

**ADDENDUM CONTAINING ADDITIONAL TERMS
FOR CITY PROCUREMENT OF SERVICES/PRODUCTS**

Provider: _____
Services/Products Provided: _____
Date of Agreement: _____
Identifying Order/Contract Number: _____

THIS IS AN Addendum setting forth additional terms of the agreement between the above Provider and the City of Bonifay, a Florida Municipal Corporation (“the City”), with respect to the services/products listed above, the agreement identified by date and order/contract number (if applicable) stated above (“the Agreement” consists of the above-mention agreement, this addendum, and all final bid and procurement specifications and documents). The Parties (the Provider named above and the City) agree that the Agreement shall be subject to all of the terms and provisions of this addendum (which are incorporated by reference into the Agreement). In the event of any conflict between the provisions of this addendum and the Agreement, the terms of this addendum shall control for all purposes.

Termination. The City shall be entitled to terminate the Agreement with or without cause, for its convenience, or in the event that funding for the services/products set forth in the Agreement is withdrawn by the City in the exercise of its governmental discretion. The termination shall be effective as stated in a termination notice given by the City with at least thirty (30) calendar days’ notice. In the event of such termination, the City shall pay for the services/products provided through the effective date of termination but shall owe no additional compensation or damages of any kind. Provider waives any claim for any other amounts or any damages. The City may also terminate this agreement upon the giving of five (5) business days’ written notice of breach of the Agreement by Provider and Provider’s failure to cure the breach within such five (5) business days. In addition, without limiting the foregoing, any misrepresentation or failure by Provider to disclose a material fact, including (but not limited to) Provider’s licensure, equipment, manpower, and financial resources and financial ability status, whether before or after the date of this Agreement, shall, at the City's option, be grounds for the immediate termination of this Agreement. Provider hereby represents that to the best of its knowledge, there are no financial, legal, or other conditions or matters which would interfere with its ability to fully perform all of its obligations under this Agreement for the full term of this Agreement.

Conditions of bid and procurement. All services/products will be provided in accordance with the specifications and bid items set forth in procurement process (all of the terms and conditions of which are incorporated herein by reference). Provider hereby agrees to provide such services/products in accordance with all applicable law and regulation, including (but not limited to) all regulations and restrictions imposed by the City.

Independent Contractor. For all purposes under this Agreement and otherwise, Provider and Provider’s employees shall be deemed independent contractors and not employees of the City. The City will not withhold or pay any state or federal income tax (either any employer's or employee's

portion), social security tax, Medicare/Medicaid tax or assessment, group or individual medical, dental and life insurance coverage, sick pay, vacation pay, personal leave, unemployment compensation (or insurance for such), or workers compensation (or insurance for such) for Provider or for any of Provider's employees. Provider and Provider's employees waive absolutely any right of recovery against the City or its officers, employees, or insurers for any of the above-mentioned benefits or for any other matter, other than compensation due to Provider as set forth in this agreement.

No assignment. Provider shall not be entitled to and shall not assign or subcontract any of the Provider's duties or obligations hereunder or the services/products, and any such assignment or subcontract shall be void as against the City. Any attempted assignment or subcontracting in violation of this provision shall give the City the right to terminate this Agreement immediately, upon written notice to Provider.

Notice to City. Any notice to the City shall be deemed made on the day personally delivered in writing (by hand delivery, fax, or email) or five business days after mailing by certified or registered mail, postage prepaid, to the Mayor at 301 J Harvey Ethridge St, Bonifay, FL 32425; with a copy to **Michelle Blankenship Jordan**, City Attorney, 1512 Highway 90, Chipley, FL 32428, fax to (877) 208-3898, email to service@blankenshipjordanpa.com.

No Implied Waiver or Amendment. The City shall not be deemed to have waived the enforcement or breach of any provision the Agreement, whether or not recurring, unless such waiver is approved by the governing body of the City in open, public session. Any amendment to the Agreement will be effective only if in writing and signed by the Mayor of the City of Bonifay after approval in an open, public meeting and by the Provider.

Severability. The invalidity or unenforceability of any provisions of the Agreement will not affect the validity or enforceability of any other provision.

Interpretation. The defined terms and paragraph titles used herein are for convenience only and do not limit the contents of this Agreement. When applicable, the use of the singular form of any word shall mean or apply to the plural, and the masculine or feminine or neutral gender as the case may be.

Indemnification by Provider. Provider agrees to indemnify the City (and the City's Councilpersons, officers, employees, and attorneys) and hold all of them harmless from and against and pay the cost of defense of any and all of them against any and all damages, claims, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, repair work, and all costs and expenses incurred in connection therewith (including but not limited to attorneys' fees, paralegal charges and expenses), arising out of or related to, directly or indirectly, Provider's performance of or failure to perform Provider's services/products under this agreement. This indemnification shall apply whether the claim or occurrence happened or began prior to, during, or after any services/products by Provider. The scope of this indemnification shall include, but not be limited to, any and all claims of Provider (except those arising out of a breach of this agreement by the City) or of any other person, firm or corporation. The City remains responsible to the extent of and subject to the limitations provided by Florida law for the acts and omissions of its employees

and agents. Nothing in the Agreement shall be deemed a waiver of the City's rights or immunities under Fla. Stat. Section 768.28.

Provider's Insurance. Provider agrees to maintain in full force and effect public and professional liability insurance in the minimum amount of \$1,000,000 during the term of this agreement or any extension hereof, and to furnish copies of each certificate of insurance to the City at any time on request by the City.

No Other Promises. The Agreement, consisting of the Agreement and this addendum and all contract and bid documents, is the entire agreement of the parties with respect to the subject matter hereof. There are no promises, representations or warranties, other than those set forth expressly herein. This agreement is not intended to and shall not be construed to effect any waiver of any immunity accruing under law to the City, or to create any rights or benefits in favor of any other person, firm or corporation or any other third party beneficiary. No duty or obligation imposed hereunder shall be deemed to run in favor or for the benefit of any person, firm or corporation, other than the parties hereto.

Public Records.

(a) **IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS:**

Name: _____
Phone: _____
Email Address: _____
Mailing Address: _____

(b) Provider shall comply with the Florida Public Records laws. In particular, the Provider shall, unless waived in writing by the City:

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 chapter 119 Florida Statutes or as otherwise provided by law.
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 the Provider

does not transfer the records to the City.

4. Upon completion of performance under the Agreement, transfer, at no cost, to the City all public records in possession of the Provider or keep and maintain public records required by the City to perform the service. If the Provider transfers all public records to the City upon completion of the contract, the Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Provider keeps and maintains public records upon completion of the contract, the Provider shall meet all applicable requirements for retaining the public records. All records stored electronically must be provided to the City, upon the request from the City's custodian of public records, in a format that is compatible with the City's information technology systems.
5. The City and/or its designee shall have the right from time to time at its sole expense to audit the compliance by the Provider with the terms, conditions, obligations, limitations, restrictions and requirements of the Agreement and such right shall extend for a period of three (3) years after any termination of the Agreement.

(c) Failure to provide the public records to the public agency within a reasonable time may subject the Provider to penalties under s. 119.10 and s. 119.0701(4), Florida Statutes.

Provider Confidential Information. Provider represents that its some or all of its product contains proprietary information and trade secrets of Provider. Accordingly, to the full extent permissible under applicable law and subject to the express terms of this provision, the City agrees to treat the identified product as confidential. In order to be treated as confidential, any material submitted to the City that Provider contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Florida statutes Chapter 119 **must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT-TRADE SECRET"**). In addition, Provider must, simultaneous with the submission of any trade secret material, provide a sworn affidavit from a person with personal knowledge attesting that the trade secret materials constitute trade secrets under Florida Statutes Section 812.081 and stating the factual basis for the same. In the event that a third party submits a request to the City for records designated by Provider as trade secret materials, the City shall refrain from disclosing the trade secret materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Provider. Provider shall indemnify and defend the City and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgment and liabilities of any kind, including attorney's fees, litigation expenses and court costs relating to the non-disclosure of the trade secret materials in response to a public records request by a third party. Notwithstanding anything in this Addendum or the Agreement, any action taken by the City in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119, shall not constitute a breach of the Agreement.

Ownership of Product. Provider hereby acknowledges that the documentation, materials, or intellectual property hereunder (collectively, the "Work Product") are works which have been specially commissioned by the City and are "work made for hire" for the City, and further that the City shall own all right, title, and interest therein. The City shall be considered the author of the Work

Product for purposes of copyright and shall own all the rights in and to the copyright of the Work Product and, as between the City and Provider, only the City shall have the right to obtain a copyright registration on the same which the City may do in its name, its trade name or the name of its nominee(s). Accordingly, among other things, the City is the author and owner of the Work Product and shall have the sole and exclusive rights to do and authorize any and all of the acts set forth in Section 106 of the Copyright Act with respect to the Work Product and any derivatives thereof, and to secure any and all renewals and extensions of such copyrights. To the extent Provider does not own such Work Product as a work made for hire, Provider hereby assigns, transfers, releases and conveys to the City all rights, title and interest to such Work Product, including but not limited to all other patent rights, copyrights, and trade secret rights.

Choice of Laws; Forum Selection. The Agreement shall be governed in all regards by Florida law, without regard to conflicts or choice of laws principles. Any action, claim, counter-claim, or third party complaint brought by Provider or the City with respect to, related to, or arising in any way out of the Agreement or the services/products provided shall be brought exclusively in state court in Holmes County, Florida. The Provider agrees to submit to the jurisdiction of such court over the Provider for any such action or claim.

Executed effective the date first stated above.

Provider: _____
By: _____
Its: _____

City of Bonifay, Florida
By: _____
_____, Mayor