

MASTER SERVICES AGREEMENT – OPERATIONS SUPPORT SYSTEM (OSS) AND BUSINESS SUPPORT SYSTEM (BSS) FOR FIBER NETWORK SERVICES

THIS MASTER SERVICES AGREEMENT FOR OSS AND BSS FOR FIBER NETWORK SERVICES ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City"), and **VENDOR**, a for-profit corporation duly organized in the state of [STATE] and authorized to do business in the state of Florida (EIN# [EIN NUMBER]) ("Vendor").

R E C I T A L S :

WHEREAS, on September [REDACTED], 2026, City issued a Request for Letters of Interest ("LOI") for the procurement of an operations support system/business support system (OSS/BSS) platform and related implementation services in support of its Ocala Fiber Network (OFN) enterprise, LOI No.: OFN/261147 (the "Solicitation"); and

WHEREAS, after submission of a responsive proposal, [AWARDED VENDOR] was selected as a finalist and awardee for the provision of said services; and

WHEREAS, City desires to contract with [AWARDED VENDOR] for the provision of a OSS/BSS platform and related implementation services pursuant to the terms and conditions set forth herein; and

WHEREAS, [AWARDED VENDOR] desires to furnish an OSS/BSS platform and related implementation services to the City and represents that it has sufficient expertise and resources to enable it to provide same.

NOW THEREFORE, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Vendor agree as follows:

T E R M S O F A G R E E M E N T :

1. **RECITALS.** City and Vendor hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The documents comprising the entire understanding between City and Vendor shall include only: (a) this Agreement; (b) those documents listed in this section as Exhibits to this Agreement; (c) the City's Solicitation for the Project and the proposal submitted by Vendor in response thereto (the "Solicitation Documents"); and (d) those documents identified in the Project Specifications section of this Agreement, if any (collectively the "Contract Documents").

A. **Exhibits to Agreement.** The Exhibits to this Agreement are as follows:

- Exhibit A:** **Scope of Services** (A-[REDACTED] through A-[REDACTED])
- Exhibit B:** **Project Schedule** (B-[REDACTED] through B-[REDACTED])
- Exhibit C:** **Vendor's Price Proposal** (C-[REDACTED] through C-[REDACTED])
- Exhibit D:** **Mutual Non-Disclosure Agreement** (D-[REDACTED] through D-[REDACTED])
- Exhibit F:** **Software License and Services Agreement** (F-[REDACTED] through F-[REDACTED])

B. The Contract Documents are incorporated herein by reference for all purposes. Any conflict between the terms of this Agreement and the Contract Documents shall be construed in favor

of this Agreement and the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the remaining Contract Documents.

3. **PROJECT OVERVIEW.** This project shall include phased services as more fully described in the attached **Exhibit A – Scope of Services** and subsequently issued Task Work Orders mutually negotiated by and between the City and Vendor for the deliverables set forth therein (collectively and interchangeably referred to as the “Services” and/or “Work”).

A. **Implementation Services.** Vendor agrees to do all things necessary for proper implementation of the OSS/BSS solution and to perform its implementation obligations hereunder in an orderly, skillful and expeditious manner, with sufficient labor and materials to ensure efficient and timely completion of such obligations.

- (1) If applicable, Vendor shall coordinate with the Project Manager all work with all other contractors and/or City personnel performing work to complete solution installation. The City shall be responsible for resolving all disputes relating to site access between Vendor and/or City personnel.
- (2) Vendor shall provide all materials necessary to properly implement the Solution. The
- (3) City shall attempt to provide reasonable working and secure storage space for the performance by Vendor of the implementation services described herein.
- (4) Unless otherwise agreed to by the City, and when required pursuant to an applicable Schedule, Vendor agrees as part of the implementation to perform all required services to successfully achieve all objectives set forth in the scope of services, including, but not limited to, (a) solution configuration; (b) interface development; (c) software testing; (d) acceptance and user acceptance testing; (e) training; (f) cooperating with all other Vendors that are supplying peripheral or ancillary equipment required for the use of the OSS/BSS solution; and (g) any additional services necessary to ensure Vendor's compliance with this Agreement.
- (5) When required pursuant to an applicable schedule, testing of the OSS/BSS solution shall consist of the tests described in the correlating Task Work Order which are to be conducted collectively by the Vendor and the City. The purpose of these tests is to demonstrate the complete operability of the solution in conformance with the requirements of the Agreement. This will include an actual demonstration of all required solution functionality. All tests shall be in accordance with test plans and procedures prepared by Vendor and previously approved by the City. In the event of any outstanding deficiencies at the conclusion of installation testing, as determined by the City, Vendor shall be responsible for instituting necessary corrective measures, and for subsequently satisfactorily demonstrating and/or re-demonstrating solution performance.

B. **Task Work Orders.** Vendor shall provide all Services and Work in the manner and within the schedules set forth in the Task Work Orders negotiated by and between the City and Vendor for the Work.

- (1) Each Task Work Order issued by the City shall, at a minimum, set forth the:
 - (a) scope of services for the individual project;
 - (b) time for performance;
 - (c) method and amount of compensation;

- (d) items to be provided to the City (the "Deliverables");
 - (e) material information regarding the Work to be performed;
 - (f) data that must be provided by the City to Vendor; and
 - (g) name and contact information for the City's Project Manager for the individual project.
- (2) Vendor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Agreement. Things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Vendor shall perform the same as though specifically mentioned, described, and delineated.
- (3) Vendor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services necessary for the completion of the Agreement. All Work and Services shall be accomplished at the direction of and to the satisfaction of the City's Project Manager.
- (4) City does not guarantee, warrant, or represent that any certain number of Task Work Orders will be assigned to Vendor under the terms of this Agreement and shall have the sole discretion to select the Task Work Orders, if any, that may be given to the Vendor.
- (5) City shall have no obligation to reimburse Vendor for services rendered outside of the scope of this Agreement or resulting Task Work Order unless and until City has given written approval of the work and the reimbursement.
- C. **Change of Scope of Services.** City may, at any time, make changes to the scope of the services provided and associated technical provisions.
- (1) Should any such change result in an increase or decrease in Vendor's quoted costs, upon Vendor's request and City's written authorization, an equitable adjustment shall be made in the contract price and a written amendment of said adjustment shall be made.
 - (2) Any claim by Vendor for an equitable adjustment shall be made in writing and delivered to City prior to proceeding with the additional services. No additional services shall be performed until written authorization is received from City.
 - (3) Nothing in this section shall excuse Vendor from proceeding with performance of its obligations under this Agreement in accordance with the original terms and conditions contained herein and any approved changes.
- D. **Vendor to Cooperate.** Should City undertake or award any other contracts for work related to the services provided by Vendor hereunder, Vendor agrees to fully cooperate with any such other vendors, employees, or independent contractors of City and to carefully fit its own work to conform with such additional work as may be necessary. Vendor shall not commit or permit any act which will interfere with the performance of work by any other vendor or independent contractor of City or any employee of City.
- E. **Use of Qualified Personnel.** Vendor shall utilize sufficient qualified personnel acceptable to the City to perform the Work under this Agreement. Vendor shall promptly remove any person from performing services as the City may request in writing and promptly replace such person with a person who shall be approved in writing by the City. Vendor agrees to include a similar provision in its agreements with any and all subcontractors.

- F. **Standard of Care.** Vendor shall perform all Work in a timely, efficient, competent, and cost-effective manner and in a manner that comports with the standards ordinarily exercised by reputable members of Vendor's profession. Vendor shall re-perform any services which fail to satisfy the foregoing standard of care at no additional cost to City. Vendor's standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement.
- G. **Assumptions, Parameters, Projections, Estimates, and Explanations.** Vendor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the City during solicitation and negotiation of this Agreement were provided for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the City makes no representations or guarantees; and the City shall not be responsible for the accuracy of the assumptions presented; and the City shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Vendor. The Vendor accepts all risk associated with using this information.
- H. **Proprietary Information and Rights.**
- (1) Vendor acknowledges that all computer software in the City's possession may constitute or contain information or materials which the City has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the City has developed at its own expense, the disclosure of which could harm the City's proprietary interest therein.
 - (2) Vendor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the City's property, any computer programs, data compilations, or other software which the City has developed, has used or is using, is holding for use, or which are otherwise in the possession of the City, other than that that may be the subject of this Agreement (hereinafter "Computer Software"). All third-party license agreements must also be honored by the Vendors and their employees, except as authorized by the City and, if the Computer Software has been leased or purchased by the City, all hired party license agreements must also be honored by the Vendors' employees with the approval of the lessor or Vendors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.
 - (3) Vendor will report to the City any information discovered or which is disclosed to the Vendor which may relate to the improper use, publication, disclosure or removal from the City's property of any information technology software and hardware and will take such steps as are within the Vendor's authority to prevent improper use, disclosure or removal.
 - (4) The Vendor hereby acknowledges and agrees that the City retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the City to the Vendor hereunder. The Vendor shall not, without the prior written consent of the City, use such documentation on any other project in which the Vendor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Vendor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not

be construed as publication in derogation of the City's copyrights or other proprietary rights.

- (5) Except as otherwise provided herein, the Vendor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder. Notwithstanding the foregoing, the Vendor hereby grants a limited, revocable, non-exclusive, non-transferable right and license to use all such Licensed Software and the associated specifications, technical data and other documentation for the operations of the City or entities controlling, controlled by, under common control with, or affiliated with the City, or organizations which may hereafter be formed by or become affiliated with the City.
 - (6) The City may only use Vendor's Proprietary Software for the City's own internal use for the term defined in the applicable Schedule, solely in connection with the City's own internal business activities. The City shall not, and shall not knowingly allow third parties, to: (i) download or copy Vendor's Proprietary Software or otherwise reproduce Vendor's Proprietary Software or any portion thereof, except as expressly authorized by Vendor (provided, however, that the City may download any reports or data), (ii) modify, reverse engineer, decompile, disassemble, or attempt to derive the source code of Vendor's Proprietary Software, (iii) permit, rent, sell, lease, assign, resell, license, sublicense, distribute or otherwise transfer the use of or access to Vendor's Proprietary Software for use by third parties, (iv) use Vendor's Proprietary Software for timesharing or service bureau purposes or otherwise for the benefit of a third party, or (v) create, write or develop any derivative technology or software program based on Vendor's Proprietary Software or any confidential information belonging to Vendor.
 - (7) Vendor retains ownership of Vendor's Proprietary Software and the Services and all related Intellectual Property Rights. Vendor reserves all rights not expressly granted to the City in this Agreement. The City recognizes that Vendor's Proprietary Software has substantial monetary value and is considered a trade secret containing confidential information belonging to Vendor. The City shall ensure that any identification labels or legal notices contained in any aspect of Vendor's Proprietary Software, if any, are not modified, suppressed or in any other way made inconspicuous. The City acknowledges that Vendor's Proprietary Software is at times dependent upon the operating system of the device and that not all features are available on all device operating systems.
4. **CONTRACT TERM.** The term of this Agreement shall commence upon the date of attestation by the City Clerk for the City of Ocala and will terminate **FIVE (5) YEARS** from that date, unless otherwise terminated as provided for in this Agreement. This Contract Term may be extended beyond the initial five-year term by mutual written agreement between the City and Vendor.
 5. **COMPENSATION.** The maximum aggregate compensation payable to Vendor for services rendered under this Agreement shall be **[NEED AMOUNT] AND NO/100 DOLLARS (\$NEED AMOUNT)** (the "Maximum Limiting Amount"), inclusive of any and all direct costs, indirect costs, and reimbursable expenses. The maximum limiting amount established under this Agreement shall not be exceeded without the City's express written approval as verified by amendment or change order to this Agreement.
 - A. **Payment Milestones.** It is expressly understood that Vendor is not entitled to the total amount of Compensation referenced above. Rather, Compensation shall be based on

satisfactory completion and delivery of the Work, up to the maximum limiting amount established herein.

- B. **Annual Maintenance and Support Services.** After the fifth year, the City may, at its discretion and provided that funding is available, continue annual maintenance and support services.
 - C. **Invoicing.** All invoices and related documentation submitted by Vendor shall include the City Contract Number, and assigned invoice number, and an invoice date. Vendor shall submit the original invoice through the responsible City Project Manager at: **Ocala Fiber Network**, Attn: **[NEED NAME AND ADDRESS]** E-mail: **[NEED E-MAIL]**.
 - (1) Vendor invoices shall be sufficiently detailed and adequately describe the work accomplished. City reserves the right to request additional documentation to support the charges reflected.
 - (2) All completed tasks must be approved and agreed upon by the City Project Manager before payment will be authorized.
 - D. **Suspension of Payment.** Should Vendor fail to perform the service required, and following written notification from City to Vendor in accordance with Florida's Prompt Pay Act, then City may, at its option, retain payment otherwise due until any service discrepancies are corrected. Repeated service discrepancies on behalf of the vendor shall entitle the City to terminate services in accordance with the Termination provisions set forth in this Agreement.
 - E. **City's Right to Withhold Payment.** In the event City becomes informed that any representations of Vendor provided in its billing are wholly or partially inaccurate, City may withhold payment for the value of the notified inaccuracy until the inaccuracy, and the cause thereof, is corrected. In the event City questions some element of an invoice, that fact shall be made known to Vendor immediately in writing. Vendor shall help effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by City shall be paid to Vendor in accordance with Florida's Prompt Pay Act.
 - F. **Excess Funds.** If due to mistake or any other reason Vendor receives payment under this Agreement in excess of what is provided for by the Agreement, Vendor shall promptly notify City upon discovery of the receipt of the overpayment. Any overpayment shall be refunded to City within **THIRTY (30)** days of Vendor's receipt of the overpayment or must also include interest calculated from the date of the overpayment at the interest rate for judgments at the highest rate as allowed by law.
 - G. **Amounts Due to the City.** Vendor must be current and remain current in all obligations due to the City during the performance of services under this Agreement. Payments to Vendor may be offset by any delinquent amounts due to the City or fees and/or charges owed to the City.
 - H. **Tax Exemption.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification Number is 59-60000392. Vendor shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will Vendor be authorized to use City's Tax Exemption Number for securing materials listed herein.
6. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond

its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, pandemic, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party ("Force Majeure"). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.

- A. The party affected by a force majeure event shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof as soon as it becomes aware.
 - B. When force majeure circumstances arise, the parties shall negotiate in good faith any modifications to the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution.
 - C. Vendor performance shall be extended for a number of days equal to the duration of the force majeure event. Vendor shall be entitled to an extension of time only and, in no event, shall Vendor be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.
7. **TERMINATION AND DEFAULT.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Document, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.
- A. **Termination by City for Cause.** This Agreement is critical to the City and City reserves the right to immediately cancel or annul the Agreement, in whole or in part, due to failure of Vendor to carry out any obligation term or condition of the Agreement. Cancellation shall be for acting or failing to act as in any of the following:
 - (1) failure to properly perform the Work in accordance with the Contract Documents and/or Task Work Orders;
 - (2) providing materials that do not meet the specifications set forth in the Agreement;
 - (3) failure to adhere to the timelines and schedules stipulated in the Task Work Orders;
 - (4) failure to make progress in the performance of the Agreement and/or otherwise gives the City reason to believe that Vendor cannot or will not perform to the requirements under the Agreement.
 - B. **Vendor's Opportunity to Cure Default.** City may, in its sole discretion, provide Vendor with an opportunity to cure the violations set forth in City's Notice of Default. Vendor shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Vendor to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.

- C. **Termination for Convenience.** City reserves the right to terminate this Agreement in whole or in part at any time for the convenience of City without penalty or recourse. Upon receipt of the City's written Notice of Termination for Convenience, Vendor shall immediately discontinue all work as directed in the Notice, provide notice to all subcontractors of the effective date of the termination, and minimize all further costs to City including, but not limited to, the placing of any and all orders for materials, facilities, or supplies, in connection with its performance under this Agreement. Vendor shall be entitled to receive compensation solely for: (1) the actual cost of the work completed in conformity with this Agreement; and/or (2) such other costs incurred by Vendor as permitted under this Agreement and approved by City.
- D. **Termination for Non-Funding.** In the event sufficient budgeted funds are not available or depleted, the City shall notify Vendor of such occurrence, and services shall terminate without penalty or expense to the City.
- 8. **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Vendor's performance. Any such evaluation will become public record.
- 9. **CONTRACT FULFILLMENT.** Vendors who enter into any agreement with the City of Ocala and fail to complete the contract term, for any reason, may be subject to future bidding suspension for **ONE (1) YEAR**, and up to a possible **THREE (3) YEAR** bid debarment for serious contract failures.
- 10. **COMMERCIAL AUTO LIABILITY INSURANCE.** Vendor shall procure, maintain, and keep in full force, effect, and good standing for the life of this Agreement a policy of commercial auto liability insurance with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage arising out of Vendor's operations and covering all owned, hired, scheduled, and non-owned automobiles utilized in said operations. If Vendor does not own vehicles, Vendor shall maintain coverage for hired and non-owned automobile liability, which may be satisfied by way of endorsement to Vendor's Commercial General Liability policy or separate Commercial Automobile Liability policy.
- 11. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Vendor shall procure, maintain, and keep in full force, effect, and good standing for the life of this Agreement a policy of commercial general liability insurance with limits not less than:
 - A. One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) aggregate for bodily injury, property damage, and personal and advertising injury;
 - B. One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) aggregate for products and completed operations;
 - C. Policy must include coverage for contractual liability and independent contractors;
 - D. The City, a Florida municipal corporation, and its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liabilities arising out of activities performed by or on behalf of Vendor. This coverage shall contain no special limitation on the scope of protection to be afforded to the City, its officials, employees, and volunteers.

12. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY COVERAGE.** Vendor shall procure, maintain, and keep in full force, effect, and good standing for the life of this Agreement adequate workers' compensation and employer's liability insurance covering all of its employees in at least such amounts as required by Chapter 440, Florida Statutes, and all other state and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable. Vendor shall similarly require any and all of its subcontractors to afford such coverage for all of its employees as required by applicable law. Vendor shall waive and shall ensure that Vendor's insurance carrier waives, all subrogation rights against the City of Ocala and its officers, employees, and volunteers for all losses or damages. Vendor's policy shall be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or its equivalent. **Exceptions and exemptions to this Section may be allowed at the discretion of the City's Risk Manager on a case-by-case basis in accordance with Florida Statutes and shall be evidenced by a separate waiver.**
13. **PROFESSIONAL LIABILITY AND/OR ERRORS AND OMISSIONS INSURANCE COVERAGE.** Vendor shall procure, maintain, and keep in full force, effect, and good standing - until the third anniversary of the expiration of this Agreement or the third anniversary of acceptance of work by City - professional liability or errors and omissions insurance coverage for wrongful acts in an amount not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) aggregate, exclusive of defense costs. It is recognized that this type of insurance is only available on a claims-made basis and additional insured endorsements are not available.
14. **CYBER LIABILITY INSURANCE.** Vendor shall procure and maintain coverage in an amount not less than One Million Dollars (\$1,000,000) per claim for the negligent retention of data as well as notification and related costs for actual or alleged breaches of data.
 - A. In the event that Vendor becomes aware of an Information Security incident, Vendor shall:
 - (1) Promptly notify the City, in writing, of the occurrence of such Information Security Incident, no more than 24 hours after becoming aware of said Information Security Incident;
 - (2) Investigate such Information Security Incident and conduct an analysis of the cause(s) of such Information Security Incident;
 - (3) Provide periodic updates of any ongoing investigation to the City;
 - (4) Develop and implement an appropriate plan to remediate the cause of such information Security Incident, to the extent that such cause is within Vendor or any of its affiliates or subcontractor's control;
 - (5) Vendor must delete and purge all Public Entity data after project completion, contract termination, etc.
 - B. Vendor shall provide:
 - (1) Notification to potentially affected persons;
 - (2) Credit monitoring services;
 - (3) Identification protection services;
 - (4) Establish and operate a call center;
 - (5) Notification to any and all regulatory authorities; and
 - (6) Other functions, services, or penalties as may be required by law.

15. DATA BREACH / PRIVACY LIABILITY INSURANCE

The Contractor shall maintain Data Breach / Privacy Liability Insurance with limits of not less than \$1,000,000 per claim and \$1,000,000 aggregate, covering liability arising from an actual or alleged breach of data security, unauthorized access to or disclosure of confidential or personal information, privacy violations, loss or theft of data, and failure to comply with applicable privacy and data protection laws.

Coverage shall include, as applicable, notification expenses, credit monitoring, forensic investigation, public relations/crisis management, regulatory defense and fines or penalties to the extent insurable by law, and costs associated with the restoration or recovery of compromised data.

The coverage shall remain in effect for the duration of the Contract and, where applicable, for any required extended reporting period following completion of the Contractor's services.

16. MISCELLANEOUS INSURANCE PROVISIONS.

- A. Vendor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by Vendor shall not be interpreted as limiting Vendor's liability or obligations under this Agreement. City does not in any way represent that these types or amounts of insurance are sufficient or adequate enough to protect Vendor's interests or liabilities or to protect Vendor from claims that may arise out of or result from the negligent acts, errors, or omissions of Vendor, any of its agents or subcontractors, or for anyone whose negligent act(s) Vendor may be liable.
- B. No insurance shall be provided by the City for Vendor under this Agreement and Vendor shall be fully and solely responsible for any costs or expenses incurred as a result of a coverage deductible, co-insurance penalty, or self-insured retention to include any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation.
- C. Certificates of Insurance. No work shall be commenced by Vendor under this Agreement until the required Certificate of Insurance and endorsements have been provided nor shall Vendor allow any subcontractor to commence work until all similarly required certificates and endorsements of the subcontractor have also been provided. Work shall not continue after expiration (or cancellation) of the Certificate of Insurance and work shall not resume until a new Certificate of Insurance has been provided. **Vendor shall provide evidence of insurance in the form of a valid Certificate of Insurance (binders are unacceptable) prior to the start of work contemplated under this Agreement to: City of Ocala. Attention: Procurement & Contracting Department, Address: 110 SE Watula Avenue, Third Floor, Ocala Florida 34471, E-Mail: vendors@ocalafl.org.** Vendor's Certificate of Insurance and required endorsements shall be issued by an agency authorized to do business in the State of Florida with an A.M. Best Rating of A or better. The Certificate of Insurance shall indicate whether coverage is being provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- D. City as an Additional Insured. The City of Ocala shall be named as an Additional Insured and Certificate Holder on all liability policies identified in this Section with the exception of Workers' Compensation and Professional Liability policies.

- E. Notice of Cancellation of Insurance. Vendor's Certificate of Insurance shall provide **THIRTY (30) DAY** notice of cancellation, **TEN (10) DAY** notice if cancellation is for non-payment of premium. In the event that Vendor's insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of Vendor to provide the proper notice. Such notification shall be in writing by registered mail, return receipt requested, and addressed to the certificate holder. Additional copies may be sent to the City of Ocala at vendors@ocalafl.org.
 - F. Failure to Maintain Coverage. The insurance policies and coverages set forth above are required and providing proof of and maintaining insurance of the types and with such terms and limits set forth above is a material obligation of Vendor. Vendor's failure to obtain or maintain in full force and effect any insurance coverage required under this Agreement shall constitute material breach of this Agreement.
 - G. Severability of Interests. Vendor shall arrange for its liability insurance to include, or be endorsed to include, a severability of interests/cross-liability provision so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.
15. **NO EXCLUSIVITY.** It is expressly understood and agreed by the parties that this is not an exclusive agreement. Nothing in this Agreement shall be construed as creating any exclusive arrangement with Vendor or as prohibiting the City from acquiring similar, equal, or like goods and/or services or from executing additional contracts with other entities or sources.
16. **PUBLIC RECORDS.** The Vendor shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, the Vendor shall:
- A. Keep and maintain public records required by the public agency to perform the service.
 - B. Upon request from the public agency'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 Chapter 119, Florida Statutes, or as otherwise provided by law.
 - C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Vendor does not transfer the records to the public agency.
 - D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Vendor or keep and maintain public records required by the public agency to perform the service. If the Vendor transfers all public records to the public agency upon completion of the contract, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the contract, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.
 - E. A contractor who fails to provide public records to City within a reasonable time may be subject to penalties under section 119.10, Florida Statutes.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK, 110 SE WATULA AVENUE, OCALA FLORIDA 34471; TELEPHONE: 352-629-8266; E-MAIL: clerk@ocalafl.org.

17. **AUDIT.** Vendor agrees to maintain such financial and other records as may be prescribed by the City or by applicable federal and state laws, rules, and regulations. Vendor shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
18. **PUBLICITY.** Vendor shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
19. **PUBLIC ENTITY CRIMES.** As provided in Section 287.133(2)(a), Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or Vendor under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO, for a period of 36 months from the date of being placed on the convicted vendor list.
20. **DRUG FREE WORKPLACE CERTIFICATION.** If not already completed during the solicitation process, in compliance with section 287.087, Florida Statutes, Vendor shall, prior to the commencement of work under this Agreement, execute the City's Drug Free Workplace Certification and it shall thereafter be deemed to be included as part of this Agreement.
21. **NON-DISCRIMINATORY PRACTICES.** Vendor, for itself, its delegates, successors-in-interest, and assigns, and as part of the consideration hereof, does hereby covenant and agree that in the furnishing of Services to the City under this Agreement, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in regard to this Agreement on the basis of race, color, religion ancestry, national origin, sex, pregnancy, age, disability, sexual orientation, gender identity, marital or domestic partner status, familial status, or veteran status. Vendor further covenants and agrees that it shall comply with all existing requirements concerning discrimination imposed by any and all applicable local, state, and federal rules, regulations, or guidelines and as such rules, regulations, or guidelines may from time to time be amended.
22. **E-VERIFY.** Pursuant to section 448.095, Vendor shall register with and use the U.S. Department of Homeland Security's ("DHS") E-Verify System, accessible at <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all newly hired employees. Vendor shall obtain affidavits from any and all subcontractors in accordance with paragraph 2(b) of section 448.095, Florida Statutes, and maintain copies of such affidavits for the duration of this Agreement. By entering into this Agreement, Vendor certifies and ensures that it utilizes and will continue to utilize the DHS E-Verify System for the duration of this Agreement and any subsequent renewals of same.

Vendor understands that failure to comply with the requirements of this section shall result in the termination of this Agreement and Vendor may lose the ability to be awarded a public contract for a minimum of one (1) year after the date on which the Agreement was terminated. Vendor shall provide a copy of its DHS Memorandum of Understanding upon City's request. Please visit www.e-verify.gov for more information regarding the E-Verify System.

23. **INDEPENDENT CONTRACTOR STATUS.** City expressly acknowledges Vendor is an independent contractor, and nothing in this Agreement is intended nor shall be construed to create an agency relationship, an employer/employee relationship, a joint venture relationship, or any other relationship allowing the City to exercise control or discretion over the manner or method by which Vendor performs hereunder.
24. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
25. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
26. **INDEMNITY.** Vendor shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from damages, claims, losses, costs, and expenses, including attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of negligent errors, acts, or omissions by Vendor and contemplated by this Agreement to the extent allowed by section 725.08, Florida Statutes, and to the extent that the services rendered pursuant to the Agreement were services of a "Design Professional" as defined in section 725.08(4), Florida Statute, including without limitation, harm or personal injury to third persons during the term of this Agreement.
27. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
28. **NOTICES.** All notices required or permitted under this Agreement shall be given in writing and shall be deemed sufficiently served if delivered by registered or certified mail, with return receipt requested; or delivered personally; or delivered via electronic mail (as provided below) and followed with delivery of a hard copy. All notices shall be addressed to the respective parties as follows:

If to Vendor:

[INSERT VENDOR CONTACT INFORMATION]

If to City of Ocala:

Jameel Barnes, Contracting Officer

City of Ocala
110 SE Watula Avenue, Third Floor
Ocala, Florida 34471
Phone: 352-629-8343
Email: notices@ocalafl.org

Copy to:

William E. Sexton, Esq., City Attorney
City of Ocala
110 SE Watula Avenue, Third Floor
Ocala, Florida 34471
Phone: 352-401-3972
E-mail: cityattorney@ocalafl.org

29. **ATTORNEYS FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by the attorney to the prevailing party.
30. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
31. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
32. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or

the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.

33. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all who shall be bound by the provisions hereof.
34. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
35. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
36. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both of the parties to this Agreement.
37. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
38. **ELECTRONIC SIGNATURE(S).** Vendor, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this agreement. Further, a duplicate or copy of the agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original agreement for all purposes.
39. **ENTIRE AGREEMENT.** This Agreement, including those documents referenced in the Contract Documents section of this Agreement, constitute the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this agreement. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
40. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on _____.

ATTEST

CITY OF OCALA

Angel B. Jacobs
City Clerk

Ire Bethea, Sr.
City Council President

Approved as to form and legality:

VENDOR NAME

William E. Sexton, Esq.
City Attorney

(Name of Authorized Signatory)

(Title of Authorized Signatory)