

**AGREEMENT FOR LOCATING AND MARKING UNDERGROUND UTILITIES  
SERVICES,**

**BETWEEN**

**CITY OF POMPANO BEACH, FLORIDA**

**AND**

**CALTROP CORPORATION**

**(Piggyback On Competitively Awarded)**

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
(hereinafter "Effective Date") by and between:

**CITY OF POMPANO BEACH**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal office at 100 W. Atlantic Blvd., Pompano Beach, Florida 33060, referred to here as "City."

and

**CALTROP**, whose mailing address is 3400 Lakeside Drive, Suite 525 Miramar, Florida 33027, (hereinafter "Contractor").

City and Contractor may also be referred to herein individually as a "Party" and collectively as the "Parties."

**WITNESSETH:**

**WHEREAS**, the City wishes to enter into this Agreement for the **location/marketing of underground Utilities Services**, (hereinafter "Agreement") with Contractor to provide location and marking services within the city limits of the City of Pompano Beach on an as-needed basis when requested by the City through a written Notice to Proceed; and

**WHEREAS**, the Code of the City of Pompano Beach at Section 34.4 (C) provides authority for the City Manager to piggyback City purchase of goods and services with state or local public contracts within certain codified guidelines, which guidelines have been met; and

**WHEREAS**, the parties wish to incorporate the terms and conditions of the solicitation and contractual arrangement between **City of Lauderhill** and Contractor in accordance with **Bid#P2014-001 contractor proposal agreement**, a copy of which is attached hereto and adopted in its entirety by City and Contractor (hereinafter "Contract"), together with and including contract renewals, amendments and change orders to the extent applicable hereto; and

**WHEREAS**, the City Manager has determined that piggybacking the Contract is necessary for Location/Marking of Underground Utilities Services, and is the most economically advantageous way to procure these necessary materials, products, and/or services in a timely and efficient manner.

**NOW THEREFORE**, in consideration of the mutual covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **RECITATIONS.** The foregoing "WHEREAS" clauses are hereby adopted and incorporated herein.

2. **TERM.** The term of this Agreement shall commence on the Effective Date and continue through September 12, 2017 unless terminated earlier or extended by the Parties.

3. **CONTRACT TERMS.** Contractor agrees to provide **location/marketing of underground Utilities Services** within the city limits of the City of Pompano Beach on an as-needed basis as requested by City through a written Notice to Proceed. The Contract is hereby incorporated into this Agreement for all purposes. In the event of conflict between the Contract and this Agreement, the order of priority shall be: **(1) this Agreement; (2) the Contract; (3) Bid #P2014-001 and (4) Contractor's Proposal**

The following provisions are included as supplementary to and amending the Contract:

A. City shall pay Contractor no more than the unit prices set forth in the Contract and in accordance with the provisions of the Contract in the total Not to Exceed Amount of **\$55,000**. If the City requires services not covered by unit prices already made a part of the Contract, the Contractor shall submit a detailed written proposal to the authorized City representative before providing any such services. For these purposes, City of Pompano Beach City Manager Dennis W. Beach shall be the City Representative.

B. If permits are required as part of the agreement required hereunder, Contractor shall submit complete and accurate permit applications to all applicable permitting agencies within five (5) days of receiving all documents from City necessary to file such permit applications. City shall pay all permit and related fees directly to the permitting agencies, including any permit fees charged by the City.

C. City of Pompano Beach shall be deemed substituted for City of Lauderhill, with regard to any and all provisions of the Contract, including, for example and not limitation,

with regard to bond requirements, insurance, indemnification, licensing, termination, default, and ownership of documents, including the additional provisions in sections D, E, F, and G, below. All recitals, representations and warranties of Contractor made in the Contract are restated as if fully set forth herein, made for the benefit of City, and incorporated herein.

D. Within five (5) days of final execution of this Agreement, Contractor shall furnish City with a certificate of insurance in a form acceptable to City for the insurance required. Such certificate provided by Contractor must state the City will be given thirty (30) days written notice prior to cancellation or material change in coverage. A copy of the additional insured endorsement must be attached and contain language on a form no more restrictive than ISO form CG 20 10 (Additional Insured – Owners, Lessees, or Contractor) combined with ISO form CG 20 37 (Additional Insured – Owners Lessees or Contractors – Completed Operations). Contractor shall not commence work unless and until the requirements for insurance have been fully met by Contractor and appropriate evidence thereof, in the City's sole discretion, has been provided to and approved by the City.

E. Contractor shall indemnify and hold harmless City, its elected officials, officers, employees and agents, from and against all claims, suits, actions, damages, causes, or action or judgments arising out of the terms of this Agreement for any personal injury, loss of life, or damage to property sustained as a result of the performance or non-performance of services, from and against any orders, judgments, or decrees, which may be entered against City, its elected officials, officers, employees and agents; and from and against all costs, attorney's fees, expenses, and other liabilities incurred in the defense of any such claim, suit, or action, and the investigation thereof. Nothing in the award, resulting agreement, contract or purchase order shall be deemed to affect the rights, privileges, and immunities of the City as set forth in Florida Statute section 768.28. The parties agree that one percent (1%) of the total compensation paid to Contractor for work under this contract shall constitute specific consideration to contractor for the indemnification to be provided under the contract.

F. Both parties agree that City may terminate this Agreement for any reason with ten (10) days' notice to Contractor.

#### **4. PUBLIC RECORDS.**

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law, as amended. Specifically, the Contractor shall:

1. Keep and maintain public records required by the City in order to perform the service.

2. Upon request from the City's custodian of public records, provide the City with a copy of 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 in Chapter 119, Florida Statutes or as otherwise provided by law.

3. 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.

4. 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 the service. 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.

B. Failure of the Contractor to provide the above described public records to the City within a reasonable time may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

## **PUBLIC RECORDS CUSTODIAN**

**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 AT:**

**CITY CLERK  
100 W. Atlantic Blvd., Suite 253  
Pompano Beach, Florida 33060  
(954) 786-4611  
[RecordsCustodian@copbfl.com](mailto:RecordsCustodian@copbfl.com)**

5. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement without the consent of the other.

6. **NOTICE.** Notice hereunder shall be provided in writing by certified mail return receipt requested, or customarily used overnight transmission with proof of delivery, to the following parties, with mandatory copies, as provided below:

For City: Dennis W. Beach  
City Manager

City of Pompano Beach  
P.O. Box 1300  
Pompano Beach, Florida 33061

Copy to: Mark E. Berman  
City Attorney  
P.O. Box 2083  
Pompano Beach, Florida 33061

For Contractor: Caltrop Corporation  
3400 Lakeside Drive, Suite 525  
Miramar, Florida 33027

7. **GOVERNING LAW AND VENUE.** The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and CONTRACTOR submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

A. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

8. **INDEPENDENT CONTRACTOR.** Both CITY and CONTRACTOR agree that CONTRACTOR is an independent contractor and not a CITY employee. CITY shall not be liable for any wages, salaries, debts, liabilities or other obligations for CONTRACTOR's employees, agents or other representatives performing obligations of CONTRACTOR hereunder. Except as otherwise provided hereunder, neither party is the agent of the other nor is authorized to act on behalf of the other in any matter.

9. **COMPLIANCE WITH ALL LAWS.** In the conduct of its activities under this License Agreement, CONTRACTOR shall comply with all applicable federal and state laws and regulations and all applicable county and city ordinances and regulations, including, but not limited to, compliance with the Americans with Disabilities Act with respect to all ramping. Ignorance on CONTRACTOR's part shall in no way relieve CONTRACTOR from this responsibility. CONTRACTOR, at its sole expense, shall purchase all necessary licenses and permits required by the State of Florida, Broward County and the CITY.

10. **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement between Contractor and City with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or

oral, between the parties. This Agreement may not be modified except by the parties' mutual agreement set forth in writing and signed by the parties.

11. **SEVERABILITY.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and in lieu of such illegal, invalid or unenforceable provision, City and Contractor shall negotiate in good faith to restore insofar as practicable the benefits to each party that were affected by such ruling and to include as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

12. **DUPLICATES.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** the parties hereto have accepted, made and executed this Agreement upon the terms and conditions above stated on the day and year entered below.

**"CITY":**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
Lamar Fisher, Mayor

\_\_\_\_\_

By: \_\_\_\_\_  
Dennis W. Beach, City Manager

Attest:

\_\_\_\_\_  
Asceleta Hammond, City Clerk

(SEAL)

Approved As To Form:

\_\_\_\_\_  
Mark E. Berman, City Attorney

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

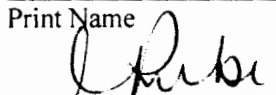
**"CONTRACTOR":**

Witnesses:

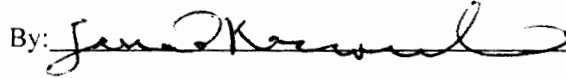
CALTROP CORPORATION  
(Type Name of Entity)

  
ENRIQUE GARIBAY

Print Name

  
Leah Rubi

Print Name

By: 

Javad Rassouli

Typed or Printed Name

Title: COO

(SEAL)

STATE OF ~~FLORIDA~~ CALIFORNIA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of August, 2016, by JAVAD RASSOULI as \_\_\_\_\_ of CALTROP CORPORATION a California corporation on behalf of the corporation. He/she is personally known to me or who has produced DRIVER LICENSE (type of identification) as identification.

NOTARY'S SEAL:

See attached  
NOTARY PUBLIC, STATE OF ~~FLORIDA~~ CALIFORNIA  
Barbara Ruben  
(Name of Acknowledger Typed, Printed or Stamped)

1993626  
Commission Number

/jrm  
8/12/16  
L:agr/piggyback form



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Bernardino

On 8/17/10 before me, Barbara Anhaeuser, Notary Public  
(insert name and title of the officer)

personally appeared Javad Russooli  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)

