

**CITY OF YORBA LINDA
AGREEMENT FOR MAINTENANCE SERVICES**

IRRIGATION PUMP CONTROL PANEL REPLACEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this 7th day of February, 2023, by and between the City of Yorba Linda, a municipal corporation of the State of California, located at 4845 Casa Loma Avenue, Yorba Linda, California 92886, County of Orange, State of California, (hereinafter referred to as "City") and **Variable Speed Solutions, a Corporation**, with its principal place of business at **16182 Gothard Street, Unit I, Huntington Beach, CA 92647** (hereinafter referred to as "Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain **irrigation pump control panel** maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing **irrigation pump control panel** maintenance services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that it is familiar with the plans of City.

2.2 Project.

City desires to engage Contractor to render such services for the **IRRIGATION PUMP CONTROL PANEL REPLACEMENT** project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the Owner all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform the **irrigation pump control panel** maintenance services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this

Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **February 7, 2023** to **June 1, 2023**, unless earlier terminated as provided herein. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.2.4 City's Representative. The City hereby designates **Brad Skeene**, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.5 Contractor's Representative. Contractor hereby designates **Brian Pavloff**, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this

Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.6 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.9 Insurance.

3.2.9.1 Time for Compliance. Contractor shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided

evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.2.9.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, the Contractor in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance. If the existing policies do not meet the Insurance Requirements set forth herein, Contractor agrees to amend, supplement or endorse the policies to do so.

- (a) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least \$1,000,000 per occurrence, and if written with an aggregate, the aggregate shall be double the per occurrence limit. Defense costs shall be paid in addition to the limits.

The policy shall contain no endorsements or provisions limiting coverage for (1) products and completed operations; (2) contractual liability; (3) third party action over claims or (4) cross liability exclusion for claims or suits by one insured against another; or (5) contain any other exclusions contrary to the Agreement.

- (b) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of \$1,000,000 each accident.
- (c) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

3.2.9.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

(A) The policy or policies of insurance required by Section 3.2.9.2 (a) Commercial General Liability shall be endorsed to provide the following:

- (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional

insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Contractor; or (4) contain any other exclusions contrary to the Agreement.

- (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) The policy or policies of insurance required by Section 3.2.9.2 (b) Automobile Liability shall be endorsed to provide the following:

- (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(C) The policy or policies of insurance required by Section 3.2.9.2 (c) Workers' Compensation shall be endorsed to provide the following:

- (1) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.
- (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.9.4 Primary and Non-Contributing Insurance. All insurance coverages shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.9.5 Waiver of Subrogation. Required insurance coverages shall not prohibit Contractor from waiving the right of subrogation prior to a loss. Contractor shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

3.2.9.6 Deductible. Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the

same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.9.7 Evidence of Insurance. The Contractor, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.9.8 Failure to Maintain Coverage. Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Agreement.

In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

3.2.9.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.9.10 Insurance for Subcontractors. All Subcontractors shall be included as additional insureds under the Contractor's policies, or the Contractor shall be responsible for causing Subcontractors to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City as an Additional Insured to the Subcontractor's policies.

3.2.10 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and

wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.11 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.2.12 Bonds.

3.2.12.1 Performance Bond. If specifically requested by City in Exhibit "B" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.12.2 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "B" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.12.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of

such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

3.2.12.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **One Hundred Sixty Seven Thousand One Hundred Twenty Six Dollars (\$167,126.00)** without written approval of City's **Parks and Recreation Director**. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth in Exhibit "C" shall be adjusted each year at the time of renewal in accordance with the amount of increase set forth in Exhibit "C."

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CONTRACTOR:

Variable Speed Solutions Inc.
16182 Gothard Street Unit I
Huntington Beach, CA 92647
Attn: Brian Pavloff

CITY:

City of Yorba Linda
4845 Casa Loma Avenue
Yorba Linda, CA 92886
Attn: Brad Skeene

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.4 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.5 Indemnification. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents or volunteers.

3.5.6 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.7 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.8 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.9 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project.

3.5.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.11 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.12 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.13 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.14 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.15 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.16 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.17 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall

have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.18 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.19 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.20 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[SIGNATURES ON NEXT PAGE]

CITY OF YORBA LINDA

VARIABLE SPEED SOLUTIONS, INC.

By: _____
Gene Hernandez
Mayor

By: _____
Name: _____

Title: _____

By: _____
Dianna Honeywell
Finance Director

Attest:

[If Corporation, TWO SIGNATURES, President **OR**
Vice President **AND** Secretary, **AND** CORPORATE
SEAL OF CONTRACTOR REQUIRED]

By: _____
Marcia Brown
City Clerk

By: _____

Name: _____

Title: _____

Approved as to Form:

By: _____
Rutan & Tucker LLP
City Attorney

EXHIBIT "A"
SCOPE OF MAINTENANCE SERVICES

The following plans and specifications are incorporated into this Contract herein by this reference:

**Pump Station Proposal as described in the Quotation Number VSS-23- 11651134585,
dated January 10 2023.**



PUMP STATION PROPOSAL

Date: January 10, 2023

Black Gold Country Club One Black Gold Drive Yorba Linda, CA 92886

Quotation Number VSS-23- 11651134585 Quoted By: Brian Pavloff

Jobsite: Black Gold Panel Replacements

Supply Power: 460/3/60

PROPOSAL SCOPE

• **Equipment**

2 Ea. UL Listed Variable Speed Control Panels with Standard MPC controls with single VFD drive and alternating contactors so each main motor may run XL or VFD. Built under ISO9001:2015 certification.

➤ **High Flow VT Control Panel**

MPC Standard Controls

- UL 508a Listed Control Panel
 - Short Circuit Current Rating 100 ka
 - NEMA 3R Enclosure
 - 3 Point Latch
 - Carbon Steel w/ Powder Coat Finish
 - UL Listed heat exchanger
 - 600-amp Main Fused Disconnect
 - Type 1 Surge Protection w/status indicators
 - Incoming Line Phase Monitor w/primary fusing
 - 2 Ea. Amiad ABF Motor ¾ HP
 - Class J fuses/block per contactor
 - AB Contactor w/1 AB SS OL per motor
 - PM Pump 3 HP
 - Class J fuses/block per contactor
 - AB Contactor w/1 AB SS OL per motor
 - 4 Ea. Main Pump 75 HP
 - 1 Ea. Danfoss Aqua Drive w/high speed JKS fuse protection
- 16182 Gothard #1 Huntington Beach Ca. 92647 / Office 714-847-5957, Fax 714-847-5958
 Package Pumping Specialists

CA Lic# 665995

_____INT.



16182 Gothard Street Unit
1 Huntington Beach
Ca.92647

Tel: 714-847-5957
Fax: 714-847-5958



- 3 ½% DC Input Link Reactor
- Door Mounted Keypad
- DTW-372 75HP 6 Year Warranty on Danfoss VFD which includes coverage against damages from momentary line or load anomalies such as lightning strikes.
 - Class J fuses/block per contactor
 - AB Interlocked Contactors w/1 AB SS OL per main motor
- AB CompactLogix PLC Platform
- AB 10" PanelView +7 Color HMI
- Inhand Network Switch with Modem
- AB DC Power Supply
- AB "Full Size" 30 mm N4 Door Devices
 - Green Illuminated Switch per pump
 - System Switches: System Control, Low Discharge, VSD Bypass, PLC Bypass, Speed Pot and Red Illuminated Fault Push Button
- GFCI Outlet
- Control Power Transformer w/primary/secondary fusing
- Horn
- Alarm Light
- Flow Signal Input: Pulse
- Lake Level Controls
 - HOA Selector Switch
 - PNR & Probes
- Fertigation Relay
- Safeties:
 - Low level shutdown
 - Low discharge pressure shutdown
 - High discharge pressure shutdown w/auto restart
 - VSD fault with auto restart
 - Solid State Overload shutdown per motor
 - Phase Failure, Imbalance, and low voltage protection

NOTE: *Safeties assume all necessary probes and sensors are existing*

- Operation Features
 - Lamp Test Function
 - Automatic alternation of pumps based on least run time
 - Intelligent Slow Ramp feature for automatic line fill
 - VFD Bypass
- 10" Color Touch screen interface
 - 3 Year Flow Total Logging Day/Week/Month/Year
 - Pump Run Times

- Event Log
- Flow and Station Trending
- Assignable I/O
- **MPC Remote Cell Monitoring w/1 Year Activation**

16182 Gothard #1 Huntington Beach Ca. 92647 / Office 714-847-5957, Fax 714-847-5958
 Package Pumping Specialists

CA Lic# 665995

_____INT.



16182 Gothard Street Unit
 1 Huntington Beach
 Ca.92647

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- **Remote pump station disable feature from any smart device or PC**
- **Factory support remote access to PLC/HMI and VFD for programming and troubleshooting**
- **nSite, MCI's Cloud Based Solution NO SUBSCRIPTION FEE**
 - Scheduled monthly email with flow report in Excel format
 - Access to one full year of pressure, flow, alarms and event data
- **nAlert**
 - Manage maintenance due dates for all aspects of maintenance on your pumping station.
 - Warning light, display message and email alert when due.
 - Monitor and report irregular operation of irrigation system, pump system and filter system.

Instrumentation

- SS Wika Pressure Transmitter 0-250 PSIG

➤ **Low Flow Booster Control Panel**

MPC Standard Controls

- UL 508a Listed Control Panel
- Short Circuit Current Rating 100 ka
- NEMA 3R Enclosure
 - 3 Point Latch
 - Carbon Steel w/ Powder Coat Finish
- UL Listed heat exchanger
- 30-amp Main Fused Disconnect
- Type 1 Surge Protection w/status indicators
- Incoming Line Phase Monitor w/primary fusing
- 2 Ea. Main Pump 5 HP
 - 1 Ea. Danfoss Aqua Drive w/high speed JKS fuse protection
 - 3 ½% DC Input Link Reactor

- Door Mounted Keypad
- DTW-172 5HP 6 Year Warranty on Danfoss VFD which includes coverage against damages from momentary line or load anomalies such as lightning strikes.
 - Class J fuses/block per contactor
 - AB Interlocked Contactors w/1 AB SS OL per main motor
- AB CompactLogix PLC Platform
- AB 10" PanelView +7 Color HMI
- Shared cellular connection with main panel
- AB DC Power Supply
- AB "Full Size" 30 mm N4 Door Devices
 - Green Illuminated Switch per pump
 - System Switches: System Control, Low Discharge, VSD Bypass, PLC Bypass, Speed Pot and Red Illuminated Fault Push Button

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- GFCI Outlet
- Control Power Transformer w/primary/secondary fusing
- Flow Signal Input: Pulse
- Fertigation Relay
- Safeties:
 - High Pump Temperature
 - Low Inlet Pressure
 - Low discharge pressure shutdown
 - High discharge pressure shutdown w/auto restart
 - VSD fault with auto restart
 - Solid State Overload shutdown per motor
 - Phase Failure, Imbalance, and low voltage protection

NOTE: *Safeties assume all necessary probes and sensors are existing*

- Operation Features
 - Lamp Test Function
 - Automatic alternation of pumps based on least run time
 - Intelligent Slow Ramp feature for automatic line fill
 - VFD Bypass
- 10" Color Touch screen interface
 - 3 Year Flow Total Logging Day/Week/Month/Year
 - Pump Run Times

- Event Log
- Flow and Station Trending
- Assignable I/O
- **MPC Remote Cell Monitoring w/1 Year Activation**
- **Remote pump station disable feature from any smart device or PC**
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● **INSTALLATION**

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➤ **Services for Station Installation and Start Up – Includes Prevailing Wages**

- Provide labor to remove existing complete panels and demo back main power feeders.
- VSS Reserves all salvage rights to all equipment removed.
- Provide labor, crane, and rigging to set new panel in same location.
- Provide labor and electrical to re-connect main power feeders and conduits.
- Provide new seal tight conduits and conductors to all skid devices.
- Provide new motor connectors.
- Provide certified start up.
- Provide written report of findings and all as left settings
- Complete end user operation and maintenance training per MCI guidelines.

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• **PRICING**

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Total Equipment and Materials Cost: \$144,476.00 USD _____ INT.
Above price excludes all equipment tax and freight

Prevailing Wage Installation and Start Up \$19,750.00 USD _____ INT.

Estimated Lead Time:
6-8 weeks following approved drawings

FOB: Dallas Texas **Estimated Freight: \$2,900.00 USD _____ INT.**

Freight is estimated at time of proposal and may significantly change at time of delivery based on available trucking and current rates, the above is ONLY an estimate and you will be charge for actual costs incurred.

Additional Warranty items

- **Warranty Includes crane if needed**
- **6-year warranty on Variable frequency drive (Includes lightning damage coverage and labor to replace)**
- **6 Year Warranty on ALL COMPONENTS IN ELECTRICAL PANEL, Inclusive of power related damage such as lightning. Includes parts only.**

TERMS AND CONDITIONS OF SALE

All sales by and purchases from Variable Speed Solutions Inc., (Seller) are governed by the following terms and conditions:

1. All purchases and credits occurring after the closing date of a month will appear on the periodic statement for the next month. Payment shall be made to the Seller in U.S. currency at its offices in Huntington Beach, Orange County, California.
2. Orders regularly entered, whether verbal or written, can only be cancelled in writing by the Buyer upon terms that will compensate the Seller against loss for actual costs incurred to date. Any additional paperwork furnished at the Buyer's request, such as sketches, drawings and specification sheets will be charged at Seller's cost.
3. Any claim for defects, damages or shortages of an order delivered must be made by the Buyer in writing and delivered to Seller within a period of ten (10) days after delivery. Failure to make such claim within the specified time constitutes an acceptance and admission that the order fully complies with the terms, conditions and specifications required. The Seller's liability shall be limited to the stated selling price of any defective goods and shall in no event include special or consequential damages, including profits (or profits lost).

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4. The Buyer bears the risk of loss of or damage to or destruction of the goods from the time of delivery. The Seller retains title to the goods until the Buyer pays the entire purchase price as specified plus any interest thereon. If requested by Seller, Buyer shall execute a security agreement and financing statement evidencing Seller's security interest in the goods delivered to Buyer
5. If the credit of Buyer in the judgment of the Seller becomes impaired at any time, the Seller has the right to require payment in advance before making further shipments, and to demand immediate performance of the Buyer of all obligations imposed upon him by this agreement.
6. If there is any breach of or default under this agreement and if the same is placed in the hands of an attorney for collection, or if collected by lawsuit or through the probate or bankruptcy court, or if any action of foreclosure be had hereunder, Buyer shall be liable for reasonable attorney's fees incurred by the Seller. In the event of default by Buyer, Seller may immediately proceed to enforce payment of Buyer's obligation and exercise all the rights and remedies provided by the Business and Commerce Code of the State of California, or the Uniform Commercial Code, as well as any other rights and remedies afforded to Seller by law. Should Buyer be in default, Seller may require Buyer to return all goods previously delivered to Buyer by Seller, and any subsequent expenses for retaking, holding, preparing for sale, and reselling of such goods shall be at Buyer's expense. Funds realized from such resale shall be credited to Buyer's unpaid account.
7. The Seller, or any credit bureau or investigating agency employed by the Seller, is hereby authorized to investigate the references herein listed or statements or other data obtained from the Buyer or from any other persons pertaining to the Buyer's credit or financial responsibility. The Buyer has read and understands the foregoing terms and conditions of this application for credit and has signed the same as an indication of intent to enter into an agreement with Seller for the future purchase of goods and services from time to time. The Buyer also understands that upon acceptance of this application by the Seller, this document constitutes an agreement between the Buyer and the Seller for payment of debts owed to the Seller in return for the delivery of goods ordered or performance of services requested by Buyer.
8. The terms herein contained shall be governed by the statutes of the State of California and specifically the Business and Commerce Code of the State of California and the Uniform Commercial Code. In the event that any account owing by Buyer to Seller becomes delinquent, and legal proceedings are instituted for collection of said account or indebtedness, such legal proceedings may be instituted and prosecuted against Buyer and its guarantors, if any, in any Court in Orange County, California, and the undersigned expressly agrees that venue for such proceeding shall be in Orange County, CA, even if the principal offices of the Buyer are located in another county within this state or outside of this state.
9. **SELLER DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE MERCHANTABILITY OF THE GOODS DELIVERED TO BUYER NOR THE FITNESS OF SUCH GOODS**

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FOR A PARTICULAR USE UNLESS A WRITTEN WARRANTY IS GIVEN TO BUYER BY
SELLER AT TIME OF DELIVERY.

10. The terms contained herein may be modified only by written agreement signed by Buyer
and an officer of Seller, VARIABLE SPEED SOLUTIONS INC

PAYMENT TERMS: All Purchase Orders are subject to acceptance at factory in Dallas, Texas.
Receipt of production deposit, verification of acceptable credit, and confirmation of order
are required before production. 50% production deposit required upon order, final 40% due
prior to shipment, 10% due net 30 following start up not to exceed 120 days from delivery.
No retention shall be withheld.

➤ Sincerely,
➤ Brian Pavloff
➤
➤ Brian Pavloff
➤ President
➤

➤ Accepted:
➤

➤ Signature

➤ Date

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EXHIBIT "B"

BOND REQUIREMENT

Contractor shall provide a Performance Bond and Payment Bond pursuant to Sections 3.2.12.1 and 3.2.12.2 of this Agreement, executed by a surety meeting the qualifications described in Section 3.2.12.4.

CITY OF YORBA LINDA

**PAYMENT BOND
FOR
IRRIGATION PUMP CONTROL PANEL REPLACEMENT**

KNOW ALL MEN BY THESE PRESENTS, that **VARIABLE SPEED SOLUTIONS, INC.**, as CONTRACTOR, and _____ as SURETY, are held and firmly bound unto **THE CITY OF YORBA LINDA** as AGENCY, in the penal sum of: **One Hundred Sixty Seven Thousand One Hundred Twenty Six Dollars (\$167,126.00)**, which is one hundred percent (100%) of the total contract amount for the above stated project, for the payment of which sums CONTRACTOR and SURETY agree to be bound, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that, whereas CONTRACTOR has been awarded and is about to enter into the annexed Contract Agreement with AGENCY for the above stated project, if CONTRACTOR or any subcontractor fails to pay for any labor or materials of any kind used in the performance of the work to be done under said contract, or fails to submit amounts due under the State Unemployment Insurance Act with respect to said labor, SURETY will pay for the same in an amount not exceeding the sum set forth above, which amount shall insure to the benefit of all persons entitled to file claims under the State Code of Civil Procedures; provided that any alternations in the work to be done, materials to be furnished, or time for completion made pursuant to the terms of the contract documents shall not in any way release either CONTRACTOR or SURETY and notice of such alterations is hereby waived by SURETY.

WITNESS our hand this ___ day of _____, 2023.

(seal)

CONTRACTOR (CORPORATION-TYPE)

By: _____
President

By: _____
Secretary/Treasurer

NOTE: SIGNATURE OF CORPORATE OFFICIALS MUST BE NOTARIZED.

PAYMENT BOND (Page 2)

(seal)

Surety's Name - Type

Mailing Address (Surety)

By: _____
Name

Title

NOTE: SIGNATURE OF CORPORATE OFFICIALS AND SURETY MUST BE NOTARIZED

BOND APPROVED AS TO FORM:

CITY ATTORNEY - CITY OF YORBA LINDA

CITY OF YORBA LINDA
FAITHFUL PERFORMANCE BOND
FOR
IRRIGATION PUMP CONTROL PANEL REPLACEMENT

KNOW ALL MEN BY THESE PRESENTS, that **VARIABLE SPEED SOLUTIONS, INC.**, as CONTRACTOR, and _____ as SURETY, are held and firmly bound unto **THE CITY OF YORBA LINDA** as AGENCY, in the penal sum of: **One Hundred Sixty Seven Thousand One Hundred Twenty Six Dollars (\$167,126.00)**, which is one hundred percent (100%) of the total contract amount for the above stated project, for the payment of which sums CONTRACTOR and SURETY agree to be bound, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that, whereas CONTRACTOR has been awarded and is about to enter into the annexed Contract Agreement with AGENCY for the above stated project, if CONTRACTOR faithfully performs and fulfills all obligations under the contract documents in the manner and time specified therein, then this obligation shall be null and void; otherwise it shall remain in full force and effect in favor of AGENCY; provided that any alterations in the obligations or time for completion made pursuant to the terms of the contract documents shall not in any way release either CONTRACTOR or SURETY and notice of such alterations is hereby waived by SURETY.

WITNESS our hands this _____ day of _____, 2023.

(seal)

CONTRACTOR (CORPORATION-TYPE)

By: _____
PRESIDENT

By: _____
SECRETARY/TREASURER

NOTE: SIGNATURE OF CORPORATE OFFICIALS MUST BE NOTARIZED

FAITHFUL PERFORMANCE BOND (PAGE 2)

(seal)

SURETY'S NAME-TYPE

MAILING ADDRESS (SURETY)

By: _____
Name

Title

NOTE: SIGNATURE OF SURETY OFFICIALS MUST BE NOTARIZED

BOND APPROVED AS TO FORM:

CITY ATTORNEY - CITY OF YORBA LINDA

EXHIBIT "C"
COMPENSATION

NO OTHER COMPENSATION WILL BE NEEDED