

9981

**AGREEMENT
UTILIZING ST. JOHNS COUNTY CONTRACT # 13-MCC-RIN-4918
BETWEEN
THE CITY OF JACKSONVILLE
AND
RING POWER CORPORATION
FOR
COUNTYWIDE GENERATOR MAINTENANCE AND REPAIR**

THIS AGREEMENT is made and entered into in duplicate this 21 day of APRIL, 2014, retroactive to January 28, 2014, by and between the CITY OF JACKSONVILLE (the "CITY"), a municipal corporation existing under the Constitution and the laws of the State of Florida, and RING POWER CORPORATION (the "Contractor"), a Florida profit corporation with its principal office at 500 World Commerce Parkway, St. Augustine, Florida 32092, for generator maintenance of multi-story buildings in the downtown core (the "Project").

RECITALS:

WHEREAS, effective December 2, 2013, St. Johns County, Florida ("St. Johns County") entered into that certain Countywide Generator Maintenance & Services Contract, Contract Number 13-MCC-RIN-04918 (the "St. Johns County Contract") with various vendors of generator maintenance services, including Contractor; and

WHEREAS, said St. Johns County Contract is in full force and effect until December 1, 2014, with four (4) one (1) year renewal options, and has been competitively procured and awarded by St. Johns County as contracting authority according to law; and

WHEREAS, the Jacksonville Procurement Code, more particularly Section 126.211, *Ordinance Code*, authorizes and allows the CITY to use *inter alia* contracts of other governmental entities, including St. Johns County, which have been competitively procured and awarded; and

WHEREAS, the St. Johns County Contract is broad enough to include the Project and Contractor has agreed to allow the CITY to use its St. Johns County Contract; and

WHEREAS, it is in the best interests of the parties to use the St. Johns County Contract for the Project and to add those contractual provisions the CITY is required to use by ordinance or policy; now therefore

IN CONSIDERATION of the premises and of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration, the parties agree as follows:

ARTICLE 1: Incorporation of Recitals:

The above-stated recitals are accurate, true, and correct and are made a part hereof and are incorporated herein by this reference.

ARTICLE 2: Engagement of Contractor:

CITY hereby engages Contractor and Contractor hereby accepts said engagement for the purpose of providing to CITY at the prices set forth in **Attachment A** for the Project, as described in and according to the provisions of the St. Johns County Contract and its exhibits, product descriptions, and quotations made thereunder (hereinafter the "Services"), identified and listed on **Composite Exhibit 1** and, by this reference, made a part hereof and incorporated herein, and in accordance with the other provisions required by law, ordinance, or policy for the CITY contained in this Agreement. Said **Composite Exhibit 1** is on file in the CITY's Office of General Counsel, 117 West Duval Street, Suite 480, Jacksonville, Florida 32202. With respect to the Project, the provisions, terms, and conditions of the St. Johns County Contract shall apply unless specifically preempted herein. Therefore, any conflict between the provisions of this Agreement and those in the St. Johns County Contract shall be resolved in favor of this Agreement, but only to the extent of any conflict.

ARTICLE 3: Coordination and Services Provided by CITY:

CITY shall designate for the Services received a Project Coordinator who will, on behalf of the CITY, coordinate with Contractor and administer this Agreement according to the terms and conditions contained herein and in the exhibits attached hereto and made a part hereof. It shall be the responsibility of Contractor to coordinate all Project-related activities

with the designated Project Coordinator. The CITY's Project Coordinator shall be: Robbie Tiedeman, Public Buildings Facilities Manager (Telephone: 630-5406; FAX: 630-5415; Email: tiedeman@coj.net).

ARTICLE 4: Duration of Agreement/Pricing Available to Other Entities:

The term of this Agreement shall commence on January 28, 2014, and shall continue and remain in full force and effect as to all its terms, conditions, and provisions as set forth herein until December 1, 2014, unless sooner terminated as provided in **Composite Exhibit 1**, with four (4) one (1) year renewal options. During said period of time, the Services provided hereunder shall be available to all using agencies and other political subdivisions, boards, agencies, or authorities existing in Duval County that may desire to purchase the same at the contract price provided herein.

ARTICLE 5: Payments for Services of Contractor:

5.1. Except as provided in Section 5.2 hereof, the CITY will compensate Contractor for the Services purchased hereunder in accordance with purchase orders issued on a project by project basis and used by the City of Jacksonville Procurement Division; provided however, payment invoices shall be sent to the authorized City representative as specified in said purchase order or other subsequent written instrument signed by the City's Project Coordinator.

5.2. Notwithstanding any contrary provision in **Attachment A**, the maximum indebtedness of the CITY for all fees, reimbursable items, or other costs for the Services provided by Contractor pursuant to this Agreement shall not exceed the sum of FIFTY-ONE THOUSAND EIGHT HUNDRED TWENTY and 00/100 USD (\$51,820.00) (a lump sum fee of \$31,820.00 with a not-to-exceed limit of \$20,000.00 for maintenance and repair).

ARTICLE 6: Notice:

In addition to the notice requirement in **Composite Exhibit 1**, notice to the CITY under this Agreement shall be delivered by certified mail, return receipt requested, or by other delivery with receipt to the following:

Robbie Tiedeman
555 West 44th Street
Jacksonville FL 32208

Gregory Pease
214 North Hogan Street
Jacksonville, FL 32202

ARTICLE 7: Laws, Ordinances, Rules and Regulations:

As required by Section 126.108(b), *Ordinance Code*, in providing the Services, the Contractor must comply with any and all applicable federal, state, and local laws, rules, regulations, and ordinances as the same exist and may be amended from time to time. Such laws, rules, regulations, and ordinances shall include but are not limited to Chapter 119, Florida Statutes (the Florida Public Records Law) and Section 286.011, Florida Statutes (the Florida Sunshine Law) as they apply to the Services contemplated in this Agreement. If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this Article 7 shall be incorporated into and become a part of the subcontract.

ARTICLE 8: Conflict of Interest:

The parties will follow the provisions of Section 126.112, *Ordinance Code*, with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with the CITY, to the extent the parties are aware of the same.

ARTICLE 9: Prompt Payment:

As required by Chapter 126, Part 6, *Ordinance Code*, notwithstanding any contrary provisions in **Composite Exhibit 1**, the CITY's prompt payment provisions shall be as follows:

9.1 *Generally*. When Contractor receives payment from the CITY for labor, services, or materials furnished by subconsultants, subcontractors, and suppliers hired by the Contractor, the Contractor shall remit payment due (less proper retainage) to those subconsultants, subcontractors, and suppliers within fifteen (15) calendar days after the Contractor's receipt of payment from the CITY. Nothing herein shall prohibit the Contractor from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be

due to its subconsultants, subcontractors, and suppliers. In the event of such dispute, Contractor may dispute the disputed portion of any such payment only after the Contractor has provided notice to the CITY and to the subconsultant, subcontractor, and supplier whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and, (iv) be delivered to the CITY and said subconsultant, subcontractor, or supplier within ten (10) calendar days after Contractor's receipt of payment from the CITY. Contractor shall pay all undisputed amounts due within the time limits imposed by this article.

9.2. *Jacksonville Small Emerging Business Enterprise ("JSEB") and Minority Business Enterprise ("MBE") Participation.* Notwithstanding Chapter 126, Part 6, *Ordinance Code*, Contractor shall pay all contracts awarded with certified JSEB's and MBE's, as defined therein, their pro rata share of their earned portion of the progress payments made by the CITY under this Agreement within seven (7) business days after Contractor's receipt of payment from the CITY (less proper retainage). The pro rata share shall be based on all work completed, materials and equipment furnished, or services performed by the certified JSEB or MBE at the time of payment. As a condition precedent to progress and final payments to Contractor, the Contractor shall provide to the CITY with its requisition for payment, documentation that sufficiently demonstrates that Contractor has made proper payments to its certified JSEB's or MBE's from all prior payments Contractor has received from the CITY. Contractor shall not unreasonably withhold payments to certified JSEB's and MBE's if such payments have been made to Contractor. If Contractor withholds payment to its certified JSEB's or MBE's, which payment has been made by the CITY to Contractor, the Contractor shall return said payment to the CITY. Contractor shall provide notice to the CITY and to the certified JSEB's or MBE's whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and, (iv) be delivered to the CITY and said JSEB's or MBE's within five (5) calendar days after Contractor's receipt of payment from the CITY. Contractor shall pay all

undisputed amounts due within the time limits imposed in this Article 9. The failure to pay undisputed amounts to the JSEB's or MBE's within seven (7) business days shall be a breach of this Agreement, compensable by one per-cent (1%) of the outstanding invoice being withheld by the CITY, not as a penalty but as liquidated damages to compensate for the additional contract administration by the CITY.

9.3. *Third Party Liability.* The Prompt Payment requirements hereunder shall in no way create any contractual relationship or obligation between the CITY and any subconsultant, subcontractor, supplier, JSEB, MBE, or any third party or create any CITY liability for Contractor's failure to make timely payments hereunder. However, Contractor's failure to comply with the Prompt Payment requirements shall constitute a material breach of CONSULTANT's contractual obligations to the CITY. As a result of said breach, the CITY, without waiving any other available remedy it may have against Contractor, may (i) issue joint checks and (ii) charge Contractor a 0.2% daily late payment interest charge or the charges specified in Chapter 126, *Ordinance Code*, for JSEB's or MBE's and in Chapter 218, Florida Statutes, for non-JSEB's or non-MBE's, whichever is greater.

ARTICLE 10: Nondiscrimination:

As required by Section 126.404, *Ordinance Code*, the Contractor represents that it has adopted and will maintain a policy of nondiscrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age, or handicap in all areas of employment relations throughout the term of this Agreement. The Contractor agrees that on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms, and other pertinent data and records by the Executive Director of the Community Relations Commission or successor agency or commission for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Agreement; provided however, that the Contractor shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the day and year first above written. The Contractor agrees that if any of the

Services to be provided pursuant to this Agreement are to be performed by a subcontractor, the provisions of this Article 10 shall be incorporated into and become a part of the subcontract.

ARTICLE 11: Counterparts:

The parties agree that for the execution of this Agreement, time is of the essence. Therefore, this Agreement and all amendments thereto may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. The parties further agree that facsimile (“fax”) transmission of all signatures with originals to follow shall constitute and be evidence of an executed Agreement.

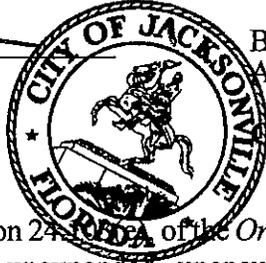
[Remainder of page is left blank intentionally. Signature page follows immediately.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Contract, in duplicate, the day and year first above written.

ATTEST:

CITY OF JACKSONVILLE, FLORIDA

By J. Timothy Horkan
Corporation Secretary



By Karen Bowling
Alvin Brown, Mayor

In accordance with Section 24-100.01 of the Ordinance Code of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing agreement, and that provision has been made for the payment of monies provided therein to be paid.

C. Ronald Beale
Director of Finance
City Contract No.: 9981

Form Approved:

James R. McCall
Office of General Counsel

Karen Bowling
Chief Administrative Officer
For: Mayor Alvin Brown
Under Authority of:
Executive Order No. 2013-04

ATTEST:

RING POWER CORPORATION

Signature

Steven D. Gambill
Signature

Type/Print Name

STEVEN D. GAMBILL
Type/Print Name

Title

VP Product Support
Title

CONTRACTOR

AMENDMENT TO AGREEMENT
UTILIZING ST. JOHNS COUNTY CONTRACT # 13-MCC-RIN-4918
BETWEEN THE CITY OF JACKSONVILLE AND RING POWER CORPORATION
FOR COUNTYWIDE GENERATOR MAINTENANCE AND REPAIR

This Amendment is entered into as of April 21, 2014, by and between the City of Jacksonville (the "City") and Ring Power Corporation (the "Contractor").

RECITALS

WHEREAS, the City and the Contractor are contemporaneously executing an Agreement Utilizing St. Johns County Contract # 13-MCC-RIN-4918 between the City of Jacksonville and Ring Power Corporation for Countywide Generator Maintenance and Repair (the "Agreement"); and

WHEREAS, the terms of the St. Johns County Contract #13-MCC-RIN-4918 shall apply unless preempted by the Agreement between the City and Contractor; and

WHEREAS, as a point of clarification, the reference to "Composite Exhibit 1" in Article 2 of the Agreement is a reference to the St. Johns County Contract # 13-MCC-RIN-4918; and

WHEREAS, as a point of clarification, the reference to "Attachment A" in Article 2 of the Agreement is a reference Exhibit "A-1" of the St. Johns County Contract # 13-MCC-RIN-4918; and

WHEREAS, the parties desire to amend and modify certain terms and provisions contained in the Agreement.

AGREEMENT

NOW THEREFORE, the parties agree to amend and modify the following provisions of the Agreement as follows:

- A. **Recitals:** The above recitals are true and correct and hereby incorporated herein.
- B. **Additional Terms:** The following terms are incorporated into the Agreement:
 - (i) **Venue:** Any and all legal action necessary to enforce this Agreement shall lie exclusively in Duval County, Florida.
 - (ii) **Waiver of Jury Trial:** THE PARTIES HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WAIVE THE RIGHT TO A TRIAL BY JURY.

(iii) **Limitation of Liability:** THE PARTIES SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO LOST REVENUE OR PROFITS, IN CONNECTION WITH THIS AGREEMENT. The provisions of this section shall survive the term or earlier termination of this Agreement.

(signature block to follow)

CITY OF JACKSONVILLE, FLORIDA	RING POWER CORPORATION
By: <u><i>Karen Bowling</i></u> Title: <u>CAO</u>	Name: <u><i>Edward D. Howard</i></u> Title: <u><i>AIP Product Support Sales Manager</i></u>

ATTEST:

J. Timothy Horkan
 Signature

J. Timothy Horkan
 Type/Print Name

CA Corp. Secretary
 Title

ATTEST:

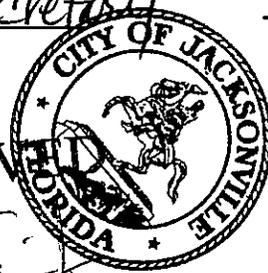
[Signature]
 Signature

Edward D. Howard
 Type/Print Name

AIP Product Support Sales Manager
 Title

FORM APPROVED

James R. McCaig
 ASSISTANT GENERAL COUNSEL



Karen Bowling
 Chief Administrative Officer
 For: Mayor Alvin Brown
 Under Authority of:
 Executive Order No. 2013-04