

AGREEMENT FOR "PIGGYBACK" PURCHASE

Contract Ref. #24-0226-PB Vehicle and Equipment
Replacement

This Agreement ("Agreement") is entered into on the date last executed below ("Effective Date"), by and between Pinellas County, a subdivision of the State of Florida whose primary address is 315 Court Street, Clearwater, Florida 33756 ("County") and Ring Power Corporation, whose primary address is 500 World Commerce Parkway, Saint Augustine, FL 32092 ("Contractor") (jointly, the "Parties").

WHEREAS, the County is authorized to procure goods and services based on the contract terms and pricing received by other governmental competitive solicitation processes which are made available to local public procurement units; and

WHEREAS, following a competitive procurement process, Sourcewell, entered into Agreement 020923 for Portable Construction Equipment, effective May 12, 2023 (the "Sourcewell Agreement"); and

WHEREAS, the County has elected to utilize resulting contract terms and pricing of the cooperative procurement or solicitation as reflected in the Sourcewell Agreement; and

WHEREAS, Contractor represents that it has the experience and expertise to provide the Goods and Services as set forth in this Agreement.

NOW THEREFORE, the Parties agree as follows:

- A. **Documents Comprising Agreement.** The Agreement consists of this document and the Sourcewell Agreement. All terms and conditions of the Sourcewell Agreement, including any amendments, are incorporated herein as if set forth in full, except as modified herein. If there is a conflict between this document and the Sourcewell Agreement, this document will prevail.
- A. **Term.** This initial term of this Agreement is effective from the Effective Date through 4/20/2027. The parties may extend this agreement in conjunction with any extensions made to the cooperative procurement by a mutually agreed upon written amendment to this Agreement. If the parties desire to extend past the expiration date of the Sourcewell Agreement, the parties may do so by entering into a mutually agreed upon written amendment to this Agreement. The Agreement will not automatically renew.
- B. **Expenditures Cap.** County expenditures under the Agreement will not exceed \$72,835.40 for the Contract term without a written amendment.
- C. **Price Schedule** – Attached as Exhibit A
- D. **Modifications to the Sourcewell Agreement.**
 1. **The County as the Contracting Party.** All references within the Sourcewell Agreement to the Sourcewell or the Participating Entity will be interpreted as pertaining to the County. It is understood that wherever other references to Sourcewell or Participating Entity appear in the Sourcewell Agreement, they shall be read as "Pinellas County." Any term in the Sourcewell Agreement that is applicable in law or fact solely to Sourcewell that cannot be reasonably applied to the County is severed from the Agreement, with no effect on the remaining terms.
 2. **Sourcewell Agreement- Section 1 Term of Contract, subsection A (Effective Date),** is revised to clarify that, as between the County and Contractor, the "Effective Date" is the date listed above. Should the Sourcewell Agreement terminate before the end of the term of the Agreement between the County and Contractor, all applicable terms of the conditions of the Sourcewell

Agreement incorporated herein will remain in full force and effect.

3. Sourcewell Agreement – Section 10 Audit, Assignment, Amendments, Wavier, and Contract Complete, subsection A (Audit), is revised to state Pinellas County reserves the right to conduct an audit of the Contractor's records related to this agreement and any Products or Services provided hereunder, pursuant to Pinellas County Code, Chapter 2. The Contractor must retain any such records for five (5) years following the Contract completion and must provide the County or their authorized representatives complete access to such records for audit purposes during the term of the Agreement and for five (5) years following Agreement completion. This provision does not entitle Pinellas County to audit any records not related to the Agreement.

4. Sourcewell Agreement – Section 14. Governing Law, Jurisdiction, and Venue is revised to state that the contract will be governed by and construed under the laws of the State of Florida, and any disputes between the parties that cannot be settled by mutual agreement shall be resolved solely and exclusively in the courts located in or for Pinellas County.

E. **Non-Exclusive Agreement.** Entering into an Agreement imposes no obligation on the COUNTY to utilize the CONTRACTOR for all goods and/or services of the type contracted for which may develop during the agreement period. All agreements are non-exclusive. During the term of any Agreement the COUNTY reserves the right to contract with another provider for similar goods and/or services as it determines necessary in its sole discretion.

F. **Independent CONTRACTOR Status and Compliance with the Immigration Reform and Control Act.** CONTRACTOR is and will remain an independent contractor and is neither agent, employee, partner, nor joint venturer of COUNTY. CONTRACTOR acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 U.S.C. 1324, et seq, and regulations relating thereto, as either may be amended from time to time. Failure to comply with the above provisions will be considered a material breach of the Agreement.

G. **E-Verify.** The contractor and subcontractor must register with and use the E-verify system in accordance with Florida Statute 448.095. A contractor and subcontractor may not enter into a contract with the County unless each party registers with and uses the E-verify system. If a contractor enters a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the Subcontractor does not employ, contract with, or subcontract with unauthorized aliens. The contractor must maintain a copy of the affidavit for the duration of the contract. If the County, Contractor, or Subcontractor has a good faith belief that a person or entity with which it is contracting has knowingly violated Florida Statute 448.09(1) shall immediately terminate the contract with the person or entity. If the County has a good faith belief that a Subcontractor knowingly violated this provision, but the Contractor otherwise complied with this provision, the County will notify the Contractor and order that the Contractor immediately terminate the contract with the Subcontractor. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged to Section 448.095(2)(d), Florida Statute. Contractor acknowledges upon termination of this agreement by the County for violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor acknowledges that Contractor is liable for any additional costs incurred by the County as a result of termination of any contract for a violation of this section. Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in this section, requiring the subcontracts to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any Subcontractor or Lower Tier Subcontractor with the clause set for in this section.

H. **Conflict of Interest.** The CONTRACTOR represents that it presently has no interest and will acquire no interest, either direct or indirect, which would conflict in any manner with the performance of the Services required hereunder, and that no person having any such interest will be employed by CONTRACTOR during the agreement term and any extensions. The CONTRACTOR must promptly notify the COUNTY in writing of any business association, interest, or other circumstance which constitutes a conflict of interest as provided herein. If the CONTRACTOR is in doubt as to whether a prospective business association, interest, or other circumstance constitutes a conflict of interest, the Contract may identify the prospective business association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion from CONTRACTOR's legal counsel, at CONTRACTOR's sole expense, as to whether the business association, interest or circumstance constitutes a conflict of interest if entered into by the CONTRACTOR.

I. **Confidential Information.**

1. **County Confidential Information** - Contractor shall not disclose to any third party County Confidential Information that Contractor, through its Contractor Personnel, has access to or has received from the County pursuant to its performance of Services pursuant to the Agreement, unless approved in writing by the County Contract Manager. All such County Confidential Information will be held in trust and confidence from the date of disclosure by the County, and discussions involving such County Confidential Information shall be limited to Contractor Personnel as is necessary to complete the Services.

2. **Contractor Confidential Information** - All Contractor Confidential Information received by the County from Contractor will be held in trust and confidence from the date of disclosure by Contractor and discussions involving such Contractor Confidential Information shall be limited to the members of the County's staff and the County's subcontractors who require such information in the performance of this Agreement. The County acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of Contractor in the Contractor Confidential Information during and after the term of the Agreement and shall at all times maintain the confidentiality of the Contractor Confidential Information provided to the County, subject to federal law and the laws of the State of Florida related to public records disclosure. Contractor shall be solely responsible for taking any and all action it deems necessary to protect its Contractor Confidential Information except as provided herein. Contractor acknowledges that the County is subject to public records legislation, including but not limited to Chapter 119, Florida Statutes, and the Florida Rules of Judicial Administration, and that any of the County's obligations under this Section may be superseded by its obligations under any requirements of said laws.

3. **Confidential Records & Information.** Each party will maintain as confidential any Confidential Records & Information, to the extent authorized by Federal and Florida law. Access to Confidential Records & Information will be limited by the Parties to only those employees or agents that must have access to comply with the terms of the Agreement.

4. **Cooperation with the Inspector General.** CONTRACTOR will fully cooperate with the Pinellas County Clerk of the Circuit Court's Inspector General in any investigation, audit, inspection, review, or hearing initiated by the Inspector General on behalf of the COUNTY that is associated with the administration or performance of the Agreement, including but not limited to providing timely access to records, authorizing interviews of CONTRACTOR agents or employees, and responding to requests for information. CONTRACTOR will include and enforce this requirement in any subcontractor agreement.

5. **Public Records.** CONTRACTOR acknowledges that information and data it manages in relation to the Agreement may be public records in accordance with Chapter 119, Florida Statutes. CONTRACTOR agrees that prior to providing Services it will implement policies and procedures to

maintain, produce, secure, and retain public records in accordance with applicable laws and regulations, including but not limited to Section 119.0701, Florida Statutes. Notwithstanding any other provision of this Agreement relating to compensation, the CONTRACTOR agrees to charge the COUNTY, and/or any third parties requesting public records only such fees allowed by Section 119.07, Florida Statutes, and County policy for locating and producing public records during the term of this Agreement. A CONTRACTOR who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10. Upon request from the COUNTY's custodian of public records, CONTRACTOR will provide the COUNTY 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 Chapter 119, Florida Statutes, or as otherwise provided by law. CONTRACTOR will 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 COUNTY. Upon completion of the contract, the CONTRACTOR will transfer to the COUNTY, at no cost, all public records in possession of the CONTRACTOR, or will keep and maintain public records as required by law. If the CONTRACTOR transfers all public records to the COUNTY upon completion of the contract, the CONTRACTOR will 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 will meet all applicable requirements for retaining public records. All records stored electronically must be provided to the COUNTY, upon request from the COUNTY's custodian of public records, in a format that is compatible with the information technology systems of the COUNTY.

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, ADMINISTRATIVE SERVICES, AT (727) 464-3341, clerkinfo@mypinellasclerk.org ATTN: PUBLIC RECORDS LIASON 315 COURT STREET, 4TH FLOOR, ROOM 400, CLEARWATER, FL 33756

The Parties acknowledge and agree that the statements and provisions in this Section are required by Florida Statutes to be included in certain contracts. The inclusion of these provisions will not be construed to imply that the CONTRACTOR has been delegated any governmental decision-making authority, governmental responsibility, or governmental function, or that CONTRACTOR is acting on behalf of the COUNTY as provided under section 119.011(2), Florida Statutes. As stated above, CONTRACTOR may contact the COUNTY with questions regarding the application of the Public Records Law; however, CONTRACTOR is advised to seek independent legal counsel as to its legal obligations. The COUNTY cannot provide CONTRACTOR advice regarding its legal rights or obligations.

J. Payment & Fiscal Obligations

1. Fiscal Non-Funding

- A. The Agreement is not a general obligation of the COUNTY. It is understood that neither this Agreement nor any representation by any COUNTY employee or officer creates any obligation to appropriate or make monies available for the purpose of the Agreement beyond the fiscal year in which this Agreement is executed. No liability will be incurred by the COUNTY, or any department, beyond the monies budgeted and available for this purpose. In the event that sufficient budgeted funds are not available for a new fiscal period, COUNTY will notify the CONTRACTOR of such occurrence and the Agreement

will terminate on the last day of the then-current fiscal period without penalty or expense to the COUNTY.

2. Invoices

- A. Invoices (if applicable) must be submitted to the billing address indicated below, or electronically as permitted by the COUNTY. Any invoiced payments will be made in accordance with the Local Government Prompt Payment Act, Florida Statutes § 218.70 et seq.. The COUNTY will notify the CONTRACTOR in writing of a change in the billing address. Any invoices must reference a valid contract or purchase order number and must include reasonable detail and supporting documentation, as necessary, for a proper pre-audit and post-audit thereof, to comply with Florida Statutes. When the Agreement is terminated, all amounts due will be pro-rated.
- B. Invoices (if applicable) must be submitted to:
 - a. Clerk of the Circuit Court and Comptroller
 - b. Attn: Finance Division / Accounts Payable
 - c. PO Box 2438
 - d. Clearwater, Florida 33757
 - e. Phone: 727-464-8300
 - f. Email: ClerkFinanceDivisionFixedAssets@mypinellasclerk.org
- C. The CONTRACTOR will provide the COUNTY with a completed IRS Form W-9 upon execution of the Agreement.

3. Refunds

- A. The CONTRACTOR will, without delay, provide a full refund to the COUNTY of any payments made, upon failure to timely and completely provide the Services for which the payments were made. At the end of the initial term, pricing may be adjusted based on mutual agreement of the Parties.

4. Taxes

- A. The COUNTY is immune from taxation. The Florida State Sales Tax Exemption Number for Pinellas County is 85-8013287050C-7 and the Federal Excise Tax Exemption Number is 59-6000800. The COUNTY will have no liability for any sales, service, value added, use, excise, gross receipts, property, workers' compensation, unemployment compensation, withholding or other taxes, whether levied upon CONTRACTOR or CONTRACTOR's assets, or upon the COUNTY in connection with the Agreement. Payments to County are subject to applicable Florida taxes, which will be the sole responsibility of CONTRACTOR.

5. Travel Expenses

- A. No travel or per diem reimbursement expenses will be paid unless expressly authorized in the Agreement and approved by the COUNTY in writing in advance. All bills for any authorized travel expenses will be submitted and paid in accordance with the rates and procedures specified in Section 112.061, Florida Statutes, and in compliance with the COUNTY's policy for travel expenses.

**K. DISPUTE RESOLUTION FOR PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS
IN MATTERS OF INVOICE PAYMENTS:**

Payment of invoices for work performed for Pinellas COUNTY Board of COUNTY Commissioners (COUNTY) is made, by standard, in arrears in accordance with Section 218.70, et. seq., Florida Statutes, the Local Government Prompt Payment Act.

If a dispute should arise as a result of non. payment of a payment request or invoice the following Dispute Resolution process will apply:

1. Pinellas COUNTY will notify a vendor in writing within 10 days of receipt of an improper invoice. The notice will indicate what steps the vendor should undertake to correct the invoice and resubmit a proper invoice to the COUNTY. Such steps should include requiring the vendor to contact the requesting department to validate the invoice and receive a sign off from that entity that would indicate that the invoice in question is in compliance with the terms and conditions of the Agreement, and then resubmitting the invoice as a "Corrected Invoice" to the requesting department to initiate the payment timeline.
 - A. Requesting department for this purpose is defined as the COUNTY department for which the work is performed or to which goods are provided.
 - B. Proper invoice for this purpose is defined as an invoice submitted for work performed that meets prior agreed upon terms or conditions to the satisfaction of Pinellas COUNTY.
2. Should a dispute result between the vendor and the COUNTY about payment of a payment request or an invoice then the vendor should submit their dissatisfaction in writing to the Requesting Department. Each Requesting Department will assign a representative who will act as a "Dispute Manager" to resolve the issue at departmental level.
3. The Dispute Manager will first initiate procedures to investigate the dispute and document the steps taken to resolve the issue in accordance with section 218.76 Florida Statutes. Such procedures must be commenced no later than 30 days after the date on which the payment request or invoice was received by Pinellas COUNTY and will not extend beyond 45 days after the date on which the payment request or invoice was received by Pinellas COUNTY.
4. The Dispute Manager should investigate and ascertain that the work, for which the payment request or invoice has been submitted, was performed to Pinellas COUNTY's satisfaction and duly accepted by the Proper Authority. Proper Authority for this purpose is defined as the Pinellas COUNTY representative who is designated as the approving authority for the work performed in the contractual document. The Dispute Manager will perform the required investigation and arrive at a solution before or at the 45-day timeframe for resolution of the dispute, per section 218.76, Florida Statutes. The COUNTY Administrator or his or her designee will be the final arbiter in resolving the issue before it becomes a legal matter. The COUNTY Administrator or his or her designee will issue their decision in writing.
5. Pinellas COUNTY Dispute Resolution Procedures will not be subject to Chapter 120 of the Florida Statutes. The procedures will also, per section 218.76, Florida Statutes, not be intended as an administrative proceeding which would prohibit a court from ruling again on any action resulting from the dispute.
6. Should the dispute be resolved in the COUNTY's favor interest charges begin to accrue 15 days after the final decision made by the COUNTY. Should the dispute be resolved in the vendor's favor the COUNTY will pay interest as of the original date the payment was due.

7. For any legal action to recover any fees due because of the application of sections 218.70 et. seq., Florida Statutes, an award will be made to cover court costs and reasonable attorney fees, including those fees incurred as a result of an appeal, to the prevailing party. If it is found that the non-prevailing party held back any payment that was the reason for the dispute without having any reasonable lawful basis or fact to dispute the prevailing party's claim to those amounts.

L. Notices

Any notice or written communication pursuant to the terms of this Agreement must be delivered in person, by Certified Mail, Return Receipt Requested or private carrier express mail, or emailed to the person or persons designated in the Agreement. Notice will be deemed to have been given on the date shown on the return receipt, or date of actual delivery, whichever is earlier. Either designated recipient will notify the other, in writing, if someone else is designated to receive notice.

M. Acceptance of Deliverables

For all deliverables under the Agreement that require formal acceptance by the COUNTY, the COUNTY will have 10 calendar days to review the deliverable(s) after receipt or completion of same by CONTRACTOR, and either accept or reject the deliverable(s) by written notice specifying any required changes, deficiencies, and/or additions necessary. CONTRACTOR will then have 7 calendar days to revise the deliverable(s) to resubmit and/or complete the deliverable(s) for review and approval by the COUNTY, which will then have 7 calendar days to review and approve, or reject the deliverable(s); provided however, that CONTRACTOR will not be responsible for any delays in the overall project schedule that result from the COUNTY's failure to timely approve or reject deliverable(s) as provided herein. The County will acknowledge final acceptance of the deliverable(s) in writing.


- N. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties.

O. Signatures

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their undersigned officials, who are duly authorized to bind the Parties to the Agreement.

For CONTRACTOR:

Signature



Print Name & Title

Alan Thomas, VP/Director of Government Sales

Date

02/23/2024

For COUNTY:

Signature

Print Name & Title

Date

APPROVED AS TO FORM

By: Keiah Townsend
Office of the County Attorney

Exhibit A –



SOURCEWELL CONTRACT QUOTATION

Prepared For:
Pinellas County

10/9/2023

ONE NEW GENIE Z34/22 DC ARTICULATING Z BOOM

CONTRACT DETAILS

| |
|--|
| Sourcewell Contract # 020923-TER Effective: Through April 20, 2027 |
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CONTRACT PRICING

| | |
|--|-----------------|
| Z-34/22 DC | \$59,156 |
| 48V DC DRIVE SYSTEM | INCL |
| INDUSTRIAL FOAM FILLED TIRES | INCL |
| 48VG SOLID STATE BATTERY CHARGER | INCL |
| 24V DC AUXILIARY POWER UNIT | INCL |
| 48V DC HYDRAULIC POWER UNIT | INCL |
| 355 DEGREE NON-CONTINUOUS ROTATION | INCL |
| DESCENT AND TILT ALARM | INCL |
| DUAL PARALLELOGRAM LIFT LINKAGE | INCL |
| FLASHING BEACON AND TRAVEL ALARM | INCL |
| 4' 8" STEEL PLATFORM | INCL |
| 4' JIB | INCL |
| LOCKABLE PLATFORM CONTROL BOX COVER | \$263 |
| AC POWER CORD TO PLATFORM | INCL |
| DRIVE ENABLE SYSTEM | INCL |
| SELF-LEVELING PLATFORM | INCL |
| LIFT GUARD CONTACT ALARM | INCL |
| BATTERY CHARGE INDICATOR | INCL |
| TEREX SOURCEWELL FREIGHT AND DELIVERY CHARGE | \$4,080 |
| TEREX STEEL SURCHARGE | <u>\$2,715</u> |
| TOTAL TRANSACTION PRICE PER SOURCEWELL CONTRACT | \$66,214 |

| Pricing Summary | | |
|-----------------|-------|-----------|
| | | 66,214.00 |
| | | |
| | | |
| | | |
| Unspecified 10% | | 6,621.40 |
| | Total | 72,835.40 |