



Procurement Division • 900 E. Strawbridge Avenue • Melbourne, Florida 32901 • (321) 608-7062 • Fax (321) 608-7070

PURCHASE AGREEMENT FOR SERVICES
TEMPORARY STAFFING SERVICES

This **PURCHASE AGREEMENT FOR SERVICES – TEMPORARY STAFFING SERVICES** (this "Contract") is entered into by and between the City of Melbourne, Florida, hereinafter referred to as the **CITY**, and **AUE Staffing, Inc.**, a Florida corporation, whose mailing address is 1600 Sarno Road, Suite 109, Melbourne, FL 32935, hereinafter referred to as the **CONTRACTOR**.

CITY PROCUREMENT CONTACT:	CITY DEPARTMENT CONTACT:	CONTRACTOR CONTACT:
Procurement Division Shanequa Nabors, Buyer 900 E. Strawbridge Ave Melbourne, FL 32901 shanequa.nabors@mlbfl.org P: 321-608-7066 F: 321-608-7070	Human Resources Dr. Kimberly Foxworth, Director of HR 900 E. Strawbridge Ave Melbourne, FL 32901 kimberly.foxworth@mlbfl.org P: 321-608-7802 F: 321-608-7818	AUE Staffing, Inc. Elizabeth Torres, Manager 1600 Sarno Road, Suite 109 Melbourne, FL 32935 etorres@auestaffing.com P: 321-622-8306 F: 321-622-8309

This Contract consists of the following documents: (Mark "X" where applicable)

- ☒ Exhibit A: Standard Terms and Conditions of Purchase Agreement - Services (Std Version 12/16/2020)
 - ☒ Exhibit A1. Statement of Work
 - ☒ Exhibit A2. Performance Standards/ Quality Requirements
 - ☐ Exhibit A3. Maintenance Agreement
 - ☒ Exhibit A4. Pricing Schedule
- ☒ Exhibit B: Supplemental Provisions
- ☐ Exhibit C: Federal Compliance Provisions
- ☐ Exhibit D: Bid Specifications
- ☒ Exhibit D1: Invitation to Bid # **ITB-B21014S-0-2021/SN**, as modified by addenda (the "ITB")
- ☐ Exhibit D2: Request for Proposal # RFP _____, as modified by addenda (the "RFP")
- ☒ Exhibit D3: CONTRACTOR's Responsive Bid dated **March 25, 2021**, but only to the extent responsive to CITY's ITB or RFP, as the case may be (the "Bid")

CITY may purchase and CONTRACTOR shall sell the Services (and Items incidental thereto) as described in Exhibit A1 at prices specified in Exhibit A4, in accordance with the terms and conditions of this Contract and the documents marked above as Exhibits, all incorporated herein by reference. This Contract commences on **July 30, 2021** (the "Commencement Date"), subject to the Effective Date. This Contract expires on **July 29, 2022** (the "Expiration Date") and ☐ is not renewable ☒ is renewable for up to **four (4) additional 12-month terms**.

CITY:

CITY OF MELBOURNE,
a Florida municipal corporation

Shannon M. Lewis, City Manager Date 7.14.2021

ATTEST: [Signature]
Kevin McKeown, City Clerk

CONTRACTOR:

AUE STAFFING, INC.,

a Florida corporation

[Signature] 06/02/2021
Signature Date

Name: Melody Martin

Title: President

City Use Only

Initial Method of Procurement (mark):

☒ ITB # **ITB-B21014S-0-2021/SN**

☐ RFP # _____

☐ Exception: _____

Commencement Date: 7/30/2021

** Note: But effective no earlier than last of the parties to execute

Expiration Date: 7/29/2022

Renewal: ☐ No ☒ Yes 4 terms ☐ Not Applicable

Council/ City Manager Approval Date: 7/13/2021

EXHIBIT A

STANDARD TERMS AND CONDITIONS OF PURCHASE AGREEMENT – SERVICES

1. DEFINITIONS

- A. "Item(s)" means any goods or items, including intellectual property, provided by CONTRACTOR incidental to the Services.
- B. "Hazardous Materials" are or contain dangerous goods, chemicals, contaminants, substances, pollutants, or any other materials that are defined as hazardous by relevant local, state, national, or international law, regulations, and standards.
- C. "Purchase Order" is CITY's document setting forth specific Services to be rendered and Order information.
- D. "Order" means CITY's authorization for CONTRACTOR to provide the Services defined in accordance with the CITY's Purchase Order sent to CONTRACTOR.
- E. "Service(s)" means the work which CONTRACTOR is to perform for CITY as set forth in Exhibit A1 in compliance with the Performance Standards of Exhibit A2 and the Maintenance Agreement of Exhibit A3.
- F. "Commencement Date" and "Expiration Date" are defined as set forth on the first page of this Contract and shall apply to term contracts.

2. TERM OF AGREEMENT

The term of this Contract shall begin on the Effective Date, and continue to the Expiration Date. The Effective Date of this Contract shall be the date of the last of the parties to sign.

3. PRICING

- A. Prices set forth on Exhibit A4 shall remain fixed for the duration of this Contract except as provided herein.
- B. The price charged CITY for any Service shall always be CONTRACTOR's lowest price charged any customer for that equivalent Service regardless of any special terms, conditions, rebates, or allowances of any nature. If CONTRACTOR sells any Service to any customer at a price less than that set forth herein, CONTRACTOR shall adjust its price to the lower price for any un-invoiced Service and for all future invoices for such Service. For purposes of comparing price under this Paragraph, the price and/or conversion costs of Services shall include those CONTRACTOR cost components which are generic to the Services as compared to other similar services generally provided by CONTRACTOR. Such comparison shall be made to the extent Services have similar characteristics, such as labor rates, turnkey material costs, storage expenses, or other specific comparison criteria agreed upon by the parties.
- C. In the event CONTRACTOR offers a lower price, either as a general price drop or only to some customer(s) for any reason, CONTRACTOR shall immediately inform CITY of this price and rebate to CITY an amount equal to the difference in the price paid by CITY and the lower price for all such Services provided during the preceding thirty (30) days.
- D. All Applicable taxes and other charges such as duties, customs, tariffs, imposts, and government imposed surcharges paid by CONTRACTOR shall be stated separately on CONTRACTOR's invoice and borne by CONTRACTOR. In the event that CITY is prohibited by law from remitting payments to the CONTRACTOR unless CITY deducts or withholds taxes therefrom on behalf of the local taxing jurisdiction, then CITY shall duly withhold such taxes and shall remit the remaining net invoice amount to the CONTRACTOR. CITY shall not reimburse CONTRACTOR for the amount of such taxes withheld.
- E. The purchase of equipment, materials, and/or service by the CITY may be exempt from the payment of excise, transportation and sales tax imposed by the federal, state and/or other city governments. Upon request, applicable federal excise exemption certificates will be furnished to CONTRACTOR.
- F. Additional costs including such taxes, surcharges and delivery costs, except those described on Exhibit A4, will not be paid or

reimbursed without CITY's prior written approval.

- G. CITY reserves the right to have CONTRACTOR's records inspected and audited to ensure compliance with this Contract. At CITY's option or upon CONTRACTOR's written demand, such audit will be performed by an independent third party at CITY's expense. However, if CONTRACTOR is found to not be complying with this Contract in any way, CONTRACTOR shall reimburse CITY for all costs associated with the audit, along with any discrepancies discovered, within thirty (30) days after completion of the audit. The results of such audit shall be kept confidential by the auditor to the extent allowed by law and, if conducted by a third party, only CONTRACTOR's failures to abide by the obligations of this Contract shall be reported to CITY.

4. INVOICING AND PAYMENT

- A. Payment for Services as specified in the contract shall be processed promptly after performance of Services and after receipt of properly prepared invoice(s). Original invoices shall be submitted and shall include: purchase agreement number from the Purchase Order, purchase order number, line item number, Order number, part number, complete bill to address, description of Services, quantities, unit price, extended totals, and any applicable taxes or other charges. For payment, Seller must render original invoice to the City of Melbourne, Accounts Payable Division, 900 East Strawbridge Avenue, Melbourne, Florida 32901.
- B. CONTRACTOR shall be responsible for and hold the CITY harmless for any and all payments to CONTRACTOR's vendors or subcontractors utilized in the performance of the Services.
- C. Discounts for prompt payment will not be considered in bid evaluations, unless otherwise specified. Offered discounts, however, will be taken if payment is made within the discount period.
- D. Payment is made when CITY's check is mailed or EDI funds transfer initiated.
- E. CITY is a local governmental entity subject to the Local Government Prompt Payment Act, §218.70, *et seq.*, Fla. Stat. and payment by CITY shall be made in compliance with said Act. Late charges may be assessed subject to said Act but only to the extent set forth in this Contract.
- F. No payments shall be made in advance of acceptance of services not covered under this Contract nor for Services not acceptable to CITY.
- G. CONTRACTOR agrees to invoice CITY no later than sixty (60) days after performance of Services. CITY will not be obligated to make payment against any invoices submitted after such period.
- H. Payment by the CITY shall be subject to approval and acceptance of Services by CITY. Notwithstanding the foregoing, CITY's payment shall not constitute acceptance.

5. NON-APPROPRIATION –

All funds for payment by CITY under this Contract are subject to the availability of an annual appropriation for this purpose by the Melbourne City Council. In the event of non-appropriation of funds by the Melbourne City Council for the Services provided under this Contract, CITY will terminate this Contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the Services covered by this Contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Contract, CONTRACTOR on thirty (30) days prior written notice shall accept cancellation, but failure to give such notice shall be of no effect and CITY shall not be obligated under this Contract beyond the date of termination.

6. NON-EXCLUSIVITY

The right to provide the Services, which will be granted under this Contract, shall not be exclusive. The CITY reserves the right to competitively bid any Services from another provider when it is in the best interest of CITY.

7. TERMINATION

- A. CITY may terminate this Contract or any Purchase Order issued, or any part thereof, at any time for its sole convenience by giving thirty (30) days written notice of termination to CONTRACTOR.
- B. CITY may terminate this Contract upon written notice to CONTRACTOR in the event CONTRACTOR defaults on any of the terms and conditions of this Contract and such failure continues for a period of fifteen (15) days following notice from CITY specifying the default.
- C. Notwithstanding the foregoing, CITY may immediately terminate this Contract, without providing CONTRACTOR with notice of default or an opportunity to cure, if CITY determines that CONTRACTOR has failed to comply with any of the terms and conditions of this Contract related to safety, indemnification or insurance coverage.
- D. Notwithstanding the foregoing, CITY reserves the right to immediately terminate this Contract by providing written notice to CONTRACTOR but without an opportunity to cure if CITY determines CONTRACTOR knowingly furnished any statement, representation, warranty or certification in connection with the solicitation of CONTRACTOR's bid or this Contract, which representation was materially false, deceptive, incorrect, or incomplete.
- E. Notwithstanding the foregoing, CITY reserves the right to immediately terminate the contract by providing written notice to CONTRACTOR if the State of Florida or the federal government enacts a law, which removes or restricts the authority of CITY to conduct all or part of its function.
- F. Upon receipt of such notice of termination, CONTRACTOR shall: (1) discontinue the terminated work in accordance with CITY's instructions, (2) thereafter perform only such portion of the work not terminated, (3) not place further orders or enter into further subcontracts for Services relating to this Contract, and (4) terminate all existing orders and subcontracts insofar as such orders and subcontracts relate to the performance of this Contract.
- G. There shall be no termination charges for Services not yet provided. The CITY will be responsible for payment of authorized Services already provided by CONTRACTOR but not yet invoiced, provided such Services have been approved by the CITY. Upon payment of CONTRACTOR's claims, the CITY shall be entitled to all work and materials paid for.
- H. Before assuming any payment obligation under this section, the CITY may inspect CONTRACTOR's work in process and audit all relevant documents prior to paying CONTRACTOR's invoice.
- I. There shall be no charges for termination of orders for Services. Notwithstanding anything to the contrary, CONTRACTOR shall not be compensated in any way for any work done after receipt of CITY's notice, nor for any costs incurred by CONTRACTOR's suppliers or subcontractors after CONTRACTOR receives the notice, nor for any costs CONTRACTOR could reasonably have avoided.
- J. Notwithstanding anything else in this Contract, failure to meet the performance date(s) in this Contract shall be considered a material breach of contract and shall allow CITY to terminate the order for the Services and/or any subsequent Orders in the Purchase Order without any liability.

8. FORCE MAJEURE

Neither party shall be responsible for its failure to perform due to causes beyond its reasonable control such as acts of God, fire, theft, war, riot, embargoes, or acts of civil or military authorities. If Services are to be delayed by such contingencies, CONTRACTOR shall immediately notify CITY in writing and CITY may either: (i) extend time of performance; or (ii) terminate all or part of the uncompleted portion of the Purchase Order at no cost to CITY.

9. SCHEDULING AND ORDERS

- A. CONTRACTOR shall promptly perform Services as scheduled or shall promptly notify the CITY if unable to perform any scheduled Services and shall state the reasons.
- B. CITY may place any portion of an Order on hold by notice which shall take effect immediately upon receipt. Orders placed on hold will be rescheduled or canceled within a reasonable time.
- C. CITY shall have no obligation with respect to the purchase of Services under this Contract until such Services are specified in an issued Purchase Order.
- D. CONTRACTOR, in performing work under this Contract, shall provide and maintain during the life of this Contract, equipment and staff sufficient in number, condition and capacity to efficiently perform the work and provide the Services required by this Contract.

10. WARRANTY

- A. CONTRACTOR represents and warrants that all Services provided shall be performed in a workmanlike and competent manner in accordance with the highest professional standards in CONTRACTOR's trade or industry, and shall meet the descriptions and specifications provided on Exhibit A1 and the performance standards stated in Exhibit A2. CITY may inspect and test all Items and review Services at reasonable times in such manner as shall not unreasonably hinder or delay CONTRACTOR's performance. All Items and Services shall be received subject to CITY's inspection, testing, approval, and acceptance at CITY's premises notwithstanding any inspection or testing at CONTRACTOR's premises or any prior payment for such Services. Items rejected by CITY as not conforming to this Contract or specifications, whether provided by CITY or furnished with the Item, may be returned to CONTRACTOR at CONTRACTOR's risk and expense and, at CITY's request, shall immediately be repaired or replaced.
- B. CONTRACTOR makes the following warranties regarding Items furnished hereunder, which shall survive any delivery, inspection, acceptance, payment, or resale of the Services and Items:
 - (i) Items will not infringe any party's intellectual property rights;
 - (ii) CONTRACTOR has the necessary right, title, and interest to provide said Items to CITY, and the Items will be free of liens and encumbrances;
 - (iii) Items are new, and of the grade and quality specified;
 - (iv) Items are free from defects in workmanship and material, conform to all samples, drawings, descriptions, and specifications furnished or published by CONTRACTOR, and to any other agreed-to specifications; and
 - (v) Items conform to the manufacturing quality provisions set forth in Exhibit A2.
- C. If CONTRACTOR breaches any of the foregoing warranties, or Items are otherwise non-conforming, during a period of three (3) years after CITY's acceptance of Services, CONTRACTOR shall, at CITY's option, (i) promptly correct any non-conforming or defective workmanship at no additional cost to the CITY; or (ii) CONTRACTOR shall promptly repair, replace, or refund the amount paid for such Items and Services; and (iii) shall pay to CITY all incidental and consequential damages arising from breach of the foregoing warranties. CONTRACTOR shall bear the cost of shipping and risk of loss of all defective or non-conforming Items while in transit. Notwithstanding the foregoing, the parties agree that the term of the manufacturer's standard warranty shall apply to all manufacturing defects.

11. INDEPENDENT CONTRACTOR

In performing Services under this Contract, CONTRACTOR is an independent contractor and its personnel and other representatives shall not act as nor be agents or employees of the CITY. As an independent contractor, CONTRACTOR will be solely responsible for determining the means and methods for performing the required Services. CONTRACTOR shall have complete charge and responsibility for personnel employed by CONTRACTOR; however, the CITY reserves the right to instruct CONTRACTOR to remove from the CITY's premises immediately any of CONTRACTOR's personnel who

are in breach of Paragraph 17 herein. Such removal shall not relieve CONTRACTOR's obligation to provide Services under this Contract.

12. SECURITY

CONTRACTOR confirms that employees of CONTRACTOR performing work at the CITY's facilities have no record of criminal convictions involving drugs, assault or combative behavior, or theft within the last five years. CONTRACTOR understands that such employees may be subject to criminal history investigations by the CITY at the CITY's expense and may be denied access to the CITY's facilities if any such criminal convictions are discovered.

13. OWNERSHIP AND BAILMENT RESPONSIBILITIES

- A. Any specifications, drawings, schematics, technical information, data, tools, dies, patterns, masks, gauges, computers, test equipment, and other materials furnished or paid for by CITY shall: (i) remain or become the CITY's property; (ii) be used by CONTRACTOR exclusively for CITY's orders; (iii) be clearly marked as CITY's property and segregated when not in use; (iv) be kept in good working condition at CONTRACTOR's expense; and (v) be shipped to CITY promptly on demand.
- B. CONTRACTOR shall insure CITY's personal property and be liable for loss or damage while in CONTRACTOR's possession or control, ordinary wear and tear excepted.

14. ASSIGNMENT OF INTELLECTUAL PROPERTY

CONTRACTOR hereby assigns to CITY all right, title, and interest to all intellectual property created by the CONTRACTOR arising out of or utilized by the CONTRACTOR in the performance of this Contract and the ownership of the intellectual property shall be vested solely in the CITY. In respect to copyrights, this assignment shall be effective for the entire duration of the copyrights and shall include, but not be limited to, all rights to derivative works. The CONTRACTOR waives all rights of attribution and integrity for specific works created by CONTRACTOR under this Contract.

15. INTELLECTUAL PROPERTY INDEMNIFICATION

CONTRACTOR shall defend, indemnify, and hold CITY and its employees, officers, agents, representatives, and subcontractors harmless from any costs, expenses (including reasonable attorneys' fees), losses, damages, or liabilities incurred because of actual or alleged infringement of any patent, copyright, trade secret, trademark, maskwork, or other intellectual property right, arising out of the use or sale of Items or CONTRACTOR's Services. If an injunction issues as a result of any such claim or action, CONTRACTOR agrees at CONTRACTOR's expense and CITY's option to either: (i) procure the right to continue using Items; (ii) replace them with non-infringing Items; (iii) modify them so they become non-infringing; or (iv) refund to the CITY the amount paid for any Items returned to CONTRACTOR or for any Item destroyed and for Services connected therewith.

16. GENERAL INDEMNIFICATION

CONTRACTOR shall, to the fullest extent permitted by law, protect, defend, indemnify, and hold CITY and its employees, officers, agents, representatives, and subcontractors harmless from and against any and all claims, liabilities, demands, penalties, forfeitures, suits, judgments, and the associated costs and expenses (including attorney's fees), which may hereafter incur, become responsible for, or pay out as a result of: death or personal injury (including bodily injury) to any person, destruction or damage to any property, contamination of or adverse effects on the environment, and any clean up costs in connection therewith, or any violation of law, governmental regulation or orders, to the extent caused by (i) CONTRACTOR's breach of any term or provision of this Contract; (ii) any negligent or willful acts, errors, or omissions by CONTRACTOR, its employees, officers, agents, representatives, or subcontractors in the performance of this Contract; or (iii) dangerous defects in Items. In agreeing to this paragraph the CITY does not intend to alter, extend or waive

any defense of sovereign immunity to which it may be entitled under the Florida Constitution, §768.28, Fla. Stat. or otherwise provided.

17. COMPLIANCE WITH LAWS

- A. CONTRACTOR shall comply with all national, state, and local laws and regulations governing the manufacture, transportation, and/or sale of Items and/or the performance of services in the course of this Contract. Lack of knowledge by CONTRACTOR shall in no way be cause for relief from responsibility. These may include, but are not limited to, Department of Commerce, Environmental Protection Agency, and Department of Transportation regulations applicable to Hazardous Materials and all immigration, employment and labor laws governing CONTRACTOR's personnel providing Services to the CITY.
- B. CONTRACTOR represents and warrants that it is in compliance with Equal Employment Opportunity regulations, unless exempted or inapplicable.
- C. CONTRACTOR represents and warrants that the Items supplied and Services provided to the CITY shall conform in all respects to the standards set forth in the Occupational Safety and Health Act 1970, as amended. Upon request of CITY, CONTRACTOR shall provide copies of CONTRACTOR's OSHA 300 safety logs (summaries only) and the safety logs (summaries only) of CONTRACTOR's subcontractors for the past twenty-four (24) months.
- D. CITY actively supports the Immigration and Nationality Act (INA), which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). CONTRACTOR shall establish appropriate procedures and controls so no services or products under this Contract will be performed or manufactured by any worker who is not legally eligible to perform such services or employment. CONTRACTOR shall register with the E-Verify system operated by the United States Department of Homeland Security and shall verify through the E-Verify system the employment eligibility of persons providing labor, supplies or services in exchange for salary, wages or other remuneration as required by §448.095, Fla. Stat. Notwithstanding anything to the contrary in this Contract, the CITY reserves the right to terminate this Contract in accordance with §448.095, Fla. Stat.
- E. CONTRACTOR represents and warrants that is not listed on the State of Florida's convicted vendor listing established under the provisions of §287.133, Fla. Stat., whereby the State of Florida maintains a convicted vendor listing which excludes those listed suppliers from bid submittal for a period of thirty-six (36) months.
- F. CONTRACTOR shall maintain, for the duration of this Contract, all valid licenses and certificates required for the performance of work and Services and provision of Items.
- G. Subject to *Odebrecht Construction, Inc., v. Prasad and Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation* and their progeny, this sub-paragraph applies to any contract for Services and Items of \$1 million or more. CONTRACTOR certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in §287.135, Fla. Stat., as may be amended or revised. CITY may terminate this Contract at the CITY's option if CONTRACTOR is found to have submitted a false certification as provided under subsection (5) of § 287.135, Fla. Stat., as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in §287.135, Fla. Stat., as may be amended or revised.
- H. CONTRACTOR agrees to abide by all of CITY's rules and regulations while on CITY's premises or performing Services including, but not limited to, safety, health and Hazardous

Material management rules, and rules prohibiting misconduct on CITY's premises such as use of physical aggression against persons or property, harassment, and theft. CONTRACTOR will perform only those Services identified on Exhibit A1 and will work only in areas designated for such Services. CONTRACTOR shall take all reasonable precautions to ensure safe working procedures and conditions for performance on CITY's premises and shall keep CITY's site neat and free from debris.

- I. Failure to comply with this Paragraph shall be considered a breach of contract.

18. RETENTION AND AUDIT

- A. CONTRACTOR understands and agrees that CITY is a public entity subject to the Florida Public Records Law and, as such, CONTRACTOR agrees to retain public records, and upon request by CITY provide to CITY those public records requested, which retention and access shall be pursuant to Chapter 119, Fla. Stat..
- B. The CITY reserves the right to audit the records of CONTRACTOR for the Services and Items provided under this Contract at any time during the performance and term of this Contract and for a period of five (5) years after completion and acceptance by CITY. If required by CITY, CONTRACTOR agrees to submit to an audit by an independent certified public accountant selected by CITY. CONTRACTOR shall allow CITY to inspect, examine and review the records of CONTRACTOR in relation to this Contract at any and all times during normal business hours during the term of this Contract. Records relating to the performance of this Contract shall be made available to CITY for audit upon reasonable notice.
- C. A request to inspect or copy public records relating to this Contract for Services must be made directly to the CITY and CONTRACTOR shall not release a public record in response to a request arising from anyone other than the CITY.
- D. To the extent CONTRACTOR is "acting on behalf of the CITY" CONTRACTOR shall be subject to the following provisions:
 - (i) As required by §119.0701, Fla. Stat., CONTRACTOR shall
 - (1) Keep and maintain public records required by the CITY to perform the Services.
 - (2) Upon request from the CITY, 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 by law.
 - (3) Ensure that public records are exempt or confidential and exempt from public records disclosure requirements that are not disclosed except as authorized by law for the duration of the Contract and following completion of the Contract if the CONTRACTOR does not transfer the records to the CITY.
 - (4) Upon completion of the Contract, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the Service. If the CONTRACTOR transfers all public records to the CITY upon completion of the Contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR 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.
 - (ii) The CONTRACTOR who fails to produce the public records as required by §119.0701, Fla. Stat. may be subject to penalties pursuant to §119.10, Fla. Stat. and civil action pursuant to §119.0701(4) and such failure to produce shall be considered a material breach of this Contract by CONTRACTOR. In the event of such breach, in addition to all other remedies available, CONTRACTOR shall pay to CITY all incidental and consequential damages arising from such breach, including attorneys' fees and costs incurred by the CITY in defending a public records action as well as those assessed against the CITY in such public records action.

(iii) The term "public record" as used in this section includes all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics or means of transmission, made or received pursuant to law or ordinance and in connection with the transaction of official business by or on behalf of the CITY. Guidance as to whether something is a "public record," whether the public record is confidential or exempt, and the applicability or implementation of the provisions of Florida public records law, may be sought from the CITY's City Attorney's Office or the City Clerk's Office; provided that the CONTRACTOR hereby agrees that neither the City Attorney's Office nor the City Clerk's Office is providing legal or other advice to be relied upon by CONTRACTOR.

19. MERGER, MODIFICATION, WAIVER, AND REMEDIES

- A. This Contract contains the entire understanding between the CITY and CONTRACTOR with respect to the subject matter hereof and merges and supersedes all prior and contemporaneous agreements, dealings and negotiations. No modification, alteration, or amendment shall be effective unless made in writing, dated and signed by duly authorized representatives of both parties. Any additional or different terms in CONTRACTOR'S documents are deemed to be material alterations and notice of objection to and rejection of them is hereby given.
- B. CONTRACTOR shall not substitute the Items.
- C. In the event of any conflict between or among this Contract or any ambiguity or missing specifications or instruction, the following priority is established:
 - First, the "Supplemental Provisions" set forth as Exhibit B to the Contract;
 - Second, the "Federal Provisions" set forth as Exhibit C to the Contract;
 - Third, these "Standard Terms and Conditions of Purchase Agreement – Services" incorporated by reference into the Contract.
 - Fourth, CITY's Invitation to Bid or CITY's Request for Proposal, as the case may be, with supporting addenda and CONTRACTOR's bid but only to the extent responsive to CITY's request, collectively set forth as Exhibit D to the Contract.
- D. No waiver of any breach hereof shall be held to be a waiver of any other or subsequent breach.
- E. CITY's rights and remedies herein are in addition to any other rights and remedies provided by law or in equity.
- F. If any provision of this Contract is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect the validity of the remaining provisions unless CITY determines in its discretion that the court's determination causes this Contract to fail in any of its essential purposes.
- G. Notwithstanding anything else contained in this Contract, CITY and CONTRACTOR specifically agree that failure to perform certain obligations undertaken in connection with this Contract would cause irreparable damage, and that monetary damages would not provide an adequate remedy in such event. The parties further agree that CONTRACTOR's failure to complete performance of the Services called for in this Contract or on any project Ordered under this Contract, or failure to perform or effect performance of Services as contracted are such certain obligations. Accordingly, it is agreed that, in addition to any other remedy to which the non-breaching party may be entitled, at law or in equity, the non-breaching party shall be entitled to an order of specific performance to compel performance of such obligations.

20. DISPUTES

In case of dispute arising under this Contract between the parties, the decision of the CITY of Melbourne shall be final and binding of both parties.

21. ASSIGNMENT; SUBCONTRACTORS

CONTRACTOR may neither assign nor factor any rights in nor delegate any obligations under this Contract or any portion

thereof without the written consent of the CITY. CITY may cancel this Contract for cause should CONTRACTOR attempt to make an unauthorized assignment of any right or obligation arising hereunder. This Contract may be amended only in writing signed by CONTRACTOR and CITY and subject to with the same degree of formality evidenced in this Contract. Nothing contained in this Contract will be construed as establishing any contractual relationship between CITY and any subcontractor of CONTRACTOR. CONTRACTOR will be fully responsible to CITY for the acts and omissions of the CONTRACTOR's subcontractor(s) and their employees. When subcontracting is allowed, any changes in subcontractors shall require prior written approval by the CITY.

22. OFFER EXTENDED TO OTHER GOVERNMENTAL ENTITIES
CITY encourages and agrees to CONTRACTOR extending the pricing, terms and conditions of this Contract to other governmental entities at the discretion of CONTRACTOR.

23. APPLICABLE LAW
This Contract is to be construed and interpreted according to the laws of the State of Florida and all legal proceedings regarding this Contract shall be filed in Brevard County, Florida.

24. HEADINGS

The headings provided in this Contract are for convenience only and shall not be used in interpreting or construing this Contract.

25. SURVIVAL

The provisions of Paragraphs 1 (Definitions), 10 (Warranty), 13 (Ownership and Bailment), 14 (Assignment of Intellectual Property), 15 (Intellectual Property Indemnification), 16 (General Indemnification), 18 (Retention and Audit), 19 (Merger, Modification, Waiver and Remedies), 20 (Disputes), 23 (Applicable Law), 24 (Headings), and 25 (Survival), and, as applicable, Exhibit A1 (Product Description and Statement of Work), Exhibit A2 (Performance Standards), Exhibit A3 (Maintenance Agreement except for Technical Support which expires or terminates), Exhibit C (Federal Compliance Provisions), all of which will survive any termination or expiration of this Contract.

26. TIME

Time is of the essence in the performance of this Contract.

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 AS FOLLOWS:

City Clerk
900 East Strawbridge Avenue
Melbourne, Florida 32901
Telephone: 321-608-7220
Email: City.Clerk@MLBFL.org

THE REMAINDER OF THIS PAGE
INTENTIONALLY LEFT BLANK

EXHIBIT A1

STATEMENT OF WORK

CONTRACTOR shall perform all work and provide all Services (and Items incidental thereto) set forth herein in compliance with the Performance Standards of Exhibit A2 and the Pricing Schedule of Exhibit A4.

I. GENERAL DESCRIPTION

CONTRACTOR shall provide temporary staffing services to various departments throughout the CITY, as specified in the scope of work. The CITY'S Human Resources Department shall be the liaison between using departments and divisions.

II. JOB CLASSIFICATIONS

- A. Clerical/Secretarial/Administrative/Office
- B. Maintenance/Custodial/Mechanical
- C. Recreational
- D. All other classifications

III. GENERAL WORK

A. The CITY'S Human Resources Department shall send a job order via email or telephone to the CONTRACTOR for each temporary staffing need. Job orders will include type of job, location of job, hours, expected duration of assignment, supervisor's name, and any other pertinent information. A copy of the job description will also be provided at the time of request. The CONTRACTOR shall contact the CITY'S Human Resources Department prior to assigning new employees to a job order and will assign the new employee as directed by the CITY'S Human Resources Department. The CONTRACTOR shall confirm via email or telephone to the CITY'S Human Resources Department, the name of the temporary employee assigned to their order. CONTRACTOR shall not supply any temporary employee without prior notification and approval from the CITY'S Human Resources Department and a confirming purchase order. The CITY shall determine the pay rate for each position filled.

B. Reports

CONTRACTOR shall provide the CITY'S Human Resources Department with monthly, and annual, electronic (i.e. Excel, Access, etc.) reports within 30 days after the end of the month. Reports shall be in a format acceptable to the CITY'S Human Resources Department. Reports shall provide the following information:

- Using Department/Division name
- Names of temporary staff who worked with the CITY during the contract
- Title for each job assignment worked
- Rate of pay for each job assignment
- Number of hours worked, by month, and year to date for each job assignment
- Total amount charged for temporary services per department/division.
- Total number of hours for all department/division combined
- Total amount charged for all department/division combined.

EXHIBIT A2

PERFORMANCE STANDARDS/QUALITY REQUIREMENTS

In addition to those requirements set forth in the Statement of Work attached and incorporated as Exhibit A1 to the Contract, all Services (and Items incidental thereto) and work provided by the CONTRACTOR shall conform to the following:

I. GENERAL REQUIREMENTS

- A. AUE Staffing, Inc., as Primary CONTRACTOR, shall ensure that all temporary employees report to work assignments within seventy-two (72) hours of notification by the CONTRACTOR. CONTRACTOR shall notify the CITY'S Human Resources Department within four (4) hours of request for a temporary employee if CONTRACTOR is unable to fill the service request. The CITY reserves the right to use secondary CONTRACTOR's if Primary CONTRACTOR is unable to fulfill the needs for a specific assignment within specified timeframe. In the event of illness or unforeseen emergencies regarding a temporary employee, CONTRACTOR shall be solely responsible for replacement of employee within seventy-two (72) hours of notification.
- B. CONTRACTOR shall certify that the temporary employees provided have been properly screened and qualified to perform their intended duties. Additional knowledge, skills, and abilities may be applicable for individual positions. CONTRACTOR shall provide a resume to the requesting department prior to commencement of work assignment and approval by department/division.
- C. No subcontractors are permitted to perform work under the Contract. CONTRACTOR shall ensure all personnel performing work under the Contract are under direct employment of the CONTRACTOR.
- D. CONTRACTOR shall ensure that all temporary employees abide by and adhere to the CITY'S policies and procedures while performing their assigned duties.
- E. CONTRACTOR shall ensure that temporary employees filling the requirements of this Contract report to their assigned workplace dressed in appropriate attire for the position being filled. This includes proper work shoes or boots as required. The CITY shall define proper attire at the time of request.
- F. Temporary employees shall provide their own transportation to the designated CITY facility at no cost to the CITY. Temporary employees shall NOT be permitted to drive CITY vehicles or operate CITY heavy equipment at any time unless it is specifically defined in the job description and the individual being assigned has the appropriate and necessary skills and credentials to do so. Temporary employees shall park in designated areas on CITY property. The CITY shall not be responsible for vehicles parked in tow away zones or any other area not owned by the CITY.
- G. CONTRACTOR shall ensure that temporary employee's report for work at the required time. The CITY'S regular work hours generally run from 7:30 a.m. to 4:00 p.m. or 8:30 a.m. to 5:00 p.m.; however, work hours will vary by department. Time shall not start until arrival time at the CITY location at the specified time. It is not the intention of the CITY to use temporary employees for overtime, holiday, or weekend work. In the event such occasions arise, the normal rule for overtime shall apply.
- H. The CITY agrees to guarantee a minimum of four (4) hours compensation per approved position for temporary staffing services, with the exception of unsatisfactory worker performance.
- I. Temporary employees shall not be entitled to participate in any of the CITY's benefit plans or paid holidays.
- J. When the incumbent term Contract has expired, temporary employees working under the Contract shall complete their work assignment per Contract terms. In instances where the employee is interested in continuing work with the CITY under the new Contract, the employee shall contact the awarded CONTRACTOR and apply for the position if they so desire.
- K. CONTRACTOR shall provide payment to temporary employees making the deductions required of employers by state, federal, and local laws, including deductions for social security and withholding taxes.

- L. CONTRACTOR shall be responsible for the administration of all employment and payroll requirements.
- M. CONTRACTOR shall be responsible for reporting and paying all appropriate taxes and fees to the IRS on tips received by temporary employees performing services under this Contract. CONTRACTOR'S invoices shall include, when applicable, the names of all temporary employees that reported tips during the appropriate billing periods, the total dollar amount of the reported tips for each temporary employee, the total of all reported tips, and the total amount to be paid by CITY. (Total reported tips shall be multiplied by the markup indicated in Exhibit A4 of this Contract).
- N. CONTRACTOR shall make all contributions for unemployment compensation funds as required by federal and state laws and process claims as indicated.
- O. Temporary employees recruited, screened and placed on assignment with the CITY by the CONTRACTOR are eligible for conversion to a permanent CITY position at no additional fee after a term of 520 hours. Earlier conversion is permitted based upon the chart below:

Time on Assignment	Prorated Fee Schedule
0 to 240 Hours	\$500.00
241 to 520 Hours	\$250.00
521 + Hours Until Day of Hire	\$0.00 (No Fee)

II. UNSATISFACTORY PERFORMANCE

- A. When a CITY department/division supervisor determines that a temporary employee is not performing satisfactorily or does not possess the minimum qualifications for the assignment, they shall inform the CITY'S Human Resources Department, who will notify the CONTRACTOR to provide a replacement for the temporary employee. The CITY shall be solely responsible for determining whether or not a temporary employee's performance is unsatisfactory. When it is determined by the CITY that a temporary employee is not performing satisfactorily or does not possess the minimum qualifications for the assignment, the CONTRACTOR shall waive all charges to the CITY for the temporary employee for up to four (4) hours of service.
- B. The CITY reserves the right to reject any temporary employee at any time during work assignment and stop their pay for, but not limited to, the following:
 - a. Violating CITY policies and procedures
 - b. Reporting to work unfit and unprepared to perform assigned duties
 - c. Using or under the influence of any controlled substances or alcohol
 - d. Engaging in inappropriate behavior
 - e. Using profanity or being verbally abusive
 - f. Possessing weapons of any kind
 - g. Deliberately destroying, damaging, or vandalizing any CITY property
 - h. Refusal to perform assigned duties and/or insubordination

III. SECURITY/BACKGROUND CHECK

- A. The CITY requires all CONTRACTOR employees entering CITY buildings to undergo background checks prior to commencement of assignments.
- B. CONTRACTOR shall ensure all temporary employees obtain background checks. The CITY shall specify the type of background check needed at the time of request.
- C. CONTRACTOR shall bear all costs for background checks.

- D. The designated supervisor shall determine how the CONTRACTOR's employees will receive access to CITY facilities which are not open to the public.

IV. INVOICING/PAYMENT

A. Invoices

The CITY shall pre-audit invoices submitted by the CONTRACTOR and pay the CONTRACTOR only for approved invoices. The CITY shall ensure that all CONTRACTOR invoices are legitimate and clearly identify the services rendered. If the CITY discovers errors in the billing statement, the CITY, shall notify the CONTRACTOR of the error. CONTRACTOR shall promptly submit a corrected invoice to the CITY. The time clock for payment of same shall commence when the corrected invoice has been resubmitted and received by the CITY. Failure to properly invoice will cause undue delay in payment and may be cause for cancellation of contract. CONTRACTOR shall submit invoices electronically on a monthly basis to the CITY'S Human Resources Department at human.resources@mlbfl.org.

Itemized invoices shall include the following information:

- Company Name
- Remittance address on the face of invoice
- CITY Purchase Order Number
- Invoice Number
- Invoice Date
- Number of hours worked
- Employee Name
- Hourly Rate
- Job Title
- Week Ending Date

B. Payment

Pursuant to the Florida Prompt Payment Act, the CITY shall pay CONTRACTOR within 45 days (with the exception of construction services) after receipt of an accurate and undisputed invoice. Invoices shall be submitted to the CITY's Accounts Payable Division. The Purchase Order number must appear on all itemized invoices and packing slips. CONTRACTOR shall address invoices to: City of Melbourne, Accounts Payable, 900 E. Strawbridge Avenue, Melbourne, FL 32901.

V. COMPLIANCE

- A. CONTRACTOR shall comply with all requirements of the law with respect to Workers Compensation, wage and hours law, American Disabilities Act, safety and health requirements, and any other federal, state, county and local laws, ordinances, rules and regulations that in any manner affect the item(s) covered herein apply. Lack of knowledge by the CONTRACTOR shall in no way be cause for relief from responsibility.
- B. CONTRACTOR shall comply with all provisions of the Affordable Care Act (ACA) applicable to its temporary employee(s), including the employer shared responsibility provisions relating to the offer of "Minimum Essential Coverage" to "Full-Time Employees" and their "Dependents" (as those terms are defined in Internal Revenue Code Section 4980H and related regulations) and the applicable reporting provisions under Internal Revenue Code Section 6055 and 6056 and related regulations (the "Reporting Requirements"). CONTRACTOR shall indemnify and hold harmless CITY from any taxes or penalties, assessed under the ACA against CITY with respect to its temporary employee(s) who are full-time employees, due to CONTRACTOR'S failure: (i) to offer to such temporary employee(s) and their dependents "Minimum Essential Coverage"; (ii) to pay any taxes or penalties for failure to offer to such temporary employee(s) "Minimum Essential Coverage" that is "affordable" and provides "minimum value" (as those terms are defined in Internal Revenue Code Section 4980H and related regulations); or (iii) to comply with the Reporting Requirements. If CITY is notified by any governmental entity of CITY'S potential liability for any such taxes, penalties, or other similar liabilities relating to CONTRACTOR'S temporary

employee(s), CONTRACTOR shall fully cooperate, at CONTRACTOR'S reasonable expense, with CITY'S efforts to object to or appeal any such determination of liability or potential.

**THE REMAINDER OF THIS PAGE
INTENTIONALLY LEFT BLANK**

EXHIBIT A4

PRICING SCHEDULE

CONTRACTOR shall provide all Services (and items incidental thereto) and work set forth in this ITB for the costs stated below.

ITEM	DESCRIPTION	MULTIPLIER
1	General Clerical (Administrative, Secretarial, Office)	1.1892
2	Maintenance, Custodial, Mechanical	1.2088
3	Recreational	1.2064
4	All other positions	1.2051
5	Percentage of markup for reported tips received by temporary employees performing services. <i>(Markup shall be paid by the CITY to the CONTRACTOR and shall cover costs with no profit margin).</i>	11.55%
<i>This multiplier and percentage of markup shall not change throughout the term of the contract; however, the CITY'S hourly rate may change.</i>		

THE REMAINDER OF THIS PAGE
INTENTIONALLY LEFT BLANK

EXHIBIT B

SUPPLEMENTAL PROVISIONS

1. Bid.

This Contract is awarded based on CONTRACTOR's Bid responding to CITY's ITB. CONTRACTOR represents and warrants that all information and representations contained in the Bid is truthful to the best of CONTRACTOR's knowledge and belief and CONTRACTOR hereby restates and affirms all representations contained in the Bid.

2. Performance Bonds.

No performance bonds or payment bonds are required by this Contract.

3. Notice to Parties

- A. Notice to the City regarding terms and conditions of the Contract and changes in address/addressee shall be directed to the City Procurement Contact as identified on the cover page of this Contract. Notice and communication with the City regarding the Services shall be directed to the City Department Contact as identified on the cover page of this Contract. Invoices to CITY shall be directed to City of Melbourne, Accounts Payable, 900 East Strawbridge Avenue, Melbourne, Florida 32901.
- B. Notice and communication and changes in address/addressee to the CONTRACTOR shall be directed to the CONTRACTOR Contact as identified on the cover page of this Contract.
- C. Notice of default or notice of termination of this Contract shall be made in writing and delivered in person or dispatched by certified mail, postage prepaid, return receipt requested and shall be addressed as follows:

If to the CITY:

Procurement Manager
Procurement Division
City of Melbourne
900 East Strawbridge Avenue
Melbourne, Florida 32901

If to CONTRACTOR:

AUE Staffing, Inc.
1600 Sarno Road, Suite 109
Melbourne, FL 32935
Attention: Melody Martin, President

A party may unilaterally change its address or addressee by giving notice in writing to the other party as provided in this section. Thereafter, notices and other pertinent correspondence shall be addressed and transmitted to the new address.

4. Insurance Requirements

- A. Commercial General Liability Insurance. CONTRACTOR shall maintain in force for the duration of the contracted period Commercial General Liability Insurance with a limit of not less than \$1,000,000 per occurrence/aggregate and a deductible amount of not more than \$10,000 per claim. The Commercial General Liability Insurance Policy shall be endorsed to list the City of Melbourne as an Additional Insured, be written on an occurrence basis, not claims made, and be issued by an insurance company licensed to do business in the State of Florida with an A.M. Best's rating of A or higher. Other specific policy endorsements may be required by the Contract, depending upon the type and scope of work to be performed. The CONTRACTOR shall require each Subcontractor to maintain Subcontractor's Commercial General Liability Insurance coverage with insurance company licensed in the State of Florida in amounts satisfactory to the CONTRACTOR or insure the activities of the Subcontractors in CONTRACTOR's own policy.

- B. Business Automobile Liability Insurance. CONTRACTOR shall maintain in force for the duration of the contracted period Business Automobile Liability Insurance with a limit not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles. In the event the CONTRACTOR does not own any automobiles, the Business Auto Liability requirement shall be amended allowing the CONTRACTOR to maintain only Hired & Non-Owned Auto Liability Insurance.
- C. Workers Compensation & Employer's Liability Insurance. CONTRACTOR shall maintain in force for the duration of the contracted period Florida Workers Compensation Insurance at Statutory limits and Employers Liability Insurance with limits of at least \$500,000 each accident, \$500,000 each disease/employee and \$500,000 per disease/policy limit. CONTRACTOR shall require their Subcontractor(s) similarly to provide Worker's Compensation Insurance for all of the latter's employees engaged in such work unless such employees are covered by the protection afforded by the CONTRACTOR's Worker's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this Contract is not protected under the Worker's Compensation statute, the CONTRACTOR shall provide and shall cause each Subcontractor to provide adequate insurance for the protection of employees not otherwise protected.
- D. Proof of Insurance. CONTRACTOR shall submit proof of the required insurance to CITY in the form of Certificates of Insurance. Such certificates shall clearly show the insurance coverage required by the Contract. In the case of Commercial General Liability Insurance, a copy of the Additional Insured Endorsement page issued by the underwriting insurance company showing that the City of Melbourne has been listed as an Additional Insured on the policy shall accompany the Certificate of Insurance.

**THE REMAINDER OF THIS PAGE
INTENTIONALLY LEFT BLANK**

EXHIBIT D1

INVITATION TO BID

On file in the Procurement Division

EXHIBIT D3

CONTRACTOR'S RESPONSIVE BID/PROPOSAL

On file in the Procurement Division