

23-23, Natural Gas Mains, Service Lines and House Piping Installation Services Contract

This CONTRACT made and entered this ____ day of April, 2023, by and between the **CITY OF CLEARWATER, FL (d/b/a Clearwater Gas System)**, a municipal corporation of the State of Florida, 400 North Myrtle Avenue, Clearwater, FL, hereinafter called "CGS", and **Equix Energy Services, LLC**, having hereinafter called the "CONTRACTOR".

WITNESSETH:

That the parties to this contract each in consideration of the undertakings, promises and agreement on the part of the other herein contained, do hereby undertake, promise and agree as follows:

The Contractor, and his or its successor, assigns, executors or administrators, in consideration of the sums of money as herein after set forth to be paid by CGS and to the Contractor, shall and will at their own cost and expense perform all labor, furnish all materials, tools, electronics, devices and equipment for the following:

"Installation of Natural Gas Main, Service Lines and House Piping Services"

As defined in **Bid 23-23** in the amount of
\$6,650,000.00

In accordance with such proposal and such other special provisions and drawings, if any, which will be submitted by CGS, together with any advertisement, instructions to bidder, general conditions, proposal and bond, which may be hereto attached, and any drawings if any, which may be herein referred to, are hereby made a part of this contract, and all of said work to be performed and completed by the contractor and its successors and assigns shall be fully completed in a good and workmanlike manner to the satisfaction of CGS, the provision of the services including but not limited to those services as described in Invitation to Bid #23-23, attached hereto as Exhibit A - Bid Pricing, Exhibit B - Scope of Services, Exhibit C - Technical Specifications and Exhibit D - Special Terms and Conditions and incorporated herein.

If the Contractor should fail to comply with any of the terms, conditions, provisions or stipulations as contained herein within the time specified for completion of the work to be performed by the Contractor, then CGS, may at its option, avail itself of any or all remedies provided on its behalf and shall have the right to proceed to complete such work as Contractor is obligated to perform in accordance with the provisions as contained herein. CGS shall recover all costs of such remedial action from the contractor for their failure to perform.

THE CONTRACTOR AND HIS OR ITS SUCCESSORS AND ASSIGNS DOES HEREBY AGREE TO ASSUME THE DEFENSE OF ANY LEGAL ACTION WHICH MAY BE BROUGHT AGAINST CGS AS A RESULT OF THE CONTRACTOR'S ACTIVITIES OR RELATED DEFICIENCIES ARISING OUT OF THIS CONTRACT AND FURTHERMORE, IN CONSIDERATION OF THE TERMS, STIPULATIONS AND CONDITIONS AS CONTAINED HEREIN, AGREES TO HOLD CGS FREE AND HARMLESS FROM ANY AND ALL CLAIMS FOR DAMAGES, COSTS OF SUITS, JUDGMENTS OR DECREES RESULTING FROM ANY CLAIMS MADE UNDER THIS CONTRACT AGAINST CGS OR THE CONTRACTOR OR THE CONTRACTOR'S SUB-CONTRACTORS, AGENTS, SERVANTS OR EMPLOYEES RESULTING FROM ACTIVITIES BY THE AFOREMENTIONED CONTRACTOR, SUB-CONTRACTOR, AGENT SERVANTS OR EMPLOYEES. UNLESS SUCH CLAIMS ARE A RESULT OF THE CITY'S NEGLIGENCE. NOTHING HEREIN SHALL BE CONSTRUED TO WAIVE OR MODIFY THE PROVISIONS OF SECTION 768.28, FLORIDA STATUTES, OR THE DOCTRINE OF SOVEREIGN IMMUNITY.

INSURANCE REQUIREMENTS

The Contractor shall, at its own cost and expense, acquire and maintain (and cause any subcontractors, representatives or agents to acquire and maintain) during the term with the City, sufficient insurance to adequately protect the respective interest of the parties. Coverage shall be obtained with a carrier having an AM Best Rating of A-VII or better. In addition, the City has the right to review the Contractor's deductible or self-insured retention and to require that it be reduced or eliminated.

Specifically, the Contractor must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum three (3) year tail following the termination or expiration of this Agreement:

- a. **Commercial General Liability Insurance** coverage, including but not limited to, premises operations, products/completed operations, products liability, contractual liability, advertising injury, personal injury, death, and property damage in the minimum amount of \$2,000,000 (two million dollars) per occurrence and \$4,000,000 (four million dollars) general aggregate.
- b. **Commercial Automobile Liability Insurance** coverage for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$1,000,000 (one million dollars) combined single limit.
- c. Unless waived by the State of Florida and proof of waiver is provided to the City, statutory **Workers' Compensation Insurance** coverage in accordance with the laws of the State of Florida, and **Employer's Liability Insurance** in the minimum amount of \$1,000,000 (one million dollars) each employee each accident, \$1,000,000 (one million dollars) each employee by disease, and \$1,000,000 (one million dollars) disease policy limit. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, contractors, subcontractors, and volunteers, if any.
- d. **Pollution Liability Insurance** coverage, which covers any and all losses caused by pollution conditions (including sudden and non-sudden pollution conditions) arising from the servicing and operations of Contractor (and any subcontractors, representatives, or agents) involved in the work/transport, in the minimum amount of \$1,000,000 (one million dollars) per occurrence and \$2,000,000 (two million dollars) general aggregate.
- e. **Professional Liability/Malpractice/Errors or Omissions Insurance** coverage appropriate for the type of business engaged in by the Respondent with minimum limits of \$1,000,000 (one million dollars) per occurrence. If a claim's made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (SERP) of as great a duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

Other Insurance Provisions.

- a. Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement remains in effect, the Contractor will furnish the City with a Certificate of Insurance(s) (using appropriate ACORD certificate, SIGNED by the Issuer, and with applicable endorsements) evidencing all of the coverage set forth above and naming the City as an "Additional Insured" on the Commercial General Liability Insurance, to include coverage for Products and Completed Operations, and Commercial Automobile Liability Insurance. In addition, when requested in writing from the City, Contractor will provide the City with certified copies of all applicable policies. The address where such certificates and certified policies shall be sent or delivered is as follows:

**City of Clearwater
Attn: Purchasing Department
P.O. Box 4748
Clearwater, FL 33758-4748**

- b. Contractor shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
- c. Contractor's insurance as outlined above shall be primary and non-contributory coverage for Contractor's negligence.
- d. Contractor reserves the right to appoint legal counsel to provide for the Contractor's defense, for any and all claims that may arise related to Agreement, work performed under this Agreement, or to Contractor's design, equipment, or service. Contractor agrees that the City shall not be liable to reimburse Contractor for any legal fees or costs as a result of Contractor providing its defense as contemplated herein.

The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the City, and City's failure to request evidence of this insurance shall not be construed as a waiver of Contractor's (or any contractors', subcontractors', representatives' or agents') obligation to provide the insurance coverage specified.

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In addition to the foregoing provisions, the Contractor agrees to conform to the following requirements:

1. The initial term of this agreement shall begin April 20, 2023, and terminate on March 31, 2024. Thereafter, this agreement may be renewed for three (3), one-year term extension. Any amendment must be made in writing and agreed to by both parties.
2. The Contractor agrees to receive the compensation/rates stated in the bid proposal, in full compensation for furnishing tools, equipment and labor necessary to perform the Installation of Gas Mains, Service Lines and House Piping within CGS's Service Territory. CGS and Contractor agree that there are no minimum requirements for purchase in this Agreement; the Contractor, for such consideration, shall be responsible for all claims, causes of action, loss or damages arising out of the nature of the work aforesaid or from any action of the elements; or from any unforeseen obstruction or difficulties which may be encountered of every description connected with the work, and furnishing the materials, until their final completion and acceptance. **UNLESS SUCH CLAIMS ARE A RESULT OF THE CITY'S NEGLIGENCE. NOTHING HEREIN SHALL BE CONSTRUED TO WAIVE OR MODIFY THE PROVISIONS OF SECTION 768.28, FLORIDA STATUTES, OR THE DOCTRINE OF SOVEREIGN IMMUNITY.** Any increase or decrease in compensation shall be effective only when incorporated in a written amendment to this Contract, executed by the Parties hereto.
3. To prevent disputes, it is agreed by and between the parties to this Contract that CGS or its authorized representative shall in all cases determine the quality and quantity of the work to be paid for under this Contract, and CGS shall determine questions in relation to lines, levels and dimensions of work.
4. Payment shall be made in accordance with provisions as outlined. Contractor shall render invoices and statements to CGS on a monthly basis. Each statement shall be paid under the guidelines of FL State Statute 218 (Florida Prompt Payment Act).

Mail Invoices To: Clearwater Gas System
Attn: Accounts Payable
777 Maple St.
Clearwater, FL 33755

5. The Contract Documents shall consist of all sections contained in Bid 23-23, attached hereto as Exhibit A, Exhibit B, Exhibit C and Exhibit D. All of which are familiar to the Contractor and which are hereby incorporated herein by reference.
6. This agreement, together with these documents, forms the contract, and they are as fully a part of the Contract as if hereto attached or herein repeated.
7. Contractor shall at all times furnish adequate tools, testing supplies, appliances, equipment, a sufficient number of properly OQ certified skilled workmen (as defined in the ITB), and a sufficient amount of materials and supplies of proper quality to efficiently and promptly prosecute the work provided for herein and shall promptly pay for all material purchased and shall pay all workmen each week, and if required by CGS, shall obtain and furnish CGS weekly with signed receipts from all workmen showing the date of payment, the amount paid, number of hours paid for, the days on which said work was performed, the classification of the labor so paid, and the rate of wage per hour paid and shall supply CGS weekly with two (2) copies of the payroll verified by an affidavit. Contractor shall, as often as requested by CGS, furnish a sworn statement showing all parties who furnished labor or materials to the Contractor, with their names and addresses and the amount due or to become due each. A like statement may be required from any subcontractor of the Contractor.
8. Contractor employees and their subcontractors must meet the requirements and intent of the Code of Federal Regulations (CFR) 49 Part 192.801, 192.803, 192.805, 192.807 and 192.809 relating to **"Operator Qualification"** with mandatory knowledge, skill and abilities, training to be completed by April 20, 2023. The contractor must state in writing that their Operator Qualification plan is in conformance with the intent of Federal Operator Qualification Regulations and is at least equal to and applicable to Clearwater Gas System's ASME B31Q Operator Qualification Plan. OQ and all Training Documentation shall be furnished upon request. The Contractor's Operator Qualification Plan must also explain how their employees have the ability to identify and react to natural gas related Abnormal Operating Conditions that may be encountered while working on the gas pipeline facility. Contractor Employee Operator Qualification, Knowledge, Skill and Ability records will be kept for a 5 year period. **Failure to provide proof of Operator Qualification compliance, and successful maintenance will disqualify the bidder from performance of the awarded bid. Training records shall be made available to CGS for auditing.**
9. The Contractor agrees that it has in place, or will implement a **Drug and Alcohol Training and Testing Program** for their employees that comply with the requirements of 49 CFR Part 199 (PHMSA drug and alcohol testing regulation) and 49 CFR Part 40 (DOT drug and alcohol testing regulation). **A copy of the Alcohol and Drug Testing Program has been included in the response to the Invitation to Bid.** The contractor will also furnish quarterly statistical reports to CGS to show active compliance.

10. Should the Contractor default in any of the provisions of this contract and CGS employs an attorney to enforce or construe any provision hereof or to collect damages for breach of the agreement or to recover on any bonds provided for herein, the Contractor and/or his surety agree to pay CGS such reasonable attorney's fees as CGS may expend therein. As against the obligations contained herein, the Contractor and his surety waive all rights of exemption.
11. The undersigned Contractor has carefully reviewed and familiar all contract documents, and is responsible for having heretofore, or shall be responsible at such time as it becomes necessary, examined the location and route of all proposed work, and is satisfied as to the character of said route, the location of surface and underground obstructions and nature thereof, the nature of the ground water table conditions and other physical characteristics of the work and the work site in order that he may include in the price which he has bid and the price of this contract all costs pertaining to the work.
12. This contract shall not be construed for or against any party because that party wrote it.
13. The Contractor and CGS for themselves, their heirs, executors, administrators, successors, and assigns, hereby agree to the full performance of the covenants herein contained. Assignment by the Contractor of any portion or all of this Contract or Contractor's obligations and rights under this Contract shall not be effective without the written or email consent of CGS, which, may be withheld at CGS's discretion.
14. In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, sex, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees or applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the non-discrimination clause.
15. The Contractor further agrees to insert the foregoing provisions in all contracts hereunder, including contracts or agreements with labor unions and/or worker's representatives, except sub-contractors for standard commercial supplies or raw materials.
16. It is mutually agreed between the parties hereto that time is of the essence of this contract, particularly in light of the mandatory timeframes as set forth in Florida Statute 556 (Underground Facility Damage Prevention and Safety Act), as may be amended from time to time, and in the event that the work to be performed by the Contractor is not completed within the time stipulated herein, it is then further agreed that CGS may deduct from such sums or compensation as may be due to the Contractor the sum of **\$1,000.00 per day** for each day that the work to be performed by the Contractor remains incomplete beyond the time limit specified herein, which sum of **\$1,000.00 per day** shall only and solely represent damages which CGS has sustained by reason of the failure of the Contractor to complete the work within the time stipulated, it being further agreed that this sum is not to be construed as a penalty but is only to be construed as liquidated damages for failure of the Contractor to complete and perform all work within the time period as specified in this contract or CGS may terminate this Contract immediately, being obligated to Contractor only for compensation duly earned for work completed, minus any amounts provided for in this paragraph.
17. It is further mutually agreed between CGS and the Contractor that if, any time after the execution of this contract and the surety bond which is attached hereto for the faithful performance of the terms and conditions as contained herein by the Contractor, that CGS shall at any time deem the surety or sureties upon such performance bond to be unsatisfactory or if, for any reason, the said bond ceases to be adequate in amount to cover the performance of the work the Contractor shall, at its own expense, within ten (10) days after receipt of written, or email, notice from CGS to do so, furnish an additional bond or bonds in such term and amounts and with such surety or sureties as shall be satisfactory to CGS. If such an event occurs, no further payment shall be made to the Contractor under the terms and provisions of this contract until such new or additional security bond guaranteeing the faithful performance of the work under the terms hereof shall be completed and furnished to the City in a form satisfactory to it.
18. NOTICES AND CHANGES OF ADDRESS

Any notice requires or permitted to be given by the provisions of this Contract shall be conclusively deemed to have been received by a party hereto on the date it is hand delivered, or emailed, to such party at the contact information as indicated below (or at such other address as such party shall specify to the other party in writing/email), or on the fifth (5th) business day after the day on which such notice is mailed and properly addressed.

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COMPANY INFO

Clearwater Gas System (CGS)

Name

Brian Langille

Name

Title

Assistant Director

Title

Address:

**777 Maple St.
Clearwater, Florida 33755**

Telephone #

727-562-4911

Telephone #

Facsimile #

727-562-4902

Facsimile #

Email:

Email: brian.langille@clearwatergas.com

19. TERMINATION OF CONTRACT

If Contractor shall fail to fulfill any of its obligations hereunder, this Contract shall be in default, the City may terminate the Contract, and Contractor shall be paid only for work completed.

20. CONFORMANCE WITH LAWS

Contractor agrees to comply with all applicable federal, state and local laws during the life of this Contract, including but not limited to Florida Statute 556 under which a material portion of this Contract will be fulfilled.

21. GOVERNING LAW AND VENUE

The laws of the State of Florida shall govern this Contract, and any action brought by either party shall lie in Pinellas County, Florida.

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IN WITNESS WHEREOF, the parties to the agreement have hereunto set their hands and seals and have executed this Contract, in duplicate, the day and year first above written.

(CONTRACTOR SEAL)

Equix Energy Services, LLC

Name: _____

Title: _____

Witness for the Contractor

CITY OF CLEARWATER, FLORIDA

CITY OF CLEARWATER, FLORIDA

Countersigned:

Brian Aungst Sr
Mayor

Approved as to form:

Michael P. Fuino
Assistant City Attorney

(NAME OF COMPANY)
Attest:

Print Name: _____
Secretary

By: _____
Jennifer Poirrier
Interim City Manager

Attest:

Rosemarie Call
City Clerk

By: _____
Print Name: _____
Title: _____