start of the installation.
- Vendor must comply with all City insurance requirements.
- Following the completion of the installation, Vendor must instruct City staff on the proper use of the various features of the sound system.
- Following the completion of the installation, Vendor must provide all equipment manuals and warranty paperwork to City staff.







Feb 16, 2021 at 9:19:30 AM
255 NW Martin Luther King Jr Ave
Ocala, FL 34475
United States



Feb 16, 2021 at 9:11:05 AM
255 NW Martin Luther King Jr Ave
Ocala FL 34475
United States



Feb 16, 2021 at 9:12:03 AM
255 NW Martin Luther King Jr Ave
Ocala FL 34475
United States



TITLE	For Signature: Sound System Upgrades at City Aquatic Centers...
FILE NAME	For Signature - C... - REC 210016.pdf
DOCUMENT ID	c6fec12bc7e54dd0e0ade1957a5d5502f7fd7f30
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Out For Signature

Document History



SENT

03 / 17 / 2021

06:43:30 UTC-5

Sent for signature to Robert W. Batsel, Jr. (rbatsel@ocalalaw.com), Ken Whitehead (kwhitehead@ocalafl.org), Angel B. Jacobs (ajacobs@ocalafl.org) and Systemwerx Technologies, Inc. (kpitgnatelli@systemwerx.com) from plewis@ocalafl.org
IP: 67.231.55.34



VIEWED

03 / 18 / 2021

10:47:31 UTC-5

Viewed by Robert W. Batsel, Jr. (rbatsel@ocalalaw.com)
IP: 216.255.247.51



SIGNED

03 / 18 / 2021

10:59:51 UTC-5

Signed by Robert W. Batsel, Jr. (rbatsel@ocalalaw.com)
IP: 216.255.247.51



VIEWED

03 / 18 / 2021

11:35:16 UTC-5

Viewed by Ken Whitehead (kwhitehead@ocalafl.org)
IP: 216.255.240.104



SIGNED

03 / 19 / 2021

11:22:31 UTC-5

Signed by Ken Whitehead (kwhitehead@ocalafl.org)
IP: 216.255.240.104

TITLE	For Signature: Sound System Upgrades at City Aquatic Centers...
FILE NAME	For Signature - C... - REC 210016.pdf
DOCUMENT ID	c6fec12bc7e54dd0e0ade1957a5d5502f7fd7f30
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Out For Signature

Document History



03 / 19 / 2021
11:27:52 UTC-5

Viewed by Angel B. Jacobs (ajacobs@ocalaf1.org)
IP: 216.255.240.104



03 / 19 / 2021
11:28:05 UTC-5

Signed by Angel B. Jacobs (ajacobs@ocalaf1.org)
IP: 216.255.240.104



03 / 19 / 2021
11:28:05 UTC-5

This document has not been fully executed by all signers.

TITLE	For Signature: Sound System Upgrades at City Aquatic Centers...
FILE NAME	For_Signature__So...__REC_210016_.pdf
DOCUMENT ID	8655988320f780639f064571a1f06f9f3e5fe533
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

Document History



SENT

03 / 22 / 2021

10:02:20 UTC-5

Sent for signature to Systemwerx Technologies, Inc.
 (btaylor@systemwerx.com) from plewis@ocalaf.org
 IP: 67.231.55.34



VIEWED

03 / 22 / 2021

10:04:43 UTC-5

Viewed by Systemwerx Technologies, Inc.
 (btaylor@systemwerx.com)
 IP: 108.189.99.228



SIGNED

03 / 22 / 2021

10:08:00 UTC-5

Signed by Systemwerx Technologies, Inc.
 (btaylor@systemwerx.com)
 IP: 108.189.99.228



COMPLETED

03 / 22 / 2021

10:08:00 UTC-5

The document has been completed.