

AGREEMENT FOR TEMPORARY PERSONNEL SERVICES

THIS AGREEMENT FOR TEMPORARY PERSONNEL SERVICES ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City"), and **22ND CENTURY STAFFING, INC. D/B/A OPTIMIZE MANPOWER SOLUTIONS, INC.**, a foreign for-profit corporation duly organized and authorized to do business in the state of Florida (EIN: 46-1443702) ("Agency").

WHEREAS, in accordance with the City of Ocala's contracting and procurement policies and procedures, the City Contracting Officer has the authority to exempt the procurement of certain services from competitive procurement requirements where said services have been benchmarked, compared, or otherwise reviewed by the City's Contracting Officer and determined to be based on best value for the City; and

WHEREAS, Optimize Manpower Solutions, Inc.'s quotation was formally benchmarked against several other agencies used by neighboring municipalities and found by the City's Contracting Officer to have the best and lowest rate; and

WHEREAS, Optimize Manpower Solutions, Inc. was selected as the intended awardee for the provision of temporary personnel services for the City.

NOW THEREFORE, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Agency agree as follows:

1. **RECITALS.** City and Agency hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **SCOPE OF SERVICES.** Agency shall provide temporary employees to the City and its departments as needed and pursuant to the contents and sections within this Agreement.
 - A. **"Temporary Employees" Defined.** The term "Temporary Employees," as used herein, shall mean flexible, temporary staff support provided by the Agency to meet specific business needs for either short-term or long-term assignments.
 - B. **Employees of the Agency.** At all times, these temporary employees shall be considered employees of the Agency and at no time shall temporary employees hold the status of employees of the City of Ocala.
 - C. **Work Assignments.** Temporary employees will work in various classifications to be assigned to office duties only, with no outside field work.
 - D. **Employee Uniform.** Temporary employees assigned to provide services under this Agreement shall present a neat and clean appearance suitable for office duties as directed.
 - E. **Drivers License Verification.** Agency is responsible for verifying that all temporary employees providing services to City under this Agreement possess a valid Florida driver's license.

3. **COMPENSATION.** The highest total compensation payable to Agency by City under this Agreement for the timely and satisfactory performance of services in compliance with the Contract Documents and the Service Pricing set forth below shall not exceed **ONE MILLION, TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,200,000)** (the "Contract Sum") over the course of the entire Contract Term. The allowability of compensation sought under this Agreement is expressly made subject to the terms of this Agreement and any pertinent Federal and State law.

A. **Service Pricing.** City will determine the starting base wage for temporary employees according to the level of work skills needed to perform the job and will pay the Agency the base wage plus a set mark-up fee per hour of labor utilized. This mark-up fee will be a multiplier of 1.21 for City recruited temporary employees and 1.30 for Agency recruited temporary employees. The compensation to be paid to the Agency will be based on the wage chart below, for each temporary employee. Under no circumstances shall there be any costs of any kind charged over and above the stated total cost per hour for temporary employees.

EXAMPLE CALCULATION				
Base Wage Per Hour	City Recruited Temporary Employees Mark-Up Multiplier	City Recruited Total Cost Per Hour	Agency Recruited Temporary Employees Mark-Up Multiplier	Agency Recruited Total Cost Per Hour
\$11.00	1.21	\$13.31	1.30	\$14.30
\$15.00	1.21	\$18.15	1.30	\$19.50
\$20.00	1.21	\$24.20	1.30	\$26.00

B. **Mark-Up Fee.** The Mark-Up multiplier will cover the Agency's entire cost and overhead for providing temporary employees to the City, including the following:

- (1) Conducting the selection process of face-to face candidate behavioral interviews.
- (2) Performing employment verification of the last two (2) employees.
- (3) Completing Right-to –Work verification (E-Verify).
- (4) Complete national and local criminal background check for final selection employees, including a Level II background check, if required by the City.
- (5) Maintaining Worker's Compensation Insurance with statutory minimum limits.

- (6) Maintaining Employer's Liability Insurance in an amount not less than \$1,000,000 per accident or injury.
 - (7) Commercial General Liability Insurance coverage for Agency, its agents and employees, with a liability limit of not less than \$1M.
 - (8) Certificate of Insurance with the City of Ocala as named insured.
 - (9) Federal and State Unemployment Insurance.
 - (10) FICA matching funds.
- C. **Future Mandated Governmental Increases.** In the case of any future mandated governmental increases to Federal and State Unemployment Insurance, the Agency will provide satisfactory evidence of the increase to the City. At that time, the City has the option to agree to pay the increased costs as a pass-through added fee, or to terminate the contract.
 - D. **Placement Fee.** There will be no "Placement Fee" obligation to the City of Ocala.
 - E. **Invoicing.** All invoices submitted by Agency shall include the City Contract Number, an assigned Invoice Number, and an Invoice Date. Agency shall invoice the City monthly for ALL work hours completed for the preceding calendar month regardless of the number of days worked. Invoices will be prepared by Agency, divided by requesting department and temporary employee, and submitted through the responsible City Project Manager. City Project Managers shall be assigned at the time services are requested by City departments.
 - F. **Payment of Invoices by City.** The City Project Manager must review and approve all invoices prior to payment. City Project Manager's approval shall not be unreasonably withheld, conditioned, or delayed.
 - G. **Withholding of Payment.** City reserves the right to withhold, in whole or in part, payment for any and all work that: (i) has not been completed by Agency; (ii) is inadequate or defective and has not been remedied or resolved in a manner satisfactory to the City Project Manager; or (iii) which fails to comply with any term, condition, or other requirement under this Agreement. Any payment withheld shall be released and remitted to Agency within **THIRTY (30)** calendar days of the Agency's remedy or resolution of the inadequacy or defect.
 - H. **Excess Funds.** If due to mistake or any other reason Agency receives payment under this Agreement in excess of what is provided for by the Agreement, Agency shall promptly notify City upon discovery of the receipt of the overpayment. Any overpayment shall be refunded to City within **THIRTY (30)** days of Agency's receipt of the overpayment or must also include interest calculated from the date of the overpayment at the interest rate for judgments at the highest rate as allowed by law.
 - I. **Tax Exemption.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification Number is 59-60000392. Agency shall not be exempted from paying sales tax to its suppliers

for materials to fulfill contractual obligations with the City, nor will Agency be authorized to use City's Tax Exemption Number for securing materials listed herein.

4. **EFFECTIVE DATE AND TERM.** This Agreement shall become effective and commence on APRIL 6, 2022 and continue for a term of THREE (3) YEARS, through and including APRIL 5, 2025 (the "Contract Term"). This Agreement may be renewed for up to TWO (2) additional ONE-YEAR (1-year) periods (each a "Renewal Term") by written consent between City and Agency.
5. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party ("Force Majeure"). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.
 - A. The party affected by force majeure shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof, as soon as it becomes aware.
 - B. When force majeure circumstances arise, the parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution. Agency performance shall be extended for a number of days equal to the duration of the force majeure. Agency shall be entitled to an extension of time only and, in no event, shall Agency be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.
6. **TERMINATION AND DEFAULT.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Documents, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.
 - A. **Termination by City for Cause.** City shall have the right to terminate this Agreement immediately, in whole or in part, upon the failure of Agency to carry out any obligation, term, or condition of this Agreement. City's election to terminate the Agreement for default shall be communicated by providing Agency written notice of termination in the manner specified for the giving of notices herein. Any notice of termination given to Agency by City

shall be effective immediately, unless otherwise provided therein, upon the occurrence of any one or more of the following events:

- (1) Agency fails to timely and properly perform any of the services set forth in the specifications of the Agreement;
- (2) Agency provides services that do not meet the specifications of the Agreement;
- (3) Agency fails to complete the work required within the time stipulated in the Agreement;
- or
- (4) Agency fails to make progress in the performance of the Agreement and/or gives City reason to believe that Agency cannot or will not perform to the requirements of the Agreement.

B. **Agency's Opportunity to Cure Default.** City may, in its sole discretion, provide Agency with an opportunity to cure the violations set forth in City's notice of default to Agency. Agency shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Agency to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.

C. **City's Remedies Upon Agency Default.** In the event Agency fails to cure any default under this Agreement within the time period specified in this section, City may pursue any remedies available at law or equity, including, without limitation, the following:

- (1) City shall be entitled to terminate this Agreement without further notice;
- (2) City shall be entitled to hire another Agency to complete the required work in accordance with the needs of City;
- (3) City shall be entitled to recover from Agency all damages, costs, and attorney's fees arising from Agency's default prior to termination; and
- (4) City shall be entitled to recovery from Agency any actual excess costs by: (i) deduction from any unpaid balances owed to Agency; and (ii) any other remedy as provided by law.

D. **Termination for Non-Funding.** In the event that budgeted funds to finance this Agreement are reduced, terminated, or otherwise become unavailable, City may terminate this Agreement upon written notice to Agency without penalty or expense to City. City shall be the final authority as to the availability of budgeted funds.

E. **Termination for Convenience.** City reserves the right to terminate this Agreement in whole or in part at any time for the convenience of City without penalty or recourse. The Project Manager shall provide written notice of the termination. Upon receipt of the notice, Agency

shall immediately discontinue all work as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to City including, but not limited to, the placing of any and all orders for materials, facilities, or supplies, in connection with its performance under this Agreement. Agency shall be entitled to receive compensation solely for: (1) the actual cost of the work completed in conformity with this Agreement; and/or (2) such other costs incurred by Agency as permitted under this Agreement and approved by City.

7. **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Agency's performance. Any such evaluation will become public record.
8. **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Any Agency who enters into an Agreement with the City of Ocala and fails to complete the contract term, for any reason, shall be subject to future bidding suspension for a period of one (1) year and bid debarment for a period of up to three (3) years for serious contract failures.
9. **AGENCY DUTIES.** The duties of Agency while fulfilling temporary labor requests under this Agreement are outlined below:
 - A. After a request is made by City for a temporary employee, the Agency will conduct a search for possible candidates. After initial interviews are completed by the Agency, resumes will be forwarded to the manager for the requesting City department for review.
 - B. City will inform the Agency which candidates will be personally interviewed for the position.
 - C. Agency will then notify potential candidates of their selection for interview and coordinate the scheduling of interview appointments with City.
 - D. City will conduct interviews and notify Agency of selection. If no candidate is found to be suitable, Agency will perform an additional search with subsequent selections until a proper candidate is found.
 - E. After a candidate is selected by City, Agency will perform the required background checks and provide results to City.
 - F. Temporary employee will report for work at City location.
 - G. Labor hours shall be verified via email on Mondays for any work completed by a temporary employee during the prior week.
 - H. Temporary labor services utilized through this Agreement may be terminated at will. City will inform Agency in writing when a temporary employee is no longer needed or desired.
 - I. The Agency will have a drug free workplace program in place. Temporary employees will not consume alcohol during working hours, will not work while under the influence of alcohol or illegal substances, and will not smoke while in City vehicles or buildings.

- J. During the assignment, temporary employees shall not work for any period over eight (8) hours per day for a maximum of forty (40) hours per week without prior authorization from the Requesting Department.
- K. Prior to the start of each assignment, working hours will be mutually agreed upon by the Agency and the City department requesting temporary employee(s).
- L. Temporary employees must comply with City of Ocala employment policies.
- M. If City desires for a temporary employee staffed under this Agreement to become a permanent City employee, the temporary employee relationship must exist for a minimum of 520 serviceable hours before any non-chargeable permanent employment transition may take place.

10. **AGENCY REPRESENTATIONS.** Agency expressly represents that:

- A. Agency has read and is fully familiar with all the terms and conditions of this Agreement, the Contract Documents, and other related data and acknowledges that they are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of the work to be performed by Agency under this Agreement.
- B. Agency has disclosed, in writing, all known conflicts, errors, inconsistencies, discrepancies, or omissions discovered by Agency in the Contract Documents, and that the City's written resolution of same is acceptable to Agency.
- C. Agency is familiar with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement whatsoever.
- D. **Public Entity Crimes.** Agency understands that a "public entity crime" as defined in section 287.133(1)(g), Florida Statutes, is "a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States..." Agency further understands that any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime (1) may not submit a bid, proposal, or reply on a contract: (a) to provide any goods or services to a public entity; (b) for the construction or repair of a public building or public work; or (c) for leases of real property to a public entity; (2) may not be awarded or perform work as a Agency, supplier, subcontractor, or consultant under a contract with any public entity; and (3) may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

11. **AGENCY RESPONSIBILITIES.** Except as otherwise specifically provided for in this Agreement, the following provisions are the responsibility of the Agency:

- A. Agency shall competently and efficiently supervise, inspect, and direct all work to be performed under this Agreement, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract Documents.
 - B. Agency shall be solely responsible for the means, methods, techniques, sequences, procedures, and safety precautions or programs incident thereto.
 - C. Agency shall be responsible to see that the finished work complies accurately with the contract and the intent thereof.
 - D. Agency shall comply with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement, and be responsible for all costs associated with same.
 - E. Agency shall continue its performance under this Agreement during the pendency of any dispute or disagreement arising out of or relating to this Agreement, except as Agency and City may otherwise agree in writing.
12. **NO EXCLUSIVITY.** It is expressly understood and agreed by the parties that this is not an exclusive agreement. Nothing in this Agreement shall be construed as creating any exclusive arrangement with Agency or as prohibit City from either acquiring similar, equal, or like goods and/or services or from executing additional contracts with other entities or sources.
13. **COMMERCIAL AUTO LIABILITY INSURANCE.** Agency shall procure and maintain, for the life of this Agreement, commercial auto liability insurance covering all automobiles owned, non-owned, hired, and scheduled by Agency with a combined limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage for each accident. Agency shall name City of Ocala, a political subdivision of the State of Florida, and its officials, employees, and volunteers.
14. **GENERAL LIABILITY INSURANCE.** Agency shall procure and maintain, for the life of this Agreement, commercial general liability insurance with minimum coverage limits not less than:
- A. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for bodily injury, property damage, and personal and advertising injury; and
 - B. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for products and completed operations.
 - C. Coverage for contractual liability is also required.
 - D. City, a political subdivision of the State of Florida, and its officials, employees, and volunteers shall be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage regarding liability arising out of activities performed

by or on behalf of Agency. The coverage shall contain no special limitation on the scope of protection afforded to City, its officials, employees, or volunteers.

15. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY.** Agency shall procure and maintain, for the life of this Agreement, Workers' Compensation insurance and employer's liability insurance in amounts required by applicable statutes. Agency shall ensure any and all subcontractors have coverage as required by applicable statutes. Agency is not required to name City as an additional insured under the policies, but a subrogation waiver endorsement is required. Exceptions and exemptions may be allowed by City's HR/Risk Director, so long as they are in accordance with Florida Statute.

16. **MISCELLANEOUS INSURANCE PROVISIONS.**

- A. Insurance Requirements. These insurance requirements shall not relieve or limit the liability of Agency. City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect Agency's interests or liabilities but are merely minimums. No insurance is provided by the City under this contract to cover Agency. **No work shall be commenced under this contract until the required Certificate(s) of Insurance have been provided.** Work shall not continue after expiration (or cancellation) of the Certificates of Insurance and shall not resume until new Certificate(s) of Insurance have been provided. Insurance written on a "Claims Made" form is not acceptable without consultation with City of Ocala Risk Management.
- B. Deductibles. Agency's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by City. Agency is responsible for the amount of any deductible or self-insured retention.
- C. Certificates of Insurance. Agency shall provide a Certificate of insurance, issued by an agency authorized to do business in the State of Florida and with an A.M. Best rating* of at least A, showing the "City of Ocala" as an Additional Insured. Original and renewal certificates must be forwarded to the **City of Ocala Contracting Department, Third Floor, 110 SE Watula Avenue, Ocala, FL 34471, E-Mail: vendors@ocalafl.org** prior to the policy expiration. **TEN (10)** days written notice must be provided to the City in the event of cancellation.

*Non-rated insurers must be pre-approved by the City Risk Manager.

- D. Failure to Maintain Coverage. In the event Agency fails to disclose each applicable deductible/self-insured retention or obtain or maintain in full force and effect any insurance coverage required to be obtained by Agency under this Agreement, Agency shall be considered to be in default of this Agreement.

- E. Severability of Interests. Agency shall arrange for its liability insurance to include General Liability, Business Automobile Liability, and Excess/Umbrella Insurance, or be endorsed to include, a severability of interests/cross liability provision, so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.
- F. Mandatory Endorsements for All Required Policies. All required policies shall include: (i) endorsement that waives any right of subrogation against the City of Ocala for any policy of insurance provided under this Agreement or under any state or federal worker's compensation or employer's liability act; and (ii) endorsement to give the City of Ocala no less than **THIRTY (30)** days written notice (with the exception of non-payment of premium which requires a **TEN (10)** calendar day notice) in the event of cancellation or material change.

- 17. **NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** During the performance of the contract, Agency shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, sexual orientation, gender identity, marital or domestic partner status, familial status, or veteran status and shall take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.
- 18. **SUBCONTRACTORS.** Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by City or its representatives to any subcontractor of Agency or any other persons or organizations having a direct contract with Agency, nor shall it create any obligation on the part of City or its representatives to pay or seek payment of any monies to any subcontractor of Agency or any other persons or organizations having a direct contract with Agency, except as may otherwise be required by law. City shall not be responsible for the acts or omissions of any vendor, subcontractor, or of any of their agents or employees.
- 19. **INDEPENDENT CONTRACTOR STATUS.** Agency acknowledges and agrees that under this Agreement, Agency and any agent or employee of Agency shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services and work required under this Agreement. Neither Agency nor its agents or employees shall represent or hold themselves out to be employees of City at any time. Neither Agency nor its agents or employees shall have employee status with City. Nothing in this Agreement shall constitute or be construed to create any intent on the part of either party to create an agency relationship, partnership, employer-employee relationship, joint venture

relationship, or any other relationship which would allow City to exercise control or discretion over the manner or methods employed by Agency in its performance of its obligations under this Agreement.

20. **ACCESS TO FACILITIES.** City shall provide Agency with access to all City facilities as is reasonably necessary for Agency to perform its obligations under this Agreement.
21. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement to any third party without the prior express approval of the other party, which shall not be unreasonably withheld.
22. **RIGHT OF CITY TO TAKE OVER CONTRACT.** Should the work to be performed by Agency under this Agreement be abandoned, or should Agency become insolvent, or if Agency shall assign or sublet the work to be performed hereunder without the written consent of City, the City Project Manager shall have the power and right to hire and acquire additional men and equipment, supply additional material, and perform such work as deemed necessary for the completion of this Agreement. Under these circumstances, all expenses and costs actually incurred by City to accomplish such completion shall be credited to City along with amounts attributable to any other elements of damage and certified by the Project Manager. The Project Manager's certification as to the amount of such liability shall be final and conclusive.
23. **PUBLIC RECORDS.** Agency shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, Agency shall:
 - A. Keep and maintain public records required by the public agency to perform the service.
 - B. Upon request from the public agency's custodian of public records, provide the public agency 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.
 - C. 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 Agency does not transfer the records to the public agency.
 - D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of Agency or keep and maintain public records required by the public agency to perform the service. If Agency transfers all public records to the public agency upon completion of the contract, Agency shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Agency keeps and maintains public records upon completion of the contract, Agency shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public

records, in a format that is compatible with the information technology systems of the public agency.

IF AGENCY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO AGENCY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: clerk@ocalafl.org; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.

24. **AUDIT.** Agency shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
25. **PUBLICITY.** Agency shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
26. **E-VERIFY.** Pursuant to section 448.095, Contractor shall register with and use the U.S. Department of Homeland Security's ("DHS") E-Verify System, accessible at <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all newly hired employees. Contractor shall obtain affidavits from any and all subcontractors in accordance with paragraph 2(b) of section 448.095, Florida Statutes, and maintain copies of such affidavits for the duration of this Agreement. By entering into this Agreement, Contractor certifies and ensures that it utilizes and will continue to utilize the DHS E-Verify System for the duration of this Agreement and any subsequent renewals of same. Contractor understands that failure to comply with the requirements of this section shall result in the termination of this Agreement and Contractor may lose the ability to be awarded a public contract for a minimum of one (1) year after the date on which the Agreement was terminated. Contractor shall provide a copy of its DHS Memorandum of Understanding upon City's request. Please visit www.e-verify.gov for more information regarding the E-Verify System.
27. **CONFLICT OF INTEREST.** Agency must have disclosed with the submission of their bid, the name of any officer, director, or agent who may be employed by City. Agency must disclose the name of any City employee who owns, directly or indirectly, any interest in Agency or any affiliated business entity. Any additional conflicts of interest that may occur during the contract term must be disclosed to the City of Ocala Procurement Department.
28. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to

require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.

29. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
30. **INDEMNITY.** Agency shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of the activities contemplated by this Agreement including, without limitation, harm or personal injury to third persons during the term of this Agreement to the extent attributable to the actions of Agency, its agents, and employees.
31. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
32. **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:

If to Agency:

22nd Century Staffing, Inc. D/B/A
Optimize Manpower Solutions, Inc.
Attention: Shania Sharma
200 Continental Drive, Suite 401
Newark, DE 19713-4337
E-mail: accounts@ompsol.com

If to City of Ocala:

Tiffany Kimball, Contracting Officer
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Phone: 352-629-8366 Fax: 352-690-2025
E-mail: tkimball@ocalafl.org

Copy to:

Robert W. Batsel, Jr.
Gooding & Batsel, PLLC
1531 SE 36th Avenue
Ocala, Florida 34471
E-mail: rbatsel@lawyersocala.com

33. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.
34. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

35. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
36. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be affected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
37. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all who shall be bound by the provisions hereof.
38. **MUTUALITY OF NEGOTIATION.** Agency and City acknowledge that this Agreement is a result of negotiations between Agency and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.
39. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
40. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
41. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
42. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
43. **ELECTRONIC SIGNATURE(S).** Agency, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and

conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.

44. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
45. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on _____.

ATTEST:**CITY OF OCALA**

Angel B. Jacobs
City Clerk

Ire Bethea, Sr.
City Council President

Approved as to form and legality:**22ND CENTURY STAFFING, INC. D/B/A
OPTIMIZE MANPOWER SOLUTIONS, INC.**

Robert W. Batsel, Jr.
City Attorney

Signature

Printed Name

Title