

## **Section I – Standard Purchase Order Contract Terms and Conditions**

### **1. OFFER AND CONTRACT**

The following terms, with such terms, plans, specifications or other documents as attached or incorporated by reference on the face of this purchase order, constitute the offer of City of Tamarac ("City") to Contractor and shall, when accepted, constitute the entire agreement ("Contract") between City and Contractor. The City gives notice of its objection to any different or additional terms. This Contract is valid only as written. If any proposal is incorporated by reference into this Contract only the technical specification aspects of it are incorporated and not any terms and conditions. If price, terms, shipping date or other expressed condition of this Contract are not acceptable, City must be notified, and any variation must be accepted in writing prior to shipment or delivery. This Contract shall be deemed to have been accepted:

- (a) absent written notification of non-acceptance by the Contractor within a reasonable time, or;
- (b) upon timely delivery of the products identified to the shipping address specified on the face of the order. Contractor will provide the goods and services to be furnished under the Contract ("Services") as an independent contractor and furnish all equipment, personnel and material sufficient to provide the Services expeditiously and efficiently. Contractor will devote only its best-qualified personnel to work under the Contract. Should the City inform Contractor that anyone providing the Services is not working to this standard, Contractor will immediately remove such personnel from providing Services and he or she will not again, without each of City's written permission, be assigned to provide Services. At no time will Contractor or Contractor's employees, subcontractors, agents, or assigns be considered employees of City for any purpose, including but not limited to workers' compensation provisions.

### **2. DELIVERY**

If deliver dates cannot be met, Contractor must notify City immediately. Such notification shall not, however, constitute a change to the terms of this Contract except as the order may be modified in writing by City.

### **3. IMPROPER DELIVERY**

In addition to other remedies provided by law, City reserves the right to refuse any goods or services and to cancel all or any part of this Contract if Contractor fails to deliver all or any part of the goods or services under this Contract. Acceptance of any part of this order shall not bind City to accept any future shipments nor deprive it of the right to return goods already accepted.

### **4. ASSIGNMENT SUBCONTRACTING AND AMENDMENT**

- (a) The Contractor shall not assign or subcontract rights or obligations to third parties without prior written consent of City. However, the Subcontractor may assign the rights to be paid amounts due or to become due if the Contractor provides City with a copy of the executed

assignment of payment. The City's obligation to pay any assignee is subject to the Contractor providing notice of assignment and is subject to any claim, defense or offset City may have against the Contractor. If a party other than the Contractor provides notification that a right to payment has been assigned, City may withhold any payments until City is furnished with either (i) the Contractor's verification of the payment assignment or (ii) reasonable proof that the assignment has explicitly been made to the party claiming payment.

- (b) This Contract may only be amended by a writing signed by each of the parties' authorized representatives. Waiver or non-enforcement by either party of a provision of the Contract will not constitute a waiver or non-enforcement of any other provision or of any later breach of the same or similar provision.

### **5. CHANGES**

The City may by a written order to the Contractor, make changes within the general scope of this Contract in:

- (a) Drawings, designs, or specifications;
- (b) Method of shipment or packing; and (c) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, performing any part of the work under this order, an equitable adjustment shall be made in the price or delivery schedule or both, and the order shall be modified in writing. Any claim by Contractor for adjustment under this Article must be asserted within 30 days from receipt by Contractor of the notification of change; provided, however, that City, if the facts justify such action, may receive and act upon any such claim asserted prior to final payment. Nothing in this clause shall excuse Contractor from proceeding with this order as changed.

### **6. FORCE MAJEURE**

Neither party shall not be liable for damages arising out of failure to perform or delay in performance caused by strikes, lockouts, fires, war, or acts of God. In such instances, the parties shall make all commercially reasonable efforts to mitigate their failure of or delay in performance. The parties shall notify the other in writing when it is reasonably possible after upon knowledge of such failure or delay.

### **7. EXISTING COMMERCIAL COMPUTER SOFTWARE – LICENSING**

*(This Article applies to acquiring a license of existing commercial computer software under this Contract, including Commercial-off-the-shelf (COTS) software. This Article does not apply to the development of software.)*

- (a) If the Contractor proposes its standard commercial software license, only those portions of the license that comply with the provisions of this Contract are incorporated into and made a part of this Contract.

- (b) If the Contractor does not propose its standard commercial software license until after this Contract has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this Contract under the same terms as in paragraph (a) above. To receive updates, correction notices, consultation, and similar activities on the computer software, any authorized user may acknowledge receipt of a registration form or card and return it directly to the Contractor; however, such signing shall not add to or alter the terms of this Contract regardless of any notations on the form or card to that effect.
- (c) If the specified computer software is shipped or delivered to City, the Contractor agrees that it has unconditionally accepted the terms in this Article and that the terms of this Contract (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.
- (d) The computer software may be:
  - (1) Used, or copied for use, in or with any computer owned or leased by, or for City. Any restrictions on use of the software or distribution of the software to multiple such computers shall be void unless explicitly agreed to by the City.
  - (2) Reproduced for safekeeping (archives) or backup purposes;
  - (3) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and
  - (4) Disclosed and reproduced for use by City designees under this Article.
- (e) The software may be used by City in support and furtherance of City's obligations to the US Government or other funding organization.
- (f) Contractor warrants it has the right to sell, license, or transfer the license for the software furnished to City under this Contract.

**8. COPYRIGHTABLE WORK**

Contractor assigns to City the entire copyright, title and interest in copyrightable work generated in the performance of this Contract.

**9. DISPUTES AND GOVERNING LAW**

- (a) Any dispute arising out of this Contract shall be submitted for resolution to ascending levels of management of the parties. If the dispute cannot be resolved after such negotiations, either party may pursue any appropriate legal recourse consistent with this Contract.
- (b) Pending any decision, judgment or settlement of any dispute, Contractor will proceed diligently with performing this Contract.

- (c) This Contract and any document to which it is appended shall be construed and enforced under the laws of Florida. Disputes will be adjudicated in Broward County, Florida. Each party shall be responsible for paying its own attorney's fees."

**10. INSPECTION AND ACCEPTANCE**

City may inspect the work and activities of the Contractor under this Contract in a reasonable and appropriate manner. Final inspection shall be at City's premises unless otherwise agreed in writing. Items rejected as not conforming to this order shall be, at the City's option, returned at Contractor's expense, including transportation and handling fees, or corrected or replaced by Contractor. Unless the Contractor removes, corrects or replaces the goods or services within the delivery schedule, City may require its delivery and make an equitable price reduction. City may also choose a refund of the amount paid under this Contract.

**11. INSURANCE**

*(This Article applies when the Contractor enters City-controlled premises.)*

- (a) Contractor agrees to, in the performance of work and services under this Purchase Order/Agreement, comply with all federal, state, and local laws and regulations now in effect, or hereinafter enacted during the term of this agreement that are applicable to Contractor, its employees, agents, or sub-consultants, if any, with respect to the work and services described herein.
- (b) Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as required by the City's Risk Manager before beginning work under this Purchase Order/Agreement. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the City's Risk Manager certificates of all insurance required under this section prior to beginning any work under this Agreement.
- (c) The following are required types and minimum limits of insurance coverage, which the Contractor agrees to maintain during the term of this contract:

**Limits**

Line of Business/ Coverage	OCC/A
Commercial General Liability	\$1,000,000

Including: Premises/Operations Contractual Liability Personal Injury, Explosion, Collapse, Underground Hazard Products/Completed Operations Broad Form Property Damage Cross Liability and Severability of Interest Clause.

Automobile Liability	\$1,000,000
Workers' Compensation & Employer's Liability	Statutory

- (d) The City reserves the right to require higher limits depending upon the scope of work under this Agreement.
- (e) Neither Contractor nor any subcontractors / sub-consultants shall commence work under this contract until they have obtained all insurance required under this section and have supplied the City with evidence of such coverage in the form of an insurance certificate and applicable endorsements (if any). The Contractor will ensure that all subcontractors / sub-consultants will comply with the above guidelines and will maintain the necessary coverages throughout the term of this Agreement.
- (f) All insurance carriers shall be rated at least A- VII per Best's Key Rating Guide and be licensed to do business in the State of Florida. "Occurrence" form policies are required.
- (g) Each carrier will give the City sixty (30) days' notice prior to cancellation.
- (h) The Contractor's liability insurance policies shall be endorsed to add the City of Tamarac as an "additional insured". The Contractor's Workers' Compensation carrier will provide a Waiver of Subrogation to the City.
- (i) The Contractor shall be responsible for the payment of all deductibles and self-insured retentions. The Contractor is responsible for disclosing any deductibles or self-insured retentions in excess of \$100,000. The City may require that the Contractor purchase a bond to cover the full amount of the deductible or self-insured retention.
- (j) If the Contractor is to provide professional services under this Agreement, the Contractor must provide the City with evidence of Professional Liability insurance with, at a minimum, a limit of \$1,000,000 per occurrence. "Claims-Made" forms are acceptable for Professional Liability insurance only.
- (k) Contractor shall indemnify and save the City harmless from any damage resulting to it for failure of either Contractor or any subcontractors / sub-consultants to obtain or maintain such insurance.

## 12. INDEMNIFICATION

- (a) The Contractor 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 Contractor or its officers, employees, agents, subcontractors, 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.

- (b) Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.
  - (1) The Contractor shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees (including appellate attorney's fees) and costs.
  - (2) City reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of Contractor under the indemnification agreement.
- (c) The City and Contractor recognize that various provisions of this Agreement, including but not limited to this Section, provide for indemnification by the Contractor and requires a specific consideration be given there for. The Parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by Contractor. Furthermore, the City and Contractor understand and agree that the covenants and representations relating to this indemnification provision shall serve the term of this Agreement and continue in full force and effect as to the City's and the Contractor's responsibility to indemnify.
- (d) Nothing contained herein is intended nor shall be construed to waive City's rights and immunities under the common law or Florida Statutes 768.28, as amended from time to time.
- (e) Nothing contained herein is intended nor shall be construed to waive City's rights and immunities under the common law or Florida Statutes 768.28, as amended from time.

## 13. NEW MATERIAL

Unless this Contract specifies otherwise, the Contractor represents that the supplies are new. If the Contractor believes that furnishing other than new material will be in the City's interest, the Contractor shall notify the Procurement and Contracts Manager in writing and request authority to use such material.

## 14. PUBLIC WORKS PROJECTS: UNITED STATES – PRODUCED IRON AND STEEL PRODUCTS

*(This Article applies to state funded projects.)*

In accordance with the requirements of F.S. §255.0993, Contractor certifies that the purchase of iron or steel for a public works project is produced in the United States except when any of the following conditions apply:

- (a) Iron or steel products produced in the United States are not produced in sufficient quantities, reasonably available, or of satisfactory quality.
- (b) The use of iron or steel products produced in the United States will increase the total cost of the project by more than 20 percent.
  - (1) Complying with this requirement is inconsistent with the public interest.
  - (2) When steel and iron materials are used in a public works project, and it does not prevent a minimal use of foreign steel and iron materials if:
    - i. Such materials are incidental or ancillary to the primary product and are not separately identified in the project specifications; and
    - ii. The cost of such materials does not exceed one-tenth of 1 percent of the total contract cost or \$2,500, whichever is greater. For purposes of this exemption, the cost of such materials is that shown to be the value of the iron or steel products as they are delivered to the project.
  - (3) Electrical components, equipment, systems, and appurtenances, including supports, covers, shielding, and other appurtenances related to an electrical system, necessary for operation or concealment, except transmission and distribution poles, are not considered iron or steel products and are exempt from the requirements.

**15. PAYMENT**

- (a) An invoice shall be submitted to the attention of City's Accounts Payable Department, unless otherwise specified, and shall contain this information: (i) Purchase Order number, (ii) item number, (iii) description of supplies or services, (iv) size, (v) quantity, (vi) unit price, (vii) extended totals and (viii) any other information which may be specified on the face of this Purchase Order.
- (b) City shall pay the Contractor, upon the submission of proper invoices, the prices stipulated in this Contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this Contract.
- (c) City shall make its best effort to make payments within the net 30-day period, unless otherwise specified in the Contract, measured from receipt of goods or service at the destination or the date of receipt of the invoice, whichever is later. Discount time periods will be measured from the same date. Payment shall be deemed to have been made on the date the check is mailed or on the date on which an electronic funds transfer was made. City will not be liable for or pay a surcharge, interest, or any penalty because of City's payment not being made within the net period specified in the Contract or the date of payment by electronic funds transfer.

- (d) Payment for goods or services under this paragraph will not waive or otherwise affect the right of City to inspect such goods or services or to reject, or revoke acceptance of, nonconforming goods.
- (e) Overpayments. If the Contractor becomes aware that City has overpaid on an invoice payment, the Contractor shall (i) Remit the overpayment along with a description of the overpayment to City's Accounts Payable Department including the (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment); (B) Affected contract number and delivery order number, if applicable; (C) Affected contract line item or subline item, if applicable; and (D) Contractor point of contact. (ii) Provide a copy of the remittance and supporting documentation to City Procurement and Contracts Manager.

**16. USE OF NAME**

Contractor agrees not to use the name, logos or trademarks of City or any member its staff or any sponsor in sales promotional work or advertising, or in any form of publicity, without the prior written permission of City.

**17. TITLE AND RISK OF LOSS**

- (a) Title to deliverables shall pass to City upon formal acceptance by City, regardless of when or where City takes physical possession, unless the Contract specifically provides for earlier passage of title.
- (b) Risk of loss shall pass to City until deliverables have been actually received and accepted by City at the destination specified. Contractor assumes all responsibility for packing, crating, marking, transportation and liability for loss or damage in transit, notwithstanding any agreement by City to pay freight, express or other transportation charges. Contractor agrees to trace lost or delayed shipments at the request of City.

**18. TAXES**

- (a) All prices included in the Contract are exclusive of any Federal, State or local taxes. The City is exempt from sales tax and federal excise taxes.

**19. STOP WORK**

- (a) City may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the City shall either—

- (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the termination for cause or termination for convenience provisions of paragraph 21. Termination.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. City shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, if—
- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, performing any part of this contract; and
  - (2) The Contractor asserts its right to the adjustment within 30 days after the period of work stoppage; provided, that, if the facts justify the action, City may receive and act upon a proposal submitted before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of City, City shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, City shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

## 20. TERMINATION

- (a) For Cause. City may terminate this Contract, or any part, for cause if any default occurs by the Contractor, or if the Contractor violates any Contract terms and conditions, or fails to provide City, upon request, with adequate assurances of future performance. In the event of termination for cause, City shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to City for such damages as would give City the benefit of the bargain, put City in the same position it would have been in if the Contractor had not breached the Contract and any and all rights and remedies provided by law. If it is determined that City improperly terminated this Contract for cause, such termination shall be deemed a termination for convenience.
- (b) For Convenience. City reserves the right to terminate this Contract, or any part, for its sole convenience. If such termination occurs, the Contractor shall immediately stop all work and shall immediately cause all of its subcontractors to cease work. Subject to the terms of this Contract, the Contractor shall be paid a percentage of the Contract price reflecting the percentage of the work performed prior to the notice of termination, plus

reasonable charges the Contractor can demonstrate to the satisfaction of City, using its standard record keeping system, have resulted from the termination. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

## 21. WARRANTY

In addition to the warranties set forth in the Contract, Contractor makes the following warranties. Contractor acknowledges that failure to comply with the warranties in the Contract will constitute a material breach of the Contract and City may terminate the Contract without damage, penalty, cost or further obligation.

- (a) General Warranties. Contractor agrees that the Services furnished under the Contract will be covered by the most favorable warranties Contractor gives to any customer for the same or substantially similar services, or such other more favorable warranties as specified in the Contract. The rights and remedies so provided are in addition to and do not limit any rights afforded to City by any other provision. Contractor expressly warrants all goods and services delivered under this Contract to be free from defects in material and workmanship and to be of the quality, size and dimensions ordered. This express warranty shall not be waived by reason of the acceptance of the goods or services or payment by City. The Contractor shall provide City with a copy of any standard warranty normally offered on a commercial product deliverable under this Contract. The commercial product warranty shall be deemed incorporated by reference and City shall be entitled to all rights under such warranty.
- (b) Permits and Licenses. Contractor agrees to procure all necessary permits and licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory and political subdivision or any other country in which the Services are provided.
- (c) Warranty and Use Right. Contractor warrants that Contractor has the right to use all intellectual property needed to provide Services.

## 22. OFFICIALS NOT TO BENEFIT

Employees or officials of the City shall not be permitted to any share or part of the Contract or any benefit that may arise therefrom. Contractor agrees not to provide any gratuity in any form, including entertainment, gifts, or otherwise, to any employee, buyer, agent, or representative of the City, with a view to securing a contract, or securing favorable treatment with respect to the award or amendment, or the making of any determination with respect to the performance of any contract.

## 23. ANTI-KICKBACK

By accepting this order, Seller attests that it has not paid kickbacks directly or indirectly to any City employee to obtain this or any other City Contract or to obtain favorable treatment in a City matter.

**24. BANKRUPTCY**

- (a) If the Contractor enters bankruptcy proceedings, whether voluntary or involuntary, the Contractor shall furnish written notification of the bankruptcy to City's Procurement and Contracts Manager within five days of initiating the proceedings. This notification will include the date on which the bankruptcy petition was filed and the identity of the court in which the bankruptcy petition was filed.
- (b) The Contractor shall to the maximum extent permitted by law: (1) continue to ensure that City has the right of access to all areas of the facilities and records involved in this order; and (2) provide City access to documents delivered in place or held at the Contractor's facility or provide electronic copies thereof. The Contractor shall ensure that the trustee, receiver, liquidator and court, knows of this access requirement.
- (c) These obligations remain in effect until final payment under this order.

**25. NO THIRD PARTY RIGHTS**

Nothing in this Contract is intended to make any person or entity that is not a signer to this Contract a third-party beneficiary of any right created by this Contract or by operation of law.

**26. SEVERABILITY**

If a provision of this Contract becomes, or is determined to be illegal, invalid, or unenforceable, that will not affect the legality, validity or enforceability of any other provision or of any portion of the invalidated provision that remains legal, valid, or enforceable.

**27. LIENS**

Contractor agrees that at any time upon request of City, Contractor will submit a sworn statement setting forth the work performed or material furnished by subcontractors and material men, and the amount due and to become due to each, and that before the final payment called for under this Contract, will upon City's request submit a complete set of vouchers showing what payments have been made for such work performed or material furnished. Contractor will promptly notify City in writing of any claims, demands, and causes of action, liens or suits brought to its attention that arises out of this Contract. City will not be obligated to make final payment until Contractor, if required, delivers to City a complete release of all liens arising out of this Contract, or receipts in full in lieu thereof, as City may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and materials for which a lien could be filed; but Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish bond satisfactory to City to indemnify it against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, Contractor will refund to all monies that City may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorneys' fees.

**28. COMPLIANCE WITH ALL LAWS**

The Contractor shall comply with all applicable laws, including those pertaining to customer records, privacy, OSHA, and discrimination.

**29. SCRUTINIZED COMPANIES**

In accordance with the requirements of F.S. §287.135 and F.S. §215.473, Contractor certifies that Contractor is not participating in a boycott of Israel. Contractor further certifies that Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in Iran Terrorism Sectors List, nor has Contractor been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the City will not contract for the provision of goods or services with any scrutinized company referred to above. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local government entity for goods or services of:

- (a) Any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or
- (b) One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:
  - (1) Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, created pursuant to Section 215.473, Florida Statutes; or
  - (2) Is engaged in business operations in Syria.
- (c) Submitting a false certification, or being placed on a list created pursuant to Section 215.473, Florida Statutes, relating to scrutinized active business operations in Iran after Contractor has submitted a certification, shall be deemed a material breach of contract. The City shall provide notice, in writing, to Contractor of the City's determination concerning the false certification. Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Contractor does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

**30. E-VERIFY**

In compliance with Section 448.095, Florida Statutes, Contractor and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021. Contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this Agreement. City, Contractor, or any subcontractor/subconsultant who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Florida Statutes, or the provisions of this section, shall terminate the contract with the person or entity. City, upon good faith belief that a subcontractor knowingly violated the provisions of this section; but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor. An agreement or contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any agreement or contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Florida Statutes Contractor acknowledges that upon termination of this Agreement by the City for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the City as a result of termination of any contract for a violation of this section. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section; requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

**31. PUBLIC RECORDS**

The City of Tamarac is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall: Keep and maintain public records required by the City in order to perform the service; Upon request from the City's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a

format that is compatible with the information technology systems of the City. During the term of the contract, the Contractor shall maintain all books, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The form of all records and reports shall be subject to the approval of the City's Auditor. The Contractor agrees to make available to the City's Auditor, during normal business hours and in Broward, Dade or Palm Beach Counties, all books of account, reports and records relating to this contract.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY CLERK, 7525 NW 88<sup>TH</sup> AVENUE, ROOM 101, TAMARAC, FL 33321, (954) 597-3505 CITYCLERK@TAMARAC.GOV.**

**32. ORDER OF PRECEDENCE**

To the extent there is inconsistency among any documents relating to this order, the inconsistency will be resolved in these order of priority:

- (a) The details specified on the City purchase order;
- (b) These General Provisions; and
- (c) Any other documents the parties agree to incorporate by reference.

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## **SECTION II – FEDERAL GRANT PROVISIONS**

If this Purchase Order Contract is issued under a U.S. Government grant, then the following provisions as contained in Appendix II of 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards is a part of this order.

### **1. CONTRACTUAL REMEDIES**

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

### **2. TERMINATION FOR CAUSE AND FOR CONVENIENCE**

All contracts in excess of \$10,000 must address termination for cause and for convenience by the Contractor including the manner by which it will be effected and the basis for settlement.

### **3. EQUAL EMPLOYMENT OPPORTUNITY**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

### **4. DAVIS-BACON ACT**

Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The Contractor must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The Contractor must report all suspected or reported violations to the Federal awarding agency. The

contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subcontractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Contractor must report all suspected or reported violations to the Federal awarding agency.

### **5. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the Contractor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

### **6. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the Contractor or subcontractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Contractor or subcontractor must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**7. CLEAN AIR ACT/FEDERAL WATER POLLUTION CONTROL ACT**

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**8. DEBARMENT AND SUSPENSION**

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**9. BYRD ANTI-LOBBYING AMENDMENT**

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**10. PROCUREMENT OF RECOVERED MATERIALS**

(a) A Contractor or subcontractor that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative

procurement program for procurement of recovered materials identified in the EPA guidelines.

(b) The Contractor or subcontractor should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

**11. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE EQUIPMENT OR SERVICES**

(a) Contractors and subcontractors are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain covered telecommunications equipment or services;
- (2) Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.

(b) As described in section 889 of Public Law 115-232, “covered telecommunications equipment or services” means any of the following:

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment;
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or

otherwise connected to, the government of a covered foreign country;

- (c) For the purposes of this section, "covered telecommunications equipment or services" also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- (d) In implementing the prohibition under section 889 of Public Law 115-232, heads of executive agencies administering loan, grant, or subsidy programs must prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained.
- (e) When the Contractor or subcontractor accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The Contractor or subcontractor is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.
- (f) For additional information, see section 889 of Public Law 115-232 and § 200.471.

**12. DOMESTIC PREFERENCES FOR PROCUREMENTS**

- (a) The Contractor or subcontractor should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards.

(b) For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- (c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

**13. OTHER TERMS AND CONDITIONS**

The Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall be provided with access to documents, papers and records directly pertinent to a specific program for audits, examinations, excerpts and transcriptions.

**14. ORDER OF PRECEDENCE**

To the extent there is inconsistency among any documents relating to this order, the inconsistency will be resolved in these order of priority:

- (a) Section II – Federal Grant Provisions;
- (b) The details specified on the City purchase order;
- (c) Section I – Standard Purchase Order Contract Terms and Conditions; and
- (d) Any other documents the parties agree to incorporate by reference.

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