

AGREEMENT**GOODS AGREEMENT**

This Goods Agreement is made as of _____ (effective date). By and between Pinellas County, a political subdivision of the State of Florida ("County"), and **Temple, Inc.** ("Contractor"), (individually, "Party," collectively, "Parties").

WITNESSETH:

WHEREAS, the County requested proposals pursuant to 23-0148-ITB-Goods for Uninterruptible Power Source (UPS) Batteries, Traffic & Solar Flashers; goods; and

WHEREAS, based upon the County's assessment of Contractor's quote, the County selected the Contractor to provide the Goods as defined herein; and

WHEREAS, Contractor represents that it has the experience and expertise to provided the Goods as set forth in this Agreement.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants, agreements, terms and conditions herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

1. EXECUTION OF AGREEMENT

The execution of this Agreement is expressly limited by the Terms and Conditions hereon. County and the Contractor are not bound by additional provisions or provisions at variance herewith that may appear in the Contractor's quotation, estimate, scope of work, or any other such related documents, acknowledgement in force, or any other communication from Contractor to or from County unless such provision is expressly set forth herein.

2. ASSIGNMENT/SUBCONTRACTING

The Contractor must provide the Goods required by this Agreement. No assignment or subcontracting is allowed without prior written consent of the County. In the event of a corporate acquisition and/or merger, the Contractor must provide written notice to the County, within 30 business days of Contractor's notice of such action or upon the occurrence of said action, whichever occurs first. In that event, the County may terminate this Agreement in those instances in which a corporate acquisition and/or merger represents a conflict of interest or contrary to any local, state or federal laws.

3. ORDERS

Within the term of this Agreement, County may place one or more orders for goods and/or services at the prices listed on the Price Schedule Exhibit attached hereto, and which is incorporated by reference hereto.

4. DELIVERY/CLAIMS

Prices on the Schedule of Prices are F.O.B. Destination, FREIGHT INCLUDED and unloaded to location(s) within Pinellas County. Actual delivery address(es) will be identified at time of order. Contractor will be responsible for making any and all claims against carriers for missing or damaged items.

5. COMPENSATION

County will pay Contractor upon Contractor's delivery of, and County's acceptance of, the goods required herein, as specified. All payments will only be made based on invoices submitted in accordance with the Local Government Prompt Payment Act, Florida Statutes §§ 218.70, et. seq.

6. TERM OF AGREEMENT AND SPENDING CAP

This Agreement is effective on the effective date and will continue in effect for a twelve (12) month period. Notwithstanding any order(s) placed pursuant to this Agreement, the County may not be held responsible for amounts exceeding the total annual not to exceed amount of \$331,820.00, without a written amendment to this Agreement raising such limit signed by the parties.

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7. INVOICING

Written invoice(s) must be submitted to:

Finance Division Accounts Payable

Board of County Commissioners Pinellas County

PO Box 2438

Clearwater, FL 33757

727-464-8389

FinanceAccountsPay@MyPinellasClerk.org

Each invoice must include, at a minimum, the Contractor's name, contact information and the Purchase Order number.

8. DISCOUNTS

Delay in receiving an invoice, invoicing for materials shipped ahead of specified schedule, or invoices rendered with errors or omissions will be considered just cause for County to withhold payment without losing discount privileges. Discount privilege will apply from date of scheduled delivery, the date or receipt of goods, or the date of approved invoice, whichever is later.

9. NAME CHANGES

The Contractor is responsible for immediately notifying the County of any company name change, which would cause invoicing to change from the name used at the time of the original Agreement.

10. COMPLIANCE WITH APPLICABLE LAWS

Contractor certifies that all of the products to be furnished hereunder will be manufactured or supplied by Contractor in accordance with all applicable provisions of State, Local and Federal laws, as of the date that the goods are supplied.

11. CHOICE OF LAW

The laws of the State of Florida apply to this Agreement and any and all purchases made hereunder. Contractors must comply with all local, state, and federal directives, orders and laws including, but not limited to, Equal Employment Opportunity (EEO), Minority Business Enterprise (MBE), and OSHA.

12. FISCAL NON-FUNDING

In the event that sufficient budgeted funds are not available for a new fiscal period, the County will notify the Contractor of such occurrence and this Agreement will terminate on the last day of the then current County fiscal period (Oct. 1 – Sept. 30) without penalty or expense to the County.

13. INDEMNIFICATION

Contractor agrees to indemnify, pay the cost of defense, including attorney's fees, and hold harmless the County, its officers, employees and agents from all damages, suits, actions or claims, including reasonable attorney's fees incurred by the County, of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the Agreement; or on account of any act or omission, neglect or misconduct of Contractor; or by, or on account of, any claim or amounts recovered under the Workers' Compensation Law; or of any other laws, regulations, ordinance, order or decree; or arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon; or for any violation of requirements of the Americans with Disabilities Act of 1990, as may be amended, and all rules and regulations issued pursuant thereto (collectively the "ADA") except when such injury, damage, or violation was caused by the sole negligence of the County.

AGREEMENT**14. INDEPENDENT CONTRACTOR STATUS AND COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986**

Contractor is and shall remain an independent contractor and is neither agent, employee, partner, nor joint venturer of County. Contractor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 U.S.C. 1324, et seq, and regulations relating thereto, as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach of the Agreement.

15. E-VERIFY

The contractor and subcontractor must register with and use the E-verify system in accordance with Florida Statute 448.095. A contractor and subcontractor may not enter into a contract with the County unless each party registers with and uses the E-verify system.

If a contractor enters a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the Subcontractor does not employ, contract with, or subcontract with unauthorized aliens. The contractor must maintain a copy of the affidavit for the duration of the contract.

If the County, Contractor, or Subcontractor has a good faith belief that a person or entity with which it is contracting has knowingly violated Florida Statute 448.09(1) shall immediately terminate the contract with the person or entity.

If the County has a good faith belief that a Subcontractor knowingly violated this provision, but the Contractor otherwise complied with this provision, the County will notify the Contractor and order that the Contractor immediately terminate the contract with the Subcontractor.

A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged to Section 448.095(2)(d), Florida Statute. Contractor acknowledges upon termination of this agreement by the County for violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor acknowledges that Contractor is liable for any additional costs incurred by the County as a result of termination of any contract for a violation of this section.

Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in this section, requiring the subcontracts to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any Subcontractor or Lower Tier Subcontractor with the clause set for in this section.

16. PUBLIC ENTITIES CRIMES

Contractor is directed to the Florida Public Entities Crime Act, Section 287.133, Florida Statutes, as well as Florida Statute 287.135 regarding Scrutinized Companies, and represents to County that Contractor is qualified to transact business with public entities in Florida, and to enter into and fully perform this Agreement subject to the provisions stated therein. Failure to comply with any of the above provisions shall be considered a material breach of the Agreement.

17. WAIVER

No waiver by either Party of any breach or violation of any covenant, term, condition, or provision of this Agreement or of the provisions of any ordinance or law, shall be construed to waive any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same.

18. DUE AUTHORITY

Each Party to this Agreement represents and warrants that: (i) it has the full right and authority and has obtained all necessary approvals to enter into this Agreement; (ii) each person executing this Agreement on behalf of the Party is authorized to do so; (iii) this Agreement constitutes a valid and legally binding obligation of the Party, enforceable in accordance with its terms.

19. SURVIVAL

The provisions of this Agreement shall survive the expiration or termination of this Agreement.

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20. NOTICES TO PINELLAS COUNTY

Any notices or inquiries relative to Purchase Order should be directed to:

Rickey L. Houston

rlhouston@pinellascounty.org

21. INSPECTION

In County's sole discretion, goods rejected due to inferior quality or workmanship will be returned to Contractor at Contractor's expense and are not to be replaced except upon receipt of written instructions from County.

22. MATERIAL QUALITY

All goods and materials purchased and delivered pursuant to this Agreement will be of first quality and not damaged and/or factory seconds. Any materials damaged or not in first quality condition upon receipt must be exchanged within 24 hours of notice to the Contractor at no charge to County.

23. MATERIAL SAFETY DATA

In accordance with OSHA Hazardous Communications Standards, it is the Contractor seller's duty to advise if a product is a toxic substance and to provide a Material Safety Data Sheet at time of delivery.

24. NON-EXCLUSIVE AGREEMENT

Award of this Agreement imposes no obligation on the County to utilize the Contractor for all goods and/or services of this type, which may develop during the agreement period. This is a non-exclusive Agreement. During the term of this Agreement, and any extensions thereof, the County reserves the right to contract for another provider for similar goods and/or services as it determines necessary in its sole discretion.

25. PURCHASE ORDER NUMBER

Each order will contain the Purchase Order Number applicable to this Agreement, and such Purchase Order Number must appear on all packing slips, invoices and all correspondence relating to the Order. County will not be responsible for goods delivered without a Purchase Order Number.

26. REMEDIES

County and Contractor will have all remedies afforded by applicable law.

27. AUDIT

Contractor shall retain all records relating to this Agreement for a period of at least 5 years after final payment is made. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, County reserves the right to examine and/or audit such records.

28. SEVERABILITY

The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the Agreement impossible to perform.

29. TAX EXEMPTION

County is immune from taxation. The Florida State Sales Tax Exemption Number for Pinellas County is 85-8013287050C-7 Federal Excise Tax Exemption Number is 59-6000800.

30. TAXES

Payments to County are subject to applicable Florida taxes.

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31. TERMINATION

County reserves the right to terminate this agreement, without cause by giving 30 days prior written notice to the Contractor of the intention to terminate or with cause if at any time the Contractor fails to fulfill or abide by any of the terms or conditions specified.

Failure of the Contractor to comply with any of the provisions of this Agreement is considered a material breach of Agreement and is cause for immediate termination of the Agreement at the sole discretion of County.

In addition to all other legal remedies available to the County, the County reserves the right to terminate and obtain from another source any services which have not been provided within the period of time stated in the proposal, or if no such time is stated, within a reasonable period of time from the date of request, as determined by the County.

32. VARIATION IN QUANTITY

County assumes no liability for goods or materials produced, processed or shipped in excess of the amounts ordered pursuant to the terms of this Agreement.

33. WARRANTY

Seller warrants that the goods are of first quality and as described in Prices Schedule. All manufacturer, producer or seller warranties offered to any other purchaser are expressly available and applicable to County.

34. INSURANCE

If applicable, Contractor shall comply with the insurance requirements as set out in the Insurance Exhibit, attached hereto and incorporated herein by reference.

35. AMENDMENT

This Agreement may be amended by mutual written agreement of the Parties hereto.

36. NO THIRD-PARTY BENEFICIARY

The Parties hereto acknowledge and agree that there are no third-party beneficiaries to this Agreement. Persons or entities not a party to this Agreement may not claim any benefit from this Agreement or as third-party beneficiaries hereto.

37. FORCE MAJEURE

“Force Majeure Event” means any act or event that (i) prevents a Party (the “Nonperforming Party”) from performing its obligations or satisfying a condition to the other Party’s (the “Performing Party”) obligations under this Agreement, (ii) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (iii) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. Force Majeure Event(s) do not include economic hardship, changes in market conditions or insufficiency of funds. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance and thereby prevented from satisfying any conditions precedent to the Performing Party’s performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. The Nonperforming Party must promptly notify the Performing Party upon the occurrence of a Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the conditions precedent to the Performing Party’s obligations, the Nonperforming Party will resume performance under this Agreement without undue delay. Each Party will use commercially reasonable efforts to mitigate the effect of a Force Majeure Event.

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38. ORDER OF PRECEDENCE

All Exhibits attached or documents included by reference are listed below, and incorporated in their entirety into, and form part of this Agreement and will have priority in the order listed.

- A. Pinellas County Agreement including Exhibit A Goods Price Schedule.
- B. ITB 23-0148 – Section B – Specials Conditions
- C. ITB 23-0148 – Section E – Specifications

39. ENTIRETY

This Agreement constitutes the entire Agreement between the Parties and supersedes all prior negotiations, representations or agreements either oral or written.

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IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the day and year as written.

PINELLAS COUNTY, a political subdivision of the State of Florida PINELLAS COUNTY acting by and through the

Board of County Commissioners

Contractor: Temple, Inc.

By:

By:

Signature

Signature

Print Name

Keith A. Frasier

Print Name

Title

Florida Sales

Title

Date

3 Jan 2023

Date

APPROVED AS TO FORM

By: Keiah Townsend
Office of the County Attorney

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EXHIBIT A

GOODS PRICE SCHEDULE

Line Item	Item Description	Manufacturer	Each	Unit Cost
1	Alphacell 100XTV/ITS Replacement Batteries with 5 Year Warranty	Alpha	Each	\$233.00
2	Odessey ODX-AGM 31 or Approved Equal UPS Solar Batteries, With 4 Year Warranty	Energys	Each	\$593.00
3	Model: BW 12550 DC (12V55AH) UPS/Solar Unit Replacement Batteries, Part # HXD1255; Delivered	Bright Way	Each	\$199.00