



STANDARD AGREEMENT

(version 9-9-2019)

This AGREEMENT (“Agreement”) is entered by and between **Hillhouse Power Solutions, Inc.** (“Contractor”), located at **8100 Oak Knoll Dr., North Richland Hills, Texas 76182** and the **City of League City** (“City”), a home-rule municipality, located at 300 W. Walker St., League City, Texas 77573 on the date set forth below.

Terms:

1. **Scope of Services:** Contractor will perform the services and/or provide the products as set forth in **Exhibit A**, which is attached and incorporated herein, and which can be generally described as **Power Factor Correction Project**. If there is a conflict between the terms of this Agreement and Exhibit A, the terms of this Agreement will prevail.
2. **Term and Termination:** This Agreement shall commence on **January 1, 2020** and shall expire on **September 30, 2020**. The period from commencement to expiration is the Contract Term. City reserves the right to terminate this Agreement for convenience upon seven (7) days written notice to Contractor. Upon such termination, City shall pay Contractor, at the rate set out in **Exhibit A**, for services satisfactorily performed or products satisfactorily provided up through the date of termination. Notwithstanding any provision in this Agreement to the contrary, City will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.
3. **Compensation:** Contractor shall be paid for the services/products as set forth in **Exhibit A**. In no event shall the total compensation exceed **\$79,900** during the term of this Agreement. City shall tender payment (including progress/partial payments) for services/goods only after such services are completed or goods are delivered and are deemed to be acceptable under this Agreement, in the sole reasonable discretion of City. Contractor must submit to City invoices for all goods delivered and services provided, which invoices must include details and dates of service or delivery. Payment by City shall be made within thirty (30) days of receipt of an invoice, except for any portion of the invoiced amount that City disapproves as not compliant under this Agreement, in the sole reasonable discretion of City. If City disapproves any amount submitted for payment by Contractor, City shall give Contractor specific reasons for disapproval in writing.
4. **Insurance:** Contractor **is** required during the Contract Term to maintain insurance as follows: (a) Comprehensive General Commercial Liability insurance covering bodily injury and property damage, with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate; (b) (DELETED) (c) If at any point during the Contract Term it is foreseeable that Contractor will enter upon City premises: (i) Worker’s Compensation coverage with statutory limits for the State of Texas, and (ii) Commercial Automobile Liability coverage with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate. All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name the City as Additional Insured. Contractor shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City. Contractor shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

5. **Liquidated Damages:** Contractor acknowledges that time is of the essence in performing this Agreement. City and Contractor (collectively, the “Parties”) agree that if Contractor is late in performing any obligation of this Agreement, City will suffer loss, damages, or other harm from Contractor’s delay. The Parties agree that the amount of loss, damages, or harm likely to be incurred is incapable or difficult to precisely estimate, and therefore Contractor agrees to pay City liquidated damages for delay at a daily rate equal to the total compensation allowed under the Agreement divided by the number of days in the Contract Term. The Parties further agree that: (i) the liquidated damages specified herein are not a penalty but rather bear a reasonable relationship to, and is not plainly or grossly disproportionate to, the probable loss likely to be incurred by City as a result of Contractor’s delay; (ii) one of the reasons for City and Contractor to agree to such amounts is the uncertainty and cost of litigation regarding the question of actual damages; and (iii) City and Contractor are sophisticated business parties and negotiated this Agreement at arm’s length.
6. **Independent Contractor:** Contractor is an independent contractor and is not an employee, partner, joint venture, or agent of City. Contractor understands and agrees that he/she will not be entitled to any benefits generally available to City employees. Contractor shall be responsible for all expenses necessary to carry out the services under this Agreement and shall not be reimbursed by City for such expenses except as otherwise provided in this Agreement.
7. **Intellectual Property:** This Agreement shall be an Agreement for services and the parties intend and consider any work created as a result of this Agreement, including any and all documentation, images, products or results, to be a work (the “Work”) for hire under federal copyright law. Ownership of the Work shall belong to and remain the exclusive property of City. The Work may be edited at any time within City’s discretion. If the Work would not be considered a work-for-hire under applicable law, Contractor hereby assigns, transfers, and conveys any and all rights, title and interest to City, including without limitation all copyrights, patents, rights of reproduction, rights to ownership, and right to secure registrations, renewals, reissues and extensions thereof. As the sole copyright holder of the Work, City maintains and asserts the rights to use, reproduce, make derivative works from, and/or edit the Work in any form of medium, expression or technology now known or hereafter developed, at any time within City’s discretion. Contractor shall not sell, disclose or obtain any other compensation for the services provided herein or the Work. If the Work is one to which the provisions of 17 U.S.C. § 106A apply, Contractor hereby waives and appoints City to assert on Contractor's behalf Contractor's moral rights or any equivalent rights regarding the form or extent of any alteration to the Work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the work, in any medium, for City’s purposes.
8. **Confidentiality:** During the course of the services to be provided under this Agreement, Contractor may become privy to confidential information of City. Contractor agrees to treat as confidential the information or knowledge that becomes known to Contractor during performance of this Agreement and to not use, copy, or disclose such information to any third party unless authorized in writing by City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Contractor shall promptly notify City of any misuse or unauthorized disclosure of City’s confidential information and upon expiration of this Agreement shall return to City all confidential information in Contractor’s possession or control. Contractor shall further comply with all information security policies of City that may apply and shall not make any press releases, public statements or advertisement referring to the services provided under this Agreement or the engagement of Contractor without the prior written approval of City.
9. **Warranties and Representations:** Contractor warrants and agrees that Contractor shall perform its services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any service performed on premises owned or controlled by City, Contractor warrants and agrees that Contractor will perform said services in compliance with all City rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.

10. **Licenses/Certifications:** Contractor represents and warrants that it will obtain and maintain in effect, and pay the cost of, all licenses, permits or certifications that may be necessary for Contractor's performance of this Agreement. If Contractor is a business entity, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its formation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Contractor.
11. **Performance/Qualifications:** Contractor agrees and represents that Contractor has the personnel, experience, and knowledge necessary to qualify Contractor for the particular duties to be performed under this Agreement. Contractor warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards.
12. **Conflict of Interest:** Contractor warrants, represents, and agrees that Contractor presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of the services hereunder. Contractor further warrants and affirms that no relationship or affiliation exists between Contractor and City that could be construed as a conflict of interest with regard to this Agreement.
13. **INDEMNIFICATION: CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY , AND EACH OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT, TO THE EXTENT THE CLAIM ARISES FROM NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT OR VIOLATION OF LAW.**
14. **Force Majeure:** Neither City nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising solely from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by the exercise of due diligence.
15. **Notices:** Any notice given under this Agreement by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the Parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notices shall be deemed communicated three (3) days after mailing.
16. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006 of the Texas Family Code, Contractor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
17. **State and/or City Auditor:** Contractor understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency or the

City's internal auditor (collectively, the "Auditor"), to conduct an audit or investigation in connection with those funds. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

18. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.
19. **Alternative Dispute Resolution:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by City and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Director of Finance of City shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. This provision shall not be construed as a waiver by City of its right to seek redress in the courts.
20. **Entire Agreement:** This Agreement contains the entire understanding between the Parties and supersedes all prior agreements, arrangements, and understanding, oral or written between the Parties relating to this Agreement. This Agreement may not be modified except by mutual written agreement of the Parties executed subsequent to this Agreement.
21. **Eligibility to Receive Payment:** Contractor certifies that, as a matter of state law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this representation is inaccurate.
22. **Payment of Debt/Delinquency to State:** Contractor certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.
23. **Products and Materials Produced in Texas:** If Contractor will provide services under the Agreement, Contractor covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
24. **Risk of Loss:** If applicable, all work performed by Contractor pursuant to the Agreement will be at Contractor's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work prior to City's acceptance, bearing such loss or damage will be Contractor's responsibility.
25. **Publicity:** Contractor shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.
26. **Legal Construction/Severability:** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this Agreement are declared to be severable. The Parties may mutually agree to renegotiate the Agreement to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.
27. **Limitations:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties;

disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Any terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.

28. **Sovereign Immunity:** The Parties agree that neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement constitutes a waiver of sovereign immunity by City.
29. **Authority:** Contractor warrants and represents that Contractor has full power and authority to enter into and perform this Agreement and to make the grant of rights contained herein. The person signing on behalf of City represents that he/she has authority to sign this Agreement on behalf of City.
30. **Non-Waiver:** The Parties specifically agree that neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor. No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.
31. **Prohibition on Boycotting Israel:** Pursuant to Section 2270.002 of the Texas Government Code, by executing this Agreement Contractor verifies that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.
32. **Prohibition Against Business with Iran, Sudan or Foreign Terrorists Organizations:** Contractor warrants, covenants, and represents that Contractor is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152 of the Texas Government Code.

(signature block on next page)

Executed on this _____ day of _____, _____. (date to be filled in by City Secretary)

HILLHOUSE POWER SOLUTIONS, INC. - "Contractor"

Michael M Hillhouse

Michael M. Hillhouse, President

CITY OF LEAGUE CITY - "City"

John Baumgartner, City Manager

Attest:

Diana Stapp, City Secretary

Approved as to Form:

Office of the City Attorney

Exhibit A

Scope of Services/Description of Products/Payment Schedule
(There are **5** pages for Exhibit A, including this page)

See Next Page

November 21, 2019

Jody Hooks
Director Public Works
City of League City
144 Park Ave Suite 100
League City, Texas 77573

Dear Mr. Hooks:

We are pleased to offer an update to our 2018 power factor correction, turnkey project proposal for the city of League City. This includes four (4) indoor capacitor systems, where one would be installed at the Police and Fire Department building, and three at water lift and waste treatment buildings.

The proposed turnkey project, including all engineering, equipment, shipping, installation and commissioning, would provide annual savings of about \$13,700 in eliminated charges, that could be achieved with a project cost of \$79,900. We offer this cost under the Equipment and Installation TIPS contract price. We will not mark up above the TIPS pricing (TIPS Contract #170905), and will come in about 18% below. The project will result in a simple payback of 70 months. The net present value of the project over a 20-year period is \$56,100 based on an 8% discount rate, and the internal rate of return is 16%.

The quote is good for 60 days from the above date. After that period, updated equipment and installation pricing would be required to confirm project costs. Should we proceed, 25% of the project cost would be due at the time of purchase order, and the remainder invoiced at 3 later project milestones. If a delay in the project completion occurs due to Hillhouse Power Solutions, the final invoice would also be delayed. Hillhouse Power Solutions' standard terms and conditions with Net 30 payment terms would apply. We would be happy to discuss the report in greater detail, and we look forward to city of League City's authorization to implement this project. Thank you for allowing Hillhouse Power Solutions to work with you.

Sincerely yours,



Jeff Hillhouse, Vice President

Enclosure

Power Factor Correction Proposal

General

Hillhouse Power Solutions conducted a power factor (PF) study for electric meters at the city of League City's Police and Fire department headquarters building, 2 wastewater, 1 water lift station. This report identifies the strategies and equipment recommended to correct the PF, along with projected cost, savings, and payback that should enable League City to make an informed decision on project expenditures. PF charges were calculated, and project equipment were designed based on the recent 12 months of power usage from Nov-2018 to Oct-2019.

To eliminate the monthly power factor charge from the utility, the PF that is recorded for each electric meter during the 15-minute period of maximum demand each month should be elevated to above 95% for the locations served by Texas New Mexico. For the location served by CenterPoint Energy, the PF would be elevated to near 100%. This will require that a capacitor system be installed downstream of each of the utility billing meters, maintaining high power factor to remove PF charges. The capacitor units will come equipped with the following items. See Figure 1. Each capacitor would supply reactive power, and if power usage remains similar to the levels in Table 1, then the new equipment will maintain power factor at about 95% or above.

Capacitor systems (480 volts, 3-Phase, 60 Hz):

- NEMA 1 indoor metal enclosure
- Fixed ON/OFF operation
- Main power distribution block for internal power distribution with lugs
- Fuse holders complete with fuses for each step
- Blown fuse indicators. LED type installed and wired on the front access door
- Harmonically detuned reactors
- Integral breaker for locations at 555 W Walker St and 904 Satsuma (Note that a separate disconnect will be installed for the 4200 Grissom and 701 N Wisconsin Ave locations)
- Forced ventilation (555 W Walker St and 904 Satsuma locations)

Invoicing and Project Schedule

Invoices would be issued to the city upon the following milestones: 25% due with city PO, 25% due with issue of project drawings and equipment fabrication start, 25% due with equipment arrival at city, and 25% due at project completion. The following estimated schedule would apply:

Week 1: Purchase Order received from city. We would issue POs to our subs.

Week 4: Project drawings issued. Equipment fabrication begins.

Week 12: Equipment ships.

Week 13: Equipment arrives at city. City staff stores each capacitor system at its location.

Week 14-15: Preparation work completed.

Week 15: Brief power outages are carried out at each location, and final install work completed.

Table 1: Historic Billing Data

Address / Location / Utility	Start Date	End Date	Metered Demand	Metered PF
555 W WALKER ST Police & Fire HQ (Texas NM Power)	11/15/18	12/16/18	331.2 KW	0.940
	12/17/18	1/15/19	309.33 KW	0.940 *
	1/16/19	2/13/19	323.64 KW	0.940
	2/14/19	3/18/19	300.6 KW	0.930
	3/19/19	4/17/19	389.97 KW	0.920
	4/18/19	5/16/19	369.18 KW	0.900
	5/17/19	6/17/19	476.64 KW	0.890
	6/18/19	7/17/19	526.86 KW	0.900
	7/18/19	8/18/19	585.63 KW	0.890
	8/19/19	9/17/19	515.25 KW	0.880
9/18/19	10/16/19	481.23 KW	0.890	
701 N Wisconsin Ave Waste Water, Front (Texas NM Power)	10/15/18	11/12/18	860.76 KW	0.900
	11/13/18	12/12/18	848.76 KW	0.900
	12/13/18	1/13/19	864.96 KW	0.900
	1/14/19	2/11/19	744 KW	0.910
	2/12/19	3/14/19	892.8 KW	0.910
	3/15/19	4/14/19	655.56 KW	0.920
	4/15/19	5/14/19	884.52 KW	0.920
	5/15/19	6/13/19	857.76 KW	0.910
	6/14/19	7/15/19	884.52 KW	0.910
	7/16/19	8/14/19	625.44 KW	0.910
8/15/19	9/12/19	767.52 KW	0.910	
9/13/19	10/14/19	869.28 KW	0.910	
904 Satsuma Waste Water, Rear (Texas NM Power)	10/15/18	11/12/18	395.4 KW	0.930
	11/13/18	12/12/18	395.52 KW	0.930
	12/13/18	1/13/19	456.6 KW	0.920
	1/14/19	2/11/19	390.84 KW	0.930
	2/12/19	3/14/19	380.16 KW	0.920
	3/15/19	4/14/19	330.48 KW	0.920 *
	4/15/19	5/14/19	454.92 KW	0.920
	5/15/19	6/13/19	461.88 KW	0.940
	6/14/19	7/15/19	407.16 KW	0.940
	7/16/19	8/14/19	341.28 KW	0.940
8/15/19	9/12/19	402.72 KW	0.940 *	
9/13/19	10/14/19	429.48 KW	0.940	
4200 Grissom Rd Water Lift Station (CenterPoint Energy)	10/16/18	11/14/18	137 KVA	0.920 *
	11/14/18	12/17/18	220 KVA	0.920 *
	12/17/18	1/18/19	228 KVA	0.920 *
	1/18/19	2/18/19	244 KVA	0.920 *
	2/18/19	3/19/19	213 KVA	0.920 *
	3/19/19	4/17/19	236 KVA	0.920 *
	4/17/19	5/17/19	210 KVA	0.920 *
	5/17/19	6/18/19	266 KVA	0.920 *
	6/18/19	7/18/19	219 KVA	0.920 *
	7/18/19	8/16/19	217 KVA	0.920 *
8/16/19	9/17/19	223 KVA	0.920 *	
9/17/19	10/16/19	205 KVA	0.920 *	

* Parameter is estimated

Equipment Warranty, Terms

When the capacitor systems are delivered, the city will offload and store the equipment. Capacitor installation work to be performed during normal working hours Monday-Friday. The outdoor equipment would be tied in and energized while the facility operates normally. Indoor equipment will require a brief power outage, lasting 4-6 hours at each location. If the city causes installation / commissioning delays or additional site mobilizations, then added charges would apply. The equipment comes with a 1 year warranty, and has an expected operating life of 20 years. Fuses are not warranted. Shipping would be approximately 12 weeks. Shipping cost to the site is included. Sales tax would be extra (if applicable), and Hillhouse Power Solutions' standard terms and conditions would apply.



Figure 1: Indoor 480 volt capacitor system (sample)



Michael M. Hillhouse

Mike Hillhouse, President