

STANDARD CONTRACTUAL TERMS AND CONDITIONS

WITNESSETH:

(1) The Vendor¹ hereby warrants and represents to the City that it is competent and otherwise able to provide professional and high quality goods and/or services to the City by means of employees who are neat in appearance and of polite demeanor.

(2) All submissions submitted by the Vendor in the proposals/bid submitted to the City are hereby incorporated herein to the extent not inconsistent with the terms and conditions as set forth herein.

(3) The Vendor acknowledges that the City may retain other goods and/or service providers to provide the same goods and/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 and/or service providers for City projects. The City reserves the right to select which goods and/or services provider shall provide goods and/or services for the City's projects.

(4) The Vendor agrees to provide and ensure coordination between goods/services providers.

(5) Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement and to undertake all obligations imposed on it. The person(s) executing this Agreement for the Vendor certify that he/she/they is/are authorized to bind the Vendor fully to the terms of this Agreement.

(6) If this is a Work Order contract:

- a. The provision of services to be performed under this Agreement may commence upon the issuance of a Work Order from the City to the Vendor. Each Work Order shall reference this Agreement by title and date, include a detailed description of quantities, services, and a completion schedule, and will be provided on Vendor letterhead. Services described in said Work Order will commence upon the issuance of a City Notice-To-Proceed.

¹ The term "Vendor," as used herein, includes vendors, contractors, consultants, and goods and services providers of every type and nature.

- b. The services required to be performed by a Work Order shall be clearly defined within the Work Order. The Vendor shall perform all services required by the Work Order, but in no event shall the Vendor be paid more than the negotiated fee amount stated therein or the fee resulting from the stated method of calculation.
- c. The Vendor agrees to adhere to the schedules established in the various Work Orders issued under this Agreement.
- d. The Vendor may invoice the amount due based on the percentage of total Work Order 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 services actually completed.

(7) If this is a Work Order contract:

- a. The City may revise the Description of Services set forth in any particular Work Order.
- b. 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 services authorized. Change Orders shall identify this Agreement and the appropriate Work Order number. The Change Orders may contain additional instructions or provisions specific upon certain aspects of this Agreement pertinent to the services to be provided. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement. An Agreement between the parties 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 and/or work/services, including all direct and indirect costs of whatever nature, and all adjustments to the Vendor schedule.
- c. If instructed by the City, the Vendor shall change or revise work that has been performed, and if such work is not required as a result of error, omission or negligence of the Vendor, the Vendor may be entitled to additional compensation. The Vendor must submit for City approval a revised proposal with a revised fee quotation. Additional compensation, if any, shall be agreed upon before commencement of any such additional work and shall be incorporated into the work by Change Order to the Work Order.

(8) If this is a Work Order contract, compensation to the Vendor for the services performed on each Work Order shall be as set forth the Work Order/Change Order and may be set as a fixed fee, an fee based upon rates, a fee that is a “not to exceed” fee, or a fee based upon some other basis as agreed upon by the parties.

(9) The Vendor hereby guarantees the City that all materials, supplies, services and equipment as listed on a Purchase Order meet the requirements, specifications and standards as provided for under the *Federal Occupations Safety and Health Act of 1970*, from time to time amended and in force on the date hereof.

(10) 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.

(11) 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, 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 reperform 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 reperformance of the services provided by other Vendors.

(12) 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.

(13) 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.

(14) Terms of shipping are F.O.B. the City's delivery location unless otherwise noted within the terms of this Agreement. Regardless of the indicated F.O.B. point, the City does not accept title until the shipment is acknowledged by an authorized City representative.

(15) 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.

(16) All final plans, documents, reports, studies and other data prepared by the Vendor shall bear the professional's seal/signature, in accordance with the applicable Florida Statute that governs and Administrative Rules promulgated by the Department of Business and Professional Regulation, and guidelines published by the City, in effect at the time of execution of this Agreement. In the event that changes in the Statute or Rules create a conflict with the requirements of the published guidelines, requirements of the Statute and/or Rules shall take precedence.

(17) Requirements for signing and sealing plans, reports and documents prepared by the Vendor shall be governed by the laws and regulations of Federal, Volusia County and State regulatory agencies.

(18) 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.

(19) 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.

(20) No claim for goods and/or services furnished by the Vendor not specifically provided for herein shall be honored by the City.

(21) 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.

(22) 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.

(23) 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.

(24) 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.

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

(26) 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.

(27) 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.

(28) 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.

(29) The City and the Vendor will make every effort to resolve all disputable items contained in the Vendor's invoices.

(30) Each invoice shall reference this Agreement, the appropriate billing period.

(31) The *Florida Prompt Payment Act* shall apply when applicable. A billing period represents the dates in which the Vendor completed goods and/or services referenced in an invoice.

(32) Invoices are to be forwarded directly to:

(Department or Person)
City Of Lake Helen
P.O. Box 39
Lake Helen, Florida 32744

(33) City designates the City Administrator 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.

(34) 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.

(35) The City Administrator, or his/her designated (in writing) 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 when reasonably requested by 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 this Agreement;
- 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.

(36) Until further notice from the City Administrator the designated representative for this Agreement is:

(NAME)
(JOB TITLE)
City of Lake Helen
P.O. Box 39
Lake Helen, Florida 32744
Telephone Number: (386) 228-2121

(37) 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.

(38) 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.

(39) 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.

(40) 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.

(41) 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.

(42) The Vendor may terminate this Agreement only if the City fails to pay the Vendor in accordance with this Agreement.

(43) 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.

(44) 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.

(45) 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.

(46) 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.

(47) 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.

(48) 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.

(49) 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.

(50) 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.

(51) 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.

(52) 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.

(53) 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.

(54) 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.

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

(56) 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.

(57) Upon receipt of written notice from the City that the Vendor's provision of goods and/or services hereunder are to be resumed, the Vendor shall continue to provide the services to the City.

(58) 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.

(59) 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, attorneys 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.

(60) 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.

(61) 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*.

(62) 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.

(63) 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.

(64) 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*.

(65) 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.

(66) 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.

(67) The Vendor shall obtain or possess and continuously maintain the insurance coverage as set forth and required in the bid documents.

(68) 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.

(69) 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.

(70) 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.

(71) 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.

(72) 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.

(73) The Vendor is an independent contractor and not an agent, representative, or employee of the City. The City shall have no liability except as specifically provided in this Agreement.

(74) All insurance shall be primary to, and not contribute with, any insurance or self-insurance maintained by the City.

(75) 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.

(76) 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.

(77) 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.

(78) The Vendor shall ensure that all taxes due from the Vendor are paid in a timely and complete manner including, but not limited to, occupational license tax.

(79) 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.

(80) The Vendor shall not publish any documents or release information, nor shall it permit publication of documents or the release of information, regarding this

Agreement to the media without prior approval of the City. All publicity rights vest in the City.

(81) 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.

(82) 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.

(83) 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.

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

(85) 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 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 unilateral termination of this Agreement by the City.

(86) 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.

(87) 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.

(88) 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.

(89) 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.

(90) The Vendor will not be liable for use by the City of plans, documents, studies or other data for any purpose other than intended by the terms of this Vendor Agreement.

(91) The City will be deemed to have accepted the goods and/or services after the City is notified by **XXXXXXX** of its satisfaction that the Work is completed. The work under this Agreement shall remain the property of the Vendor until the City accepts it. In the event the Work furnished under this Agreement is found to be defective or does not conform to the specifications, the City reserves the right to cancel the Agreement upon written notice to the Vendor.

(92) All information, data, designs, plans, drawings, and specifications furnished to or developed for the City by the Vendor or its employees, pursuant to this Agreement, shall be the sole property of the City and all rights therein are reserved by the City, except that the Vendor may disclose any such information to its corporate affiliates and their agents.

(93) If applicable, in accordance with Section 216.347, *Florida Statutes*, the Vendor shall not use funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or State agency.

(94) 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.

(95) The Vendor shall not engage in any action that would create a conflict of interest in the performance of the actions of any City employee or other person during the course of performance of, or otherwise related to, this Agreement or which would violate or cause others to violate the provisions of Part III, Chapter 112, *Florida Statutes*, relating to ethics in government.

(96) 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.

(97) The Vendor shall maintain books, records, documents, time and costs accounts and other evidence directly related to its provision or performance of services under this Agreement. All time records and cost data shall be maintained in accordance with generally accepted accounting principles.

(98) 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.

(99) 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 subcontract 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.

(100) 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 Volusia, 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.

(101) The Vendor must provide copies of any audit referencing this Agreement, the audit transmittal letter and any response to such audit to the City within thirty (30) days of receipt by the Vendor.

(102) In the event of any audit or inspection conducted reveals any overpayment by the City under the terms of the Agreement, the Vendor shall refund such overpayment to the City within thirty (30) days of notice by the City of the request for the refund.

(103) The Vendor agrees to fully comply with all State laws relating to public records.

(104) 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.

(105) The Vendor shall not sublet, assign or transfer any interest in or rights provided by this Agreement, or claims for the money due or to become due out of this Agreement 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.

(106) The Vendor may associate with it 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.

(107) 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.

(108) 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.

(109) The Vendor agrees to reasonably participate in any "piggybacking" programs pertinent to local government.

(110) The Vendor shall reasonably cooperate at all times with the City and other City Vendors and professionals.

(111) This Agreement is to be governed by the laws of the State of Florida.

(112) Venue for any legal proceeding related to this Agreement shall be in the Seventh Judicial Circuit Court in and for Volusia County, Florida, as to state actions and the United States District Court for the Middle District of Florida as to federal actions.

(113) 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.

(114) This Agreement is the result of *bona fide* arms 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.

(115) 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.

(116) 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.

(117) The recitals herein are true and correct in form and constitute a material part of this Agreement upon which the parties have relied.

(118) 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.

(119) This Agreement may only be amended, supplemented or modified by a formal written amendment.

(120) Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties.

(121) 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.

(122) 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.

(123) 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.

(124) In no event shall any obligation of the City under this Agreement be or constitute a general obligation or indebtedness of the City, a pledge of the *ad valorem* taxing power of the City or a general obligation or indebtedness of the City within the meaning of the *Constitution of the State of Florida* or any other applicable laws, but shall be payable solely from legally available revenues and funds.

(125) The Vendor shall not have the right to compel the exercise of the *ad valorem* taxing power of the City.

(126) The Vendor shall not pledge the City's credit nor make the City a guarantor of payment or surety for any contract, debt, obligation, judgment lien, or any form of indebtedness.

(127) Each exhibit referred to and attached to this Agreement is an essential part of this Agreement. The exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement.

(128) 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.

(129) 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.

(130) All provisions of this Agreement shall be read and applied in *para materia* with all other provisions hereof.

(131) 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.

(132) 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 procedures.

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

(134) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

(135) 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 Commission 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.

(136) 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.

(137) In order to comply with Section 119.0701, *Florida Statutes*, public records laws, the Vendor must:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- b. Provide the public with access to public records on the same terms and conditions that the City would provide the records 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.
- d. Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the Vendor upon termination of the contract and destroy any duplicate 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.

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.

(138) 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 proceed. No claim for extra work will be considered valid by the City unless first submitted in writing.

(139) 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.

(140) 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.

(141) 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.

(142) 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.

(143) 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.