

## **PURCHASE AGREEMENT**

**THIS AGREEMENT** is made by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 100 NW 1<sup>st</sup> Avenue, Delray Beach, FL 33444 and Americas Generators, Inc., hereinafter referred to as "Supplier"), a Florida corporation whose address is 8511 NW 61<sup>st</sup> Street, Miami, Florida 33166, this \_\_\_\_ day of \_\_\_\_\_, 2017.

**WHEREAS**, the City issued solicitation 2017-043 to furnish, deliver, provide start-up and training on fixed and portable generators on February 23, 2017.

**WHEREAS**, Supplier submitted a response to the solicitation dated March 30, 2017.

**WHEREAS**, the City desires to purchase products and services from Supplier subject to the terms and conditions of the ITB 2017-043 and Supplier's Bid response to ITB 2017-043.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration of which the parties hereto acknowledge, the parties agree as follows:

1 The above recitals are true and correct and are incorporated herein by reference.

2 The Supplier shall provide to the City five fixed and portable generators in accordance with and pursuant to the terms, conditions, and pricing of ITB 2017-043.

3 This Agreement is in full force and effect upon full execution by the City of Delray Beach for a not-to exceed amount of Two Hundred Thirteen Thousand Six Hundred Twenty-Nine and 68/100 dollars (\$213,629.68).

4 Supplier shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Supplier, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Supplier shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney

selected by City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Supplier under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by City.

5 This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court.

**6 IF THE SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUPPLIER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1<sup>ST</sup> AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.**

- a. Supplier shall comply with public records laws, specifically to:
  - i. Keep and maintain public records required by the City to perform the service.
  - ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
  - iii. 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 Agreement term and following completion of the Agreement if the Supplier does not transfer the records to the City.
  - iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Supplier or keep and maintain public records required by the City to perform the service. If the Supplier transfers all public records to the City upon completion of the Agreement, the Supplier shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Supplier keeps and maintains public records upon completion of the Agreement, the Supplier 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.

- v. If the Supplier does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

7 Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For City:

City of Delray Beach, Florida  
100 N.W. 1st Avenue  
Delray Beach, Florida 33444  
Attn: City Manager

For Supplier:

Americas Generators, Inc.  
8511 NW 61 Street  
Miami, Florida 33166  
Attn: Eric Johnston - CEO

8 Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party.

9 Supplier is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Supplier and its subcontractors and lower tier subcontractors. Supplier understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Supplier or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

10 The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- a. Terms and conditions as contained in this Agreement.
- b. Terms and conditions of the Purchase Order issued pursuant to this Agreement.
- c. Supplier's response to ITB 2017-043 and any subsequent information submitted by Supplier during the evaluation process.

[Remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the City and the Supplier executed this Agreement as of the day and year first above written.

ATTEST:

CITY OF DELRAY BEACH

\_\_\_\_\_  
Kimberly Wynn, Interim City Clerk

By: \_\_\_\_\_  
Cary D. Glickstein, Mayor

Approved as to form and legal sufficiency:

\_\_\_\_\_  
R. Max Lohman, City Attorney

Americas Generators, Inc.,

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

Print Name: Eric Johnston

Title: CEO

(SEAL)

STATE OF FLORIDA

COUNTY OF DADE

The foregoing instrument was acknowledged before me this 9 day of May, 2017, by Eric Johnston, as CEO (name of officer or agent, title of officer or agent), of Americas Generators (name of corporation acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced driver's license (type of identification) as identification



Yamilé Carpio  
Commission # GG046567  
Expires: Nov. 13, 2020  
Bonded thru Aaron Notary

\_\_\_\_\_  
Notary Public - State of Florida