

**AGREEMENT
BETWEEN
THE CONSOLIDATED CITY OF INDIANAPOLIS AND MARION COUNTY XXXX
AND
XXXX
FOR THE SUPPLY OF
XXXX**

THIS AGREEMENT, executed by and between the Consolidated City of Indianapolis and Marion County, Indiana, by and through _____ (hereinafter City), and _____ (hereinafter Contractor);

WITNESSETH THAT:

WHEREAS, City is desirous of retaining Contractor's services for procurement of and delivery of _____ (more particularly described in Attachment A, "Scope of Services"); and

WHEREAS, Contractor is capable of said procurement and delivery of _____ (hereinafter "Goods") as per its Bid on City's ITB No. _____; and

WHEREAS, said Bid was determined to be the lowest responsible and responsive Bid for said requisition;

NOW THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree as follows:

SECTION I. TERM

- 1.01 The term of this Agreement shall be for ____ years from the date of execution of this Agreement by all parties, unless terminated earlier in accordance with the terms of this Agreement or with applicable law.
- 1.02 This Agreement may be renewed by agreement of parties. The term of the renewal may be less but shall not be longer than the term of the original Agreement. A renewal shall be only by written instrument signed by both City and Contractor and attached hereto as an amendment. All other terms and conditions of the Agreement shall remain the same as set forth herein. In no event may the total term of this Agreement, including amendments and extensions, exceed a period of four years.

SECTION II. SERVICES, DELIVERY AND ACCEPTANCE

- 2.01 If the Scope of Services requires services incidental to the procurement and delivery of the Goods, Contractor shall perform such services in a workmanlike manner and in accordance with the conditions of this Agreement.

2.02 Delivery

- 2.02.1 Contractor shall deliver the Goods specified in Attachment A, "Scope of Services" within ____ business days from receipt of each order placed by City. All deliveries shall be made Monday through Friday during normal business hours (City holidays excluded) unless other prior arrangements with City are made.
- 2.02.2 Delivery date shall be the date a complete item, vehicle, or piece of equipment ("Goods"), installed and/or ready to operate, has been delivered to City. To be accepted, the Goods must successfully pass an acceptance inspection by City. Acceptance inspection shall be an inspection as well as an operational test to ensure the Goods both meet the specifications and are operable. Unless otherwise noted in the specifications, the acceptance inspection will be completed within fifteen (15) calendar days of the delivery date. The warranty for said equipment shall become effective on the "Date of Acceptance". Please Note: For equipment to be accepted, all manuals, ownership papers, and a certificate of origin, if required, must be supplied at the time the Goods are delivered.
- 2.02.3 Time is of the Essence. It is hereby understood by both parties that time is of the essence in this Agreement. Failure of Contractor to supply and deliver the Goods as herein provided will result in monetary damages to City in the amount stated in specifications, if any. Contractor agrees to pay City said damages or, in the alternative, City may withhold monies otherwise due Contractor. It is expressly understood by the parties hereto that these damages relate to the time of performance and do not limit City's other remedies under this Agreement, or as provided by applicable law. Extensions may be granted by City based upon inclement weather, natural disaster, or other acts beyond the control of Contractor. Such extensions must be in writing and agreed to by both parties.
- 2.02.4 If Contractor fails to supply and deliver Goods as required by the terms of this Agreement, City may procure the same or similar items from the open market. If the market price of those items is greater than the Agreement price, Contractor shall be liable to City for the difference between the market price and the Agreement price, plus it shall be liable to City for any incidental or consequential damages incurred by City as a result of Contractor's breach. Contractor's liability may be deducted from any monies due or that may become due Contractor and shall not limit City's other remedies available under this Agreement or as provided by applicable law. If Contractor's liability exceeds the sum of any monies due or that may become due Contractor under the Agreement, Contractor shall pay City the amount of said excess.
- 2.02.5 City shall be the sole judge of the adequacy of Contractor's performance pursuant to this Agreement. Contractor shall not be relieved of liability to City for damages sustained by virtue of any breach of this Agreement. City may withhold payment due or that may become due to Contractor as set-off for any damages due City. If City's damages exceed the amount of payment due or that may become due, Contractor shall pay City the excess. City's right of set-off shall not limit its other remedies available under this Agreement or as provided by applicable law.

2.03 Defects; Correction

2.03.1 Contractor shall perform final inspections on all Goods prior to delivery. City has the right to inspect the Goods to the extent practicable, at any time and place. If, as a result of City's acceptance inspection, City determines that any Goods do not conform to Agreement requirements, City may, at Contractor's cost and at no increase in contract amount and at City's sole option and discretion:

- 1) require Contractor promptly to correct the defects to the non-conforming goods where practicable; or
- 2) reject the non-conforming goods and require Contractor to complete the order by delivering conforming goods.

2.03.2 When the defects for any Goods cannot be corrected practicably, City may at its sole option and discretion:

- 1) by contract or otherwise, correct the defects and charge the Contractor any costs incurred by City directly related to the cost of correcting the defects; or
- 2) reduce the Agreement price to reflect the reduced value of the Goods.

2.03.3 If the Contractor fails to correct performance or take necessary action to ensure future performance, in conformity with contract requirements, or when the defects for any Goods cannot be corrected practicably, City may:

- 1) require Contractor to take necessary action to ensure that future performance conforms to Agreement requirements; and/or
- 2) terminate the Agreement for default.

2.04 Any remedy provided by this section shall not limit City's other remedies available under this Agreement or as provided by applicable law.

SECTION III. COMPENSATION

3.01 Contractor shall submit a properly itemized invoice for approved orders; City will pay Contractor within thirty days after receipt of such properly itemized claim forms. City shall compensate Contractor in an amount not to exceed the per unit prices as shown on Attachment B.

3.02 If, for any reason, City rejects the Goods supplied by Contractor, City shall not be responsible for any shipping, restocking, or similar charges incurred by Contractor.

3.03 NO MINIMUM OR MAXIMUM AMOUNT OF GOODS TO BE PURCHASED UNDER THIS AGREEMENT IS STATED OR IMPLIED HEREIN.

3.04 The prices as stated in Attachment B shall remain in effect for the term of this Agreement.

3.05 Contractor shall maintain proper accounting records relevant to this Agreement and provide an accounting for all charges and expenditures as may be necessary for audit

purposes. All such records shall be subject to inspection and examination by City's representatives at reasonable business hours.

SECTION IV. GENERAL PROVISIONS

4.01 Liability of Parties

Contractor agrees to defend, indemnify, and hold harmless City and its officers, agents, officials, and employees for (1) any and all liability, claims, actions, causes of action, judgments, and/or liens arising out of any negligent act or omission by Contractor or any of its officers, agents, employees or subcontractors; or (2) any defect in materials or workmanship of any supply, material, mechanism, or other product or service which it or any of its officers, agents, employees, or subcontractors has supplied to City or has used in connection with this Agreement. Such indemnity shall include attorneys' fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein.

4.02 Termination

- 4.02.1 City may terminate this Agreement, in whole or in part, upon ten (10) calendar days written notice to Contractor, in the event that Contractor becomes insolvent or violates or fails to perform any term, covenant, or provision in accordance with the terms of this Agreement. Contractor shall have an opportunity for consultation with City prior to termination.
- 4.02.2 Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise, then City shall have the right to terminate this Agreement without penalty by giving prior written notice documenting the lack of funding. In this instance, unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. City agrees that it will make its best efforts to obtain sufficient funds, including, but not limited to, incorporating in its budget for each fiscal period during the term hereof a request for sufficient funds to meet its obligations hereunder in full.
- 4.02.3 City reserves the right to terminate this Agreement, in whole or in part, for its convenience at any time during the term of the Agreement, without penalty, upon ten (10) calendar days written notice to Contractor and an opportunity for consultation with City prior to termination.

4.03 Independent Contractor

Both parties agree that for the purpose of this Agreement, Contractor shall be an independent Contractor as that term is commonly used and is not an employee of the Consolidated City of Indianapolis and of Marion County. As such, Contractor is solely responsible for all taxes and none shall be withheld from the sums paid to Contractor. Contractor acknowledges that it is not insured in any manner by City for any loss of any kind whatsoever. Contractor has no authority, express or implied, to bind or obligate City in any way.

4.04 Assignment

City and Contractor each binds itself and its partners, successors, executors, administrators and assigns to the other party in respect to all covenants of this Agreement. Contractor shall not subcontract, assign or delegate any portion of this Agreement or the services to be performed hereunder without prior written approval of City.

In the event that City approves of any such subcontracting, assignment or delegation, Contractor shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. City shall have no obligation whatsoever toward such persons. Contractor shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Contractor of any responsibility for performing under this Agreement.

- 4.05 Prompt pay requirement. Contractor shall pay subcontractors and suppliers funds due from previous progress payments within fifteen (15) business days of receipt of payment from the City. During the term of this Agreement and upon completion of this Agreement, the City may request documentation to certify payments to subcontractors and suppliers and Contractor shall provide such documentation within fourteen (14) days of such request. Violation of this requirement shall constitute a breach of this Agreement.

4.06 Extent of Agreement: Integration

This Agreement consists of the following parts, each of which is as fully a part of this Agreement as if set out herein:

1. This Agreement
2. Technical Specifications (Attachment A, "Scope of Services")
3. Bid Prices (Attachment B)

In resolving conflicts, errors, discrepancies, and disputes concerning the Scope of Services to be performed by Contractor or other rights and obligations of City and Contractor, the document expressing the greater quantity, quality, or scope of the service or imposing the greater obligation upon Contractor and affording the greater right or remedy to City shall govern; otherwise the documents shall be given precedence in order as enumerated above.

4.07 Renewal of Agreement

This Agreement may be renewed by agreement of parties. The term of the renewal may be less but shall not be longer than the term of the original Agreement. A renewal shall be only by written instrument signed by both City and Contractor and attached hereto as an amendment. All other terms and conditions of the Agreement shall remain the same as set forth herein.

4.08 Insurance

- 4.08.1 Contractor must keep and maintain a Product Liability- Completed Operations limit of \$1,000,000 in conjunction with this agreement.

If services such as installation, or on-site maintenance are required as part of the supply, the contractor will be expected to carry a minimum of:

- 1) One Million Dollar (\$1,000,000) per occurrence Commercial General Liability,
- 2) One Million Dollar (\$1,000,000) Combined single limit auto coverage, and
- 3) Statutory requirements for workers compensation.

Any third party vendor acquired to perform delivery or product service must maintain the same minimum standards of insurance as the contractor.

The City, at its discretion, may require the vendor to produce an excess umbrella limit if product service or installation is anticipated for longer durations of time, or will consist of frequent trips to City owned property.

The Contractor shall extend all applicable coverages to the Consolidated City of Indianapolis and Marion County as an Additionally Insured party and shall file such Certificates of Insurance with City prior to commencement of any work. The coverages afforded under the policies shall not be cancelled or not renewed until at least thirty (30) days after written notice has been given to City. Upon cancellation, Contractor shall obtain a new insurance policy in accordance with Section 4.07 of this Agreement and send a copy of the new policy to the City.

All carriers supplying coverage must be A rated or better, according to A.M. Best and Company standards.

- 4.08.2 With the prior approval of City, Contractor may substitute different types of coverage for those specified. The City may also choose to waive all or portions of the required limits with written approval by the Department or Agency Director, or through the City Risk Manager. Contractor shall be responsible for all deductibles.
- 4.08.3 Nothing in the above provisions shall operate as or be construed as limiting the amount of liability of Contractor to the above enumerated amounts.

4.09 Necessary Documentation.

Contractor certifies that it will furnish City any and all documentation, certification, authorization, license, permit, or registration required by the laws or rules and regulations of the City of Indianapolis, other units of local government, the State of Indiana, and the United States. Contractor further certifies that it is now and will remain in good standing with such governmental agencies and that it will keep its license, permit, registration, authorization, or certification in force during the term of this Agreement.

4.10 Confidentiality.

Contractor acknowledges that City will not treat this Agreement as confidential information and will post the Agreement on the City of Indianapolis website as required by Section 141-105 of the Revised Code of the Consolidated City of Indianapolis and Marion County. Use by the public of any document or the information contained therein shall not be considered an act of City.

4.11 Applicable Laws; Forum.

- 4.11.1 Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included in this Agreement are hereby incorporated by reference. This includes, but is not limited to, the Federal Civil Rights Act of 1964 and, if applicable, the Drug-Free Workplace Act of 1988. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by City and Contractor to determine whether the provisions of the Agreement require formal modification.
- 4.11.2 This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinance or Codes of the Consolidated City of Indianapolis, County of Marion. Suit, if any, shall be brought in the State of Indiana, County of Marion.

4.12 Nondiscrimination

- 4.12.1 Contractor and its officers, agents, employees, and subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this section shall be regarded as a material breach of this Agreement.

4.13 Minority, Women's, Veteran's, or Disability-Owned Business Enterprise Participation

- 4.13.1 To the extent Contractor uses subcontractors or other agents in the performance of services under this Agreement, Contractor shall either:
- (a) Use, at a minimum, fifteen percent (15%) Minority Business Enterprises, eight percent (8%) Women's Business Enterprises, three percent (3%) Veteran's Business Enterprises, and one percent (1%) Disability-Owned Business Enterprises in the performance of services under this Agreement; or
 - (b) Demonstrate a good faith effort to achieve such percentages, in compliance with the policies and to the satisfaction of the City of Indianapolis Office of Minority & Women Business Development.

Failure of Contractor to comply with either (a) or (b), above, shall constitute a breach of this Agreement.

4.14 Workmanship and Quality of Materials

4.14.1 As required in the Technical Specifications, Contractor shall guarantee the Goods for a period of _____ from date of acceptance. Failure of any portion of the Goods due to improper materials or workmanship, materials of construction or design may result, at City's option, in a refund to City of the purchase price of that portion which failed or, in the alternative, in replacement of that portion which failed at no cost to City, in addition to all other remedies provided by law and by this Agreement.

4.14.2 City shall be the sole judge of the sufficiency of workmanship and quality of materials. Disputes shall be resolved by the Director of the Department and are not subject to arbitration.

4.15 Safety

Contractor shall be responsible for the safety of its employees at all times and shall provide all equipment necessary to insure their safety.

4.16 Attorneys' Fees

Contractor shall be liable to City for reasonable attorneys' fees incurred by City in connection with the collection, or attempt to collect, any damages arising from the negligent or wrongful act or omission of Contractor, or from Contractor's failure to fulfill any provisions, responsibility, or any other terms of this Agreement.

4.17 Written Notice

Any notice required to be sent under this Agreement shall be sent by internationally recognized overnight courier, certified mail, facsimile or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party) :

To Contractor:

To City:

, Director

Department
200 East Washington Street, Suite

Indianapolis, Indiana 46204

4.18 Severability and Waiver

In the event that any clause or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any other provision of this Agreement. Failure of City to insist on strict compliance with the provisions of this Agreement shall not constitute waiver of City's right to demand later compliance with the same or other provisions of this Agreement.

4.19 Debarment and Suspension

- 4.19.1 Contractor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from or ineligible for participation in any Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Contractor.
- 4.19.2 Contractor shall provide immediate written notice to City if, at any time after entering into this Agreement, Contractor learns that its certifications were erroneous when submitted, or Contractor is debarred, suspended, proposed for debarment, declared ineligible, has been included on a list or received notice of intent to include on a list created pursuant to IC 5-22-16.5, voluntarily excluded from or becomes ineligible for participation in any Federal assistance program. Any such event shall be cause for termination of this Agreement as provided herein.
- 4.19.3 Contractor shall not subcontract with any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in any Federal assistance programs by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana.

4.20 Authority to Bind Contractor

Notwithstanding anything in this Agreement to the contrary, the signatory for Contractor represents that he/she has been duly authorized to execute agreements on behalf of Contractor and has obtained all necessary or applicable approval from the home office of Contractor to make this Agreement fully binding upon Contractor when his/her signature is affixed and accepted by City.

4.21 Conflict of Interest.

- 4.21.1 Contractor certifies and warrants to City that neither it nor any of its officers, agents, employees, or subcontractors who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with City.
- 4.21.2 For purposes of compliance with IC 36-1-21, Contractor certifies and warrants to City that Contractor, or a person who wholly or partially owns Contractor, is not a *relative*, as that term is defined by IC 36-1-21-3, of either the Mayor of Indianapolis, Indiana, or a member of the City-County Council of Indianapolis and Marion County, Indiana.

4.22 Disputes

Contractor shall carry on all work required under this during all disputes or disagreements with City. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as Contractor and City may otherwise agree in writing. Should Contractor fail to continue to perform its responsibilities as regards all non-disputed work without delay, any additional costs incurred by City or Contractor as a result of such failure to proceed shall be borne by Contractor, and Contractor shall make

no claim against the City for such costs. City may withhold payments on disputed items pending resolution of the dispute.

[INCLUDE THE E-VERIFY TERM IF CONTRACT INCLUDES ANY SERVICES]

4.23 Compliance with E-Verify Program. By executing this Agreement, the Contractor affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

4.23.1 The Contractor shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC § 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

4.23.2 The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

4.23.3 The Contractor shall require its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

If Contractor is in violation of IC § 22-5-1.7, and fails to cure the breach within 30 days after being notified by the City, such circumstance may constitute a material breach of this Agreement and the City may terminate this Agreement as provided by this statute.

4.24 Tax exemption

The Consolidated City of Indianapolis and Marion County are exempt from local, state and federal taxes and will not be responsible for any taxes levied on Contractor as a result of this Agreement. The Tax exempt ID number for the Consolidated City of Indianapolis and Marion County is: 03157202-001-0.

4.25 Additional Information upon Request

The Contractor shall, upon request of the City, make available its policies, practices and standards for the hiring of applicants, except as prohibited under Indiana Code section 22-2-17-3, to the extent such information is related to the provision of services under this Agreement.

4.26 Post-Employment Restrictions

Contractor, providing supplies, real property, or services under this Agreement, certifies to City that no employee, contract employee, or sub-contractor of Contractor:

- 4.26.1 Participated in any way in the solicitation, negotiation, or awarding of this Agreement while previously employed by an agency of the City of Indianapolis or Marion County for a period of one (1) year prior to the execution of this Agreement;
- 4.26.2 For a period of one (1) year after such employee ceased supervising the administration or performance of this Agreement on behalf of an agency of the City of Indianapolis or Marion County, shall perform any functions on behalf of Contractor under this Agreement with respect to the City, unless the employee's former agency has consented to the employee's performance for Contractor in writing;
- 4.26.3 Has violated any provision of Chapter 293 of the Revised Code of the Consolidated City of Indianapolis and Marion County, regarding the solicitation, negotiation, awarding, or performance of this Agreement;
- 4.26.4 Is currently an official or deputy mayor of, or has appointing authority to, any agency of the City of Indianapolis or Marion County; and
- 4.26.5 Was previously employed by the City of Indianapolis or Marion County within one (1) year of this Agreement and currently has the performance of lobbying activity (as that term is defined in Section 909-101 of the Revised Code of the Consolidated City of Indianapolis and Marion County) related to an agency or an official as a responsibility of his or her employment or contractual relationship with Contractor.

Violation of this certification shall constitute a material breach of this Agreement and, upon such a violation, City may terminate this Agreement. In addition, upon a violation of this certification, City shall report such violation to the Office of Corporation Counsel who may, at its discretion, debar Contractor from eligibility for future city and/or county purchasing, bids, contracts, and/or projects.

4.27 Supersession

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between City and Contractor. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by City or Contractor which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both City and Contractor.

E-sign digital signature block: This agreement will require electronic signatures by Awarded Vendor and City to constitute a legally binding transaction.

**ATTACHMENT A
SCOPE OF SERVICES**

Technical Specifications
[insert name of specs]
ITB No. _____

Contractor shall provide all items listed in Attachment B in accordance with the Technical Specifications contained herein. All items, where applicable, shall conform to specifications, including any Supplemental Specifications effective at the date of quote/bid opening.

SAMPLE

**ATTACHMENT B
PRICING**

[Insert Bid Pricing Sheet Here]

SAMPLE

**ATTACHMENT C
BID DOCUMENTS**

[Attachment/inclusion of full bid documents shall be at the City's Sole discretion]

SAMPLE