

MEMORANDUM

TO: MAYOR AND CITY COMMISSION
FROM: CITY ATTORNEY'S OFFICE
DATE: October 19, 2020
RE: **Agreement with CenState Contractors Inc. for Rehabilitation of Northside WWTP Headworks**

Attached hereto for your consideration is a proposed Agreement with CenState Contractors Inc. (CenState) of Winter Haven FL for rehabilitation of the headworks structure at the Northside Wastewater Treatment Plant.

The project will include removal of a portion of the top concrete slab, water and sand blasting of the walls to remove loose concrete and coatings, apply cementitious grout, apply new coatings, installation of aluminum covers in place of the concrete top slab, extension of odor control ducting, new screening equipment, and a new grit classifier.

Tetra Tech Inc was engaged to produce bid ready plans and specifications for the construction of the needed repairs and new equipment. Accordingly, the City's Purchasing Department issued Invitation to Bid No. 0259 to procure the services of a qualified and experienced contractor to perform this work. The bid form included an alternative line item for screening equipment that provides higher removal of solids than the equipment specified in the base bid. Since the alternative cost was reasonable and within the budget, Water Utilities is selecting the alternative equipment. All bids were evaluated with the alternative included. The following nine (9) responses to the Invitation to Bid were received:

Contractor	Location	Evaluated Price
CenState Contractors	Winter Haven, FL	\$1,406,862
TLC Diversified Inc	Palmetto, FL	\$1,472,700
Florida Design Contractor	Lake Park, FL	\$1,594,972
Vogel Brothers Building	Lakeland, FL	\$1,595,944
Carr & Collier Inc	Leesburg, FL	\$1,672,703
Prime Construction Group	Orlando, FL	\$1,785,584
Wharton Smith Inc	Sanford FL	\$1,889,000
Lawrence Lee Construction	Stuart, FL	\$1,867,000
Intercounty Engineering	Pompano Beach, FL	\$2,067,611

City Staff, as well as Tetra Tech Inc evaluated the bids and determined that CenState was the most responsive bidder. Subsequently a Notice of Intent to award was sent out on October 9, 2020.

CenState will perform all services in accordance with the terms/conditions contained in the contract documents. All work will be substantially complete 270 calendar days from the Notice to Proceed. The total cost of the project will be \$1,406,862 and has been included in Water Utilities' FY2021 budget.

It is recommended that the appropriate City officials be authorized to execute this Agreement with CenState Contractors for the Rehabilitation of the Headworks Structure at the Northside Wastewater Treatment Plant.

Attachment

SECTION 00500

AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 20__, by and between the City of Lakeland, Florida, (hereinafter called the OWNER) and CenState Contractors Inc. (hereinafter called CONTRACTOR);

WITNESSETH:

THAT WHEREAS, OWNER has caused to be prepared specifications, plans and other contract documents as further defined in OWNER Invitation to Bid No. 0259; and,

WHEREAS, CONTRACTOR has submitted to OWNER a Bid in accordance with the terms of said Invitation to Bid; and,

WHEREAS, OWNER, in the manner prescribed by law, has determined and declared the aforesaid company to be the best evaluated bidder for the said work and has duly awarded to them a contract therefor, for the sum or sums named herein;

NOW THEREFORE, OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – INCORPORATION OF RECITALS

The foregoing recitals are true and correct and are incorporated herein by reference.

ARTICLE 2 - SCOPE OF WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work generally involves the following:

Structural rehabilitation of certain portions of the Northside Water Reclamation Facility headworks and various other piping, mechanical, and structural improvements.

The CONTRACTOR shall perform all Work Orders associated with the Work set forth in the Specifications and Contract Documents for the:

City of Lakeland
Northside Water Reclamation Facility Headworks Rehabilitation
Dated August 14, 2020

and shall execute and complete all Orders included in and covered by the OWNER'S official award of the Contract Agreement to the said CONTRACTOR.

ARTICLE 3 - ENGINEER

The Project has been designed by Tetra Tech, whose address is 201 E. Pine Street, Suite 1000, Orlando, Florida, 32801, who is hereinafter called ENGINEER, and who will assume all duties and responsibilities and will have the rights and authority assigned to the ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIME

- 4.1 The Work, as defined in Article 2, will be substantially and finally completed on the following time line for each portion of the Work, as listed below. For purposes of this Contract, the structural rehabilitation, piping improvements, new screening systems, and new grit classifier will be deemed substantially complete after the systems have been inspected and returned to service for seven (7) days without incident. Placing equipment in service does not constitute acceptance of work. Final Completion shall be when all Work is in service and ready for final payment in accordance with Article 14 of the General Conditions. The contract time will commence to run on the date of Notice to Proceed. Substantial completion for the Northside WRF Headworks Rehabilitation project and all associated appurtenances shall be 270 calendar days from Notice to Proceed. Final completion shall be 300 calendar days from Notice to Proceed.
- 4.2 Liquidated Damages. OWNER and CONTRACTOR recognize that **TIME IS OF THE ESSENCE** of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties in proving the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER \$2,000.00 for each day that expires after the time specified in paragraph 4.1 for Substantial Completion until the Work, as defined in Article 2, is substantially complete. This amount represents an estimate of OWNER's damages for loss of use and administrative costs associated with delay. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 4.1 for completion and readiness or fail to complete the remaining Work within the time specified in paragraph 4.1 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER \$2,000.00 for each day that expires after the time specified in paragraph 4.1 for completion and readiness of project including all installation and refurbishment.

ARTICLE 5 - CONTRACT PRICE

- 5.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds at the lump sum or unit prices as presented in the Bid Form, which is incorporated herein and made a part hereof by this reference.

5.2 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the amount below:

Lump Sum of One million four hundred six thousand eight hundred sixty two dollars
(use words)

Lump Sum of \$1.406,862.00
(figures)

5.3 The parties expressly agree that the Contract Price is a stipulated sum, except with regard to those items in the Bid which are subject to unit prices. As provided in Article 11 of the General Conditions estimated quantities are not guaranteed and determinations of actual quantities and classification are to be made by ENGINEER as provided in paragraph 9.07 of the General Conditions.

ARTICLE 6 - PAYMENT PROCEDURES

6.1 Price shall be as stated in Article 5.

6.2 CONTRACTOR and ENGINEER will agree on the portion of work that is complete, and CONTRACTOR shall submit Applications for Payment in accordance with this Article. Applications for Payment will be reviewed by ENGINEER and sent to the CITY when payment is recommended.

6.3 Progress Payments: CITY shall make progress payments on account of the Bid Price on the basis of CONTRACTOR'S monthly Applications for Payment, as recommended by the ENGINEER, within 35 days after the ENGINEER receives the Application for Payment. If there is a dispute in any portion of the Application for Payment, the CITY shall pay and the CONTRACTOR agrees to accept the amount that is not in dispute.

6.4 Payments made by CONTRACTOR: CONTRACTOR shall pay any portions due but not in dispute to all subcontractors and material suppliers in the lesser of 30 days after CONTRACTOR is invoiced or within 10 days from when CONTRACTOR is paid by the CITY.

6.5 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or CITY may withhold for defective or unaccepted work or for liens and claims against CITY or CONTRACTOR, or any other good cause.

6.5.1 Ninety percent (90%) of the value of Work completed, with the balance being retainage.

6.5.2 Ninety percent (90%), with the balance being retainage of the value of materials and equipment not incorporated in the Work, but delivered, suitably stored and accompanied by documentation satisfactory to CITY that CONTRACTOR has paid for said materials and equipment.

6.5.3 Upon the completion of 50% of the work, the CITY may, unless good cause exist, increase total payments to CONTRACTOR to ninety five percent (95%) of the Contract

Price, with the balance being retainage, less such amounts as ENGINEER shall determine, or CITY may withhold, for defective or unaccepted work or for liens and claims against CITY or CONTRACTOR.

- 6.6 Final Payment. CONTRACTOR will be ready for final payment upon final completion of the Work described in Article 2 herein and in accordance with the Task Authorization, and submittal of all Record Drawings, specifications, addenda, modifications and shop drawings, written and/or extended warranties, and all manufacturers instructional and parts manuals are delivered to and accepted by the ENGINEER and CITY.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 7) and the other related data identified in the Bidding Documents including "technical data."
- 7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- 7.4 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities). CONTRACTOR accepts the determination of the extent of the "technical data" contained in such drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.02 of the General Conditions. CONTRACTOR acknowledges that such drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

- 7.5 CONTRACTOR is aware of the general nature of Work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- 7.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 7.7 CONTRACTOR has given OWNER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

The Contract Documents which comprise the entire Agreement between the OWNER and CONTRACTOR are attached to this Agreement, are made a part hereof and consist of the following:

- 8.1 This agreement (pages 1 to 8 inclusive).
- 8.2 Exhibits to this Agreement (sheets 0 to 0, inclusive).
- 8.3 Performance Bond, Payment Bond and Certificates of Insurance (Project Manual Sections 00610, 00620 and 00650, respectively).
- 8.4 Notice of Award and Notice to Proceed (Project Manual Sections 00841 and 00842, respectively).
- 8.5 General Conditions (Project Manual Section 00700) as amended by the Supplementary Conditions.
- 8.6 Supplementary Conditions (Project Manual Section 00800).
- 8.7 City of Lakeland Invitation to Bid No. 0259 – Northside WRF Headworks Rehabilitation for the Water Utilities Department, dated August 14, 2020.
- 8.8 Project Manual For the City of Lakeland Northside WRF Headworks Rehabilitation, hereafter, "Project Manual" prepared by Tetra Tech, and consisting of Volume I, Divisions 0 through 16, inclusive.
- 8.9 Addenda numbers _ through _ inclusive.
- 8.10 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.04 of the General Conditions.

- 8.11 Bid Form (Project Manual Section 00300) (Pages 1 to 15, inclusive) and all documents attached to and made a condition of the Bid.
- 8.12 City of Lakeland Indemnification Form executed by CONTRACTOR.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended, or repealed in accordance with Article 3 of the General Conditions as modified in the Supplementary Conditions.

ARTICLE 9 – MISCELLANEOUS

- 9.1 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns or legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.2 Terms used in this Agreement, which are defined in the General Conditions, shall have the meanings indicated in the General Conditions, and in the Supplementary Conditions.
- 9.3 No assignment by a party hereto of any rights under, or interests in, the contract documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due, and moneys that are due, may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the contract documents.
- 9.4 Notwithstanding any other provision of this Agreement, City may, upon written notice to the CONTRACTOR, terminate this Agreement if (a) CONTRACTOR is adjudged to be bankrupt; (b) CONTRACTOR makes a general assignment for the benefit of its creditors; (c) CONTRACTOR fails to comply with any of the conditions or provisions of this Agreement, including failure to complete work within the specified time frames; or (d) CONTRACTOR is experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this Agreement, without prejudice to any other right or remedy City may have under this Agreement. In the event of termination, City shall be liable only for the payment of all unpaid charges, determined in accordance with the provisions of this Agreement, for work properly performed prior to the effective date of termination.
- 9.5 Should any local, state or federal government or agency make a significant and material change in permit conditions or requirements, fail to issue any necessary permits, or grant required approvals to enable the parties to carry out the intent and purpose of this Agreement, then to the extent that such requirements would affect any party's performance hereunder, the affected party shall be excused from performance to the extent affected. Provided, however, the parties shall undertake to re-negotiate that portion of the Agreement to bring it into conformity with the approvals or requirements.

9.6 It is understood and agreed that the written terms and provisions of this agreement shall supersede all past or contemporaneous oral and written negotiations and such past or contemporaneous negotiations shall not be construed as being part of this agreement.

9.7 IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: KEVIN COOK - DIRECTOR OF COMMUNICATIONS AT: PHONE: 863-834-6264, E-MAIL: KEVIN.COOK@LAKELANDGOV.NET, ADDRESS: ATTN: COMMUNICATIONS DEPARTMENT, 228 S. MASSACHUSETTS AVE., LAKELAND, FLORIDA 33801.

In accordance with Florida Statute §119.0701, CONTRACTOR shall keep and maintain public records required by OWNER in performance of services pursuant to this AGREEMENT. Upon request from OWNER's custodian of public records, CONTRACTOR shall provide OWNER 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 pursuant to Florida Statute Chapter 119 or as otherwise provided by law. CONTRACTOR shall 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 this Contract term and following completion of this Contract if CONTRACTOR does not transfer the records to OWNER. CONTRACTOR shall, upon completion of this Contract, transfer, at no cost, to OWNER all public records in possession of CONTRACTOR or keep and maintain public records required by OWNER to perform services pursuant to this Contract. If CONTRACTOR transfers all public records to OWNER upon completion of this Contract, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of this Contract, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to OWNER, upon request from OWNER's custodian of public records, in a format that is compatible with the information technology systems of OWNER.

ARTICLE 10 - GOVERNING LAW

The parties agree that this Contract is governed by and construed in accordance with the laws of the state of Florida. Venue for any action brought pursuant to this Contract Agreement shall be Polk County, Florida, or the U.S. District Court, Middle District of Florida.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in quadruplet. Three counterpart each has been delivered to OWNER, and one to CONTRACTOR, with copy to ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on _____, 20_.

OWNER: **CITY OF LAKELAND**

CONTRACTOR: **CenState Contractors Inc**

BY: _____

BY: _____

NAME: H. William Mutz
(type)

NAME: _____
(type)

TITLE: Mayor

TITLE: _____

ATTEST: _____

ATTEST: _____

NAME: _____
(type)

NAME: _____
(type)

Address for giving notices:

Address for giving notices:

Mark Raiford, Purchasing Manager
City of Lakeland Purchasing Department
1140 E. Parker Street
Lakeland, FL 33801

Florida State
Contractor's License No. _____

Approved as to form and correctness:

_____, 20__.

_____, City Attorney

END OF SECTION