

TERMS AND CONDITIONS

(Services)

Effective 9/19/2025

1. **Applicability of Terms and Conditions.** These Terms and Conditions shall **NOT** apply to:
 - a. procurement of products and services for which the City and Contractor have a pre- existing written agreement.
 - b. procurement of construction services.
 - c. procurement of architectural, engineering, surveying or landscape architectural services (professional services under CCNA).

ALL CONSTRUCTION SERVICES AND PROFESSIONAL SERVICES MUST BE PROCURED BY SEPARATE CONTRACT. PAYMENT WILL NOT BE MADE BY CITY WITHOUT A SEPARATE SIGNED AGREEMENT.

The following terms and conditions are applicable to this Purchase Order entered into by and between the City of Gainesville, Florida (“CITY”) and Vendor (“Contractor”).

2. **PRECEDENCE.** These Terms and Conditions will govern the obligations of the Parties notwithstanding any other terms provided by the Contractor. The City shall not be bound by any other terms, including terms contained in a quote from the Contractor, unless both parties have executed a separate written agreement for purchases in which case the terms, conditions and specifications of the separate agreement shall take precedence. In the event that this Purchase Order is a result of Contractor’s response to a solicitation, the terms, conditions, specifications and pricing of the solicitation shall take precedent. Acceptance of the Purchase Order constitutes acceptance of all conditions stated herein.
3. **ACCEPTANCE.** Acceptance is limited to the provisions set forth in this order including these terms and conditions and those on the face hereof or incorporated herein by reference. Contractor’s performance of any work or shipment of any materials covered by this order without having received the City’s express written assent to modification of or addition to the terms hereof shall constitute Contractor’s acceptance of these terms despite any language to the contrary in Contractor’s quotation, acknowledgement, confirmation or other communication made in response to this order, and such action by the Contractor shall constitute a waiver of any such language. The City’s silence or acceptance of any work performed or materials shipped shall in no event be deemed the City’s acceptance of any terms contained in the Contractor’s quotation, acknowledgement, confirmation or other communication received from the Contractor which are different from or in addition to the terms hereof.
4. **DELIVERY.** Shipment shall be F.O.B. Gainesville unless otherwise stated. Time is of the essence in the filling of this order. No delays in shipment of equipment or materials or rendition of services will be permitted except as authorized by the City in writing. Please notify the City at once of anticipated delay. Excessive or unusual transportation charges caused by Contractor’s inability to perform by specified date and in specified quantities shall be charged to Contractor. No additional charges (including shipping and handling) will be accepted or paid unless specifically stated as a line item on the face of this purchase order.
5. **DELAY.** Notwithstanding the delivery schedule, the City shall have the right to delay the delivery for up to three months as necessary or desirable and such delay shall not be deemed a breach of contract, but the delivery schedule shall be extended for a period equivalent to the time lost by reason of the City's delay. If the project for which the delivery is required is stopped or delayed for more than three

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months, either in whole or in substantial part, and either the City or Contractor elects to terminate this Purchase Order because of such delay, and if such stoppage or delay is due to actions taken by the City within its control, Contractor's sole remedy under the Purchase Order will be reimbursement for costs reasonably expended in preparation for or in performance of the work to the date of termination.

6. **CONTRACTOR'S ASSURANCES.** Contractor covenants, represents, and warrants to the City that the following are true and correct in all material respects:
- a. Contractor shall timely fulfill all the conditions of this Purchase Order that are in the control of Contractor and are the responsibility of Contractor.
 - b. During the period in which the obligations of Contractor pursuant to this Purchase Order are in effect, Contractor shall cause to occur and to continue to be in effect those instruments, documents, certificates, and events contemplated by this Purchase Order that are applicable to, and the responsibility of, Contractor.
 - c. Contractor is a validly existing legal entity, authorized to do business in the State of Florida. Contractor has all requisite power and authority to carry on its business as now conducted and to enter into and perform its obligations of this Purchase Order and each instrument required to be executed by Contractor pursuant to this Purchase Order, and consents to service of process in the State of Florida by entering into this Purchase Order.
 - d. This Purchase Order and each document required to be executed by Contractor pursuant to this Purchase Order has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, Contractor, and neither the execution and delivery nor the compliance with the terms and provisions thereof: (i) requires the approval of any other party, except as has been obtained or noted herein; (ii) contravenes any law, judgment, governmental rule, regulations, or order binding on Contractor; or (iii) results in any default under or creates any lien upon any property of Contractor.
 - e. This Purchase Order and each document to be executed by Contractor pursuant to this Purchase Order constitutes a legal, valid, and binding obligation of Contractor, enforceable against Contractor, in accordance with the Purchase Order's terms except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws which affect creditor's rights generally and subject to usual equitable principles if equitable remedies are invoked.
 - f. To the best knowledge of Contractor, there are no pending or threatened actions before any court or administrative agency against Contractor that: (i) question the validity of this Purchase Order; or (ii) are likely to materially adversely affect this Purchase Order or the financial condition of Contractor.
 - g. The goods and services supplied by Contractor to the City pursuant to this Purchase Order will fully conform to the specifications set forth in the Purchase Order, will be of the highest quality, and will be free from latent and patent defects in materials, workmanship, and title, and will be free from defects in design. In addition, the goods and services supplied by Contractor to the City pursuant to this Purchase Order are suitable for, and will perform in accordance with, the purpose for which they are purchased, fabricated, manufactured, and designed or for such other purposes as are expressly specified in this Purchase Order. In the event the City, in the City's sole discretion, determines that any product or services supplied pursuant to this

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Purchase Order is defective or does not conform to the specifications set forth in the Purchase Order, the City may: 1) return any nonconforming or defective items to the Contractor or require correction or replacement of the item at the time the defect is discovered, all at the Contractor's sole risk and expense; and/or 2) unilaterally cancel an order or terminate this Purchase Order upon written notice [and an opportunity to cure if applicable] to the Contractor, and reduce commensurately any amount of money due the Contractor. The City's acceptance of any product or services shall not relieve the Contractor of its responsibility as provided herein.

- h. The Contractor shall take every necessary precaution against damage to the goods, services, or work, from any cause whatsoever, required by Contractor pursuant to this Purchase Order until final acceptance by the City. Contractor will rebuild, repair, restore, or make good at Contractor's sole expense damages to any portion of the goods, services, or work before its completion and final acceptance by the City. Failure to do so will be at Contractor's own risk. Contractor is not relieved of any requirement of the specifications on the plea of error.

- 7. **WARRANTY.** In addition to any warranty implied by law or fact, and any other express warranties, Contractor expressly warrants all items to be free from defects in design, workmanship, and materials; to conform strictly to applicable specifications, drawings, approved samples, if any; and to be fit and sufficient for the purpose intended and to be merchantable. Such warranties, together with all other service warranties of Contractor, shall run to the City. All warranties shall survive inspection, test acceptance of and payment by the City.
- 8. **WARRANTY-PRICE.** Contractor warrants that the City shall not be billed at prices higher than stated on this purchase order unless authorized by the City in writing. Contractor represents that the prices charged for the goods and services covered by this order are the lowest prices charged by the Contractor to buyers of a class similar to the City under conditions similar to those specified in this order and the prices comply with applicable government regulations in effect at the time of quotation, sale or delivery. Contractor agrees that any price reduction made in terms covered by this order subsequent to the placement of this order will be applicable to this order. Contractor agrees that no additional charges (including shipping and handling) will be accepted or paid unless specifically stated as a line item on the face of this purchase order.
- 9. **INDEPENDENT CONTRACTOR.** In the performance of this Purchase Order, Contractor will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venture, or associate of the City. Contractor cannot create any obligation or responsibility on behalf of the City or bind City in any manner. The City cannot create any obligation or responsibility on behalf of Contractor or bind Contractor in any manner. Policies and decisions of the Contractor, which are used in its performance of this Purchase Order, shall not be construed to be the policies or decisions of the City. Each party is acting for its own account and has made its own independent decisions to enter into this Purchase Order and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that none of the other parties hereto is acting as a fiduciary for or an adviser to it in respect of this Purchase Order or any responsibility or obligation contemplated herein. Contractor further represents and acknowledges that no one was paid a fee, commission, gift, or other consideration by Contractor as an inducement to entering into this Purchase Order. Contractor shall be considered an independent contractor and as such shall not be entitled to any right or benefit to which City employees are or may be entitled to by

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reason of employment. Contractor shall be solely responsible for the means, method, techniques, sequences, and procedures used by Contractor in the full performance of this Purchase Order.

10. INSURANCE.

- a. During the term of this Purchase Order, Contractor shall maintain minimum insurance as follows:

Workers' Compensation insurance	Coverage in compliance with Chapter 440, Florida Statutes
Public Liability insurance (other than automobile) consisting of broad form comprehensive general liability insurance including contractual coverage	\$1,000,000.00 per occurrence combined single limit for bodily injury and property damage
Automobile Liability insurance	\$500,000.00 per occurrence for BI/PD combined single limit for bodily injury and property damage, including hired/non-owned vehicles regardless of number of passengers transported

- b. Prior to the Effective Date of this Purchase Order, Contractor shall provide to City a certificate of insurance certifying such insurance and naming City as additional insured (except the City is not an additional insured for Workers' Compensation coverage) and that City will be notified in writing at least thirty (30) days before any such insurance is canceled or materially changed.
- c. Insurance must be written by a company licensed to do business in the State of Florida and satisfactory to the City.

11. INDEMNIFICATION.

Contractor agrees to and shall defend at Contractor's expense (subject to City's right to choose counsel or defend itself), pay on behalf of, hold harmless, and indemnify the City, its elected and appointed officials, officers, employees, and agents (collectively, "Indemnified Parties") from and against any and all liabilities, judgments, losses, claims, demands, damages, fines, fees, expenses, liens, penalties, suits, proceedings, actions, and cost of actions (collectively, "Claims"), whether or not a lawsuit is filed, including but not limited to costs, expenses, and reasonable attorneys' fees for trial and on appeal, which Claims of any kind and nature are alleged or found to have arisen out of or to be in any way connected with any of the following, in whole or in part, directly or indirectly:

- a. The Contractor's or its agents', employees', partners', or subcontractors' performance of or obligations under this Purchase Order.
- b. The failure of Contractor or its agents, employees, partners, or subcontractors to comply or conform with any applicable laws, including all applicable federal, state, and local laws, statutes, rules, regulations, and ordinances, the federal and state constitutions, and the orders and decrees of lawful authorities having jurisdiction over the matter at issue.

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- c. Any negligent act or omission of the Contractor or its agents, employees, partners, or subcontractors, whether or not such negligence is claimed or found to be solely that of the Contractor or its agents, employees, partners, or subcontractors or claimed or found to be in conjunction with the negligence of others, including but not limited to that of any of the Indemnified Parties.
- d. Any reckless or intentional wrongful act or omission of the Contractor or its agents, employees, partners, or subcontractors.

The provisions of this section are independent of, and will not be limited by, any insurance required to be obtained by the Contractor pursuant to this Purchase Order or otherwise obtained by the Contractor, and this section will survive the termination or expiration of this Purchase Order with respect to any Claims or liability arising in connection with any event occurring prior to such termination or expiration.

12. **LIMITATION OF LIABILITY.** The City and Contractor each hereby acknowledges and agrees that it is sophisticated and prudent in business transactions and proceeds at its own risk under advice of its own counsel and advisors and without reliance on the other party. To the fullest extent permitted by law, the City shall not be liable for any incidental, consequential, punitive, exemplary, or indirect damages, lost profits, revenue, or other business interruption damages, including but not limited to, loss of use of equipment or facility. This section will survive the termination or expiration of this Purchase Order.
13. **SOVEREIGN IMMUNITY.** Nothing in this Purchase Order may be interpreted as a waiver of the City's sovereign immunity, as granted under section 768.28, Fla. Stat., or otherwise.
14. **ANTI-DISCRIMINATION.** Contractor shall not discriminate based on race, color, religion, gender, national origin, marital status, sexual orientation, age, disability, or gender identity, or undertake any other unlawful forms of discrimination in the performance of this Purchase Order. Contractor understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of the Purchase Order. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
15. **E-VERIFY.** The Contractor shall comply with all applicable requirements of section 448.095, Fla. Stat., including but not limited to: 1) the Contractor shall register with and use the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees of the Contractor during the term of this Purchase Order; and 2) the Contractor shall expressly require any subcontractors performing work or providing services pursuant to this Purchase Order to likewise register with and use the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees of the subcontractor during the term of this Purchase Order. Section 448.095, Fla. Stat., states the statute must be construed in a manner that is fully consistent with any applicable federal laws or regulations, and therefore this section does not apply to this Purchase Order to the extent that this section would be inconsistent with any federal laws or regulations that are applicable to this Purchase Order.
16. **ANTI-HUMAN TRAFFICKING.** On or before the Effective Date of this Purchase Order and, in addition, on or before the effective date of each renewal or extension of this Purchase Order, the Contractor

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shall provide the City with an affidavit, pursuant to section 787.06(13), Fla. Stat., which is signed by an officer or a representative of the Contractor under penalty of perjury attesting that the Contractor does not use coercion for labor or services as those terms are defined in section 787.06(13), Fla. Stat. This Section applies only to Contractors that are nongovernmental entities.

- 17. SCRUTINIZED COMPANIES OR ENTITIES.** Section 287.135, Fla. Stat., prohibits the City from: 1) contracting with companies or entities for goods or services in an amount of one hundred thousand dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company or entity is on the Scrutinized Companies or Other Entities that Boycott Israel List, created pursuant to section 215.4725, Fla. Stat., or is engaged in a boycott of Israel as that term is defined in section 215.4725, Fla. Stat.; and 2) contracting with companies or entities for goods or services in an amount of 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 or entity is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Terrorism Sector List, created pursuant to section 215.473, Fla. Stat., or is engaged in business operations, as that term is defined in section 287.135, Fla. Stat., in Cuba or Syria. The Contractor hereby certifies that none of the above-listed situations exist or otherwise prevent the Contractor from entering into this Purchase Order with City.

In addition and pursuant to section 287.135, Fla. Stat., the City may terminate this Purchase Order if the City has determined, in the City's sole discretion using credible information available to the public, that the Contractor: 1) has submitted a false certification as may be required by subsection 287.135(5), Fla. Stat.; 2) has been engaged in business operations, as that term is defined in section 287.135, Fla. Stat., in Cuba or Syria; 3) has been placed on a list created pursuant to section 215.473, Fla. Stat., relating to scrutinized active business operations in Iran or the Scrutinized Companies with Activities in Sudan List; 4) has been placed on the Scrutinized Companies or Other Entities that Boycott Israel List created pursuant to section 215.4725, Fla. Stat.; or 5) is engaged in a boycott of Israel as that term is defined in section 215.4725, Fla. Stat. The City shall bring a civil action against the Contractor in accordance with subsection 287.135(5), Fla. Stat., for any Contractor violation of the certification requirements provided in subsection 287.135(5), Fla. Stat.

18. TERMINATION.

- a. For Cause. Either City's or Contractor's failure to comply with their respective obligations contained in this Purchase Order will be a material breach of this Purchase Order ("Default"). The non-defaulting party shall provide written notice of Default to the defaulting party ("Notice of Default"). The defaulting party will have thirty (30) calendar days from the effective date of the Notice of Default, as determined by the "Notices" section of this Purchase Order, to cure such Default ("Initial Cure Period"). In the event the nature of the Default is such that it cannot reasonably be cured within such Initial Cure Period, then the cure period will be extended in writing, so long as the defaulting party has commenced to cure such Default within said Initial Cure Period and the defaulting party diligently undertakes and pursues such cure to completion ("Extended Cure Period"). The defaulting party must provide the non-defaulting party with documentation evidencing that the defaulting party is diligently undertaking and pursuing such cure to completion. The foregoing notwithstanding, all monetary Defaults will be deemed capable of cure within thirty (30) calendar days. During the Initial Cure Period or any Extended Cure Period where the Contractor is the defaulting party, the City may suspend any payment

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otherwise payable pursuant to this Purchase Order until the Default has been cured. Upon the defaulting party's failure to cure such Default within the Initial Cure Period or any Extended Cure Period, as applicable, the non-defaulting party may choose to immediately terminate this Purchase Order in writing and without prejudice to any other rights or remedies the non-defaulting party may have pursuant to law or equity. The non-breaching party may pursue all remedies available at law.

Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Purchase Order by the Contractor, and the City may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

- b. Without Cause. Either party may terminate this Purchase Order without cause upon thirty (30) calendar days' written notice to the other party. In the event of such termination, the City will compensate Contractor for any services rendered through the effective date of the termination. Contractor will not be entitled to overhead and profit for the unperformed portion of the Purchase Order.
- c. Loss of Funding. In the event City funding for any reason becomes unavailable, the City may terminate this Purchase Order by giving at least twenty-four (24) hours' prior written notice to the Contractor. The City will be the final authority as to the availability of funds. The Contractor will be compensated for services rendered through the effective date of the termination.

19. COMPLIANCE WITH LAWS AND REGULATIONS. Contractor agrees to comply with all federal, state and local laws and regulations applicable to the production, sale and delivery of the goods or the furnishing of any labor or services called for by this order, and any provisions required thereby to be included herein shall be deemed to be incorporated herein by reference.

20. CLEAN UP. If work is performed on City property, work shall not be considered complete until all rubbish and unused material due to, or connected with, the work are removed and the premises are left in a safe and tidy condition.

21. PAYMENT. The City shall make payment in accordance with the Local Government Prompt Payment Act, Sections 218.70 et. seq., Florida Statutes. Contractor will be paid electronically as an electronic funds transfer (EFT). The City's payment terms are net forty-five (45) days from receipt of complete and correct invoice. Contractor shall not submit more than one (1) invoice per thirty-day period.

Invoicing: Contractor is responsible for invoicing the City for goods or services provided pursuant to this purchase order. Itemized invoices shall be addressed to the City of Gainesville, and shall include the following information (if applicable): invoice date, invoice number, purchase order number, description of the goods or services or property provided to the City, part or item number for each item or part delivered, location and date of delivery of the goods or services or property to the City, quantity of the goods or services or property provided to the City, unit price of the goods or services or property provided to the City, extended total price of the goods or services or property provided to the City, and all applicable charges and discounts. The invoice must not include sales tax.

The invoice(s) must be mailed or emailed as follows:

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City of Gainesville Accounts Payable PO Box 490, MS 15

Gainesville, FL 32627-0490 cityap@cityofgainesville.org Phone: 352-334-5057

22. **FUNDING.** The obligations of the City as to any funding required pursuant to this Agreement shall be limited by an obligation in any given year to budget and appropriate from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available non- ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.
23. **DISPUTES.** Except as otherwise provided in this Purchase Order, any dispute concerning a question of fact or of interpretation of a requirement of the Purchase Order which is not disposed of by mutual consent between the parties shall be administratively decided by the City Manager or designee, who shall reduce the decision to writing and furnish a copy thereof to the parties. In connection with any dispute proceeding under this clause, each party shall be afforded an opportunity to be heard and to offer evidence in support of its version of the facts and interpretation of the Purchase Order. The City Manager or designee shall make such explanation as may be necessary to complete, explain, or make definite the provisions of this Purchase Order. Pending the final decisions of a dispute hereunder, Contractor shall proceed diligently with its performance of the Purchase Order in accordance with the preliminary directions of the City Manager or designee. Administrative dispute resolution under this section shall be a condition precedent to bringing a suit to resolve a contract dispute.
24. **PUBLIC RECORDS.** Florida has a very broad public records law and certain records of the Contractor may be subject to the Florida Public Records Act (Chapter 119, Fla. Stat.). By entering into this Purchase Order with the City, the Contractor acknowledges that it will comply with this section and that failure by Contractor to comply with this section is a breach of this Purchase Order and the City may pursue all available remedies. A request to inspect or copy any public records, as defined in section 119.011(12), Fla. Stat., relating to this Purchase Order must be made directly to the City. If the City does not possess the requested public records, the City shall immediately notify the Contractor of the request and the Contractor shall, within a reasonable duration of time, either provide the records to the City or allow the records to be inspected or copied. In addition, the Contractor shall:
- a. Keep and maintain all public records required by the City to perform the service.
 - b. Upon request from the City's custodian of public records, provide the City 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 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 this Purchase Order and following completion or termination of this Purchase Order if the Contractor does not transfer the records to the City.
 - d. Upon completion or termination of this Purchase Order, transfer to the City 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

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completion or termination of this Purchase Order, 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 or termination of this Purchase Order, 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.

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 PURCHASE ORDER, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 352-334-5015, clerks@gainesvillefl.gov, or Office of the City Clerk, P.O. Box 490, Station 19 Gainesville, FL 32627-0490.

25. **DISCLOSURE and CONFIDENTIALITY.** Florida's Public Records Act, chapter 119, Fla. Stat., includes numerous exemptions to the general requirement to disclose information to the public in response to a public records request. Exemptions are found in various provisions of the Florida Statutes, including but not limited to section 119.071, Fla. Stat. (General exemptions from inspection or copying of public records), and section 119.0713, Fla. Stat. (Local government agency exemptions from inspection or copying of public records). Section 815.045, Fla. Stat. (Trade secret information), provides that trade secret information as defined in section 812.081, Fla. Stat. (Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty) is confidential and exempt from disclosure because it is a felony to disclose such records. The Parties understand and agree that Florida's Public Records Act is very broad and that documents claimed by a Party to be confidential and exempt from public disclosure pursuant to the Public Records Act may in fact not be deemed such by a court of law. Accordingly, the following provisions shall apply:

- a. Identifying Trade Secret or Otherwise Confidential and Exempt Information. For any records or portions thereof that Contractor claims to be Trade Secret or otherwise confidential and exempt from public disclosure under the Public Records Act, Contractor shall:
 - i. Specifically identify the records or specific portions thereof that are confidential and exempt and reference the particular Florida Statute that grants such status. Provide one redacted copy of the record and one copy of the record with the confidential and exempt information highlighted. Contractor shall take care to redact only the confidential and exempt information within a record.
 - ii. Provide an affidavit or similar type of evidence that describes and supports the basis for Contractor's claim that the information is confidential and exempt from public disclosure.
- b. Request for Trade Secret or Otherwise Confidential and Exempt Information.
 - i. In the event the City receives a public records request for a record with information labeled by Contractor as Trade Secret or otherwise as confidential and exempt, the City will provide the public record requester with the redacted copy of the record and will notify Contractor of the public records request.
 - ii. However and notwithstanding the above, in the event that the City in its sole discretion finds no basis for Contractor's claim that certain information is Trade Secret or otherwise

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confidential and exempt under Florida's Public Records Act, then the City shall notify Contractor in writing of such conclusion and provide Contractor a reasonable amount of time to file for declaratory action requesting a court of law to deem the requested information as Trade Secret or otherwise as confidential and exempt under Florida's Public Records Act. If Contractor fails to file for declaratory action within the reasonable amount of time provided, then the City will disclose the information requested.

- iii. If a public records lawsuit is filed against the City requesting public disclosure of the information labeled by Contractor as Trade Secret or otherwise as confidential and exempt, the City shall notify Contractor and Contractor shall intervene in the lawsuit to defend the nondisclosure of such information under Florida's Public Records Act.
- iv. Contractor hereby indemnifies and holds the City and its officers and employees harmless from any and all liabilities, damages, losses, and costs of any kind and nature, including but not limited to attorney's fees, that arise from or are in any way connected with Contractor's claim that any information it provided to the City is Trade Secret or otherwise confidential and exempt from public disclosure under Florida's Public Records Act.

26. INTELLECTUAL PROPERTY AND WORK PRODUCT.

- a. Ownership and Publication of Materials. All reports, information, data, and other materials prepared by the Contractor pursuant to the Purchase Order, except those separately identified in the Scope of Services or in other written agreements between the Parties, are owned by the City. The City has the exclusive and unrestricted authority to release, publish, or otherwise use, in whole or in part, information contained therein and relating thereto. No material produced in whole or in part under the Purchase Order may be copyrighted or patented in the United States or in any other country without prior written approval of the City.
- b. Intellectual Property. Contractor warrants that it owns or has rights to use any and all intellectual property used for the scope of this Purchase Order, including patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes, or products of a particular manufacturer expressly required by the City. Contractor represents and warrants that Contractor shall not infringe a trademark, copyright, patent, trade secret, or any such intellectual property right in the performance of this Purchase Order. In the event of an infringement suit related to or resulting from this Purchase Order, Contractor shall promptly give written notice to the City of the infringement and Contractor represents and warrants that City will not be liable for any damages or royalties if applicable.

27. RECORDS AND RIGHT-TO-AUDIT. Contractor shall maintain records sufficient to document completion of the scope of services established by the Purchase Order, including: 1) financial records and reports relating to use of funding; 2) books, records, documents, invoices, and other evidence and accounting procedures and practices such as will permit the Contractor to sufficiently and properly reflect all direct costs of any nature associated with this Purchase Order; and 3) records sufficient to document Contractor's performance under this Purchase Order. These records shall be subject at all reasonable times to review, inspect, copy, and audit by persons duly authorized by the City. These records shall be kept for a minimum of three (3) years after termination of the Purchase Order. Records that relate to any litigation, appeals, claims, or settlements of claims arising from performance under this Purchase Order shall be made available until a final disposition has been made of such litigation,

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appeals, or claims. This right to audit and inspect includes a right to interview any employees and clients of the Contractor to be assured of satisfactory performance of the terms and conditions of this Purchase Order.

28. **OPEN DATA POLICY.** Contractor shall comply with the City's Open Data (G-8) policy. See <https://cityofgainesville.github.io/opendata/Open%20Data%20Administrative%20Procedure.pdf>
29. **ADVERTISING.** Contractor shall not publicly disseminate any information concerning this Purchase Order without prior written approval from City, including but not limited to, mentioning the Purchase Order in a press release or other promotional material, identifying the City as a reference, or otherwise linking Contractor's name and either a description of the Purchase Order or the name of the City in any material published, either in print or electronically, to any entity that is not a party to the Purchase Order, except potential or actual authorized distributors, dealers, resellers, or service representatives.
30. **APPLICABLE LAW AND VENUE; ATTORNEYS' FEES; WAIVER OF RIGHT TO JURY TRIAL.** This Purchase Order is governed by and must be construed in accordance with the laws of the State of Florida, notwithstanding any Florida conflict of law provision to the contrary. In the event of any suit, action, or other proceeding relating to this Purchase Order, venue shall be in Alachua County, Florida, for any state or federal court action and each party agrees not to assert by way of a motion or a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper.
- In the event of any legal proceedings arising from or related to this Purchase Order: (1) each Party shall bear its own attorneys' fees except to the extent that Contractor agrees to indemnify City as described in this Agreement, including any appeals; and (2) for civil proceedings, the Parties hereby waive the right to jury trial.
31. **SEVERABILITY.** Any provision of this Purchase Order held by a court of competent jurisdiction to be invalid, illegal, or unenforceable will be severable and may not be construed to render the remainder of this Purchase Order to be invalid, illegal, or unenforceable.
32. **INTEGRATION/MERGER.** This Purchase Order, including the Terms and Conditions of the City, contains the entire contract and understanding of the Parties regarding the matters set forth herein and supersedes all previous negotiations, discussions, and understandings, whether oral or written, regarding such matters. The Parties acknowledge that they have not relied on any promise, inducement, representation, or other statement made in connection with this Purchase Order that is not expressly contained in this Purchase Order. The terms of this Purchase Order are contractual and not merely recital.
33. **MODIFICATION AND WAIVER.** The provisions of this Purchase Order may only be amended, modified, or waived in writing signed by all the Parties. No course of dealing shall be deemed a waiver of rights or a modification of this Purchase Order. The failure of any party to exercise any right in this Purchase Order shall not be considered a waiver of such right. No waiver of a provision of this Purchase Order will apply to any other portion of this Purchase Order. A waiver on one occasion may not be deemed to be a waiver on other occasions.

TERMS AND CONDITIONS

(Services)

Effective 9/19/2025

34. **CAPTIONS AND SECTION HEADINGS.** Captions and section headings used herein are for convenience only and shall not be used in construing this Purchase Order.
35. **SUCCESSORS AND ASSIGNS.** The Parties to this Purchase Order may not assign, transfer, or subcontract any interest in this Purchase Order without the prior written consent of the other Parties. The Parties each bind the others and their respective successors and assigns in all respects to all the terms, conditions, covenants, and provisions of this Purchase Order.
36. **NONEXCLUSIVE CONTRACT.** Nothing in this Purchase Order shall be construed to prohibit the City from awarding, authorizing, or directing work to be performed, whether identified in this Purchase Order or otherwise, to vendors other than Contractor.
37. **NONEXCLUSIVE REMEDIES.** Except as expressly set forth in this Purchase Order, the exercise by either Party of any of its remedies under this Purchase Order shall be without prejudice to its other remedies under this Purchase Order or otherwise.
38. **THIRD PARTY BENEFICIARIES.** This Purchase Order does not create any relationship with, or any rights in favor of, any third party.
39. **TIME.** Time is of the essence for this Purchase Order, and Contractor shall complete all obligations and responsibilities by the respective dates specified within this Purchase Order. In computing time periods of fifteen (15) days or less, Saturdays, Sundays, and state or national legal holidays are excluded. Time periods of more than fifteen (15) days will be computed based on calendar days. Whenever a notice or performance is to be done on a Saturday or Sunday or on a legal holiday observed by the City, it will be postponed to the next business day.
40. **FORCE MAJEURE.** Delays in any performance due to: fire, flood, earthquake, windstorm, or sinkhole; war, declaration of hostilities, revolt, civil strife, altercation, or commotion; strike or labor dispute; epidemic; archaeological excavation; or because of an act of God are deemed to be events of Force Majeure and such delays are excused in the manner herein provided. If such party is delayed for any of the events of Force Majeure, the date required for actions required will be extended by the number of calendar days equal to the total number of calendar days, if any, that such party is actually delayed. The party seeking excuse for nonperformance on the basis of Force Majeure shall give written notice to the other party specifying the cause of the anticipated delay, giving its actual or anticipated duration, and weekly thereafter, if such delay is continuing, written notice stating whether the condition continues and giving its actual or then anticipated duration. Each party seeking excuse from nonperformance on the basis of Force Majeure shall use its best efforts to rectify conditions causing a delay and will cooperate with the other party, except for the occurrence of unreasonable additional costs and expenses, to overcome any loss of time that has resulted.