

**VIA ELECTRONIC MAIL**

April 7, 2011

Patrick T. Rainey, President  
Encore Construction Company, LLC  
370 East Crown Point Road  
Winter Garden, FL 34787

**RE: ITB 110161 – Highland Lakes WTP Improvements**

Dear Mr. Rainey,

This letter is to advise, I will be recommending to the City Commission it approve an agreement for the Highland Lakes Water Treatment Plant Improvement with Encore Construction Company, LLC (ECC) as provided for by the ITB and by ECC's bid dated March 29, 2011.

Accompanying this correspondence you will find one (1) set of Agreement documents. Please print at least two (2) copies, sign and return two sets with original signatures to the Purchasing Office. Our address is 204 N. 5<sup>th</sup> Street, Leesburg, Florida 34748.

We would like to include this item on the City Commission Agenda for April 25, 2011. In an effort to ensure our office can complete all administrative tasks to make this agenda date we request the signed contracts be returned as soon as possible, however, no later than 10:00 AM, Tuesday, April 12, 2011.

Should you have any questions please contact me at (352)728-9880. Congratulations on your successful bid and we look forward to working with you and your company on another successful project.

Respectfully,



Mike Thornton  
Purchasing Manager  
City of Leesburg  
cc: File



Purchasing Division  
2010 Griffin Road, Leesburg, FL 34748  
Phone: (352)728-9880 / Fax: (352)326-6618  
E-mail: purch@leesburgflorida.gov

## AGREEMENT FOR CONTRACTOR SERVICES

**THIS AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2011, between The City of Leesburg, Florida, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the "CITY"), and **ENCORE CONSTRUCTION COMPANY, LLC** whose address is 370 East Crown Point Road, Winter Garden, Florida 34787 (hereinafter referred to as the "CONTRACTOR").

**NOW, THEREFORE**, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the parties agree as follows:

**1. Services.** The CONTRACTOR shall perform the following services: **SEE EXHIBIT "A,"** which is attached and incorporated by reference herein. Nothing herein shall limit the CITY'S right to obtain proposals or services from other contractors for similar projects.

**2. Compensation.** The services shall be performed for an amount not to exceed **\$2,020,000.00**. The cost of the services shall not exceed this amount unless the CITY has executed a written change order approving any increase in price. Included in this amount are:

**A. Base Bid Amount.** The base bid amount of \$1,970,000.00 submitted by the CONTRACTOR in response to Invitation to Bid 110161.

**B. Additive Alternates.** The CITY includes an additional \$50,000.00 for Additive Alternates number 1 & 2.

i. Additive Alternate 1 – Demolition of the existing .2 MG elevated storage tank for \$21,000.00.

ii. Additive Alternate 2 – Landscaping at site for \$29,000.00.

**2. Labor and Materials.** All work will be done in a competent and workmanlike manner, using quality, new materials in compliance with the description in EXHIBIT "A" hereto. CONTRACTOR shall guarantee all materials and workmanship furnished under this agreement as provided in EXHIBIT "A" hereto.

**3. Insurance.** The CONTRACTOR will maintain throughout this Agreement the following insurance:

**a.** Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles. Coverage limit will be \$1,000,000 combined single limits with the CITY named as an additional insured.

**b.** Comprehensive General Liability, including  
Contractor's Protective Liability Product, Completed Operations, and  
Contractual Liability in the amount of \$1,000,000.00  
Employer's Liability - \$500,000.00

Bodily Injury - \$500,000.00 each person  
Property Damage - \$500,000.00 each person  
Personal Injury Liability -\$500,000 each person  
with the CITY named as an additional insured.

c. **Worker's Compensation - Statutory Benefits**

A certificate of insurance evidencing all required coverages shall be delivered to CITY by CONTRACTOR prior to starting work. Each policy shall contain a provision that it may not be canceled for any reason without prior, written notice being given to CITY by the insurer. All policies shall be issued by insurers of recognized responsibility, which are licensed to do business in Florida.

**4. Waiver of Lien.** The CONTRACTOR agrees to make payment of all proper charges for labor and materials supplied and CONTRACTOR shall hold harmless the CITY against any claim arising out of: any unpaid bills for labor, services or materials furnished to this project.

**5. Indemnification.** CONTRACTOR shall defend, indemnify, and save harmless the CITY or any of their officers, agents, or servants and each and every one of them against and from all third party claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY or any of their officers, agents, or servants may be put by reason of personal injury to persons or tangible property of others to the extent caused by the performance of CONTRACTOR'S duties under this Contract, through the negligence of the CONTRACTOR, or through any act or omission on the part of the CONTRACTOR, his agents, employees, or servants. The CONTRACTOR'S indemnification is conditioned on the CITY'S (a) providing reasonable notice to the CONTRACTOR of any claim, and (b) providing reasonable cooperation in the defense of any claim.

**6. Codes, Laws, and Regulations.** CONTRACTOR will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

**7. Permits, Licenses, and Fees.** CONTRACTOR will obtain and pay for any permits and licenses required by law that are associated with the CONTRACTOR'S performance of the Scope of Services. The CITY shall obtain and pay for any permits and licenses required by law that are associated with the CITY'S installation of any equipment and/or materials hereunder.

**8. Access to Records.** CONTRACTOR will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available for examination in person by the CITY at the CONTRACTOR'S place of business during normal business hours. Said records will be maintained for a period of three (3) years after the date of the invoice.

**9. Contingent Fees Prohibited.** The CONTRACTOR warrants that he or she has not employed or retained any company or person, other than a bona fide employee and / or its authorized representative working solely for the CONTRACTOR, to solicit or secure this Agreement and that

he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee and / or its authorized representative working solely for the CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

**10. Payment.** CITY shall compensate CONTRACTOR for their services as detailed in **EXHIBIT "A"** following acceptance of the work by the CITY. No other costs or services shall be billed to the CITY.

**11. Guaranty of Faithful Performance and Payment -** A Public Construction Bond (Performance and Payment Bond), written by a Surety firm satisfactory to the City of Leesburg on the forms attached hereto which comply with Section 255.05(1), Florida Statutes, will be required of the successful Bidder to guarantee that he will deliver a complete project under his Contract in strict accordance with the Contract Documents and that he will pay promptly all persons supplying him with labor or materials for the work.

The Public Construction Bond shall be for an amount not less than the Total Contract Price as agreed to by both parties. The cost of this bond shall be included in the price bid in the Bid Response.

This bond shall be substantially in the form provided herein and written by a qualified Surety firm and through a reputable and responsible surety bond agency licensed to do business in the State of Florida and Lake County and meet the following requirements:

The Surety must be rated as "A" or better as to strength by Best's Insurance Guide, published by Alfred M. Best Company, Inc., 75 Fulton Street, New York, New York.

**Bonding Limit - Any One Risk:** The Bonding Limit of the Surety shall not exceed ten (10) percent of the policy-holders surplus (capital and surplus) as listed by the aforementioned Best's Insurance Guide. The completed Bond shall be executed in four (4) counterparts and delivered to the City of Leesburg with the required Power-of-Authority and executed contract.

**12. Ownership of Documents.** All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or disclosed by the CITY (or by such sub-consultants and specialty consultants of the CITY) in rendering services hereunder shall be the sole property of the CITY. All devices, designs (including drawings), estimates, prices, notes, electronic data and other documents or information prepared or disclosed by the CONTRACTOR, and all intellectual property rights, shall remain CONTRACTOR'S sole property. The CITY and the CONTRACTOR grant to the other party to this agreement a non-exclusive, non-transferable license to use any such material solely for the other parties' use for the manufacturing of, installation of, or the use of the equipment purchased under this agreement. Unless required by applicable law, neither

the CITY nor the CONTRACTOR shall disclose any such material to any third party without the other party's prior written consent. All original documents shall be permanently kept on file at the office of the respective parties.

**13. Independent Contractor.** The CONTRACTOR is an independent contractor and as such will be responsible for paying his own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this agreement.

**14. Assignment.** Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

**15. No Third Party Beneficiaries.** This Agreement gives no rights or benefits to anyone other than the CONTRACTOR and the CITY.

**16. Jurisdiction.** The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

**17. Term and Termination.** Work shall commence within 14 calendar days after CITY issues a Notice to Proceed. All services detailed in the Scope of Services attached as EXHIBIT "A" shall be completed by the CONTRACTOR within 365 days from the date the CITY issues the Notice to Proceed. The term of this Agreement shall be for a period of 365 days or until such time all services have been rendered and accepted by the City, whichever occurs first. All or part of this Agreement may be terminated by the CITY for its convenience on fifteen (15) days written notice to the CONTRACTOR. In such event, the CONTRACTOR will be entitled to compensation for services competently provided prior to cancellation or suspension up to the date of termination. The CONTRACTOR will be entitled to compensation for materials ordered and held in storage that cannot be returned.

**18. Contact Person.** The primary contact person under this Agreement for the CONTRACTOR shall be Tim Behler, Vice - President. The primary contact person under this Agreement for the CITY shall be Al Purvis, Project Manager.

**19. Approval of Contractors.** The CITY reserves the right to approve the contact person and the persons actually performing the CONTRACTOR services on behalf of CONTRACTOR pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of CONTRACTOR pursuant to this Agreement, CITY may require CONTRACTOR assign a different person or persons be designated to be the contact person or to perform the CONTRACTOR services hereunder.

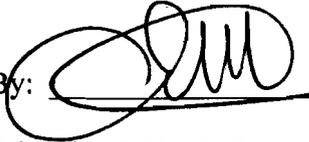
**20. Authority to Obligate.** Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing and bind and obligate such party with respect to all provisions contained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

**21. Notice to Owner.** All Notice to Owners (NTO) issued by sub-contractors and material suppliers must be mailed or delivered to:  
PURCHASING MANAGER, RE: ITB 90211, PO Box 490630, Leesburg, FL 34749 - 0630

*[Rest of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the respective dates under each signature.

**“CONTRACTOR”**  
**Encore Construction Company, LLC**

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

Printed: Patrick T. Rainey

Its(title):  
President

Date: April 12, 2011

**“CITY”**  
**The City of Leesburg, Florida**

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

Attest: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney

**EXHIBIT "A"**

**SCOPE OF SERVICES**

**I. GENERAL**

**A. SCOPE OF WORK**

1. The Contractor shall furnish all labor, materials, supervision, tools, equipment and miscellaneous materials necessary to complete the Highland Lakes Water Treatment Plant Improvements at 26800 Cash Court, Leesburg, Florida.

**B. COST SUMMARIES & PAYMENT**

1. The covered work will be performed for the following prices.

<b>Group Description</b>	<b>Contractor Bid</b>
Item 1 – Mobilization & Demobilization	<b>\$260,000.00</b>
Item 2 – Site Work	<b>\$ 41,000.00</b>
Item 3 – Piping & Valving	<b>\$270,000.00</b>
Item 4 – 0.75 MG Ground Storage Tank	<b>\$400,000.00</b>
Item 5 – High Service (HS) Pump Station Building	<b>\$239,000.00</b>
Item 6 – HS and Well Pumps and Equipment	<b>\$200,000.00</b>
Item 7 – Electrical Equipment & Systems, including Auxiliary Generator	<b>\$370,000.00</b>
Item 8 – Contractor Furnished and Installed Instrumentation and Control Equipment and Systems	<b>\$ 5,000.00</b>
Item 9 – Allowance for City Installed Fiber Optics Service	<b>\$ 10,000.00</b>
Item 10 – Allowance for Siemens Water Technologies Furnished Instrumentation and Control Equipment and Systems	<b>\$170,000.00</b>
Item 11 – Start-Up and Testing	<b>\$ 5,000.00</b>
Additive Alternate 1 – Demolition of .2MG EST	<b>\$21,000.00</b>
Additive Alternate 2 – Site Landscaping per specifications	<b>\$29,000.00</b>
<b>Contract Total</b>	<b>\$2,020,000.00</b>

## **EXHIBIT "A" (cont)**

### **C. WARRANTY**

1. CONTRACTOR shall warrant workmanship against defects for a period of two (2) years from project completion.
2. All material shall be warranted in accordance with the manufacturers' warranty.
3. The two (2) year warranty will be provided in the form of a Warranty/Maintenance Bond on the form provided by the City and from a Surety complying with Florida Statute 255.05(1).

### **D. QUALITY ASSURANCE**

1. The Contractor shall ensure that any work performed by Contractor is performed in accordance with and any applicable manufacturer's installation instructions, and shall ensure that any manufacturer's warranty is in no way voided by such work.

### **E. WORKING HOURS**

1. The Contractor shall perform the work required by this Agreement during the hours and on the scheduled days as agreed to by the City.
2. The Contractor or its designated representative shall check-in with the City upon arrival at the work site and shall also checkout with the City prior to departure from the work site.

### **F. MATERIALS**

1. The City shall not be obligated to provide any materials to Contractor.

## **II. OTHER**

- A. **General Conditions**. The General Conditions from the Invitation to Bid 110161 are incorporated by reference and made a part hereof.
- B. **Special Conditions**. The Special Conditions from the Invitation to Bid 110161 are incorporated by reference and made a part hereof.
- C. **Addenda**. Addendums 1 through 3 of Invitation to Bid 110161 are incorporated by reference and made a part hereof.
- D. **Vendor Bid Submittal**. The bid response to Invitation to 110161 submitted by the vendor is incorporated by reference and made a part hereof.