

## APPENDIX 08.

### TERMS AND CONDITIONS FOR PURCHASE ORDERS

1. **DEFINITIONS:** "County" shall mean Highlands County, a political subdivision of the State of Florida and the term "Contractor" means the person, firm or corporation from whom the goods or services have been ordered.

2. **ELECTRONIC/FACSIMILE TRANSMISSION:** If this Purchase Order is fully executed and is transmitted by fax or by other means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to the Contractor.

3. **AGREEMENT:** This purchase order, when properly signed and bearing a purchase order number, including these terms and conditions; the applicable specifications; the referenced solicitation document and executed agreement (as applicable), constitute the sole and entire Agreement between the parties hereto. Contractor certifies that the offer has been made by an officer or employee having the authority to bind the Contractor. Contractor's acceptance of this purchase order is limited to the terms and conditions hereof, and written confirmation, commencing performance, or making deliveries hereunder constitutes such acceptance. No terms stated by Contractor in accepting or acknowledging this order shall be binding upon County unless accepted in writing by County. No course of prior dealings between the parties and no usage of the trade shall be a relevant supplement or explain any of the terms or conditions hereof.

4. **MODIFICATIONS:** This Agreement can be modified or rescinded only in writing when issued by an authorized County representative. County reserves the right to change specifications and delivery dates. Any difference in price required by such changes shall be equitably adjusted and this Agreement shall be modified in writing accordingly.

5. **ASSIGNMENT:** No right or interest in this Agreement shall be assigned by Contractor without the written permission of County and no delegation of any obligation owed by either County or Contractor shall be made without the written permission of either party.

6. **TIME IS OF THE ESSENCE:** Failure to deliver goods and services of the quality and quantity and within the time(s) specified by this order shall, at option of County, relieve County of any obligation to accept and pay for such goods and services as well as any undelivered shipments if any; and upon failure to deliver as specified, County may buy like goods/services elsewhere and charge Contractor with any increased cost or other loss incurred thereon pursuant to Chapter 672 of the Florida Statutes, unless deferred shipment is agreed to by County in writing. Any failure by County to exercise its option with respect to any shipment of goods and services shall not be deemed to constitute a waiver with respect to subsequent shipments. This provision is not in lieu of, and County does not waive, any remedies provided by law.

7. **TERMINATION FOR CONVENIENCE:** The County, at its sole discretion, reserves the right to terminate this Agreement without cause upon ten (10) days written notice. Upon receipt of such notice, the Contractor shall not incur any additional costs under this Agreement. The County shall be liable only for reasonable costs incurred by Contractor prior to its receipt of the notice of termination.

8. **TERMINATION FOR DEFAULT:** The County reserves the right to terminate this Agreement, in part or in whole, or place the Contractor on probation in the event the Contractor fails to perform in accordance with the terms of this Agreement. The County further reserves the right to suspend or debar the Contractor in accordance with the appropriate County ordinances, resolutions and/or administrative orders. The Contractor will be notified by letter of the County's intent to terminate. In the event of termination for default, the County may procure the required goods and services from any source and use any method deemed to be in its best interest. All re-procurement costs shall be borne by Contractor.

9. **AGREEMENT EXTENSION:** The County reserves the right to exercise its option to extend this Agreement for up to one hundred-eighty (180) calendar days beyond the current Agreement period and will notify the Contractor in writing of the extension. This Agreement may be extended beyond the initial one hundred-eighty (180) day extension period upon mutual agreement between the County and the Contractor upon approval by the Board of County Commissioners.

10. **CONTINGENCIES AND FORCE MAJEURE:** Performance of any obligation under this Agreement may be suspended by either party without liability, to the extent that an act of God, war, riot, fire, explosions, accidents, floods, sabotage, inability to obtain fuel or power, governmental laws, regulations, or orders, or any other cause beyond the reasonable control of such party, or labor trouble, strike, lockout, or injunction (whether or not such labor event is within the reasonable control of such party) delays, prevents, restricts, or limits the performance of this Agreement. The affected party shall invoke this provision by promptly notifying the other party of the nature and estimated duration of the suspension period. At County's option, the Agreement may be terminated or modified. If the County fails to modify the Agreement within thirty (30) days of receipt of notification from the Contractor, the Agreement lapses with respect to any deliveries affected.

11. **PERFORMANCE DURING EMERGENCY:** By entering into this Agreement, Contractor agrees and promises that, during and after a public emergency, disaster, hurricane, flood, or acts of God, the County shall be given "first priority" for all goods and services under this Agreement. Contractor agrees to provide all goods and services to the County during and after the emergency at the terms, conditions, and prices as provided in this Agreement on a "first priority" basis. Contractor shall furnish a 24-hour phone number to the County in the event of such an emergency. Failure to provide the stated priority during and after an emergency shall constitute a breach of contract and make the Contractor subject to sanctions from doing further business with the County.

12. **PRICE PROTECTION:** Contractor warrants that the price(s) set forth herein is/are equal to the lowest net price, and the terms and conditions of sale as favorable or better, as the price(s), terms, and conditions afforded by Contractor to any other customer for goods and services of comparable grade or quality during the term hereof.

13. **DISCOUNT:** Discount will be computed from the date of satisfactory delivery, acceptance, or from receipt of correct invoice, whichever is the latter.

14. **SALES PROMOTIONS/PRICE REDUCTIONS:** Should sales promotions occur during the term of the Agreement that lower the price of the procured item, the Contractor shall extend to the County the lower price offered by the manufacturer of any such promotional item. Further, any price decreases effectuated during the contract period by reason of market change or otherwise, shall be passed on to the County. Additionally, anytime after the Agreement is entered into by the parties, the Contractor may offer a reduced price which shall remain in effect for the duration of the Agreement.

15. **TAXES:** County is a non-profit governmental operation and not subject to federal excise or state sales tax.

16. **FISCAL YEAR FUNDING APPROPRIATION:** (a) Specified period: Unless otherwise provided by law, a purchase order for supplies or services may be entered into for any period of time deemed to be in the best interest of County, provided the term of the purchase order and conditions of renewal or extension, if any, are included in the solicitations and funds are available for the initial fiscal period of the purchase order. Payment and performance obligations for succeeding fiscal periods shall be subject to annual appropriations by the Board of County Commissioners (governing body). (b) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the purchase order shall be canceled and Contractor shall be entitled to reimbursement for the reasonable value of any work performed to the date of cancellation.

17. **PROMPT PAYMENT:** County abides by Florida Statute Chapter 218 with respect to all matters relating to the payment of Contractors. In accordance with said statute, County's terms

are Net 30 days from receipt of a proper invoice. In addition, County's exposure relative to outstanding balances is limited to a maximum of 1% per month and 12% per annum maximum for any amount unpaid or in dispute.

18. **QUANTITY:** The quantities of goods/services as indicated on the face hereof, must not be exceeded without prior written authorization from County. Excess quantities may be returned to Contractor at Contractor's expense.

19. **PACKAGING AND CARTAGE:** No charge will be allowed for packing, boxing, or cartage, unless agreed upon at the time of purchase, but damage to any goods not packed to insure proper protection to same will be charged to Contractor. County's order number, part number, and quantity shipped will be marked, tagged, or provided on each package and bill of lading. County's count will be accepted as final and conclusive on any shipment not accompanied by itemized packing slip. Delay in or non-receipt of packing list, statements, or invoices in the number of copies specified or errors or omissions of any of these will be just cause for withholding payment without loss of cash discount privilege.

20. **FREIGHT:** Unless the Purchase Order expressly states otherwise, all goods shall be shipped FOB Destination: the "Ship to" location designated in the Purchase Order. Risk of loss shall not pass to County until goods called for in this Purchase Order actually have been received and accepted by the County at the destination specified herein. Contractor assumes full responsibility for packing, crating, marking, transportation and liability for loss and/or damage even if County has agreed to pay freight, express or other transportation charges. Contractor's responsibility is inclusive of its use of any third-party couriers.

21. **INVOICES:** Terms are Net 30. Invoices must be mailed to the ship to address, or included with the shipment.

22. **INSURANCE:** Contractor shall furnish to County Certificates of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- (a) Workers' Compensation Insurance for all employees of the Contractor as required by Florida Statute 440. The policy must include Employers Liability with a limit of \$100,000 for each accident, \$500,000 disease (policy limit), and \$100,000 disease (each employee).
- (b) General Liability Insurance on a comprehensive basis in an amount not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. County must be shown as an additional insured with respect to this coverage.
- (c) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$500,000.00 combined single limit per occurrence for bodily injury and property damage.

22.1. **INSURANCE COMPANY RATING:** All required insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications: The company must be rated no less than "A-" as to management and no less than "Class VII" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, New Jersey.

22.2. **CERTIFICATES OF INSURANCE MUST MEET THE FOLLOWING REQUIREMENTS:**

- (a) Certificate must indicate that no modification or change in insurance shall be made without thirty (30) days written advance notice to certificate holder.
- (b) Certificate must indicate the County's Purchase Order or Contract Number.
- (c) Signature of agent must be included.
- (d) If Automotive Liability Insurance is required, insurance must be provided for all of the following vehicles:
  - (i) Owned
  - (ii) Non-owned
  - (iii) Hired
- (e) If General or Public Liability Insurance is required, Certificate of Insurance must show Highlands County as an additional insured for that coverage.
- (f) Certificate Holder must read exactly as presented below:  
Highlands County, a political subdivision of the State of Florida, its Elected Officials, Agents, and Volunteers  
800 S. Commerce Ave., Sebring, Florida 33870

22.3. Contractor shall ensure that the Certificates of Insurance required in conjunction with this section remain in full force for the term of the Contract, including any renewal or extension periods that may be exercised by the County. If the Certificate(s) of Insurance is scheduled to expire during the term of the Contract, Contractor shall submit new or renewed Certificate(s) of Insurance to the County a minimum of ten (10) calendar days before such expiration.

22.4. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificates are received by the County in the manner prescribed herein. If such suspension exceeds 30 calendar days, the County may, at its sole discretion, terminate the Contract for cause and the Contractor shall be responsible for all direct and indirect costs associated with such termination.

23. **PROPRIETARY/CONFIDENTIAL INFORMATION:** Contractor is hereby notified that all information submitted as part of, or in support of this Agreement will be available for public inspection pursuant to Chapter 119 of the Florida Statutes; popularly known as the "Public Record Law." Contractor shall not submit any information in connection with this Agreement that Contractor considers to be a trade secret, proprietary or confidential. The submission of any information to the County in connection with this Agreement shall be deemed conclusively to be a waiver of any trade secret or other protection, which would otherwise be available to the Contractor.

24. **PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF A PUBLIC AGENCY:** The Contractor shall comply with the State of Florida Public Records Law, s. 119.0701, F.S., specifically to: (1) keep and maintain public records that ordinarily and necessarily would be required by the public agency to perform the service; (2) provide the public with access to public records on the same terms and condition that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Contractor upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. If the Contractor does not comply with a public records request, the public agency shall enforce contract provisions in accordance with the Agreement.

25. **INSPECTION:** County shall have a reasonable time after delivery within which to inspect the goods. Goods rejected will, at Contractor's expense, be returned to Contractor or otherwise disposed of as Contractor shall reasonably request. The cost of inspection of goods rightfully rejected shall be charged to Contractor. If reasonable inspection disclosed that part of the goods received are defective or nonconforming, County shall have the right to cancel any unshipped

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portion of the order. Payments for the goods on this order prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that County may have against Contractor. The making or failure to make any inspection of, or payment for or acceptance of, the goods, shall in no way impair County's right to reject non-conforming goods, recover damages, or exercise any other remedy to which County may be entitled; notwithstanding, County's knowledge of the non-conformity, its substantiality, or the ease of its discovery.

**26. WARRANTY:** All warranties express and implied, shall be made available to the County for goods and services covered by this agreement. Contractor warrants to County (a) that the goods/services shall be of the quality specified or of the best grade of their respective kinds if no quality is specified, shall conform to the specifications, drawings, samples, and other descriptions contained herein or as stated in the solicitation document and to representation made by Contractor or its representatives; (b) that at the time the goods/services are accepted by County, the goods/services shall have been produced, sold, delivered, and furnished in strict compliance with any and all applicable federal and state laws, regulations, acts, rules, local ordinances; labor agreements, and (c) that the goods/services furnished hereunder are free of any claims or liens of whatever nature whether rightful or otherwise, of any person, corporation, partnership, or association. At no expense to the County, the Contractor shall correct any and all apparent and latent defects that may occur within the manufacturer's standard warranty. All materials, except where recycled content is specifically requested, supplied by the Contractor under the Agreement shall be new, warranted for their merchantability, and fit for the particular purpose herein. In the event any of the materials supplied to the County by Contractor are found to be defective or do not conform to specifications: (1) the materials may be returned to the Contractor at its expense and the Agreement terminated or (2) the County may require the Contractor to replace the materials at its expense.

**27. INDEMNIFICATION:** Contractor shall indemnify and hold harmless the County and its officers, employees, elected officials, appointed officials, attorneys and agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, elected officials, appointed officials, attorneys and agents may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Agreement by Contractor or its employees, agents, partners, principals or subcontractors. Contractor shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may be incurred thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, elected officials, appointed officials, attorneys and agents as herein provided.

**28. PATENT/COPYRIGHT INDEMNIFICATION:** Contractor shall pay all royalties and assume all costs arising from the use of any invention, design, process, materials, equipment, product or device which is the subject of patent rights and copyrights. Contractor agrees at its own expense, to hold harmless and to defend County and its agents against any claims, suits, or proceedings brought against County for patent infringement occasioned by the manufacture, sale, or use of material supplied under this order and to indemnify County against any damages occasioned by such claims whether justified or unjustified.

**29. LAWS AND REGULATIONS:** The Contractor shall comply with all laws and regulations applicable to provide the goods and services specified in this Agreement. The Contractor shall comply with all federal, state and local laws that may affect the goods and services specified by this Agreement.

**30. LICENSES, PERMITS AND FEES:** The Contractor shall hold all licenses and certifications, obtain and pay for all permits and inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and fines imposed on the County or Contractor resulting from Contractor's failure to obtain and maintain required licenses, certifications, permits and inspections shall be borne by Contractor.

**31. ANTITRUST LAWS:** Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

**32. NO THIRD PARTY BENEFICIARY:** No provision in this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or Contractor.

**33. TOXIC SUBSTANCES/FEDERAL "RIGHT TO KNOW" REGULATIONS:** The Federal "Right to Know" Regulation implemented by the Occupational Safety and Health Administration (OSHA) requires employers to inform their employees of any toxic substances which they may be exposed to in the workplace, and to provide training in safe handling practices and emergency procedures. It also requires notification to local fire departments of the location and characteristics of all toxic substances regularly present in the workplace. Accordingly, the Contractor shall provide two (2) complete sets of Material Safety Data Sheets to each County Department utilizing products provided by Contractor. This information should be

**34. BANKRUPTCY:** The County reserves the right to terminate this Agreement, if, during the term of any Agreement the Contractor has with the County, the Contractor becomes involved as a debtor in bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

**35. SURVIVAL:** The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation of this Agreement. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration of the Agreement.

**36. WAIVER:** No waiver by either Contractor or County with respect to any breach or default of or with respect to any provisions or conditions of this Agreement shall be deemed to constitute a continuing waiver of any other breach or default of or with respect to the same or any other provision or condition of this Agreement. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

**37. GOVERNING LAW AND VENUE:** The Agreement, including appendices, and all matters relating to the validity, interpretation, and performance of this Agreement (whether in contract, statute, tort, or otherwise) shall be governed and construed in accordance with the laws of the State of Florida. Venue for any legal action shall lie in Highlands County, Florida.

**38. EQUAL OPPORTUNITY EMPLOYER:** County is an Equal Employment Opportunity (EEO) employer and as such encourages Contractor to voluntarily comply with EEO regulations with regards to gender, age, race, veteran status, country of origin, and creed. In addition, Contractor or anyone under its employ shall comply with all applicable rules, regulations, and promulgations thereby pertaining to the avoidance or appearance of sexual harassment or on the job discrimination. Contractor shall maintain a work environment free of discrimination or unwelcome action of a personal nature. Any sub-contracts entered into shall make deference to this clause with the same degree of application being encouraged. When applicable, Contractor shall comply with all new state and federal EEO regulations.

**39. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA):** Any person or entity that performs or assists the County with a function or activity involving the use or disclosure of "individually identifiable health information (IH)" and/or Protected Health Information (PHI) shall comply with HIPAA. HIPAA mandates for privacy, security and electronic transfer standards that include but are not limited to:

- a. Use of information only for performing services required by the Agreement or required by law;
- b. Use of appropriate safeguards to prevent non-permitted disclosures;
- c. Reporting to the County of any non-permitted use or disclosure;
- d. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to Contractor and reasonable assurances that IH/PHI will be held confidential;
- e. Making PHI available to the customer;
- f. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer; and
- g. Making internal practices, books and records related to PHI available to the County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission. The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

**40. RIGHT TO AUDIT RECORDS:** County shall be entitled to audit the fiscal books and records of Contractor to the extent that such books and records relate to the performance of the purchase order or any supplement to the purchase order. Such books and records shall be maintained by Contractor for a period of three (3) years from the date of final payment under the purchase order, unless a longer or shorter period is otherwise authorized in writing by County.