

CONTRACT

Between the City of Tallahassee ("City") and Eli Roberts & Sons, Inc. ("Contractor")

CONTRACT NO. 4258

SUBJECT OF CONTRACT: Bulk Automotive Oils/Fluids for the Maintenance and Repair of Fleet Equipment

CONTRACT AMOUNT:

- | | |
|--|---|
| <input type="checkbox"/> Exact Amount: \$ _____
<input type="checkbox"/> Not To Exceed (NTE): \$ _____
<input checked="" type="checkbox"/> Estimate Only (EST): <u>\$132,124.50</u> | <input type="checkbox"/> Exact Amount: \$ _____
(Subject to allowed adjustments as specified elsewhere in the contract.) |
|--|---|

LINE ITEMS AWARDED: All

CONTRACT TERM:

The performance period ("Term") of the resultant contract will be as follows:

- (a) Basic Term: Five (5) Year Term is effective upon full execution of this contract.
- (b) Extension Period(s): Two (2), 3 – Year Extensions (See Section 5.16)

CONTACT PERSONNEL	
Contract Administrator: Keith Milton Telephone Number: (850) 891-8289 Email: keith.milton@talgov.com	Technical Representative: Eddie Tyer Telephone Number: (850) 891- 5663 Email: eddie.tyer@talgov.com
FOR CITY OF TALLAHASSEE INTERNAL USE ONLY	
Type of Contract (Check One) <input type="checkbox"/> Firm Fixed Price <input checked="" type="checkbox"/> Fixed Price w/Economic Price Adjustment Type of Quantity Delivery (Check One) <input type="checkbox"/> Definite Quantity <input type="checkbox"/> Indefinite Quantity <input checked="" type="checkbox"/> Requirements	Type of Contract Award (Check One) <input checked="" type="checkbox"/> Single Award <input type="checkbox"/> Split Award <input type="checkbox"/> Multiple Award
Approval Level: <u>City Commission</u>	Approval Date: <u>June 20, 2018</u>

TABLE OF CONTENTS

This contract incorporates the following documents and sections in full text, unless stated elsewhere in the contract as incorporated by reference. Any inconsistency in the contract shall be resolved by giving precedence in the following order:

INCLUDED	DESCRIPTION
Contract Cover (Pages 1 and 2)	Contract Between the City and Contractor
Section 1	Price Schedule
Section 2	Representations/Certifications
Section 3	Statement of Work/Specifications
Section 4	Contract Management
Section 5	Miscellaneous Contract Clauses
Section 6	Attachments to Contract

CERTIFICATION OF CONTRACTOR

In response to the solicitation, I, the undersigned representative of the named contractor, hereby certify and represent as follows --

1. That I have read and examined the solicitation in full and all attachments thereto, and that I have satisfied myself with respect to any questions I have regarding the solicitation; and
2. That I am duly authorized by the named contractor to execute the bid and associated contract intending to bind the contractor to the City as stated in those documents; and
3. That, if awarded the subject contract, the contractor will satisfactorily perform all work under that contract in strict accordance with its terms and conditions.

CONTRACT EXECUTION

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed by their duly authorized representatives, effective as of the commencement of the performance period ("Term") set forth on page 1 of this contract.

City of Tallahassee

Contractor

(By) Andre Libroth
(Signature)

(By) Josh Roberts
(Signature)

Andre Libroth
Manager for Procurement Services

Josh Roberts, VP 7/12/18
(Print/Type Name, Title and Date)

Attest
(City Representative)

Approved As To Form:
(City Attorney)

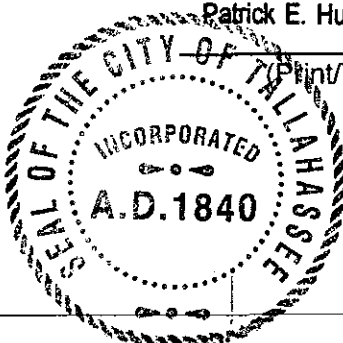
(By) James O. Cooke, IV
(Signature)

(By) Patrick E. Hurley
(Signature)

James O. Cooke, IV
City Treasurer-Clerk

Patrick E. Hurley, Senior Assistant City Attorney
(Print/Type Name, Title and Date)

8-2-18
Execution Date



SECTION 1 - PRICE SCHEDULE

(This page must be submitted with bid and shall become an integral part of the resultant contract.)

Bidder Name: Eli Roberts & Sons, Inc.

THE CONTRACTOR AGREES --

To furnish the supplies and/or services, awarded in whole or in part by the City, at the price set for each item offered by the Contractor, in accordance with the terms and conditions of the contract.

PRICE RELATED FACTORS

1. The price set for each item is a "Fixed Price with Economic Price Adjustment " price, and inclusive of all labor, supervision, materials, supplies, equipment, tools, transportation, handling, assessments, fees, and taxes, etc., unless any of these factors are listed below as a separate line item.
2. Delivery shall be "F.O.B. Destination". Unless freight/handling fees are listed below as a separate line item, the price set for each item shall include all freight/handling fees, and
3. The Contractor is not exempt from the Florida Sales Tax on materials or services.

CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

The bidder certifies that—

1. The prices set forth in the price schedule have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor.
2. The prices set forth in the price schedule will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening.
3. No attempts have been made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.
4. Bidders must submit bids based on the bidding requirements/specifications in this IFB. Unless specifically requested in this solicitation, alternate or optional bids will not be considered for award and may render the entire submitted bid as non-responsive.

CONTRACTOR PRICES

ITEM NUMBER	ITEM DESCRIPTION	ESTIMATED 1 YR QTY	UNIT	COST PER UNIT	TOTAL COST
1	15W-40 VIRGIN (BULK)	5000 GL	GL	\$6.12	\$30,600.00
2	15W-40 REREFINED (BULK)	5000 GL	GL	\$7.15	\$35,750.00
3	5W-30 VIRGIN (BULK)	600 GL	GL	\$5.81	\$3,486.00
4	5W-30 REREFINED (BULK)	600 GL	GL	\$5.79	\$3,474.00
5	5W-20 VIRGIN (BULK)	1200 GL	GL	\$5.81	\$6,972.00
6	5W-20 REREFINED	1200 GL	GL	\$5.79	\$6,948.00
7	ATF TRANSYND (OR EQUIVALENT-BULK)	500 GL	GL	\$23.20	\$11,600.00
8	AW 68 HYDRAULIC FL (BULK)	2200 GL	GL	\$5.60	\$12,320.00
9	AW 68 HYDRAULIC FL (5 GL BUCKETS)	100	5 GAL BUCKET	\$33.36	\$3,336.00
10	TRACTOR HYDRAULIC (BULK)	400 GL	GL	\$4.78	\$1,912.00
11	TRACTOR HYDRAULIC (5 GL BUCKETS)	50	5 GAL BUCKET	\$36.93	\$1,846.50
12	DIKAN S2V32 (NON CONDUCTIVE HYD FLUID OR EQUIVALENT-5 GL BUCKETS)	100	5 GAL BUCKET	\$71.31	\$7,131.00
13	ANTIFREEZE (ROT ELLA NITRATE FREE ELC OR EQUIVALENT-BULK)	500 GL	GL	\$9.30	\$4,650.00
14	GEAR OIL (80-140 W SYNTHETIC-BULK)	100 GL	GL	\$20.99	\$2,099.00
	ESTIMATED TOTAL COST TO CITY OF TALLAHASSEE				\$132,674.50

SECTION 2 – REPRESENTATIONS AND CERTIFICATIONS

TAXPAYER IDENTIFICATION

Respondent must complete Federal Form W-9 and submit it with their bid.

OFFICIAL COMPANY INFORMATION AS REGISTERED (Type/Print)

COMPANY NAME: **Eli Roberts & Sons, Inc.**
MAIL ADDRESS: **2195 Lake Bradford Rd.**
Tallahassee, FL 3210
(City) (State) (Zip Code+4)
TELEPHONE NO: VOICE: **850-576-3145**, EXTENSION:
(Toll-Free Preferred) OTHER: ; FAX:
EMAIL ADDRESS: **www.eliroberts.com**
WEBSITE URL:

COMPANY CONTACT FOR CONTRACT MANAGEMENT (Type/Print)

PERSON NAME: **Josh Roberts or Kial Heathcoat**
TELEPHONE NO: VOICE: **850-576-3835**, EXTENSION:
(Toll-Free Preferred) OTHER: ; FAX:
EMAIL ADDRESS: josh@eliroberts.com or kial@eliroberts.com

PAYMENT REMITTANCE ADDRESS (Type/Print) (if same as 2.8, enter "SAME 2.8")

NAME: **Debbie Nunes**
MAIL ADDRESS: **2195 Lake Bradford Rd.**
(City) (State) (Zip Code+4)
VOICE: , EXTENSION:
TELEPHONE NO: OTHER: ; FAX:
(Toll-Free Preferred)
EMAIL ADDRESS: **debbie@eliroberts.com**

CONTACT FOR INVOICE INQUIRIES

NAME: **Cheryl McDermit**
TELEPHONE NO: VOICE: **850-576-3145**, EXTENSION:
(Toll-Free Preferred) OTHER: ; FAX:
EMAIL ADDRESS: **cheryl@eliroberts.com**

WHERE TO SEND PURCHASE ORDER (IF APPLICABLE)

COMPANY NAME: **Same as 2.8**
MAIL ADDRESS:
(City) (State) (Zip Code+4)

SECTION 3 – STATEMENT OF WORK

3.1 INTENT

The City of Tallahassee is seeking a contractor to enter into a long term contract for the purchase of bulk Automotive Oils and Fluids for use in the maintenance and repair of the City of Tallahassee's Fleet Vehicles to include all materials, necessary to provide such products and/or services as outlined in this document.

Any estimated quantities stated are provided only as a guideline for bid preparation and shall not guarantee the quantity that will be ordered. The City reserves the right to increase or decrease the number of items purchased.

3.1.1 History/Background. The City's Fleet Management maintains and repairs a fleet of approximately 2500 vehicles at three different locations (Fleet Management's Main Facility 400 Dupree Street, Tallahassee Police Department Headquarters Facility 234 Seventh Ave. and Star Metro 555 Appleyard Drive). The City uses metered bulk dispensing for oil, transmission fluid, gear oil and engine coolant.

3.2 SCOPE OF WORK / SPECIFICATIONS

Bidders are responsible for familiarizing themselves with the specifications of the products to be delivered and/or the work to be performed under this Bid. Bidders should inspect any equipment and/or locations prior to submitting a bid in order to be fully aware of the scope of services required. Failure to inspect the various sites will not relieve the successful Bidder's responsibility from performing in accordance with the intent and meaning of the specifications at the awarded prices.

3.2.1. The contractor must provide the City of Tallahassee's Fleet with high quality products that meet or exceed the manufacturer's requirements for servicing and maintenance insuring all applicable warranties remain in effect.

The vendor will be responsible to monitor all tanks (at a minimum every 2 weeks) and maintain on a keep full status. Deliveries during business hours to Fleet Management at 400 Dupree, Star Metro at 555 Appleyard DR, TPD 234 7th Ave
Delivery times will be 24 hours for prepackaged products and 48 hours for bulk products.

To prevent contamination of product, all bulk deliveries must have their tanks cleaned each time products are changed.

Upon contract award, supplier will provide a MSD sheet to each location for the products they are providing.

Products must meet or exceed the following manufacturer's current requirements;

- API CK-4 for diesel engines (as of 2018)
- API SN for gasoline engines (as of 2018)
- Cummins
- Caterpillar
- Mack
- International/Navistar
- John Deere
- New Holland

- Vermeer
- Ford
- General Motors

Note: No maximum or minimum quantities are guaranteed. The City reserves the right to increase or decrease the quantities/delivery locations as needed. Orders will be placed on an as needed basis during the term of the contract.

3.2.2 **Place of Performance**

The vendor shall provide bulk Automotive oils and fluids for use in the maintenance and repair of The City of Tallahassee's vehicles.

3.2.3 Upon contract award, supplier will provide a MSD sheet to each location for the products they are providing.

3.3 **PRE-QUALIFICATION OF BIDDERS**

3.3.1 This solicitation **does not** require the pre-qualification of bidders.

3.4 **CONTRACTOR RESPONSIBILITIES**

3.4.1 The Contractor shall be solely responsible for, and shall indemnify, defend, and save the City harmless, from all matters relating to the payment of its employees, including compliance with Social Security, withholding, and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

3.4.2 Firearms & Explosives: No person conducting business on City property is to carry a firearm or explosive of any type. All Contractors and subcontractors shall honor this requirement at all times and failure to honor this requirement shall result in Contract termination and additional penalties. This requirement also applies to any and all persons, including those who maintain a concealed weapons permit. In addition to Contract termination, anyone carrying a firearm or explosive device will be subject to further legal action.

3.4.3 This contract prohibits the unlawful possession, use or distribution of controlled substances and alcohol and prohibits Contractor employees from being under the influence of such controlled substances or alcohol on the City jobsites. This Contractor, at their cost, shall provide drug testing of its employees and employees of its subcontractors on a pre-employment, post-accident or for cause basis.

3.4.4 This contractor is responsible for any and all costs including procurement of permits and city licenses required for this service.

3.4.5 Contractor must be familiar with, have a working knowledge of and comply with all federal, state and local laws, statutes, ordinances and regulations applicable to the service requirements.

3.4.6 Contractor will be responsible for any truck breakdown (mechanical/hydraulic/engine/etc.).

3.5 **CONTRACTOR PERSONNEL REQUIREMENTS**

The Contractor shall, at a minimum, provide employees with a company uniform/garment and a visible photo identification badge listing the employee and the company name. All items provided at the Contractor's expense. Uniforms and identification badges are to be worn by

Contractor's employees while completing services under this contract. Photo identification shall be worn at chest level on the outmost garment of the employee and must be displayed all times. Repeated non-compliance may result in the removal of employee from any further services under this contract. Continual non-compliance by Contractor may result in contract termination.

3.6 CONTRACTOR CONSTRAINTS

Not applicable for this solicitation.

3.7 SUPERVISION

This contract does not require direct supervision over the Contractor while services are being rendered.

3.8 VEHICLE IDENTIFICATION

All contractor vehicles shall be clearly marked with the name of the company.

3.9 REQUIREMENTS FOR SITE ACCESS

Contractor will be responsible for notifying delivery site when entering facility for deliveries during business hours

3.10 RESPONSE TIMES

3.10.1 Delivery response times will be 24 hours for prepackaged products and 48 hours for bulk products.

3.10.2 The vendor will be responsible to monitor all tanks (at a minimum every 2 weeks) and maintain on a keep full status. Deliveries will be during normal business hours. Failure to comply with this requirement may be cause for termination.

3.11 DELIVERY AND DROP-OFF LOCATIONS

Delivery and drop-off locations, days and times (if applicable) will be designated at the time of each order is placed.

Fleet Management at 400 Dupree St, Tall FL. Monday-Friday 8:00 am – 4:00 pm

StarMetro at 555 Appleyard Dr, Tall FL. Monday-Friday 8:00 am – 4:00 pm

Tallahassee Police Department 234 7th Ave, Tall FL. Monday-Friday 8:00 am – 3:00 pm

3.12 PRODUCT / SERVICE STANDARDS

3.12.1 Parts and Materials

Not applicable to this solicitation

3.12.2 Services

All services provided to the City shall be performed in accordance with recognized industry standard and/or manufacturer standards for the products or services provided.

3.12.3 Inspection and Acceptance

- No supplies and/or services received by the City pursuant to the contract shall be deemed accepted until City has had reasonable opportunity to inspect the supplies and/or services.
- All supplies and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected.
- In addition, all supplies and/or services which are discovered to be defective or which do not conform to City requirements specified herein upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- The City reserves the right to reject shipment or services at the Contractor's expense for full credit or replacement and to specify a reasonable date by which replacement must be received. The City's right to reject any unacceptable supplies and/or services shall not exclude any other legal, equitable or contractual remedies the City may pursue.

3.13 SERVICE HOURS

3.13.1 City service work should be accomplished at the convenience of the City. The service work hours/ delivery will be established with the awarded Contractor prior to contract commencement. Regular business working hours as follows:

- Business Hours is work performed between 8:00 AM to 4:00 PM, Monday through Friday excluding City holidays.
- After Hours Service is defined as work performed after 4:00 PM and before 8:00 AM
- Weekend and Holiday work is defined as being performed during Saturday, Sunday or during any City holiday.

3.14 ADDITION AND DELETION OF ITEMS OR SERVICE LOCATIONS

The City reserves the right to add or delete products and/or service locations at any time during the term of the contract without penalty.

3.15 REPORTING REQUIREMENTS AND PROCEDURES

3.15.1 Contractor shall provide a spend report of all City purchases at least once per contract year, or as requested from the designated department representative or Procurement Services. The report shall identify higher-level detail of the types of items purchased and/or services provided by month, location, and dollar amount. If the Contractor services multiple locations where pricing is different, it is beneficial to have those locations specified separately. The level of detail in the report will assist Procurement Services and the Department in providing more accurate information and estimates of future need.

3.15.2 **Billing:** Contractor shall *maintain separate accounts for each departmental user participating in award established under the City authority.* All records of purchases of services and payment transactions made between the Contractor and the requesting (user) department shall be easily accessible by Contractor via computer reports and able to be quickly provided to user departments upon request.

3.16 EVALUATION OF CONTRACTOR PERFORMANCE

Evaluating Contractor performance is essential. Documenting vendor performance provides a trail and proof of notifications between parties.

Disputes

In the event COT staff believe that Contractor has not complied with the terms and conditions of the Purchase Order/Contract COT staff shall document all communications with the affected Contractor. COT staff should immediately contact the Contractor if any of the following happenings have occurred.

(Note: List is not meant to be all-inclusive)

- Late or non-delivery of services
- Unauthorized substitution
- Failure to respond to a phone calls

COT affected area should initiate contact with the Contractor, preferably in writing to resolve the problem. If COT area verbally speaks with the Contractor, the COT affected area should, at a minimum, note the description of the problem, whom they spoke with, the date and time of the conversation and the results of the actions to be taken with a copy to the Facilities Management Technical Representative. It is extremely important to document the problems encountered. Contractor shall provide a resolution plan of all issues or problems in writing to COT Customer within five (5) days or shorter.

If the problem is not reconciled, the affected COT area should notify the Procurement Contract Manager, in writing, utilizing the **Vendor Performance Evaluation Form**, of the situation and provide all background information and documentation. The evaluation will be provided to the Contractor for response. Both the original comments and Contractor response shall become a part of the Procurement contract file. If a meeting is needed to discuss/negotiate pending issue the Contract Manager will coordinate with COT area, Facilities Management Technical Representative and Contractor.

SECTION 4 - CONTRACT MANAGEMENT

4.1 CITY REPRESENTATIVES

4.1.1 CONTRACT ADMINISTRATOR

Responsible for acting on behalf of the Manager of Procurement Services Office (PSO), as delegated. Duties include, but not limited to --

- a. Overall liaison between the City and the Contractor.
- b. Overall contract administration (maintain contract files; process contract modifications, cancellations, or terminations; etc.).
- c. Assist and advise City departments and subordinate units on purchasing matters.
- d. Resolve conflicts between the City and contractor, when such conflicts cannot be resolved by the Technical Representative, to include, interpreting and enforcing contract requirements.

4.1.2 TECHNICAL REPRESENTATIVE(S)

Duties include, but not limited to --

- a. Serve as liaison between the PSO and the Contractor on technical issues.
- b. Place orders against this contract, if applicable.
- c. Conduct evaluation and report on contractor's performance.
- d. Reviews and recommends action on contractor payment requests.
- e. Alerts the Contract Administrator of developing and unresolved problems.

4.2 CONTRACTOR REPRESENTATIVES

The Contractor's representatives on this contract responsible for contract management are those persons identified by the contractor in the Representations and Certifications Form and as required by any other clause to this contract.

4.3 CHANGES TO DESIGNEES

If different representatives are designated by either party during the term of the contract, notice of any changes (name, address, telephone numbers, etc) will be promptly rendered in writing to the other party. Changes to designees shall be handled between the City's Contract Administrator and the Contractor's Contract Manager.

SECTION 5 – GENERAL TERMS AND CONDITIONS

5.1 INSURANCE REQUIREMENTS

- a. **Prior to commencing work**, the Contractor shall procure and maintain at Contractor's own cost and expense throughout the Term of the contract the following types and limits of insurance coverage in relation to the performance of work or provision of services hereunder by the Contractor, its agents, representatives, employees or subcontractors:
- (1) Commercial General/Umbrella Liability Insurance - \$2,000,000 limit per occurrence for property damage and bodily injury. The service provider should indicate in its bid whether the coverage is provided on a claims-made or preferably on an occurrence basis. The insurance shall include coverage for the following:
 - Premise/Operations
 - Explosion, Collapse and Underground Property Damage Hazard (only when applicable to the project)
 - Products/Completed Operations
 - Contractual
 - Independent Contractors
 - Broad Form Property Damage
 - Personal Injury
 - (2) Business Automobile/Umbrella Liability Insurance- \$1,000,000 limit per accident for property damage and personal injury.
 - Owned/Leased Autos
 - Non-owned Autos
 - Hired Autos
 - (3) Workers' Compensation and Employers'/Umbrella Liability Insurance -- Workers' Compensation coverage with benefits and monetary limits as set forth in Chapter 440, Florida Statutes. This policy shall include Employers'/Umbrella Liability coverage for \$1,000,000 per accident. Workers' Compensation coverage is required as a condition of performing work or services for the City whether or not the Contractor or Vendor is otherwise required by law to provide such coverage.
- b. **Deductibles and Self-Insured Retentions**
Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of Tallahassee, members of its City Commission, boards, commissions and committees, officers, agents, employees and volunteers ("City Insureds"); or the Contractor shall procure a bond guaranteeing payment of losses, related investigation, claim administration and defense expenses.
- c. **Other Insurance Provisions**
- (1) Commercial General Liability and Automobile Liability Coverage
 - (i) The City Insureds are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor or premises on which Contractor is performing services on behalf of the City. The coverage shall contain no special limitations on the scope of protection afforded to the City Insureds.
 - (ii) The Contractor's insurance coverage shall be primary insurance as respects the City Insureds. Any other insurance or self-insurance maintained by or on behalf of the City Insureds shall be excess of Contractor's insurance and shall not contribute with it.
 - (iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City Insureds.

(iv) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) **Workers' Compensation and Employers' Liability and Property Coverage**

The insurer shall agree to waive all rights of subrogation against the City Insureds for losses arising from activities and operations of Contractor in the performance of services under this contract.

(3) **All Coverage**

(i) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City Contract Administrator.

(ii) If Contractor, for any reason, fails to maintain insurance coverage which is required pursuant to this contract, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this contract and obtain damages from the Contractor resulting from said breach.

(iii) Alternatively, City may purchase such required insurance coverage (but has no special obligation to do so), and without further notice to Contractor, City may deduct from sums due to Contractor any premium costs advanced by City for such insurance.

d. **Acceptability of Insurers**

Insurance is to be placed with Florida admitted insurers rated B+X or better by *A.M. Best's* rating service.

e. **Verification of Coverage**

Vendors are reminded that regardless of what the State of Florida requirements for insurance are (Including the exemption for Workers Compensation Insurance), the insurance specified herein is the minimum requirement for firms wishing to enter into a contract with the City. Bidders, must supply proof with their bid, of insurance meeting the above mentioned requirements or provide a letter from an authorized agent of Florida admitted insurers stating that if awarded a contract the vendor will be eligible to buy insurance in the amounts required by the contract. Contractor shall furnish the City with certificates of insurance and with original endorsements providing evidence of coverage required by this clause. The certificates and endorsements for each policy must be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the City before work commences. Certificates of Insurance must be annotated with the applicable contract number.

f. **Subcontractors**

Contractor shall include each of its subcontractors as insured under the policies of insurance required herein.

5.2 **PAYMENTS**

- a. The City shall pay the Contractor, either by government credit card or upon the submission of proper invoices or contract pay requests, the prices stipulated in this contract, less any deductions provided in this contract.
- b. It is the policy of the City of Tallahassee to fully implement the provisions of the "Florida Prompt Payment Act". For more information, please refer to Section 218.70 Florida Statutes.

5.3 **SUBMITTAL OF PROPER INVOICES**

- a. The Contractor shall submit an invoice at the end of every month [or other specified interval], in which services were rendered [or in which supplies were delivered] and accepted, by one of the following methods:

(1) **E-mail** (electronic PDF image of invoice): accountspayable@talgov.com;

(2) **Mail:** Accounts Payable, 300 S. Adams St, Mail Box A-28, Tallahassee, FL 32301-1731

(3) **Deliver:** Accounts Payable, 3rd Floor, City Hall, 300 S. Adams St, Tallahassee, FL

NOTE 1: At the request of the user-department, a copy of the invoice may be submitted to the project manager or designee at an address to be supplied.

NOTE 2: If payment has been made utilizing a City Purchase/Credit Card then the invoice must be sent to the attention of and address for the individual who made the purchase. The Invoice should indicate that payment has been with a Purchase Card.

b. Accounts Payable Contact Telephone: (850) 891-8280; Fax: (850) 891-8788

c. A proper invoice must include--

(1) Name and address of the Contractor;

(2) Invoice date;

(3) Invoice number (contractor is encouraged to assign an identification number);

(4) Contract number, if applicable;

(5) City's Purchase Order number, if applicable;

(6) Contract line item number (if applicable);

(7) Descriptions, quantities, units of measure, unit prices, and extended price of each item;

(8) Terms of any prompt payment discounts offered;

(9) Name and address of official to whom payment is to be sent;

(10) Federal Identification Number or Social Security Number (whichever applies)

5.4 **INDEPENDENT CONTRACTOR STATUS**

The parties to this contract are independent contractors, and none of the provisions of this contract shall be interpreted or deemed to create any relationship between such parties other than that of independent contractors. Nothing contained in this contract shall be construed to create a relationship of employer and employee, master and servant, principal and agent, or coventurers between the City and the Contractor, between the City and any employee of the Contractor, or between the Contractor and any employee of the City. The City shall have no right to control or direct the details, manner, or means by which the Contractor performs the services or other requirements of this contract except to require compliance with such requirements, and the Contractor, similarly, shall have no control over or management authority with respect to the City or its operations.

5.5 **INDEMNIFICATION**

a. The Contractor shall indemnify and hold harmless the City, and its officials, officers, and employees, from and against all claims for infringement of any United States Patent and all other claims, damages, losses, and expenses (including without limitation costs of defending the same and attorney's fees) arising out of or resulting from the performance of the work, furnishing of services, or furnishing of materials, goods, or equipment (including but not limited to claims regarding defects in materials, goods, or equipment) which is caused in whole or in part by any breach of contract, act, or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

b. In any and all claims against the City, or any of its agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under any Workers' Compensation Act, Disability Benefit Act, or other Employee Benefit Act.

5.6 EVALUATION OF SERVICES--FIXED-PRICE

- a. Definition: "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- b. The Contractor shall provide and maintain a quality control program acceptable to the City covering the services under this contract. If requested, complete records of all quality control work performed by the Contractor shall be maintained and made available to the City during contract performance and for as long afterwards as the contract requires.
- c. The City has the right to evaluate all services called for by the contract, to the extent practicable at all times and places of work during the term of the contract. The City shall perform evaluations in a manner that will not unduly delay the work.
- d. Evaluations conducted by the City shall be recorded on a standard City Vendor Performance Evaluation (VPE) form or other appropriate document. Completed VPE forms shall be processed as follows:
 - (1) The City employee conducting the evaluation ("evaluator") shall send the original VPE form to the Contract Administrator.
 - (2) The Contract Administrator shall forward a copy of the completed VPE form to the Contractor.
 - (3) The Contractor shall furnish a written reply to the Contract Administrator within ten (10) workdays, on any VPE form which contains area rated "unsatisfactory". As a minimum, the Contractor's written reply must explain the courses of action the Contractor has taken to resolve the unsatisfactory findings and to prevent future unsatisfactory performance. The Contractor's written reply to a VPE form shall also be maintained with the contract filed at the PSO.
- e. If any of the services do not conform with contract requirements, the City may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the City may--
 - (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
 - (2) Reduce the contract price to reflect the reduced value of the services performed.
- f. If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the City may—
 - (1) By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or
 - (2) Terminate the contract for default.
- (g) All completed VPE forms and other evaluation correspondence, shall become public record and may be used in evaluations for award of future contracts

5.7 CHANGES--FIXED-PRICE

- a. The Contract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract.
- b. If any such change causes an increase or decrease in the cost of, or the time required for performance of, any part of the work under this contract, whether or not changed by the order, the Contract Administrator shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- c. The Contractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order. However, if the Contract Administrator decides that the facts justify it, the Contract Administrator may receive and act upon a proposal submitted before final payment of the contract.

- d. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contract Administrator shall have the right to prescribe the manner of the disposition of the property.
- e. Failure of the parties to mutually agree to any adjustment shall be resolved under the **Disputes** clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

5.8 **DISPUTES**

- a. All disputes arising under or relating to this contract shall be resolved under this clause.
- b. "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause; however, such request may become the basis for a claim if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- c. A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within one (1) year after accrual of the claim to the Contract Administrator for a written decision. A claim by the City against the Contractor shall be subject to a written decision by the Procurement Services Office.
 - (1) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
 - (2) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the City is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."
 - (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- d. For Contractor-certified claims, the Procurement Services Office must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- e. The decision of the Procurement Services Office shall be final.
- f. If the claim by the Contractor is submitted to the Procurement Services Office or a claim by the City is presented to the Contractor, the parties, by mutual consent, may agree to use alternative disputes resolution. If the Contractor refuses an offer for alternative disputes resolution, the Contractor shall inform the Procurement Services Office in writing, of the Contractor's specific reasons for rejecting the request.
- g. The City shall pay interest at the rate prescribed by Florida Statute 218.74(4) on the amount found due and unpaid from --
 - (1) the date that the Procurement Services Office receives the claim (certified, if required); or
 - (2) the date that payment otherwise would be due, if that date is later, until the date of payment.
- h. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Procurement Services Office.

5.9 **NOTIFICATION OF LABOR DISPUTES**

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contract Administrator.

5.10 **NOTIFICATION OF OWNERSHIP CHANGES**

- a. The Contractor shall notify the Procurement Services Office within thirty (30) calendar days, in writing, when the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur.
- b. The Procurement Services Office reserves the right to request accounting records from the Contractor, whenever the Procurement Services Office determines that the ownership changes may affect any cost and pricing data required by the contract, if applicable. For this purpose, the Contractor shall:
 - (1) Maintain current, accurate, and complete inventory records of assets and their costs;
 - (2) Provide the Procurement Services Office ready access to the records upon request;
 - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
 - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

5.11 **NOTIFICATION OF BANKRUPTCY**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contract Administrator. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers for all City contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract has been made.

5.12 **PROTECTION OF CITY BUILDINGS, EQUIPMENT, AND VEGETATION**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on City property. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the City, as the Contract Administrator directs. If the Contractor fails or refuses to make such repair or replacement in accordance with such directions, the City may make or contract for such replacement or repair, and, in such event, the Contractor shall be liable to the City for all related costs, which may be deducted from the contract price, and any amounts otherwise owed the Contractor, by the Procurement Services Office. Such failure by the Contractor shall also be deemed a default and shall constitute grounds for termination of this contract, at the option of the City.

5.13 **WARRANTY OF SERVICES**

- (a) Definitions.

"**Acceptance**," as used in this clause, means the act of an authorized representative of the City by which the City assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.

"**Correction**," as used in this clause, means the elimination of a defect.

- (b) Notwithstanding evaluation and acceptance by the Technical Representative or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contract Administrator shall give written notice of any defect or nonconformance to the Contractor within thirty (30) days from the date of acceptance by the City. This notice shall state either --

- (1) That the Contractor shall correct or re-perform any defective or nonconforming services;
or
- (2) That the City does not require correction or re-performance.
- (c) If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the contract price.
- (d) If the City does not require correction or re-performance, the City shall make an equitable adjustment in the contract price.

5.14 TERMINATION

- a. If the Contractor fails to fulfill any of its obligations under this Contract, or otherwise, through no fault of the City, such failure shall be considered a default and shall entitle, but not obligate, the City to suspend performance under or to terminate this Contract, in whole or in part, at the City's discretion, if the Contractor fails to cure such default within thirty (30) days after receipt of a written notice thereof from the City. Furthermore, the City shall have the right to terminate this Contract, in whole or in part, without the Contractor being in default thereunder. Termination shall be effected by delivery to the Contractor of a written notice specifying whether termination is for the default of the Contractor or for the City's convenience, the extent to which services under this Contract are to be terminated, and the date upon which such termination becomes effective. After receipt of such written notice, and except as otherwise directed in writing by the City, the Contractor shall promptly stop work under this Contract on the date and to the extent specified in the notice, terminate all subcontracts to the extent that they relate to the performance of services terminated by the notice, and complete performance of such services as shall not have been terminated by the notice.
- b. In the event of termination for convenience, the City shall pay the Contractor (i) the full amount due for goods satisfactorily delivered and/or services satisfactorily rendered, (ii) approved costs and expenses incurred which remain unpaid at the time of such termination, and (iii) such other costs of termination, if any, as may be mutually agreed by the parties. The City shall have the right to set off against amounts otherwise owed the Contractor all amounts owed by the Contractor to the City under this Contract or otherwise.

5.15 AVAILABILITY OF FUNDS FOR FUTURE FISCAL YEARS

Funds may not be available for performance under this contract beyond September 30 of each year included in this contract. The City's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the City for any payment may arise for performance under this contract beyond the above referenced date, until funds are made available before commencing work or making deliveries to ensure funds are appropriated for this contract.

5.16 EXTENSION OF CONTRACT TERM (BILATERAL)

Upon mutual agreement between the Contractor and the City, this contract may be extended for up to six years, at the increments stated in the contract, at the conclusion of the basic contract term by written notice to the Contractor within 30 calendar days before the contract expires.

5.17 EXTENSION OF CONTRACT (not exceed six (6) months)

After completion of the basic contract period and any yearly extensions, the City may require continued performance of any services within the limits and at the rates specified in the contract. The extension provision may be exercised monthly or quarterly, but the total extension of performance hereunder shall not exceed six (6) months. The City may extend the services by written notice to the Contractor within thirty (30) calendar days.

5.18 PURCHASES BY OTHER PUBLIC AGENCIES

With the consent and agreement of the successful bidder(s), purchases may be made under this bid by other governmental agencies or political subdivisions within the State of Florida. Such purchases shall be governed by the same terms and conditions stated herein. This agreement in no way restricts or interferes with the right of any Florida State or political subdivision or other public entity to bid any or all of these items independently.

5.19 ECONOMIC PRICE ADJUSTMENT

Unit Prices shall be adjusted, either higher or lower, based upon percentage changes in the price paid by the Contractor to its supplier. Contractor shall give written notice of such changes to City accompanied by documentation of such change. Such change in the price under this Contract shall be effective thirty (30) days following the date of notice to the City.

5.20 REQUIREMENTS

- a. This is a requirements contract for the supplies or services specified and effective for the stated Term. The quantities of supplies or services specified are estimates only. Except as this contract may otherwise provide, if the City's requirements do not result in placement of orders in the quantities described as "estimated" or "maximum", that fact shall not constitute the basis for an equitable price adjustment.
- b. Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations and Requirements clause or elsewhere in this contract, the Contractor shall furnish to the City all supplies or services specified in the contract and called for by orders issued in accordance with the Ordering clause. The City may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- c. Except as this contract otherwise provides, the City shall order from the Contractor all the supplies or services described in the Price Schedule that are required to be purchased by the City department(s) or division(s) specified in the contract.
- d. The City is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.
- e. If the City requires delivery of any quantity of an item before the earliest date that delivery must be made under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the City may acquire the urgently required goods or services from another source.
- f. Any order issued during the Term of this contract and not completed prior to the end of such Term shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and City's rights and obligations with respect to that order to the same extent as if the order were completed during the Term.

5.21 ORDERING

- a. Any items to be furnished under this contract shall be ordered by issuance of purchase orders by City departments or activities, as specified in the contract. Such purchase orders may be issued at any time during the Term of this contract.

- b. All orders are subject to the terms and conditions of this contract. In case of a conflict between an order and this contract, the contract shall control.
- c. Orders may be issued orally, by facsimile, by electronic commerce methods.

5.22 **ORDER LIMITATIONS**

With regard to orders placed against this contract --

- a. there is NO minimum monetary limit on single orders;
- b. there is NO minimum or maximum limit on the total orders that can be placed against this contract.

5.23 **MATERIAL SAFETY DATA**

- a. The contractor shall submit a Material Safety Data Sheet in, accordance with the requirements of 29 CFR 1910.1200(g) for all hazardous material identified and listed in the contractor's bid. Data shall be submitted whether or not the contractor is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet before the use of any hazardous material shall result in termination of the contract with the contractor for default.
- b. The list of hazardous material in effect at commencement of this contract must be updated during performance of the contract whenever the Contractor determines that any hazardous material not previously listed is to be delivered under this contract.
- c. During performance of the contract, if there is a change in the composition of the item(s), which renders incomplete or inaccurate the data previously submitted, the Contractor shall promptly notify the Contract Administrator and submit complete and accurate data.
- d. Neither the requirements of this clause nor any act or failure to act by the City shall relieve the Contractor of any responsibility or liability for the safety of City, Contractor, or subcontractor personnel or property.
- e. Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, coded, ordinances and regulations (including the obtaining of licenses and permits) regarding hazardous materials.
- f. The City's rights in data furnished under this contract with respect to hazardous material are as follows:
 - (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to-
 - i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing hazardous materials;
 - ii) Obtain medical treatment for those affected by the material; and
 - iii) Have others use, duplicate, and disclose the data for the City for these purposes.
 - (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (f) (1) of this clause, in precedence over any other clause of this contractor providing for rights in data.
 - (3) The City is not precluded from using similar or identical data acquired from other sources.

5.24 **PRE-PERFORMANCE CONFERENCE**

- a. The Contract Administrator or Technical Representative of the City reserves the right to conduct a Pre-Performance Conference (PPC) to discuss issues that may affect performance on the contract. If the PPC is scheduled, the Contractor will be notified and will be required to attend. The Contractor will be notified of the date, time, and location of the PPC, and any need for attendance by subcontractors. At the conclusion of the PPC, the Contractor and other attendees will be asked to sign a PPC Checklist that outlines the topics discussed at the PPC and will be filed with the contract.

- b. The Contractor and all other attendees are cautioned that the PPC shall NOT be used as a forum for making changes to the terms and conditions in the contract. Changes to the contract shall be processed in accordance with the procedures provided for in the Changes clause of this contract.

SECTION 6 - ATTACHMENTS TO CONTRACT

6.1 ATTACHMENTS INCORPORATED IN FULL TEXT

The following attachments are incorporated in this contract in full text and become an integral part of the contract:

- None

6.2 DOCUMENTS INCORPORATED BY REFERENCE

The following documents are incorporated in this contract by reference and become an integral part of the contract, and shall have the same force and effect as if they were incorporated in full text:

- Proposal of the Contractor, dated May 10, 2018.
- Invitation for Bids document, dated April 16, 2018, including all addenda thereto, if any.
- Addendum 1, dated May 3, 2018