

CONTRACTUAL TERMS AND CONDITIONS

1. Cancellation: The City reserves the right to cancel an Invitation to Bid, in whole or in part, when it is in the best interest of the City. Notice of cancellation will be posted on the City Purchasing website.

2. Non-Collusion: The prices in this bid have been arrived at independently, without consultation, collusion, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor.

3. Conflict of Interest: In addition to full and complete adherence to the requirements provided in Chapter 112.313, Florida Statutes, all Bidders must disclose with their bid the name of any officer, director, agent, or representative who is also an employee of the City of Mount Dora and who knowingly owns, directly or indirectly, any interest of any amount in the Bidders company, firm, or branch.

4. Bid Information and Notification: All bid notices and solicitations are web posted on the Purchasing Division website at (<http://www.cityofmountdora.com>) and also at (<http://www.demandstar.com>) It is the Bidders responsibility to monitor the website(s) to view current solicitation opportunities and addenda. All supporting bid documents such as amendments, tabulations sheets, notice of action and notice of award will be posted on the website. It is the responsibility of the bidder to monitor the website for all information about this bid. Bid tabulations will be posted in Purchasing Division for review by interested parties for 72 hours.

5. Bid Protests: Any person who is adversely affected by any specification in this Bid or RFP or any decision or intended decision concerning this Bid or RFP and who wishes to protest such specification, decision, or intended decision shall file a protest in accordance with section 120.57(3), Florida Statutes. A formal written protest must be accompanied by a bond payable to the City in an amount equal to one percent (1%) of the total value of the proposed contract. Security shall be in the form of a bond, a cashier's check, or money order. Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security within the time frame set forth in section 287.022(2)(c), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

6. Lobbying: Lobbying is defined as any action taken by an individual, firm, association, joint venture, partnership, syndicate, corporation, and all other groups who seek to influence the Governmental decision of a City Council Member or City Personnel after advertisement and prior to the posted recommendation on the award of this contract. Vendors/bidders shall not contact City Council members, staff, or committee members during the course of the bid/proposal process and prior to City Council approval. All questions shall be directed through the City's Purchasing Division via fax at (352) 735-4789 or email at brucej@cityofmountdora.com. In addition, evaluation committee members or other city employees shall not be contacted or approached by representatives of any potential vendors/bidders during the RFP process. Contact or communication initiated as described above, may result in disqualification of said proposal

7. Laws and Regulations: Applicable provisions of all Federal, State, County, and Local laws, and all ordinances, rules and regulations shall govern development, submittal and evaluation of all bids received in response hereto and shall govern any and all claims and disputes which may arise between person(s)

submitting a Bid response hereto and the City of Mount Dora, Florida by and through its officers, employees, and authorized representatives, or any other persons, natural or otherwise; and lack of knowledge by any Bidder shall not constitute a cognizable defense against the legal effect thereof.

8. Patents and Royalties: The Bidder, without exception, shall indemnify and save harmless the City of Mount Dora, Florida and its employees from liability of any nature or kind including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the City of Mount Dora, Florida. If the Bidder uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the Bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

9. Advertising: In submitting a Bid, Bidder agrees not to use the results therefrom as a part of any commercial advertising.

10. Other Governmental Agencies: All bidders awarded contracts from this bid may, upon mutual agreement, permit any City, County or other governmental agency to participate in the contract under the same prices, terms and conditions, if agreed to by both parties. It is understood that at no time will any City, County or other agency be obligated for placing an order for any other City, County or agency; nor will any City, County, or agency be obligated for any bills incurred by any other City, County, or agency. Further, it is understood that each agency will issue its own purchase order to the awarded bidder(s).

11. Right to Use Existing Bids: The City of Mount Dora, Florida reserves the right to utilize any other contract, including but not limited to the following: any State of Florida Contract, any contract awarded by any other city or county governmental agencies, other Cities, other community college/state university system or Cooperative Bid agreements. The City also reserves the right to bid separately any item(s) and/or service(s) covered under this contract, if deemed to be in the best interest of the City, at any time during this contract term.

12. Default: Failure to perform according to this proposal and/or resulting contract shall be cause for Bidder's company to be found in default in which event any and all re-procurement costs may be charged against Bidder's company. Failure to pay said amount to the City upon demand would result in the company being barred from doing business with the City for a period not less than three (3) years from date of infraction. Thereafter, the Bidder may request to be reinstated. In the event of a default on a contract, the Bidder shall be responsible for any all attorneys' fees and court costs incurred in collecting any liquidated damages.

13. Public Entity Crimes: Section 287.133(2)(a), Florida Statutes, as currently enacted or as amended from time to time, states that a person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a Bid on a contract to provide any goods or services to a public entity, may not submit a Bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit Bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.

14. Awards: Bids shall be awarded on the basis of the lowest, responsive and responsible bidder which meets specifications with consideration being given to the specific quality of the product, conformity to the specifications, delivery terms, and financial ability of the firm, qualifications, experience, reputation, integrity, and past performance of the bidder. The City also reserves the right to award to more than one vendor for same or similar products or services.

The City reserves the right to make award(s) by individual item, group of items, all or none or a combination thereof; to reject any and/or all Bids or to waive any minor irregularity or technicality. Bidders are cautioned to make no assumptions unless their Bid has been evaluated as being responsive. Awards made as a result of this proposal shall conform to applicable Florida Statutes.

Vendors shall accept Purchase Orders or a City of Mount Dora Visa Purchasing Card as instruments of authorization for purchases. Vendors who fail to comply with this requirement will be deemed as failing to perform.

15. Termination: The City reserves the right to terminate the contract awarded as a result of this bid/proposal, or any part herein, without penalty. The City will notify the vendor of the intent to terminate, in writing, at least twenty (20) days prior to the effective date of termination, and the contract will officially terminate at the end of the twenty (20) day grace period. The awarded vendor may cancel the Bid ninety (90) days after written notice to the City of Mount Dora, Florida, Purchasing Division.

16. Right to Reject: The City reserves the right to reject any or all proposals, to waive irregularities and technicalities, or to accept the proposal(s) which, in its judgment, best serves the interest of the City.

17. Tie Bids: In the case of identical qualified bids, the following criteria shall be utilized to determine award of bid: (1) Certification under Florida Statutes as a Drug-Free Workplace; (2) Local Vendor Preference; (3) Payment discount offered; (4) Coin flip.

18. Prices and Terms: Prices are requested in units of quantity specified in the Bid specifications. In case of a discrepancy in computing the total amount of Bid, unit price quoted will govern. Firm prices shall be bid and include any and all fees or costs involved in providing the product or service to the purchaser. Bid prices shall include delivery F.O.B. destination, freight prepaid and shall include all cartage, drayage, packing, etc., delivered to and unloaded at the receiving station at the site designated in the Invitation to Bid or purchase order and there received by the designated City agent. The City shall not pay Federal Excise and State taxes on direct purchases of tangible personal property. The City's Sales tax exemption number is 85-8012621644C-3. This exemption does not apply to purchases of tangible personal property made by contractors who use the tangible personal property in the performance of contracts for the improvement of City-owned real property as defined in Chapter 192 of the Florida Statutes. Cash discounts for prompt payment shall not be considered in determining the lowest net cost for bid evaluation purposes.

19. Quantities: The quantities as shown on the Bid Price Sheet are estimates only and in no way obligate the City to purchase these amounts. The estimates are intended as a guide in submitting your Bid. The actual quantities purchased under this Bid may vary. The City reserves the right to re-negotiate prices if at any time during the term of the contract agreement the City purchases fifty percent more than the estimated quantity of any line item on the bid price sheet.

20. Extension: In addition to any renewal options contained herein, the City has the right to extend any award resulting from this Bid for the period of time necessary for the City to release, award and implement a replacement Bid for the goods, products and/or services provided through this Bid. Such extension shall be based upon the same prices, terms and conditions as the existing bid.

21. Method of Ordering: Orders shall be processed only upon receipt of an authorized purchase order issued by the City of Mount Dora, Florida, or a City of Mount Dora Visa Purchasing Card. All orders shall be initiated on an as-needed basis throughout the term of the contract. Orders shall be promptly filled and delivered to any location within the City of Mount Dora, Florida. Any item or items received that do not meet specifications or duplicate shipments received will be returned at vendor's expense.

22. Invoicing: The successful Bidder will be required to submit invoices that reference valid purchase order numbers on all requests for payment. Invoices, in duplicate, shall be mailed directly to the "SHIP TO" address on the purchase order. A separate invoice must be received for each purchase order number. It is the sole responsibility of the vendor to ensure that the invoice corresponds to the purchase order and to resolve any discrepancies by notifying the point of contact on the purchase order prior to submitting the invoice for payment. Any invoice submitted as a result of the award of this Bid shall be itemized reflecting the items on the purchase order. "Lump sum" invoices shall not be submitted nor will be accepted for multiple line purchase orders.

23. Payment: The City will only pay the dollar amounts authorized on the purchase order. Payments shall be made to the vendor on the purchase order. Payment will be made according to the Prompt Payment Act after the items awarded to a vendor have been received, inspected, and found to comply with award specifications, free of damage or defect and properly invoiced. Payment for partial shipments shall not be made unless specified. Failure to follow these instructions may result in delay in processing invoices for payment. The purchase order number must appear on invoices, bills of lading, packages, cases, delivery lists and correspondence.

24. Assignment: The awarded vendor shall not assign, transfer, convey, sublet or otherwise dispose of this contract, or of any or all of its rights, title, or interest therein, or its power to execute such contract to any person, firm or corporation without prior written authorization by the City of Mount Dora, Florida.

25. Manufacturer's Name & Approved Alternates: Any manufacturer's names, trade names, brand names, information and/or catalog numbers listed in a specification are for information and not intended to limit competition. If Bids allow equivalent products, indicate on the Bid form the manufacturer's name and model number. Bidder shall submit with his Bid, cut sheets, sketches, and descriptive literature, and/or complete specifications. The City of Mount Dora, Florida reserves the right to determine acceptance of item(s) as an approved alternate. Bids that do not comply with these requirements are subject to rejection. If the manufacturer's model number for the items specified herein is incorrect, has changed or is no longer available and has been replaced with a new updated model and specifications, the Bidder shall notify the Purchasing Division in writing.

26. Item Substitutions: Substitution of other brands for items awarded and ordered is prohibited. In the event an awarded item

is discontinued by the manufacturer during the term of the contract and is not available from either the vendor's or the manufacturer's inventory then the successful Bidder must provide written notification from the manufacturer that the item has been discontinued. The vendor must file a written request with the Purchasing Division and be granted approval to substitute, in writing, before any substitution may be made. Requests to substitute shall be accompanied by complete specifications for the proposed substitute item and a sample, if requested.

27. Quality: The items Bid must be new, the latest model, of the best quality and highest grade workmanship. Items offered may be tested for compliance with Bid conditions and specifications at any time. Items delivered not conforming to Bid conditions or specifications may be rejected and returned at vendor's expense.

28. Silence of Specifications: Any omissions of detail in the specifications stated herein that would render the materials/service from use as specified will not relieve the bidder from responsibility.

29. Samples: Samples of items, when required, must be furnished at no cost to the City and will be returned at the Bidder's expense upon request. Bidders shall be responsible for the removal of all samples furnished within 30 days after Bid opening. All samples will be disposed of after 30 days.

30. Manufacturer's Certification: The Procurement Services department reserves the right to request any and all manufacturer's certifications, if applicable.

31. OSHA: The Bidder warrants that the product or products supplied to the City of Mount Dora, Florida shall conform in all respects to the standards set forth in the Occupational Safety and Health Act of 1979, as amended, and the failure to comply will be considered a breach of contract.

32. Material Safety Data Sheet: A Material Safety Data Sheet (MSDS) must be submitted for all hazardous materials/chemicals. The MSDS sheet must be submitted for hazardous materials/chemicals prior to a recommendation for award. Failure to submit the required Material Safety Data Sheet(s) within forty-eight (48) hours of request shall render the Bid non-responsive. This information must be provided in compliance with Florida's Right-To-Know Law.

33. Asbestos and Formaldehyde Statement: Bidder certifies that all materials supplied to the City will be 100% asbestos and formaldehyde free.

34. Underwriters' Laboratories: Unless otherwise stipulated in the Bid, all manufactured items and fabricated assemblies shall be UL listed where such has been established by UL for the item(s) offered and furnished. In lieu of the UL listing, Bidder may substitute a listing by an independent testing laboratory recognized by OSHA under the Nationally Recognized Testing Laboratories (NRTL) Recognition Program.

35. Service and Warranty: Unless otherwise specified, all equipment Bid must be new, the latest model, first quality, carry the manufacturer's standard warranty and be equal to or exceed the specifications listed in the Bid. During the warranty period, the successful Bidder must repair or replace any defective equipment without cost to the City with the understanding that all replacements shall carry the same guarantee as the original equipment. The successful Bidder shall make any such repairs or replacements immediately upon receiving notice from a representative of the City.

36. Facilities: The City of Mount Dora, Florida reserves the right to inspect the Bidder's facilities at any time with prior notice. The City may use the information obtained from this inspection in determining whether a Bidder is responsible.

37. Delivery: Unless otherwise specified, delivery shall be within thirty (30) days from the date of the receipt of the purchase order. If unable to meet this delivery time frame, please indicate the best delivery times on the bid price sheet. Delivery time may become a basis for making an award. Deliveries shall be made between normal city working hours only. That is Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m.

38. Freight Terms: Unless otherwise specified, all shipments are to be shipped inside delivery, F.O.B. destination, with all transportation charges prepaid and title transferring to the City at time of delivery, (Bidder pays and bears all freight related charges, owns goods in transit and files any claims). Bid prices shall include all cartage, drayage, packing, etc., delivered to and unloaded at the receiving station at the site designated in the Invitation to Bid or purchase order and there received by the designated City agent.

39. Failure of Performance/Delivery: In case of default by the bidder or contractor, the City may procure the articles or services from other sources and hold the bidder or contractor responsible for any excess costs incurred thereby.

40. Packaging: All products shipped shall require proper packaging to ensure they are received free from damage. Vendors must comply with all packaging requirements as required for the product to be received and used in proper working condition. All such packaging costs shall be included in unit prices.

41. Packing Slips: The Vendor shall be responsible for attaching all packing slips to the OUTSIDE of each shipment. Packing slip must reference the City's purchase order number. Failure to provide packing slip attached to the outside of shipment may result in refusal of shipment at vendor's expense.

42. Labeling: Each carton, package, box and/or container shall be properly labeled with the address, contact name, content description, PO number, and vendor name.

43. Inspection, Acceptance and Title: The Vendor shall be responsible for delivery of all items in good condition at destination point. Vendors shall file with the carrier all claims for breakage and other losses. The City shall document packages that are not received in good condition. In the event the material and/or services are found to be defective or do not conform to specifications, the City reserves the right to cancel the order upon written notice to the vendor and/or return the product at the vendor's expense.

44. Equal Employment Opportunity: The City of Mount Dora, Florida, does not discriminate in admission or access to, or treatment or employment in its programs and activities on the basis of race, color, religion, age, sex, national origin, marital status, handicap or any other reason prohibited by law.

45. Anti-Discrimination: The City is committed to assuring equal opportunity in the award of contracts and therefore complies with all laws prohibiting discrimination on the basis of race, color, religion, national origin, handicap, age and gender.

46. Indemnification: The Vendor shall indemnify and hold harmless the City, its elected and appointed officials, employees,

and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the operations of the Vendor or its officers, employees, agents, , or independent contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the City or its elected or appointed officials and employees. The above provisions shall survive the termination of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination hereof. Nothing contained herein is intended nor shall be construed to waive The City's rights and immunities under the common law or Florida Statutes including, but not limited to, Florida Statute 768.28, as amended from time to time.

47. Liability, Insurance, Licenses and Permits: The bidder agrees to provide and maintain at all times during the term of this agreement and any renewals, without cost to the City, policies of insurance insuring the bidder against any and all claims, demands or causes of action whatsoever, for injuries received or damage to property relating to the performance of duties, services, and/or obligations of the bidder under the terms and provisions of this agreement. The bidder will provide the City with copies of current appropriate business licenses.

The minimum requirements for insurance coverage shall be as follows: Bidder shall take special notice that the City of Mount Dora shall be named as an additional insured under the General Liability policy including Products Liability. The insurance policies shall be issued by companies qualified to do business in the State of Florida and grant the City of Mount Dora thirty days of advanced written notice of a cancellation, expiration or any material change in the specified coverage. The insurance companies must be rated not less than "A" from A.M. Best & Company. All policies must remain in effect during the performance of the contract.

General Liability Insurance in amounts of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) per aggregate to include personal injury, property damage, premises operations, products and completed operations.

Automobile Liability Insurance: Automobile Liability Insurance shall be maintained during the life of this Contract, by Vendor as to ownership, maintenance, and use, including loading and unloading, of all owned, non-owned, leased or hired vehicles with limits of not less than One Million Dollars (\$1,000,000.00) combined single limit each accident for bodily injury & property damage liability.

Employer's Liability Insurance: The Vendor shall maintain during the life of this Contract, Employer's Liability Insurance shall be in the amounts not less than Five Hundred Thousand Dollars (\$500,000) each accident for bodily injury by accident, Five Hundred Thousand Dollars (\$500,000) each employee for bodily injury by disease, and Five Hundred Thousand Dollars (\$500,000) policy limit for bodily injury by disease.

Worker's Compensation Insurance: The Contractor shall maintain during the life of this Contract, Worker's Compensation Insurance in accordance with Florida Statute 440. Contractors shall require all subcontractors to maintain such insurance during the life of this Contract.

48. Bid Bonds, Performance Bonds and Certificates of Insurance: Bid bonds, when required, shall be submitted with the

Bid in the amount specified in Special Conditions. Bid bonds will not be returned to unsuccessful bidders. After acceptance of Bid, the City may notify the awarded vendor to submit a performance bond and certificate of insurance in the amount specified in Special Conditions. Upon receipt of the performance bond, the Bid bond will be returned to the awarded vendor.

49. Records: The CONTRACTOR shall retain and maintain all records and documents relating to this Agreement and shall make them available at all reasonable times for inspection and audit by The City during the term of this Agreement and for a period of three (3) years after expiration of this Agreement.

50. Governing Law and Venue: All legal proceedings brought in connection with this contract shall only be brought in a state or federal court located in Lake County, Florida. Each party hereby agrees to submit to the personal jurisdiction of these courts for any lawsuits filed there against such party arising under or in connection with this contract. In the event that a legal proceeding is brought for the enforcement of any term of the contract, or any right arising therefrom, the parties expressly waive their respective rights to have such action tried by jury trial and hereby consent to the use of non-jury trial for the adjudication of such suit.

All questions concerning the validity, operation, interpretation, construction and enforcement of any terms, covenants or conditions of this contract shall in all respects be governed by and determined in accordance with the laws of the State of Florida without giving effect to the choice of law principles thereof and unless otherwise preempted by federal law.

51. Compliance with Public Records Act: Pursuant to Chapter 119.0701, Florida Statutes (2013), the Selected Contractor shall comply with the provisions of the Florida Public Records Act, specifically to:

1. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the Work.
2. Provide the public with access to public records on the same terms and conditions that the City would provide the public records and at a cost that does not exceed the cost provided in Chapter 119.0701, Florida Statutes, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
4. Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the Contractor upon termination of the contract and destroy any duplicates public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.
5. If the Contractor does not comply with a public records request, the City shall consider such noncompliance a material default of the terms of the contract negotiated pursuant to this solicitation and shall seek such remedies for such default as provided in the contract or at law.

If a Vendor does not comply with a public records request, the City shall enforce the contract provisions in accordance with the contract. Failure by the Vendor to grant such public access and comply with public records request(s) shall be grounds for immediate unilateral cancellation of this Agreement 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 a copy of the Vendor's response to each such request.

52. If the Vendor is contracted to provide products, the Vendor warrants that such products shall be free of all liens, claims or encumbrances, and the Vendor warrants that it has clear title to the products being delivered.

53. The Vendor warrants that the services, including, but not limited to, equipment and materials provided shall conform to professional standards of care and practice in effect at the time the service is performed, be of the highest quality, and be free from all faults, defects or errors. Vendor standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement. Whenever required by the specifications of the Invitation to Bid, the Vendor warrants that all equipment and materials provided shall be new, in unused condition and free from defects in title, workmanship, and defects in design and in full compliance with the specifications designed by the City. If the Vendor is notified in writing of a fault, deficiency or error in the goods and/or services provided within one (1) year from completion of the services, the Vendor shall, at the City's option, either re-perform such portions of the 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 faculty, defective or erroneous services, including, but not limited to, the costs for re-performance of the services provided by other Vendors.

54. All goods purchased hereunder must be packaged to ensure its security and delivery in accordance with the City's shipping and packing specifications and good commercial practice. Each package shall be labeled indicating the addresses of each package or shipment and the purchase order number, if applicable. Charges are not allowed for boxing or crating unless specifically agreed to in writing.

55. All work shall be constructed with asbestos-free materials. Vendor agrees that if materials containing asbestos are subsequently discovered at any future time to have been included in the construction done by the Vendor or any of its subcontractors or agents that were not specified in the design or required by the Agreement Vendor shall be liable for all costs relating to the abatement of such asbestos and damages or claims against the City.

56. The Vendor shall provide the City with any and all data, reports or other information as required and requested by the City to enable it to utilize the product or service furnished by the Vendor. At the convenience of and at no expense to the City, the Vendor may be required to provide training to City employees in the operation and maintenance of any item purchased unless otherwise specified.

57. Nothing herein contained 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 (including, but not limited to, its officers, employees, and agents) 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 under this Agreement.

58. Persons employed by the Vendor in the provision and performance of the goods and/or services and functions pursuant to this Agreement 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.

59. Execution of this Agreement by the Vendor is a representation that the Vendor is familiar with, and acknowledges full understanding of the extent and character of, the goods and/or services to be provided and/or performed and with local conditions. The Vendor shall make no claim for additional time or money based upon its failure to comply with this Agreement. The Vendor has informed the City, and hereby represents to the City, that it has extensive experience in performing and providing the services and/or goods described in this Agreement and that it is well acquainted with the components that are properly and customarily included within such projects and the requirements of laws, ordinance, rules, regulations or orders of any public authority or licensing entity having jurisdiction over the City's Projects. The City will not be responsible for any alleged misunderstanding of the goods and services to be furnished or completed, or any misunderstanding of conditions surrounding the performance thereof. It is understood that the execution of this Agreement by the Vendor serves as his stated commitment to fulfill all the conditions referred to in this Agreement.

60. The Vendor shall be responsible for the professional quality, accepted standards, technical accuracy, neatness of appearance of employees, employee conduct, and the coordination of all goods and/or services furnished by the Vendor under this Agreement as well as the conduct of its staff, personnel, employees and agents, which shall comply with reasonable conduct guidelines and City policies and procedures. The Vendor shall work closely with the City on all aspects of the provision of the goods and/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 and not as a limitation: documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by the Vendor under this Agreement.

61. Under the terms of this Agreement, the plans, reports and recommendations of the Vendor may be reviewed by the City for conformity with the City standards and agreements terms. However, review by the City does not constitute detailed review or checking of design components and related details, or the accuracy with which designs are depicted on the plans.

62. Neither the City's review, approval or acceptance of, nor payment for, any of the goods and/or services required shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement 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 and/or services furnished under this Agreement.

63. Time is of the essence in the lawful performance of all goods and/or services, duties and obligations provided by the Vendor under the terms of this Agreement. The Vendor agrees that Vendor shall diligently and expeditiously pursue the Vendor's obligations at such a rate of progress as will ensure full

completion thereof within the time specified.

64. The rights and remedies of the City, provided for under this Agreement, are in addition to any other rights and remedies provided by law.

65. The Vendor agrees to provide project schedule progress reports in a format acceptable to the City and at intervals established by the City. The City will be entitled at all times to be advised, at its request, as to the status of work being done by the Vendor and of the details thereof. Coordination will be maintained by the Vendor with representatives of the City, or of other agencies interested in the project on behalf of the City. Either party to the Agreement may request and be granted a conference.

66. Except for issues arising from contract indemnification provisions, the City will have the right to retain out of any payment due the Vendor under this Agreement an amount sufficient to satisfy any amount due and owing to the City by the Vendor on any other Agreement between the Vendor and the City. The City may withhold payment on any invoice in the event that the Vendor is in default under any provision of this Agreement or any other Agreement between the Vendor and the City as of the time of processing the invoice or as of the time payment is made available on the invoice. This right to withhold will continue until such time as the default has been cured, and, upon cure, the City will have the right to retain an amount equal to the damages suffered as a result of the default.

67. The Vendor will be notified of any disputable items contained in invoices submitted by the Vendor within fifteen (15) days of receipt by the City with an explanation of the deficiencies.

68. Invoices which have to be returned to a Vendor because of Vendor preparation errors will result in a delay of the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the City.

69. City designates the City Manager or his/her designated representative, to represent the City in all matters pertaining to and arising from the work, goods and/or services, and the performance of this Agreement.

70. The Vendor shall designate a Vendor's representative who shall not be replaced without written notice to the City within twenty-four (24) hours before or after the incident. The Vendor's representative shall be present at the job site and will have the authority to act on behalf of the Vendor. The Vendor's representative shall be fluent in the English language. All communications (both verbal and written) given to the Vendor's representative will be binding as if given to the Vendor. All verbal communications will be followed up in writing within two (2) working days. The Vendor's representative shall supervise and direct the work efficiently with due care, skill and attendance. The Vendor will be responsible to ensure that the completed work complies accurately with the specifications.

71. City may terminate this Agreement for convenience at any time or for any one (1) or more of the reasons as follows:

- a. If, in the City's opinion, adequate progress is not being made by the Vendor due to the Vendor's failure to perform; or
- b. If, in the City's opinion, the quality of the goods and/or services provided by the Vendor is/are not in conformance with commonly accepted professional standards, standards of the City, and the requirements of Federal and/or State

regulatory agencies, and the Vendor has not corrected such deficiencies in a timely manner as reasonably determined by the City; or

- c. The Vendor, or any employee or agent of the Vendor, is indicted or has a direct charge issued against him for any crime arising out of or in conjunction with any work that has been performed by the Vendor; or
- d. The Vendor becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or
- e. The Vendor violates the Standards of Conduct provisions herein or any provision of Federal, State or local law or any provision of the City's Code of Conduct.

72. The Vendor understands and agrees that in the event of any of the causes of termination, all tracings, plans, specifications, computer files, maps, and data prepared or obtained under this Agreement will immediately be turned over to the City.

73. In the event of any of the causes of termination, the City's designated representative may send a certified letter to the Vendor requesting that the Vendor show cause why the Agreement 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 seven (7) calendar days of the date of the letter, the City may consider the Vendor to be in default, and may then immediately terminate this Agreement. The City shall have no liability to the Vendor beyond payment of any balance owed for material(s) purchased hereunder and delivered to and accepted by the City prior to the Vendor's receipt of the notice termination.

74. In the event that the Vendor, or any employee or agent of the Vendor, is indicted or has a direct charge issued against him or her for any crime arising out of or in conjunction with any work that has been performed by the Vendor, the City further reserves the right to suspend the qualifications of the Vendor to do business with the City upon any such related conviction.

75. In the event that this Agreement is terminated for cause and it is later determined that the cause does not exist, then this Agreement and the pertinent Purchase/Work Order shall be deemed terminated for convenience by the City and the City shall have the right to so terminate this Agreement without any recourse by the Vendor.

76. Notwithstanding any other provision of this Agreement, the City shall have the right at any time to terminate this Agreement in its entirety without cause, if such termination is deemed by the City to be in the public interest, in writing of deficiencies or default in the performance of its duties under the Agreement and the Vendor shall have ten (10) days to correct same or to request, in writing, a hearing. Failure of the Vendor to remedy said specified items of deficiency or default in the notice by either the City's designated representative within ten (10) days of receipt of such notice of such decisions, shall result in the termination of the Agreement, and the City shall be relieved of any and all responsibilities and liabilities under the terms and provisions of the Agreement.

77. Failure of a Vendor to deliver or perform the required goods and/or services within the time specified, or within a reasonable time as determined by the City or failure to make replacements of rejected articles or goods and/or services when so requested, immediately or as directed by the City, shall

constitute authority for the City to purchase in the open market articles or goods and/or services of comparable grade to replace the articles or goods and/or services rejected, not delivered, nor completed. On all such purchases, the Vendor or his surety shall reimburse the City, within a reasonable time specified by the City, for any expenses incurred in excess of the Agreement prices. Such purchases shall be deducted from Agreement quantities. Should public necessity demand it, the City reserves the right to utilize services or use and/or consume articles delivered 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 applicable evidence has been submitted to the City that failure to perform the goods and/or services was due to causes beyond the control and without the fault or negligence of the Vendor.

78. The Vendor shall promptly correct all goods and/or services rejected by the City as faulty, defective, or failing to conform to this Agreement whether observed before or after substantial completion of the goods and/or services, and whether or not fabricated, installed or completed. The Vendor shall bear all costs of correcting such rejected goods and/or services.

79. Acceptance of the goods and/or services by the City or Agreement termination does not constitute City approval and will not relieve the Vendor of the responsibility for subsequent corrections of any errors and/or omissions and the clarification of any ambiguities. The Vendor shall make all necessary revisions or corrections resulting from errors and/or omissions on part of the Vendor without additional compensation. If these errors and/or omissions are discovered during the construction of the project, they shall be corrected without additional compensation.

80. The City reserves the right to conduct any inspection or investigation to verify compliance of the goods and/or services with the requirements of this purchase order and to reject any delivery not in compliance. If any deficiency is not visible at the time of the delivery the City reserves the right to take and/or require appropriate corrective action upon the delivery of any deficiency, non-compliance, or defect.

81. All design work performed by the Vendor for projects where anticipated construction cost is one million dollars (\$1,000,000) or more will be subject to value engineering. The City further reserves the right to subject projects of lesser construction cost to value engineering should be the City deem circumstances are present that warrant such a decision. Value engineering may be performed at any stage of the design process. Unless specifically identified by the City, the Vendor will not be required to perform the value engineering analysis.

82. The City shall have the right to terminate this Agreement without cause with a sixty (60) day written notice to the other party. The City reserves the right to terminate any Agreement for cause with a five (5) day written notice to the Vendor. Notice shall be served to the parties as specified in the Agreement.

83. In the event the goods and/or services covered by this Agreement includes the preparation of construction plans, it is understood that the work may be divided into two or more construction projects by the City and that, if this is done, the Vendor will supply construction plans for each project.

84. In the event that this Agreement is terminated, the City shall identify any specific work to be continued to completion pursuant to the provisions of this Agreement.

85. In the event that after the City termination for cause for

failure of the Vendor to fulfill its obligations under this Agreement it is found that the Vendor has not so failed, the termination shall be deemed to have been for convenience and without cause.

86. In the event this Agreement is terminated prior to final completion without cause, payment for the unpaid portion of the services provided by the Vendor to the date of termination and any additional services shall be paid to the Vendor.

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

88. The performance or provision of the Vendor's goods and/or services under this Agreement may be suspended by the City at any time.

89. In the event the City suspends the performance or provision of the Vendor services hereunder, the City shall so notify the Vendor in writing, such suspension becoming effective within seven (7) days from the date of mailing, and the City shall pay to the Vendor within thirty (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 and/or services unless and until the City's designated representative notifies the Vendor in writing that the provision of the goods and/or services of the Vendor called for hereunder are to be resumed by the Vendor.

90. The Vendor agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or their forms or compensation; and selection for training, including apprenticeship. The Vendor, moreover, shall comply with all the requirements as imposed by the Americans with Disability Act, the regulations of the Federal government issued thereunder, and any and all requirements of Federal or State law related thereto.

91. 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 services required under this Agreement, provided that same is caused in whole or part by the error, omission, negligent act, failure to act, breach of contract, malfeasance, misfeasance, conduct, or misconduct of the Vendor, its agents, servants, officers, officials, employees, or subcontractors.

92. In accordance with Section 725.06, Florida Statutes, adequate consideration has been provided to the Vendor for this obligation, the receipt and sufficiency of which is hereby specifically acknowledged.

93. 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.

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

95. If the Vendor is an individual or entity licensed by the state of Florida who holds a current certificate of registration under Chapter 481, Florida Statutes, to practice architecture or landscape architecture, under Chapter 472, Florida Statutes, to practice land surveying and mapping, or under Chapter 471, Florida Statutes, to practice engineering, and who enters into a written agreement with the City relating to the planning, design, construction, administration, study, evaluation, consulting, or other professional and technical support services furnished in connection with any actual or proposed construction improvement, alteration, repair, maintenance, operation, management, relocation, demolition, evacuation, or other facility, land, air, water, or utility development or improvement, the Vendor will indemnify and hold harmless the City, and its officers and employees, from liabilities, damage, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Vendor and other persons employed or utilized by the Vendor in the performance of the contract. The parties agree that 1% of the total compensation to the Vendor for performance of this Agreement is the specific consideration from the City to the Vendor for the Vendor's indemnity agreement.

96. Nothing in this Agreement or any action relating to this Agreement shall be construed as the City's waiver of sovereign immunity beyond the limits of Section 768.28, Florida Statutes, or deemed to affect the rights, privileges, and immunities of the City as set forth in Section 768.28, Florida Statutes.

97. In claims against any person or entity indemnified under this Section by an employee of the Vendor or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Vendor or its agents or subcontractors, under Workers Compensation acts, disability benefits acts, or other employee benefit acts.

98. The execution of this Agreement by the Vendor shall obligate the Vendor to comply with the indemnification provision in this Agreement; provided, however, that the Vendor must also comply with the provisions of this Agreement relating to insurance coverages.

99. All insurance other than Workers Compensation and Professional Liability that must be maintained by the Vendor shall specifically include the City as an additional insured.

100. The Vendor shall provide Certificates of Insurance to the City evidencing that all such insurance is in effect prior to the issuance of the first Purchase/Work Order under this Agreement from the City. These Certificates of Insurance shall become part of this Agreement. Neither approval by the City nor failure to disapprove the insurance furnished by a Vendor shall relieve the Vendor of the Vendor's full responsibility for performance of any obligation including the Vendor's indemnification of the City under this Agreement. If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: (1) lose its Certificate of Authority,

(2) no longer comply with Section 440.57, Florida Statutes, or (3) fail to maintain the requisite Best's Rating and Financial Size Category, the Vendor shall, as soon as the Vendor has knowledge of any such circumstance, immediately notify the City and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as the Vendor has replaced the unacceptable insurer with insurance acceptable to the City, the Vendor shall be deemed to be in default of this Agreement. All insurance policies shall be issued by responsible companies who are acceptable to the City and authorized to do business under the laws of the State of Florida.

101. The insurance coverage shall contain a provision that requires that prior to any changes in the coverage, except increases in aggregate coverage, thirty (30) days prior notice will be given to the City by submission of a new Certificate of Insurance.

102. The Vendor shall furnish Certificates of Insurance directly to the City's Designated Representative. The certificates shall clearly indicate that the Vendor has obtained insurance of the type, amount and classification required by this Agreement.

103. The City shall not be obligated or liable under the terms of this Agreement to any party other than the Vendor. There are no third party beneficiaries to this Agreement.

104. 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 this Agreement 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 making this Agreement.

105. The Vendor shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement or violate any laws pertaining to civil rights, equal protection or discrimination.

106. 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 this Agreement shall be immediately disclosed in writing to the City. Violation of this Section shall be considered as justification for immediate termination of this Agreement.

107. 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 this Agreement, the City shall so notify the Vendor, in writing. The Vendor shall immediately remove such employee or representative of the Vendor from such assignment.

108. If the Vendor or an affiliate is placed on the convicted Vendor list following a conviction for a public entity crime, such action may result in termination 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.

109. The City reserves the right to unilaterally terminate this

Agreement 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 this Agreement.

110. The Vendor shall comply with the requirements of the Americans with Disabilities Act (ADA), and any and all related Federal or State laws which prohibit discrimination by public and private entities on the basis of disability.

111. 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 U.S.C. Section 1324a(e) Section 274A(e) of the Immigration and Nationality 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 unilateral termination of this Agreement by the City.

112. The Vendor agrees to comply with Federal, State, and local environmental, health, and safety laws, rules, regulations and codes, and their successors or amendments, applicable to the goods and/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. The Vendor shall erect and properly maintain at all times all necessary vehicular and facility safeguards for the protection of both the workmen and general public. If necessary, the Vendor shall post signs warning against hazards in and around the work site. Violation of such laws, rules, regulations, and codes may be grounds for delaying or reducing the amount due, or in rescinding the contract, agreement, bid or quote.

113. The Vendor shall ensure that all goods and/or services are provided to the City after the Vendor has obtained, at its sole and exclusive expense, any and all permits, licenses, permissions, certificates, approvals or similar consents as may be required by Federal, State and local laws, ordinances, rules, and regulations, for the proper execution and completion of the work under this Agreement.

114. 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 performance of the Work (goods and/or services), which is the subject of patent rights or copyrights. 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 Work (goods and/or services), or any part thereof, furnished under this Agreement, constitutes an infringement of any patent or copyright of the United States. The Vendor shall pay all damages and costs awarded against the City.

115. All tracings, plans, specifications, maps, computer files and/or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, will be considered works made for hire and will become the property of the City upon completion or termination without restriction or limitation on their use and will be made available, upon request, to the City at any time during the performance of such services and/or upon completion or termination of this Agreement. Upon delivery to the City of said document(s), the City will become the custodian thereof in accordance with Chapter

119, Florida Statutes. The Vendor will not publish or copyright any material and products or patent any invention developed under this Agreement, it being understood that such material, products or inventions are or were developed with the purpose of becoming property of the City. The City will have the right to visit the site for inspection of the work, goods and/or services, and the products of the Vendor at any time.

116. Vendor covenants and agrees that it and its employees will be bound by the standards of conduct provided in applicable Florida Statutes and applicable rules of the Department of Business and Professional Regulation as they relate to work performed under this Agreement. Vendor further covenants and agrees that when a former state employee is employed by the Vendor, the Vendor will require that strict adherence by the former state employee to Sections 112.319(9) and 112.3185, Florida Statutes, is condition of employment of said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. Vendor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to goods and/or services provided or performed pursuant to this Agreement.

117. The Vendor shall maintain and allow access to the records required under this Section for a minimum period of five (5) years after the completion of the provision or performance goods and/or services under this Agreement and date of final payment for said goods and/or services, or date of termination of this Agreement. Records of the costs incurred will include, but are not limited to, the Vendor's general accounting records and the project records, together with supporting documents and records, of the Vendor and all sub consultants performing work on the project, and all other records of the Vendor and sub consultants considered necessary by the City for a proper audit of project costs.

118. The City may perform, or cause to have performed, an audit of the records of the Vendor or any subcontractor, to the extent that such books and records relate to the performance of the Agreement or any sub-contract to the Agreement, before or after final payment to support final payment under any Purchase/Work Order issued hereunder. Such books and records shall be maintained by the Vendor for a period of five (5) years from the date of final payment under the Agreement and by the subcontractor for a period of five (5) years from the date of final payment under the sub-contract unless a shorter period is otherwise authorized in writing. 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 and/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.

119. In addition to the above, if Federal, State, County, or other entity funds are used for any goods and/or services under this Agreement, the Comptroller General of the United States or the Chief Financial Officer of the State of Florida, or the County of Seminole, or any representatives, shall have access to any books, documents, papers, and records of the Vendor which are directly pertinent to goods and/or services provided or performed under this Agreement for purposes of making audit, examination, excerpts, and transcriptions.

120. The Vendor may associate with its subcontractors, for the purpose of its services hereunder, without additional cost to the City. Any Vendor proposed subcontractors shall be submitted

to the City for written approval prior to the Vendor entering into a subcontract. Subcontractor information shall include, but not be limited to, State registrations, business address, occupational license tax proof of payment, and insurance certifications. All Vendors and subcontractors must be authorized to do business within the State of Florida.

121. The Vendor shall coordinate the provision of goods and/or services and work product of any City approved subcontractors, and remain fully responsible for such goods and/or services and work under the terms of this Agreement.

122. Any subcontract shall be in writing and shall incorporate this Agreement and require the subcontractor to assume performance of the Vendor's duties commensurately with the Vendor's duties to the City under this Agreement, it being understood that nothing herein shall in any way relieve the Vendor from any of its duties under this Agreement. The Vendor shall provide the City with executed copies of all subcontracts.

123. In any legal action related to this Agreement, instituted by either party, Vendor hereby waives any and all privileges and rights it may have under Chapter 47 and Section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in any county chosen by the City and in the event that any such legal action is filed by Vendor, Vendor hereby consents to the transfer of venue to the county chosen by the City upon the City filing a motion requesting the same.

124. This Agreement is the result of bona fide arm's length negotiations between the City and the Vendor and all parties have contributed substantially and materially to the preparation of the Contract. Accordingly, this Agreement shall not be construed or interpreted more strictly against any one party than against any other party.

125. 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 by Force Majeure. Force Majeure shall include, but not be limited to, hostility, terrorism, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, explosion, 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 in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section. Any such causes of delay, even though existing on the date of the Agreement or on the date of the start of Work, shall extend the time of the Vendor's or City's performance respectively, by length of the delays occasioned thereby, including delays reasonably incident to the resumption of normal work schedules.

126. In the event there are delays caused by the City in approval of any of the materials submitted by the Vendor or if there are delays occasioned by circumstances beyond the control and without fault or negligence of the Vendor which delay the scheduled project completion date, the City may grant an extension of time equal to the aforementioned project schedule delay, as a minimum and not to exceed the Agreement term, by issuance of a Time Extension Letter. This letter will be for time only and does not include any additional compensation. It will be the responsibility of the Vendor to ensure at all times that sufficient time remains in the Project Schedule within which to

complete the services on the project. In the event there have been delays which would affect the project completion date, the Vendor will submit a written request to the City which identifies the reason(s) for the delay, the amount of time related to each reason and specific indication as to whether or not the delays were concurrent with one another. The City will review the request and make a determination as to granting all or part of the requested extension. In the event time for performance of the scheduled project services expired and the Vendor has not requested, or if the City has denied same, and extension of the Project Schedule completion date, partial progress payments will be stopped on the date time expires. No payment shall be made for work performed after the Project Schedule completion date until a time extension is granted or all work has been completed and accepted by the City if the Agreement term has not expired.

127. This Agreement, together with the exhibit(s), if any, constitutes the entire integrated Agreement between the City and the Vendor and supersedes all prior written or oral understandings in connection therewith. This Agreement, and all the terms and provisions contained herein, including without limitation the exhibits hereto, constitute the full and complete agreement between the parties hereto to the date hereof, and supersedes and controls over any and all prior agreements, understandings, representations, correspondence and statements whether written or oral.

128. Written notice requirements of this Agreement 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 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 herein. Computer notification (e-mails and message boards) shall not constitute proper written notice under the terms of the Agreement.

129. The failure of the City to insist in any instance upon the strict performance of any provision of this Agreement 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.

130. No consent or waiver, expressed or implied, by a party, to or of any breach or default of any other party with regard to the performance by said other party of its obligations under this Agreement shall be deemed or construed to constitute consent or waiver to or of any other breach or default in the performance of that party of the same or of any other obligation of performance incumbent upon that party. Failure on the part of a party to notify another party of any act or failure to act on the part of the other party in default shall not constitute a waiver by that party of its rights and any remedies that exist under this Amendment, at law or in equity.

131. The Section headings and captions of this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any provision of this Agreement.

132. If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, 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 this

Agreement shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.

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

134. Fiscal Year Funding Appropriation:

- a. Specified Period: Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interest of the City, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contract. Payment and performance obligations for succeeding fiscal periods shall be subject to appropriation by City Council of funds therefor.
- b. Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods: When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the Vendor shall be entitled to reimbursement for the reasonable value of any nonrecurring cost incurred but not advertised in the price of the supplies or services delivered under the contract or otherwise recoverable.

135. City is obligated only to the extent that funds are included in the City's fiscal year and/or capital budget. Should the City not include funds for this expense the Agreement is null and void.

136. The City and Vendor agree that there may be additional services required to be performed by the Vendor during the performance of obligations relating to this Agreement that cannot be defined sufficiently at the time of execution of this Agreement. The City, without invalidating this Agreement, may order changes in the goods and/or services within the general scope of this Agreement consisting of additions, deletions, or other revisions, the Agreement price and time being adjusted accordingly. All such changes in the work shall be authorized by a written addendum to this Agreement, and shall be executed under the applicable conditions of the Agreement. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement. If the Vendor plans to make a claim for an increase in the Agreement price or an extension in the Agreement Schedule/Term, he shall first give the City written notice within ten (10) calendar days after the occurrence of the event giving rise to such a claim. This written notice shall be given by the Vendor to the City, and a written approval secured from the City, before proceeding to execute the goods and/or services, except in an emergency endangering life or property, in which case the Vendor shall immediately precede. No claim for extra work will be considered valid by the City unless first submitted in writing.

137. Before making any additions or deletions to the work described in the Agreement, and before undertaking any changes or revisions to such work, the parties will negotiate any necessary cost changes and will enter into a Supplemental Agreement covering such work and compensation. Reference herein to the Agreement will be considered to include any Supplemental Agreement.

138. The title and risk of loss to the goods and/or services shall pass from the Vendor to the City upon the City's final acceptance of the goods and/or services.

139. The Vendor shall at all times, keep the work area free from accumulation of waste materials or rubbish caused by his operations, and promptly remove any such materials to an approved disposal location.

140. The Vendor is responsible for all damage or loss by fire, theft or otherwise, to materials, tools, equipment, and consumables, left on City property by the Vendor.

141. All materials, tools, equipment, and consumables or property furnished to the Vendor by the City shall remain the property of the City, be subject to removal upon the City's demand, be used only on behalf of the City, be maintained in good order, and be clearly identified as property of the City. The Vendor assumes any and all liability of whatsoever type or nature for loss or damage to such property.

142. The City will not make advance payments or initial deposits prior to any work being performed under a City Contract. All work is to be paid through invoices under the Florida Prompt Payment Act. No payments will be made for work not performed.

DEFINITION OF TERMS

Addendum - an addition or supplement to a document, for example, items or information added, deleted, or changed on a procurement document.

Alternate Bid - a substitute bid or a bid submitted with an intentional substantive variation to a basic provision, specification, term, or condition of the solicitation. Alternate bids shall only be provided when requested in the bid documents.

Best Value Bidding - The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for specific goods or services based on pre-determined criteria identified by The City.

Bidder - one who submits a response to an invitation to bid.

Bid Sample - a sample offered by a bidder when required in an invitation to bid (ITB). The samples are considered a required part of the bid and are examined and tested for conformance with the requirements of the ITB.

Conflict of Interest - an actual or potential situation in which the personal interests of a vendor, employee, or public official, are, or appear to be, in conflict with the best interests of The City of Mount Dora.

Contract - a mutually binding legal instrument obligating the seller to furnish the supplies or services and the buyer to pay for them, including but not limited to purchase orders and formal agreements.

Contract Modification - means any written change in the terms of a contract.

Contractor - the bidder, proposer, offeror or respondent.

Descriptive Literature - means information provided by an offeror, such as cuts, illustrations, drawings, and brochures that shows a product's characteristics or construction of a product or explains its operation. The term includes only that information needed to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

FOB Destination - free on board at destination; title changes hands from vendor to purchaser at the destination of the shipment; vendor owns goods in transit and files any claims. Payment of freight charges is determined by contract terms.

In Writing - any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

Insurance - Means a contract in which one party, for a fee, undertakes to protect another party against loss, damage or liability arising from an unknown or contingent event.

Latent Defect - an unknown deficiency or imperfection that impairs worth or utility that cannot be readily detected from initial or visual examination.

Laws and Regulations - Laws, Rules, Regulations, Ordinances, and/or court or administrative Orders of the federal, state and City.

Lobbying - lobbying is defined as any action taken by an individual, firm, association, joint venture, partnership, syndicate, corporation, and all other groups who seek to influence the decision of a Council Member or City personnel after advertisement and prior to the posted recommendation on the award of a contract.

Lump Sum - the total price of a group of items which is priced as a whole.

Notice of Award - The written notice of the acceptance of the

solicitation from the City to the Contractor/Consultant.

Offer - a response to a solicitation that, if accepted, would bind the offeror to perform the resulting contract.

Offeror - one who submits a bid in response to a (ITB); one who makes an offer in response to a solicitation

Pricing - the process of establishing a reasonable amount to be paid for supplies or services.

Purchasing Contact - the Purchasing Division employee who is primarily responsible for processing the solicitation.

Purchase Order - a purchaser's written document to a vendor formalizing all the terms and conditions of a proposed transaction, such as a description of the requested item(s), delivery schedule, terms of payment, and transportation.

Qualification Requirement - means the City requirement for testing or other quality assurance demonstration that must be completed before award of a contract.

Qualified Products List (QPL) - an approved list of supplies, services, or construction items, described by model or catalogue numbers, which, prior to competitive solicitation, The City has determined will meet the applicable specification requirements.

Responsible Bidder - a bidder who has the capability in all respects to perform fully the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

Responsive Bidder - Bidder that has a submitted a bid that conforms in all material respects to the solicitation.

Signature or Signed - the discrete, verifiable written symbol of an individual; indicates a present intention to authenticate the writing. This includes electronic signatures.

Solicitation - a request for bids to provide supplies, services, or construction items.

Solicitation Provision or Provision - a term or condition used only in solicitations and applying only before contract award.

Specifications - a description of the physical or functional characteristics, or of the nature of a supply, service, or construction item; the requirements to be satisfied by a product, material, or process indicating, if appropriate, the procedures to determine whether the requirements are satisfied.

Submitting of Bids - All Bids must be submitted in a sealed envelope. The face of the envelope shall contain the date and time of the Bid opening and the Bid number. Bids not submitted on the City Bid forms may be rejected. All Bids are subject to the conditions specified herein and on any attached sheets, specifications, special conditions or vendor notes.

Supplemental Agreement - means a contract modification that is accomplished by the mutual action of the parties.

Surety - Shall mean any corporation that executes, as Surety, the contractor's Proposal/Bid, Performance, and/or Payment Bond.

Termination for Convenience - means the exercise of the City's right to completely or partially terminate performance of work under a contract when it is in the City's interest.

Termination for Default - means the exercise of the City's right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.

Warranty - means a promise or affirmation given by a contractor to the City regarding the nature, usefulness, or condition of the supplies or performance of services furnished under the contract.