



Agenda Item Cover Sheet

Agenda Item N^o: A-55

Meeting Date 7/14/2021

☒ Consent Section

☐ Regular Section

☐ Public Hearing

Subject: Award a five (5) year sole source contract (21659) for ongoing and as needed purchases of Flygt-brand pump equipment, replacement parts and labor; and approve material changes to the County's standard purchase order terms and conditions for the Water Resources Department (WRD) at a total cost of \$7,250,310.00.

Department Name: Procurement Services

Contact Person: Scott Stromer

Contact Phone: 301-7095

Sign-Off Approvals:

Ronald Barton 7/2/2021

Assistant County Administrator Date

Kevin Brickey 7/2/2021

Management and Budget – Date
Approved as to Financial Impact Accuracy

N/A **N/A**

Deputy or Chief County Administrator Date

Scott Stromer 7/2/2021

Department Director Date

Sacha Brown-Taylor 7/2/2021

County Attorney – Date
Approved as to Legal Sufficiency

Staff's Recommended Board Motion:

Award a five (5) year sole source contract (21659) to Xylem Water Solutions U.S.A., Inc., for ongoing and as needed purchases of Flygt-brand pump equipment, replacement parts, and associated labor at a total cost of \$7,250,310.00 for the Water Resources Department (WRD). In addition, at the request of the recommended vendor, approve material changes to the County's standard purchase order terms and conditions. Flygt-brand pumps are installed at numerous lift stations throughout the county and are used to move raw sewage to the appropriate facilities for treatment. A "Notice of Intent to Sole Source" (21659) was properly posted and no challenges were received. Xylem Solutions U.S.A., Inc., is the only authorized distributor and service repair provider for Flygt products in the State of Florida. In this case, there are no subcontracting opportunities for Certified Disadvantaged Minority/Disadvantaged Women Business Enterprise (DM/DWBE) or Registered Small Business Enterprise (SBE) firms as the subject goods or services will be provided directly and exclusively by the recommended vendor due to the proprietary nature of the requested equipment, parts, and labor. Funding for this procurement is available in the requesting department's approved budget, and purchase orders will only be issued against approved budgets.

Financial Impact Statement:

Funding for this procurement is available in the requesting department's approved budget, and purchase orders will only be issued against approved budgets.

Background:

This sole source procurement is being made in accordance with Section 3-208 of the Procurement Policy, to maintain interchangeability or compatibility as part of an existing integrated system. Xylem Solutions U.S.A., Inc., is the only authorized distributor and service repair provider for Flygt products in the State of Florida; and therefore, is deemed to be the only reasonable vendor for the same. The requesting department determined the offered pricing to be fair, reasonable, and consistent with previous purchases of similar equipment, parts, and services.

DELEGATIONS TO DIRECTOR OF PROCUREMENT:

☐ Unilateral Change Orders up to \$25,000 for additions within the scope of the contract

☐ Unilateral Extensions

☐ Unilateral Renewals

☐ Additional Purchase Option(s)

List Attachments: Noncompetitive Procurement Request, Vendor Quote, Standard Purchase Order Terms and Conditions

Noncompetitive Procurement Request

Department: Water Resources Department

Contact Person: Judy Knotts

Phone: 813-663-3203

Vendor: Xylem Water Solutions USA, Inc.

Estimated amount of this purchase: \$8,400,000.00

\$7,250,310.00 revised amount, as approved by Judy Knotts on June 7, 2021.

Contract Term Requesting: 5 Years

Description of Product/Service: Flygt Original Equipment Manufacturer (OEM) Pumps, OEM Replacement Parts and Xylem Labor Services

RQ Number/Approval Date (Procurement will update): 221110753; Approved: April 27, 2021

Please complete the noncompetitive procurement request form and attach it to the requisition submitted via Oracle EBS.

1. In accordance with the Procurement Policy, please indicate which of the following sections of the policy is applicable to your request:

☒ §3-205

☒ §3-207

☒ §3-208

Please provide justification in the box below to document the need and/or basis for the commodity or service using a noncompetitive procurement.

Xylem Water Solutions USA, Inc. is the manufacturer of Flygt products world-wide and sole authorized representative for Flygt products (Pumps and replacement parts) and services (labor) in the State of Florida (documentation attached).

2. Please explain the purpose and intended outcome of this product/service by describing what the product/service is or does, what it is being used for, and how it benefits the citizens of Hillsborough County.

The purpose of this Xylem contract is to give the Water Resources Department (WRD) the ability to purchase Flygt Pumps and OEM repair/consumable parts.

This equipment is utilized daily in the County's wastewater infrastructure. This contract will serve WRD's ability to meet the necessary guidelines established by the Department of Environmental Protection regarding wastewater movement and treatment. Without this contract, WRD could experience fines levied against the County and endangering the health and well-being of the public.

3. Explain why the product/service requested is the only product/service that can satisfy your requirements, why alternatives are unacceptable, and why the use of competitive sealed bidding or competitive sealed proposals is impractical, not financially advantageous, or in the County's best interest. Be specific in regard to specifications, features, characteristics, requirements, capabilities, and compatibility. Describe any steps taken that aided in the determination.

Oracle Responsibility Required for Noncompetitive Procurement Request: BOCC Sourcing Team Member

The Water Resources Department requires Flygt pumps and OEM parts for the repair and like for like replacement of equipment. This equipment is utilized daily to ensure the proper movement of raw sewage to the appropriate facility for treatment in accordance with the Department of Environmental Protection regulations.

Implementing alternate manufacturer's parts would cause significant delays and increased expense due to re-engineering, design modifications and retrofitting.

4. Explain why this service provider, supplier, or manufacturer is the only available practical source in the marketplace from which to obtain this product or service and describe the efforts that were made to verify and confirm whether, or not, this is so. (Obtain and attach a letter from the manufacturer confirming, claims made by distributors of exclusive distributorships for the product or service, if, that is cited as a reason for this noncompetitive procurement request.)

Xylem Water Solutions USA, Inc. is the sole authorized representative for Flygt products (Pumps and replacement parts) and services (labor) in the State of Florida (documentation attached).

5. Explanation of the current situation, e.g. current department inventory, and the expiration date of the current contract. Please provide your current and/or previous BPA/CPA/SPO, and historical usage information including BPA/CPA/SPO awarded amount and, the total amount released to date against the awarded BPA/CPA/SPO. If this request is more than 10% over the current released amount, justify why.

Contract file no. SS-P-0058-0-2011/RM for purchase of Flygt products (expired: March 31, 2016) This contract was awarded in the amount of \$2 million and provided a discount of 5% off the Flygt manufacturer current price list for equipment, and parts. Labor under this contract was a fixed rate per hour. During the contract performance period, aggressive pump replacement schedules driven by SCADA Phase II increased utilization and resulted in contract amount increase by \$4 million from \$2 million to \$6 million. Communication with the Contractor for change order to increase contract amount (result of aggressive pump replacement) resulted in County negotiated discount increase from 5% to 7% off manufacturer current list pricing.

Due to modification efforts that did not materialize, a temporary solution to obtain Flygt pumps and parts was sought and Blanket Purchase Agreement (BPA) 216208621 in the amount of \$249,000.00 was created.

Contract file no. 7067-2 for the purchase of Flygt (OEM) Pump Equipment, OEM Replacement Parts and Xylem Labor (expired July 31, 2021) This contract was awarded in the amount of \$8.4-million and provided a discount of 9.5% off the Flygt manufacturer current price list for equipment, OEM Replacement Parts and Xylem Labor.

Although the current agreement for Xylem has an agreed amount of \$8,400,000.00; only \$6,256,981.74 has been utilized to date. Much of the renovations and upgrades slated over the past 14 months have been paused or rescheduled due to COVID. WRD will again be rescheduling the renovations, upgrades and repairs moving forward.

6. Please advise if this noncompetitive procurement request is a(n) (check all that apply):
☐ Experimental Trial ☐ Pilot ☐ Testing
7. Describe the result of your negotiation efforts with the vendor to obtain the best possible price (i.e., vendor's initial offer versus final offer). Indicate any price discounts that are being offered.

WRD worked with Xylem Water Solutions USA, Inc. based on a new 5-year relationship for pumps, parts and labor. Xylem Water Solutions USA, Inc. provided its proposal (attached) dated April 7, 2021 and maintains the following highlighted results:

➤ **Pumps: 9.5% off current Flygt list price for each year of the 5-year term**

Oracle Responsibility Required for Noncompetitive Procurement Request: BOCC Sourcing Team Member

- **Parts:** 9.5% off current Flygt list price for each year of the 5-year term
- **Labor:** 9.5% off Xylem current labor rates for each year of the 5-year term
- **Terms/Conditions:** Xylem Water Solutions USA, Inc. agrees to County Terms and Conditions

8. Explain why the price for this product or service is considered to be fair and reasonable. Include price comparisons with other government entities, when possible, and provide documentation to support the fair and reasonable pricing.

Xylem pricing is fair and reasonable based on contracts for similar products and service. Additionally, negotiation efforts between the Water Resources Department and Xylem have resulted in equal discounts as on the current contract with Xylem. Bid prices are FOB Destination and 9.5% is the largest discount offered to a Florida agency and is an exclusive discount to Hillsborough County. Xylem was able to offer this discount based upon the 5-year period sought by the County and Xylem's evaluation of prior and future volume considerations.

9. Explain what alternative(s) have been considered in lieu of this noncompetitive procurement request. Be specific in regards to your efforts towards reviewing similar products/alternatives in the marketplace and provide an estimated cost to move towards new equipment and/or technology.

Flygt (Original Equipment Manufacturer (OEM)) Pumps have been installed at numerous Water Resources Department (WRD) lift stations as a part of the overall wastewater management system. When the pump stations were originally built, they were specifically designed for use with Flygt Pumps. No other pumps fit at the lift stations that currently have Flygt pumps installed. Flygt Pumps are one (1) of three (3) pump manufacturers that have been reviewed and approved for use by the Department's Product Review Committee. In addition, Flygt grinder pumps work extremely well within current and planned operational systems.

The Flygt pump brand continues to provide reliability and its performance has been vetted and analyzed by WRD staff and its engineers. Flygt brand products and OEM replacement parts meet our collective systems operation requirements which include its pumping curve efficiency ranges, operating pressures, and total dynamic head conditions. Flygt brand products is a pivotal component in WRD's long term community planning outlined in WRD's Technical Manual and Technical Specifications which are living documents created and maintained by the County for both Professional Engineers and Community Partners/Developers. Flygt grinder pumps work well with operational pump station requirements that involve Supervisory Control and Data Acquisition (SCADA) - Phase II impact.

10. Will this purchase obligate us to a particular vendor for future purchases? (Either in terms of maintenance that only this vendor will be able to perform and/or if we purchase this item, will we need more "like" items in the future to match this one?)

Yes

The Flygt pump brand continues to provide reliability. Flygt product performance has been vetted and analyzed by the WRD. Flygt brand products meet our collective systems operation requirements which include its pumping curve efficiency ranges, operating pressures, and total dynamic head conditions. Flygt brand products is a pivotal component in WRD's long term community planning outlined in WRD's Technical Manual and Technical Specifications which are living documents created and maintained by the County for both Professional Engineers and Community Partners/Developers. Flygt pumps account for a large portion of the County asset inventory, provides for purchase of direct replacement pumps, and replacement parts.

11. Explain the consequence(s) to the County or Public, including a dollar estimate of the financial impact, if this noncompetitive procurement is not approved.

Oracle Responsibility Required for Noncompetitive Procurement Request: BOCC Sourcing Team Member

The Financial impact would be substantial.

Without a contract to purchase Flygt pumps and Flygt pump parts, existing lift stations would become inoperable as pumps completely or partially fail to operate at maximum capacity. WRD would then be forced to retrofit existing lift stations to accommodate a different brand of pump. Such retrofitting efforts would incur expenses for design and engineering as well as construction. Additionally, during the time a lift station would be inoperable additional costs would be realized as the lift station would have to be pumped out manually and there could be a substantial backup of the wastewater system in the service area of the malfunctioning lift station.

11. Funding/Budget Source: (Check all that apply)
- | | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Operating |
| <input checked="" type="checkbox"/> | Capital – Indicate Project No(s): Developed as needed |
| <input type="checkbox"/> | Grant – Indicate Grant title: _____ |
| <input type="checkbox"/> | Other: _____ |

I hereby request that a Noncompetitive Procurement be approved as described above.

Richard Cummings
Division Director's Signature

4/20/2021
Date

Richard Cummings
Printed Name

Beth Schinella
Department Director's Signature

4/23/21
Date

Beth Schinella
Printed Name



Xylem Water Solutions USA, Inc.
Flygt Products
455 Harvest Time Drive
Sanford, FL 32771
Tel 407-880-2900
Fax 407-880-2962

June 6, 2021

Hillsborough County Utilities
Attn: Anela Saday

Subject: Flygt 2021 5 Year Blanket Purchase Order Proposal

Dear Ms Saday,

Below please find our proposal with the information you requested as outlined in your email dated June 6, 2021.

- 1) Xylem Water Solutions USA, Inc. will offer a fixed rate percent (%) discount structure off Flygt list price for pumps at 9.5%, parts at 9.5% and labor at 9.5% for the 5 year term of the Hillsborough County purchase agreement. The discount structure is offered for each year of the 5 year proposal period.
- 2) Xylem Water Solutions USA, Inc. is the only authorized vendor for Flygt products and is the only authorized service, repair and warranty origination in the state of Florida (east of the Apalachicola River).
- 3) Xylem's shop labor repair rate is \$135.00/hr
- 4) Xylem Water Solutions USA, Inc. will authorize extensions from the end of the 5 year purchase order term as agreed upon between parties at the time of the proposed renewal.

We thank you for your business and continued interest in Flygt Products. Do not hesitate to reach out to me if you have any questions regarding this pricing or any other matter.

Sincerely,

Frank Jones
ACT Service Center Manager

HILLSBOROUGH COUNTY BOARD OF COUNTY COMMISSIONERS
Standard Purchase Order Terms and Conditions

The vendor, in accepting this purchase order, agrees to and shall be bound by all of the following terms and conditions:

1. The content and conditions of this purchase order may not be verbally modified. Any changes must be in writing and approved by the Director of Procurement. If these conditions are not acceptable, please notify the contact listed on the order before shipping the items or delivering services. If prices are higher than specified, do not ship without prior written approval from the Director of Procurement.
2. All invoices, packing lists and packages must include the order number printed on the upper right corner of the purchase order. The vendor must provide a proper invoice by which payment will be processed. In accordance with §218.76(1), Fla. Stat., if an invoice is subsequently determined to be improper, it shall be returned to the vendor. Proper invoices must include:
 - Original Invoice.
 - Vendor's name and address.
 - Vendor's tax identification number.
 - Vendor's "remit to" address.
 - Invoice date.
 - Invoice number.
 - Invoice must be billed to "BOCC Hillsborough County Florida."
 - Correct purchase order number.
 - Description of goods/services purchases, to include quantity and/or hours of work performed.
 - Correct unit price (not to exceed four [4] decimal places), extended price, and total amount due.
 - Shipping date.
 - County department name and/or delivery contact named on the purchase order.
 - Conformance to all other requirements specified in the corresponding contract/agreement.
3. All original invoices for goods and services must be emailed to countyfinanceinvoices@hillsclerk.com or mailed to: County Finance Department, Hillsborough County Clerk of the Circuit Court, P.O. Box 1110, Tampa, Florida 33601. Invoices for construction services may be mailed directly to the requesting department or assigned project manager for review and sign off.
4. Payments will be made upon receipt of a proper invoice in accordance with Florida's Local Government Prompt Payment Act, Chapter 218, Part VII, Florida Statutes. The following payment options are available:

Method	Source	Fee	Remittance/Notice
ACH (Direct Deposit) ¹	Electronic (Bank)	None	Email (Invoice # & Amount)
Check	Paper	None	Stub (Invoice # & Amount)
ePayables	Electronic (Credit Card)	Merchant Services Fee ²	Email or Fax (Invoice # & Amount)

¹Vendor's bank account information will remain confidential to the extent provided by law and necessary to make ACH payments via direct deposit. Please visit <http://hillsboroughcounty.org/documentcenter/home/view/286> for the ACH enrollment form.

²Merchant services fees are determined by the vendor's agreement with their Merchant Bank. Fees are generally up to 3%. Please visit <http://www.hillsboroughcounty.org/documentcenter/view/285> for the ePayables enrollment form.

**PROCUREMENT POLICY ATTACHMENT 3
STANDARD PURCHASE ORDER – TERMS & CONDITIONS**

5. Materials rejected by the County will be returned to the vendor at the vendor's risk and expense. The County shall not be liable or otherwise responsible for any re-stocking charges unless prior written approval has been provided by the Director of Procurement.
6. Cash discounts will be deducted as provided for on the face of this purchase order or in accordance with the terms of the vendor's quotation or bid.
7. Acceptance by the vendor of this order includes acceptance of all items, conditions, prices, delivery instructions and specifications as shown on the order or attached to or referred to, and which are made a part hereof by reference, as fully and to the same extent as if copied at length herein. In the event of a conflict or discrepancy between this purchase order and any referenced contract document, if one exists, the contract document shall govern. The vendor may not unilaterally modify the terms of this purchase order by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the vendor's order or fiscal forms or other documents forwarded by the vendor for payment. The County's acceptance of product or processing of documentation on forms furnished by the vendor for approval or payment shall not constitute acceptance of the proposed modification to the terms and conditions of this purchase order.
8. If this purchase order is a call or release order against a Blanket Purchase Agreement (BPA) or Contract Purchase Agreement (CPA), all terms and conditions of the subject purchase agreement and this purchase order shall apply to the order. The purchase order number, not the purchase agreement number, must be on the invoice.
9. All shipments by the vendor must be F.O.B Destination, unless otherwise authorized in writing by the Director of Procurement. Any F.O.B. Shipping Point freight charges shall be prepaid and added to the invoice and with a copy of the freight bill attached. The County will not accept collect shipments. All stated delivery times are of the essence.
10. In accordance with law, the County reserves the right to cancel all or part of this purchase order prior to acceptance of the goods or services.
11. Vendors are expected to satisfy all purchase orders in one shipment unless otherwise stipulated in the subject solicitation, award, or authorized by the Director of Procurement in writing. Excessive and unauthorized partial shipments may result in vendor debarment or prohibition from doing business with the County.
12. Vendors are not authorized to deliver any goods or services which are not covered by this purchase order. The County accepts no responsibility and is not obligated to render payment for purchases that are not covered by a duly-issued purchase order or specifically authorized by the Director of Procurement or County Administrator. Vendors violating this condition may be subject to debarment or prohibition from doing business with the County in accordance with the County's Procurement Policies and such vendors may forfeit their right to compensation for such deliveries.
13. **INDEMNIFICATION (PATENT OR COPYRIGHT):** The vendor shall indemnify and hold harmless, and defend the County and the Board of County Commissioners, their agents and employees, and anyone directly or indirectly employed by either of them, from and against all liabilities, damages, claims, demands or actions at law or in equity, including court costs and attorney's fees that may hereafter at any time be made or be brought by anyone arising out of any infringement of patent rights or copyrights held by others or for the disclosure or improper utilization of any trade secrets by vendor during or after completion of the Work. These obligations shall survive acceptance of any goods and/or services and payment therefore by the County.

**PROCUREMENT POLICY ATTACHMENT 3
STANDARD PURCHASE ORDER – TERMS & CONDITIONS**

14. **INDEMNIFICATION (GENERAL LIABILITY):** The vendor shall indemnify, hold harmless, and defend the County and the Board of County Commissioners, their agents and employees, and anyone directly or indirectly employed by either of them, from and against any and all liabilities, losses, claims, damages, demands, expenses or actions, either at law or in equity, including court costs and attorneys' fees, that may hereafter at any time be made or brought by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, as a result of any negligent, wrongful, or intentional act or omission, or based on any action of fraud or defalcation by the vendor, or anyone performing any act required of vendor in connection with performance of the Contract awarded pursuant to this order. These obligations shall survive acceptance of any goods and/or services and payment therefore by the County.
15. **INDEMNIFICATION (GENERAL LIABILITY—GOVERNMENTAL AGENCY-VENDORS ONLY):** The County and governmental agency-vendor shall each be liable to the extent permitted by §768.28, Fla. Stat., for the negligent acts, or omissions of their respective officers, employees and agents. Nothing in the foregoing shall be construed as a waiver of sovereign immunity or as consent to be sued by either the County or the governmental agency-vendor.
16. Any dispute or contractual right regarding this purchase order shall be governed by Florida Law. In the event of a lawsuit by the vendor the venue of such lawsuit shall be in Hillsborough County, Florida and the vendor waives whatever rights it has in the selection of venue.
17. The vendor shall have in its possession any applicable permits, licenses, etc. that may be required by Federal, State, County, or local law to furnish products or services under the scope of this purchase order. The vendor shall be in compliance with all zoning and other ordinances in the performance of the awarded contract.
18. **EQUAL EMPLOYMENT OPPORTUNITY; NON-DISCRIMINATION:** The vendor shall comply with Hillsborough County, Florida - Code of Ordinances and Laws, Part A, Chapter 30, Article II (Hillsborough County Human Rights Ordinance) as amended, which prohibits illegal discrimination on the basis of actual or perceived race, color, sex, age, religion, national origin, disability, marital status, sexual orientation, or gender identity or expression, in employment, public accommodations, real estate transactions and practices, County contracting and procurement activities, and credit extension practices. The vendor shall also comply with the requirements of all applicable federal, state and local laws, rules, regulations, ordinances and executive orders prohibiting and/or relating to discrimination, as amended and supplemented. All of the aforementioned laws, rules, regulations, ordinances and executive orders are incorporated herein by reference. Furthermore, Hillsborough County hereby notifies all vendors that Minority Business Enterprises (MBE), Disadvantaged Minority Business Enterprises (DMBE), and Disadvantaged Women Business Enterprises (DWBE) will be afforded a full opportunity to participate in any award made by Hillsborough County and will not be subjected to discrimination on the basis of race, color, sex or national origin.
19. The vendor shall keep adequate records and supporting documentation applicable to this contractual matter. Said records and documentation will be retained by the vendor for a minimum of six (6) years from the date of termination of this Contract. The County and its authorized agents shall have the right to audit, inspect and copy all such records and documentation as often as the County deems necessary during the period of this contract and during the period of six (6) years thereafter. This six (6) year time period will be extended until audit findings are issued if an audit is initiated during the six (6) year period. Such activity shall be conducted only during normal business hours. The County, during the period of time expressed by the preceding sentence, shall also have the right to obtain a copy of and otherwise inspect any audit made at the direction of the vendor as concerns the aforesaid records and documentation.
20. **TAXES:** Counties are exempt from Federal Taxes on transportation charges and any Federal Excise Tax (No. 59-6000661). If you are to prepay charges, do not pay tax as County will not reimburse you for taxes paid. The County's Consumers Certificate of Exemption Number is #85-8012622015C-2, effective 11/30/14.

PROCUREMENT POLICY ATTACHMENT 3
STANDARD PURCHASE ORDER – TERMS & CONDITIONS

21. Questions concerning delivery of this order should be directed to the department contact shown on the order. For other questions regarding this order, please contact the Procurement Services Department at P.O. Box 1110, 601 E. Kennedy Blvd., 25th Floor, Tampa, FL 33601, procurementservices@hillsboroughcounty.org, or (813) 272-5790. Please visit www.hillsboroughcounty.org/procurementmanual to view or download the County's Procurement Policy and Procedures Manual.
22. RISK OF LOSS: Until acceptance, risk of loss or damage shall remain with the vendor. The vendor shall be responsible for filing, processing, and collecting all damage claims. When the County rejects a product, the vendor shall remove it from the premises within ten (10) days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the vendor. Rejected product not removed by the vendor within ten (10) days shall be deemed abandoned by the vendor, and the County shall have the right to dispose of it as its own property. The vendor shall reimburse the County for costs and expenses incurred in storing or effecting removal or disposition of rejected product.
23. WARRANTY: The vendor shall provide to the County a one (1) year written warranty: (a) against poor workmanship, for all services rendered by the vendor, (b) for all products, materials or equipment provided by the vendor in the course of providing service to the County, and (c) for all commodities sold to the County. The warranty period shall begin on the date of final completion and/or acceptance by the County.
24. FISCAL NON-FUNDING CLAUSE: This purchase order is subject to funding availability. In the event sufficient budget funds to fund this purchase order become reduced or unavailable, the County shall notify the vendor of such occurrence, and the County may terminate this purchase order, without penalty or expense to the County, upon no less than twenty-four (24) hours written notice to the vendor. The County shall be the final authority as to the availability of funds and how available funds will be allotted. If this purchase order is funded in whole or in part by federal or state dollars which are reduced or become unavailable, the County shall notify the vendor of such occurrence and the County may terminate this purchase order, without penalty or expense to the County, upon no less than twenty-four (24) hours written notice to the vendor.
25. ACCESS TO RECORDS: If applicable, vendor shall comply with the requirements of Chapter 119, Florida Statutes, with respect to any documents, papers, and records made or received by vendor in connection with this purchase order.
26. REIMBURSEMENT OF TRAVEL EXPENSES: Travel expenses, if applicable, shall be paid pursuant to the provision of §112.061, Florida Statutes.
27. LEGALLY REQUIRED STATEMENT AND PROVISIONS REGARDING ACCESS TO RECORDS – APPLICABLE TO SERVICES CONTRACTS ONLY

The Parties acknowledge and agree that the statement and provisions below are required by Florida Statute to be included in this contract for services. The inclusion of this statement and provisions below shall not be construed to imply that the vendor has been delegated any governmental decision-making authority, governmental responsibility or governmental function or that the vendor is acting on behalf of the County as provided under Section 119.011(2), Florida Statutes, or that the statement or provisions are otherwise applicable to the vendor. As stated below, the vendor may contact the County's Custodian of Public Records with questions regarding the application of the Public Records Law; however, the vendor is advised to seek independent legal counsel as to its legal obligations. The County cannot provide the vendor advice regarding its legal rights or obligations.

PROCUREMENT POLICY ATTACHMENT 3
STANDARD PURCHASE ORDER – TERMS & CONDITIONS
**IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA
STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS
CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

- I) _____ (name & telephone number),
- II) _____ (email address),
- III) _____ (County department name & mailing address)

If under this contract, the vendor is providing services and is acting on behalf of the County as provided under Section 119.011(2), Florida Statutes, the vendor will comply with public records law, and agrees to:

- I) Keep and maintain public records required by the County to perform the services.
- II) Upon request from the County's custodian of public records, provide the County 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 Chapter 119 Florida Statutes or as otherwise provided by law.
- III) 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 the vendor does not transfer the records to the County.
- IV) Upon completion of the contract, transfer at no cost to the County, all public records in possession of the vendor or keep and maintain public records required by the County to perform the service. If the vendor transfers all public records to the County upon completion of the contract, the vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the vendor keeps and maintains public records upon completion of the contract, the vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

Failure of the vendor to comply with Chapter 119, Florida Statutes, and/or the provisions set forth above, where applicable, shall be grounds for immediate unilateral termination of this contract by the County.

28. MUTUAL WAIVER AND LIMITATION OF LIABILITY:

County and Vendor (inclusive of their respective officers, directors, members, partners, subcontractors, and employees) shall not be liable to each other for loss of profit or revenue, loss of use or business opportunity, loss of contract, or for any indirect, consequential, special, incidental and punitive damages. The aggregate liability of each party, whether under contract law, in tort, or otherwise, will not exceed the total amount actually paid to Vendor by County in the prior twelve (12) months ("Cap"). This Cap does not apply to: (a) costs, losses, or damages asserted by third parties for destruction of tangible property, bodily injury, sickness, or death; or (b) gross negligence or willful misconduct. This Clause prevails over all other Purchase Order clauses.

**Approved by County Attorney
As to Form and Legal Sufficiency**

By: _____

Requesting Dept. Approval:

Beth Schinella, Director	<small>Digitally signed by Beth Schinella, Director Date: 2021.06.07 13:29:11 -0400</small>	Date: _____
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