

**Phoenix ELM**

3011 Shaughnessy Drive  
Wellington, FL 33414 US  
ewtodd@phoenixelm.com  
www.phoenixelm.com



**Purchase Order**

VENDOR  
Electric Supply Inc  
4407 N. Manhattan  
Tampa, Florida 33614 USA

SHIP TO  
Phoenix ELM  
3011 Shaughnessy Drive  
Wellington, FL 33414 US

P.O. 203204659  
DATE 02/12/2020

ACTIVITY	DESCRIPTION	AMOUNT
Parts:Parts	IPL FDLS-120WLED-UNIV-40-TMB 120W LED FLOOD 4000K	1,461.37
Parts:Parts	IPL WPLO-90WLED-UNIV-40 90W LED FLOOD 4000K	871.80
TOTAL		\$2,333.17

Approved By \_\_\_\_\_

Date \_\_\_\_\_



## Agreement for Work or Service (USA)

Revision 01/10/2020

### (Vendor Standard Terms & Conditions)

This agreement ("Agreement") between Purchaser and Supplier shall be as set forth in (i) the attached front page of the Agreement for Work and Service; (ii) these terms and conditions; (iii) other documents as may be expressly incorporated into this Agreement and (iv) any subsequent written authorizations.

#### 1.0 SCOPE OF WORK

- 1.1 Supplier shall deliver all material, or perform all services, (collectively "Work") as specified in this Agreement and in conformance to all applicable specifications and drawings or authorized changes thereto. Changes in the scope or prices in this Agreement shall be effective only when authorized in writing by Purchaser.
- 1.2 If the country of origin of any of the Work changes, then Supplier shall notify Purchaser within two (2) business days of knowledge of such occurrence, provided that it is understood that Supplier shall not be entitled to and hereby waives any right to seek any adjustment to the Contract price or the Work schedule as a result of or arising from such occurrence. In addition, Supplier shall, at its own expense, defend, indemnify and hold Purchaser Entities harmless from and against all liability, loss or damage (including attorney's fees and other defense costs) assessed against or suffered by Purchaser Entities as a result of such change.

#### 2.0 DELIVERY

- 2.1 The delivery date specified in this Agreement is the date the material is due at the specified delivery point or the date the services must be completed. If Supplier fails to deliver all material or complete the services specified in this Agreement by the delivery date, Purchaser may terminate this Agreement for cause in accordance with Section 10.0 below.

#### 3.0 PAYMENT AND INVOICING

- 3.1 An invoice for procured materials shall include the Agreement for Work or Service control number, the date the materials were delivered, the quantity, description, unit price, extended price for each item, the sales tax (if applicable) and the invoice total.
- 3.2 For materials and services procured by credit card, Supplier shall bill Purchaser upon delivery of the materials or completion of the services, as applicable.
- 3.3 For all materials not procured by credit card, Supplier shall submit an invoice to Purchaser upon delivery of the material.
- 3.4 For services performed on a lump-sum or fixed repetitive payment basis which are not procured by credit card, Supplier shall submit an invoice for the amount specified in the Agreement for Work or Service following completion of the service for specific scope of work or upon the completion of services for the applicable specified time period (e.g. week, month)
- 3.5 For services performed on a time and material basis, Supplier's compensation for scheduled services shall include time and material rates and reasonable reimbursable expenses which shall be agreed upon in writing by the parties. The rates shall include profit and all direct and indirect expenses except reimbursable expenses. Supplier shall complete the services and shall invoice Purchaser for the actual man-hours expended to perform the services multiplied by the applicable hourly rate plus reimbursable expenses directly related to the services up to the total not-to-exceed amount in the Agreement for Work or Service. Purchaser shall have no obligation to pay Supplier in excess of the not to exceed amount. Supplier shall submit an invoice monthly, or as otherwise may be agreed by the parties, induplicate, for the cost of the services provided during the invoice period, with enough detail to verify the invoiced amount. Each invoice shall include (i) the Agreement for Work or Service control number; (ii) hours of services performed by each individual, the individuals' respective personnel category, rate per hour and the resulting total cost for each such individual for the invoicing period; (iii) itemization for all reimbursement expenses over Twenty-five Dollars (\$25) and (iv) total amount of invoice. Supplier shall maintain books and records supporting all costs hereunder. Purchaser shall have access to such books and records as required to verify reimbursable costs and hours worked for the duration of this Agreement and for a period of two years thereafter.
- 3.6 Unless otherwise agreed in writing, all payments not made by credit card shall be due and payable within forty-five (45) calendar days after Purchaser's receipt of a correct and properly documented invoice. Payment inquiries may be directed to: [AP@phxelm.com](mailto:AP@phxelm.com).
- 3.7 Supplier shall prepare a separate invoice to cover any changes authorized pursuant to Section 1.0, Scope of Work.

#### 4.0 WARRANTY:

- 4.1 Supplier warrants that materials provided under this Agreement; (i) shall be provided in conformance with the description and requirements of this Agreement. (ii) Shall be fit and enough for the intended purpose; (iii) shall be constructed from new materials and (iv) shall be free from fault and defects.
- 4.2 Supplier warrants that services provided under this Agreements shall be performed in accordance with standards of care, skill and diligence consistent with (i) recognized and sound industry practices, procedures and techniques; (ii) all applicable laws and regulations; (iii) the specifications, documents and procedures applicable to the services; and (iv) the degree of knowledge, skill and judgement customarily exercised by professional firms with respect to services of similar nature.
- 4.3 If any material or services fails to meet this warranty within (12) months after delivery of the material or completion of the services, Supplier shall immediately repair, replace, or correct the material or service failing to meet the warranty. Such repaired, replaced, or corrected material or service shall meet the warranty stated herein for twelve (12) months after the completion of the repair, replacement, or correction and the remedy for any breach shall be as stated herein.

#### 5.0 SUBSTITUTION OF MATERIAL:

- 5.1 Supplier shall not substitute from the specified material unless a substitution allowance is authorized in writing by Purchaser.



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#### 6.0 CHARACTER OF WORKERS:

6.1 Purchaser reserves the right to request Supplier to remove immediately from the Jobsite any personnel of Supplier, any Subcontractor, or any Subcontractor personnel, who, in the sole opinion of Purchaser, (i) poses any threat to the security, health or safety of Purchaser, its property, its customers, or the public, (ii) whose conduct adversely affects the Work or reflects unfavorably upon Purchaser, or (iii) who have been terminated for cause by Purchaser or its affiliates.

#### 7.0 INDEPENDENT CONTRACTOR:

7.1 Supplier is at all times and shall remain an independent contractor and not a subcontractor, agent or employee of Purchaser, its parent, subsidiaries or any affiliated company of Phoenix ELM, LLC and their respective officers, directors, agents and employees ("Purchaser Entities"), solely responsible for completing its Work under this Agreement with full power and authority to select the methods, means and manner of performing such Work, so long as such methods, means and manner do not adversely affect the completed improvements or efforts of other suppliers and subcontractors in the execution of their work. Purchaser retains no control or direction over Supplier, its employees and subcontractors, or over the detail, manner or methods of performance of the Work by Supplier, its employees and its subcontractors.

#### 8.0 INDEMNITY:

8.1 Supplier agrees to protect, defend indemnify and hold Purchaser Entities free and unharmed from and against any liabilities whatsoever resulting from or in connection with the Agreement or in connection with the performance of the Work by Supplier, its employees, subcontractors or subcontractor employees to the extent due to or cause by the negligence of Supplier, its employees, its subcontractors or subcontractor employees.

#### 9.0 LIMITATIONS OF LIABILITY:

9.1 Subject to the next sentence and except as expressly set forth in the Agreement, neither Purchaser nor Supplier shall be liable to the other for consequential, special exemplary, punitive, indirect or incidental losses or damages, including loss of use, cost of capital, loss of goodwill, lost revenues or loss of profit under the Agreement, and Purchaser and Supplier each hereby releases the other and each of such persons and entities from any such liability. The foregoing exclusion shall not be construed to limit recovery under any indemnity for third party claims under the Agreement or preclude recovery, where applicable, of liquidated damage amounts hereunder. Supplier shall secure the limitations of liability in this Section 9.0 in all its subcontracts.

#### 10.0 TERMINATION FOR CAUSE:

10.1 If Supplier fails to deliver or perform as required under this Agreement, Purchaser may cancel all or any part of this Agreement. Supplier shall receive payment for material or services accepted by Purchaser, but Purchaser may withhold from any payment due Supplier for additional costs Purchaser may incur as a result of this termination.

#### 11.0 TERMINATION FOR CONVENIENCE:

11.1 Purchaser may terminate all or any part of this Agreement for its convenience. In such event, Purchaser shall pay Supplier for that portion and liability with respect to terminated work. At its option, Purchaser may conduct an audit of Supplier's records to verify that termination charges are reasonable and proper. Payment of such termination charges shall be Purchaser's sole obligation and Supplier's exclusive remedy for termination.

#### 12.0 COMPLIANCE WITH LAWS, RULES AND REGULATIONS:

12.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Supplier shall supply all material, and perform all services, in accordance with all applicable codes, laws, rules, regulations, orders and standards of federal, state, regional, local and municipal government agencies, and all standards, rules, regulations and orders issued by such agencies, including but not limited to all requirements related to equal employment opportunity and civil rights. If Supplier scope of Work include performance of Work on Purchaser's premises "30 or more employee days cumulative per 12 month period," as defined in Purchaser's Safe and Secure Workplace Policy for Suppliers, Supplier shall (and shall cause its subcontractors to) comply with the requirements of such policy, as such policy may be amended. Neither this agreement, nor any duty, interest or rights hereunder shall be subcontracted, assigned, transferred, delegated or otherwise disposed of by Supplier without Purchaser's prior written approval. Supplier shall, at its own expense, defend, indemnify, and save harmless Purchaser Entities from and against all liability, loss or damage (including attorneys' fees and other defense costs) assessed against or suffered by Purchaser Entities as a result of any allegation or claim of noncompliance by Supplier with this Section 12.0.

12.2 Supplier acknowledges that any information, materials, software, or technology provided by Purchaser to Supplier to perform the Work may be subject to the export and reexport control laws and regulations of the United States, including but not limited to the Export Administration Regulations ("EAR") and Department of the Treasury Office of Foreign Assets Controls ("OFAC") Regulations and agrees to comply with these laws and regulations. Without limiting the foregoing or Supplier's other obligations under this Section 12.0, the Supplier will not (and will cause its Subcontractors not to), without proper authorization from the applicable United States Government Agency, export, reexport, or transfer any information, materials, software, or technology provided by Purchaser, either directly or indirectly, to any entity, country, or national of any country in breach of such laws and regulation.

#### 13.0 DISPUTE RESOLUTION

13.1 Any disputes resulting in litigation between the parties shall be conducted in the state or federal courts of the State of Florida. Proceedings shall take place in the Circuit Court for Palm Beach County, Florida, the United States District Court for the Southern District of Florida, or such other Florida location or forum all at Purchaser's election. THE PARTIES TO THE CONTRACT HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THAT MAY EXIST TO HAVE A TRIAL BY JURY IN



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RESPECT OF ANY LITIGATION BASED UPON OR ARISING OUT OF, UNDER, OR IN ANY WAY CONNECTED WITH, THE CONTRACT OR THE PERFORMANCE OF WORK BY SUPPLIER HEREUNDER.

#### 14.0 ASSIGNMENT

14.1 Neither the Agreement, nor the Work, nor any duty, interest or rights hereunder shall be subcontracted, assigned, transferred, delegated or otherwise disposed of by Supplier without Purchaser's prior written approval. Without limiting Purchaser's rights under applicable law, Purchaser may at any time and at its sole and unrestrained discretion assign the Agreement to one of its subsidiaries or affiliates by written notice to Supplier.

#### 15.0 NON-WAIVER

15.1 Failure by Purchaser to enforce any provisions hereof, Purchaser's failure or delay in exercising any rights or remedies provided herein or by law, Purchaser's approval of, acceptance of, or payment for the Work, or any part or combination thereof, or any purported oral modification or rescission of the Agreement by an employee or agent of Purchaser shall neither relieve nor release Supplier from any of its obligations under the Agreement, shall not be deemed a waiver of any rights of Purchaser to insist upon strict performance hereof or of Purchaser's rights or remedies under the Agreement or by law, and shall not operate as a waiver of any of the provisions hereof.

#### 16.0 INSURANCE

16.1 Before commencing Work under the Agreement at any Owner facility or site (including any leased or easement property), Supplier shall procure and maintain the following minimum insurance, unless otherwise specified in the Agreement, with insurance companies acceptable to Purchaser (insurers rates "A-, VII" or higher by A.M. Best's Key Rating Guided are deemed acceptable) that are licensed to do business in the State where the Work is performed or to be performed, or as may be approved writing by Purchaser from time to time:

16.1.1 Workers' Compensation Insurance for statutory obligations imposed by applicable laws where the Work is to be performed and is performed, including, where applicable, the Alternate Employer Endorsement, the United States Longshoremens and Harbor Worker's Act, the Maritime Coverage and the Jones Act.

16.1.2 Employer's Liability Insurance, including Occupational Disease, shall be provided with a limit of (i) One Million Dollars (\$1,000,000) for bodily injury per accident, (ii) One Million Dollars (\$1,000,000) for bodily injury by disease per policy and (iii) One Million Dollars (\$1,000,000) for bodily injury by disease per employee;

16.1.3 Automobile Liability Insurance which shall apply to all owned, non-owned, leased and hired automobiles in an amount with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage per accident; and

16.1.4 General Liability Insurance, written on Insurance Services Office Form CG 00 01 1204 (or equivalent) covering liability arising out of premises, operations, bodily injury, property damage, products completed and liability insured under and insured contract (sometimes referred to as broad form contractual liability), with minimum limits of One Million Dollars (\$1,000,000) combined single limit per occurrence, which shall insure the performance of the contractual obligations assumed by Supplier under the Agreement. The products completed in liability insurance shall be provided for the duration of any applicable warranty period pursuant to Section 4.0, WARRANTY.

16.2 Except for the Worker's Compensation Insurance, Purchaser Entities shall be endorsed as an additional insured on Supplier's insurance policies required to be maintained under the Agreement and such policies shall provide for a waiver of subrogation in favor of Purchaser Entities. All policies of insurance required to be maintained by Supplier hereunder shall provide for a severability of interests clause and include a provision in such policies that Supplier's insurance policies are to be primary and non-contributory to any insurance that may be maintained by or on behalf of Purchaser Entities.

16.3 If any policy furnished by Supplier provides for coverage on a "claims made" basis, the retroactive date of the policy shall be the same as the effective date of the Agreement, or such other date, as to protect the interest of the Purchaser Entities. Furthermore, for all policies furnished on a "claims made" basis, Suppliers providing of such coverage shall survive the termination of the Agreement and the expiration of any applicable warranty period, pursuant to Section 4.0, WARRANTY, until the expiration of the maximum statutory period limitations in the State of Florida for actions based in contract or in tort. If coverage is on "occurrence" basis, Supplier shall maintain such insurance during the entire term of the Agreement.

16.4 Supplier shall promptly provide evidence of the minimum insurance coverage required under the Agreement in the form of an ACORD certificate or other certificate of insurance acceptable to Purchaser. Upon Purchaser's request, Supplier shall provide Purchaser with complete copies of all required Insurance policies under the Agreement. If any of the required insurance is cancelled or non-renewed, Supplier shall within thirty (30) days written notice to Purchaser and file a new Certificate of Insurance or binder with Purchaser demonstrating to Purchaser's satisfaction that the required insurance coverages to be maintained hereunder have been extended or replaced. Neither Supplier's failure to provide evidence of minimum coverage of insurance following Purchaser's request, nor Purchaser's decision to not make such request, shall release Supplier from its obligation to maintain the minimum coverage provided for in this Section 16.0

16.5 In the event Supplier performs Work pursuant to Section 4.0, WARRANTY, Supplier shall comply with the requirements in this Section 16.0.

#### 17.0 SUPPLIER CODE OF CONDUCT

17.1 Supplier shall perform Work in accordance with the Purchaser Supplier Code of Conduct available upon request and provided with any new vendor forms.