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RESOLUTION NO. 08-60

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, APPROVING AN AGREEMENT WITH ISI WATER COMPANY TO PROVIDE CONSULTANT SERVICES TO ANALYZE AND MAXIMIZE THE BILLABLE UTILITY REVENUE OF STORMWATER MANAGEMENT CHARGES FOR PARCELS OF LAND WITHIN THE VILLAGE OF PALMETTO BAY; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AN AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Palmetto Bay exercised its option to be exempt from inclusion in Miami-Dade County Stormwater Utility; and,

WHEREAS, the Village of Palmetto Bay entered into an agreement with Miami-Dade County Water and Sewer Department for Stormwater Management Utility fee billing and collection services in July 2006; and,

WHEREAS, Miami-Dade County Water and Sewer Department currently bills and collects Stormwater Management Utility fees to fund and support the management of stormwater systems within the Village's boundaries; and,

WHEREAS, the billing rate used by Miami-Dade Water and Sewer for collecting fees associated with Stormwater Management Utility is based on the area of impervious surface which may not be accurate; and,

WHEREAS, Miami-Dade Water and Sewer may be under-billing or not billing Village property owners based on the average parcel size and landuse of the property; and,

WHEREAS, ISI Water Company has offered to analyze and maximize the billable revenue billed to property owners based on actual property size and total impervious surface area contained within the property; and,

WHEREAS, pursuant to the Village's Purchasing Procedures, the Village may enter into piggyback contracts when another public agency has already followed proper formal bid procedures; and,

WHEREAS, the City of Lakeland, Florida, entered into an Agreement with ISI Water Company after solicitation of a request for proposals; and,

WHEREAS, the Village waives competitive bidding in the award of the agreement to ISI Water Company for Utility Revenue Enhancement Services; and,

WHEREAS, ISI Water Company, has agreed to provide Utility Revenue Enhancement Services to the Village with the same terms and conditions as set forth in the Agreement with the City of Lakeland dated the 18th day of October, 2004 with the exception of Article 2. Mutually Agreed Upon Amendment.

1
2 **NOW, THEREFORE, BE IT RESOLVED, BY THE MAYOR AND VILLAGE**
3 **COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**
4

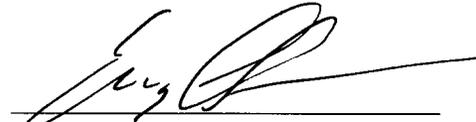
5 Section 1: The Village of Palmetto Bay Council authorizes the Village Manager to
6 execute an Agreement with ISI Water Company for Utility Revenue Enhancement Services.
7

8 Section 2: This resolution shall be effective immediately upon approval.
9

10 **PASSED and ADOPTED** this 7th day of July, 2008.

11
12
13
14 **ATTEST:**


15 Meighan Rader
16 Village Clerk
17


18 Eugene P. Flinn Jr.
19 Mayor
20

21 **READ AND APPROVED AS TO FORM:**


22 Erye Boutsis
23 Village Attorney
24
25
26
27
28

29 **FINAL VOTE AT ADOPTION:**

30
31 Council Member Ed Feller YES
32
33 Council Member Paul Neidhart YES
34
35 Council Member Shelley Stanczyk YES
36
37 Vice-Mayor Linda Robinson YES
38
39 Mayor Eugene P. Flinn Jr. YES
40
41

AGREEMENT BETWEEN
THE VILLAGE OF PALMETTO BAY
and
ISI WATER COMPANY

FOR
UTILITY REVENUE ENHANCEMENT SERVICES

THIS AGREEMENT, made and entered into as of the date of countersignature, by and between ISI Water Company, a corporation organized and existing under the laws of the State of Texas and authorized to do business in the State of Florida, having its principal offices at 6320 SW 89 Court, Miami, FL 33173, hereinafter referred to as Water Company of America ("WCA"), and the Village of Palmetto Bay, a political subdivision of the State of Florida, having its principal offices at 8950 Southwest 152 Street, Florida 33157, hereinafter referred to as the "Village".

WITNESSETH:

WHEREAS, WCA offered to identify unbilled or misbilled water, sewer, stormwater and sanitation services for the Village; and,

WHEREAS, WCA has entered into an agreement with the City of Lakeland, Florida to identify unbilled and misbilled water and sewer services, which is attached hereto as "Exhibit A"; and,

WHEREAS, the Village has authorized the Purchasing Department to utilize and have access to Contracts and Agreements of Florida City governments; and,

WHEREAS, the Village desires to contract for the performance of such services in accordance with the terms of the Lakeland Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. EXHIBIT A

The Agreement between the City of Lakeland, Florida and WCA for Review of Unbilled or Misbilled Utility Services, entered into on October 18, 2004, is attached hereto, identified as "Exhibit A" and made a part hereof, and mutually amended to provide for the special requirements of the Village and WCA.

ARTICLE 2. MUTUALLY AGREED UPON AMENDMENTS

The Village and WCA mutually agree the following definitions, terms, and conditions shall amend said Agreement in the order stated in said agreement:

- a) All references to "Lakeland" found within "Exhibit A" or referenced within "Exhibit A", shall for the purposes of this Agreement be replaced with the words "Village of Palmetto Bay".
- b) Modify "Article 5.02" from 55% to 50%.

ARTICLE 3. NOTICES

- a) All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if sent in a manner requiring a signed receipt of delivery, such as Federal Express, courier delivery, or if mailed, Registered or Certified mail, return receipt requested, in any case addressed as follows:

- (i) To the Village at the following address:

Village of Palmetto Bay
8950 Southwest 152 Street
Palmetto Bay, Florida 33157

Attention: Ron E. Williams

- (ii) To WCA at the following address:

ISI Water Company
6320 SW 89 Court
Miami, FL 33173

Attention: Steven Hooper

- b) Either party may at any time designate a different address by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 4. NEGOTIATED AGREEMENT

This Agreement reflects the negotiation and agreement of the parties. Nothing contained herein shall be interpreted, by implication or otherwise, as inuring to the benefit or the disadvantage of one party in the absence of such mutual negotiation and agreement.

ARTICLE 5. CONTRACT DOCUMENTS CONTAIN ALL TERMS

This Agreement and all documents incorporated by reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first herein above set forth:

ATTEST:

VILLAGE OF PALMETTO BAY

Signature: 

Printed name: Ron E. Williams

Title: Village Manager

Date: _____

ISI WATER COMPANY

By: _____
Steven Hooper, General Manager

Date: _____

Monday, March 8, 2004

Lakelandgov.net

Purchasing Division

You are logged in as:

Guest

Purchasing Terms

Purchasing Policy

Staff Directory

Bidder Application

Request for

Quotation Notices

Abstracts

Bid Status

Plan Holders

Contact Us

Upcoming Events

Main > Purchasing > Request Notice

REQUEST FOR PROPOSAL

WATER AND WASTEWATER BILLING COMPARISON CONSULTANT for CITY OF LAKELAND
WATER UTILITIES DEPARTMENT

MARCH 4, 2004

RFP NO. 4078

Request for Proposals will be received by the Purchasing Manager, City of Lakeland, Florida, 1140 East Parker Street, Lakeland, Florida 33801 UNTIL 2:00 P. M. MARCH 18, 2004 at which time and place they will be publicly opened in the office of the Purchasing Manager and read aloud for the following:

Bid Documents may be requested by visiting our Website at <http://www.lakelandgov.net> or by contacting the City of Lakeland Purchasing Division at (863) 834-6780, on or before, March 15, 2004. Any Bidder that does not have a City of Lakeland Bidder Number should visit the above website and complete a Bidder's Application.

THE CITY OF LAKELAND IS REQUESTING PROPOSALS FROM EXPERIENCED AND QUALIFIED COMPANIES FOR SPECIFIC AND CONTINUING CONSULTING SERVICES REQUIRED AT CITY OF LAKELAND WATER UTILITIES DEPARTMENT. THE SCOPE OF SERVICES SHALL INCLUDE, WITHOUT LIMITATIONS, ANALYSIS OF ACCOUNTS WITHIN THE COMPUTER BILLING SYSTEM, CORRECT RATE APPLICATION, BILLING ERRORS OCCURRING IN AVAILABLE PAST HISTORIES AND CORRECT APPLICATION OF METERS. THE REQUEST FOR PROPOSALS SUBMITTED AND THE RESULTING AGREEMENT AND CONTRACT, IF ISSUED, SHALL BE IN COMPLETE ACCORDANCE WITH, BUT NOT LIMITED TO, THIS REQUEST FOR PROPOSAL AND ALL CURRENT FEDERAL, STATE, AND LOCAL ORDINANCES, CODES AND REGULATIONS.

For any further TECHNICAL INFORMATION or clarification contact: Mr. Gary Ross, Assistant Director of Water Utilities at (863) 648-6193.

Please refer Commercial Inquiries to: Mr. Don Hillman at (863) 834-6780.

**CONTRACT
FOR
SERVICES**

THE STATE OF: FLORIDA

COUNTY OF: POLK

KNOWN ALL MEN BY THESE PRESENTS:

THIS CONTRACT FOR SERVICES ("Contract") is made on this 18th day of October, 2004, by and between the City of Lakeland ("City"), and Infrastructure Services Inc. (referred to herein as Water Company of America "WCA"), a Delaware corporation, with its principal office in Houston, Harris County, Texas. The initial addresses of the parties are as follows:

WCA
Infrastructure Services, Inc.
711 Rankin Road
Houston, Texas 77073

City
City of Lakeland
501 East Lemon St.
Lakeland, Fl. 33801

WITNESSETH:

WHEREAS, the City desires to secure the performance of services of the highest quality by trained, skilled personnel; and

WHEREAS, WCA desires to provide such services in exchange for the fees hereinafter specified;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein contained, it is agreed as follows:

ARTICLE I

Definitions

As used in this Contract, the following terms shall have meanings as set out below:

"Account" is defined as a particular Water and/or Wastewater Service of the City. This definition includes all unauthorized taps discovered by WCA that previously had not been given an Account number by the City.

"Base Revenue" is defined as the average monthly billing on an Account listed for up to the twelve month period immediately preceding the completion of the Work.

"WCA Share" is defined as the fee to be paid by the City to WCA for performance of duties under this Contract, computed in accordance with Section 5.5.02 hereof.

"City" is defined in the preamble of this Contract and includes its successors and assigns.

"WCA" is defined in the preamble of this Contract and includes its successors and assigns.

"Customer Information System" (or "CIS") is defined as the system used by the City to bill and to account for water and sewer customer activities. This City system utilizes software under the acronym of "UMS".

"Contract Administrator" is defined as that person designated by the Director by notice to WCA, to administer this Contract on behalf of the City. This individual shall have a working knowledge of City protocol and operating procedures of the City, and shall have the authority and responsibility of administering all day-to-day aspects of this contract on behalf of the City.

"Director" is defined as the City's designated Utility manager who has ultimate authority and responsibility over this Contract.

"Documenting The Find" is defined as the notation by WCA on the Research report to the City or the approval of a submitted Formal Work Order.

"Find" is defined as the discovery by WCA of an Account condition, as the result of the Work, that causes a specific Water or Wastewater Service to be improperly or inaccurately billed.

"Force Majeure" as used herein, shall include but not be limited to, acts of God, acts of the public enemy, war, blockades, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, tornadoes, hurricanes, arrests, and restraints of government and people, explosions, breakage or damage to machinery or equipment and any other abilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability.

"Increased Revenue" is defined as the amount of monthly income received by the City on an Account, over and above the monthly Base Revenue, subsequent to corrective action being taken on that Account, including both income derived from ongoing usage, as well as retroactive billing determined to be appropriate by the City.

"Notice to Proceed" is defined as the written notification by the City to WCA to initiate Work.

"Research Report" is defined as the reports delivered to the City by WCA pursuant to Section 2.01 (C) (1) hereof.

"Water and/or Wastewater Service" is defined as the physical location of a City consumer, both known and unknown to the City, which utilizes services provided by the City.

"Work" is defined as all of WCA's efforts towards determining needed changes and recommending the corrective actions necessary in order for the specific Water and Wastewater Service to be properly and accurately billed.

"Work Order" shall be defined to mean that certain standard document that defines relevant information about a City Account that WCA has evaluated and determined to be defective.

ARTICLE II

Scope of Service

2.01 - Basic Service

Upon receipt of the Notice to Proceed, WCA shall provide the investigation, Work Orders, and field services necessary to maximize the billable revenue for the City's Water and Wastewater Service.

- A) Investigation and Field Work
- B) Upon receiving the Account information described in Section 3.01 (A) hereof WCA shall:
 - 1) Investigate each Account and determine if there is a loss of revenue to the City associated with that Account.
 - 2) Submit Work Orders with recommendation for changes in billing procedures and/or changes in physical service. This information will be provided for each Account.
- C) Reports
 - 1) WCA shall provide to the City on a periodic basis a complete list of all Accounts researched on which WCA has identified potential increased revenues to the City. This Research Report shall be submitted for the purpose of "Documenting the Find" and WCA shall be entitled to its portion of the Increased Revenues on said Accounts, if the Work Order(s) included therein are subsequently approved by the Contract Administrator.
 - 2) WCA shall provide the Contract Administrator a monthly status report. This report is to be inclusive of all Accounts that are deemed by WCA to justify action and on which a

Work Order has been generated in the prior month. This report shall be due on or before the 10th calendar day each month.

- D) WCA warrants that all work shall be performed in a good and workmanlike manner meeting the standards of quality prevailing for services of like kind. WCA further warrants that trained and skilled persons who have been previously approved by the City shall perform all Work.

2.02 - Services in General

WCA shall coordinate all of its activities herein described with the City, the Director, WCA Administrator, or their designated representative(s).

2.03 - Finds Exempted

In certain rare cases, WCA may discover a Find on an account of which the City has prior knowledge and is attempting to remedy. These remedies are typically the result of various City reports and procedures that already exist which are designed to identify and correct certain system and billing errors or "inconsistencies". These "inconsistencies" subsequently detected separately by WCA are exempted and not to be considered as a "Find". These cases may fall into two categories and require that WCA shall: 1) for a period of 120 calendar days from the date of the inception of a new Account problem that originates during the term of this agreement, refrain from submitting a Work Order related to that Find, and 2) for a period of 120 calendar days beginning at the Notice to Proceed date, refrain from submitting a Work Order for any specific account problem known to the City and made known to WCA, that the City is in the process of remedying.

It is agreed by the parties hereto that the purpose of this Section 2.03 is to define and agree to the period of time for the City to remedy new problems that it discovers, and/or to remedy known situations. This will minimize duplication of effort, thus keeping project resources focused on providing maximum benefit to the City.

ARTICLE III

City Duties, Data Records, Work Products, Etc.

3.01 - Certain Duties of the City:

- A) In addition to its other duties under this Contract, the City shall, to the extent permitted by law for each Account, promptly provide access to all the data and records in the possession of the City and provide copies of any documents in the possession or control of the City or available to the City which are requested by WCA and are reasonably necessary for WCA to perform its duties under this Contract. Upon request and subject to the terms and conditions set forth in Exhibit "A," attached hereto and incorporated herein by reference, the City shall make available to WCA the Customer Service Information System via a computer link for the viewing and extracting of real time information or a FTP (File Transfer Protocol) site. At no time shall WCA input a change or modification to an Account by way of any link.
- B) Upon execution of this Contract by all parties, the City will coordinate a post-award meeting with WCA and all designated management personnel representing the City under this Contract in order to fully explain all the aspects of this Contract.

- C) The City shall review all Work Orders submitted by WCA under Section 2.01 (B) hereof and within twenty-one (21) calendar days of the date of submittal, the City shall advise WCA of the disposition of the Work Order request (approved or denied). The Contract Administrator shall coordinate the analysis of submittals with the appropriate City representative(s) in determining approval or denial of the requests.
- D) The City shall in a timely manner implement the recommended corrective action identified in the Work Order once approved. Changes to account data such as billing code changes shall be accomplished within forty-five calendar days. Should this not occur within the time frame specified, the City shall issue to WCA written notification of a fifteen day extension. Work Orders that involve changes to physical service shall be expedited with all reasonable haste but in conjunction with the City's work order backlog. Both parties recognize and agree that the purpose and intent of the project cannot be realized until approved changes have been implemented and accounts are fairly and accurately billed.
- E) The Contract Administrator shall assist WCA in its dealings with any City department.
- F) The City shall acknowledge receipt of WCA's Research Report pursuant to Section 2.01 (C) (1), by promptly entering the appropriate information related to the Account within the "CIS" System. Receipt of this Research Report by the City shall preclude any action on the Account by the City prior to or during the Work Order approval process.
- G) On each Account for which WCA has Documented the Find and the City has subsequently collected a billing, the City shall issue to WCA, at least monthly, a verification of the following information:
- 1) Account Name
 - 2) Account Number
 - 3) Service Address
 - 4) Amount Billed
 - 5) Monthly Base Revenue in dollars
 - 6) Amount Collected
 - 7) Amount of moneys owed to WCA
 - 8) WCA Work Order Number
- H) Matters not specifically covered by this Contract will have procedures established by mutual agreement of WCA and the Contract Administrator.
- I) At all times, the spirit of this Contract will be upheld by both the City and WCA. WCA is performing a service to the City by increasing revenue to the City. The City has given WCA authorization to perform the defined duties of this Contract and will not hinder, restrict, delay or compete with WCA's performance of these duties.
- J) The City shall establish financial procedures by which the Finds are identified and deposited in such a manner that the moneys owed to WCA can be easily retrieved; see Section 5.01.

ARTICLE IV

Indemnification and Insurance

4.01 - Indemnification

To the fullest extent permitted by laws and regulations, and in consideration of the amount stated on any Purchase Order, the Contractor shall defend, indemnify, and hold harmless the City, its officers, directors, agents, guests, invitees, and employees from and against all liabilities, damages, losses, and costs, direct, indirect, or consequential (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising out of or resulting from any acts of negligence, recklessness or intentional wrongful misconduct in the performance of the work by the Contractor, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable.

In any and all claims against the City, or any of its officers, directors, agents, or employees by any employee of the Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, nor shall this indemnification obligation be limited in any way by any limitation on the amount or type of insurance coverage provided by the City, the Contractor, or any of his Subcontractors. To the extent this Indemnification conflicts with any provision of Florida Law or Statute, this indemnification shall be deemed to be amended in such a manner as to be consistent with such Law or Statute.

Applicability: It is the express intent of the Contractor that this agreement shall apply for the project(s) or time period indicated below. (Check and complete one):

Agreement is limited to Purchase Order # _____, **or Contract**
dated 10/18/04.

(OR)

Agreement is applicable to all contracts, purchase orders and other work performed for the City of Lakeland for the time period of _____ until _____.

Subrogation: The Contractor and his Subcontractors agree by entering into this contract to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Contractor or Subcontractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor or Subcontractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor or Subcontractor enter into such an agreement on a pre-loss basis.

Release of Liability: Acceptance by the Contractor of the last payment shall be a release to the City and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, or relating to the work, or for any act or neglect of the City or of any person relating to or affecting the work.

Savings Clause: The parties agree that to the extent the written terms of this Indemnification conflict with any provisions of Florida laws or statutes, in particular Sections 725.06 and 725.08 of the Florida Statutes, the written terms of this indemnification shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in full and complete compliance with all such laws or statutes and to contain such limiting conditions, or limitations of liability, or to not contain any unenforceable, or prohibited term or terms, such that this Indemnification shall be enforceable in accordance with and to the greatest extent permitted by Florida Law.

151
Name of Organization

BY: Steven Mark Hooper
Signature of Owner or Officer

ATTEST: Janet L. Rose
Corporate Secretary or Witness

STATE OF: Florida

COUNTY OF: Polk

The foregoing instrument was acknowledged before me this 31 day of August, 2003 ⁴ (KAR)

by Steven Mark Hooper of Infrastructure Services, Inc.
Printed Name of Owner / Officer Corporate or Company Name

He/She is personally known to me or has produced Texas 07550618 as
State Drivers License Number

identification, and did / did not X take an oath.

Kimberly A Russell
Signature of Person Taking Acknowledgment

Kimberly A Russell
Printed Name of Person Taking Acknowledgment

Serial Number, if any _____

 Kimberly A. Russell
Commission #DD163104
Expires: Nov 04, 2006
Bonded Thru
Atlantic Bonding Co., Inc.
Notary Seal

4.02 - Insurance

Throughout the term of this Contract, WCA shall carry and maintain the following insurance coverage with a company or companies reasonably satisfactory to the Director, and policies of insurance that meet the requirements of the State. The City shall be named as an additional insured on all such policies for this Contract, and the policy shall provide that the Director will be given at least thirty (30) days notice in case of cancellation. Such insurance coverage shall have the minimum limits of liability in not less than the following amounts:

SPECIAL PROVISIONS

Commercial General Liability: This insurance shall be an "occurrence" type policy written in comprehensive form and shall protect the Contractor and the additional insured against all claims arising from bodily injury, sickness, disease, or death of any person other than the Contractor's employees or damage to property of the City or others arising out of any act or omission of the Contractor or his agents, employees, or Subcontractors and to be inclusive of property damage resulting from explosion, collapse or underground (xcu) exposures. This policy shall also include protection against claims insured by usual personal injury liability coverage, and to insure the contractual liability assumed by the Contractor under the article entitled **INDEMNIFICATION**, and "**Completed Operations**" and "**Products Liability**" coverage.

The liability limits shall not be less than:

Bodily Injury and Property damage	\$300,000 Single limit each occurrence
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Business Automobile Liability: This insurance shall cover "any auto" type for bodily injury and property damage. This shall include owned vehicles, hired and non-owned vehicles, and employee non-ownership.

The liability limits shall not be less than:

Bodily Injury and Property Damage	\$300,000 Single limit each occurrence
--------------------------------------	---

Workers' Compensation: Workers' Compensation coverage to apply for all employees for statutory limits and shall include employer's liability with a limit of \$100,000 each accident, \$500,000 disease policy limits, \$100,000 disease limit each employee. ("All States" endorsement is required where applicable). If exempt from Worker's Compensation coverage, as defined in Florida Statue 440, the Contractor will provide a copy of State exemption.

ARTICLE V

Payment

5.01 - Limitation Of Funds

Any and all fees due to WCA under this Contract shall be payable solely from the funds collected pursuant to this Agreement. WCA acknowledges and agrees that the City's liability for any and all payments hereunder shall be limited by this provision. No other funds are available nor will they be appropriated for the purpose of this Contract.

5.02 - Payment for Services

- A) If any Work performed by WCA to an Account results in Increased Revenues to the City, WCA shall be entitled to a WCA Share for such Work equal to 55% of all Increased Revenues (as defined in Article I of this Contract) for a term of 36 months thereafter.
- B) Documentation substantiating and calculating Increased Revenue shall be reviewed and approved by the City within thirty calendar days of submission and thereafter processed for payment within the time frame stipulated by Statute. Interest on all amounts remaining unapproved and/or unpaid beyond the time frame stipulated by Statute shall accrue at a rate of 10% per annum until paid. However, because account payments are made throughout the month, WCA and the City shall establish a payment schedule by which no more than one payment per month is made to WCA.
- C) If all of the data necessary to compute the WCA Share is not available in time to make such payment when due, the City shall not be penalized and shall make sure that the data (account) is reflected on the next payment. Adjustments to such WCA Share shall be made on succeeding monthly payments after actual Increased Revenues are determined.

5.03 - Arbitration

The City and WCA shall promptly notify each other of any controversy which shall arise with respect to the computation of any payments or fees due to WCA hereunder. Each party shall act in good faith and shall make its best reasonable effort to resolve the dispute within thirty (30) days after receipt of any invoice disputing such payments or fees. In the event the parties are not able to resolve the dispute within such thirty (30) day period, the controversy shall be considered and resolved by majority vote of an arbitration panel ("Panel") consisting of three (3) persons selected and designated as follows:

1. The City shall within ten (10) days thereafter designate an independent certified public accountant which may be the independent auditors regularly retained by the City;
2. WCA shall within ten (10) days thereafter designate an independent certified public accountant which may be a certified public accountant regularly retained by WCA; and
3. The two (2) certified public accountants and/or independent auditors thus designated shall agree upon and promptly designate a third certified public accountant and/or independent auditor which shall not have then or previously had any significant relationship with the City or WCA.

The parties agree that the arbitration procedure provided above shall be the sole remedy for dispute of the payments or fees due WCA hereunder and shall be binding on the parties thereto; provided, however, in the event the City's certified public accountant and WCA's certified public accountant cannot agree upon a third accountant, or the Panel does not resolve the controversy within a reasonable period, not to exceed one hundred twenty (120) days from the date the independent certified public accountants are retained by the parties, either party may pursue any other remedy provided by law. Each party shall bear the expenses of its designated accountant, and the expense of the third accountant shall be borne equally by the parties.

ARTICLE VI

Term and Termination

6.01 - In General

This Contract shall be effective when fully executed by both parties hereto (the "Effective Date"). The term of the Contract is divided in two phases and begins at the Notice to Proceed. Phase one is the operations period when WCA is performing the Work and shall continue for a primary term equal to twelve (12) months. At the end of the primary term of phase one, the phase one term may be renewed for successive periods of twelve (12) months per mutual agreement of the Director and WCA. At least sixty (60) days prior to the expiration of any phase one term, a renewal request will be issued. Phase two is the period of time during which the WCA Share is determined (reference 5.02 A). Therefore the Contract Term is the total time from the Effective Date, through phase one, including any renewal periods, and including phase two which is the 36 month revenue sharing period for each Find approved by the City.

6.02 - Termination by WCA

WCA may terminate phase one (the operations period) of this Contract at any time by giving a thirty day written notice to the City of WCA's intent to terminate. The City agrees that for three (3) years after termination of this Agreement, however brought about, the City shall, during normal business hours, provide WCA with access to and the determination of fees and payments owed to WCA hereunder.

6.03 - Termination by City

The City may terminate phase one (the operations period) of this Contract at any time by giving a thirty day written notice to WCA of the City's intent to terminate.

6.04 - Earned Fees

The duties and obligations of the City to pay WCA under the terms of Article V shall continue in full force and effect as outlined therein and shall survive the completion of phase one (the operations period) of this Contract.

ARTICLE VII

Miscellaneous Provisions

7.01 - Independent Contractor

The relationship between WCA and the City shall be that of an independent contractor.

7.02 - Business Structure and Assignments

Other than by operation of law, WCA shall not delegate or assign any portion of this Contract without the written consent of the Director, which shall not be unreasonably withheld. WCA however may assign any portion of its WCA Share under this Contract. Before an assignment of this sort can become effective, WCA shall furnish reasonable proof of the assignment by providing a notice to the Director containing the following information: a) the name, address and telephone number of WCA with clear reference to this Contract; b) the name, address and telephone number of assignee; and c) the identity of the fees to be assigned (such identity to be established by providing the invoice number, task description and unit price to each item assigned). If reasonable proof as described above, is not provided to the Director, the City may continue to pay the assignor.

7.03 - Subcontractors

WCA may subcontract any part of its performance under this Contract without the written approval of the Director or Contract Administrator. Any subcontractor shall be treated under the Contract as if they were employees of WCA, except in regard to fees and shall fully comply with the terms of the contract as if they were employees of WCA.

7.04 - Parties in Interest

This Contract shall not bestow any rights upon any third party, but rather, shall bind and benefit the City and WCA only.

7.05 - Non-waiver

Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on or to enforce by any appropriate remedy strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

7.06 - Applicable Laws

This Contract is subject to all laws of the State of domicile of the City, the City Charter and Ordinances of the City, the laws of the federal government of the United States of America and all rules and regulations of any regulatory body having jurisdiction.

7.07 - Notices

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Services post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the other party at the address prescribed in the preamble hereof or at such other address as the receiving party may have therefore prescribed by notice to the sending party.

7.08 - Equal Employment Opportunity

WCA will comply with all laws, ordinances and policies set by the City in reference to Equal Employment Opportunities.

7.09 - Force Majeure

In the event either party is rendered unable, wholly or in part, by Force Majeure to perform under this Contract, it is agreed that, upon such party's giving notice specifying such Force Majeure in writing or by telefax to the other party as soon as possible after the occurrence of the Force Majeure, the obligations of the party giving such notice, to the extent it is affected by Force Majeure and to the extent that due diligence is being used to cure the Force Majeure and resume performance at the earliest practicable time, shall be suspended during the continuance of the Force Majeure, but for no longer extended by the period of time during which either party was unable to perform its obligations hereunder as a result of the occurrence of a Force Majeure.

7.10 - Approvals; Authority

An approval by the Director, or by any other instrumentality of the City, of any part of WCA's performance shall not be construed to waive compliance with this Contract or to establish a standard of performance other than required by this Contract or by law. No party is authorized to vary the terms of this Contract.

7.11 - Remedies Cumulative

The rights and remedies contained in this Contract shall not be exclusive but shall be cumulative of all other rights and remedies, now or hereafter existing, whether by statute, at law, or in equity; provided however, that none of the parties shall terminate this Contract except in accordance with the provision hereof.

7.12 - Representations

- A) WCA represents that it and its employees, agents and subcontractors are fully competent and qualified to perform all the service required to be performed under this Contract. WCA represents that it has experience in performing all of the services to be performed hereunder and these services shall be of the highest professional quality.
- B) The City represents that it is duly authorized and empowered to enter into this Agreement and to carry out its obligations hereunder. By proper action of its members, the City has duly authorized the execution, delivery and performance of this Agreement.

7.13 - Captions

The captions at the beginning of the Articles of this Contract are guides and labels to assist in location and reading such Articles and, thereto, will be given no effect in construing this Agreement and shall not be restrictive of or be used to interpret the subject matter of any article, section or part of this Contract.

7.14 - Personnel of WCA

WCA shall replace any personnel assigned to provide services under this Contract which are deemed unsuitable by the Director or Contract Administrator.

7.15 - Entire Agreement

This Contract contains all the agreements of the parties relating to the subject matter hereof and is the full and final expression of the agreement between the parties.

7.16 - Amendment

This Contract may be modified or amended only by written agreement signed by all parties hereto.

7.17 - Exclusive Contract

WCA shall have the sole and exclusive franchise, license and privilege to provide water consulting services within the bounds of the Contract service area during the term of this Contract.

WCA

CITY

WATER COMPANY OF AMERICA

CITY of LAKELAND

By: *John Hoyer*

By: *Robert D. Jackson*

Title: *Vice President*

Title: *Mayor*

Date: *8/31/04*

Date: *10/19/04*

ATTEST:

ATTEST:

By: _____

By: *Kelly S. Koos*
Kelly S. Koos, City Clerk

Approved as to Form and Correctness:

By: *Timothy J. McCausland*
Timothy J. McCausland, City Attorney



EXHIBIT "A"

Information Security Considerations

The City of Lakeland takes the security of its computer systems and its information very seriously. Potential vendors must assure the City of Lakeland that it will adhere to several important Information Security concepts.

To serve as a vendor, you must explicitly agree to comply with the following:

City Rules

AA
Agree To Comply

Vendor agrees to comply with all City of Lakeland Information Security rules and regulations throughout the engagement, including use of Internet and E-Mail policy.

Privacy Control

AA
Agree To Comply

Vendor agrees to hold all Information or Data held by City of Lakeland systems confidential unless City expressly authorizes release or disclosure thereof or Vendor is under subpoena or other legal requirement.

Network Attachment

AA
Agree To Comply

Any contractor supplied device (laptop, test equipment etc.) shall be screened for viruses or illegal software by the Vendor. Vendor devices are subject to monitoring by COL and no expectation of privacy is to be assumed.

Access Restrictions

AA
Agree To Comply

Vendor agrees its personnel shall not attempt to access any system or device not specifically required as a condition of fulfilling the contract or engagement.

Unauthorized UserID/Password

AA
Agree To Comply

Vendor agrees not to leave any unauthorized UserID or password or "backdoor" on any systems at the completion of the engagement without express written permission from COL.

Background Checks

AA
Agree To Comply

Vendor agrees that it has performed due diligence in obtaining a criminal and financial background check on all its employees that will access COL systems. Vendor represents and warrants that its employees accessing COL systems have not been convicted of any felony within the last ten years.

Vendor explicitly agrees to each condition by its authorized representative's initial on the associated lines above.

Amendment to Contract, Renewal #1
Contract to Review Unbilled or Misbilled Utility Services

Effective Date: July 6, 2006

The contract of October 18, 2004 with a Notice to Proceed date of July 5, 2005 between the City of Lakeland and ISI Water Company is changed as follows:

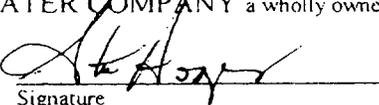
Contract is **renewed**:

From: July 6, 2006

To: July 5, 2007

All other terms and conditions shall remain unchanged.

ISI WATER COMPANY a wholly owned subsidiary of INFRASTRUCTURE SERVICES, INC.

BY: 
Signature

Steven Hooper
Typed/Printed Name

General Manager
Title

DATE: 5/26/06

CITY OF LAKELAND

BY: 
Signature

CHARLES EGAN
Typed/Printed Name

Director of Water Utilities
Title

DATE: 5-17-06



DEPARTMENT OF WATER UTILITIES

501 East Lemon Street -A68
Lakeland, Florida 33801-5079
(863) 834-6568 FAX (863) 834-6274
www.waterutilities.lakelandgov.net

"TREATING YOUR WATER SERIOUSLY"

Chuck Garing, Director
Bob Conner, Assistant Director Gary Ross, Assistant Director

June 20, 2005

Jeff Haddock, Contract Manager
IST / Water Company of America
9318 E. Colonial Drive, Suite A-10
Orlando, Florida 32817

Re: Notice to Proceed
Water and Wastewater Revenue Recovery Agreement
Contract Executed by City of Lakeland October 19, 2004

Dear Mr. Haddock:

This letter shall serve as your Notice to Proceed with the above referenced contract. Field operations may commence on July 5, 2005. Your primary contact for issues relating to this contract will be me. My number is (863) 834-6193.

In accordance with this contract for service, the term of the contract begins to run on the date specified. Consideration shall be as stipulated in the agreement.

Sincerely,

Gary L. Ross
Assistant Director of Water Utilities

xc: Chuck Garing, Director of Water Utilities
Robert Conner, Assistant Director of Water Utilities
Greg Finch, City Finance Director
Steven Hooper, Vice-President, Water Company of America