

CONTRACT TERMS AND CONDITIONS FOR ALL CITY PROCUREMENTS

The following terms and conditions apply to all City of Sanford procurement activities whether consummated by contract documents in the form of an agreement, a work order, a purchase order or any other form of communication. These terms and conditions are incorporated into such documents in full as if set forth therein in haec verba.

The City's Vendor:

- (1). The term “vendor” as used in these terms and conditions means and includes a vendor, contractor, consultant and other suppliers of goods or services, by whatever name such as by means of, by way of example only, contracts, agreements, work orders, purchase orders, etc., and is hereby defined to include the person or entity, including, but not limited to, the person or entity’s employees, officers, managers, servants, partners, principals, affiliates, principals, agents officials, subvendors and assignees who are providing goods or services to the City.
- (2). The City shall not be contractually or otherwise obligated or liable to any party other than the vendor. There are no third party beneficiaries.
- (3). The vendor is an independent contractor and not an agent, representative, or employee of the City.
- (4). Execution of the City contract documents by the vendor is a representation that the vendor is familiar with the goods or services to be provided to the City or performed for the City and with local conditions. The vendor shall make no claim for additional time or money based upon its failure to comply with the City contract documents. The vendor has informed the City, and hereby represents to the City, that it has extensive experience in performing and providing the services or goods described in the City contract documents and which may be identified in work orders, and that it is well acquainted with the work conditions and the components that are properly and customarily included within City projects and programs and the requirements of laws, ordinances, rules, regulations or orders of any public authority or licensing entity having jurisdiction over the City's projects and programs. Execution of the City’s contract documents shall be an affirmative and irrefutable representation by the vendor to the City that the vendor is fully familiar with any and all requisite work conditions of the provision of goods or services to the City.

General Rules Of Contract Terms:

- (1). The vendor's obligations herein are a material inducement for the engagement of the vendor to the City to have the City procure the provided goods or services from the vendor and the vendor's failure to execute its obligations shall constitute a contract default.
- (2). Words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- (3). Captions are set forth for the purposes of convenience and reference only and in no way define, limit or otherwise describe the scope or the intent, of any term or condition or in any way affect the interpretation of the contract documents.
- (4). The contract documents between the City and the vendor are the result of bona fide arm's length negotiations between the City and the vendor and the City and the vendor have contributed substantially and materially to the preparation of the terms and conditions that have been agreed to control the respective contractual obligations of the City and the vendor. Accordingly, the terms and conditions shall not be construed or interpreted more strictly against any one party than against any other party.
- (5). The terms "word order" and "purchase order" may be used interchangeably and represent a written authorization by the City to a vendor for a vendor to provide goods or services to the City.
- (6). The exhibits to the contract document will provide a precise description of the goods and serves and the rate of compensation and may also provide for a time for the provision of goods or services to be commenced in addition to a precise description of the goods and serves.

Loyalty To City:

- (1). The vendor shall, at all times, maintain complete loyalty to the City and disclose any circumstance that could be detrimental to the City or advantageous to the City regardless of any representation or, or services performed to, or goods provided to, any other client of the vendor. Any representation or work performed to another client of the vendor after the occurrence of an event that could result in a detriment to the City or the failure to provide to the City any information to the City that could be, in any way, of benefit to the City or which could result in a



detriment to the City shall be an irrebuttable conflict of interest. The word “client” means and includes customers of any type or nature whatsoever.

(2). Any vendor who submits a false claim shall be liable to the City and shall reimburse the City when such a claim is found to have been submitted by a controlling legal authority as well as for any and all statutory penalties set forth in controlling law. A vendor will be deemed to have submitted a false claim to the City if the vendor:

(a). knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;

(b). knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City;

(c). conspires to defraud the City by in any way causing a false claim allowed or paid by the City;

(d). knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or

(e). is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

(3). Any alteration of any City form by the vendor (without the express written consent of the City which the City shall not give absent extraordinary circumstances with the approval of the Purchasing Manager and City Attorney) shall constitute a breach of contract and a default. Only City forms may be used in contract implementation with regard to any manner proposed to be binding upon the City.

(4). Vendor certifies and affirms the truthfulness and accuracy of each statement of its communications with the City and his certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into by the City.



Vendor Responsibilities:

(1). The vendor shall be responsible for the professional quality, accepted standards, technical accuracy, neatness of appearance of employees, employee conduct, safety, and the coordination of all goods or services furnished by the vendor under the City contract documents as well as the conduct of its staff, personnel, employees and agents.

(2). The vendor shall provide to the City a list of employee working days, times and assignments within 2 hours of the City's request for such information and the City may request, and the vendor shall provide, employee addresses and drivers' licenses. The vendor shall work closely with the City on all aspects of the provision of the goods or services. With respect to services, the vendor shall be responsible for the professional quality, technical accuracy, competence, methodology, accuracy and the coordination of all of the following which are listed for illustration purposes only and not as a limitation: documents, analysis, reports, data, plans, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by the vendor under the City contract documents. The vendor shall, without additional compensation, correct or revise any errors or deficiencies in his/her/its plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature. The vendor's submissions in response to the subject bid or procurement processes are incorporated herein by this reference thereto.

(3). Neither the City's review, approval or acceptance of, nor payment for, any of the goods or services required shall be construed to operate as a waiver of any rights under the City contract documents or of any cause of action arising out of the performance of the City contract documents and the vendor shall be and remain liable to the City in accordance with applicable law for all damages to the City caused by the vendor's negligent or improper performance or failure to perform any of the goods or services furnished under the City contract documents.

(4). The rights and remedies of the City, provided for under the City contract documents, are in addition to any other rights and remedies provided by law.

(5). Time is of the essence in the performance of all goods or services provided by the vendor under the terms of the City contract documents and each and every work order. The vendor agrees that all services shall be prosecuted regularly, diligently, and uninterrupted at such a rate of progress as will ensure full completion thereof within the time specified and that all goods shall be delivered in a timely manner as set forth in the City contract documents.



(6). This vendor represents to the City the vendor is not excluded, debarred or disqualified from entering into a contractual relationship with the City.

(7). The vendor shall not use the City's seals, logos, crests, or reproductions of flags or likenesses of City officials without specific written City pre-approval.

(8). The vendor shall not commence the performance of work or the provision of goods prior to any authorization of the City.

(9). The vendor shall pay all royalties and assume all costs arising from the use of any invention, design, process, materials, equipment, product or device in the performance of services or the provisions of goods which is subject to patent rights of copyrights. The vendor shall, at its own expense, hold harmless and defend the City against any claim, suit, or proceeding brought against the City, which is based upon a claim, whether rightful, or otherwise, that the goods or services, or any part thereof, furnished to the City, constitutes an infringement of any patent or copyright and, further, the vendor shall pay all damages and costs awarded against the City.

(10). The vendor shall advise the City of any violations of the City contract documents.

adopt and implement security systems that protect the City's computer systems such as, by way of example and not limitation, the protection of passwords, encryption of data during transmission and at rest, the implementation of firewalls, the use of intrusion detection tools, use of appropriate internet protocols, adhering to patch management and the use of software to detect and eliminate malware, spam and spyware. The vendor shall also take other security measures, as needed, to wipe hard drives, shredding before recycling and related measures. The vendor shall advise the City of any security breaches relative to which the vendor becomes aware.

City Rights And Responsibilities:

(1). The City shall reasonably cooperate with the vendor in a timely fashion.

(2). The City shall furnish a City representative, as appointed by the designated representative to administer, review and coordinate the provision of services and goods.

(3). The City shall make City personnel available where, in the City's opinion, they are required and necessary to assist the vendor. The availability and

necessity of said personnel to assist the vendor shall be determined solely at the discretion of the City.

(4). The City shall examine all of the vendor's goods or services and indicate the City's approval or disapproval within a reasonable time so as not to materially delay the provisions of the goods or services of the vendor.

(5). The City shall transmit instructions, relevant information, and provide interpretation and definition of City policies and decisions with respect to any and all materials and other matters pertinent to the services covered by the City contract documents.

(6). The City shall give written notice to the vendor whenever the City's designated representative knows of a development that affects the goods or services provided and performed under the City contract documents, timing of the vendor's provision of goods or services, or a defect or change necessary in the goods or services of the vendor.

(7). The rights and remedies of the City provided for under the City contract documents are in addition to any other rights and remedies provided by law. The City may assert its right of recovery by any appropriate means including, but not limited to, set-off, suit, withholding, recoupment, or counterclaim, either during or after performance as well as the adjustment of payments made to the vendor based upon the quality of work or goods of the vendor.

(8). The City shall be entitled to recover any and all legal costs including, but not limited to, attorney fees and other legal costs that it may incur in any legal actions it may pursue in the enforcement of the terms and conditions of the City contract documents or the responsibilities of the vendor in carrying out the duties and responsibilities deriving from the City contract documents.

(9). The failure of the City to insist in any instance upon the strict performance of any provision of the City contract documents, or to exercise any right or privilege granted to the City hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

(10). Neither the City's review, approval or acceptance of, nor payment for, any of the goods or services required shall be construed to operate as a waiver of any rights under the City contract documents nor or any cause of action arising out of the performance of the City contract documents and the vendor shall be and always remain liable to the City in accordance with applicable law for any and all damages to the City or the public caused by the vendor's negligent or



wrongful provision or performance of any of the goods or services furnished under the City contract documents.

(11). All deliverable analysis, reference data, survey data, plans and reports or any other form of written instrument or document that may result from the vendor's services or have been created during the course of the vendor's performance under the City contract documents shall become the property of the City after final payment is made to the vendor.

Property Of The City:

(1). All reports, drawings, specifications, manuals, learning and audio/visual materials, boring logs, field data, laboratory test data, calculations, estimates, and other documents (collectively "Work Product") prepared by the vendor are instruments of service and shall be and remain for all times the property of the City.

(2). The vendor conveys, sells, assigns, and transfers to the City all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating to the particular goods or services purchased or acquired by the City.

Compliance By City/Estoppel Certificates:

Vendor agrees from time to time and within 10 days after request of City to deliver to the City, or a grantor of the City, an estoppel certificate stating that this lease is in full force and effect, the date to which rent has been paid, the unexpired term of the procurement and such other matters pertaining to the procurement as may be requested by the City. Any such statement may be relied upon by a grantor of the City.

Expenditure Of City Funds:

(1). The vendor shall ensure that any authorization to expend City funds upon goods or services issued by a City employee is within the City employee's authorized level of expenditure. Purported obligations that have been executed or undertaken beyond the authority of a City employee are void.

(2). City contracts in excess of 1 year in duration must have been approved by the City Commission and, absent such approval, the contract is void.

Vendor Personnel:

The vendor shall utilize only competent personnel under the supervision of, and in the employment of, the vendor (or the vendor's authorized subcontractors) to perform the services. The vendor shall comply with City's reasonable requests regarding assignment or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by the vendor. The vendor shall commit adequate resources to allow timely completion of all contractual obligations.

Vendor's Provision Of Goods Or Services:

(1). The vendor shall provide the goods or services to the City as set forth in the exhibit to the agreement incorporating these terms and conditions.

(2). The vendor acknowledges that the City may retain other goods or service providers to provide the same goods or services for City projects. The vendor acknowledges that the City, at the City's option, may request proposals from the vendor and the other goods or service providers for City projects. The City reserves the right to select which goods or service provider shall provide goods or services for the City's projects.

(3). The vendor agrees to provide and ensure coordination between goods/services providers.

(4). The vendor represents to the City that it has undertaken all necessary actions to execute its contract documents with the City and that it has the legal authority to enter into the contract documents and to undertake all obligations imposed on the vendor. The persons executing contract documents for the vendor certify that they are authorized to bind the vendor in all respects.

(5). Time is of the essence of the lawful performance of the duties and obligations of the vendor. The vendor covenants and agrees that the vendor shall diligently and expeditiously pursue its obligations.

(6). The vendor hereby guarantees the City that all goods and services shall meet the requirements, specifications and standards as provided for under the Federal Occupations Safety and Health Act of 1970 and all other law.

(7). It is agreed that nothing in the contract documents is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties, or as constituting the vendor the agent,

representative, or employee of the City for any purpose, or in any manner, whatsoever. The vendor is to be and shall remain forever an independent contractor with respect to all services performed or good provided.

(8). Persons employed by the vendor in the provision and performance of the goods or services shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the City's officers and employees either by operation of law or by the City.

(9). No claim for goods or services furnished by the vendor not specifically provided for in an order or procurement document of the City shall be honored by the City.

(10). The vendor shall safely, diligently, and in a professional and timely manner perform, with its own equipment and assets and provide goods or services as directed by the City.

(11). The vendor certifies that it has not commenced the provision of goods or services to the City prior to the execution of contract documents with the City.

(12). The vendor shall not provide goods or services to the City without authorization by the City in accordance with its purchasing policies and procedures.

(13). The vendor shall make maximum use of products containing recovered materials that are Environmental Protection Agency designated items unless the product cannot be acquired:

(14). Unless specifically provided and agreed the name of a certain brand, make or manufacturer does not restrict procurements to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the City, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted by the vendor. The vendor is responsible to clearly and specifically identify products to the City and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the City to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation.

(15). The price of goods offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Unless otherwise directed by the City, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description and quantity.

(16). The vendor shall ensure that all permits and authorizations are obtained as are required to provide goods or services to the City. The vendor is to procure all permits, licenses, and certificates, or any such approvals of plans or specifications as may be required by law for the proper execution and completion of the provision of goods or services.

(17). The vendor warrants that the goods or services provided to the City including, but not limited to, equipment and materials provided shall conform to the professional standards of care and practice in effect at the time the goods or services are provided or performed, be of the highest quality, and be free from all faults, defects or errors. Whenever required by the specifications of the procurement documents, the vendor warrants that all equipment and materials provided shall be new.

(18). If the vendor is notified in writing of a fault, deficiency or errors in the goods or services provided with 1 year from completion of the goods or services, the vendor shall, at the City's option, either re-perform or re-deliver such portions of the goods or services to correct such fault, defect or error, at no additional cost to the City, or refund to the City, the charge paid by the City, which is attributable to such portions of the faulty, defective or erroneous goods or services including, but not limited to, the costs for re-performance or re-supply of the goods or services provided by other vendors.

(19). The Vendor shall promptly correct all goods or services rejected by the City as faulty, defective, or failing to conform to City contract documents whether observed before or after substantial completion of the provision of the goods or services, and whether or not fabricated, installed or completed. The vendor shall bear all costs of correcting such rejected goods or services.

(20). The vendor shall take all necessary precautions for the safety of the City's and the vendor's employees and the general public and shall erect and properly maintain at all times all necessary vehicular and facility safeguards for the protection of the workers and public. If necessary, the vendor shall post signs warning against hazards in and around a work site. The vendor shall at all times, keep work areas free from accumulation of waste materials or rubbish caused by

his operations and shall promptly remove any such materials to an approved disposal location.

Work Orders:

- (1). The provision of goods or services, to be performed under the provisions of the City contract documents may be commenced upon the execution of a work order issued on a form provided by the City hereunder commencing the provision of goods and services.
- (2). Work orders executed by the City shall include a detailed description of quantities, of goods or the type of services and a completion or delivery schedule. The vendor shall review work orders and notify the City in writing of asserted inadequacies for the City's correction, if warranted. In every case, if work is completed or goods are provided by the vendor without authorization, the City is not obligated to compensate the vendor for the unauthorized services or goods.
- (3). If the services required to be performed or the goods to be provided by a work order are clearly defined, the work order shall be issued on a "fixed fee" basis. The vendor shall perform all services or provide all goods required by the work order but, in no event, shall the vendor be paid more than the negotiated fixed fee amount stated therein.
- (4). If the services required to be performed or the goods to be provided are not clearly defined, the work order may be issued on a "time or quantity basis method" and contain a not-to-exceed amount. If a not-to-exceed amount is provided, the vendor shall perform all work required or the goods required by the work order; but in no event, shall the vendor be paid more than the not-to-exceed amount specified in the work order.
- (5). If the services required to be performed or the goods to be provided are not clearly defined, the work order may be issued on a "time or quantity basis method" and contain a limitation of funds amount. The vendor is not authorized to exceed that amount without the prior written approval of the City which approval, if given, shall indicate a new limitation of funds amount. The vendor shall advise the City whenever the vendor has incurred expenses on any work order that equals or exceeds 80% of the limitation of funds amount.
- (6). For work orders issued on a "fixed fee basis", the vendor may invoice the amount due based on the percentage of total goods provided or services actually performed and completed; but, in no event, shall the invoice amount exceed a

percentage of the fixed fee amount equal to a percentage of the total goods provided or services actually completed.

(7). For work orders issued on a “time or quantity basis method” with a not-to-exceed amount, the vendor may invoice the amount due for actual work hours performed or goods provided but, in no event, shall the invoice amount exceed a percentage of the not-to-exceed amount equal to a percentage of the total services actually completed or goods provided.

(8) Each work order issued on a “fixed fee basis” or “time or quantity basis method” with a not-to-exceed amount shall be treated separately for retainage purposes, if retainage is agreed to in the compensation part of the contract documents, which shall also be prescribed on the face of the work order. If the City determines that work is substantially complete and the amount retained is considered to be in excess, the City may, at its sole and absolute discretion, release the retainage or any portion thereof.

(9). For work orders issued on a “time or quantity basis method” with a limitation of funds amount, the vendor may invoice the amount due for services actually performed and completed. The City shall pay the vendor 100% of the approved amount on work orders issued on a “time basis method” with a limitation of funds amount.

(10). Payments shall be made by the City to the vendor when requested as work progresses for services furnished or as goods are provided as ordered, but not more than once monthly. Each work order shall be invoiced separately. The vendor shall render to the City, at the close of each calendar month, an itemized invoice properly dated, describing any services rendered or goods provided, the cost of the services or goods, the name and address of the vendor, work order number, contract number and all other information required by the City contract documents.

Change Orders:

(1). The City may revise the scope of services or order for goods set forth in any particular work order.

(2). Revisions to any work order shall be authorized in writing by the City as a change order. Each change order shall include a schedule of completion for the goods or services authorized. Change orders shall identify the City contract documents and the appropriate work order number. Change orders may contain additional instructions or provisions specific upon certain aspects of the City



contract documents pertinent to the goods or services to be provided. Such supplemental instructions or provisions shall not be construed as a modification of the City contract documents. An agreement between the City and the vendor on and execution of any change order shall constitute a final settlement and a full accord and satisfaction of all matters relating to the change and to the impact of the change on unchanged goods or work, including all direct and indirect costs of whatever nature, and all adjustments to the vendor's schedule.

Compensation:

- (1). The vendor shall be paid in accordance with the schedule of charges as set forth in the exhibit attached to the contract documents.
- (2). Unless the schedule of charges as set forth in the exhibit attached to the contract documents provides for an change in compensation during the course of the period for the provision of goods or services, no adjustments shall be made at any time whether by contract amendment or otherwise.
- (3). There are no reimbursable expenses to be paid to the vendor except as specifically set forth herein.

Invoice Process:

- (1). Invoices, which are in an acceptable form to the City and without disputable items, which are received by the City, will be processed for payment within 30 days of receipt by the City. The *Florida Local Government Prompt Payment Act* shall apply when applicable. A billing period represents the dates in which the vendor completed goods or services referenced in an invoice.
- (2). The vendor will be notified of any disputable items contained in invoices submitted by the vendor within 15 days of receipt by the City with an explanation of the deficiencies.
- (3). The City and the vendor will make every effort to resolve all disputable items contained in the vendor's invoices.
- (4). Each invoice shall reference the City contract documents, the appropriate work order and change order, if applicable.
- (5). Invoices are to be forwarded directly to the City contact person set forth in the contract documents.



(6). All goods or services provided shall be billed by the vendor at the contract price, regardless of which City department was provided the goods or services.

(7). Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged by the City, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the City shall promptly notify the vendor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A vendor may not institute legal action unless a settlement cannot be reached within 30 days of notification. This provision shall not relieve the City of its prompt payment obligations with respect to those charges which are not in dispute.

Commencement/Implementation Schedule Of Agreement:

(1). The vendor shall commence the provision of goods or services as described in the City contract documents upon execution of the City contract documents or execution of the City contract documents and execution of a work order issued by the City, whichever may be appropriate.

(2). The vendor and the City agree to make every effort to adhere to the schedules required by the City or as established for the various work orders. However, if the vendor is delayed at any time in the provision of goods or services by any act or omission of the City or force majeure and not resulting from the inactions or actions of the vendor and beyond the vendor's control which would not reasonably be expected to occur in connection with or during performance or provision of the goods or services, or by delay authorized by the City pending a decision, or by any cause which the City shall decide to justify the delay, the time of completion shall be extended for such reasonable time as the City may decide in its sole and absolute discretion. It is further expressly understood and agreed that the vendor shall not be entitled to any damages or compensation, or be reimbursed for any losses on account of any delay or delays resulting from any of the aforesaid causes or any other cause whatsoever. The sole remedy available to the vendor shall be additional time in which to perform service or provide goods.

Term/Length Of Agreement:

(1). The term of agreement shall be as stated the City contract documents.

Jeff Triplett
Mayor

Art Woodruff
District 1

Velma H. Williams
District 2

Patrick Austin
District 3

Patty Mahany
District 4

Norton N. Bonaparte, Jr.
City Manager



(2). After the initial term, renewals shall occur as stated the City contract documents.

Designated Representatives:

(1). The City's designated representative, to represent the city in all matters pertaining to and arising from the work and the performance shall be as stated in the City contract documents.

(2). The City's designated representative, shall have the following responsibilities:

(a). Examination of all work and rendering, in writing, decisions indicating the City's approval or disapproval within a reasonable time so as not to materially delay the work of the vendor;

(b). Transmission of instructions, receipt of information, and interpretation and definition of City's policies and decisions with respect to design, materials, and other matters pertinent to the work covered by the City contract documents;

(c). Giving prompt written notice to the vendor whenever the City official representative knows of a defect or change necessary in the project; and

(d). Coordinating and managing the vendor's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.

(3). The vendor's designated representative shall be the signatory on the City contract documents at the address set forth therein unless the vendor notifies the City of another person or address in writing.

Termination/Suspension Of Agreement:

(1). The City may terminate the vendor for convenience at any time or for any of the reasons as follows:

(a). If, in the City's opinion, adequate progress is not being made by the vendor in the provision of goods or services due to the vendor's failure to perform;



(b). If, in the City's opinion, the quality of the goods or services provided by the vendor is not in conformance with commonly accepted professional standards, standards of the City, or the requirements of Federal or State regulatory agencies, and the vendor has not corrected such deficiencies in a timely manner as reasonably determined by the City;

(c). The vendor is indicted or has a direct charge issued against it/him/her for any crime arising out of or in conjunction with any work that has been performed by the vendor;

(d). The vendor becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors;

(e). The vendor violates the standards of conduct provisions herein or any provision of law or any provision of the City's code of conduct or policies; or

(f). The violation of any term or condition or any substantive requirement of law

(2). In the event of any of the causes described herein, the City's designated representative may send a certified letter to the vendor requesting that the vendor show cause why the vendor should not be terminated. If assurance satisfactory to the City of corrective measures to be made within a reasonable time is not given to the City within 7 calendar days of the date of the letter, the City may consider the vendor to be in default, and may then immediately terminate the vendor.

(3). In the event that the vendor is terminated for cause and it is later determined that the cause does not exist, then the vendor shall be deemed to have been terminated for convenience by the City and the City shall have the right to so terminate the City contract documents without any recourse by the vendor except for sums due for goods or services received for the benefit of the City in accordance with the City contract documents.

(4). In case of failure to deliver goods or services in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure them from other sources and hold the vendor responsible for any

resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City may have.

(5). The City may terminate a vendor in whole or part and with regard to specific work orders or procurements.

Termination By Vendor For Cause:

(1). The vendor may terminate its contractual obligations to the City only if the City fails to pay the vendor in accordance with the City contract documents.

(2). In the event of a failure of the City to pay the vendor, the vendor shall send a certified letter requesting that the City show cause why the contractual obligations of the vendor to the City should not be terminated. If adequate assurances are not given to the vendor within 15 days of the receipt by the City of the notice, then the vendor may consider the City to be in default, and may immediately terminate its performance to the City.

Termination By The City Without Cause:

(1). Notwithstanding any provision of the City contract documents, the City shall have the right at any time to terminate the vendor's provision of goods and services to the City without cause, or terminate any specific work order without cause, if such termination is deemed by the City to be in the public interest, or the vendor is notified in writing of deficiencies or default in the performance of its duties in which case the vendor shall have 10 days to correct same or to request, in writing a hearing before the City.

(2). Failure of the vendor to remedy said specified items of deficiency or default in the notice by either the City's designated representative within 10 days of receipt of such notice of such decisions, shall result in the termination of the vendor, and the City shall be relieved of any and all responsibilities and liabilities under the terms and conditions.

(3). The City shall have the right to terminate the vendor without cause with a 60 day written notice to the vendor.

(4). In the event that the vendor is terminated, the City shall identify any specific work order being terminated and the specific work order to be continued to completion pursuant to the provisions of the City contract documents.

(5). The City contract documents will remain in full force and effect as to all authorized work orders that is/are to be continued to completion.

Payment In The Event Of Termination:

(1). In the event the provision of goods or services by the vendor to the City is terminated or canceled prior to final completion without cause, payment for the unpaid portion of the services provided by the vendor through the date of termination, and any additional services, shall be paid to the vendor.

(2). Failure of the vendor to deliver good or perform services within the time specified, or within a reasonable time as determined by the City or failure to make replacements of rejected goods or services when so requested, immediately or in a time period directed by the City, shall constitute authority for the City to purchase in the open market good or services of comparable grade or quality so as to replace the goods or services rejected, not delivered, nor completed. On all such purchases, the vendor shall reimburse the City, within a reasonable time specified by the City, for any expense incurred in excess of the agreed upon compensation. Such purchases shall be deducted from quantities or goods of services. Should public necessity demand it, the City reserves the right to utilize services or use or consume goods or services delivered or provided which are substandard in quality, subject to an adjustment in price to be determined by the City. The vendor shall not be liable for any excess costs if acceptable evidence has been submitted to the City that failure to perform service or provide goods was due to causes beyond the control and without the fault or negligence of the vendor as a result of force majeure.

Action Following Termination:

(1). Upon receipt of notice of termination given by either party, the terminated party shall promptly discontinue the provision of all goods or services, unless the notice provides otherwise.

(2). In the event of such a termination by the City, the City shall be liable for the payment of all goods and service properly provided or performed prior to the effective date of termination and for all portions of ordered goods or services which cannot be cancelled and were placed prior to the effective date of termination and other reasonable costs associated with the termination.

Suspension:



- (1). The performance or provision of the vendor's goods or services under any work order or under the City contract documents may be suspended by the City at any time.
- (2). In the event the City suspends the performance or provision of the vendor's services hereunder, the City shall so notify the vendor in writing, such suspension becoming effective within 7 days from the date of mailing, and the City shall pay to the vendor within 30 days all compensation which has become due to and payable to the vendor to the effective date of such suspension. The City shall thereafter have no further obligation for payment to the vendor for the suspended provision of goods or services unless and until the City's designated representative notifies the vendor in writing that the provision of the goods or services of the vendor called for hereunder are to be resumed by the vendor.
- (3). Upon receipt of written notice from the City that the vendor's provision of goods or services hereunder are to be resumed, the vendor shall continue to provide the services to the City.

Insurance:

Each vendor shall possess and continuously maintain the insurance requirements set forth in the City's **Section 00618** Form entitled "Insurance Requirements Outlined below applicable to Contracts for services when the Contractors performs on or off City premises" which is part of this document as set forth below.

Indemnification:

- (1). To the fullest extent permitted by law, the vendor shall indemnify, hold harmless and defend the City, its agents, servants, officers, officials and employees, or any of them, from and against any and all claims, damages, losses, and expenses including, but not limited to, attorney's fees and other legal costs such as those for paralegal, investigative, and legal support services, and the actual costs incurred for expert witness testimony, arising out of or resulting from the performance or provision of good or provided to the City if caused in whole or part by the error, omission, negligent act, failure to act, malfeasance, misfeasance, conduct, or misconduct of the vendor related in any way to the performance of services or the provision of goods to the City.
- (2). To the extent applicable, in accordance with Section 725.06, *Florida Statutes*, adequate consideration has been provided to the vendor for its



obligations, the receipt and sufficiency of which is hereby specifically acknowledged.

(3). Nothing herein shall be deemed to affect the rights, privileges, and immunities of the City as set forth in Section 768.28, *Florida Statutes*.

(4). In claims against any person or entity indemnified by an employee of the vendor anyone directly or indirectly employed by the vendor or anyone for whose acts the vendor may be liable, this indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the vendor under Workers Compensation acts, disability benefit acts, or other employee benefit acts.

(5). The execution of the contract documents by the vendor shall obligate the vendor to comply with the indemnification provisions; provided, however, that the vendor must also comply with insurance coverage requirements.

(6). The vendor shall submit a report to the City within 24 hours of the date of any incident resulting in damage or which is reasonably likely to result in a claim of damage.

(7). In the event that the vendor is providing services as a “design professional”, the indemnification by the vendor running in favor of the City shall be to the maximum extent permissible under the provisions of Section 725.08, *Florida Statutes*.

(8). The vendor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its officers, officials, boards, commissions, officers or employees of articles, work or deliverables supplied in the performance of services. Infringement of patent rights, copyrights, or other proprietary rights in the performance of the vendor’s contractual relationship with the City, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract. With regard to photography, video images, art work, audio recordings, or any other type of intellectual property, of whatsoever type or nature, the vendor shall ensure that all rights necessary to convey all rights of ownership to the City have been obtained such that unencumbered ownership of the materials vest in the plenary scope in the City.

(9). The vendor shall be held responsible for all accidents and shall indemnify,

hold harmless, and protect the City from all suits, claims and actions brought against the City or its officials, representatives, agents, officers, and employees, and all costs, damages, or liabilities to which the City or its officials, representatives, agents, officers, and employees may be exposed, for any injury or alleged injury to the person(s) or property(ies) of another resulting from negligence or carelessness in the performance of the work, or in protection of the project site, or from any improper or inferior workmanship, or from inferior materials used in the work, or otherwise related to the project

Compliance With Law:

(1). The vendor shall at all times comply with law when engaging in its contractual relationship with the City. The term “law” means any and all controlling Federal, State or local law. The term shall also mean as such law is amended from time-to-time. The term shall include, but not be limited to statutes, codes, rules and regulations.

(2). Without limiting the generality of the foregoing, the vendor shall:

(a). Comply with the provisions of the *Federal Civil Rights Act of 1964*.

(b). Comply with the *Americans With Disabilities Act*.

(c). Not employ illegal alien workers or otherwise violate the provisions of the *Immigration Reform and Control Act of 1986* or any similar law or law of similar effect.

(d). Comply with the *Contract Work Hours and Safety Standards Act*.

(e). Comply with the *Clean Air Act*.

(f). Comply with the *Water Pollution Control Act*.

(g). Comply with the investment prohibitions under Federal and State law.

(3). The vendor agrees to report each violation that becomes known to the vendor to the City and understands and agrees that the City will, in turn, report each violation as required to the appropriate agency with jurisdiction over the matter.

(4). The vendor shall be bound by applicable law to the same extent that the City would be as if such provisions were fully set forth in these terms and conditions.

Controlling Law/Venue:

(1). The City's contractual relationship with the vendor shall be governed by the laws of the State of Florida regardless of any other consideration or doctrine of the choice of law.

(2). Venue for any legal proceeding shall be in the State Courts of Seminole County, Florida; the State and County in which the City is located.

Access To Records/Public Records:

(1). The vendor shall maintain books, records, documents, time and costs accounts and other evidence directly related to its provision or performance of services under the City contract documents. All-time records and cost data shall be maintained in accordance with generally accepted accounting principles. Upon termination of the City contract documents, the vendor shall deliver all records, data, memoranda, models, and equipment of any nature that are in the vendor's possession or under the vendor's control and that are the City's property or relate to the City's business.

(2). The vendor shall maintain and allow access to the records for a minimum period of 5 years after the completion of the provision or performance goods or services under to the City and date of final payment for said goods or services, or date of termination of the contract documents.

(3). The vendor agrees to fully comply with all State laws relating to public records. In order to comply with Section 119.0701, *Florida Statutes*, the vendor must:

(a). Keep and maintain public records required by the City to perform the service.

(b). Upon request from the City's custodian of public records, provide the public with a copy of the public records requested or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*, 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 term of the City contract documents and following completion of the provision of goods or services to the City if the vendor does not transfer the records to the City.

(d). Upon completion of the provision of goods or services to the City, transfer, at no cost, to the City all public records in possession of the vendor or keep and maintain public records required by the City to perform the service. If the vendor transfers all public records to the City upon completion of the provision of goods or services to the City, the vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the vendor keeps and maintains public records upon completion of the City contract documents, the vendor shall meet all applicable requirements for retaining public records. All records stored electronically 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.

(e). If the VENDOR does not comply with a public records request, the City shall enforce any and all Agreement provisions in accordance with the City contract documents and the CONTRACTOR shall be subject to all rights and remedies of the City and the public under controlling State law.

(f). A request to inspect or copy public records relating to the City contract documents must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the vendor of the request, and the vendor must provide the records to the City or allow the records to be inspected or copied within a reasonable time. Failure by the vendor to grant such public access and comply with public records requests shall be grounds for immediate unilateral cancellation of the City contract documents by the City. The vendor shall promptly provide the City with a copy of any request to inspect or copy public records in possession of the vendor and shall promptly provide the City with a copy of the vendor's response to each such request.

(4). The vendor agrees that if any litigation, claim, or audit is started before the expiration of the record retention period established above, the records shall be

retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(5). IF THE CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE CONTRACTOR'S (VENDOR'S) DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (407) 688-5012, TRACI HOUCHIN, CITY CLERK, CITY OF SANFORD, CITY HALL, 300 NORTH PARK AVENUE, SANFORD, FLORIDA 32771, TRACI.HOUCHIN@SANFORDFL.GOV.

(6). The City reserves the right to unilaterally terminate if the vendor refuses to allow public access to all documents, papers, letters, or other materials subject to provisions of Chapter 119, *Florida Statutes*, and other applicable law, and made or received by the vendor in conjunction, in any way, with goods or services provided to the City.

Codes And Design Standards; Expertise Of Vendor:

(1). All goods or services to be provided for performed by the VENDOR shall, at a minimum, be in conformance with commonly accepted industry and professional codes and standards, standards of the City, and the laws of any and all Federal, State and local regulatory agencies or which, otherwise, have jurisdiction over the goods or services.

(2). If the provision of goods or services relate to matters that are subject to the standards of the Federal Emergency Management Agency, the Federal Highway Administration, the Florida Department of Transportation or a similar agency of government which provides funding to the City or provides grants to the City; the vendor shall ensure that it complies in all respects with the rules, regulations and policies relating to such matters so as to ensure that the City is not rejected for grants or denied a funding source.

(3). The vendor shall be responsible for keeping apprised of any changing laws, applicable to the goods or services to be performed under the City contract documents.

Assignability.

(1). The vendor shall not sublet, assign or transfer any interest in a City contract, or claims for the money due or to become due out of a City contract to a bank, trust company, or other financial institution without written City approval. When approved by the City, written notice of such assignment or transfer shall be furnished promptly to the City.

(2). The vendor agrees to reasonably participate in the contractual “piggybacking” programs pertinent to governmental entities as may be authorized by law.

Force Majeure:

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented, directly or indirectly, by Force Majeure. Force Majeure shall include, but not be limited to, hostility, terrorism, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, explosion, computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within party’s possession or reasonable control (including, but not limited to, delays or destruction of electronic data or information resulting from failures of hard drives, storage disks, thumb drives or other such digital media memory cards on which such information was held), denial of service attacks, incompatibility of City’s equipment or software with equipment or software of a contractor/consultant/vendor, acts or omissions of vendors or suppliers, transportation, telecommunications difficulties, any law, proclamation, regulation, or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated is beyond the control and without the fault or negligence of the party seeking relief.

Post Audits:

(1). The City may perform, or cause to have performed, an audit of the records of the vendor before or after final payment to support final payment to the vendor. This audit shall be performed at a time mutually agreeable to the vendor and the City subsequent to the close of the final fiscal period in which goods or services are provided or performed. Total compensation to the vendor may be determined subsequent to an audit as provided for in this Section, and the total compensation so determined shall be used to calculate final payment to the vendor. Conduct of this audit shall not delay final payment as required by this Section.



(2). In addition to the above, if Federal, State, County, or other entity funds are used for any goods or services under the City contract documents, the Comptroller General of the United States or the Chief Financial Officer of the State of Florida, or a county or municipality with jurisdiction or any representatives, shall have access to any books, documents, papers, and records of the vendor which are directly pertinent to goods or services provided or performed under the City contract documents for purposes of making audit, examination, excerpts, and transcriptions. In every respect, the vendor shall ensure compliance with any applicable requirements of governmental agencies including, but not limited to, their pre-audit and post-audit requirements.

(3). In the event of any audit or inspection conducted reveals any overpayment by the City, the vendor shall refund such overpayment to the City within 30 days of notice by the City of the request for the refund.

Code Of Conduct:

(1). If a vendor colludes to engage in the violation of a City Purchasing Policy, or a procedure relating thereto, such action shall subject the vendor to debarment and any other action authorized by controlling law and shall constitute a breach of contract and default.

(2). The vendor shall not discriminate against any employee or applicant for employment because of to race, color, religion, sex, age, national origin, sexual orientation, disability, or any other basis prohibited by Federal of State law relating to discrimination in employment or against faith-based organizations. The vendor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth this nondiscrimination policy.

(3). The vendor, in all solicitations or advertisements for employees placed by or on behalf of the vendor, shall state that the vendor is an equal opportunity employer.

(4). Notices, advertisements and solicitations placed in accordance with Federal or State law, shall be deemed sufficient for the purpose of meeting the notice requirements set forth herein.

(5). The vendor shall reasonably cooperate at all times with the City and other City consultants and professionals.

(6). The vendor certifies that it has not colluded with any other vendor or bidder



with regard to providing goods or services to the City or engaged in fraud with regard to the City and it has not offered or received any kickbacks or inducements from any other vendor or subvendor and that it has not conferred on any public employee having official responsibility for the City with regard to procurement activities any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged. This certification shall be a continuing certification and the vendor owes the City the continuing obligation to refrain from any such activity.

(7). The vendor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the vendor, to solicit or secure a contractual relationship with the City and that the vendor has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the vendor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of a contract by the City.

(8). The vendor hereby certifies that no undisclosed (in writing) conflict of interest exists with respect to the Agreement, including, but not limited to, any conflicts that may be due to representation of other clients, customers or vendees, other contractual relationships of the vendor, or any interest in property that the vendor may have. The vendor further certifies that any conflict of interest that arises during the term of the City contract documents shall be immediately disclosed in writing to the City.

(9). The vendor shall ensure that all taxes due from the vendor are paid in a timely and complete manner including, but not limited to, the local business tax.

(10). If the City determines that any employee or representative of the vendor is not satisfactorily performing his/her assigned duties or is demonstrating improper conduct pursuant to any assignment or work performed under the City contract documents, the City shall so notify the vendor, in writing. The vendor shall immediately remove such employee or representative of the vendor from such assignment.

(11). The vendor shall not publish any documents or release information regarding its contractual relationship with the City to the media without prior approval of the City.

(12) The vendor shall certify, upon request by the City, that the vendor maintains a drug free workplace policy in accordance with Section 287.0878,

Florida Statutes. Failure to submit this certification may result in termination.

(13). If the vendor is placed on the convicted vendor list following a conviction for a public entity crime, such action may result in termination of the City contract documents by the City. The vendor shall provide a certification of compliance regarding the public crime requirements set forth in State law upon request by the City.

(14). The City will not intentionally award publicly-funded contracts to any vendor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8, *United States Code*, Section 1324a(e) Section 274A(e) of the *Immigration and Nationally Act (INA)*. The City shall consider the employment by the vendor of unauthorized aliens, a violation of Section 274A (e) of the *INA*. Such violation by the vendor of the employment provisions contained in Section 274A (e) of the *INA* shall be grounds for immediate termination of the vendor by the City. The vendor shall utilize the United States Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the vendor during the term of the its contractual obligations to the City. The vendor shall expressly require any subcontractors performing work or providing services to likewise utilize the United States Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the vendor's contractual obligations to the City.

(15). The vendor agrees to comply with environmental law applicable to the goods or services provided to the City. The vendor agrees that any program or initiative involving the work that could adversely affect any personnel involved, citizens, residents, users, neighbors or the surrounding environment will ensure compliance with any and all employment safety, environmental and health laws.

(16). The vendor shall ensure that all goods or services are provided to the City after the vendor has obtained, at its sole and exclusive expense, any and all permits, licenses, permissions, approvals or similar consents.

(17). If applicable, in accordance with Section 216.347, *Florida Statutes*, the vendor shall not use funds provided by the City under the contract documents for the purpose of lobbying the Legislature, the judicial branch or a State agency.

(18). The vendor shall advise the City in writing of it who has been placed on a discriminatory vendor list, may not submit a bid on a contract to provide goods or services to a public entity, or may not transact business with any public entity.

(19). The vendor shall not engage in any action that would create a conflict of interest in the performance of that actions of any City employee or other person during the course of performance of, or otherwise related to, the City contract documents or which would violate or cause others to violate the provisions of Part III, Chapter 112, *Florida Statutes*, relating to ethics in government. No official or employee of the City who is authorized in his or her official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a City project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services to the City in connection with a City project shall have, directly or indirectly, a financial or other personal interest, other than his or her employment or retention by the City, in any contract or subcontract in connection with such City project. No officer or employee of such person retained by the City shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a City project.

(20). The vendor certifies that it is not a scrutinized entity as identified in Section 287.135, *Florida Statutes*, and shall notify the City if it were to become such an entity.

Subcontractors:

(1). Any vendor-proposed subvendor shall be submitted to the City for written approval prior to the vendor entering into a subcontract. Subvendor information shall include, but not be limited to, governmental registrations, business address, local business tax proof of payment and insurance certifications.

(2). The vendor shall coordinate the provision of goods or services and work product of any City approved subvendors, and remain fully responsible for goods and services provided to the City.

(3). Any subcontracts with all subvendors shall be in writing and shall incorporate the City's terms and conditions and require the subvendors to assume performance of the vendor's duties commensurately with the vendor's contractual duties to the City it being understood that nothing herein shall in any way relieve the vendor from any of its duties to the City.

(4). The vendor shall provide the City with executed copies of all subcontracts.

(5). A vendor shall:



(a). Pay subcontractor(s) within 7 days of the vendor's receipt of payment from the City for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; with the City; or

(b). Notify the department and the subcontractor(s), in writing, of the vendor's intention to withhold payment and the reason such proposed action.

(6). The vendor shall not attempt to engage the City in any dispute or any nature between the vendor and its subcontractors. The vendor's relationship with its subcontractors shall be conducted in a manner which furthers the vendor's provisions of goods or services to the City.

City Purchasing Goals/Performance Monitoring:

(1). It is the intent of the City to promote competition. The vendor shall advise the City of any language, requirements, etc. or any combination thereof, in any City instruction or document which the vendor feels may inadvertently restrict or limit the requirements of the City to a single vendor or manufacturer.

(2). To ensure that the City's goals and objectives are implemented in a manner that comports with City policy and sound public policy, the City may make such reasonable investigations as deemed proper and necessary to determine the ability of the vendor to perform the services/furnish the goods and the vendor shall furnish to the City all such information and data for this purpose as may be requested. The City reserves the right to inspect vendor's physical facilities prior to award to satisfy questions regarding the vendor's capabilities and qualifications to carry out the obligations to the City and to provide the services or furnish the goods to the City. The City may conduct any test/inspection it may deem advisable to assure goods and services conform to specifications

(3). The City may, at any reasonable time, conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

Extent Of Agreement/Integration/Amendment:

(1). The City's contract documents constitute the entire integrated agreement between the City and the vendor and supersede all prior written or oral understandings in connection therewith.

(2). The terms and conditions contained herein, including the exhibits,



constitute the full and complete agreement between the City and the vendor to the date hereof, and supersede and control over any and all prior agreements, understandings, representations, correspondence and statements whether written or oral.

(3). The terms and conditions contained herein may only be amended, supplemented or modified by a formal written amendment.

(4). Any alterations, amendments, deletions, or waivers of the terms and conditions shall be valid only when expressed in writing and duly signed by the City and the vendor.

Notices:

(1). Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section.

(2). The parties' persons and places for giving of notice shall be the City's contact/project manager and the vendor's signatory at the vendor's address set forth in the contract documents as determined by the City.

(3). Written notice requirements shall be strictly construed and such requirements are a condition precedent to pursuing any rights or remedies hereunder. The vendor agrees not to claim any waiver by the City of such notice requirements based upon City having actual knowledge, implied, verbal or constructive notice, lack of prejudice or any other grounds as a substitute for the failure of the vendor to comply with the express written notice requirements. Computer notification (e-mails and message boards) shall not constitute proper written notice.

Waiver.

(1). The failure of the City to insist in any instance upon the strict performance of any provision of the terms and conditions, or to exercise any right or privilege granted to the City shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

(2). Payment for goods or services by the City shall not constitute waiver of any type of nature by the City.

Severability/Construction:

(1). If any term, provision or condition contained in the City's procurement documents shall, to any extent, be held invalid or unenforceable, the remainder of the contract documents, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision and condition of the City contract documents shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.

(2). All terms and conditions shall be read and applied in para materia with all other provisions.

Alternative Dispute Resolution (ADR):

(1). In the event of a dispute related to any performance or payment obligation arising, the parties agree to exhaust any alternative dispute resolution procedures reasonably imposed by the City prior to filing suit or otherwise pursuing legal remedies.

(2). The vendor agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration to the City in alternative dispute resolution procedures or which the vendor had knowledge and failed to present during the City's procedures.

(3). In the event that the City's procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through mediation. Mediator selection and the procedures to be employed in mediation shall be mutually acceptable to the parties. Costs of mediation shall be shared equally among the parties participating in the mediation.

No General City Obligation:

(1). In no event shall any obligation of the City be or constitute a general obligation or indebtedness of the City, but shall be payable solely from legally available revenues and funds and the vendor shall have no right to impose the levy of ad valorem taxation by the City.

(2). In no event shall the vendor have any right to cause the City to appropriate or budget funds for any purpose or reason.

(3). Unless otherwise provided by law, a procurement for goods or services may be entered into for any period of time deemed to be in the best interests of the City, provide the time of the procurement and the conditions of renewal or extension, if any, are included in the solicitation and funds are available for the period at the time of procurement. Payment and performance obligations for succeeding fiscal periods shall be subject to appropriation by the City of funds therefor.

(4). When funds are not appropriated or otherwise made available to support continuation of the performance of services or the provision of goods in a subsequent fiscal period, the agreement with the City shall be canceled and the vendor shall be entitled for the reasonable value of any nonrecurring cost incurred, but not advertised in the prices of the goods supplied or services provided under the City contract documents.

Exhibits:

Each exhibit referred to and attached to the City's contract documents, as are consistent with the requirements herein with regard to using City forms and documents and other terms and conditions, is an essential part of this contractual relationship. The exhibits and any amendments or revisions thereto agreed upon by the parties, even if not physically attached hereto, shall be treated as if a part of the contract documents.

Counterparts:

Contract documents may be executed in any number of counterparts, each of which shall be deemed an original instrument as to those who have executed the document, but all of which, taken together, shall constitute one and the same document; provided, however, that, in the event of a disparity between the counterparts, the counterpart recorded in the City's official records shall be controlling.

ADDITION TO PURCHASING POLICIES

All City personnel who have received limited authority to sign contracts have a responsibility to learn and determine acceptable contract language in order to avoid situations which can become very costly to the City. It is to be noted that an individual may become personally liable if he or she signs a contract that exceeds their purchasing authority.



Before signing any procurement document a City employee must first carefully answer the following question: *“Do I have authority to sign this document and does the document explicitly and completely describe the good, service being purchased, as well as, set parameters for performance standards to provide a measure for time requirements to judge completeness or if necessary, enable an accurate measure of untimely performance or other default?”*

Vendors shall not be permitted to draft contract documents. Once a contract is executed it will often be extremely difficult to correct or change the contract.

There are several contract terms which appear commonly in contracts, but are not acceptable for anyone other than the City Commission to approve and execute a contract. Some of these are:

(1). Insurance coverage requirements for vendors which deviate from City norms.

(2). Indemnification, hold-harmless clauses, or other terms, which would waive the City’s sovereign immunity protection as provided by Section 768.28, *Florida Statutes*, or which are adverse to the City.

(3). Requiring the application of the law of any state other than Florida in interpreting, governing or enforcing the contract or requiring or permitting that any dispute under the contract be resolved in the courts of any venue other than the Eighteenth Judicial Circuit in and for Seminole County, Florida.

(4). Automatic renewals without the inclusion of a cancellation or termination clause.

(5). Requiring or stating that the terms of the vendor’s terms and conditions prevail over the City’s. The attempt to add any provision of that nature by the vendor via a quotation, proposal, scope of work or insertion or other attachment is a breach of contract. This practice is a violation of the trust relationship that the City must have with its vendors.

(6). Binding the City to any arbitration or to the decision of any arbitration board, commission, panel or other entity.

(7). Bestowing any right or incurring any obligation that is beyond the duly granted authority of the City employee to bestow or incur on behalf of the City.



(8). Providing that the intellectual property resulting from a relationship is not owned by the City. All materials purchased by or developed for the City becomes property of the City with all rights owned by the City.

ADDITIONAL TERMS AND CONDITIONS

Probationary Period.

The first 90 days of the contractual relationship between the vendor and the city are to be considered a “probationary” period. At the City’s discretion, the vendor may be terminated based on the performance of the vendor.

Most Favored Customer.

The City seeks and demands to be the most favored customer of each vendor who does business with the City. The most favored customer is a customer or category of customers that receives the best discounts from the vendor’s commercial price list when procuring quantities comparable to the City’s under similar terms and conditions. The vendor agrees to provide the City discounts from the vendor’s commercial price list that are equal to or greater than the vendor’s most favored customer is receiving.

The City will invoke the price reduction clause if the vendor violates its pricing/discount relationship with the City by offering a better discount or better pricing to another customer. The City shall request a price reduction from the date that the violation took place. The vendor will owe the City a discount proportionately equal to that given the most favored customer.

Public Emergencies.

It is hereby made a part of this proposal that before, during and after a public emergency, disaster, hurricane, tornado, flood, terrorism, acts of God, or other events of a similar nature, the City shall require a “first priority” for goods and services. It is vital and imperative that the health, safety, and welfare of the citizens of the City are protected from any emergency situation that threatens public health and safety as determined by the City. The vendor agrees to provide all goods and services to the City or governmental entities on a “first priority” basis. The City expects to pay contractual prices for all products and/or services under the City’s contract documents in the events referenced herein. Should the vendor provide the City with goods or services not under the awarded Agreement, the City expects to pay a fair and reasonable price for all goods or services in the events listed above.

Scope Of City Personnel Authority:

All City personnel who have received limited authority to sign contracts have a responsibility to learn and determine acceptable contract language in order to avoid



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situations which can become very costly to the City. It is to be noted that an individual may become personally liable if he or she signs a contract that exceeds their purchasing authority. Vendors may not benefit from wrongful actions of City employees which obligate the City further than the employee's level of authority.

Jeff Triplett
Mayor

Art Woodruff
District 1

Velma H. Williams
District 2

Patrick Austin
District 3

Patty Mahany
District 4

Norton N. Bonaparte, Jr.
City Manager