

CITY OF CORAL SPRINGS TERMS AND CONDITIONS

You are a person or entity entering into a contract with the City of Coral Springs (“City”). The words “you” and “your” refer to either you as an individual or as representative of the legal entity that you represent. Your signature on the document that directed you to these terms and conditions binds you to these terms and conditions. These terms and conditions are material and are hereby incorporated into the document that you signed.

The City may change these terms and conditions unilaterally without any notice to you. In the event the web address changes that displays these terms and conditions, the City will provide an updated link on its homepage for no less than 30 days.

Section 1. INDEMNIFICATION

Notwithstanding any other provision to the contrary, this Section 1 shall survive termination of the contract that you are entering.

If you are not a state agency or political subdivision as defined in Chapter 768.28, Florida Statutes, for adequate and sufficient consideration that you received, you agree to indemnify, defend, save and hold the City, its officers, agents and employees, harmless from any and all claims, damages, liability, losses, causes of action of any nature whatsoever, which may arise out of, in connection with, or because of the agreement or document that referred you to these terms and conditions, the breach of the agreement or document that referred you to these terms and conditions, or a breach of these terms and conditions.

Under this indemnification, the City reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be your responsibility.

Such indemnification shall not be limited to the amount of comprehensive general liability insurance which you will be required to obtain. This indemnification clause is not intended nor shall it be construed to waive the City’s rights and immunities under the common law or Florida Statutes 768.28, as amended from time to time.

You shall also be required to indemnify, save and hold harmless, the City, its officers, agents and employees from all claims, damages, losses, liabilities and expenses arising out of an alleged infringement of copyrights, patent rights, the unauthorized or unlicensed use of any material, property or other work in connection with the performance of the services you provide.

If you are a state agency or political subdivision as defined in Chapter 768.28, Florida Statutes, you agree that you shall be fully responsible for acts and omissions of your agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract with the City.

Section 2. INSURANCE

If insurance is required as determined by the City, then you shall be required to secure and maintain, at your own expense, and keep in effect during the full term of any contract, a policy or policies of insurance, which must include the following coverages and minimum limits of liability:

(1) Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employers' Liability Act and the Jones Act. Employer's Liability Insurance shall be provided with a minimum of two hundred thousand and xx/100 dollars (\$200,000.00) per accident. You will be required to agree to be responsible for the employment, conduct and control of your employees and for any injury sustained by such employees in the course of their employment.

(2) Commercial Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by you and/or your company in the performance of any obligations under any contract you enter into with the City, with the following minimum limits of liability with no restrictive endorsements:

\$1,000,000.00 Combined Single Limit, per occurrence, Bodily Injury & Property Damage

(3) Comprehensive General Liability (occurrence form) with the following minimum limits of liability with no restrictive endorsements:

\$1,000,000.00 Combined Single Limit, per occurrence, Bodily Injury & Property Damage.

Coverage shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

- (a) Premises and Operations.
- (b) Independent Contractors.
- (c) Product and Completed Operations Liability.
- (d) Broad Form Property Damage.
- (e) Broad Form Contractual Coverage applicable to the Agreement and specifically insuring the indemnification and hold harmless agreement contained in section 1 above.
- (f) Owner's or Contractor's Protective Liability.

UPON CONTRACT EXECUTION, CONTRACTOR SHALL BE REQUIRED TO SUBMIT TO THE City COPIES OF ITS CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT THE City OF CORAL SPRINGS IS AN ADDITIONAL NAMED INSURED OR ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND CONTRACTOR OPERATIONS UNDER THE AGREEMENT. Insurance companies selected must be acceptable to the City. All of the policies of insurance so required to be

purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to the City by certified mail.

These insurance requirements shall not relieve or limit your liability. The City does not in any way represent that the types and amounts of insurance required are sufficient or adequate to protect your interests or liabilities but are merely minimum requirements established by the City's Risk Management Coordinator. The City reserves its right to require any other insurance coverages that the City deems necessary depending upon the risk of loss and exposure to liability.

The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.

You shall be required to require each of your subcontractors of any tier to maintain the insurance required herein (except as respects limits of coverage for employers and public liability insurance which may not be less than One Million (\$1,000,000) Dollars for each category), and you shall be required to provide verification thereof to the City upon request of the City.

All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against the City with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.

You shall be required to ensure that any company issuing insurance to cover the requirements contained in any contract you enter into and you shall be required to agree that you shall have no recourse against the City for payment or assessments in any form on any policy of insurance.

The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which the City is named as an additional named insured shall not apply to the City. Instead, the City shall provide written notice of occurrence within fifteen (15) working days of the City's actual notice of such an event to you.

You shall not be allowed to commence performance of any services until you have obtained all of the minimum insurance herein described and the same has been approved.

Violation of any of the insurance terms shall constitute a breach of your contract and the City, at its sole discretion, may cancel your contract and all of your rights, title and interest shall thereupon cease and terminate.

If you are a self insured state agency or political subdivision as defined in Chapter 768.28, Florida Statutes, an acknowledgment that you are a self-insured governmental entity subject to the limitations of Section 768,28, Florida Statutes and that you institute and maintain a fiscally

sound and prudent risk management program with regard to your obligations under any contract entered into with the City in accordance with the provisions of Section 768.28, Florida Statutes, shall meet the above insurance requirements.

Section 3. ACCIDENT PREVENTION

You shall be required to exercise reasonable care and precaution at all times for the protection of persons and property on the premises. Safety provisions of all applicable laws and ordinances shall be strictly observed. The City reserves the right to expel any person from municipal property who is causing a disturbance, is conducting themselves in violation of City rules, regulations, ordinances or whose conduct or activity presents a safety risk or public nuisance. Neither the City nor any of its officers, agents or employees shall be liable to you and/or your company for any damages that may be sustained by you and/or your company through exercise by City of such right.

Section 4. INDEPENDENT CONTRACTOR STATUS

You and your employees, volunteers and agents shall be and remain as independent contractors and not agents or employees of the City, with respect to all of the acts and services performed by and under the terms of any such contract. The provision of your services under any contract shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between yourself and the City.

Section 5. NON-EXCLUSIVITY

The agreement that you are entering into is non-exclusive.

Section 6. COMPLIANCE WITH LAWS

You shall be required to comply with all statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, City of Coral Springs and of any other public authority, which may be applicable.

Section 7. PERMITS, FEES AND LICENSES

You shall be required to secure and pay for all permits and governmental fees, licenses and charges necessary for the proper execution and completion of the services you provide.

Section 8. TAXES

You shall be required to pay all applicable sales, consumer use and other similar taxes required by law.

Section 9. CONFLICT OF INTEREST

You shall be required to covenant that no person under your employ who presently exercises any functions or responsibilities in connection with your services has any personal financial interests, direct or indirect, with the City. You will further be required to covenant that, in the performance of your services, no person having such conflicting interest shall be employed. Any such interests, on the part of you or your employees, must be disclosed in writing to the City.

You must familiarize yourself with the conflict of interest laws of the Municipal Code of the City of Coral Springs, Broward County and the State of Florida, Chapter 112, Florida Statutes, as amended from time to time, and agree that you will fully comply in all respects with the terms of said laws.

You will also be required to warrant that you have not employed or retained any person employed by the City to solicit or secure any contract with the City and that you have not offered to pay, paid, or agreed to pay, any public official or person employed by the City any fee, commission, percentage, brokerage fee or gift of any kind, contingent upon or resulting from the award of a contract.

Section 10. WARRANTIES

You shall be required to warrant to the City that your services shall be performed in a workmanlike manner, and that such services, including all materials and equipment provided shall conform to professional standards of care and practice in effect at the time the work is performed, be of the highest quality and free from fault and defects, whether patent or latent, and be merchantable and fit for the ordinary purposes for which they are intended.

You shall also be required to warrant to the City that: you will comply with all applicable federal, state and local laws, regulations and orders in carrying out your obligations; the consummation of the services shall not result in the breach of any term or provision of or constitute a default under any indenture, mortgage, contract or agreement to which you are a party; you do not have any financial interest in marketing the City's debt, or financial interest with investment banks, banks or underwriters associated with the City's proposed debt issues; and, you are not insolvent, you are not in bankruptcy proceedings or receivership, nor are you engaged in or threatened with any litigation or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on your ability to perform your obligations.

No warranty, express or implied, may be modified, excluded or disclaimed in any way by you and all warranties shall remain in full force and effect subsequent to the provision of all specified services.

Section 11. ASSIGNMENT

You shall not be allowed to assign, or transfer your rights, title or interests nor shall you delegate any of your duties and/or obligations undertaken by you without the City's prior written approval.

Changes in Staff. You agree that you will advise the City not less than thirty (30) days in advance of any proposed changes in your staff assignment to enable the City an opportunity to discuss such proposed changes with you.

Section 12. INSOLVENCY

In the event that you become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for your business or your assets or shall avail yourself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, or become subject to rehabilitation, then, at the option of the City and immediately upon written notice, your services shall terminate and any contract entered into between yourself and the City will be of no further force and effect.

Section 13. NON-DISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYMENT

You not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. You will be required to take affirmative action to ensure that employees are treated during employment, without regard to their race, creed, color, or national original. Such action must include, but not be limited to, the following: employment, upgrading; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. You shall be required to agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

Section14. RECORDS AND AUDIT

14.01 City reserves the right to audit your records relating to this Agreement at any time during the performance and term of the Agreement and for a period of three (3) years after completion and acceptance by City. If required by City, you shall agree to submit to an audit by an independent certified public accountant selected by City. You shall allow City to inspect, examine and review your records at any and all times during normal business hours during the term of this Agreement.

14.02 You agree that you shall keep accurate and complete records with regard to all services you approve to City.

14.03 You shall preserve and make available for inspection by City personnel, or by personnel duly authorized by City, computer data and other records related to services you provide to City.

These records will be made available during normal business hours upon twenty-four (24) hours' notice by the City.

14.04 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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE City OF CORAL SPRINGS, DEBRA THOMAS, CMC, City CLERK, 9551 WEST SAMPLE ROAD, CORAL SPRINGS, FLORIDA 33065, DTHOMAS@CORALSPRINGS.ORG, TELEPHONE NUMBER (954) 344-1067.

If you are a contractor, as defined by Section 119.0701, Florida Statutes, as amended from time to time, you understand, acknowledge and agree that you shall do the following:

- (1) Keep and maintain public records required by the City to perform the service.
- (2) 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 in Ch. 119, Florida Statutes, or as otherwise provided by law or City policy.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if you do not transfer the records to the City.
- (4) Upon completion of the contract, transfer, at no cost, to the City all public records in your possession or keep and maintain public records required by the City to perform the service. If you transfer all public records to the City upon completion of the contract, you shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If you keep and maintain public records upon completion of the contract, you 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.

REQUEST FOR NONCOMPLIANCE

- (a) A request to inspect or copy public records relating to a City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify you of the request, and you must provide the records to the City or allow the records to be inspected or copied within a reasonable amount of time.

(b) If you do not comply with the City's request for records, the City shall enforce the contract provisions in accordance with the contract.

(c) If you fail to provide the public records to the City within a reasonable time, you may be subject to penalties under s. 119.10.

CIVIL ACTION

(a) If a civil action is filed against you to compel production of public records relating to City's contract for services, the court shall assess an award against you the reasonable costs of enforcement, including reasonable attorney fees, if:

(1) The court determines that you unlawfully refused to comply with the public records request within a reasonable time; and

(2) At least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that you have not complied with the request, to the City and to you.

(b) A notice complies with subparagraph (a)2, above, if it is sent to the City's custodian of public records and to you at your address listed on its contract with the City or to your registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(c) If you comply with a public records request within eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

Section 15. TERMINATION AND CUMULATIVE REMEDIES

Upon seven (7) calendar days written notice City may, without cause and without prejudice to any other right or remedy, terminate the Agreement for the City's convenience whenever the City determines that such termination is in the best interest of the City. Upon receipt of the City's notice to terminate for convenience, the you shall promptly discontinue all performance, service, and/or work at the time and to the extent indicated on the Notice of Termination, terminate all outstanding subcontractors and purchase orders to the extent that they relate to the terminated portion of the Agreement and refrain from placing further orders and subcontracts except as they may be necessary, to complete any continued portions of the work.

The remedies expressly provided to the City shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of the City now or hereafter existing at law or in equity.

Section 16. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the parties relating to the subject matter superseding all prior communications between the parties whether oral or written. The agreement may not be altered, amended, modified or otherwise changed nor may any of the terms thereof be waived, except by a written instrument executed by both parties. The failure of a party to seek redress for violation of or to insist on strict performance of any of the covenants of any contract between yourself and the City shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.

Section 17. ATTORNEY'S FEES AND COSTS

The City shall be entitled to an award of all reasonable attorney's fees, interest and court costs incurred by the City against the losing party including reasonable appellate attorney's fees, interest and taxable costs. In the event that the City is required to file legal action against you to collect any amounts due, the City shall be entitled to its costs of collection, attorney's fees and costs, and interest at the maximum rate allowable by law.

Section 18. GOVERNING LAW; VENUE

The validity, construction and effect of any agreement with the City shall be governed by the laws of the State of Florida.

Any claim, objection or dispute arising out of the terms of any agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida.

Section 19. CONSTRUCTION OF AGREEMENT

The terms and conditions of any contract entered into with the City are to be construed with their common meaning to effectuate the intent of the contract. All words used in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words in any gender shall extend to and include all genders.

The parties agree that each party has been represented by counsel or had sufficient time to consult counsel before the execution of the contract. Any applicable law that would require interpretation of claimed ambiguities against the drafting party has no application and is expressly waived by both parties. If either party raises a claim as to any conflict, omission, or ambiguity in the provisions of the contract, there shall be no presumption or burden of persuasion that will be implied.

Section 20. SEVERABILITY

Should any part, term or provision of any contract entered into with the City shall be by the courts decided to be invalid, illegal or in conflict with any law of this State, the validity of the remaining portions or provisions shall not be affected thereby.

Section 21. CONFLICT

In the event of conflict between this the contract entered into and the terms and conditions set forth in any request for proposal issued, the terms of the contract shall control.

Section 22. NOTICES

All notices or other communications required by any contract shall be in writing and deemed delivered upon mailing by registered or certified mail, return receipt requested, hand-delivery, overnight courier, facsimile or email to the persons/addresses noted in the contract.

Each such notice shall be deemed delivered on the date delivered if by hand-delivery or overnight courier; on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed; and on the date of transmission with confirmed answer back if by facsimile or email.