

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: September 18, 2017

RE: Perpetual Software License and General Consulting Agreement with Power Cost, Inc.

Attached hereto for your consideration is a proposed Perpetual Software License and General Consulting Agreement between Power Cost, Inc. (PCI) and the City of Lakeland, together with the Orlando Utilities Commission (OUC) and the Florida Municipal Power Agency (FMPA) for software known as PCI Generation Supply Management System (GSMS). The GSMS is a pool settlement system software, which will be used by the power pool in computing hourly energy transactions and monthly allocations between its members. This software will be used by the Power Pool and the City in conjunction with the other members.

The Power Pool currently uses software written in Visual Basic 6 using Microsoft Access as the back-end database and spreadsheets in Excel as output. The Visual Basic 6 software is outdated and no longer supported. The use of multiple software applications complicates the process and delays the delivery of results when there are software crashes and glitches. The new software will consolidate applications, eliminating the need for multiple software applications to extract, store and analyze data. PCI will also provide hosting services for the software. As part of hosting service, PCI shall apply all software updates and provide IT and database administration patches, upgrades and database backups and monitoring.

In January 2017, Florida Municipal Power Pool's (FMPP) Steering Committee finalized its recommendation that FMPP select PCI on a sole source basis to provide, implement and host this new software. This GSMS software is the industry standard across North America and, with PCI's hosting capability, was found to be the most cost effective when compared to an in-house solution. This software will simplify and improve the process to compute allocations for Lakeland Electric and the other Power Pool Members, while allowing for greater transparency. Lakeland Electric will also directly participate in the Power Pool reviews and analysis.

Anticipating all Power Pool Members' approvals in late 2017, the term of the Agreement will be for a period of five (5) years. Implementation will begin in early 2018 and the software is expected to be operational by May 2019. The total cost of the project, including five (5) years of hosting services and all updates and support is \$2.5 million dollars, which will be split equally among the three (3) Pool Members. The City's share of the project cost is \$844,431. The proposed cost is included in Lakeland Electric's FY-18 budget.

It is recommended that the appropriate City officials be authorized to execute this agreement with PCI for software and consulting services on behalf of the City.

**PERPETUAL
SOFTWARE LICENSE, HOSTING SERVICES, AND
GENERAL CONSULTING AGREEMENT
BETWEEN**

Power Costs, Inc.

AND

**Orlando Utilities Commission, City of Lakeland and
Florida Municipal Power Agency (All-Requirements
Power Supply Project)**

SOFTWARE LICENSE AND GENERAL CONSULTING AGREEMENT

This Software License and General Consulting Agreement (“Agreement”) is made this ____ day of _____, 2017 (“Effective Date”) between Power Costs, Inc., an Oklahoma corporation with a principal office at 301 David L. Boren Blvd. Suite 2000, Norman, OK 73072 (“Licensor” or “PCI”) and the Orlando Utilities Commission, a statutory commission existing under the laws of the State of Florida with a principal office at 100 West Anderson St., Orlando, Florida 32801, City of Lakeland, a municipal corporation existing under the laws of the state of Florida with a principal office at 501 East Lemon Street, Lakeland, Florida 33801-5079 and Florida Municipal Power Agency (All Requirements Power Supply Project), a joint action agency with offices at 8553 Commodity Circle, Orlando, Florida 32819. The Orlando Utilities Commission (“OUC”), City of Lakeland (“Lakeland”) and Florida Municipal Power Agency (“FMPA”) are referred to herein collectively as the “Licensee” or “Licensee Group.” Licensor and Licensee are referred to herein individually as a “Party” or collectively as the “Parties.”

NOW THEREFORE, in consideration of the promises contained herein, the parties agree as follows:

1.0 Definitions

When used herein with initial capitalization, whether in the singular or in the plural, the following terms shall have the following meanings:

- 1.1 Named User:** Named User accounts are individualized and may not be shared or used by anyone other than the one employee or contractor to whom the Named User account is assigned. The identification of Named User must be unique to an individual and may not be of a generic nature or used by a group of individuals. Licensee may terminate a Named User account and assign said terminated Named User account to another one of its employees or contractors, so long as Licensee does not exceed the total number of allowed Named User accounts under this Agreement.
- 1.2 Hosting Services:** Hosting Services shall be defined in Section 21.0 hereof.
- 1.3 Power System Model:** Within Software, a power system model is defined as a unique portfolio of generation positions within a region (generators, power contracts, fuel contracts, and transmission agreements). The single objective within Software is to maximize the system's profit (minimize loss) through the optimum use of the positions in the power system model.
- 1.4 Software:** The Software is all computer programs in object code, machine-only readable form known as PCI GSMS as described in the attached Exhibit A to this document, which is incorporated into and made a material part of this Agreement by this reference.

- 1.5 Task Consulting:** Work performed by Licensor for Licensee under a mutually agreed Task Order.
- 1.6 Task Order:** A document defining specific tasks to be performed by Licensor for Licensee according to the terms for Task Consulting as defined herein.
- 1.7 Users:** Users shall mean any employees or contractors of each respective entity of the Licensee Group (namely, OUC, Lakeland, and FMFA), and jointly employees or contractors of the Licensee.
- 1.8 Task Order:** A document defining specific tasks to be performed by Licensor for Licensee according to the terms for Task Consulting as defined herein.
- 1.9 Users:** Users shall mean employees of the Licensee and shall exclude employees and contractors of any acquisitions or mergers which occur after the date of this Agreement.

2.0 Document Priority

In the event of conflicting provisions between a Task Order and this Agreement, the provisions of this Agreement shall govern, unless the Task Order specifically states that in the event of a conflict the provisions of the Task Order will govern over the conflicting provisions of the Agreement.

3.0 License Grant

- 3.1** Licensor hereby grants to Licensee Group a non-exclusive, non-transferable perpetual license to use the Software in accordance with the terms of the Agreement. Software may be used in the normal course of business of Licensee for Licensee's portfolio by Users at the number of Named Users specified in the attached Exhibit A.
- 3.2** The license granted in 3.1 is conditioned upon Licensee satisfying the following conditions precedent: (i) Licensee has paid Licensor the perpetual license fee specified in Exhibit A and (ii) this Agreement has been executed by Licensor and Licensee.
- 3.3** Licensee may not sell, assign or otherwise transfer the Software (or any portion thereof) or the license, or sublicense the Software (or any portion thereof) to any other entity or grant a security interest in or over Licensee's rights to use the Software
- 3.4** Licensee may not (and may not permit anyone else to) copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code of the Software or any part thereof, unless this is

expressly permitted or required by law, or unless you have been specifically told that you may do so by Licensor, in writing.

4.0 Ownership

Licensor shall retain title to the Software and to all the documentation, data and information relating to the Software given by or disclosed to Licensee. Licensor shall own and possess all rights, title, and interest in the Software. Licensor expressly has the right to reproduce, publish, sell, license and distribute the Software to anyone. Licensee may not sell, transfer, assign, encumber or otherwise dispose of any Software or any of its rights under the Agreement. The Licensee shall be strictly prohibited from reverse engineering, modifying, decompiling, translating, disassembling, or otherwise attempting to derive source code from any part of the Software for any purpose whatsoever.

4.1 For any Task Consulting, the scope of each task shall be defined in a Task Order for the task.

4.2 Except as otherwise provided in a Task Order, Licensee acknowledges and agrees that any and all deliverables provided as part of the Task Consulting, including, without limitation, any modification or enhancements to the Software, and any ideas, know-how or techniques relating thereto (the “Deliverables”) shall be and remain the property of Licensor. Licensor grants Licensee Group a nonexclusive, nontransferable perpetual license to use such Deliverables for internal use only. However, all Licensee Group data, which is defined herein as such data that is licensed or developed by or on behalf of the Licensee Group, including but not limited to the “Pool Model” or “CHP Settlement”, provided to Licensor in connection with this Agreement, including any such data that is loaded into, or located in, any data files, tables, objects or other storage medium developed or maintained by or on behalf of Licensor shall be owned exclusively by Licensee Group and Licensee Group shall retain all rights, title and interest in such data.

4.3 Licensor acknowledges and agrees that Licensee shall own and possess all rights, title, and interest any and all data, or any other information, regardless of form, related to the market pricing structure, operations, procedures, or practices of Licensee.

4.4 A source code escrow agreement will be executed between Licensor and Licensee upon full payment of the perpetual license fee by Licensee. Licensor shall deliver to a mutually agreed upon software escrow agent a complete copy of all source code relating to the Software, including but not limited to necessary instructions and Software updates, (the “Escrowed Material”) for the benefit of the Licensee Group. The Licensee Group may only use the Escrowed Material for internal purposes for the maintenance of the Software in the event that Licensor cannot demonstrate substantial progress toward its curing of failures to perform in accordance with the terms of the Agreement by the end of the 30th day after Licensor’s receipt of written notice from Licensee which specifies such failures or

if Licensor notifies Licensee, in writing, that Licensor will not continue to perform the Software maintenance and support as agreed to under the Agreement.

5.0 Task Consulting

5.1 Licensee may require Task Consulting services from Licensor from time to time. Licensor and Licensee shall execute a written Task Order for all Task Consulting services performed. Each Task Order shall be signed by the Parties to this Agreement, shall describe the scope of services, schedule, deliverables, Licensee responsibilities, compensation, and any unique terms and conditions. Estimated time to complete, and estimated costs and expenses shall be set forth in each Task Order. Task Consulting services shall be performed at the hourly rates set forth on Exhibit "B" of this Agreement, which is incorporated into and made a material part of this Agreement by this reference.

5.2 Licensor shall perform the Task Consulting services described in each Task Order.

5.3 Licensee shall be responsible for all Licensee matters described in each Task Order.

5.4 Licensee shall pay Licensor in accordance with each Task Order.

5.5 Licensor shall exercise the same degree of care, skill, and diligence in the performance of the Task Consulting services as is ordinarily possessed and exercised by a professional consultant under similar circumstances. No other warranty, express or implied, is included in this Agreement or in any drawing, specification, report, or opinion produced pursuant to this Agreement.

5.6 Licensor shall not be liable to Licensee for any special, indirect, or consequential damages resulting in any way from the performance of the Task Consulting services. Licensor's total liability for a task shall not exceed Licensor's compensation for task consulting services provided under such task.

5.7 Licensee and Licensor waive all rights against each other and their respective directors, officers, partners, commissioners, officials, agents, subcontractors, and employees for any special, indirect, or consequential damages resulting in any way from the performance of Task Consulting.

5.8 Licensor's opinions of probable cost and forecast schedules shall be made on the basis of Licensor's experience and qualifications as a professional consultant. Licensor does not guarantee that proposals, bids, or actual task costs will not vary from Licensor's cost estimates or that actual schedules will not vary from Licensor's projected schedules. Licensor shall inform Licensee immediately when Licensor reasonably believes that Licensor's cost estimate or forecast schedules may vary from those provided by Licensor in any proposal, bid, or Task Order. Licensor shall not exceed, and Licensee shall not be obligated to pay Licensor for, any costs or fees in

excess of those set forth on a Task Order unless prior written authorization to exceed such costs and fees has been given by Licensee. However, if a Task Order includes a “not to exceed” price and Licensee does not provide prior written consent to increase the limit, Licensee shall only be obligated to pay for Services up to and including the “not to exceed” price.

5.9 Licensee shall have the right to terminate a task for Licensee's convenience upon written notice to Licensor, and Licensor shall terminate performance of the task on a schedule acceptable to Licensee. In the event of termination for Licensee's convenience, Licensee shall pay Licensor for all services performed and any related expenses incurred up to the date of termination and termination expenses.

5.10 It is understood and agreed that Task Consulting services of Licensor will be performed by and through the employees of Licensor with Licensor determining the number and which employees will be scheduled to perform the Task Consulting services for Licensee.

5.11 It is understood by both parties that Licensor is an independent contractor with respect to Licensee, and not an employee of Licensee for Task Consulting services. Licensee will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of Licensor.

6.0 Warranty

6.1 Licensor warrants that the Software will perform substantially in accordance with and in the manner described in the System Functional Design Specification, as shown in Exhibit “C,” which is incorporated into and made a material part of this Agreement by this reference. This warranty shall extend for a period of 60 months after the date on which the Software is first installed provided that: (a) the Software is not modified, changed, or altered by anyone other than Licensor, unless authorized by Licensor in writing; (b) the error or defect is not caused by change in the computer equipment (including operating system software) on which Licensor installed the Software; (c) the computer equipment is in good operating order and is installed in a suitable operating environment; (d) the error or defect is not caused by Licensee Group, its agents, servants, employees, or contractors, or any third parties; (e) Licensee Group promptly notifies Licensor of the error or defect after it is discovered; and (f) all fees due at the time to Licensor have been paid. THERE ARE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, THE SOFTWARE, OR ANY SERVICES OR GOODS PROVIDED BY LICENSOR TO LICENSEE IN CONNECTION WITH THE SOFTWARE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR A CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION. Licensee represents that it accepts sole responsibility for: (a) the

selection of the Software to achieve Licensee's intended results; (b) its use; and (c) the results obtained from the Software and Software Documentation. LICENSEE'S SOLE AND EXCLUSIVE REMEDY and Licensor's only obligation under this warranty is to correct all software errors, as soon as practicable, in the most recent release to operate substantially in accordance with the Licensor's then-current function for the Software. Under no circumstances shall Licensor be liable for any loss, cost, expense, or damage to Licensee in an amount cumulatively exceeding the license fee for the Software actually paid by Licensee. Any action by Licensee for breach of this Agreement must be commenced within two (2) years after breach has occurred.

6.2 Licensor warrants that the Software is legally owned by, or has been developed by Licensor or that Licensor is authorized to distribute the Software. Licensor shall, at its own cost, defend, indemnify, and hold harmless Licensee Group, its officers, employees, agents, assigns, and successors in interest from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs including attorney's fees and expenses, or any of them arising out of any claim, actual or alleged, that the Software, or Licensee's use or possession of the Software, infringes any United States copyright, trade secret, patent or other intellectual property right of any third party.

7.0 Confidentiality

It is anticipated by the parties hereto that either party may acquire confidential and proprietary information of the other party. Such information shall be treated as "Confidential Information" (defined below). The parties shall treat all Confidential Information in accordance with Section 7.0 of this Agreement.

7.1 "Confidential Information" as used in this Agreement shall mean all such information that is or has been disclosed by the Disclosing Party (through one of its Representatives (defined below): (i) in writing or by email or other tangible electronic storage medium and is clearly marked "Confidential" or "Proprietary," or (ii) orally or visually, or by means of any other media, which is disclosed in a manner such that a reasonable person would understand the nature and confidentiality of the information. Confidential Information shall include but not be limited to knowledge of the business, trading practices, financial structure, operations and fiduciary relationships of the other party as well as product design information, pricing structures, source code, object code, copyrights, trademarks, patents, and all reports, analyses, notes or other information that are based on, contain or reflect any such Confidential Information. Confidential Information includes Licensee's energy market pricing methodology, fuel costs, electric generating unit costs, and all other information or data relating to Licensee's market pricing, operations, and practices. As used in Section 7, "Representatives" with respect to a party means any officers, directors, employees, agents, independent contractors and/or advisors of the party.

7.2 The Receiving Party agrees, except as required by law, including without limitation, Chapter 119, Florida Statutes: (a) to protect the confidentiality of the other party's Confidential Information as disclosed; (b) to use the Confidential Information

only in accordance with this Agreement; (c) to use the same degree of care as with its own Confidential Information, which shall be at least a reasonable standard of care, to prevent disclosure of the Confidential Information to third parties; and (d) not to disclose to any third party other than said Party's Representatives that are required to access the Confidential Information in order use the Software in accordance with this Agreement.

7.3 The Receiving Party agrees to be responsible for any of its Representatives' breach of provisions of Section 7. Each party acknowledges that money damages would not be a sufficient remedy for any breach of this Agreement. Accordingly, in the event of any such breach, in addition to any other remedies at law or in equity that a party may have, it shall be entitled to equitable relief, including injunctive relief or specific performance, or both.

7.4 The provisions of Section 7 shall be inoperative as to particular portions of the Confidential Information disclosed by the Disclosing Party if such information: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party or its Representatives; (ii) was available on a non-confidential basis prior to its disclosure to the Receiving Party; (iii) is or becomes available to the Receiving Party, its Representatives, or its Affiliates on a non-confidential basis from a source other than the Disclosing Party when such source is not, to the best of the Receiving Party's knowledge, subject to a confidentiality obligation with the Disclosing Party, or (iv) was independently developed by the Receiving Party or its Representatives, without reference to the Confidential Information,, and the Receiving Party can verify the development of such information by written documentation.

7.5 Each party shall retain ownership of all Confidential Information it discloses.

7.6 Upon termination of this Agreement, the Receiving Party will immediately return all Confidential Information disclosed to it, or (ii) will destroy it (with such destruction to be certified by the Receiving Party) without retaining any copy thereof. Termination of the Agreement or return or destruction of the Confidential Information will not affect the confidentiality obligations of the Receiving Party or its Representatives, all of which will continue in effect as provided in this Agreement. Notwithstanding anything in this Agreement to the contrary, the Receiving Party may retain a record copy of any Confidential Information if required to do so by applicable law, including, without limitation, Chapter 119, Florida Statutes. In such an instance, the Receiving Party shall identify in writing the specific Confidential Information retained, and shall provide the Disclosing Party with a written commitment to return or destroy the retained Confidential Information upon the expiration of the retention period required by law. The obligation under this Agreement to maintain the confidentiality of all Confidential Information shall continue to apply to such retained Confidential Information for so long as the Receiving Party possesses such Confidential Information.

7.7 If either party or any of their respective Representatives is requested pursuant to Florida Statute Chapter 119, the Florida Public Records Act or required (by interrogatories, subpoena, or similar legal process) to disclose any Confidential Information, such party agrees to provide the Disclosing Party with prompt notice of

each such request, to the extent practicable, so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the provisions of this Agreement, or both. If, absent the entry of a protective order or receipt of a waiver, the Receiving Party is, in the opinion of its counsel, legally compelled to disclose such Confidential Information, the Receiving Party may disclose such Confidential Information to the Persons and to the extent required without liability under this Agreement. In the event a request is received by the Receiving Party in accordance with Florida Statute Chapter 119, the Florida Public Records Act, the Disclosing Party shall be solely liable for all courts costs and attorneys' fees relative thereto and the Receiving Party shall have no such liability.

7.8 The Licensor understands that under the Florida Statute Chapter 119, the Florida Public Records Act, any person or party holding 'public records' may be subject to statutory fines and penalties, including a requesting parties costs and attorney's fees for failure to make public records available for public inspection upon request. In addition, said person or party may be subject to its own costs and expenses of litigation. With this understanding in mind, the Licensor agrees that in the event the Licensee, in an attempt to comply with this Agreement, refuses to honor a public records request under Chapter 119, Florida Statutes, for examination or inspection of Licensor Confidential Information and is forced to defend its actions in a court of competent jurisdiction, Licensor shall indemnify, defend, and hold Licensee harmless from and against any fines, penalties, costs, attorney's fees and expenses, including attorney's fees, expert fees, court costs and other costs arising from or related to defending any lawsuit brought pursuant to Chapter 119, Florida Statutes; provided, however, Licensor is notified of the request and Licensor fails to respond or claims that its Confidential Information is not a public record under Chapter 119, Florida Statutes. Notwithstanding anything herein to the contrary, Licensee shall be under no obligation to withhold such information unless a specific exemption is provided to Licensee by Licensor consistent with Chapter 119, Florida Statutes, or the information has been claimed by Licensor to be a trade secret. If Licensee becomes legally compelled to disclose any of the Confidential Information or is require to do so under Section 119.07, Florida Statutes , Licensee shall provide Licensor with prompt notice so that Licensor may seek a protective order or other appropriate remedy, and Licensee shall disclose only that portion of the Confidential Information which it is advised by written opinion of its counsel that it is legally required to disclose shall exercise reasonable efforts to obtain reliable assurance that the confidentiality of the Confidential Information will be maintained. Licensor must provide written acknowledgement of its intent to intervene and seek protective measures for any such Confidential Information within 10 business days after notice from Licensee, including the general statutory basis of the exception claimed to the disclosure under Chapter 119 of the Florida Statutes.

7.9 Nothing herein shall be construed to limit disclosure required pursuant to Florida Statute Chapter 119, the Florida Public Records Act or any other applicable law.

8.0 Payment Default

Licensor may terminate this Agreement and Update and Support Service in the event that Licensee shall fail to pay any fees due hereunder, which failure to pay is not cured within thirty (30) days from the due date of such fees. In this case, Licensee shall deactivate the Software and all copies of the Software shall be returned to the Licensor and no further use of the Software by the Licensee is allowed.

Each of the following shall constitute a Licensor default under this Agreement: (a) Licensor is adjudged to be bankrupt; (b) Licensor makes a general assignment for the benefit of its creditors; (c) Licensor fails to comply with any of the terms, conditions or provisions of this Agreement and Licensor cannot demonstrate substantial progress toward curing such failure by the end of the 30th day after it receives written notice from Licensee which specifies such failure; or (d) Licensor is experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this Agreement. If during the term of this Agreement, Licensor shall be in default of this Agreement, Licensee may suspend its performance hereunder until such delinquency or default has been corrected; provided, however that no suspension shall be effective unless and until Licensee gives written notice of default to Licensor with at least thirty (30) days to cure such default. If Licensor fails to correct such delinquency or default, Licensee may terminate this Agreement and pursue such remedies as may be available at law or in equity. Licensee shall not be liable for partially completed work.

9.0 License Fees and Payment Terms

All Update and Support Fee, The License Fees, Annual Update and Support Fees and payment terms for the Software are as specified in Exhibit A attached to this Agreement. Payment is due within thirty (30) days of Licensee's receipt of the invoice. Any amounts due Licensor under this Agreement not received by Licensor by the date due shall be subject to (i) a service charge of one percent (1 %) per month, or the maximum charge permitted by law, whichever is less; and (ii) the provisions of Section 8.0 hereof.

10.0 Audit Rights

Licensee shall maintain such books, records, and accounts as are necessary to account for the use of the Software. Licensee agrees to provide Licensor access to such books, records, and all computers or servers running the Software upon advance notice and during normal business hours. In the event that an audit reveals use of the Software to be inconsistent with the terms of the Agreement, Licensor shall provide Licensee with written notice of the alleged inconsistent use and an opportunity to dispute same. Upon a finding of inconsistent use, Additional License Fees and Update and Support Fees shall be due to Licensor, in amount consistent with the fees set forth in this Agreement, such amount shall be paid to Licensor within thirty (30) days of the date of notice of the inconsistent use.

11.0 Consequential Damages

Neither Licensee nor Licensor shall be liable to the other for any indirect, incidental, punitive, exemplary, special or consequential damages including, but not limited to, loss of anticipated profits, loss of use of or underutilization of labor or facilities, cost of replacement power and claims from customers, resulting from a party's performance or nonperformance of its obligations under the Agreement, or in the event of termination of the Services in accordance with the task order.

12.0 Notices

Any legal notices pertaining to the Agreement shall be (i) in writing and delivered or sent registered mail, postage prepaid, (ii) at each individual address stated in the Agreement for the corresponding party and effective when received. If the notice is to the Licensee Group, then notice shall be sent to OUC (attention Ken Ksionek, General Manager and CEO), Lakeland (attention R. Howard Wiggs, Mayor), and FMPPA (attention Jacob A. Williams, General Manager and CEO), with a copy to Tom Reedy, FMPP Executive Director at:6113 Pershing Ave. Orlando, FL 32802. If the notice is to Licensor, then it shall be sent to Licensor (attention Chief Financial Officer).

13.0 Publicity

Neither Licensor nor Licensee shall issue a release for publication of any articles or advertising or publicity matter relating to the work performed hereunder or implying the nature of the other party without the prior written consent of such other party, which consent shall not be unreasonably withheld. It is understood and agreed that, Licensor shall reference the implementation of the Software at Licensee's Website and in customer reference lists.

14.0 Reserved

15.0 Taxes

The payments payable under the Agreement shall not be construed to include local, state or federal sales, use, excise, personal property or similar taxes or duties ("Taxes"). Any such Taxes, other than taxes based on the net income of Licensor, shall be assumed and paid for by Licensee to the extent that Licensee is subject to such Taxes and unless otherwise exempted by applicable law, in which case Licensee shall provide a valid certificate of exemption upon execution of this Agreement.

16.0 Governing Law (Florida)

This Agreement and the performance hereunder shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any proceeding arising

hereunder shall be in the Courts of Orange County, Florida, or the United States District Court in and for the Middle District of Florida, Orlando Division.

17.0 Severability

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality, or enforceability of the remaining provisions shall be in no way affected or impaired thereby and shall remain in full force and effect.

18.0 No Waiver

Failure of either party to exercise in any respect any of the rights provided for herein shall not be deemed a waiver of any right hereunder.

19.0 Assignment

This Agreement and the rights and duties hereunder shall not be assignable by either party except upon the written consent of the other party which consent shall not be unreasonably withheld.

20.0 Update and Support Services

20.1 Subject to Section 6.0 and upon payment of the applicable Update and Support Fee, Update and Support Service shall include the following:

- a. Telephone service for Licensee to notify Licensor of errors in the Software and for Licensee to receive consulting on the proper or recommended methods of utilizing the Software Monday through Friday 7:00 a.m. to 7:00 p.m. Central time during normal business hours;
- b. Licensor will use its best efforts to promptly confirm the existence of and correct errors in the most recent release of the Software if Licensee notifies Licensor of the same.
- c. Periodic updates of Software modifications applicable to the modules which have been licensed.
- d. Update and Support Services shall include non-major ISO mandated changes excluding major application rewrites, data restructures, and additional modules.

The level of effort assumed for Update and Support Service is based on the following assumptions:

- a. Problems and resolutions are handled by a single point of contact designated by the Licensee.
- b. Licensee is using the Software on one Power System Model.

- c. Licensee shall allow Licensor support staff to access Licensee machines and application servers via Webex or equivalent method when necessary for Software problem diagnosis.
- d. Normal support does not cover correcting errors or ISO updates in the former releases if such errors have already been corrected or ISO updates have been incorporated in a later release.
- e. IT consulting on how to use the PCI API library will be billed on a time and material basis.

While these assumptions are not intended to restrict the use of the Software, extended use beyond these parameters may warrant additional fees for extended Update and Support Services.

20.2 Update and Support Service shall be mandatory for the five-year period commencing on the Delivery Date and shall be optional thereafter.

20.3 Annual renewal of Update and Support Service

Update and Support Fee for the first (5) five years shall be held firm in accordance with the amounts set forth in Exhibit A. Licensor may increase subsequent annual Update and Support Fee from time to time upon reasonable prior written notice to the Licensee Group. Such increase, however, may not exceed the product of (a) the most recent 12-month change in Consumer Price Index – All Urban Consumers (CPI) at the time of such increase plus three percent 3% and (b) Annual Update & Support Fee for the immediately preceding 12-month. Additional support service, such as more than one point of contact or more than one system model may be provided for additional fees as specified in Exhibit A. Update and Support Service shall renew automatically for additional one (1) year terms unless the notice of termination is received by Licensor on or before thirty (30) days prior to the end of the initial Support Service period or any renewal terms. Annual Update and Support Fee will be invoiced 30 days prior to the anniversary date of the Delivery Date of the Software, and payment of such invoice is due net 30 days after date of invoice.

20.4 Reinstatement

If Licensee terminates Update and Support Service in accordance with the provisions of this Agreement, Licensee may reinstate such service at a future date if Licensee gives Licensor written notice of its intent to exercise such right and pays the lapsed annual Update and Support Fee(s). If Update and Support Service is suspended by Licensor due to Licensee non-payment, Licensee will continue to be charged the applicable Update and Support Fee during any period of suspension.

21.0 Hosting Services

Upon Licensee's payment of the Hosting Fees for the applicable annual period, Licensor shall provide Hosting Services for the Software as defined in this section and its subsections and in accordance with the attached PCI Hosted Solutions Functional Specification, hereto attached Exhibit "F" to this document, which is incorporated into and made a material part of this Agreement by this reference. Hosting Services constitutes a hardware platform remote from Licensee's facilities on which the Software is installed for access by Licensee's Users. Hosting Services shall include system administration, database administration, and all aspects of Software installations and upgrades.

21.1 As part of the Hosting Services, PCI shall apply all Software updates and provide IT and database administration. The IT and database administration provided by PCI shall consist of:

- a. Operating system, database and WebLogic patches, updates, and upgrades
- b. Operating system and database backups
- c. System, database and local network monitoring
- d. Operating system, database, local network security
- e. Operating system, database and local network troubleshooting and error resolution
- f. Internet availability monitoring
- g. User account administration
- h. Performance Tuning

21.2 If Licensee requests additional IT and database administration services beyond that specified in Section 21.1, additional fees may be required.

21.3 Licensee will monitor the operation of the Hosting Services and notify PCI if tasks and interfaces are not functioning properly. For those functions under Licensee's control, and as directed by PCI, Licensee will take the recommended remedial actions to correct malfunctions in the tasks and interfaces.

22.0 Non-Hire

Each party recognizes that the other party has incurred and will incur significant expenses in training its own employees and agrees that during this Agreement and for a period of twelve (12) months after its termination, in whole or in part, it will not directly solicit the services of (i) an employee of the other party or (ii) a former employee of the other party whose employment with the other party ended less than twelve (12) months prior to the date of such hiring (unless such employment ending was at the discretion of such employee's employer or such employee accepted a company severance or benefit package offered by the employee's employer), provided, however, that this provision shall not apply if the employer

or former employer of such individual consents in writing to such solicitation. The term “directly solicit” shall not include any employment of personnel through the means of advertisements, job postings, job fairs and the like.

23.0 No Obligations

Except as to the obligations as expressly set forth in this Agreement, neither Licensor nor Licensee shall be deemed to have assumed any obligation to enter any other agreement with the other. Further, this Agreement does not create any agency or partnership relationship between the Parties.

24.0 Headings

The Parties agree that the captions and headings contained in this Agreement are for convenience only and shall not be deemed to constitute a part of this Agreement.

25.0 Export Control

Parties each agree to take such measures as may be necessary to ensure that the disclosure of Confidential Information complies with any export control laws which may govern such disclosure. The Receiving Party represents and warrants that no technical data it receives in conjunction with the Confidential Information that is subject to the export control laws of the United States of America (“U.S.”) shall be exported from the U.S. or re-exported from any other country without first complying with all export control laws and regulations of the U.S. Government including the requirement for obtaining any export license, if applicable. The Receiving Party shall indemnify and hold the Disclosing Party harmless from all claims, demands, damages, costs, fines, penalties, attorney’s fees and all other expenses arising from its failure to comply with this clause and/or applicable export control laws and regulations.

26.0 Entire Agreement

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the exclusive and complete statement of the Agreement between the parties hereto and supersedes all prior proposals, understandings and agreements, whether oral or written, relating to the subject matter hereof. This Agreement may not be modified except by written instrument duly executed by both parties.

27. Severability; Counterparts.

This Agreement may be signed in one or more counterparts. Regardless of whether multiple Licensees may have entered into this Agreement, the rights and obligations of each Licensee shall be independent of the rights and obligations of each other Licensee who enters into this Agreement. Notwithstanding the foregoing, each Licensee understands and recognizes that payment default of other member(s) of the

Licensee Group, if not cured as specified in Section 8 of the Agreement, shall result in termination of the Agreement in accordance with Section 8.

28. This Agreement shall take effect upon the date that the last Party executes this Agreement.

IN WITNESS WHEREOF, the Licensor and Licensee have duly executed this Agreement.

LICENSOR

Power Costs, Inc.

Signature

Sandy B. Ho

Printed Name

Chief Financial Officer

Title

Date

LICENSEE

THE ORLANDO UTILITIES COMMISSION,

By: _____
Ken Ksionek, General Manager

Date

LICENSEE

CITY OF LAKELAND, FLORIDA,
a Florida municipal corporation

(CORPORATE SEAL)

By: _____
R. Howard Wiggs, Mayor

By: _____
Kelly S. Koos, City Clerk

Approved as to form and correctness:

By: _____
Timothy J. McCausland, City Attorney

Date

LICENSEE

FLORIDA MUNICIPAL POWER AGENCY,

By: _____
Jacob A. Williams, General Manager and CEO
Florida Municipal Power Agency

Date

Exhibit A
License Fees and Payment Terms

I. Licensed Software:

- PCI Pool Settlement System
 - 10 Named Users
- PCI Pool Settlement Data Mart
 - Unlimited Named Users

Total Perpetual License Fee: \$600,000

II. Update and Support Services Fees:

Licensee hereby agrees to acquire the Update and Support Services for the 5-year period commencing on the date on which the Software first passed the site acceptance test (“Maintenance Start Date”) and pay the related annual Update and Support Services Fee by their respective due dates as specified in the table below:

Payment Due Date	Update and Support Period	Annual Update and Support Services Fee (Note 4)
Maintenance Start Date	The one year period commencing on the Maintenance Start Date	\$150,000
The 1 st anniversary date of the Maintenance Start Date	The one year period commencing on the 1 st anniversary date of the Maintenance Start Date	\$150,000
The 2 nd anniversary date of the Maintenance Start Date	The one year period commencing on the 2 nd anniversary date of the Maintenance Start Date	\$150,000
The 3 rd anniversary date of the Maintenance Start Date	The one year period commencing on the 3 rd anniversary date of the Maintenance Start Date	\$150,000
The 4 th anniversary date of the Maintenance Start Date	The one year period commencing on the 4 th anniversary date of the Maintenance Start Date	\$150,000

III. Hosting Services Fees

Fees for the Hosting Services for the 5-year period commencing on the date on which the Software is first installed on the hosted hardware (“Hosting Service Start Date”). Licensee agrees to pay for the amounts by their respective due dates as listed in the table below.

Payment Due Date	Payment Amount
The date on which the Software is first installed on the hosted hardware (“Hosted Service Start Date”)	\$105,000

The 1 st anniversary date of the Hosted Service Start Date	\$45,000
The 2 nd anniversary date of the Hosted Service Start Date	\$45,000
The 3 rd anniversary date of the Hosted Service Start Date	\$45,000
The 4 th anniversary date of the Hosted Service Start Date	\$45,000

NOTES:

1. The above discounted License Fee for the additional software will be used for the Licensee's portfolio with up to 50 units totaling 5 GW. Additional license fee shall be due if the use of the system exceeds these limits.
2. License Fee above does not include costs of hardware and the 3rd party software (Oracle Database, Oracle WebLogic).
3. Perpetual License Fee will be paid by Licensee in the following milestone:

Milestone	Milestone Description	Milestone Payment
1.	Upon contract signing	\$180,000
2.	Upon completion of design document	\$120,000
3.	Upon initial installation of PCI Pool Settlement System on Licensee servers	\$165,000
4.	Upon initial installation of PCI Pool Settlement Data Mart on Licensee servers	\$15,000
5.	Upon completion of PCI Pool Settlement System site acceptance test	\$110,000
6.	Upon completion of PCI Pool Settlement Data Mart site acceptance test	\$10,000
	Total License Fee	\$600,000

Licenseor will issue invoice to Licensee upon completion of each of the milestone. Licensee agrees to pay the invoice within 30 days.

4. Included in the Annual Update Support Services Fees are PCI standard Update and Support Services as specified in Section 20 of the Agreement and up to 160 hours of services per year to maintain Licensee specific features and to implement new functionalities.
5. Licensee agrees not to use the Software for production purposes until after the completion of site acceptance.
6. Hosting Services include the provision of the following environments: one production environment, one test/dev environment, and one disaster recovery environment. Licensee will have the option to request additional environment for Hosting Services at the fee of \$1,500 per month per environment. The initial setup of the additional environment will be billed to Licensee on a time and material basis at Licenseor's standard hourly rate.

Travel Expenses

Travel expenses for on-site services, including installation and initial training, shall be paid by Licensee Group.

Exhibit B
Consulting Services Rates

Position	Standard Rate (\$/hr)
Vice President	\$400
Director	\$350
Senior Consultant; Project Manager	\$300
Senior Application Engineer; Consultant;	\$250
Senior Analyst	\$200
Analyst	\$150

The above Hourly Rate may be revised from time to time by PCI by providing prior written notice to Licensee Group. For this pool-billing project, PCI will use a discounted flat hourly rate of \$200 per hour

Exhibit C

System Functional Specifications



PCI_Design_Doc_F
MPP_V8_14June16_F

Exhibit D

Press Release Template

FOR IMMEDIATE RELEASE

Contact: Stuart Wright

Media

Power Costs, Inc. (PCI)
405 701-7378
swright@powercosts.com

[New Customer] Selects PCI for [GSMS Components] Solution

[Date] – Norman, OK – PCI is pleased to announce [New Customer] has selected PCI to [provide GSMS solution]. The implementation of PCI's solution will [provide New Customer with...].

[New Customer] selected PCI after an extensive evaluation that encompassed numerous demonstrations across multiple functionalities as well as an in-depth technology review.

"[New Customer Quotation]," said [Name], [Title].

[Statement on Implementation to be written].

"[PCI Quotation]," said [Name], [Title] at PCI.

About [New Customer]

[New Customer - About Statement].

About Power Costs, Inc. (PCI)

PCI is the leading provider of generation supply management and optimization software to energy focused companies. Founded in 1992 by Dr. Fred Lee, PCI continues to develop power industry software solutions, superior customer support and value-added services for top-tier energy customers. More than half of all power generation in the United States use PCI software solutions. PCI is a privately held company based in Norman, Oklahoma with offices in Houston, Texas and Raleigh, North Carolina. To learn more about PCI, please visit www.powercosts.com.

Exhibit E

Issue and Solution Tracking document



PCI Issue and
Solution Tracking Gi

Exhibit F

Hosted Solution Functional Specification



PCI Hosted
Solution Functional

Exhibit G

OUC Security Questionnaire for Hosted Vendor Solutions & Vendor Answers



Security_Questionai
re_for_Hosted_Vend



PCI_Response_OUC
_Security_Questiona

Exhibit H

SOFTWARE ESCROW AGREEMENT



Escrow Agreement -
FMPP.doc