

## MEMORANDUM

**TO:** MAYOR AND CITY COMMISSION

**FROM:** CITY ATTORNEY'S OFFICE

**DATE:** April 18, 2022

**RE:** **Agreement with Total Wrecking & Environmental, LLC for Demolition of McIntosh Units 1, 2 and 3**

Attached hereto for your consideration is a proposed Agreement with Total Wrecking & Environmental, LLC (Total Wrecking) for services related to the demolition of McIntosh Units 1, 2 and 3. As a result of the recent shutdown of McIntosh Unit 3, Lakeland Electric is seeking complete demolition of Unit 3 and Units 1 and 2, which were previously retired. Complete demolition of these electric generating Units will reduce potential environmental hazards on these sites, as well as prepare the site for future use.

Accordingly, on December 20, 2021, the City's Purchasing Department issued Request for Proposal (RFP) No. 2046 seeking proposals from qualified contractors for demolition services. The City received responses from the eight (8) companies listed below.

- |                                       |                  |
|---------------------------------------|------------------|
| • Foss Demolition, Inc.               | La Grange, NC    |
| • Total Wrecking & Environmental, LLC | Buffalo, NY      |
| • Sabre Demolition Corporation        | Warners, NY      |
| • GSD Trading USA, Inc.               | Channelview, TX  |
| • Independence Excavating             | Independence, OH |
| • DH Griffin Wrecking Co, Inc.        | Plant City, FL   |
| • Brandenburg Industrial Service Co   | Chicago, IL      |
| • Jackson Demolition Services, Inc.   | Schenectady, NY  |

Upon evaluation by Lakeland Electric staff, Total Wrecking was selected as the most qualified contractor capable of best meeting Lakeland Electric's needs in accordance with the City's RFP. Total Wrecking will perform all services pursuant to the terms and conditions set forth in the Agreement, the City's RFP and Total Wrecking's RFP response dated February 11, 2022. Pursuant to the Agreement, Total Wrecking will perform all work necessary to demolish and remove equipment, foundations, steel framing, structures and buildings that comprise the project site where Units 1, 2 and 3 are located. Specifically, Total Wrecking's scope of services to complete the work will encompass:

- Procurement of necessary licenses/permits
- Mobilization of personnel, equipment and materials
- Establishing and maintaining temporary site fencing and services such as sanitary, electric, lighting and water
- Abatement of asbestos and regulated/hazardous materials
- Demolition of structures
- Protection of existing above and below grade utilities/structures not being demolished or removed
- Handling and loading for off-site disposal of waste resulting from the demolition
- Site restoration
- Demobilization

Upon City Commission approval, Total Wrecking will begin services on or about May 2, 2022. Total Wrecking is scheduled to complete all work by November 2023. This Agreement with Total Wrecking will be zero cost to the City. Rather, Total Wrecking will issue monthly credits to the City based on the tonnage of scrap metal and equipment removed. As such, the City will be paid a total of \$1,222,122.

It is recommended that the City Commission approve this Agreement with Total Wrecking for services related to the demolition of Units 1, 2 & 3 and authorize the appropriate City officials to execute all corresponding documents related to the Agreement.

Attachment

## DEMOLITION SERVICES AGREEMENT

**THIS AGREEMENT**, made and entered into on this 18th day of April 2022 by and between the City of Lakeland, Florida, a municipality organized and existing in accordance with the laws of the State of Florida, hereinafter referred to as the "City", located at 228 South Massachusetts Avenue, Lakeland, Florida 33801-5086, and Total Wrecking & Environmental, LLC., a New York limited liability company, located at 70 Pearce Ave, Tonawanda, NY 14150, hereinafter referred to as the "Contractor".

### WITNESSETH

**WHEREAS**, City has previously determined that it has a need for Demolition services to remove specified electric generating units from its McIntosh Power Plant; and

**WHEREAS**, City solicited a Request for Proposal (RFP) for such services pursuant to City of Lakeland RFP No. 2046 (hereinafter RFP); and

**WHEREAS**, City awarded the Proposal to Contractor; and

**WHEREAS**, Contractor has represented that it is able to satisfactorily provide the services according to the terms and conditions of the RFP, which are incorporated herein by reference, and the terms and conditions contained herein; and

**NOW THEREFORE**, in consideration of the above and mutual covenants contained herein, the parties agree as follows:

1. Services to be Performed. The Contractor hereby agrees to provide the City with demolition services to remove specified electric generating units from the City's McIntosh Power Plant, as requested and more specifically outlined in the RFP, attached hereto and incorporated herein by reference as **Exhibit "A"**, this Agreement, and all subsequent official documents that form the Contract Documents for this Agreement.

2. Time of Service. Services shall be performed in a timely manner, as specified in the RFP and in the Contractor's Submittal set forth in **Exhibit "B"**.

3. Term of Agreement/Option of Renewal. The initial term of this Agreement shall be effective April 18, 2022 ("Effective Date") through November 30, 2023, unless otherwise cancelled or terminated herein. The Agreement may be renewed for one (1) month periods upon written mutual agreement of

the parties. Notice of intent to renew the Agreement shall be provided, in writing, fifteen (15) days prior to the expiration of the initial term or any renewal term.

4. Amendment of the Contract. This Agreement may be amended only by mutual written agreement of the parties.

5. Assignment/Subcontracting. The Contractor shall perform this Agreement. Except for those Subcontractors indicated in Contractor's bid submission, no assignment or subcontracting shall be allowed without the prior written consent of the City, which shall not be unreasonably withheld. In the event of a corporate acquisition and/or merger, the Contractor shall provide written notice to the City within thirty (30) business days of Contractor's notice of such action or upon the occurrence of said action, whichever occurs first. The right to terminate this Agreement, which shall not be unreasonably withheld by City, shall include, but not be limited to, instances in which a corporate acquisition and/or merger represent a conflict of interest or are contrary to any local, state or federal laws. Action by the City awarding a proposal to a contractor which has disclosed its intent to assign or subcontract in its response to the RFP, without exception shall constitute approval for purposes of this Agreement.

6. Cancellation. City reserves the right to cancel this Agreement, without cause, by providing thirty (30) days prior written notice to the Contractor of its intention to cancel, or with cause if at any time the Contractor fails to fulfill or abide by any of the terms or conditions specified.

Failure of the Contractor to comply with any of the provisions of this Agreement shall be considered a material breach of contract and shall be cause for immediate termination of the Agreement at the discretion of the City if the Contractor fails to remedy such breach of contract within thirty (30) calendar days of receipt of written notice thereof.

In addition to all other legal remedies available to City, City reserves the right to cancel and obtain from another source any items which have not been provided within the period of time stated in the proposal, or if no such time is stated, within a reasonable period of time from the date of order or request, as determined by City.

In addition, in the event that sufficient budgeted funds are not available for a new fiscal period, the City shall notify the Contractor of such occurrence and the City shall terminate this Agreement on the last day of the then current fiscal period without penalty or expense to the City.

7. Prohibition of Contingent Fees. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of making of this Agreement. In the event of breach of this provision, the City shall have the right to terminate this Agreement without further liability and, in its sole discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid as a result of said breach.

8. Compensation. For and in consideration of the performance of the Work of the Contract, the City shall transfer title to scrap metals and assets derived from the Work to the Contractor. For and in consideration of the value received by Contractor through the sale of scrap metals and other assets derived from the Work, Contractor agrees to fully perform the Work of this Contract and pay to the City a total sum of \$1,222,122.00. Contractor shall make monthly payments to the City in an amount equal to Fifty Dollars and 00/100 (\$50.00) for each gross ton of scrap metal removed from the Project Site, regardless of metal type. In any event, Contractor shall pay City a total Contract amount of One Million Two Hundred Twenty-Two Thousand One Hundred Twenty-Two Dollars and 00/100 (\$1,222,122.00) . Contractor shall be required to identify the total dollar amounts paid for such removal for each individual electric generating unit (i.e. Units 1, 2, and 3) demolished.

9. Ownership of Documents. All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda and other documents, instruments, information and material prepared or accumulated by the Contractor or its subcontractors in rendering services pursuant to this Agreement shall be the sole property of the City which may have access to the reproducible copies at no additional cost other than printing. Contractor retains all rights to methodology, knowledge, documents, software, and data brought to the performance of the Agreement by Contractor. If Contractor's methodology, knowledge, documents, or data are used in the performance of the Services and incorporated into the deliverables prepared for the City, the City shall have a perpetual right to use such property. No rights to Contractor's property or proprietary interests existing prior to the start of the Agreement are assigned to City pursuant to this Agreement. In no event shall Contractor be liable or responsible to anyone for the City's use of any such information or material in another project or following termination of this Agreement.

10. Permits/ Licenses. Contractor must secure and maintain any and all permits and licenses required to complete services pursuant to this Agreement.

11. Access to Records/Audit. The Contractor shall retain all records relating to this contract for a period of at least three (3) years after final payment is made. Contractor shall maintain accounting records in accordance with generally accepted accounting principles and practices to substantiate all invoice amounts to the City. City reserves the right to audit such records upon notice to the Contractor.

12. Public Records. Contractor shall comply with Florida Statute Chapter 119, the Florida Public Records Act as it relates to records kept and maintained by Contractor in performance of services pursuant to this Agreement.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, 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, the Contractor shall keep and maintain public records required by the City in performance of services pursuant to the contract. Upon request from the City's custodian of public records, Contractor shall provide the City 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 City. Contractor shall, upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform services pursuant to the contract. If the Contractor transfers all public records to the City 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 City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

13. Minimum Insurance Requirements. The Contractor must maintain insurance, at its own expense, in at least the amounts set forth in **Exhibit "A"** attached hereto and incorporated herein by reference throughout the term of this Agreement. The Contractor must provide a Certificate of Insurance in accordance with said Insurance Requirements evidencing such coverage prior to issuance of a purchase order or commencement of any work under this Agreement.

14. Indemnification. Contractor shall indemnify, pay the cost of defense, including attorneys' fees, and hold harmless the City from all suits, actions or claims of any character brought on account of any injuries or damages received or sustained by Contractor in accordance with the indemnification provision set forth in **Exhibit "A"**, attached hereto and incorporated herein by reference.

15. Site Specific Health and Safety Plan (HASP) Requirement. No later than ten (10) days prior to Contractor's mobilization of personnel to perform the services pursuant to this Agreement, Contractor shall submit its Site-Specific HASP to the City's authorized representative for review, comment and approval.

16. Jurisdiction/Venue/Governing Law. The Parties consent to jurisdiction and venue of the Courts of Polk County, Florida or the United States District Court in and for the Middle District of Florida, Tampa Division in connection with any action or proceeding arising out of or relating to this Agreement, document or instrument delivered pursuant to, in connection with, or simultaneously with this Agreement, or breach of this Agreement or any such document or instrument. The laws of the State of Florida shall govern this Agreement.

17. Independent Contractor Status. The Contractor is and shall remain an independent contractor and is neither an agent, employee, partner, nor joint venturer of the City.

18. Compliance with Laws. Contractor shall comply with all applicable local, state and federal ordinances, codes, laws, statutes, regulations and standards in force during the term of this Agreement.

19. Severability. The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the agreement to be impossible of performance.

20. Documents Comprising Contract. The Contract shall include this Agreement for Demolition services to remove specified electric generating units from the City's McIntosh Power Plant and appendices, as well as the following documents which are incorporated herein by reference.

- a. City of Lakeland Request for Proposal #2046 and all of its addenda and attachments, **Exhibit "A"**; and
- b. Contractor's Submittal, **Exhibit "B"**;

If there is a conflict between the terms of this Agreement and the above referenced documents, then the conflict shall be resolved as follows: the terms of this Agreement shall prevail over the other documents, and the terms of the remaining documents shall be given preference in their above listed order.

21. NOTICES. All Notices pursuant to this Agreement shall be deemed sufficiently given when in writing when (i) personally served on a party to be notified, (ii) delivery by overnight express courier, or (iii) three (3) business days following deposit in the United States mail, postage prepaid certified delivery, directed to the party to be notified at the following address:

Contractor:

Frank Bodami  
Total Wrecking & Environmental, LLC  
PO Box 326  
Buffalo, NY 14231  
716-725-2590  
fbodmai@totalwrecking.com

As to City:

Lakeland Electric  
Attn: Michael Dammer  
3030 E Lake Parker Drive  
Lakeland, FL 33805



863-834-8660  
Michael.Dammer@lakelandelectric.com

**IN WITNESS WHEREOF**, the parties herein have executed this Agreement for Demolition services to remove specified electric generating units from the City's McIntosh Power Plant pursuant to City RFP No. 2046 as of the day and year first written above.

CITY OF LAKE LAND, FLORIDA

CONTRACTOR

\_\_\_\_\_  
H. William Mutz, Mayor

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

[Corporate Seal]

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Kelly S. Koos, City Clerk

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

APPROVED AS TO FORM AND CORRECTNESS:

By: \_\_\_\_\_  
Palmer C. Davis, City Attorney