

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: November 20, 2023

RE: **Agreement with AVEVA, Inc. for Software Purchase to Replace Lakeland Electric's Energy Management Systems Historian Software**

Attached hereto for your consideration is a proposed Agreement with AVEVA, Inc. (AVEVA) for the purchase of AVEVA'S PI computer software to replace Lakeland Electric's Energy Management Systems eDNA Historian software. Lakeland Electric's existing Energy Management Supervisory Control and Data Acquisition (SCADA) Systems eDNA Historian software will no longer be supported in 2026 and therefore is in need of replacement.

This software provides a comprehensive overview of Lakeland Electric's business operations by storing and tracking trending historical energy data enabling users to analyze overall energy grid performance in order to make informed operational and maintenance decisions related to the utility. Lakeland Electric's Energy Management team is seeking to run both software systems simultaneously for a period of time to ensure data compatibility and to facilitate user training. In addition, the new software is needed in FY24 due to a major SCADA software upgrade and hardware replacement taking place over the next two (2) years.

The City's Purchasing Department has approved AVEVA, the designer and manufacturer of this specialized software, as a sole source supplier for this purchase. Upon City Commission approval, the City will issue a Purchase Order and implementation is projected to occur in January 2024. The purchase of this software will be governed by the terms and conditions set forth in AVEVA's Proposal, with an effective date of December 1, 2023, and continuing through November 30, 2026. The total cost of the three (3) year Agreement is \$325,710.00. By entering into a three (3) year Agreement with AVEVA, the City will be able to save approximately \$33,480.00. The first year's cost of \$108,570.00 is included in Lakeland Electric's FY24 budget. The cost for the remaining two (2) year Agreement will be subject to budget approval by the City Commission in subsequent budget years.

It is recommended that the City Commission approve this Agreement with AVEVA for the purchase of software to replace Lakeland Electric's Energy Management Systems SCADA eDNA Historian software and authorize the appropriate City officials to execute all corresponding documents on behalf of the City.

Attachment

AVEVA Flex Order Form

AVEVA Contract Information:

This AVEVA Flex Order Form ("Order Form") is a binding agreement for the Products and/or Services listed in this Order Form. This Order Form is governed by the agreement specified below ("Agreement"):

- 1. The AVEVA General Terms and Conditions ("GTCs") GTC#: 000280

AVEVA Flex Order Form Term:

Effective Date of this Order Form ("Order Form Effective Date"): December 1, 2023

Order Form Expiration ("Order Form Expiration Date"): November 30, 2026

This Order Form is effective as of the Order Form Effective Date and unless terminated earlier in accordance with the terms of the Agreement, this Order Form will immediately expire on the Order Form Expiration Date ("Order Form Term").

Party Identification:

AVEVA:	AVEVA Software LLC ("AVEVA")
Company Registration Number (if applicable):	47-2573795
Company Registered Address:	26561 Rancho Parkway South, Lake Forest, CA 92630-8301, United States
Company Telephone Number:	949 885 0700
Principal Contact (Name, Email and Phone Number):	Name: Cy Hertz Email: cyril.hertz@aveva.com Phone Number: 239 326 3329

CUSTOMER:	City of Lakeland ("Customer")
Company Registration Number (if applicable):	
Company Registered Address:	501 East Lemon Street, Lakeland, FL, 33801, United States
Company Telephone Number:	863 834 9535
Ship to Address (if different than Registered Address):	
Invoice Address (if different than Registered Address):	City of Lakeland 501 East Lemon Street Lakeland FL 33801, United States
Principal Contact (Name, Email and Phone Number):	Name: Roy Osborne Email: roy.osborne@lakelandelectric.com Phone Number: +1 863-834-6458
AVEVA Connect Administrator (Name and Email):	Name: Roy Osborne Email: roy.osborne@lakelandelectric.com

This Order Form is hereby executed by the parties.

AVEVA:

AVEVA Software LLC

By: _____

(Signature)

Name: Preeti Saraogi

Title: Assistant Treasurer

Date: _____

Customer:

City of Lakeland

By: _____

(Signature)

Name: H. William Mutz

Title: Mayor

Date: _____

1. **ORDER SUMMARY, PRODUCT SCHEDULES AND INVOICE SCHEDULE**

Section A: Order Summary

Total Flex Credit Fees:	USD 325,710.00
Total Flex Credits:	23,688
AVEVA Customer FIRST Program Service Level:	Premium

Through Flex Credits, Customer has access to the entire portfolio of AVEVA's Products on the AVEVA Connect platform. Customer can access a Cloud Service or download an On Premises Product via the AVEVA Connect platform and support websites. Customer's purchased or allocated credits will be deducted from the total number of credits (as applicable) shown in Customer's credit balance in the AVEVA Connect platform in accordance with the Product Rate Plan associated with the accessed or downloaded Products. The Product Rate Plan may change depending upon the Products that the Customer chooses throughout the course of the Term. Such changes will be shown in the AVEVA Connect platform. Appendix A sets out the agreed list of offers for Products initially selected by the Customer and their associated rate plan charges of said Products expressed in Flex Credits.

Section B: Order Details

AVEVA Flex Credits		
<u>AVEVA Product Code</u>	<u>Description</u>	<u>Quantity</u>
	AVEVA Flex Credits Designated for Cloud Service – FLEX-CR-002	23,688
	Total AVEVA Flex Credits	23,688

Customer acknowledges and agrees that any credits designated for On Premises Product can only be applied to On Premises Products and any credits designated for Cloud Service can only be applied to Cloud Service; they are not interchangeable.

Section C: Invoice Schedule and Product Fees

AVEVA will invoice Customer for the above Flex Credits in accordance with the invoice schedule below. Customer will pay to AVEVA the fees for the agreed Flex Credits set forth in this Order Form within 45 days of receipt of invoice date set forth below.

Top-Up Flex Credits are charged at the rate of USD 14.44 per credit.

Item	Year 1	Year 2	Year 3
Invoice Amount	USD 108,570.00	USD 108,570.00	USD 108,570.00
Invoice Date	December 1, 2023	December 1, 2024	December 1, 2025
Authorized Location(s) of Use	Lakeland Electric, Lakeland, FL		

2. Other Terms.

2.1. Definitions. Capitalized terms used in this Order Form without definition have the meanings ascribed to them in the applicable document.

"Authorized Location(s) of Use" means locations set forth in this Order Form where the On Premises Products are permitted to be installed.

"AVEVA Connect Administrator" means the Customer representative(s) set out in the Order Form, which, in the management of the applicable Product(s) has the right to grant access or use to any Users of such Product on behalf of Customer.

"Flex Credits" means Reward Credits, Test Credits or other electronic credits purchased by the Customer, which are then redeemed by the Customer for the use of On Premises Products or Cloud Service as the case may be. At the start of the Order Form Term, all Flex Credits for Products (whether On Premises or Cloud) purchased by the Customer as set forth in the Product Rate Plan, will be allotted in full to Customer for use throughout the entire Order Form Term. Any unused Flex Credits remaining at the end of the Order Form Term will expire and may not be carried forward to any other term or otherwise.

"Product Rate Plan" means the information accessible via AVEVA Connect that provides a Customer with their then-current list of subscribed Products and the associated rate plan charges of said Products expressed in Flex Credits;

"Reward Credits" means credits that AVEVA, in its sole discretion, may offer at no cost to the Customer.

"Test Credits" means credits allocated to a Customer's AVEVA Connect Test Account. Such test account provides access to Products solely for non- production use.

"Top-Up Flex Credits" means additional Flex Credits purchased by the Customer during the Order Form Term to remedy an AVEVA Connect Account that is overdrawn in Flex Credit usage or to supplement the Customer's Flex Credit usage.

2.2. Credit Based Subscription Model. The Customer understands that the Products supplied in connection with this Order Form are being provided on a credit based subscription model basis, and acknowledges that:

- a) The Customer's Use of the Products is controlled and restricted by the number of Flex Credits set out in this Order Form;
- b) The Customer's initial Flex Credits as set out in this Order Form will expire at the end of the Order Form Term;
- c) If Customer owes AVEVA any unpaid fees or has any issued-and-outstanding invoice(s). Customer shall pay the full amount of such unpaid fees and/or invoice(s) to AVEVA prior to purchasing Top-Up Flex Credits;
- d) Where the Customer purchases Top-up Flex Credits, such Top-up Flex Credits will be purchased at the rate set out in this Order Form and such Top-up Flex Credits will expire at the end of the Order Form Term;
- e) Where the Customer's use of the Product exceeds the number of Credits (an "Overdraft") the Customer will be required to purchase additional Credits in the form of Top-Up Credits to remedy the AVEVA Connect Account being overdrawn, within forty-five (45) days of any Overdraft. AVEVA reserves the right to limit or deny access to future consumption of Credits if Customer fails to correct an Overdraft in accordance with Section 4.2.5 of the Cloud Services Addendum to the General Terms and Conditions.

2.3. Non-Cancellable and Non-Refundable. This Order Form is non-cancellable and all fees paid are non-refundable.

AVEVA Product Schedules
Engineering Software Portfolio: The software schedule titled "AVEVA Software Schedule Engineering (including SimSci and Process Optimization)" shall apply to all software listed in the Engineering Portfolio (including the AVEVA Process Optimization Software), as set forth at https://www.aveva.com/en/legal and incorporated into this Order Form by reference.
Operations and Performance Software Portfolio: The software schedule titled "AVEVA Software Schedule PO APM MC (excluding Process Optimization and Unified Supply Chain)" shall apply to all software listed in the Operations and Performance Portfolio (excluding AVEVA Process Optimization Software), as set forth at https://www.aveva.com/en/legal and incorporated into this Order Form by reference.
PI System Software: The software schedule titled "AVEVA Software Schedule PI System" shall apply to the PI System software Product, as set forth at https://www.aveva.com/en/legal and incorporated into this Order Form by reference.

2.4 PURCHASE ORDER “PO” INSTRUCTIONS

- Customer will issue one PO for the total amount of the Order Form. To facilitate PO processing and eliminate possible rework and review, please see information below and ensure the PO has this information. Notwithstanding anything else contained herein, Customer shall remain ultimately liable for the payment of all amounts owed pursuant to this Order Form, regardless of whether or not a PO is issued
- The PO has an authorized signature and is dated.
- Any documents requiring execution, Order Form, must be executed and provided with issuance of the PO.
- The PO MUST reference the Order Form Number OPP-408446
- The PO MUST state, “The AVEVA General Terms and Conditions (“GTCs”) (# 000280) will regulate the work performed under this Purchase Order and will supersede the terms attached to this Purchase Order.”
- Issue PO to: AVEVA Software LLC, 26561 Rancho Pkwy S, Lake Forest, CA 92630-8301
- For processing, please send POs to: Software.USA@AVEVA.com

Appendix A

Product Rate Plans for Selected AVEVA Flex Offerings

AVEVA Cloud SaaS

<u>AVEVA Product Code</u>	<u>AVEVA Product Name</u>	<u>Commercial Unit</u>	<u>Credit Rate per Stream per Day</u>	<u>Credit Rate per Month</u>	<u>Provision Upon Sale</u>
FLEX-ADH-001	AVEVA Data Hub – V2 Includes 'Committed Usage' of: Streams Stored per day – 500 Streams Accessed per day – 200 Shared Streams Accessed – 400	Fixed Charge for 'Committed Usage'	n/a	0	Yes
		For Additional Usage of Streams Stored	0.0008	n/a	Yes
		For Additional Usage of Streams Accessed	0.007	n/a	Yes
		For Additional Usage of Shared Streams Accessed	0.007	n/a	Yes

<u>AVEVA Product Code</u>	<u>AVEVA Product Name</u>	<u>Commercial Unit</u>	<u>Credit Rate per Month</u>	<u>Provision Upon Sale</u>
FLEX-PIDI-018	AVEVA PI Data Infrastructure 10K	Monthly Fixed Charge	274	Yes
FLEX-PIDI-051	AVEVA PI System Connectivity Pack	-	-	Yes
FLEX-PIDI-337	AVEVA PI Server - Test 10K	-	-	Yes
FLEX-CVS-001	AVEVA Connect visualization services	Monthly Fixed Charge	<ul style="list-style-type: none"> • 0: 1-5 users • 5: 6-500 users • 4: 501-1,000 users • 3: 1,001+ users 	Yes
FLEX-PIDI-056	AVEVA PI Client Pack 50	Monthly Fixed Charge	183	Yes
FLEX-PIDI-068	AVEVA Add-ons HA Node 10K	Monthly Fixed Charge	102	Yes
FLEX-PIDI-110	AVEVA Add-ons PI System Access (PSA) 10K	Monthly Fixed Charge	99	Yes