

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: October 18, 2021

RE: **Agreement with Schneider Electric Smart Grid Solutions, LLC for Upgrade of Graphical Work Order Electronic Distribution Design Application**

Attached hereto for your consideration is a proposed Agreement with Schneider Electric Smart Grid Solutions, LLC (Schneider) for an upgrade of the Graphical Work Order Electronic Distribution Design application and the dependent Maximo interface including the corresponding Graphical Information System (GIS) platform. Lakeland Electric's current Graphical Work Order Electronic Distribution Design software package (Designer) is a critical tool that staff engineers and technicians use on a daily basis to design and maintain Lakeland Electric's transmission, distribution and lighting system. Lakeland Electric's Transmission and Distribution construction crews pick materials and construct the City's electric infrastructure in accordance with Maximo work orders that are generated in Designer by Energy Delivery's engineers and technicians.

Schneider's Designer version 10.6.1 is fully integrated with and fully dependent on the current version of Environmental Systems Research Institute (ESRI) client-server online geographical information system (ArcGIS). Designer also interfaces bi-directionally with Maximo. This current 10.6.1 version of Designer and ArcGIS will be de-supported by Schneider at the end of 2023. Operating unsupported versions past this date exposes the City to security and operational concerns.

Accordingly, the City's Purchasing Department has approved Schneider, the original system provider, as the sole source supplier for this work. Pursuant to this Agreement, Schneider will provide a scope of work that includes: (1) upgrading ArcGIS and its extension, ArcFM, version 10.6.1 to version 10.8.1 for continued support; (2) upgrading of Schneider's Designer version 10.6.1 to version XI to interface with ArcGIS version 10.8.1; and (3) updating and rewriting the Designer-Maximo interface to ensure compatibility among the three (3) applications of ArcGIS, Designer and Maximo. Additionally, Schneider will also provide all necessary training, user and factory acceptance testing and support. Below is a summary of the work and associated costs.

Scope of Work Cost	
ArcFM 10.8.1 Upgrade	\$ 126,183
Designer XI Implementation	\$ 567,150
Maximo/DXI Integration	\$ 316,216
TOTAL	\$1,009,549

Upon approval by the City Commission, Schneider will begin project planning with an anticipated project kickoff to occur in October 2021. The project is estimated to take eighteen (18) months with acceptance testing and training to be completed in March 2023. The work will be governed in accordance with terms and conditions contained in the attached Agreement. The total cost of the work is \$1,009,549 and is included in Lakeland Electric's FY22 budget and FY23 budget, subject to the City Commission's approval of the budget.

It is recommended that the City Commission approve this Agreement with Schneider for an upgrade of the Graphical Work Order Electronic Distribution Design application and authorize the appropriate City officials to execute all corresponding documents associated with the purchase.

Attachments

This Professional Services Agreement ("Agreement") made effective on the 18th day of October, 2021 ("Effective Date") by and between City of Lakeland, Florida, a municipality organized and existing in accordance with the laws of the State of Florida, ("Client") and Schneider Electric Smart Grid Solutions, LLC, a limited liability company organized under the laws of Delaware ("Contractor"), and collectively the "Parties" and individually, "Party" with reference to the following:

WHEREAS, Client requires Contractor to perform certain professional Services as defined in each applicable Task Order to this Agreement; and

WHEREAS, Contractor has the expertise necessary to perform such Services; and

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and promises the Parties hereby agree as follows:

Article 1 – Scope of Agreement

This Agreement establishes the framework in order to enable Contractor to provide professional Services to Client and its Affiliates. "Services" means work described in an applicable Task Order/Statement of Work ("SOW") that is agreed upon by both Parties in the format set forth in Attachment A. The Parties agree that the terms of this Agreement will govern all purchases by Client of Services unless otherwise agreed by the Parties in writing. Pre-printed terms contained in any Client purchase order shall not apply to any of the Services provided under this Agreement

"Affiliate" means any corporation or other entity that owns or controls, is owned or controlled by, or is under common control or ownership with a Party. A corporation or other entity shall be deemed to control another corporation or entity if it, directly or indirectly, owns more than fifty (50%) percent of the voting shares or other interest, or has the power to elect more than half the directors or representatives of such other corporation or entity.

Article 2 – Responsibilities of Contractor

- a. **Professional Standards.** Contractor shall perform all Services and provide all products as specified in this Agreement and the applicable Task Order. In performing the specified Services, Contractor shall follow practices consistent with the professional and technical standards in the industry.
- b. **Staffing.** Contractor will furnish Services in the amount necessary to complete the work promptly and effectively and shall be responsible for the supervision and direction of the work by its employees. For each Task Order, Contractor shall identify a designated project manager, who shall be empowered to act for the Contractor in accordance with this Agreement in all matters relating to the technical administration and staffing matters relating to the Services as defined in the Scope of Work set forth in each Task Order.
- c. **Change in Key Contractor Staff.** Should Contractor's project manager be unable to complete his/her responsibility for any reason, Contractor will provide replacement personnel of equal qualifications, education and experience. Contractor will be responsible to bear any relocation, training, and expenses associated with providing such replacement personnel including the time necessary for such personnel to become familiar with the Services already performed.

Article 3 – Independent Contractor

Nothing contained herein or any document executed in connection herewith, shall be construed to create an employer-employee partnership or joint venture relationship between Client and Contractor. Contractor is an independent contractor and not an employee of Client, or any of its subsidiaries or Affiliates. The consideration set forth in a Task Order or SOW shall be the sole consideration due to Contractor for the Services rendered hereunder.

Article 4 – Responsibilities of Client

- a. **Staffing and Project Manager.** Client agrees that its officers and employees will cooperate with Contractor in the performance of Services under this Agreement and will be available for consultation with Contractor at such reasonable times as do not conflict with their other responsibilities. In each Task Order, Client shall identify its designated Project Manager, who shall be empowered to act for the Client in accordance with this Agreement and shall have sole discretion to review the quality, acceptability and fitness of Services performed and items provided by the Contractor.
- b. **Change in Key Client Staff.** Should Client's Project Manager be unable to complete his/her responsibility for any reason, Client will provide replacement personnel of equal qualifications, education and experience. Client will be responsible to bear any relocation, training, and expenses associated with providing such replacement personnel including the time necessary for such personnel to become familiar with the Services already performed.
- c. **Data, Resources and Facilities.** Upon request by Contractor, Client, without charge, will reasonably furnish or make available for examination or use any data and/or Client resources that is necessary for Contractor to complete the Services.

Client shall also provide Contractor sufficient access to the hardware and software system(s) required for the performance of the Services. Remote access to Client's systems may also be required and such access may be provided through an external connection such as Citrix, VNC (Virtual Network Connection), VPN (Virtual Private Network), or PCAnywhere. If Client is not able to provide access via an external connection, then Client may be required to supply additional hardware and equipment.

- d. **Specification of Deliverables.** The specifications of deliverables described in each Task Order are intended as precise guidance as to the conduct within a project. However, the Client realizes that different combinations of work practice, updated technological approaches, and modern equipment can potentially yield a final product of accuracy and quality equal to that proposed in each Task Order.
- e. **Backup and Recovery.** During the entire course of the project, Client will be responsible for backup/recovery of all onsite project related digital data, materials and databases. Contractor will be responsible for backup/recovery of all project related data housed on Contractor computer systems.

Article 5 - Acceptance

- a. **Deliverable Review.** All deliverables as defined in each SOW ("Deliverable(s)") shall be submitted to Client for review and categorization as detailed in Article 5(c) below. Unless otherwise agreed to in a Task Order, Client shall have fourteen (14) days to categorize the Deliverables and Contractor shall be notified in writing of any delays in the review period unless otherwise modified by the SOW. Should Client fail to notify Contractor in writing within fourteen (14) days, the Deliverables shall be deemed accepted.
- b. **Compliance.** All reviews will be performed on the basis of work correctness and compliance with the Agreement. Client reserves the right to return for correction within the review period any Deliverables that are in error or have not been prepared within the specifications set forth in the applicable SOW.
- c. **Classification of Deliverables.** After review, Deliverables shall be classified as follows:
 - (i) **DELIVERABLE ACCEPTED,** shall be defined as a Deliverable conforming to the SOW or meeting the specifications, with no more than minor and/or isolated exceptions or nonconformities. In such case Client will take responsibility for any necessary corrections.
 - (ii) **DELIVERABLE ACCEPTED WITH REWORK,** shall be defined as a Deliverable essentially conforming to its specification, but having a significant number of isolated exceptions, and is accepted pending re-editing and correction by Contractor. Contractor shall re-edit the work for the indicated errors and resubmit within 30 days. Client will rerun its acceptance checks for the classes of errors detected in the initial check and will reclassify the Deliverable(s) as either ACCEPTED or REJECTED.
 - (iii) **DELIVERABLE REJECTED,** shall be defined as a Deliverable failing to conform to the SOW or to meet specification in ways that indicate that major improvements in procedure are needed to avoid recurrence. Contractor shall rework the Deliverable and resubmit to Client within thirty (30) days, at which time the Client will rerun its acceptance check and reclassify the work.
- d. **Client Delays.** Client must exercise due diligence and shall ensure that factors beyond the control of Contractor, such as Client delays and failure to fulfill Client responsibilities, will not interfere with Contractor's ability to complete the Services. Client shall notify Contractor of any such factors that may cause delays in the completion of tasks or changes to the SOW, and both Parties will mutually determine required modifications to this Agreement.
- e. **Final Acceptance and Certification.** At the conclusion of project acceptance, Contractor will request that Client sign a final acceptance certificate and Client shall have fourteen (14) days to sign off on the final acceptance certificate. Should Client fail to notify Contractor of their acceptance in writing within fourteen (14) days of receiving the final acceptance certificate, all of the Deliverables shall be deemed accepted. In addition, should Client use any of the Deliverables in a Production Environment prior to receipt of an acceptance certificate, such use shall constitute deemed acceptance on part of Client. A "Production Environment" is defined as a computer system consisting of hardware that is executing the Software in an environment that is accessed by end users and is part of Licensee's system of record database system for live business operations.

Article 6 – Changes to the SOW

Client may at any time request additions, modifications or deletions to the SOW set forth in each Task Order. If such changes cause an increase or decrease in the cost of, or time required for, performance of the Services, an equitable adjustment shall be made in the fixed fee, and the Task Order shall be modified in writing accordingly, using the form provided in Attachment B. Project members may discuss or make arrangements for changes in the SOW, but any verbal or written communication between or among Client and Contractor project personnel shall not be construed as a modification to the conditions of the Agreement unless a formal modification is executed using the scope change order form provided.

Article 7 – Compensation and Invoices

- a. **Fixed Fee for Tasks.** Client shall pay Contractor the fixed fee for each task performed as outlined in the applicable Task Order. If changes in the schedule are made by written consent of both Parties that affect the completion of tasks or change the order of the tasks that affect milestone acceptance, the Contractor has the right to invoice based on a partial milestone completion percentage. In the event any work task is not 100 percent complete, Contractor will submit sufficient documentation to assure the Client that Contractor has satisfactorily performed such tasks. This preliminary acceptance for payment in no way abrogates Contractor's responsibility to correct any errors in compensated work tasks. The maximum amount that Contractor may be paid for each task, unless otherwise provided by written authorization from Client, shall be as specified in the Task Order. Each Milestone payment amount includes the labor plus any out-of-pocket expenses. All costs for services shall be quoted in US Dollars. The Contractor will submit an invoice and Milestone Acceptance Form (Attachment C, attached hereto and made a part hereof), identifying the Milestone delivered, and the expected amount. The Client will have fifteen (15) days to approve or reject the Milestone Acceptance form, the signature of which constitutes acceptance of the deliverables within the Milestone. Failure on the part of Client to reject the Milestone within fifteen (15) days will constitute acceptance. Invoice terms are 45 days net, following receipt of invoice in accordance with Florida Statute §218.74 et. seq., the Local Government Prompt Payment Act. The Contractor will provide bank wiring instructions for wire transfer. Any invoices that are past due are subject to an interest at a rate of 1% per month on any unpaid balances.
- b. **Time and Materials Efforts.** Contractor's labor rates are set forth in Attachment D hereto and shall be used as a basis for payment for services performed on a time and materials basis. These rates include wages, salaries, employee taxes, insurance, overhead and profit. The rates in effect upon execution of a Task Order/SOW, will remain in effect until the Task Order/SOW are complete. The hourly salary rates set forth in Attachment D hereto shall be held firm through September 30, 2024, but thereafter are subject to an annual equitable adjustment on September 30th of each subsequent year. Contractor shall notify Client, in writing, of any such rate adjustment by September 30th of each subsequent year. Any adjustments to the Fee Schedule must be mutually agreed to, in writing, by the Client and Contractor. Failure to reach an agreement on fees and costs shall cause this Agreement to terminate in accordance with the provisions set forth in Article 12. Contractor's transportation, lodging and meal expenses shall be paid in

accordance with Client's Consultant Expense Reimbursement Policy contained in Attachment E hereto. All costs for services shall be quoted in US Dollars.

- c. Exclusive of Shipping, Handling, and Taxes. The price excludes all present or future sales taxes, excise taxes, value-added taxes, import and export duties and any other taxes, surcharges or duties now existing or hereafter imposed by Government authorities upon Services provided by the Contractor. Client shall be responsible for all such taxes and duties resulting from this Agreement. The Contractor is required to impose taxes on orders and shall invoice the Client for such taxes and/or fees according to state and local statute, unless the Client furnishes the Contractor at the time of order with a properly completed exemption certificate(s) acceptable to the authorities imposing the tax or fees.

Article 8 – Indemnification

- a. General Indemnity. To the extent permitted by law, each Party (the "Indemnifying Party") agrees to indemnify the other Party (the "Indemnified Party"), its officers, directors and employees from and against any and all third Party claims, damages, costs, expenses (including, but not limited to, reasonable attorneys' fees and costs) or liabilities to the extent resulting from the Indemnifying Party's gross negligence or willful misconduct arising from or related to the performance of the work pursuant to this Agreement. It is the intent of this Agreement that each Party to this contract shall bear the risk of and liability for its own actions arising from or related to the performance of the work pursuant to this Agreement. Client shall continue to have any other remedies available at law, subject to the limits of liability set out herein. Notwithstanding the foregoing, the Client does not waive its right to sovereign immunity under Florida Statute §768.28.
- b. Copyright and Intellectual Property Rights. Contractor will indemnify, at its expense, any action or proceeding brought against Client by a third Party to the extent that it is based on a claim that any part of the Deliverables provided, or their use under this Agreement, infringes any copyrights, trademarks, patents or other intellectual property right in Canada or United States ("Claim"). Client shall promptly notify Contractor in writing of any infringement action or proceeding that has been brought or threatened of which it is aware. Contractor will settle or defend the action and pay the costs and damages awarded in any action or proceeding, provided that Contractor has control of the defense of any action and all negotiations for settlement or compromise in connection therewith. In the event that a final injunction is obtained against Client's use of any part of the Deliverables by reason of infringement of a foregoing proprietary right, or if in Contractor's opinion the Deliverables is likely to become the subject of a claim for such infringement, Contractor shall at its option and expense, either:
 - (i) procure for Client the right to continue using such portion of the Deliverables; or
 - (ii) replace such portion of the Deliverables with a non-infringing and non-misappropriating functional equivalent satisfactory to Client or
 - (iii) modify such portion of the Deliverables in a way satisfactory to Client so that it becomes non-infringing and non-misappropriating.

Contractor will have no indemnification obligations under this section with regard to any Claim that is based upon (a) a modification of the Deliverables made by Client (other than at Contractor's written direction); (b) use of the Deliverables in combination with products, data or business methods not provided by Contractor, if the infringement or misappropriation would not have occurred without the combined use; (c) use of any release of the Deliverables if, as of the date of a Claim or threatened Claim, the infringement or misappropriation would not have occurred through use of a more recent release of the Deliverables; (d) any use of the Deliverables by Client other than for Client's internal use; (e) use by Client after notice by Contractor to discontinue use of all or a portion of the Deliverables.

- c. Data for Work Execution. It is understood among the Parties that the Contractor is relying solely upon information, data, records, documentation, and maps already in existence and copy made available through public record or confidential sources by the Client to the Contractor with which to perform its obligation under this Agreement, and that the resulting work product is informational only and may not be relied on as a substitute for documents of records.

Article 9 – Limitation of Liability

Contractor's liability, including the liability of any Subcontractors or Affiliates, to Client in contract tort, strict liability or otherwise regarding the Services or Deliverables provided under this Agreement, is limited to amounts paid by Client under the Statement of Work which is the basis for the liability. In no event will, Contractor, or any Subcontractor or Affiliate be liable for any indirect, special, or consequential damages, including lost profits, even if advised of the possibility of such damage or loss. The Parties expressly acknowledge and agree that they have entered into this Agreement, including the prices herein, in reliance upon the limitations of liability specified herein, which allocate the risk between Contractor and Client. If any remedy hereunder is determined to have failed in its essential purpose, all limitations of liability, disclaimers and exclusions of warranty and damages set forth in this Agreement shall remain in effect. The limitation of liability stated in this Article shall not apply to damages resulting from personal injury, death or property damage to tangible physical property which results from Contractor's or any Subcontractor's or Affiliate's gross negligence or willful misconduct.

Article 10 – Insurance

- a. Insurance Coverage. Contractor shall maintain in force, throughout the term of the Contract or any extension thereof, insurance with the following coverage and limits:
 - (i) If applicable, Automobile Insurance, including Non-Owned Automobile Liability, in the amount of not less than one million dollars (\$1,000,000). Such policy shall provide that it shall not be cancelled except upon thirty (30) days prior written notice by Contractor to the Client.
 - (ii) Professional Errors and Omissions Insurance in the amount of not less than one million dollars (\$1,000,000). Such policy shall provide that it shall not be cancelled or amended so as to reduce or restrict coverage except upon thirty (30) days prior written notice by Contractor to the Client.

- (iii) Commercial General Liability Insurance on an occurrence basis with limits of at least one million dollars (\$1,000,000) inclusive for both bodily injury (including death) and property damage for each occurrence including the following extension: Products and Completed Operations, Blanket Written Contractual, Personal Injury, Broad Form Property Damage, and Employer's Liability. Such policy shall: (i) Contain a severability of interest clause and cross liability clause between the Contractor and the Additional Insured; (ii) Be primary, noncontributing with, and not in excess to any insurance available to the Additional Insured; (iii) Provide that it shall not be cancelled or amended so as to reduce or restrict coverage except upon thirty (30) days prior written notice by Contractor to the Client.

(iv)

Network Security and Privacy Liability Insurance: This insurance shall be a “claims made” type policy and shall protect the City against claims arising from Contractor’s acts, errors or omissions including electronic or non-electronic security events for:

- a. Contractor’s actual or alleged breach of any confidence, or violation or infringement of any rights to privacy or other legal protections for personal information, including breach of a person’s right of publicity, public disclosure of a person’s private information, or misappropriation of a person’s picture or name for commercial gain;
- b. Contractor’s breach of duty to:
 - i. protect the security and confidentiality of customer records and information;
 - ii. protect against threats or hazards to the security or integrity of such records;
 - iii. protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer;
 - iv. protect any personally identifiable information, or other private or confidential information; under any statute including but not limited to HIPAA and GLB acts, or under any contract, including but not limited to Contractor’s privacy statement;

The retroactive date of this “claims made” policy must be earlier than or equal to the start date of this contract. The Contractor shall purchase this coverage for a period of three years beyond the completion of this project.

- (i) The liability limits shall be \$1,000,000 per claim

- b. Copies of Insurance Policies. At the Client's request, Contractor will provide a memorandum of insurance to Client upon execution of this Agreement reflecting Contractor’s liability insurance coverage, limits to liability to the extent required by this Agreement, insured entities, and blanket endorsements. With the exception of Workers’ Compensation, Professional Errors and Omissions Insurance and Cyber Liability Insurance, the City of Lakeland should be listed as an additional insured.
- c. Workers Compensation. Contractor shall ensure that, with respect to all persons performing the Services, Contractor and its subcontractors maintain in effect at all times during performance of the Services, coverage or insurance in accordance with the applicable laws relating to Workers' Compensation.

Article 11 – Confidential Information

- a. Obligations. During the term of this Agreement, both Parties agree that (a) Confidential Information will be used only in accordance with the terms and conditions of this

Agreement; (b) each will use the same degree of care it utilizes to protect its own confidential information, but in no event less than reasonable care; and (c) the Confidential Information may be disclosed only to employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. Both Parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information. "Confidential Information" means all information disclosed by either Contractor or Client ("Disclosing Party") to the other Party ("Recipient") during the term of this Agreement that is either (y) marked confidential or (z) disclosed orally and described as confidential at the time of disclosure and subsequently set forth in writing, marked confidential, and sent to the Recipient within thirty (30) days following the oral disclosure.

b. Exclusions. Confidential Information will not include information:

- (i) which was in Client's possession without any obligation of confidentiality prior to the disclosure thereof by Contractor to Client and was not acquired by Client directly or indirectly from Contractor;
- (ii) which is or later becomes a matter of public knowledge without any fault or negligence on the part of Client;
- (iii) which Client receives without any obligation of confidentiality from a third Party who is rightfully in possession of such information;
- (iv) which is developed by Client independently of Contractor and without reference to any of the confidential information of Contractor; or
- (v) which Client is required by law to disclose, including Florida Statute Chapter 119, the Florida Public Records Act.

Both Parties acknowledge and agree that disclosure of any of the Confidential Information would cause serious and irreparable harm to the Disclosing Party which could not adequately be compensated for in damages and, in the event of a breach, or an anticipated breach, by the Recipient of any of the provisions of this Agreement, the Recipient hereby consents to an injunction being issued against it restraining it from such anticipated breach or any further breach of such provision (as applicable), but such action shall not be construed so as to be in derogation of any other remedy which may be available in the event of such breach or anticipated breach.

The Recipient shall immediately notify the Disclosing Party of any unauthorized possession, use or knowledge of the Disclosing Party's Confidential Information which becomes known to a responsible officer of the Recipient.

c. Public Records.

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

Article 12 - Term and Termination

- a. This Agreement shall be effective September 20, 2021 and shall remain in effect until September 30, 2024, unless cancelled or otherwise terminated as provided for herein. Additionally, the term may be extended by mutual written agreement of the Parties for two (2) additional one (1) year periods. In no event shall this Agreement extend beyond September 30, 2026.
- b. Termination For Cause. This Agreement may be terminated in whole or in part in writing by either Party in the event of substantial failure by the other Party to fulfill its obligations under this Agreement through no fault of the terminating Party. In the event Contractor is in default under this Agreement because of a failure to fulfill any material obligation contained herein, Client shall give written notice to Contractor of such default and in the event the Contractor has not remedied the default as soon as reasonably possible, but no later than thirty (30) calendar days from Contractor's receipt of said notice the Agreement may be terminated; provided that no such termination may be effected unless the other Party is given: (1) not less than fifteen (15) working days written notice of intent to terminate, and (2) an opportunity for consultation with the terminating Party in order to correct any such default prior to termination.
- c. Termination for Convenience. The Agreement may be terminated in whole or in part in writing by Client for its convenience, provided that no such termination may be effected unless Contractor is given: (1) not less than ten (10) working days written notice of intent to terminate, and (2) an opportunity for consultation with Client prior to termination.
- d. Delivery Following Termination. Upon receipt of a notice of termination, Contractor shall: (1) promptly discontinue all Services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to Client all finished or unfinished documents and all information which have been accumulated, or prepared by Contractor in performing Services under the Agreement.
- e. Payment Following Termination. Contractor shall be paid on a pro rata basis for work completed under this Agreement through the effective date of termination including any

associated wind-down expenses incurred by Contractor, all return travel and subsistence expenses associated with returning Contractor employees and/or subcontractors to their permanent duty locations.

- f. Persistence of Property Rights. Upon any termination of the Agreement, Client may take over the work and prosecute the same to completion by Agreement with another Party or otherwise. The provisions of Article 13, Property Rights, shall apply.
- g. Suspension of Work. If, prior to completion, work under this agreement is stopped or suspended by Client, Contractor shall be paid on a pro rata basis for work completed under this Agreement through the effective date of suspension, including any associated wind-down expenses incurred by Contractor, and all return travel and subsistence expenses associated with returning Contractor employees and/or subcontractors to their permanent duty locations. In addition, prior to restarting work, both Parties will negotiate a change in scope as provided in Article 6 to address any necessary additions in time or expense to complete the work as a result of the suspension. Suspension of work will not terminate this agreement. All other terms and conditions of this Agreement shall remain in force until such time as work is resumed or terminated as provided in this Article, such period of time not to extend beyond ninety (90) days from the issuance of the suspension without the mutual consent of both Parties.

Article 13 – Intellectual Property Rights

- a. Use of Proprietary Skills, Tools, and Data. Each Party reserves the right to use, for any purpose, any programming tools, skills, and techniques previously acquired, developed or used in the performance of the Services described herein. Nothing in this Agreement shall be construed as restraining either Party, their employees, or agents in the use of the techniques and skills of computer programming and design which may be utilized or acquired in the course of performance of this Agreement.
- b. License To Use. Contractor grants to Client, subject to the terms of this Agreement, a personal, nontransferable, nonexclusive license to use and copy the Deliverables solely for Client's internal business purposes. Client shall include Contractor's copyright notice and any other legend of ownership on all copies of the Deliverables as such notice appears on the originals. The Services and Deliverables delivered hereunder are not "work for hire". With the exception of the portions of Deliverables that contain data (either spatial or non-spatial) relating to the land, facilities and customers of Client, Contractor shall own all right, title, and interest to such Services and Deliverables.
- c. Excluded Uses. Client shall not make, sell, translate, export, license, sublicense, localize, use with any time-sharing or for service bureau arrangements, or transmit to any person outside of Client's internal business organization the Deliverables.
- d. Provision Against Derivation of Source Code. Client shall not reverse engineer, decompile, disassemble or apply any process, technique, or procedure or make any attempt to ascertain or derive the source code of the core product used in conjunction with the Deliverables.
- e. Any patentable or unpatentable discoveries, ideas, including methods, techniques, know-how, concepts, or products ("Inventions") created by Contractor specifically applicable to software wholly owned by Contractor during the course of the project shall be the sole and exclusive property of Contractor. Any patentable or unpatentable

discoveries, ideas, including methods, techniques, know-how, concepts, or products (“Inventions”) created jointly by Client and Contractor during the course of the project and are independent of Contractor’s software shall be co-owned and jointly shared property of Client and Contractor. With respect to any Inventions of Client relating to Contractor’s software, Client hereby grants and agrees to grant Contractor an irrevocable, royalty-free, nonexclusive, worldwide right and license, with right to sublicense, use, make, sell, offer to sell, or import such Inventions for any purpose, whether or not patented in the country of such past or intended use. Client agrees to disclose promptly to Contractor (i) each Invention relating to the Contractor software and made or conceived by Client’s Inventors during the term of this Agreement and (ii) of any decision to file a patent application with respect to such Invention and the country or countries in which such application will be filed.

- f. **Ownership.** Except as set forth in Section a. above, no direct or indirect ownership interest or license rights in Inventions, Works of Authorship or other intellectual property including software or patents are granted or created by implication in this Agreement.
- g. **Performance of Similar Service.** Contractor may perform the same or similar Services for others, including providing the same or similar conclusions and recommendations, provided that Client’s Confidential Information is not disclosed.

Article 14 – Audit

- a. **Inspection.** Contractor shall maintain records of performance under this Agreement and make these records available for inspection and audit by Client.
- b. **Audit.** Audits conducted pursuant to this Article shall be in accordance with generally accepted auditing standards and established procedure and guidelines of the reviewing or auditing agency.
- c. **Term.** Records maintained under terms of the above shall be maintained and made available during performance of Services under this Agreement and until three years from date of final payment. In addition, those records which relate to any dispute, appeal, litigation, or the settlement of claims arising out of such performance or costs of items to which an audit exception has been taken shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim, or exception.

Article 15 – Covenant Against Contingent Fees

Contractor warrants that no person or company other than Contractor employees have been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; nor has Contractor paid or agreed to pay any person other than Contractor employees, company, corporation, individual, or firm any fee, commission, contribution, donation, percentage, gift, or any other consideration contingent upon or resulting from award of this Agreement. For any breach or violation of this provision, Client shall have the right to terminate this Agreement without liability.

Article 16 – Force Majeure

Neither Party shall be considered in default in the performance of its obligations hereunder, to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such Party. Any delays beyond the control of either Party shall automatically extend the time schedules as set forth in this Agreement by the period of any such delay.

Article 17 – Governing Law

This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida, without regard to such state’s choice of law provisions, if any, which may dictate that the law of another jurisdiction shall apply. Venue shall be in Polk County, Florida, or the United States District Court in and for the Middle District of Florida, Tampa, Division.

Article 18 – Assignment

Any attempt by Contractor to assign or otherwise transfer any interest in this Agreement without the prior written consent of Client shall be void provided, however, that claims for compensation due or to become due to Contractor from Client under this Agreement may be assigned without such approval. Notice of any such assignment or transfer shall be furnished promptly to Client.

Article 19 – Notice

Any notice required or permitted to be given hereunder shall be deemed to have been given when received by the Party to whom it is directed by personal service, hand delivery, or mail delivery as follows:

TO CLIENT: Tracy Kirkpatrick
City of Lakeland
501 East Lemon Street
Lakeland, FL 33801

TO CONTRACTOR: Schneider Electric Smart Grid Solutions, LLC
Contracts
2620 E. Prospect Rd, Suite 130
Fort Collins, CO 80525

Either Party may change its representative or address above by written notice to the other.

Article 20 – Non-Hire

It is hereby mutually agreed that Client will not solicit, hire, or contract with any employee(s) of Contractor's staff who are associated with efforts called for under this Agreement during the term of this Agreement and for a period of one (1) year thereafter. In the event the foregoing provision is breached, liquidated damages equal to twelve (12) months of the employee's compensation plus any legal expenses associated with the enforcement of this provision shall be paid by the Client to Contractor.

Article 21 – Warranty Disclaimer

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN A SPECIFIC TASK ORDER, CONTRACTOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ALLEGED TO ARISE AS A RESULT OF CUSTOM AND USAGE, OR WARRANTIES OF TITLE AND AGAINST INFRINGEMENT.

IN ADDITION TO AND WITHOUT LIMITING THE PRECEDING PARAGRAPH, CONTRACTOR DOES NOT WARRANT IN ANY WAY THE MAP DATA, WHETHER SUPPLIED BY CONTRACTOR, OR ITS VENDORS. IF SUPPLIED BY CONTRACTOR OR ITS VENDORS, CONTRACTOR BELIEVES SUCH MAP DATA IS RELIABLE, BUT IT MAY NOT BE FREE OF NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS; BE AVAILABLE WITHOUT INTERRUPTION; BE CORRECTED IF ERRORS ARE DISCOVERED; OR MEET CLIENT'S NEEDS OR EXPECTATIONS. CLIENT IS RESPONSIBLE FOR THE QUALITY OF DATA AND VERIFYING THE ACTUAL DATA FROM DOCUMENTS OF RECORD, FIELD MEASUREMENT, OR OBSERVATION.

Article 22 – Immigration and Entry Requirements

If this Agreement requires performance of Services in Client's or another country outside the United States, Client shall assist Contractor in obtaining all necessary licenses, permits, authorizations, and passes, including but not limited to professional visit passes and/or employment passes issued by the national immigration agency under the national immigration law of such country, and any other clearances required, in a timely manner to support performance under this Agreement. Contractor's performance is contingent upon the foregoing, and in the event that Contractor is unable to obtain such in a timely manner, or that any of such are later withdrawn, Contractor's performance schedule, and any other necessary terms of this Agreement shall be equitably adjusted.

Article 23 – Waiver

The failure of either Party at any time to enforce any of the provisions of this Agreement or any right under this Agreement, or to exercise any option provided, will in no way be construed to be a waiver of the provisions, rights, or options, or in any way to affect the validity of this Agreement. The failure of either Party to exercise any rights or options under the terms or conditions of this Agreement shall not preclude or prejudice the exercising of the same or any other right under this Agreement.

Article 24 - Severability

If any provision or portion of a provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall not be affected, and the remaining terms will continue in effect and be binding on the Parties, provided that such holding of invalidity or unenforceability does not materially affect the essence of the Agreement.

Article 25 – Survival

The terms and conditions of this Agreement regarding confidentiality, payment, warranties, liability and all others that by their sense and context are intended to survive the execution, delivery, performance, termination or expiration of this Agreement survive and continue in effect.

Article 26 – Disclaimer

Client acknowledges that the products or part thereof are produced in, or otherwise sourced from, or will be installed areas already affected by, or that may be affected in the future by, the prevailing COVID-19 epidemics/pandemic and that the situation may trigger stoppage, hindrance or delays in Contractor’s (or its subcontractors) capacity to produce, deliver, install or service the products, irrespective of whether such stoppage, hindrance or delays are due to measures imposed by authorities or deliberately implemented by Contractor (or its subcontractors) as preventive or curative measures to avoid harmful contamination exposure of Contractor’s (or its subcontractors’) employees. Client therefore recognizes that such circumstances shall be considered as a cause for excusable delay not exposing Contractor to contractual sanctions including without limitation delay penalties, liquidated or other damages or termination for default.

This Agreement represents the entire understanding of the Parties as to the subject matter herein. No prior oral or written understanding shall be of any effect with regard to these matters. Any change or modification of this Agreement including but not limited to a change under Article 4 (Changes to Scope of Work) shall be made only upon written consent of both Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date written above.

City of Lakeland

(Client)

Schneider Electric Smart Grid Solutions, LLC

(Contractor)

Signature

H. William Mutz _____
Printed Name

Mayor _____
Title

Date

Attest:

By: _____
Kelly S. Koos, City Clerk

Approved as to form and correctness:

By: _____

Palmer C. Davis, City Attorney

Signature

Printed Name

Title

Date



ATTACHMENT A
Sample Task Order

Professional Services Agreement
Task Order ____

In accordance with the terms and conditions of the Agreement (Contract No.
_____/Effective Date of _____) between _____
(Client) and Schneider Electric Smart Grid Solutions, LLC (Contractor), this Task Order
authorizes delivery of the Services described and in accordance with the terms, schedule, and
start/end date(s) specified below.

- 1. Scope of Work: See attached scope entitled, "_____."
2. Contract Type (FFP or T&M): _____.
3. Total Task Order Value: \$_____ to be paid in accordance with the following
milestone schedule.

Table with 4 columns: Milestone #, Task #, Description, Cost. Includes a Total row at the bottom right.

- 4. Delivery Schedule or Start/End Date(s) for Each Deliverable: See attached scope of work.
5. Special Considerations: None
6. Contractor Project Manager:
Client Project Manager:

ACCEPTED AND AGREED:

City of Lakeland

Schneider Electric Smart Grid Solutions,
LLC
(Contractor)

(Client)

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**ATTACHMENT B
Sample Change Order**

CHANGE ORDER #	Project Number	ENTERED BY
SUBJECT		ENTRY DATE
DESCRIPTION		
<p>In accordance with the terms and conditions of the _____ between _____ and Schneider Electric Smart Grid Solutions, LLC, both Parties now wish to modify the Scope of Work under Task Order #___ as follows:</p>		
Total Cost		
Schedule Impact		

ACCEPTED AND AGREED:

City of Lakeland _____
(Client)

Schneider Electric Smart Grid
Solutions, LLC
(Contractor)

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT C
Sample Milestone Acceptance Form

Client Name and Project Code	DATE COMPLETED	DATE DELIVERED
Agreement/Task Order Number		
Milestone Number, Description, & Value		

Upon signature of this document Client hereby accepts the milestone set forth above. Schneider Electric shall invoice Client for the total value of the above referenced milestone in accordance with the terms and conditions of the Agreement.

Accepted and Agreed:

City of Lakeland

Schneider Electric Smart Grid Solutions, LLC

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: Project Manager

Title: _____

Date: _____

Date: _____

Schneider Electric Internal Use Only			
INVOICING and PAYMENT INFORMATION (per Contract Terms and Conditions)			
DATE RECEIVED (Milestone)	DATE ACCEPTED (≤15 Days after Received)	DATE INVOICED	DATE PAID (≤20 Days after Accepted/Invoiced)

ATTACHMENT D
Schneider Electric Smart Grid Solutions, LLC Rates

Contractor's rates as set forth below are inclusive of all costs and/or fees.

Resource	Hourly Rate
Project Manager	\$235.00/hr
Database Administrator	\$235.00/hr
Solution Architect	\$230.00/hr
Technical Lead	\$230.00/hr
Implementation Specialist	\$230.00/hr
Software Engineer	\$190.00/hr
Education Specialist	\$200.00/hr
Travel & Expenses	Cost

ATTACHMENT E
Client's Consultant Expense Reimbursement Policy
Revised 6/18/2018

General

This policy governs all eligible reimbursement expenses paid to consultants hired by City Departments under professional service contracts. All reimbursable expenses must adhere to the following provisions and be verified and approved by the appropriate department head, or their designated representative administering the professional contract. An exhibit to each contract or agreement must be accepted by each professional services consultant prior to the agreement being considered fully executed. All proposed reimbursable consultant expenses must be submitted to the managing designee with matching receipts and specific documentation outlining the nature of the business conducted in association with the expenditure prior to approval by the City.

Consultant Contract Provisions

Reasonable expenses will be reimbursed for customary business activities deemed integral to the completion of the consulting assignment (i.e. phone calls, copies, printing, facsimile services, etc.)

Reasonable travel expenses will be reimbursed at a rate not-to-exceed the following:

Car Rental – Limited to mid-size vehicles or smaller.

Airline Travel – Limited to tourist or coach class fare, all efforts will be made to identify the most economical flight options available at time of scheduling.

Use of private automobile for administration of project related requirements may be reimbursed at the current IRS mileage reimbursement rate. (www.irs.gov)

Local hotel accommodations will be reimbursed at a rate not-to-exceed the GSA lodging rate for Tampa, Florida per night plus sales tax. (www.gsa.gov) Incidentals related to the hotel stay will not be reimbursed.

Meal expenses will be reimbursed at a rate not-to-exceed the GSA M&IE rate for Tampa, Florida. A maximum of 15% gratuity on meals will be allowed.

No entertainment expenses will be reimbursed, including, but not limited to, alcoholic beverages, in-room entertainment, registrations, tickets to sporting events or entertainment events, banquet and or client entertainment.

No reimbursement will be provided for personal expenses of any nature.

When representing the interest of the City outside of the Lakeland area, reimbursement of reasonable hotel accommodation costs will be provided as determined by the responsible Department Head.

Collection of back-up Documentation

All consultant expenditures submitted for reimbursement shall be properly documented and approved by the appropriate department head or designated representative managing the agreement. Original receipts must be provided for payment, along with documentation on purpose. The department head or designated representative will be responsible for the collection of this documentation and for communicating with the consultant on issues related to reimbursable costs or back-up documentation. It will be the responsibility of the department head

or designated representative to obtain the necessary approvals from the City Managers' Office for variances to the policy.

Prior to payment of invoices, the following will be required:

Verification that invoice references the correct professional service contract.

Verification that the specific contract deliverables have been met and scope of work has been satisfactorily completed.

Verification that all consultant reimbursable expenses were incurred in conjunction with specified services rendered and billed at cost.

All reimbursable expenses must be submitted with receipts documenting expenses.

Verify all expense calculations are correct.

Variance Approval

All variances or modifications to the provisions in this policy must be approved by the City Manager or authorized designee.

The City of Lakeland ("Licensee") and Schneider Electric Smart Grid Solutions, LLC, formerly Telvent USA, LLC ("Schneider Electric") mutually desire to modify the Software License Agreement, Effective Date of August 5, 2004/Contract No. 2004-MM-333 (the "Agreement"), to include this Online Services Addendum (the "Addendum"), which sets forth the terms of use for Schneider Electric's Online Services. All rights not specifically granted in this Addendum are reserved to Schneider Electric and all of the terms and conditions set forth in the Agreement are incorporated herein including but not limited to the terms and conditions related to indemnification and limitation of liability. Regarding Online Services, conflicts that may arise between this Addendum and the Agreement shall be resolved in favor of this Addendum.

ARTICLE 1—DEFINITIONS

In addition to the definitions provided in the Agreement, the following definitions apply to this Addendum:

- **"API"** means application programming interface.
- **"Content"** means data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, software applications, and Developer Tools.
- **"Developer Tools"** means software development kits (SDKs), APIs, software libraries, code samples, and other resources.
- **"Named Users"** means Licensee's employees; agents; consultants; contractors whom Licensee authorizes to access Online Services for Licensee's exclusive benefit through Licensee's Online Services account, to which they are explicitly linked through unique, individual user names and passwords. Named Users' access to features of Online Services may be constrained by Named Users type as defined for specific Online Services and as described in the applicable Ordering Document or other product documentation.
- **"User Role"** means the role of a Named User that enables the highest level of access to features of Online Services.
- **"Monthly Active Named Users"** means Named Users who have made a connection to Online Services during a given month.
- **"Online Content"** means Content hosted or provided by Schneider Electric as part of the Online Services, including any Map Services, Task Services, Image Services, and Developer Tools and excluding Content provided by third parties that Licensee accesses through Online Services.
- **"Licensee's Content"** means any Content that Licensee or Licensee's Named Users submit to Schneider Electric in connection with Licensee's use of the Online Services, any results derived from the use of Licensee's Content with Online Services, and any applications Licensee builds with Developer Tools and deploy with Online Services. Licensee's Content excludes any feedback, suggestions, or requests for Product improvements that Licensee provides to Schneider Electric.
- **"Malicious Code"** means software viruses, worms, time bombs, Trojan horses, or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

- **"Online Services"** means any Internet-based geospatial system, including the ArcFM Solution XI Series applications and associated APIs and Licensee's Content that is hosted by Schneider Electric or its licensors, for storing, managing, publishing, and using maps, data, and other information. Excepting Licensee's Content, Schneider Electric and its third party licensors (as applicable) solely and exclusively own all right, title and interest in the Online Services.
- **"Subscription Term"** means the time period in which Licensee is authorized to access and use the Online Services which shall be for a period of one (1) year from the Effective Date of this Addendum.

ARTICLE 2—USE OF ONLINE SERVICES

- 2.1 License to Online Services. Upon payment in full of the applicable fees, Schneider Electric grants to Licensee and Licensee's Named Users a personal, nonexclusive, nontransferable license to access and use the Online Services for Licensee's internal business use for the duration of the Subscription Term.
- 2.2 Provision of Subscription Online Services. For subscription Online Services, Schneider Electric will
- Provide Online Services to Licensee in accordance with this Addendum;
 - Provide customer support in accordance with Schneider Electric's Maintenance and Support Policy as detailed at <https://myarcfm.schneider-electric.com/myarcfm/s/maintenance-policy>; and
 - Use commercially reasonable efforts to ensure that Online Services will not transmit to Licensee any Malicious Code. Notwithstanding the foregoing, Schneider Electric shall not be liable for Malicious Code introduced to Online Services through Licensee's account or through third-party Content.
- 2.3 Licensee's Responsibilities. Licensee and Licensee's Named Users are the only persons authorized to access Online Services through Licensee's accounts. Named Users' login credentials are for designated Named Users only and may not be shared among multiple individuals. Named Users' login credentials may be reassigned to new Named Users if the former users no longer require access to Online Services. Licensee and Licensee's Named Users are responsible for maintaining the confidentiality of Authorization Codes, Access Codes, Named Users' login credentials, or any other method that enables access to Online Services and for ensuring that unauthorized third parties do not access Licensee's account. Licensee will immediately notify Schneider Electric if Licensee becomes aware of any unauthorized use of Licensee's account or any other breach of security.
- 2.4 Prohibited Uses of the Online Services. In addition to the prohibited uses under the Agreement, Licensee shall not (i) attempt to gain unauthorized access to the Online Services or assist others to do so; (ii) use Online Services to store or transmit Malicious Code; (iii) share or distribute the client-side data cache derived from Online Services with third parties not specifically authorized herein; (iv) incorporate any portion of Online Services into a commercial product or service; (v) reverse engineer, decompile, disassemble, modify, adapt or translate any part of the Online Services or create derivative works based on any part of the Online Services; (vi) disrupt or interfere with

the security of the Online Services; (vii) transfer, license, sublicense, rent, lease, sell, lend, distribute, host, outsource, disclose, permit timesharing or service bureau use, assign, or otherwise commercially exploit or make available the Online Services to any third party; or (viii) use the Online Services to publish, post, distribute or disseminate any information or material which is obscene, defamatory, indecent or unlawful.

- 2.5 Evaluations. Schneider Electric may provide licenses to use certain Online Services for Licensee's internal evaluation purposes ("Evaluation Licenses"). Evaluation Licenses are provided on an AS-IS basis and without warranty of any kind and all implied and other warranties are expressly excluded and disclaimed including but not limited to the implied warranties of merchantability and fitness for a particular purpose. Additionally, Evaluation Licenses shall continue until the stated evaluation period expires or until Licensee purchases a subscription, whichever occurs first. IF LICENSEE DOES NOT CONVERT LICENSEE'S EVALUATION LICENSE TO A SUBSCRIPTION PRIOR TO EXPIRATION OF THE EVALUATION TERM, ANY CONTENT AND CUSTOMIZATIONS THAT LICENSEE UPLOADED OR MADE DURING THE EVALUATION TERM WILL BE PERMANENTLY LOST. IF LICENSEE DOES NOT WISH TO PURCHASE A SUBSCRIPTION, LICENSEE MUST EXPORT SUCH CONTENT BEFORE THE END OF LICENSEE'S EVALUATION PERIOD.
- 2.6 Modifications of Online Services. Schneider Electric reserves the right to alter, modify, deprecate, or discontinue Online Services and related APIs at any time. If reasonable under the circumstances, Schneider Electric will provide prior notice of any material alterations.
- 2.7 Attributions. Licensee is not permitted to remove any Schneider Electric or its licensors' logos or other attribution associated with any use of ArcFM Mobile Online Services.
- 2.8 Usage. Licensee at any time may exceed the total number of Named Users, or the number of Named Users at a specific User Role, for which Licensee has paid the applicable fees ("Subscribed Named Users") on a temporary basis in order to address the Licensee's needs resulting from catastrophic circumstances. Licensee may add these new users temporarily without incurring new costs.

Prior to the end of an annual subscription term, Schneider Electric will analyze the Licensee's actual usage of Online Services during the term. If Licensee's number of Monthly Active Named Users or number of Named Users for a specific User Role exceeds the total number of Subscribed Named Users by either ten percent (10%) or ten (10) users, whichever is less, for more than one month during the term, Schneider Electric will inform the Licensee of the excess usage. In this circumstance, if the overage was not caused by a catastrophic event, the Licensee has the option either to reduce usage to Subscribed Named User levels before the beginning of the next term, or Schneider Electric will invoice Licensee for the overage.

- 2.9 Inspection. During the term of this Addendum and for one (1) year thereafter, Schneider Electric or its designated agent may inspect Licensee's facilities and records to verify Licensee's compliance with this Addendum. Any such inspection will take place only during Licensee's normal business hours and upon no less than ten (10) days prior written notice from Schneider Electric.

ARTICLE 3—LICENSEE'S CONTENT

- 3.1 Licensee's Content. Licensee is solely responsible for the development, operation, and maintenance of Licensee's Content and for all materials that appear on or in any of Licensee's Content. Licensee retains all right, title, and interest in Licensee's Content. Licensee hereby grants Schneider Electric and its licensors a nonexclusive, nontransferable right to host, run, and reproduce Licensee's Content solely for the purpose of enabling Licensee's use of Online Services. Without Licensee's permission, Schneider Electric will not access, use, or disclose Licensee's Content except as reasonably necessary to support Licensee's use of Online Services, respond to Licensee's requests for customer support, troubleshoot Licensee's account, to provide improved services and performance of the system, or for any other purpose authorized by Licensee in writing. If Licensee accesses Online Services with an application provided by a third party, Schneider Electric may disclose Licensee's Content to such third party as necessary to enable interoperation between the Online Services and Licensee's Content. Schneider Electric may disclose Licensee's Content if required to do so by law or pursuant to the order of a court or other government body, in which case Schneider Electric will reasonably attempt to limit the scope of disclosure. It is Licensee's sole responsibility to ensure that Licensee's Content is suitable for use with Online Services and for maintaining regular offline backups using the Online Services export and download capabilities.
- 3.2 Removal of Licensee's Content. Licensee will provide information and/or other materials related to Licensee's Content as reasonably requested by Schneider Electric to verify Licensee's compliance with this Addendum. Schneider Electric may remove or delete any portions of Licensee's Content if there is reason to believe that uploading it to, or using it with, Online Services violates this Addendum. If reasonable under these circumstances, Schneider Electric will notify Licensee before Licensee's Content is removed. Schneider Electric will respond to any Digital Millennium Copyright Act take-down notices in accordance with applicable law.
- 3.3 Retrieving Licensee's Content upon Termination or Expiration. Upon termination or expiration of this Addendum, Schneider Electric will make Licensee's Content available to Licensee for download for a period of thirty (30) days unless Licensee provides Schneider Electric with timely notification in accordance with Section 4.7 that Licensee elects to have Schneider Electric retain Licensee's Content for a longer period in accordance with Section 4.7(b). Thereafter, Licensee's right to access or use Licensee's Content with Online Services will end, and Schneider Electric will have no further obligations to store or return Licensee's Content.

ARTICLE 4—TERM AND TERMINATION

- 4.1 Term of Subscriptions. The Subscription Term is one (1) year from the Effective Date in this Addendum or in any applicable ordering document issued by Schneider Electric, and shall automatically renew for successive terms of one (1) year each, unless either party gives written notice to the other of its intention not to renew at least sixty (60) days before the beginning of the next term.

- 4.2 Subscription Rate Changes. Schneider Electric shall provide at least thirty (30) days written notice prior to the end of the subscription term of any increase in annual subscription rates.
- 4.3 Service Interruption. Licensee's access to and use of Online Services may be temporarily unavailable, without prior notice, for any unanticipated or unscheduled downtime or unavailability of all or any portion of Online Services, including system failure or other events beyond the reasonable control of Schneider Electric or its affiliates.
- 4.4 Service Suspension. Schneider Electric and its affiliates shall be entitled, without any liability to Licensee, to suspend access to any portion or all of Online Services at any time on a service-wide basis (a) if Licensee breaches this Addendum, exceeds Licensee's usage limits, and fails to purchase additional license capacity sufficient to support Licensee's continued use of Online Services as described in Article 5 of this Addendum; (b) if there is reason to believe that Licensee's use of Online Services will adversely affect the integrity, functionality, or usability of the Online Services or that Schneider Electric and its licensors may incur liability by not suspending Licensee's account; (c) for scheduled downtime to conduct maintenance or make modifications to Online Services; (d) in the event of a threat or attack on Online Services (including a denial-of-service attack) or other event that may create a risk to the applicable part of Online Services; or (e) in the event that Schneider Electric or its licensors determine that Online Services (or portions thereof) are prohibited by law or otherwise that it is necessary or prudent to do so for legal or regulatory reasons. If warranted under these circumstances, Licensee will be notified of any Service Suspension beforehand and allowed reasonable opportunity to take remedial action.
- 4.5 Schneider Electric is not responsible for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Licensee or any Licensee customer may incur as a result of any Service Interruption or Service Suspension.
- 4.6 Termination for Convenience. Licensee may at any time terminate an Online Service for its convenience. Licensee will not receive any refund of prepaid fees for Online Services.
- 4.7 Effect of Termination or Expiration. Upon expiration or termination of Licensee's online service subscription, Licensee shall notify Schneider Electric in writing within ten (10) days of such expiration or termination in order to direct Schneider Electric to:
- (a) disable the account and then delete the Licensee's Content; or
 - (b) retain Licensee's Content stored in the online service in a limited function account for a maximum of 90 days after expiration or termination of the subscription (the "Retention Period") so that Licensee may extract the data.

If Licensee indicates (a), Licensee will no longer be able to extract the Licensee's Content from the account upon receipt of such by Schneider Electric. If Licensee does not indicate (a) or (b), Schneider Electric will retain the Licensee's Content in accordance with (b).

Following the expiration of the Retention Period, Schneider Electric will disable the account and then delete the Licensee Content. Cached or back-up copies will be purged within 30 days of the end of the Retention Period.

Licensee agrees that, other than as described herein, Schneider Electric has no obligation to continue to hold, export or return the Licensee Content. It is expressly understood and agreed by Licensee that Schneider Electric shall have no liability whatsoever for deletion of the Licensee's Content pursuant to this provision.

ARTICLE 5— SERVICE LEVELS

- 5.1 Service Levels. Service levels are governed by the Service Level Agreement found in Exhibit 1 to this Addendum.

ARTICLE 6—LICENSEE'S WARRANTIES

- 6.1 Licensee warrants that Licensee's Content or use of Online Services with a product, process, or system not supplied by Schneider Electric or specified by Schneider Electric in its Documentation will not (i) infringe or misappropriate any third-party intellectual property rights or proprietary rights, (ii) violate any third party's privacy or other rights or any applicable law, or (iii) contain or transmit to a third party any Malicious Code. If Licensee's breach of this Section 6.1 or breach of Section 2.4 results in any third party claims or legal actions (collectively, "Legal Actions") against Schneider Electric then Licensee agrees to indemnify, defend and hold harmless Schneider Electric from any and all damages, losses, expenses (including but not limited to reasonable attorney's fees), costs, settlements and/or judgments associated with such Legal Actions.

ARTICLE 7 – DISCLAIMER

- 7.1 Licensee acknowledges that the products or part thereof are produced in, or otherwise sourced from, or will be installed areas already affected by, or that may be affected in the future by, the prevailing COVID-19 epidemics/pandemic and that the situation may trigger stoppage, hindrance or delays in Schneider Electric's (or its subcontractors) capacity to produce, deliver, install or service the products, irrespective of whether such stoppage, hindrance or delays are due to measures imposed by authorities or deliberately implemented by the Schneider Electric (or its subcontractors) as preventive or curative measures to avoid harmful contamination exposure of Schneider Electric's (or its subcontractors') employees. Licensee therefore recognizes that such circumstances shall be considered as a cause for excusable delay not exposing the Schneider Electric to contractual sanctions including without limitation delay penalties, liquidated or other damages or termination for default.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum to be effective, valid, and binding upon the parties as of the date below as executed by their duly authorized representatives.

Signatures to follow on next page

ACCEPTED AND AGREED:
CITY OF LAKELAND
(Licensee)

SCHNEIDER ELECTRIC SMART GRID
SOLUTIONS, LLC
(Schneider Electric)

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: H. William Mutz _____

Printed Name: _____

Title: Mayor _____

Title: _____

Date: _____

Date: _____

ATTEST:

By: _____
Kelly S. Koos, City Clerk

Approved as to form and correctness:

By: _____
Palmer C. Davis, City Attorney

Exhibit 1

ArcFM Online Service Level Agreement

This ArcFM Online Service Level Agreement (“SLA”) governs the availability of certain ArcFM online services identified below as made available to Licensee under the terms of the Software License Agreement (“Agreement”). All terms previously defined in the Agreement shall have the same meaning in this SLA.

1. DEFINITIONS

“Covered Downtime” means all Downtime other than Excluded Downtime.

“Covered Services” means the component of ArcFM online services identified in Section 4 below.

“Downtime” means period during which material portions of the Covered Services are not available.

“Excluded Downtime” includes Planned Downtime and any Downtime resulting from (i) events beyond Schneider Electric’s reasonable control, including, but not limited to, network disruptions, denial of service attacks, network hacks, or events constituting a force majeure; (ii) any action taken under Licensee’s account; (iii) any termination or suspension of Licensee’s account in accordance with the terms of the Agreement; (iv) any third-party software or hardware used to access the Services; (v) use of the Services in a manner that is inconsistent with the Agreement or Schneider Electric’s reasonable instructions; and (vi) use of Beta, evaluation, and free Services.

“Planned Downtime” means Downtime for scheduled maintenance. Schneider Electric will use commercially reasonable efforts to announce Planned Downtime as early as possible but not less than eight (8) hours beforehand.

“Datacenter” means a Microsoft-managed datacenter utilized by Schneider Electric for hosting ArcFM online services.

“Quarterly Uptime Percentage” equals one hundred percent (100%) less the percentage of one (1)-minute intervals during the Service Quarter that constitute Covered Downtime. The Services will be considered to have been one hundred percent (100%) available for any portion of a Service Quarter in which Licensee did not maintain an active subscription.

“Service Quarter” means a standard three (3)-month calendar quarter. Service Quarters are defined as the following (4) specific time periods: January through March, April through June, July through September, and October through December.

“SLA Credit” means a credit applied to Licensee’s subscription when the Service Commitment is not met.

“Datacenter Disaster” means loss of Datacenter infrastructure due to events constituting force majeure.

“Recovery Time Objective” means the maximum targeted period that Covered Services are not available from a Datacenter due to a Datacenter Disaster.

“Recovery Point Objective” means the maximum targeted period in which data might be lost due to a Datacenter Disaster.

2. SERVICES AVAILABILITY

Schneider Electric will use commercially reasonable efforts to make the Covered Services available with a Quarterly Uptime Percentage of ninety-nine point nine percent (99.9%) (Service Commitment). For any Service Quarter that the Quarterly Uptime Percentage is less than Schneider Electric’s Service Commitment, Licensee will receive an SLA Credit equivalent to the net Covered Downtime during the relevant Service Quarter in excess of the maximum Downtime permitted under the Service Commitment. Licensee will receive one (1) day of SLA Credit for every twenty-four (24) hours (or fraction thereof) of excess Covered Downtime. SLA Credit(s) is the Licensee’s sole and exclusive remedy for any breach of this SLA. SLA Credit(s) is non-transferable.

3. DATACENTER RECOVERY

In the event of a Datacenter Disaster, Schneider Electric will use commercially reasonable efforts to achieve a Recovery Time Objective of maximum one (1) day and a Recovery Point Objective of maximum one (1) day.

3. PROCEDURE

Once Schneider Electric has verified that the Quarterly Uptime Percentage for Licensee’s account fell below ninety-nine point nine percent (99.9%), the appropriate SLA Credit will be applied to Licensee’s account in the next billing cycle.

4. COVERED SERVICES

The following ArcFM online services are covered by this SLA:

- Hosted Tenancy Service
- Hosted Access Service
- Hosted Sync Service
- Hosted Mapping Service
- Hosted Redlining Service
- Hosted Designer Service