



City of Pembroke Pines

**GENERATOR MUFFLER REPLACEMENT AGREEMENT
BETWEEN THE CITY OF PEMBROKE PINES AND
PANTROPIC POWER, INC.**

**THIS AGREEMENT ("Agreement"), dated _____, is entered into
by and between:**

THE CITY OF PEMBROKE PINES, a municipal corporation of the
State of Florida with a business address of **601 City Center Way,
Pembroke Pines, FL 33025**, hereinafter referred to as "CITY",

and

PANTROPIC POWER, INC., a For-Profit Corporation as listed with
the Florida Division of Corporations, with a business address of **8205
N.W. 58th Street, Damien Stewart, Miami, FL 33166**, hereinafter
referred to as "CONTRACTOR". "CITY" and "CONTRACTOR" may be
collectively referred to herein as "Parties" and individually as "Party".

W I T N E S S E T H:

In consideration of the mutual terms and conditions, promises, covenants and payments
hereinafter set forth, CITY and CONTRACTOR agree as follows:

**ARTICLE 1
PREAMBLE**

In order to establish the background, context and form of reference for this Agreement, and
to generally express the objectives and intentions of the respective Parties herein, the following
statements, representations, and explanations shall be accepted as predicates for the undertakings and
commitments included within the provisions which follow, and may be relied upon by the Parties as
essential elements of the mutual considerations upon which this Agreement is based.

1.1 The CITY is in need of replacing the Caterpillar generator mufflers at the CITY's Water
Treatment Plant.

1.2 The CITY Code of Ordinance **Section 35.18(C)(7)(d)**, entitled "**Maintenance service and
repair of equipment**," authorizes the CITY to enter into contracts for maintenance services when
the services will be performed by the manufacturer's service representative or distributor of the
manufacturer's equipment. Pursuant to Section 35.18(C)(7)(d), the maintenance services to be
provided herein are exempt from the CITY's formal bidding procedures.

1.3 CONTRACTOR is the authorized dealer for Caterpillar power generation, industrial
marine and on-highway engines, Caterpillar parts, and service for the following 13 counties in



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Florida: Broward, Dade, Charlotte, Collier, Glades, Indian River, Hendry, Lee, Martin, Monroe, Okeechobee, Palm Beach, and St. Lucie.

1.4 CITY desires to engage CONTRACTOR to perform the services required herein for the CITY.

1.5 On _____, the CITY awarded the contract to CONTRACTOR and authorized the proper CITY officials to enter into this Agreement with CONTRACTOR, to govern the services more particularly described herein below.

1.6 Negotiations pertaining to the services to be performed by the CONTRACTOR were undertaken and this Agreement incorporates the results of such negotiation.

ARTICLE 2
SERVICES AND RESPONSIBILITIES

2.1 CONTRACTOR hereby agrees to perform the services required **to provide, and install two (2) new generator mufflers**, one (1) muffler in generator with serial number SYC00657 and one (1) muffler in generator with serial number SYC00685, both of which are more particularly located at CITY's Water Treatment Plant at **7960 Johnson Street, Pembroke Pines, FL 33024**, (the "Property"), as more particularly described herein and in CONTRACTOR's proposal, attached hereto and made a part hereof as **Exhibit "A"**. CONTRACTOR agrees to perform all services required pursuant to this Agreement and in the Proposal.

2.2 CONTRACTOR shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.

2.3 CONTRACTOR shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. CONTRACTOR shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. CONTRACTOR shall at all times have a competent field supervisor available to enforce these policies and procedures at the CONTRACTOR's expense.

2.4 CONTRACTOR shall provide CITY with seventy-two (72) hours written notice prior to the beginning of work under this Agreement and prior to any schedule change with the exception of changes caused by inclement weather.

2.5 CONTRACTOR hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONTRACTOR, that CONTRACTOR has the professional expertise, experience and manpower to perform the services to be provided by CONTRACTOR pursuant to the terms of this Agreement.

2.6 CONTRACTOR hereby represents to CITY that CONTRACTOR is properly licensed by the applicable federal, state, and local agencies to provide the services under this Agreement. Furthermore, CONTRACTOR agrees to maintain such licenses during the term of this Agreement.



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If CONTRACTOR's license is revoked, suspended, or terminated for any reason by any governmental agency, CONTRACTOR shall notify the CITY immediately.

2.7 CONTRACTOR shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to CONTRACTOR, its employees, agents or subcontractors, if any, with respect to the work and services described herein. A violation of any federal, state, or local law or regulation may be cause for breach, allowing the CITY to terminate this Agreement.

2.8 CONTRACTOR shall not subcontract any of its obligations under this Agreement without first obtaining the CITY's prior written consent, which consent shall not be unreasonably denied. In the event the CITY does consent in writing to a subcontracting arrangement, CONTRACTOR shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Agreement. Any subcontract entered into by CONTRACTOR shall name the CITY as a third-party beneficiary.

2.9 **Return of Keys.** Upon completion of services rendered or termination of this agreement, CONTRACTOR must promptly return to CITY all CITY keys and/or access cards. By agreeing herein, CONTRACTOR understands that any loss or failure to return a CITY key shall subject CONTRACTOR to the costs associated with key replacement and/or re-keying. For keys unlocking several doors, replacement and re-keying costs can be substantial. In case of failure to return a key and failure to pay for key replacement and/or lock re-keying, CONTRACTOR understands that CITY shall enforce by all legal means its right to repayment for all costs incident to key replacement and/or lock re-keying.

ARTICLE 3
TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The work to be performed pursuant to this Agreement shall be commenced after CITY's execution of the Agreement and not later than ten (10) calendar days after the date that CONTRACTOR receives CITY's Notice to Proceed. The work herein required shall be completed within **two hundred seventy-four (274) calendar days** from issuance of CITY's Notice to Proceed, subject to any permitted extensions of time pursuant to this Agreement and any amendments and/or addenda thereto. For the purposes of this Agreement, the term "completion" shall mean the satisfactory completion and final inspection of the Property by the CITY.

3.2 During the pre-installation portion of the work hereunder, the Parties agree to work diligently and in good faith in performing their obligations hereunder, so that all required permits for the installation portion of the work may be obtained, as applicable. In the event that any delays in the pre-installation or installation portion of the work occur, despite the diligent efforts of the Parties hereto, and such delays are the result of force majeure or are otherwise outside of the control of either party hereto, then the Parties shall agree on an equitable extension of the time for substantial completion hereunder and any resulting increase in general condition costs.

3.3 In the event that CONTRACTOR abandons this Agreement or causes it to be terminated, CONTRACTOR shall indemnify CITY against any loss pertaining to this termination up to a



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maximum of the full contracted fee amount. All finished or unfinished documents, data, studies, surveys, and reports prepared by CONTRACTOR shall become the property of CITY and shall be delivered by CONTRACTOR to CITY.

ARTICLE 4
COMPENSATION AND METHOD OF PAYMENT

4.1 CITY agrees to compensate CONTRACTOR monthly for all services and work that has been completed, inspected, and properly invoiced by CONTRACTOR pursuant to this Agreement. The total amount of compensation paid to CONTRACTOR pursuant to this Agreement shall not exceed **SEVENTY-NINE THOUSAND, SEVEN HUNDRED AND EIGHT DOLLARS AND ZERO CENTS (\$79,708.00)**.

4.2 All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

4.3 **Method of Billing and Payment.** The CITY shall within thirty (30) calendar days, from the date the CITY's Utilities Department Director approves the Application for Payment, pay the CONTRACTOR the amount approved by the CITY's Utilities Department Director or his or her designee.

Payment will be made to CONTRACTOR at:

**Pantropic Power, Inc.
8205 NW 58th Street
Miami, FL 33166-3406**

ARTICLE 5
WAIVER OF LIENS

Prior to final payment of the amount due under the terms of this Agreement, to the extent permitted by law, a final waiver of lien shall be required to be submitted by the CONTRACTOR, as well as from all suppliers and subcontractors who have worked on the project that is the subject of this Agreement. Payment of the invoice and acceptance of such payment by CONTRACTOR shall release CITY from all claims of liability by CONTRACTOR in connection with this Agreement.

ARTICLE 6
WARRANTY

6.1 **Labor and Services Warranty.** CONTRACTOR warrants the work against defect for a period of six (6) months labor and one (1) year parts from the date of completion of work. In the event that defect occurs during this time, CONTRACTOR shall perform such steps as required to remedy the defects in conformance to manufacturer's warranty. CONTRACTOR shall be responsible for any damages caused by defect to



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the affected area, according to the manufacturer's warranty. The warranty periods do not begin until completion, of the entire project and approval by the CITY's Environmental Services Director. All parts warranties are that of the Manufacturer, and the CITY is a third party beneficiary of said manufacturer's warranties.

ARTICLE 7
CHANGES IN SCOPE OF WORK

7.1 CITY or CONTRACTOR may request changes that would increase, decrease, or otherwise modify the scope of work to be provided pursuant to this Agreement, as more particularly described in **Exhibit "A"**. These changes may affect the monthly compensation accordingly. Such changes or additional services or work must be in accordance with the provisions of the Code of Ordinances of the CITY, and must be contained in a written amendment, executed by the Parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work.

7.2 While requesting changes that would increase, decrease, or otherwise modify the scope of work CONTRACTOR shall continue work, however, in no event will CONTRACTOR be compensated for any work that has not been described either herein, in a purchase order, or separate written agreement executed by the parties hereto.

ARTICLE 8
INDEMNIFICATION

8.1 CONTRACTOR shall indemnify and hold harmless the CITY, its elected and appointed officers, agents, employees, consultants, separate contractors, any of their subcontractors, subcontractors, agents and employees from and against claims, demands, or causes of action whatsoever, and the resulting losses, damages, costs and expenses, including but not limited to reasonable attorney's fees, including paralegal expenses, liabilities, damages, orders, judgments, or decrees, sustained by the CITY arising out of or result from the negligence, recklessness, and intentional misconduct of CONTRACTOR and its officers, employees, agents, and subcontractors during performance of this Agreement, excepting those losses, damages, claims, suits, etc., that arose as a result of the CITY's gross negligence.

8.2 CONTRACTOR's aggregate liability arising from this Agreement shall not exceed the proceeds of insurance required to be placed pursuant to this Agreement, plus the compensation received by CONTRACTOR. In no event shall the CONTRACTOR be liable for special damages.

8.3 Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive for a period of four (4) years after Completion .

8.4 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR.

8.5 Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or Section 768.28, Florida Statutes, as may be amended from



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time to time.

ARTICLE 9
INSURANCE

9.1 CONTRACTOR shall indemnify and hold harmless the CITY, its trustees, elected and appointed officers, agents, servants, assigns, employees, consultants, separate contractors, any of their subcontractors, sub-contractors, agents and employees from and against claims, demands, or causes of action whatsoever, and the resulting losses, damages, costs and expenses, including but not limited to reasonable attorneys' fees, including paralegal expenses, liabilities, damages, orders, judgements, or decrees, sustained by the CITY arising out of or resulting from performance of the work or the failure of the CONTRACTOR to take out and maintain insurance as required under this Agreement. The CONTRACTOR expressly understand and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

9.2 CONTRACTOR AND ALL SUBCONTRACTORS, SHALL NOT BE ALLOWED TO commence work under this AGREEMENT until the CONTRACTOR has obtained all insurance required by this Insurance Section, including the purchase of a Policy of Insurance naming the City of Pembroke Pines as an Additional Named Insured, which Insurance Policy and its terms must be agreed to and approved in writing by the Risk Manager for the City of Pembroke Pines, nor shall any SUBCONTRACTOR be allowed to commence work under this AGREEMENT until the SUBCONTRACTOR complies with the Insurance requirements required by this Insurance Section, including the duty to purchase a Policy of Insurance which names the City of Pembroke Pines as an Additional Named Insured, which Insurance Policy and its terms are agreed to and approved in writing by the Risk Manager for the City of Pembroke Pines.

9.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

9.4 Certificates of Insurance shall provide for thirty (30) calendar days' prior written notice to the CITY in case of cancellation or material changes in the policy limits or coverage states. If the carrier cannot provide thirty (30) calendar days' notice of cancellation, either the CONTRACTOR or their Insurance Broker must agree to provide notice.

9.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the CONTRACTOR shall furnish, at least forty-five (45) calendar days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall neither commence nor continue to



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provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

9.6 REQUIRED INSURANCE

CONTRACTOR shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:

Yes No

✓ 9.6.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000
5. Products & Completed Operations Aggregate Limit - \$2,000,000

Aggregate Reduction: CONTRACTOR shall advise the CITY in the event any aggregate limits are reduced below the required per-occurrence limit. At its own expense, the CONTRACTOR will reinstate the aggregate limits to comply with the minimum requirements and shall furnish the CITY with a new certificate of insurance showing such coverage is in force.

Products & Completed Operations Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

✓ 9.6.2 Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of the CONTRACTOR engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation:	Coverage A – Statutory
2. Employers Liability:	Coverage B
	\$500,000 Each Accident
	\$500,000 Disease – Policy Limit
	\$500,000 Disease – Each Employee



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If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption for CITY to exempt CONTRACTOR.

Yes No

9.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) - \$1,000,000

If work under this Agreement includes transportation of hazardous materials, policy shall include pollution liability coverage equivalent to that provided by the latest version of the ISO pollution liability broadened endorsement for auto and the latest version of the ISO Motor Carrier Act endorsement, equivalents or broader language.

Yes No

9.6.3.1 If CONTRACTOR requests reduced limits under a Personal Auto Liability Policy and it is agreed to by the CITY, coverage shall include Bodily Injury limits of \$100,000 per person/\$300,000 per occurrence and Property Damage limits of \$300,000 per occurrence.

Yes No

9.6.4 Umbrella/Excess Liability Insurance in the amount of \$1,000,000.00 as determined appropriate by the CITY depending on the type of job and exposures contemplated. Coverage must be follow form of the General Liability, Auto Liability and Employer's Liability. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

9.7 REQUIRED ENDORSEMENTS

- 9.7.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the Liability Policies required herein.
- 9.7.2 Waiver of all Rights of Subrogation against the CITY.
- 9.7.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the CITY.
- 9.7.4 CONTRACTOR's policies shall be Primary & Non-Contributory.



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9.7.5 All policies shall contain a “severability of interest” or “cross liability” clause without obligation for premium payment of the CITY.

9.7.6 The City of Pembroke Pines shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

9.8 Any and all insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement.

9.9 The CITY reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Agreement.

9.10 The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the CONTRACTOR has assumed in the indemnification/hold harmless section(s) of this Agreement.

ARTICLE 10
NON-DISCRIMINATION & EQUAL OPPORTUNITY EMPLOYMENT

During the performance of the Agreement, neither the CONTRACTOR nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONTRACTOR further agrees that CONTRACTOR will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

ARTICLE 11
INDEPENDENT CONTRACTOR

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the CONTRACTOR is an independent contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the



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provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR, which policies of CONTRACTOR shall not conflict with CITY, State, Federal, or United States policies, rules or regulations relating to the use of CONTRACTOR's funds provided for herein. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

ARTICLE 12
TERMINATION

Termination for Convenience. This Agreement may be terminated by CITY for convenience, upon fifteen (15) calendar days of written notice by the CITY to CONTRACTOR for such termination, in which event CONTRACTOR shall be paid its compensation for services performed to termination date, and non-inventoried parts ordered up to the termination date, including services reasonably related to termination. In the event that CONTRACTOR abandons this Agreement or causes it to be terminated, CONTRACTOR shall indemnify CITY against loss pertaining to this termination.

ARTICLE 13
AGREEMENT SUBJECT TO FUNDING

This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Pembroke Pines in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

ARTICLE 14
UNCONTROLLABLE FORCES

Neither CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" 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, earthquakes, storms, hurricanes, supply issues, material scarcity or shortage thereof, labor shortages, lightning, epidemic, pandemic, acts of God, war (declared or not), riot, civil disturbance, sabotage, and governmental actions. Neither Party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming Party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming Party shall, within a reasonable time of



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being prevented or delayed from performance by an uncontrollable force, give written notice to the other Party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 15
GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all actions or claims arising out of or related to this Agreement shall be in Broward County, Florida.

All Parties to this Agreement agree that the underlying transactions contemplated between them are complex and not appropriate for determination by a jury. Therefore, both Parties herein **WAIVE THEIR RIGHT TO A JURY TRIAL** and they both acknowledge that said waiver is a material inducement to the other into entering this Agreement.

ARTICLE 16
SIGNATORY AUTHORITY

Upon CITY's request, CONTRACTOR shall provide CITY with copies of requisite documentation evidencing that the signatory for CONTRACTOR has the authority to enter into this Agreement.

ARTICLE 17
DEFAULT OF CONTRACT & REMEDIES

17.1 Liquidated Damages.

17.1.1 Breach of Service. As a breach of the service provided by this Agreement would cause serious and substantial damage to CITY Property, and the nature of this Agreement would render it impracticable or extremely difficult to fix the actual damage sustained by CITY by such breach, it is agreed that, in case of breach of service wherein CONTRACTOR fails to maintain the Property, leaving the said property in disrepair, CITY may elect to collect liquidated damages for each such breach, and CONTRACTOR will pay CITY as liquidated damages, and not as penalty, five hundred dollars and zero cents (\$500.00) for every calendar day of such malfunction. This sum is the agreed upon amount by which CITY will be damaged by the breach of such service.

17.1.2 Time is of the Essence. The Parties recognize that time is of the essence on this Agreement and that the CITY will suffer financial loss if the work is not completed within the time specified herein. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the CITY if the work is not completed on time. Accordingly, instead of requiring any such proof, the Parties agree that as liquidated damages for delay (but not as a penalty), the CONTRACTOR shall pay the CITY, five hundred dollars and zero cents (\$500.00) for each calendar day that expires after the time herein for final completion and full acceptance is achieved. This sum is the agreed upon amount by which CITY will be damaged by the breach of such specified time.

An election to seek such remedies shall not be construed as a waiver of any legal remedies CITY



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may have as to any subsequent breach by CONTRACTOR pursuant to this Agreement. Liquidated damages are cumulative.

17.1.3 Notwithstanding anything to the contrary, the remedies outlined in Section 17 of this Agreement shall not apply if the delay is caused by Force Majeure, and until two weeks (14 calendar days) after CONTRACTOR receives all the necessary components to do the muffler work.

17.2 **Correction of Work.** If, in the judgment of CITY, work provided by CONTRACTOR does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, CITY reserves the right to require that CONTRACTOR correct all deficiencies in the work to bring the work into conformance without additional cost to CITY, and / or replace any personnel who fail to perform in accordance with the requirements of this Agreement. CITY shall be the sole judge of non-conformance and the quality of workmanship.

17.3 **Default of Contract.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by CONTRACTOR:

17.3.1. The abandonment, unnecessary delay, refusal of, or failure to comply with any of the terms of this Agreement or neglect, or refusal to comply with the instructions of the Utilities Director relative thereto.

17.3.2. The failure by CONTRACTOR to observe or perform any of the terms, covenants, or conditions of this Agreement to be observed or performed by CONTRACTOR, where such failure shall continue for a period of seven (7) calendar days after written notice thereof by CITY to CONTRACTOR; provided, however, that if the nature of CONTRACTOR's default is such that more than seven (7) calendar days are reasonably required for its cure, then CONTRACTOR shall not be deemed to be in default if CONTRACTOR commences such cure within said seven (7) calendar day period and thereafter diligently prosecutes such cure to completion.

17.3.3. The assignment and/or transfer of this Agreement or execution or attachment thereon by CONTRACTOR or any other party in a manner not expressly permitted hereunder.

17.3.4. The making by CONTRACTOR of any general assignment or general arrangement for the benefit of creditors, or the filing by or against CONTRACTOR of a petition to have CONTRACTOR adjudged a bankruptcy, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against CONTRACTOR, the same is dismissed within sixty (60) calendar days); or the appointment of a trustee or a receiver to take possession of substantially all of CONTRACTOR's assets, or for CONTRACTOR's interest in this Agreement, where possession is not restored to CONTRACTOR within thirty (30) calendar days; for attachment, execution or other judicial seizure of substantially all of CONTRACTOR's assets, or for CONTRACTOR's interest in this Agreement, where such seizure is not



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discharged within thirty (30) calendar days.

17.4 Remedies in Default. In case of default by CONTRACTOR, CITY shall notify CONTRACTOR, in writing, of such abandonment, delay, refusal, failure, neglect, or default and direct CONTRACTOR to comply with all provisions of the Agreement. If the abandonment, delay, refusal, failure, neglect or default is not cured within seven (7) calendar days of when notice was sent by CITY, CITY may declare a default of the Agreement and notify CONTRACTOR of such declaration of default and terminate the Agreement. The CONTRACTOR shall within ten (10) calendar days of such declaration of default, rectify or cause to be rectified any mismanagement or breach of service in the Agreement and proceed to perform services under the Agreement, at its own cost and expense.

17.4.1. Upon such declaration of default, all payments remaining due CONTRACTOR at the time of default, less all sums due CITY for damages suffered, or expenses incurred by reason of default, shall be due and payable to CONTRACTOR.

17.4.2. CITY may complete the Agreement, or any part thereof, either by day labor or re-letting a contract for the same, and procure the equipment and the facilities necessary for the completion of the Agreement, and charge the cost of same to CONTRACTOR together with the costs incident thereto to such default.

17.4.3. In the event CITY completes the Agreement at a lesser cost than would have been payable to CONTRACTOR under this Agreement, if the same had been fulfilled by CONTRACTOR, CITY shall retain such differences. Should such cost to CITY be greater, CONTRACTOR shall pay the amount of such excess to the CITY.

17.4.4 Notwithstanding the other provisions in this Article, CITY reserves the right to terminate the Agreement at any time, whenever the service provided by CONTRACTOR fails to meet reasonable standards of the trade after CITY gives written notice to the CONTRACTOR of the deficiencies as set forth in the written notice within fourteen calendar (14) calendar days of the receipt by CONTRACTOR of such notice from CITY.

ARTICLE 18
BANKRUPTCY

It is agreed that if CONTRACTOR is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective on the date and at the time the bankruptcy petition is filed.

ARTICLE 19
MERGER; AMENDMENT

This Agreement constitutes the entire Agreement between CONTRACTOR and CITY, and all negotiations and oral understandings between the Parties are merged herein. This Agreement can be supplemented or amended only by a written document executed by both CONTRACTOR and CITY with the same formality and equal dignity herewith.



ARTICLE 20 **DISPUTE RESOLUTION**

20.1 Operations During Dispute.

20.1.1 In the event that a dispute, if any, arises between CITY and CONTRACTOR relating to this Agreement, performance or compensation hereunder, CONTRACTOR shall continue to render service in full compliance with all terms and conditions of this Agreement as interpreted by CITY regardless of such dispute.

20.1.2 CONTRACTOR expressly recognizes the paramount right and duty of CITY to provide adequate maintenance of CITY's Property, and further agrees, in consideration for the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court, but will negotiate with CITY for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute, may present the matter to a court of competent jurisdiction in an appropriate suit therefore instituted by it or by CITY.

ARTICLE 21 **PUBLIC RECORDS**

21.1 The City of Pembroke Pines is public agency subject to Chapter 119, Florida Statutes. The CONTRACTOR shall comply with Florida's Public Records Law. Specifically, the CONTRACTOR shall:

21.1.1 Keep and maintain public records required by the CITY to perform the service;

21.1.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat., or as otherwise provided by law;

21.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession after the CONTRACTOR transfers the records in its possession to the CITY; and

21.1.4 Upon completion of the Agreement, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by the CONTRACTOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

21.2 The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement.



City of Pembroke Pines

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
601 CITY CENTER WAY, 4th FLOOR
PEMBROKE PINES, FL 33025
(954) 450-1050
drogers@ppines.com**

**ARTICLE 23
SCRUTINIZED COMPANIES**

22.1 CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in Iran Terrorism Sectors List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:

22.1.1 Any amount if, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

22.1.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

22.1.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, created pursuant to Section 215.473, Florida Statutes; or

22.1.2.2 Is engaged in business operations in Syria.

**ARTICLE 23
EMPLOYMENT ELIGIBILITY**

23.1 **E-Verify.** CONTRACTOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

23.1.1 **Definitions for this Section.**



City of Pembroke Pines

23.1.1.1 “Contractor” means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration.

23.1.1.2 “Contractor” includes, but is not limited to, a vendor or consultant.

23.1.1.3 “Subcontractor” means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

23.1.4 “E-Verify system” means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

23.2 Registration Requirement; Termination. Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security’s E-Verify System to verify the employment eligibility of:

23.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and

23.2.2 All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Pembroke Pines. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security’s E-Verify System during the term of the contract is a condition of the contract with the City of Pembroke Pines; and

23.2.3 The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to, registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

ARTICLE 24
MISCELLANEOUS

24.1 Ownership of Documents. Reports, surveys, studies, and other data provided in connection with this Agreement are and shall remain the property of CITY, whether or not the project for which they are made is completed.



City of Pembroke Pines

24.2 Legal Representation. It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both Parties.

24.3 Records. CONTRACTOR shall keep such records and accounts and require any and all subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONTRACTOR expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY after written notice, and shall be kept for a period of five (5) years after the completion of all work to be performed pursuant to this Agreement at Contractor's normal place of business. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries. All records shall be maintained and available for disclosure, as appropriate, in accordance with Chapter 119, Florida Statues.

24.4 Assignments; Amendments. This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONTRACTOR shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns.

It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

24.5 No Contingent Fees. CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

24.6 Notice. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONTRACTOR and CITY designate the following as the respective places for giving of notice:

CITY

Charles F. Dodge, City Manager
City of Pembroke Pines
601 City Center Way, 4th Floor
Pembroke Pines, Florida 33025



City of Pembroke Pines

Telephone No. (954) 450-1040

Copy To: Samuel S. Goren, City Attorney
Goren, Chero, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Telephone No. (954) 771-4500
Facsimile No. (954) 771-4923

CONTRACTOR **Ettore J. DeTorres, VP-COO**
Pantropic Power, Inc.
8205 N.W. 58th Street
Miami, FL 33166
E-mail: info@pantropic.com
Telephone No: (305) 592-4944

24.7 **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

24.8 **Headings.** Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

24.9 **Exhibits.** Each exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits, if not physically attached, should be treated as part of this Agreement and are incorporated herein by reference.

24.10 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

24.11 **Extent of Agreement and Conflicts.** This Agreement represents the entire and integrated agreement between CITY and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. In the event of a conflict between this Agreement, and **Exhibit "A"**, this Agreement shall govern, then **Exhibit "A"**.

24.12 **Waiver.** Failure of CITY to insist upon strict performance of any provision or condition of this Agreement, or to execute any right therein contained, shall not be construed as a waiver or relinquishment for the future of any such provision, condition, or right, but the same shall remain in full force and effect.

24.13 **Attorneys' Fees.** In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.



24.14 **Protection of CITY Property.** At all times during the performance of this Agreement, CONTRACTOR shall protect CITY's property from all damage whatsoever on account of the work being carried on under this Agreement.

24.15 **Counterparts and Execution.** This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

24.16 **Human Trafficking.** Pursuant to Section 787.06(13), Fla. Stat., nongovernmental agencies contracting with CITY are required to provide an affidavit attesting that the nongovernmental agency does not use coercion for labor or services as defined within Section 787.06, Fla. Stat. By executing this Agreement and submitting the executed required affidavit, the CONTRACTOR represents and warrants that it does not use coercion for labor or services as provided by state law.

24.17 **Discriminatory Vendor List.** Pursuant to Section 287.134(2)(a), Fla. Stat., an entity or affiliate, as defined in Section 287.134(1), who has been placed on the discriminatory vendor list may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity. By executing this Agreement, the COLLEGE represents and warrants that neither it nor any of its affiliates is currently on the discriminatory vendor list.

24.18 **Antitrust Violations.** Pursuant to Section 287.137, Florida Statutes, as may be amended, a person or an affiliate who has been placed on the antitrust violator vendor list (electronically published and updated quarterly by the State of Florida) following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity. By entering into this Agreement, CONTRACTOR certifies neither it nor its affiliate(s) are on the antitrust violator vendor list at the time of entering this Agreement. False certification under this paragraph or being subsequently added to that list will result in termination of the Original Agreement, as amended, at the option of the CITY consistent with Section 287.137, Florida Statutes, as amended.

24.19 **Public Entity Crimes.** Pursuant to Section 287.133(2)(a), Fla. Stat., a person or affiliate, as defined in Section 287.133(1), Fla. Stat., who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work;



City of Pembroke Pines

may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of thirty-five thousand dollars (\$35,000.00) for a period of thirty-six (36) months following the date of being placed on the convicted vendor list. By executing this Agreement, the CONTRACTOR represents and warrants that neither it nor any of its affiliates is currently on the convicted vendor list.

24.20 Compliance with Statutes. It shall be the CONTRACTOR's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, City, state, and federal agencies as applicable.

24.21 Compliance with Foreign Entity Laws. CONTRACTOR ("Entity") hereby attests under penalty of perjury the following:

- 24.21.1 Entity is not owned by the government of a foreign country of concern as defined in Section 287.138, Florida Statutes. (Source: § 287.138(2)(a), Florida Statutes);
- 24.21.2 The government of a foreign country of concern does not have a controlling interest in Entity. (Source: § 287.138(2)(b), Florida Statutes);
- 24.21.3 Entity is not owned or controlled by the government of a foreign country of concern, as defined in Section 692.201, Florida Statutes. (Source: § 288.007(2), Florida Statutes);
- 24.21.4 Entity is not a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country of concern, as defined in Section 692.201, Florida Statutes, or a subsidiary of such entity. (Source: § 288.007(2), Florida Statutes);
- 24.21.5 Entity is not a foreign principal, as defined in Section 692.201, Florida Statutes. (Source: § 692.202(5)(a)(1), Florida Statutes); and,
- 24.21.6 Entity is in compliance with all applicable requirements of Sections 692.202, 692.203, and 692.204, Florida Statutes.

**SIGNATURE PAGE AND
AFFIDAVIT OF COMPLIANCE WITH
HUMAN TRAFFICKING LAWS FOLLOW**



City of Pembroke Pines

IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

CITY:

CITY OF PEMBROKE PINES, FLORIDA

APPROVED AS TO FORM:

Print Name: _____
OFFICE OF THE CITY ATTORNEY

MAYOR ANGELO CASTILLO

ATTEST:

DEBRA E. ROGERS, CITY CLERK

BY: _____

CHARLES F. DODGE, CITY MANAGER

CONTRACTOR:

PANTROPIC POWER, INC.

DocuSigned by:

Signed By: _____

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Printed Name: _____ Ettore J. DeTorres

Title: _____ VP-COO

August 5, 2025



City of Pembroke Pines

AFFIDAVIT OF COMPLIANCE WITH HUMAN TRAFFICKING LAWS

In accordance with section 787.06 (13), Florida Statutes, the undersigned, on behalf of the entity listed below (“Entity”), hereby attests under penalty of perjury that:

1. The Affiant is an officer or representative of the Entity entering into an agreement with the City of Pembroke Pines.
2. The Entity does not use coercion for labor or services as defined in Section 787.06, Florida Statutes, entitled “Human Trafficking”.
3. The Affiant is authorized to execute this Affidavit on behalf of the Entity.
4. I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.
5. Pursuant to Sec. 92.525(2), Fla. Stat., under penalties of perjury, I declare that I have read the foregoing affidavit of compliance with Human Trafficking Laws and that the facts stated in it are true.

FURTHER AFFIANT SAYETH NAUGHT.

DATE: August 5, 2025

ENTITY: **PANTROPIC POWER, INC.**

SIGNED BY: Ettore J. DeTorres
DocuSigned by:
012FB030D5C940D...
NAME: Ettore J. DeTorres
TITLE: VP-COO