



**City of Holmes Beach**

**AGREEMENT FOR AERATION SYSTEM SERVICES BETWEEN THE CITY OF HOLMES BEACH AND SOLITUDE LAKE MANAGEMENT, LLC**

This Agreement is made and entered into this \_\_\_\_\_, 2023, by the City of Holmes Beach, a municipal corporation organized and existing under the laws of the State of Florida, (“City”), and SOLitude Lake Management, LLC (“Contractor”), a corporation authorized to do business in the State of Florida and located at 5869 Enterprise Parkway, Ft. Myers, FL 33905.

**WHEREAS**, the City is entering into this Agreement with the Contractor for the Contractor to perform Aeration System Services.

The City and the Contractor, in consideration of the mutual covenants contained in this Agreement, agree as follows:

**1. Description of Work:**

The City is entering into this Agreement with the Contractor for the Contractor to provide Aeration System Services per the Schedule attached hereto as **Exhibit A** (“Services”).

**2. Contract Price and Term of Agreement:**

The Annual Contract Price is \$428.00. The Contractor shall invoice the City \$214.00 two (2) times per year for the Services to be provided under this Agreement. The term of this Agreement is for a period of twelve (12) months, with payment invoiced on the first day of each month. Due to the seasonality of these services, and the disproportionate amount of time and materials dedicated to providing these services during some times of the year as compared to others, based on the season, weather patterns, and other natural factors, the amount billed and paid to date is not necessarily equivalent to the amount of work performed to date.

Payment shall be made after presentation of an invoice and verification of the work by the City, and in accordance with Florida Prompt Payment Act. No change orders or additional payments or compensation will be allowed unless first approved by the City’s Board of Commissioners. All invoices shall be delivered to:

City of Holmes Beach

Attention: Accounts Payable  
5801 Marina Drive  
Holmes Beach, FL 34217

Any addition to the scope of services or additional costs shall require an amendment to the Agreement. The Agreement will automatically renew annually at the end of the contract effective date for a subsequent one (1) year term, with a four percent (4%) escalation in the Annual Contract Price each year, under the same terms, specifications, and conditions as set forth by this contract, unless either party gives written notice of cancellation thirty (30) days prior to the termination date of this contract, or subsequent renewal contracts.

Should there be any conflict between this Agreement and Exhibit A, this Agreement shall control.

**3. Attorney's Fees and Costs:**

Should any party to the Agreement be required to sue to enforce its rights under this Agreement, the prevailing party in such litigation shall be entitled to receive from the non-prevailing party its expenses, fees, and costs, including reasonable attorney's fees, for all pre-lawsuit, lawsuit, and appellate proceedings. The same prevailing party provision shall apply to any arbitration proceedings if the parties agree to resolve a contractual dispute through arbitration.

**4. Controlling Law and Venue:**

The Contractor and the City agree this Agreement shall be controlled and governed by the laws of the State of Florida. In the event the parties to this Agreement cannot resolve a difference with regard to any matter arising under this Agreement, the disputed matter will be referred to court-ordered mediation pursuant to Section 44.102, Florida Statutes. If no agreement is reached, any party may file a civil action and pursue all available remedies whether at law or equity. Venue for any dispute shall be in the Circuit Court of Manatee County, Florida.

**5. Remedies:**

Upon receipt of notice of any defective materials, labor, or work or other failure to perform the required services by the Contractor, the Contractor shall remedy or replace defective programs, materials, equipment or remedy any faulty workmanship within an amount of time as specified by the City, but not less than ten (10) calendar days of receipt of notice. This guarantee and warranty provision does not create any limitations on the City as to any claims or legal actions for breach of guaranty or breach of warranty that the City may have against the Contractor or others and does not constitute an exclusive remedy against the Contractor or any other person or entity that provides materials, equipment, or labor for the project.

**6. Relationship of Parties:**

The parties agree that the Contractor is an independent contractor and the relationship between the City and the Contractor is not that of employer and employee.

**7. Assignment:**

This Agreement shall be binding upon the parties and shall not be assignable, provided that any request for assignment to a non-affiliated third party by the Contractor shall not be effective unless approved by the City's Board of Commissioners.

**8. Indemnification:**

The Contractor assumes all risk of loss or injury to property or persons caused by its performance of this Agreement. The Contractor agrees to indemnify and hold harmless the City and its agents, directors, employees, officers, and servants from and against any and all such suits, actions, legal proceedings, claims, demands, damages, costs, liabilities, losses, or expenses, including but not limited to reasonable attorney's fees caused by a willful or negligent act or omission under this Agreement by the Contractor's officers and employees and any suppliers or subcontractors. The City's liability hereunder is subject to the limitations and provisions of Section 768.28, Florida Statutes, and any other applicable law limiting the City's liability, and nothing herein shall be deemed to waive the sovereign immunity of the City. The obligation to indemnify the City shall include the duty to defend the City and its officials and employees in any action arising out of this Agreement.

**9. Insurance:**

**9.1** The Contractor shall, at its sole cost and expense, procure and maintain throughout the term of this Agreement insurance coverage in such amounts as required and authorized by Florida law, and will provide endorsed certificates of insurance generated and executed by a licensed insurance broker, brokerage, or similar licensed insurance professional evidencing such coverage, and naming the City as additional insured, as well as furnishing the City with certificates of insurance. The insurance coverages procured by the Contractor as required by this Agreement shall be considered, and the Contractor agrees that the insurance coverages it procures as required by this Agreement shall be considered, as primary insurance over and above any other insurance or self-insurance, available to the City, and that any other insurance or self-insurance available to the City shall be considered secondary to, or in excess of, the insurance coverage(s) procured by the Contractor as required by this Agreement. Nothing herein shall be construed to extend the City's liability beyond that provided in Section 768.28, Florida Statutes, or any other applicable law.

**9.2** The Contractor shall secure, pay for, and file with the City, prior to commencing any Services under this Agreement, all certificates for workers' compensation, public liability, and property damage liability insurance, and such other insurance coverages as may be required by specifications and addenda thereto in at least the following minimum amounts with specific amounts to prevail if greater than minimum amounts

are indicated. Notwithstanding any other provision of the Agreement, the Contractor shall provide the minimum limits of liability insurance coverage as follows:

Auto Liability	\$1,000,000	Combined Single Limit
General Liability	\$2,000,000	Aggregate
	\$2,000,000	Products Aggregate
	\$1,000,000	Any One Occurrence
	\$1,000,000	Personal Injury
Additional Umbrella	\$1,000,000	Occurrence/Aggregate
Professional Liability	\$1,000,000	Per Claim/Aggregate

The Contractor shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, the City of Holmes Beach named as an additional insured on its General Liability and Automobile Liability policies on a PRIMARY and NON-CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its equivalent, (combination of CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations, is acceptable) including a waiver of subrogation clause in favor of the City on all policies. The Contractor shall maintain the General Liability and Professional Liability insurance coverages summarized above with coverage continuing in full force, including the additional insured endorsement on the General Liability policy until at least three (3) years beyond completion and delivery of the Services agreed upon herein.

- 9.3** Notwithstanding any other provision of the Agreement, the Contractor shall maintain complete workers' compensation coverage for each and every employee, principal, officer, representative, or agent of the Contractor who is performing any labor, services, or material under the Agreement. Further, with respect to Employers' Liability, Contractor shall additionally maintain the following minimum limits of coverage:

Bodily Injury Each Accident	\$1,000,000
Bodily Injury/Disease/Employee	\$1,000,000
Bodily Injury/Disease/Policy Limit	\$1,000,000
Bodily Injury Each Accident	\$1,000,000
Bodily Injury by Disease Each Employee	\$1,000,000
Bodily Injury by Disease Policy Limit	\$1,000,000

- 9.4** The Contractor's insurance policies shall be endorsed to give thirty (30) days written notice to the City in the event of cancellation or material change. The Contractor will comply with all safety regulations required by any agency or regulatory body including but not limited to OSHA. The Contractor will notify the City immediately by telephone at (941) 779-3332 of any accident or injury to anyone that occurs on the services site and is related to any of the services being performed by the Contractor.

- 9.5** Nothing herein shall be construed to extend the City's liability beyond that provided in Section 768.28, Florida Statutes, or any other applicable law.

**10. Public Contracting and Environmental Crimes and Scrutinized Companies Compliance:**

By executing this Agreement, the Contractor acknowledges compliance with the Public Contracting and Environmental Crimes provisions of Section 287.133(2)(a), Florida Statutes compliance with the Scrutinized Companies provisions of Section 287.135, Florida Statutes.

**11. Drug Free Workforce:**

The Contractor shall comply with City's Drug Free Workplace policy and acknowledges by execution of this Agreement compliance regarding the policy prior to initiating any work on the Project.

**12. Public Records:**

Pursuant to Section 119.0701, Florida Statutes, the Contractor agrees to:

- (a) Keep and maintain public records required by the public agency to perform the service and supply goods and materials;
- (b) Upon request from the public agency's custodian of public records, provide the public agency 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 the Florida Public Records Act or as otherwise provided by law;
- (c) 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 Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the public agency; and
- (d) Upon completion of the Agreement, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the Agreement, the Contractor shall 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 Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**IF THE CONTRACTOR HAS ANY QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 941-708-5800, EXTENSION 226, OR**

**13. Termination and Default:**

- 13.1 The City of Holmes Beach reserves the right to cancel this contract without cause by giving thirty (30) days prior notice to the contractor in writing of the intention to cancel or with cause if at any time the contractor fails to fulfill any of the terms or conditions specified.
- 13.2 Failure of the contractor to comply with any of the provisions of this contract shall be considered a material breach of contract and shall be cause for immediate termination of the contract at the discretion of the City of Holmes Beach.
- 13.3 In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the Contractor of such occurrence and the contract shall terminate on the last day of current fiscal period without penalty or expense to the City.
- 13.4 In addition to all other legal remedies available to the City of Holmes Beach, the City reserves the right to cancel and obtain from another source, any items which have not been delivered within the period of time stated in proposal, or if no such time is stated, within a reasonable period of time from the date of order as determined by the City of Holmes Beach.

**14. Severability:**

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.

**15. Compliance with Law:**

The Contractor shall perform all of the work required under this Agreement in accordance with applicable federal, state, and local statutes, ordinances, rules, and regulations, whether or not expressly set forth in the Agreement Documents. The Contractor shall maintain all required State and local licenses that are required to perform the work and supply the equipment under this Agreement, including registration with "Sunbiz.org" as required by applicable Florida law. The required licenses shall remain valid during the entire term of this Agreement. The Contractor shall provide the City with a copy of all required licenses upon request.

In accordance with Section 448.095(2), Florida Statutes, the Contractor shall comply with all E-Verify requirements in its hiring practices. This Agreement shall be subject to termination as provided in Section 448.095(2), Florida Statutes if the City determines that the Contractor is not in compliance with the requirements of that provision.

**16. Amendment:**

This Agreement may be amended, and its material provisions may be waived, only by written instrument expressly approved for the City by the City's Board of Commissioners and for the Contractor by a named officer and only if properly executed by all the parties to this Agreement.

**17. Conflict of Interest:**

The Contractor shall be required to disclose prior to signing this Agreement the name of any officer, director, employee, or agent who may be employed by the City or otherwise affiliated with the City. The Contractor shall disclose the name of any City official or employee who owns, directly or indirectly, any interest in the Contractor's company or any affiliated business entity. Any additional conflicts of interest that may occur during the term of the Agreement must be disclosed to the City immediately upon discovery of the conflict or potential conflict.

**18. Non-Discriminatory Employment Practices:**

During the performance of this Agreement, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, or veteran status and will take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities or treatment without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

**19. Force Majeure:**

The Contractor shall be temporarily excused from performance if an Event of Force Majeure directly or indirectly causes its nonperformance. An "Event of Force Majeure" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquake, storm, lightning, war, riot, civil disturbance, sabotage, epidemics and pandemics for which a federal or state order has been issued that prohibits construction or other work from being done, and governmental actions. No later than five (5) days after the occurrence of an Event of Force Majeure, the Contractor shall deliver written notice to the City describing the event in reasonably sufficient detail and how the event precluded the Contractor from performing its obligations pursuant to this Agreement. The Contractor's obligations, so far as those obligations are affected by the Event of Force Majeure, shall be temporarily suspended during, but no longer than, the continuance of the Event of Force Majeure and for a reasonable time thereafter as may be required for the Contractor to return to normal business operations. If excused from performing any obligations under this Agreement due to the occurrence of an Event of Force Majeure, the Contractor shall promptly, diligently, and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations under this Agreement. During any such time period the Contractor shall keep the City duly notified

of all such actions required for it to be able to commence or resume performance of its obligations under this Agreement.

**20. Federal and State Taxes:**

The City is exempt from Federal Excise and State Sales Taxes. Therefore, the Contractor is prohibited from delineating a separate line item in their proposal for any sales or services taxes. Nothing herein shall affect the Contractor's normal tax liability.

**21. Annual Appropriations:**

The Contractor acknowledges that during any fiscal year, the City shall not expend money, incur any liability, or enter into any Agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any Agreement, verbal or written, the City may enter into in violation of this fiscal limitation is null and void, and no money shall be paid on such Agreement. The City may enter into Agreements which the duration exceeds one (1) year; however, any such Agreement shall be executory only for the value of the services to be rendered which the City agrees to pay as allocated in its annual budget for each succeeding fiscal year. Accordingly, the City's performance and obligation to pay the Contractor under this Agreement is contingent upon an annual appropriation being made for that purpose.

**22. Access and Audits:**

The Contractor shall maintain adequate records to justify all charges and costs incurred in performing the Services for at least three (3) years after completion of this Agreement. The City shall have access to all books, records, and documents that the Contractor must maintain in accordance with this Agreement for the purpose of inspection or audit during the Contractor's normal business hours at its usual place of business. If the City determines that the City has overpaid the Contractor because the Contractor has misrepresented its billable time or reimbursable expenses, the Contractor shall deliver the full amount of any overpayment to the City. If the City incurs any fees, costs, or expenses to recover the overpayment amount including, but not limited to, administrative accounting and attorneys' fees, costs, and expenses, then the Contractor must pay the City the full amount of the same as such fees, costs, and expenses come due.

If the City determines that the Contractor has under-billed the City because the Contractor has miscalculated any reimbursable items or rates after submitting the invoice in accordance with this Agreement, the Contractor waives any claim for additional payment for those services or reimbursable items. All invoices submitted to the City pursuant to this Agreement are subject to audit and demand for refund of overpayment for a time period extending three (3) years beyond the expiration or earlier termination of this Agreement.

**23. Notice:**



All notices, elections, requests, and other communications under this Agreement shall be in writing and shall be deemed given in the following circumstances when personally delivered: on the date of delivery after being deposited in the U.S. Mail, postage prepaid, certified, or registered, or on the date of delivery after being deposited with a nationally recognized overnight mail or courier delivery service, and addressed as follows (or to such other person or at such other address, of which any party hereto shall give written notice to the other party):

The City of Holmes Beach: Mayor Judy Titsworth  
City of Holmes Beach  
5801 Marina Drive  
Holmes Beach, FL 34217  
Email: [hbmayor@holmesbeachfl.org](mailto:hbmayor@holmesbeachfl.org)

Sage Kamiya  
Superintendent of Public Works/City Engineer  
City of Holmes Beach  
5801 Marina Drive  
Holmes Beach, Florida 34217  
[Skamiya@holmesbeachfl.org](mailto:Skamiya@holmesbeachfl.org)

Contractor: Solitude Lake Management, LLC  
2844 Crusader Circle, Ste. 450  
Virginia Beach, VA 23453

**IN WITNESS WHEREOF**, the Parties have signed this Agreement:

**CITY OF HOLMES BEACH:**

**SOLITUDE LAKE MANAGEMENT,  
LLC**

By: \_\_\_\_\_  
Judy Titsworth, Mayor

By: Trina L. Duncan

Title: Business Manager

Date: \_\_\_\_\_

Date: 05/11/2023

**ATTEST:**

---

Stacey Johnston, City Clerk



## EXHIBIT "A" SCHEDULE A - SERVICES

### Submersed Air Diffuser Aeration System Maintenance:

1. Company will service all of the Diffused Aeration System **two (2) times per year on a semi-annual basis** as follows:
  - Replace piston cups and seals/vanes once a year or as needed
  - Adjust air manifold and pressure relief valves to ensure optimal performance.
  - Replace air filters as needed
  - Clean cabinet interior.
  - Inspect system.
  - Clean muffler intake assembly.
  - Inspect cooling fan.
  - Remove excessive grass/weed growth from around compressor cabinet(s) to maintain optimal airflow & operating temperature.
  - Apply ant bait if necessary.
  - Lubricate cabinet hinges and barrel locks.
  - Test and reset GFI circuitry.
  - Inspect airline supply tubing and fittings.
  - Adjustment each diffuser for proper airflow and performance.
2. All necessary repairs (parts & labor) covered by warranty will be performed at no additional charge to the Customer.
3. All replacement parts required for proper maintenance of the aeration systems will be billed as an additional charge.
4. Any significant problems / malfunctions that are discovered during the maintenance service which are no longer under warranty, which are not part of routine maintenance, and that will require additional labor and/or parts, will be written up and submitted to the Customer for his / her approval prior to proceeding with the work.
5. All aerator work will be performed by factory certified service and repair technicians.

### Service Reporting:

1. Customer will be provided with a monthly service report detailing all of the work performed as part of this contract.

### Permitting (when applicable):

1. SOLitude staff will be responsible for the following:
  - a. Obtaining any Federal, state, or local permits required to perform any work specified in this contract where applicable.

**Competitively Sensitive & Proprietary Materials** – The information contained herein is the intellectual property of SOLitude Lake Management. Recipient may not disclose to any outside party any proprietary information, processes, or pricing contained in this document or any of its attachments without the prior written consent of SOLitude Lake Management. This document is provided to the recipient in good faith and it shall be the responsibility of the recipient to keep the information contained herein confidential.



- b. Attending any public hearings or meetings with regulators as required in support of the permitting process.
- c. Filing of any notices or year-end reports with the appropriate agency as required by any related permit.
- d. Notifying the Customer of any restrictions or special conditions put on the site with respect to any permit received, where applicable.

Customer Responsibilities:

1. Customer will be responsible for the following:
  - a. Providing information required for the permit application process upon request.
  - b. Providing Certified Abutters List for abutter notification where required.
  - c. Perform any public filings or recordings with any agency or commission associated with the permitting process, if required.
  - d. Compliance with any Order of Conditions or other special requirements or conditions required by the local municipality.
  - e. Compliance and enforcement of temporary water-use restrictions where applicable.

General Qualifications:

1. Company is a licensed pesticide applicator in the state in which service is to be provided.
2. Individual Applicators are Certified Pesticide Applicators in Aquatics, Public Health, Forestry, Right of Way, and Turf/Ornamental as required in the state in which service is to be provided.
3. Company is a SePRO Preferred Applicator and dedicated Steward of Water. Each individual applicator has been trained and educated in the water quality testing and analysis required for prescriptive site-specific water quality management and utilizes an integrated approach that encompasses all aspects of ecologically balanced management. Each applicator has received extensive training in the proper selection, use, and application of all aquatic herbicides, algaecides, adjuvants, and water quality enhancement products necessary to properly treat our Customers' lakes and ponds as part of an overall integrated pest management program.
4. Company guarantees that all products used for treatment are EPA registered and labeled as appropriate and safe for use in lakes, ponds, and other aquatic sites, and are being applied in a manner consistent with their labeling.
5. All pesticide applications made directly to the water or along the shoreline for the control of algae, aquatic weeds, or other aquatic pests as specified in this contract will meet or exceed all of the Company's legal regulatory requirements as set forth by the EPA and related state agencies for NPDES and FIFRA. Company will perform

**Competitively Sensitive & Proprietary Materials** – The information contained herein is the intellectual property of SÖLitude Lake Management. Recipient may not disclose to any outside party any proprietary information, processes, or pricing contained in this document or any of its attachments without the prior written consent of SÖLitude Lake Management. This document is provided to the recipient in good faith and it shall be the responsibility of the recipient to keep the information contained herein confidential.



treatments that are consistent with NPDES compliance standards as applicable in and determined by the specific state in which treatments are made. All staff will be fully trained to perform all applications in compliance with all federal, state, and local law.

6. Company will furnish the personnel, vehicles, boats, equipment, materials, and other items required to provide the foregoing at its expense.

**Competitively Sensitive & Proprietary Materials** – The information contained herein is the intellectual property of SŌLitude Lake Management. Recipient may not disclose to any outside party any proprietary information, processes, or pricing contained in this document or any of its attachments without the prior written consent of SŌLitude Lake Management. This document is provided to the recipient in good faith and it shall be the responsibility of the recipient to keep the information contained herein confidential.