

<b>COMMITTEE REPORTS\CONSENT AGENDA continued (ITEMS 1 THROUGH 39):</b>
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15. **File No. PRC21-65369 – RESOLUTION NO. 2020-791 (Miranda absent at vote)**  
**Resolution** making certain changes in the budget of the City of Tampa for the fiscal year ending September 30, 2021; approving the transfer, reallocation, and/or appropriation of \$108,000 within the General Fund to provide funding for the Tampa Bay Community Network; providing an effective date.
16. **File No. PRC20-65443 – RESOLUTION NO. 2020-792 (Miranda absent at vote)**  
**Resolution** approving the execution by the Mayor and attestation by the City Clerk of a Second Amendment to License Agreement between the City of Tampa, as Licensor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Licensee, for the modification of telecommunications equipment on City property located at 333 S. Franklin Street, Tampa, Florida; providing an effective date.

<p align="center"><b>Public Works Committee (Items 17 through 19)</b></p>
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<p align="center">John Dingfelder, Chair  Bill Carlson, Vice-Chair  Charlie Miranda, Alternate</p>
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17. **File No. PW20-65411 – RESOLUTION NO. 2020-793 (Miranda absent at vote)**  
**Resolution** authorizing Change Order 4 Final to Contract 11-C-00015; Westshore Waterways Improvement Phase II, between the City of Tampa and Duncan Seawall, Dock and Boat Lift, LLC, a decrease of \$52,215.55, and final payment in the amount of \$500; providing an effective date.
18. **File No. PW20-65421 – RESOLUTION NO. 2020-794 (Miranda absent at vote)**  
**Resolution** approving the renewal of an award between the City of Tampa and Iron Container, LLC, without a price escalation, for the furnishing of Steel Refuse Dumpsters and Lids in the estimated amount of \$330,000 for use by the Solid Waste Department; providing an effective date.
19. **File No. PW20-65444 – RESOLUTION NO. 2020-795 (Miranda absent at vote)**  
**Resolution** approving an Agreement between the City of Tampa and E Source Companies, LLC for the provision of Advanced Metering Infrastructure (AMI) Solution Consulting Services in the estimated amount of \$114,602 for use by the Water Department; authorizing the Mayor to execute said agreement; providing an effective date.

## AGREEMENT

THIS AGREEMENT made and entered into at Tampa, Florida, this 19th day of November, 2020, by and between the CITY OF TAMPA, a municipal corporation organized and existing under the Laws of the State of Florida, hereinafter referred to as "City", whose address is the Municipal Office Building being at 306 E. Jackson Street, 2E, Tampa, Florida 33602 and E Source Companies, LLC, hereinafter referred to as "Contractor", whose address is 1745 38<sup>th</sup> Street, Boulder, CO 80301.

In consideration of the mutual stipulations, agreements, and covenants herein contained, the parties hereto have agreed and hereby agree with each other or their executors, administrators, heirs or successors, and assigns, as follows:

### **FIRST:**

Contractor shall at its own cost and expense furnish the services described below and all material, equipment, tools, and labor of every description necessary for and to carry out in good, firm, substantial and workmanlike manner the following work as specified in the Contract Documents consisting of this Agreement and:

- (x) Request for Proposals (RFP) # 42081120 ADVANCED METERING INFRASTRUCTURE (AMI) SOLUTION CONSULTING SERVICES, inclusive of all parts and attachments and Addendum #1.
- (X) Contractor's Proposal in response to RFP # 42081120
- (X) Insurance Requirements as set forth in RFP # 42081120

### **SECOND:**

Upon the faithful performance of the contract work by Contractor, City shall pay Contractor for work performed and labor furnished at the prices set forth in Contractor's executed Proposal.

### **THIRD:**

Contractor shall abide by, comply with, duly perform, and be bound by each and every one of the terms, provisions, conditions, and agreements contained in the Contract Documents.

### **FOURTH:**

Contractor shall not transfer or assign this contract without the prior written approval of City; and, during the progress of the work, Contractor shall comply with applicable Federal, State, County and City laws, rules, regulations, codes, and rules applicable to this contract.

### **FIFTH:**

Contractor shall commence the work and shall faithfully prosecute said work to its full completion within the number of days set forth in the Contract Documents.

### **SIXTH:**

This contract shall be interpreted and construed in accordance with the laws of the State of Florida. Venue for any action brought in state or federal court shall be in Tampa (Hillsborough County) Florida.

### **SEVENTH:**

If any part, terms, or provisions of this contract shall be held illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this contract, the validity of the remaining portions or provisions shall not be affected thereby. The City and Contractor will in good faith attempt to replace an invalid or unenforceable clause with one that is valid and enforceable.

### **EIGHTH:**

The City does not explicitly or impliedly waive its rights to the privileges, rights, immunities, or limitations of liability provided

in Section 768.28, Florida Statutes, or any other statutory limitations provided for in the Florida Statutes.

**NINTH:**

Contractor shall perform the services provided by this contract as an independent contractor, and nothing contained herein shall in any way be construed to constitute Contractor to be a representative, agent, subagent, or employee of the City or any political subdivision of the State of Florida. The relationship of Contractor to the City created by this Contract is that of an independent contractor. No person performing work or providing services for Contractor under this Contract shall be entitled to any benefits available or granted to employees of the City. Contractor assumes full responsibility for the payment and reporting of all local, state, foreign, and federal taxes and other contributions imposed or required under unemployment, social security, income tax, and similar laws, with respect to the performance of Contractor's obligations required by this contract by, or on behalf of, Contractor to the City. Notwithstanding anything in this contract to the contrary, Contractor shall not have the right or power to make any contracts, commitments, or admissions of liability for or on behalf of the City. Contractor shall be solely responsible for the means, methods and procedures used by Contractor to perform under this contract.

**TENTH:**

Notwithstanding any other provision of the Agreement, if funds for the continued fulfillment of the Agreement by the City are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise, then the City will have the right to terminate the Agreement at no additional cost and with no penalty whatsoever by giving prior written notice documenting the lack of funding. The City will use reasonable efforts to ensure appropriated funds are available.

**ELEVENTH:**

This Agreement may not be modified, amended or extended verbally or by conduct but only by a writing duly executed by the parties herein.

**TWELFTH:**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or Contractor.

**THIRTEENTH:**

A waiver of any provision of this contract shall be valid and effective only if it is in writing and signed by or on behalf of the party granting the waiver. No delay or course of dealing by a party to this contract in exercising a power, right, or remedy under this contract will operate as a waiver of any power, right, or remedy of that party, except to the extent expressly set forth in a writing signed by or on behalf of that party. In addition, the written waiver by a party of a power, right, or remedy under any provision of this contract will not constitute a waiver of any succeeding exercise of the power, right, or remedy or a waiver of the provision itself. Any waiver shall be limited to the particular right so waived and shall not be deemed to waive any other right under this contract.

**FOURTEENTH:**

Whenever either party desires to give notice unto the other, it must be given by written notice, delivered (i) in person, (ii) via registered or certified United States mail, postage prepaid with return receipt requested, or (iii) via nationally recognized overnight delivery service, and addressed to the party for whom it is intended at the place last specified by each party. The place for giving of notice shall remain such until it is changed by written notice delivered in compliance with the provisions of this Fourteenth Paragraph. For the present, the parties designate the following as the respective places for giving of notice:

For City:  
Joe Benjamin  
Purchasing Department  
306 E. Jackson St.  
Tampa, FL 33602

For Contractor:  
James A. Ketchledge  
E-Source Companies, LLC  
1745 38<sup>th</sup> Street  
Boulder, CO 80301

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement as of the date first written above.

ATTEST:

*Shirley Cox-Koules*  
(SEAL) CITY CLERK/DEPUTY CITY CLERK

APPROVED AS TO FORM:

*Marcella Hamilton*  
Marcella Hamilton (Nov 23, 2020 14:26 EST)

MARCELLA T. HAMILTON  
ASSISTANT CITY ATTORNEY

ATTEST:

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(SEAL) CORPORATE SECRETARY

CITY OF TAMPA

By: *Jane Castor*  
JANE CASTOR, MAYOR

E SOURCE COMPANIES, LLC

*James Ketchledge*  
James Ketchledge (Nov 23, 2020 11:20 MST)

BY: James Ketchledge  
TYPE or PRINT

TITLE: Executive Vice-President

(Pres., V-Pres., Partner, Owner)

Corporation

Partnership

Individual

Incorporated in the State of Delaware

If business is individually owned, you must sign before two (2) witnesses:

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_