Southeast Florida Governmental Purchasing Cooperative Group

CONTRACT AWARD

Please complete each of the applicable boxes and submit with bid documents, award notices and tabulations to rwhitcomb@greenacresfl.gov for placement on the NIGP SEFL website Cooperative contract page.

BID/RFP No. 19-12R

Description/Title: Office Supplies, Products and Related Services

Initial Contract Term: Start Date: October 14, 2019 End Date: October 13, 2023

Renewal Terms of the Contract: 1 (No. of Renewals) Renewal Options for 4 Years (Period of Time)

Renewal No. ___ Start Date: _____ End Date: _____

Renewal No. ___ Start Date: _____ End Date: _____

Renewal No. ___ Start Date: _____ End Date: _____

Renewal No. ___ Start Date: _____ End Date: _____

Extension / Renewal Note: _____

SECTION #1 VENDOR AWARD

Vendor Name: Office Depot, Inc.

Vendor Address: 6600 North Military Trail, Boca Raton, FL 33496

Contact: Seth Kaminstein (Individual Local Reps. to be appointed for each entity)

Phone: 561-245-0297 Fax: 561-948-0448

Cell/Pager: _____ Email Address: seth.kaminstein@officedepot.com

Website: https://business.officedepot.com/ FEIN: 59-2663954

(Above is on-line Catalog Ordering Web-site. General web-site is www.officedepot.com)

SECTION #2 AWARD/BACKGROUND INFORMATION

Award Date: July 10, 2019 Resolution/Agenda Item No.: R-2019-76

Insurance Required: Yes X No _____

Performance Bond Required: Yes _____ No X

SECTION #3 LEAD AGENCY

Agency Name: City of Tamarac

Agency Address: 7525 NW 88th Avenue, Tamarac, FL 33321

Agency Contact: Keith Glatz Email keith.glatz@tamarac.org

Telephone: 954-597-3567 Fax: 954-597-3565

CITY OF TAMARAC
INTEROFFICE MEMORANDUM
FINANCIAL SERVICES DEPARTMENT

TO: Michael C. Cernech, City Manager
DATE: June 24, 2019

THROUGH Mark Mason
Director of Financial Services

FROM: Keith K. Glatz
Purchasing &Contracts Manager
RE: Temp. Reso. #13307 Office Supplies

Recommendation:
Award an Agreement to Office Depot, Inc. to provide Office Supplies to the City, and the members of the Southeast Florida Governmental Purchasing Cooperative (Co-Op) and the Omnia Partners, LLC national consortium based on pricing received on Request for Proposal #19-12R for the period October 14, 2019 through October 13, 2023, and approving the termination for convenience of the current Agreement dated October 18, 2016 for the period from October 14, 2019 through October 17, 2019.

Issue:
The City is in need of an agreement for the purchase of office supplies for the City and the members of the Co-Op, with an estimated value of $100,000 for the City, and an aggregate value of $4 million for the Co-Op, and up to $49.8 million annually for all members of the Omnia Partners, LLC national consortium.

Background:
The Current Office Supply Agreement with Office Depot is set to expire on October 17, 2019. The City of Tamarac acts as the lead agency for the Co-Op for the procurement of office supplies. Since 2016, the City has also been the lead agency for the Omnia Partners. LLC (formerly National IPA) national consortium, which includes members from across the United States.

The City issued Request for Proposal # 19-12R on March 5, 2019 which was advertised in the South Florida Sun Sentinel, and online through the City's Bids and Tenders solicitation management web-site, as well as online through the DemandStar.com web-site. As a result of these efforts, 23 firms downloaded the RFP document, however, only two firms responded despite an active recruiting effort on the part of staff. We learned that some of the firms decided not to respond either because they already have a national contract through another consortium, or because they were unable to coordinate national distribution channels. The two (2) firms who submitted proposals which were due on May 9, 2019 were as follows:

Office Depot, Inc.	Boca Raton, Florida
The Office Cart, LLC	Fort Lauderdale, Florida

An Evaluation Committee was formed from public procurement professionals who are members of the Southeast Florida Government Co-operative, as well as the representative who serves as the project liaison for this contract from Omnia Partners, LLC who served in a strictly non-voting advisory role. The Evaluation Committee was chaired and facilitated by the City's Purchasing & Contracts Manager and members included procurement professionals from the cities of Coral Springs, Margate and Sunrise, as well as the Financial Services Purchasing and Contracts Division Procurement Coordinator.

Quantities utilized in this RFP were based on the actual historic usage of Co-Op agencies combined with the estimated quantities from across the nation through Omnia Partners, LLC, and included approximately 500 of the top utilized items, known as "core" items, which were the primary items evaluated in the pricing component. Additionally, the City requested pricing for approximately 2,500 items which are representative of the types of product groups that have been purchased across the nation by members of the Omnia Partners, LLC national consortium. These items are referred to as "market basket" items since they reflect a diverse mixture of the types of items commonly ordered.

The Evaluation Committee convened on May 30, 2019, and evaluated the two proposals against criteria for pricing (50% of the weighted value) and qualifications, availability of items and services provided (also 50% of the weighted value). As a result of this review, the Committee determined that the proposal submitted by Office Depot, Inc. best met the requirements of the City and the Co-op, as well as Omnia Partners, LLC.

Based on the national quantities provided in the bid, the following aggregate pricing was received.

Proposer	Core List	Market Basket	Aggregate	Items NOT Priced
Office Depot	$23,996,412.27	$25,835,379.48	$49,831,791.75	None
The Office Cart	$44,644,182.38	$27,862,783.23	$72,506,965.61	Core: 60; Market Basket: 460

Office Depot also provided category discounts for several categories of supplies, equipment and furniture not included in the core or market basket list as requested by the RFP document. Representative discounts include percentage off of list price discounts of 62% for other office consumables, 75% for white recycled and virgin copy paper, 78% for palletized paper, 60% for toner for re-manufactured toner, which the City has used extensively, 43% for original equipment manufacturer (OEM) toner, 69% for folders, binders and writing instruments, and several other category discounts. The Office Cart did not provide any specific category discounts beyond their core and market basket pricing as requested by the proposal document issued by the City.

Office Depot has been successfully providing service to the members of the Co-Op for over fifteen (15) years. The proposal includes requirements for multiple value-added services such as on-line ordering and next day delivery with easy returns, which have become standard in the marketplace within the past few years; however Office Depot has also provided some additional value-added services including their print and copy services, interior design services for furniture and managed print services, but most importantly they guarantee a 98% order accuracy rate, and a 99.5% price accuracy rate, which is professionally audited on a quarterly basis by a third-party independent accounting firm. The current firm being used by Office Depot to perform this function is Price Waterhouse Coopers, LLC.

Since the inception of our partnership with Omnia Partners, LLC (formerly National IPA) our contract has become the "go-to" contract for the K-12 market and Office Depot provides such diverse materials including materials that assist in curriculum development as well as assessment tools; and featuring a wide range of course material for classroom training up to the college level.

Office Depot has also established multiple sustainability programs including offering numerous environmentally "green" products.

Another part of the overall sustainability efforts by Office Depot, includes the pro-active utilization of minority / women-owned and disadvantaged businesses both as suppliers of office supply materials (Tier 2 Suppliers), and to provide other services under the Agreement in partnership with Office Depot (Tier 1 Suppliers). This program allows for M/WBE and DBE suppliers to take an active part in the Agreement providing product fulfillment and other services to participating entities. An entity taking part in this program will pay an additional percentage fee for their office supply purchases to fund this activity. The typical fee is about ten percent (10%) of the product cost but is open to negotiation between Office Depot, the Tier 1 Supplier, and the requesting entity. Office Depot maintains a

dedicated Vendor Development Team tasked with empowering diverse suppliers by raising their capabilities to generate greater spend. This team was responsible for generating $121.6 million in spend during 2018, with over $3.5 billion in spend generated since the inception of their program in 1999.

As a means of preparing for potential emergencies, this proposal was solicited in conformance with the Procurement Standards of federal requirements 2 CFR Part 200 in order to make purchases under this Agreement during a federally declared emergency eligible for reimbursements by FEMA or other grant agencies.

Finally, staff wishes to exercise our right to terminate the existing Agreement dated October 18, 2016 for the period from October 14, 2019 through October 17, 2019 in order to effectuate a more efficient implementation of the Agreement for Office Depot, Inc. October 18, 2019 falls on a Friday, and Office Depot, Inc. has requested that they be able to utilize a weekend to load required documentation into their IT system to start on a Monday morning.

Fiscal Impact:

Pricing on the new Agreement is fairly similar to the current pricing being paid by the City and the Co-Op. It is anticipated that the City will expend approximately $100,000 annually. Each City department is funded for office supply expenditures. The more important impact, however, is that Omnia Partners, LLC will pay the City of Tamarac a commission of 6.9% of the administrative fee that the supplier pays to Omnia Partners. The most recent check for 2018 was for approximately $62,000. We will receive this payment annually.

CITY OF TAMARAC, FLORIDA

RESOLUTION NO. R-2019-76

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA, AWARDING REQUEST FOR PROPOSAL #19-12R TO OFFICE DEPOT, INC.; AND AUTHORIZING THE APPROPRIATE OFFICIALS TO APPROVE AND EXECUTE AN AGREEMENT FOR OFFICE SUPPLY NEEDS WITH OFFICE DEPOT, INC. ON BEHALF OF THE SOUTHEAST FLORIDA GOVERNMENTAL PURCHASING COOPERATIVE AND THE OMNIA PARTNERS, LLC, CONSORTIUM UTILIZING PRICING PROVIDED THROUGH REQUEST FOR PROPOSAL #19-12R FOR THE PERIOD OF OCTOBER 14, 2019 THROUGH OCTOBER 13, 2023, WITH ONE (1) FOUR (4) YEAR RENEWAL OPTION; APPROVING THE EARLY TERMINATION FOR CONVENIENCE OF THE AGREEMENT WITH OFFICE DEPOT DATED OCTOBER 18, 2016 FOR THE PERIOD FROM OCTOBER 14, 2019 THROUGH OCTOBER 17, 2019; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO APPROVE AND ACCEPT RENEWAL OPTIONS AND ANY REQUIRED AGREEMENTS WITH OMNIA PARTNERS, LLC RELATING TO ADMINISTRATION OF THE OFFICE SUPPLY AGREEMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

I HEREBY CERTIFY THAT THIS DOCUMENT IS A TRUE AND CORRECT COPY OF R-2019-76
THE ORIGINAL OF WHICH IS ON FILE IN CITY HALL
WITNESS MY HAND AND OFFICIAL SEAL
OF THE CITY OF TAMARAC, FLORIDA.
THIS 16th DAY OF April 2019
CITY CLERK

WHEREAS, the City of Tamarac has need to purchase office supplies to support all City operations; and

WHEREAS, the utilization of a term contract agreement provides for volume savings through quantity discounts; and

WHEREAS, the City of Tamarac served as the "lead agency" for the Southeast Florida Governmental Purchasing Cooperative and for the Omnia Partners, LLC, consortium for the purchase of office supply needs; and

WHEREAS, thirty-one (31) governmental agencies within the Southeast Florida Governmental Purchasing Cooperative and all members of the Omnia Partners, LLC Consortium across the United States are eligible to utilize this agreement for the purchase of approximately $49 million in annual office supplies estimated to be purchased on a national basis; and

WHEREAS, the City of Tamarac formally advertised and issued Request for Proposal # 19-12R in order to obtain pricing and service capability information for vendors in the office supply marketplace, a copy of which is on file with the City Clerk; and

WHEREAS two (2) firms responded to the RFP as follows:

Office Depot, Inc., Boca Raton, Florida

The Office Cart, LLC, Fort Lauderdale, Florida; and

WHEREAS, an evaluation team facilitated and chaired by the City of Tamarac Purchasing and Contracts Manager, and including procurement professionals from the City of Coral Springs, Florida, the City of Margate, Florida, the City of Sunrise, Florida, and the Financial Services Purchasing and Contracts Division Procurement Coordinator, as well as a non-voting member from Omnia Partners, LLC who solely served in an advisory role, evaluated and ranked all responses to the proposal; and

WHEREAS, the proposal offering submitted by Office Depot, Inc. was ranked by the Evaluation Committee as the most advantageous, best value overall response to the solicitation in terms of service capabilities and pricing, a copy of the proposal evaluation scores are included herein as Exhibit "1"; and

WHEREAS, Office Depot. Inc. has successfully supplied the needs of the Southeast Florida Governmental Purchasing Cooperative and the Omnia Partners, LLC Consortium in the past; and

WHEREAS, the proposal provides for one (1) four (4) year renewal option based on satisfactory performance under the Agreement; and

WHEREAS, sufficient funds are available from all Departments' Operating funds; and

WHEREAS, the City Commission of the City of Tamarac finds it to be in the best interest of the City of Tamarac to award RFP #19-12R to Office Depot, Inc. and to authorize the appropriate City Officials to execute an Agreement with Office Depot, Inc. for the purchase of Office Supplies by the City and members of the Southeast Florida Governmental Purchasing Cooperative and the Omnia Partners, LLC consortium using pricing provided by Office Depot, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA THAT:

SECTION 1: The foregoing "WHEREAS" clauses are HEREBY ratified and confirmed as being true and correct and are hereby made a specific part of

this Resolution upon adoption hereof and all exhibits referenced and attached hereto are incorporated herein and made a specific part of this resolution.

SECTION 2: The City Commission hereby awards Request for Proposal #19-12R to Office Depot, Inc., and authorizes the appropriate City Officials to execute an Agreement with Office Depot, Inc. for the purchase of Office Supplies using pricing provided by Office Depot, Inc., a copy of said Agreement is included herein as Exhibit "2", for the City and the members of the Southeast Florida Governmental Purchasing Cooperative, and the national members of the Omnia Partners, LLC consortium.

SECTION 3: The City Manager or designee furthermore is hereby authorized to approve and accept renewal options and other contract amendments pursuant to the requirements of the Agreement, attached hereto as Exhibit "2" as well as any administrative Agreements between the City and Omnia Partners, LLC which may be required to administer the Office Supply Agreement with Office Depot, Inc.

SECTION 4: The City Commission authorizes the early termination for convenience of the current Agreement in force between the City and Office Depot, Inc., which was effective on October 18, 2016 for the period from October 14, 2019 through October 17, 2019, to provide for a more efficient transition between Agreements.

SECTION 5: All resolutions or parts of resolutions in conflict herewith are HEREBY repealed to the extent of such conflict.

SECTION 6: If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

SECTION 7: This Resolution shall become effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED this 10th day of July 2019.

Michelle J. Gomez
MICHELLE J. GOMEZ
MAYOR

ATTEST:

Patricia Teufel
PATRICIA TEUFEL, CMC
CITY CLERK

RECORD OF COMMISSION VOTE:

MAYOR GOMEZ	yes
DIST 1: COMM. BOLTON	yes
DIST 2: COMM. GELIN	yes
DIST 3: COMM. FISHMAN	yes
DIST 4: V/M PLACKO	yes

I HEREBY CERTIFY THAT I HAVE APPROVED THIS RESOLUTION AS TO FORM

Samuel S. Goren 7/10/19.
SAMUEL S. GOREN
CITY ATTORNEY

May 30, 2019

OFFICE SUPPLIES
Committee Evaluation Totals

RFP 19-12R

Proposer's Name:	Office Depot	The Office Cart
No Conflict of Interest	X	X
Adhered to the Instructions	X	
Cost (Price)	Core: $23,996,412.27 Total: $49,631,791.75	Core: $44,644,182.38 Total: $72,506,965.61
		Items not complete. Did not provide Category Discounts
RANKING		
Purchasing Agent, City of Coral Springs	1	2
Procurement Manager, City of Margate	1	2
Contracts Manager, City of Sunrise	1	2
Procurement Coordinator, City of Tamarac	1	2
TOTAL POINTS		
	4	8
TOTAL RANKING		
	1	2

AGREEMENT

BETWEEN THE CITY OF TAMARAC

AND

OFFICE DEPOT, INC.

THIS AGREEMENT is made and entered into this 14th day of October, 2019 by and between the City of Tamarac, a municipal corporation with principal offices located at 7525 N.W. 88th Ave., Tamarac, FL 33321 (the "CITY") and Office Depot, Inc. a Delaware corporation duly registered as a Florida Foreign Corporation, with principal offices located at 6600 North Military Trail, Boca Raton, Florida 33496-2434 (the "Contractor") to provide Office Supplies for CITY and other participating agencies in the Southeast Florida Governmental Purchasing Cooperative and nationwide through OMNIA Partners, Public Sector ("Omnia Partners").

Now therefore, in consideration of the mutual covenants hereinafter set forth, the City and Contractor agree as follows:

1. The Contract Documents

The contract documents consist of this Agreement, Request for Proposal Document No.19-12R for Office Supplies, Products and Related Services issued March 5, 2019, including all conditions therein, (General Terms and Conditions, Special Conditions and/or Special Provisions), Technical Specifications, all addenda, the Contractor's bid/proposal dated May 9, 2019 incorporated herein as if attached hereto, and all modifications issued after execution of this Agreement. These contract documents form the Agreement, and all are as fully a part of the Agreement as if attached to this Agreement or repeated therein. Furthermore, in the event of a conflict between this document and any other contract documents, this Agreement shall prevail.

2. The Work

2.1. The Contractor shall perform all work for the City required by the contract documents as set forth below:

2.1.1 Contractor shall furnish all labor, materials, and equipment necessary to provide just-in-time desktop delivery of office supplies to the City of Tamarac and participating members of the Southeast Florida Governmental Purchasing Cooperative and to agencies participating in this Agreement through Omnia Partners.

2.1.2 Contractor shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to the Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.

2.2 The Contractor and the City shall extend this Agreement to other public sector entities ("entities") within the State of Florida, including but not limited to agencies, school districts, universities, community colleges, counties, cities, towns, villages and special districts. Purchases may be made under the terms and conditions of this Agreement by governmental and educational entities located outside the State of Florida.

2.3 The City (also referred to as "Principal Procurement Agency" in material provided by Omnia Partners) and Contractor are partnering with Omnia Partners to offer the Agreement (also referred to as the "Master Agreement" in material distributed by Omnia Partners) on a national basis to public agencies who register with Omnia Partners ("Participating Agencies"). Participating Agencies that choose to access the Agreement via their participation with Omnia Partners do not need to register with the Southeast Florida Governmental Purchasing Cooperative and vice versa.

2.4 **Third-Party Audits:** The Contractor shall obtain a third-party firm (to be approved by the City) at no additional cost to the City to conduct external price audits for the Agreement. The third-party firm will perform a quarterly audit with a minimum of 500 items to confirm the accuracy of the discount from list price and final sell price. Specifically, the third-party firm will verify that prices offered to the City under the Agreement which are displayed on the Contractor's website are less than or equal to the discounts offered in the Agreement. The third-party firm shall submit a quarterly report to the City confirming the "Price Accuracy Rate" within 15 days after the close of each quarter. The "Price Accuracy Rate" shall be calculated using the following formula: Price Accuracy Rate = the number of audited items each quarter where the net price is less than or equal to the Agreement price, divided by the number of audited items (Example: 490 items priced at or below the approved Agreement price/500 items audited = 98.0% pricing accuracy). The Contractor shall maintain a Price Accuracy Rate of 98% or greater.

At a minimum, the quarterly report will identify items not in compliance with the Agreement terms, provide the date of the audit and screenshots of the items on the Contractor's website that were not in compliance with the Agreement terms. **Tier 1 Provider Option (Small, Minority- Women-Owned and Service Disabled Veteran Suppliers)**

2.4.1 Contractor partners with certain small businesses and minority- or women-owned supplies and services disabled veteran suppliers ("Tier One Providers") to assist Participating Agencies in meeting diversity goals. Tier One Providers perform services and resell products from Contractor to Participating Agencies. Participating Agencies may request Contractor to provide products and services available under the Agreement through Tier One Providers. Contractor will report all applicable invoiced sales to Omnia Partners in accordance with the Agreement.

2.4.2 Pricing offered to Tier One Providers will be the pricing offered under the Agreement marked-up by the percentage of compensation negotiated by Contractor and Tier One Provider, and mutually agreed to by the Participating Agency.

3. Insurance

3.1. Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as specified in section 3.4 herein of this Agreement or as required by the City's Risk and Safety Manager before beginning work under this Agreement including, but not limited to, Workers' Compensation, Commercial General Liability, and all other insurance as required by the City, including Professional Liability when appropriate. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the City's Risk and Safety Manager certificates of all insurances required under this section prior to beginning any work under this Agreement. The Contractor will ensure that all subcontractors comply with the above guidelines and will retain all necessary insurance in force throughout the term of this agreement.

3.2. Contractor shall indemnify and hold the City harmless for any damages resulting from failure of the Contractor to take out and maintain such insurance. Contractor's General Liability Insurance policies shall be endorsed to add the City as an additional insured. Contractor shall be responsible for payment of all deductibles and self-insurance retentions on Contractor's Liability Insurance policies.

3.3. Contractor agrees to, in the performance of work and services under this Agreement, comply with all federal, state, and local laws and regulations now in effect, or hereinafter enacted during the term of this agreement that are applicable to Contractor, its employees, agents, or subcontractors, if any, with respect to the work and services described herein.

3.4 Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as required by the City's Risk & Safety Officer before beginning work under this Agreement. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the City's Risk & Safety Officer certificates of all insurance required under this section prior to beginning any work under this Agreement. Contractor shall indemnify and save the City harmless from any damage resulting to it for failure of either Contractor or any subcontractor to obtain or maintain such insurance.

The following are required types and minimum limits of insurance coverage, which the Contractor agrees to maintain during the term of this contract:

Insurance Requirements		
Line of Business / Coverage	Occurrence	Aggregate
Commercial General Liability Including:	$1,000,000.00	$2,000,000.00
Premises / Operations		
Contractual Liability		
Personal Injury		
Explosion, Collapse, Underground Hazard		
Products / Completed Operations		
Broad Form Property Damage		
Cross Liability and Severability of Interest Clause		
Commercial Automobile Liability	$1,000,000.00	$1,000,000.00
Workers' Compensation & Employer's	Statutory	
Professional Liability (Errors and Omissions)	$1,000,000.00	$2,000,000.00
The Bidder must provider the City with evidence of Professional Liability insurance with at a minimum of One Million dollars ($1,000,000.00) per occurrence and in the aggregate "Claims-Made" forms are acceptable for Professional Liability.		
Excess liability is not required but will accept it if the General Liability cannot cover the $2M/$3M		

The City reserves the right to require higher limits depending upon the scope of work under this Agreement.

Neither Contractor or any subcontractor shall commence work under this contract until they have obtained all insurance required under this section and have supplied the City with evidence of such coverage in the form of an insurance certificate and endorsement. The Contractor will ensure that all subcontractors will comply with the above guidelines and will maintain the necessary coverage throughout the term of this Agreement. Contractor will be responsible to provide proof of insurance and certificates of insurance to participating agencies.

All insurance carriers shall be rated at least A-VII per A.M. Best's Key Rating Guide and be licensed to do business in Florida. Policies shall be "Occurrence" form. Each carrier will give the City sixty (60) days notice prior to cancellation.

The Contractor's liability insurance policies shall be endorsed to add the City of Tamarac (or participating agencies utilizing this Agreement) as an "additional insured. The Contractor shall be responsible for the payment of all deductibles and self-insured retentions.

If the Contractor is to provide professional services. The City reserves the right to request the successful Contractor to provide the City with evidence of Professional Liability insurance with, at a minimum, a limit of $1,000,000 per occurrence and in the aggregate.

"Claims-Made" forms are acceptable for Professional Liability insurance in the event that the successful Contractor provides professional services as agreed upon with City.

4. Contract Term and Renewal

This Agreement shall be effective October 14, 2019 for a period of four (4) years until October 13, 2023. City and Contractor reserve the right to exercise one (1) additional four (4) year agreement, upon the written agreement by both Contractor and City, subject to satisfactory performance by Contractor. In the event that an Agreement is not in place as of the termination date of this Agreement, the Agreement shall remain in effect on a month-to-month basis until terminated, but not for longer than six (6) months following the October 13th termination date.

5. Contract Sum, Pricing, Payments, Discounts, Deliveries and Warranties

5.1 Contract Sum: The Contract Sum for the above work is based on the core, market basket and discounted catalog pricing provided by Contractor as part of its response to Request for Proposal #19-12R dated May 9, 2019. Contract shall be for the actual amount ordered by all qualified user agencies including the City of Tamarac, members of the Southeast Florida Governmental Purchasing Cooperative, and to participating agencies with Omnia Partners.

5.2 Pricing Escalation/De-escalation

5.2.1 Contractor shall submit requests for escalation or de-escalation within a reasonable time period prior to the desired effective date of the change. The changes shall be based on changes to the list unit pricing for each item, and the percentage discounts for each category/item shall remain unchanged throughout the term of the Agreement.

5.2.2 The City recognizes that at certain times during the term of this Agreement, pricing in some industries may become volatile due to various changes not limited to changes in economic conditions such as product shortages, raw material shortages, labor stoppages, tariffs, government regulation, foreign interference or other changes which create volatile market pricing. The successful Contractor shall be responsible to provide adequate notice to the City of such situations. It is desired that such pricing remain fixed and firm through the remaining three (3) month period in place at the time, with adjustments to be made at the beginning of the next three (3) month period; however, in the event of extreme changes in market conditions, the Contractor shall advise the City as soon as feasibly possible regarding the circumstances surrounding such extreme market condition changes.

5.2.3 The Contractor may offer promotional discounts for specific items or categories of items. The Contractor may provide the City with temporary promotional discounts to pricing during the term of the Agreement. The promotional discounts may be provided based on the actual effective dates of such promotions and shall not penalize the Contractor when pricing is audited.

5.3 **Deliveries**: Deliveries shall be FOB destination with all costs and charges included in the contract price. The pricing shall include desktop delivery and dock and/or mailroom delivery as specified by the individual participating agency; however additional freight charges may be applied for items exceeding 70 lbs. in weight, and/or 110" in length/width, furniture, bulk items, cases of bottled water and other beverages, orders delivered to Hawaii, Alaska and Puerto Rico, special or customized orders and/or rush deliveries.

5.4 **Minimum Order / Minimum Order Fee**: Contractor is permitted to impose a minimum order fee of $5.95 for orders valued at $25.00 or less. The $25.00 minimum order will remain in place for the life of this Agreement and any renewals expressly authorized under this Agreement. Beginning on the first anniversary of the effective date of this Agreement, and on each anniversary date thereafter, Contractor reserves the right to escalate the minimum order fee by a maximum of 10% of the current fee then being charged; however, the minimum order fee shall never exceed a cap of $7.95 for the lifetime of the Agreement. Contractor agrees to utilize technology web-based solutions to provide sufficient notifications and / or other controls necessary to alert Participating Entities that a fee will be charged for orders valued at $25.00 or less. Such technology based tools shall provide the capability to allow the Participating Agency to meet the minimum order value in order to avoid the Minimum Order Fee.

5.5 All materials and products supplied by the Contractor in association with this Agreement shall be new, warranted for their merchantability, fit for a particular purpose, free from defects and consistent with industry standards. The products shall be delivered to the City in excellent condition. In the event that any of the products supplied to the City are found to be defective or do not conform to the specifications, the City reserves the right to return the product to the Contractor in accordance with the requirements of the Contractor's Return Authorization Policy.

Contractor's warranties will be limited to Contractor-branded products only, and for all other products, Contractor will pass through to participating agencies, all manufacturer-supplied end-user warranties. The warranty period shall commence upon final acceptance of the product in accordance with Contractor's or manufacturer's end-user warranties as applicable.

6. Payments

Invoices are due thirty (30) days from the date of invoice. Invoices not paid within thirty (30) days shall bear interest at the rate of 1.5% per month or the maximum amount allowed under law, whichever is less, from the due date of the invoice. City's credit limit shall be established by Contractor, who reserves the right to lower City's credit limit or refuse to ship any orders if at any time: (a) City is delinquent in making payments to Contractor or is otherwise in breach of this Agreement; or (b) City's credit standing becomes impaired or reasonably unsatisfactory to Contractor. When payment is made by purchase order or ACH transaction, payment will be made only after receipt and acceptance of materials/services, and upon receipt of a properly prepared invoices as applicable for goods properly delivered. Payments by procurement card shall only be permitted at the time of order entry. The City of Tamarac will pay all office supply invoices by procurement card. All payments shall be governed by the Local Government Prompt Payment Act, F.S., Part VII, Chapter 218.

7. Indemnification

7.1 The Contractor shall indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by or resulting from, the operations of the Contractor or its officers, employees, agents, subcontractors, or independent Contractors, excepting only such loss of life, bodily or personal injury, or property damage attributable to the gross negligence or willful misconduct of the City or its elected or appointed officials and employees. The above provisions shall survive the termination of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination hereof.

7.2 Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

7.3 The Contractor shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees (including appellate attorney's fees) and costs.

7.4 The City and Contractor recognize that various provisions of this Agreement, including but not limited to this Section, provide for indemnification by the Contractor and requires a specific consideration be given there for. The Parties therefore agree that the sum of Ten Dollars and 00/100 ($10.00), receipt of which is hereby acknowledged, is the specific consideration for such

indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by Contractor. Furthermore, the City and Contractor understand and agree that the covenants and representations relating to this indemnification provision shall serve the term of this Agreement and continue in full force and effect as to the City's and the Contractor's responsibility to indemnify.

7.5 City reserves the right to select its own legal counsel at the City's cost to conduct any defense in any such proceeding.

7.6 Nothing contained herein is intended nor shall be construed to waive City's rights and immunities under the common law or Florida Statutes 768.28, as amended from time to time.

8. Non-Discrimination & Equal Opportunity Employment

During the performance of the Contract, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity and expression, or disability if qualified. The Contractor will take affirmative action to ensure that employees and those of its subcontractors are treated during employment, without regard to their race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity or expression, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor and its subcontractors shall agree to post in conspicuous places, available to its employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The Contractor further agrees that he/she will ensure that all subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

9. Independent Contractor

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Contractor is an independent contractor under this Agreement and not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Contractor, which policies of Contractor shall not conflict with City, State, or United States policies, rules or regulations relating to the use of Contractor's funds provided for herein. The Contractor agrees that it is a separate and independent

enterprise from the City, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Contractor and the City and the City will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

10. Assignment and Subcontracting

Contractor or City shall not transfer or assign the performance required by this Agreement without the prior consent of the other party. This Agreement, or any portion thereof, shall not be subcontracted by Contractor without the prior written consent of the City; and shall not be subcontracted by City without the prior written consent of the Contractor. For purposes of this Agreement, any change of ownership of the Contractor shall constitute an assignment which requires City approval. However, this Agreement shall run to the benefit of the City and its successors and assigns. The prohibition on assignment and subcontracting does not apply to subcontractors involved in Contractor's or City's day-to-day operations.

11. Notice

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice either delivered in person, sent by U.S. Certified Mail, U.S. Express Mail, air or ground courier services, or by messenger service, as follows:

CITY

City Manager
City of Tamarac
7525 N.W. 88th Avenue
Tamarac, FL 33321

With a copy to City Attorney at the following address:

Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Blvd., Suite 200
Fort Lauderdale, FL 33308

CONTRACTOR
Office Depot, Inc.
6600 North Military Trail
Boca Raton, FL 33496-2434
Attn: Thomas Riccio, Senior Vice President
Thomas.Riccio@officedepot.com

12. Termination

12.1 Termination for Convenience: The City recognizes that this is a national Agreement, and as such will require sufficient notice to participating entities prior to any contract termination. This Agreement may be terminated by the City or Contractor for convenience, upon a minimum of one-hundred eighty (180) days of written notice by the City to the Contractor or by the Contractor to the City, for such termination in which event the Contractor shall be paid its compensation for services performed to termination date, including services reasonably related to termination.

12.2 Default by Contractor: In addition to all other remedies available to the City, this Agreement shall be subject to cancellation by the City for cause, should the Contractor neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a minimum period of thirty (30) days after receipt by Contractor of written notice of such neglect or failure. In the event that the Contractor abandons this Agreement or causes it to be terminated, Contractor shall indemnify the City against loss pertaining to this termination.

12.3 Default by City: In addition to all other remedies available to the Contractor, this Agreement shall be subject to cancellation by the Contractor for cause, should the City neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a minimum period of thirty (30) days after receipt by City of written notice of such neglect or failure.

13. Scrutinized Companies F.S. 287.135 and 215.473

Contractor must certify that the company is not participating in a boycott of Israel. Contractor must also certify that Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the City will not contract for the provision of goods or services with any scrutinized company referred to above. Contractor must submit the certification that is attached to this contract. Submitting a false certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to the Contractor of the City's determination concerning the false certification. The Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, the Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Contractor does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

14. Public Records

14.1 The City is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, Contractor shall:

14.1.1. Keep and maintain public records required by the City in order to perform the service;

14.1.2. Upon request from the City, 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 no cost to the City.

14.1.3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement and any renewals thereof if Contractor does not transfer the records to the City.

14.1.4. Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of Contractor, or keep and maintain public records required by the City to perform the service. If Contractor transfers all public records to the City upon completion of the Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the Agreement, 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.

14.2 During the term of this Agreement and any renewals, Contractor shall maintain all books, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. Notwithstanding the requirements enumerated in Section 2.4 "Third-Party Audits" contained herein under this Agreement, and subject to Confidentiality agreements between Contractor and third parties, and no more than annually, City, at its expense, may audit Contractor's books and records

directly pertaining to this Agreement, to determine whether Contractor extended correct pricing. Any third-party auditor used must be approved by Contractor and must execute a non-disclosure agreement. Contractor may dispute the result of any audit by City and will refund any overcharges to customer (and customer shall be requested to refund any undercharges to Contractor, however, City will not be responsible for the actions of other participating agencies utilizing this Agreement, and Contractor shall not involve City in any enforcement actions against any participating agency). Other conditions may apply.

15. Uncontrollable Forces

15.1 Neither the City nor Consultant shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

15.2 Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

16. Agreement Subject to Funding

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Tamarac in the annual budget for each fiscal year of this Agreement and is subject to termination based on lack of funding.

17. Venue

This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this agreement is fixed in Broward County, Florida.

18. Signatory Authority

The Contractor shall provide the City with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.

19. Severability; Waiver of Provisions

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

20. Merger; Amendment

This Agreement constitutes the entire Agreement between the Contractor and the City, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Contractor and the City.

21. No Construction Against Drafting Party

Each party to this Agreement expressly recognizes that this Agreement results from the negotiation process in which each party was represented by counsel and contributed to the drafting of this Agreement. Given this fact, no legal or other presumptions against the party drafting this Agreement concerning its construction, interpretation or otherwise accrue to the benefit of any party to the Agreement, and each party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Agreement.

22. Public Records Custodian:

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 AT:

CITY CLERK
7525 NW 88TH AVENUE
ROOM 101
TAMARAC, FL 33321
(954) 597-3505
CITYCLERK@TAMARAC.ORG

23. Special Provisions for Florida Schools:

It is anticipated that this Agreement will be utilized by various school districts within the State of Florida. Accordingly, Contractor or any Sub-contractor making deliveries to the facilities of any School District in the State of Florida with children present shall comply with the following requirements:

23.1 Background Screening: Contractor does not share its employees' personal identifiable information. However, upon receipt of award, Contractor will run background checks as required by any State Department and will provide attestations certifying that the background checks have been run on the employees who will be performing the work and that such persons have not been convicted of a violent or serious felony.

23.2 **Child Neglect:** The Contractor and its employees shall be subject to the requirements of §39.201 Florida Statute that requires the reporting of child abuse or child neglect to the State of Florida, Department of Children and Families via the Florida Abuse Hotline 1-800-962-2873.

23.3 **Confidential Student Information**: Notwithstanding any provision to the contrary contained in this agreement between the Contractor and the City; Contractor and its officers, employees, agents, representatives, contractors, and sub-contractors shall fully comply with the requirements of Section 1002.22 and Section 1002.221, Florida Statutes, or any other law or regulation, either federal or State of Florida, regarding confidentiality of student information and records. Further, Contractor for itself and its officers, employees, agents, representatives, contractors, or sub-contractors, shall fully indemnify and hold the City of Tamarac as well as any Florida school district using this Agreement, and its officers and employees harmless for any violation of this covenant, including but not limited to defending the City and any Florida school district using this Agreement, its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon the City or Florida school district using this Agreement or payment of any and all costs(s), damages (s), judgment(s), or loss(es) incurred by or imposed upon the City or Florida school district using this Agreement arising out of the breach of this covenant by the vendor, or an officer, employee, agent, representative, contractor, or sub-contractor of the vendor to the extent and only to the extent that the vendor or an officer, employee, agent, representative, contractor, or sub-contractors of the vendor shall either intentionally or negligently violate the provisions of this covenant, or Sections 1002.22 or 1002.221, Florida Statutes. This provision shall survive the termination of or completion of all performance or obligations under this agreement and shall be fully binding upon Contractor until such time as any proceeding brought on account of this covenant is barred by any applicable statute of limitations.

24. Compliance with Statutes:

It shall be Contractor's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, city, state and federal agencies as applicable; specifically the Jessica Lunsford Act – Chapter 1012, Florida Statutes, which provides for the screening of individuals who are vendors or contractors with a Florida public school or district.

Remainder of Page Intentionally Blank

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF TAMARAC, signing by and through its Mayor and City Manager, and CONTRACTOR, signing by and through its duly authorized to execute same.

CITY OF TAMARAC ESTABLISHED 1963 SEAL BROWARD COUNTY, FLORIDA

CITY OF TAMARAC

Michelle J. Gomez, Mayor

7-10-19
Date

Kathleen Gunn for Cernech
Michael C. Cernech, City Manager

7/15/19
Date

ATTEST:

Patricia A. Teufel, CMC
City Clerk

7/15/19
Date

Approved as to form and legal sufficiency:

City Attorney

7/10/19
Date

ATTEST:

Signature of Corporate Secretary

Kristen Sampo
Type/Print Name of Corporate Secy. Assistant

(CORPORATE SEAL)

Office Depot, Inc.
Company Name

Signature of Senior Vice President/Owner

Thomas Riccio
Type/Print Name of Senior Vice President/Owner

June 26, 2019
Date

TAMARAC
The City For Your Life

City of Tamarac *Purchasing and Contracts Division*

CORPORATE ACKNOWLEDGEMENT

STATE OF Florida :
:SS
COUNTY OF Palm Beach :

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Thomas Riccio, of Boca Raton, Fl.,

a _____ Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this 26th day of June, 2019.

GERRI LYNN PINVIDIC
Notary Public - State of Florida
Commission # GG 263523
My Comm. Expires Jan 23, 2023
Bonded through National Notary Assn.

Signature of Notary Public
State of Florida at Large

Gerri Pinvidic
Print, Type or Stamp
Name of Notary Public

☑ Personally known to me or
☐ Produced Identification

_____
Type of I.D. Produced

☐ DID take an oath, or
☑ DID NOT take an oath.