


CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams 
Director of Procurement

DATE: June 27, 2016

RE: Authorization to Execute Cooperative Purchase (Piggyback) Agreement with
Traffic Control Devices, Inc., for Installation of E-Pass Overlay Sign Panels
Contract No. 001219

Board approval is requested to execute an agreement with Traffic Control Devices, Inc. (TCD) in the amount of \$97,175.00 to install E-Pass Overlay Sign Panels along S.R. 417, S.R. 408, and S.R. 417.

This will be a cooperative purchase (piggyback) agreement based on a contract between TCD and the City of Winter Park for the same services which will allow us to take advantage of the favorable rates already negotiated by the City of Winter Park.

Reviewed by:


Ben Dreiling
Director of Construction



**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
COOPERATIVE PURCHASE AGREEMENT
INSTALLATION OF E-PASS OVERLAY SIGN PANELS
CONTRACT NO. 001219**

This Contract is made this 14th day of July, 2016, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, hereinafter called CFX and TRAFFIC CONTROL DEVICES, INC., 242 N. Westmonte Drive, Altamonte Springs, FL 32714, hereinafter the CONTRACTOR:

WITNESSETH:

WHEREAS, CFX was created by statute and is charged with acquiring, constructing, operating and maintaining a system of limited access roadways known as the Central Florida Expressway System; and,

WHEREAS, CFX has been granted the power under Section 348.754(2)(m) of Florida Statutes, "to do all acts and things necessary or convenient for the conduct of its business and the general welfare of the Central Florida Expressway Authority, in order to carry out the powers granted to it (by state law);" and,

WHEREAS, CFX has determined that it is necessary and convenient in the conduct of its business to retain the services of a CONTRACTOR to perform installation of E-PASS Overlay Sign Panels; and,

WHEREAS, on or about October 29, 2014, the CONTRACTOR entered into Contract No. IFB-12-2014 with the City of Winter Park (City) to provide substantially the same services as required by CFX; and,

WHEREAS, an Invitation to Bid seeking qualified contractors to perform such services for CFX was not required because the CONTRACTOR has an existing contract with the City for substantially the same services to be provided hereunder and CFX has decided to contract with CONTRACTOR for the performance of the services described herein under the same conditions previously negotiated by the City; and,

WHEREAS, the CONTRACTOR agrees to provide the services under the same terms, conditions and rates as included in its contract with the City, a copy of which is attached to this Contract, and such additional terms and conditions as detailed below;

NOW THEREFORE, in consideration of the mutual covenants and benefits set forth herein and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged by each party to the other, the parties hereto agree as follows:

1. SERVICES TO BE PROVIDED

The CONTRACTOR shall, for the consideration herein stated and at its cost and expense, do all the work and furnish all equipment, supplies, labor and incidentals necessary to perform this Contract in the manner and to the full extent as required by CFX

2. CONTRACT TERM AND AMOUNT

The term of the Contract will be sixty (60) calendar days from the date specified in the Notice to Proceed from CFX. The Contract amount shall not exceed \$97,175.00 during the term.

3. COMPENSATION FOR SERVICES

Compensation shall be in accordance with the pricing sheet included in the CONTRACTOR's contract with the City.

4. CONTRACTOR INSURANCE

CONTRACTOR shall carry and keep in force during the period of this Contract, the required amount of coverage as stated in the CONTRACTOR's contract with the City with additional coverage as required below. Compliance with these insurance requirements shall not relieve or limit the CONTRACTOR's liabilities and obligations under this Contract. Failure of CFX to demand such certificate or evidence of full compliance with these insurance requirements or failure of CFX to identify a deficiency from evidence provided will not be construed as a waiver of the CONTRACTOR's obligation to maintain such insurance. The acceptance of delivery by CFX of any certificate of insurance evidencing the required coverage and limits does not constitute approval or agreement by CFX that the insurance requirements have been met or the insurance policies shown in the certificates of insurance are in compliance with the requirements. Additional coverage shall be as follows:

4.1 Comprehensive Automobile Liability (for bodily injury, death and property damage) having a minimum coverage of One Million Dollars (\$1,000,000.00) for each accident;

4.2 Workers' Compensation Insurance Coverage, including all coverage required under the laws of the state of Florida (as amended from time to time hereafter);

4.3 Unemployment Insurance Coverage in amounts and forms required by Florida law, as it may be amended from time to time hereafter.

Such policy or policies shall be carried without deductible, without co-insurance, and shall (a) include CFX, and such other parties CFX shall designate, as additional insureds, (b) be primary insurance, (c) include within the terms of the policy, or by contractual liability endorsement, coverage insuring the CONTRACTOR's indemnity obligations, (d) provide that the policy may not be canceled or changed without at least thirty (30) days prior written notice to CFX from the company providing such insurance, and (e) provide that the insurer waives any right of

subrogation against CFX, to the extent allowed by law and to the extent the same would not void primary coverage. At least fifteen (15) days prior to the expiration of any such policy of insurance required to be carried by CONTRACTOR hereunder, CONTRACTOR shall deliver insurance certificates to CFX evidencing a renewal or new policy to take the place of the one expiring. Procurement of insurance shall not be construed to limit CONTRACTOR's obligations or liabilities under the Contract. The requirement of insurance shall not be deemed a waiver of sovereign immunity by CFX.

Any insurance carried by CFX in addition to CONTRACTOR's policies shall be excess insurance, not contributory.

If CONTRACTOR fails to obtain the proper insurance policies or coverages, or fails to provide CFX with certificates of same, CFX may obtain such policies and coverages at CONTRACTOR's expense and deduct such costs from CONTRACTOR payments.

5. CONTRACTOR RESPONSIBILITY

CONTRACTOR shall take all reasonable precautions in the performance of the services and shall cause its employees, agents and subcontractors to do the same.

5.1 CONTRACTOR shall comply, and shall cause its employees, agents, officers and subcontractors and all other persons for whom CONTRACTOR may be legally or contractually responsible, with applicable laws, ordinances, rules, regulations, orders of public authorities, sound business practices, including without limitation:

- (i) those relating to the safety of persons and property and their protection from damage, injury or loss, and
- (ii) all workplace laws, regulations, and posting requirements, and

5.2 CONTRACTOR shall be responsible for all damage and loss that may occur with respect to any and all property in any way involved in the provision of services by CONTRACTOR, whether such property is owned by CONTRACTOR, CFX, or any other person, to the extent such damage or loss shall have been caused or brought about by the acts or omissions of CONTRACTOR or its employees, agents, officers or subcontractors or any other persons for whom CONTRACTOR may be legally or contractually responsible.

5.3 CONTRACTOR shall ensure that all of its activities and the activities of its employees, agents, officers and subcontractors and all other persons for whom CONTRACTOR may be legally or contractually responsible are undertaken in a manner that will minimize the effect on surrounding property and the public.

6. INDEMNITY

The CONTRACTOR shall indemnify, defend and hold harmless CFX and all of its respective officers, agents, CONTRACTOR's or employees from all suits, actions, claims, demands, costs as defined elsewhere herein, expenses (including reasonable attorneys' fees as defined elsewhere

herein), judgments, liabilities of any nature whatsoever (collectively, "Claims") arising out of, because of, or due to breach of the Contract by the CONTRACTOR (its subcontractors, officers, agents or employees) or due to any negligent or intentional act or occurrence of omission or commission of the CONTRACTOR (its subcontractors, officers, agents or employees). CONTRACTOR will not be liable for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of CFX or any of its officers, agents or employees. The parties agree that 1% of the total compensation to the CONTRACTOR for performance of each task authorized under the Contract is the specific consideration from CFX to CONTRACTOR for CONTRACTOR's indemnity and the parties further agree that the 1% is included in the amount negotiated for each authorized task.

7. PUBLIC RECORDS

Upon receipt of any request by a member of the public for any documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by CONTRACTOR in conjunction with this Contract (including without limitation CONTRACTOR Records and Proposal Records, if and as applicable), CONTRACTOR shall immediately notify CFX. Thereafter, CONTRACTOR shall follow CFX's instructions with regard to such request. To the extent that such request seeks non-exempt public records, CFX shall direct CONTRACTOR to provide such records for inspection and copying in compliance with Chapter 119. A subsequent refusal or failure by CONTRACTOR to timely grant such public access will be grounds for immediate, unilateral cancellation of the Contract by CFX.

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

Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, Florida 32807
(407) 690-5000
PublicRecords@CFXWay.com

8. MEDIA RELEASES

CONTRACTOR shall make no statements, press releases or publicity releases concerning the Contract or its subject matter, or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished under the Contract, or any particulars thereof, without first notifying CFX and securing its consent in writing.

9. PERMITS, LICENSES, ETC.

Throughout the term of the Contract, the CONTRACTOR shall procure and maintain, at its sole expense, all permits and licenses that may be required in connection with the performance of Services by CONTRACTOR; shall pay all charges, fees, royalties, and taxes; and shall give all

notices necessary and incidental to the due and lawful prosecution of the Services. Copies of required permits and licenses shall be furnished to CFX upon request.

10. CONFLICT OF INTEREST AND STANDARDS OF CONDUCT

CONTRACTOR acknowledges that CFX officials and employees are prohibited from soliciting and accepting funds or gifts from any person who has, maintains, or seeks business relations with CFX in accordance with CFX's Ethics Policy. To the extent applicable, CONTRACTOR will comply with the aforesaid Ethics Policy in connection with performance of the Contract.

In the performance of the Contract, CONTRACTOR shall comply with all applicable local, state, and federal laws and regulations and obtain all permits necessary to provide the Contract services.

CONTRACTOR covenants and agrees that it and its employees, officers, agents, and subcontractors shall be bound by the standards of conduct provided in Florida Statutes 112.313 as it relates to work performed under this Contract, which standards will be reference be made a part of this Contract as though set forth in full.

11. NONDISCRIMINATION

CONTRACTOR, its employees, officers, agents, and subcontractors shall not discriminate on the grounds of race, color, religion, sex, national origin, or other protected class, in the performance of work or selection of personnel under this Contract.

12. SUBLETTING AND ASSIGNMENT

CONTRACTOR shall not sublet, sell, transfer, assign, delegate, subcontract, or otherwise dispose of this Contract or any portion thereof, or of the CONTRACTOR's right, title, or interest therein without the written consent of CFX, which may be withheld in CFX's sole and absolute discretion. Any attempt by CONTRACTOR to dispose of this Contract as described above, in part or in whole, without CFX's written consent shall be null and void and shall, at CFX's option, constitute a default under the Contract.

13. DISPUTES AND TERMINATION

All services shall be performed by the CONTRACTOR to the reasonable satisfaction of CFX's Executive Director (or her/his delegate), who shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Contract, the prosecution and fulfillment of the services described and the character, quality, amount and value thereof.

CFX shall have the right to terminate or suspend the Contract, in whole or in part, at any time, for any reason, with 7 days notice for convenience or 10 days notice for cause.

14. OTHER SEVERABILITY

If any section of this Contract be judged void, unenforceable or illegal, then the illegal provision shall be, if at all possible, interpreted or re-drafted into a valid, enforceable, legal provision as close to the parties' original intention, and the remaining portions of the Contract shall remain in full force and effect and shall be enforced and interpreted as closely as possible to the parties' intention for the whole of the Contract.

15. GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws of Florida. Venue of any legal or administrative proceedings arising out of this Contract shall be exclusively in Orange County, Florida.

16. RELATIONSHIPS

CONTRACTOR acknowledges that no employment relationship exists between CFX and CONTRACTOR or CONTRACTOR's employees. CONTRACTOR shall be responsible for all direction and control of its employees and payment of all wages and salaries and other amounts due its employees. CONTRACTOR shall be responsible for all reports and obligations respecting such employees, including without limitation social security tax and income tax withholding, unemployment compensation, workers compensation, and employment benefits.

Any approval by CFX of a subcontract or other matter herein requiring CFX approval for its occurrence shall not be deemed a warranty or endorsement of any kind by CFX of such subcontract, subcontractor, or matter.

17. INTERPRETATION

For purposes of this Contract, the singular shall include the plural, and the plural shall include the singular, unless the context clearly requires otherwise. Reference to one gender shall include all genders. Reference to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the stated statute or regulation. Words not otherwise defined and that have well-known technical, industry, or legal meanings, are used in accordance with such recognized meanings, in the order stated. References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities. If CONTRACTOR discovers any material discrepancy, deficiency, or ambiguity in this Contract, or is otherwise in doubt as to the meaning of any provision of the Contract, CONTRACTOR may immediately notify CFX and request clarification of CFX's interpretation of the Contract. The Contract, together with and including all exhibits, comprise the entire agreement of the parties and supersedes and nullifies all prior and contemporaneous negotiations, representations, understandings, and agreements, whether written or oral, with respect to the subject matter hereof.

18. SURVIVAL OF EXPIRATION OR TERMINATION

Any clause, sentence, paragraph, or section providing for, discussing, or relating to any of the following shall survive the expiration or earlier termination of the Contract:

18.1 Payment to CONTRACTOR for satisfactory work performed or for termination expenses, if applicable; and

18.2 Any other term or terms of this Contract which by their nature or context necessarily survive the expiration or earlier termination of the Contract for their fulfillment.

19. OBLIGATIONS UPON EXPIRATION OR TERMINATION OF CONTRACT

CONTRACTOR shall initiate settlement of all outstanding liabilities and claims arising out of the Contract and any subcontracts or vending agreements to be canceled. All settlements shall be subject to the approval of CFX. This Contract was awarded by the CFX Board of Directors at its meeting on July 14, 2016.

IN WITNESS WHEREOF, the authorized signatures named below have caused this instrument to be signed by their respective duly authorized officials, as of the day and year first above written.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: _____
Director of Procurement

TRAFFIC CONTROL DEVICES, INC.

By: _____

Title

Attest: _____ (Seal)

Date: _____

Approved as to form and execution, only.

General Counsel for CFX



Corporate Office
242 North Westmonte Drive
Altamonte Springs, FL 32714

Phone - 407.869.5300
Fax - 407.682.0076
www.TCD-USA.com

Local Offices

Altamonte Springs, FL	Sarasota, FL
Clermont, FL	Tampa, FL
Deland, FL	Dallas, TX
Jacksonville, FL	Houston, TX
Pompano, FL	San Antonio, TX
Punta Gorda, FL	Salisbury, NC
Rockledge, FL	

To:	Central Florida Expressway Authority	Contact:	Ben Dreiling
Address:	4974 ORL Tower Road Orlando, FL 32807	Phone:	(407) 690-5000
		Fax:	(407) 690-5032

Project Name:	801-16 CFX - Install EPass Overlay Sign Panels (Rev 1)	Bid Number:	599-624A
Project Location:	Along SR417, SR429, SR408, SR417, Orlando, FL	Bid Date:	6/16/2016

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
4	Overtime Traffic Signal Level I Tech	700.000	MH	\$67.50	\$47,250.00
5a	Bucket Truck	420.000	HR	\$74.25	\$31,185.00
5d	Service Vehicle (Project Supervisor Vehicles)	280.000	HR	\$35.50	\$9,940.00
6	Police Officer	160.000	MH	\$55.00	\$8,800.00


Total Bid Price: \$97,175.00

Notes:

- This proposal is a unit price proposal. The total sum is an approximate sum based on the estimated quantities on the attached proposal (which is an integral part of this proposal) at the unit prices depicted thereon. The final contract amount of any contract resulting from this proposal shall be based on the quantities actually installed and field verified by the Owner's architect/engineer at these unit prices.
- Our price includes Insurance.
- No items quoted herein may be "broken out" without prior approval in writing.

Payment Terms:

Payments are to be made to us by the tenth day of the month for all work installed and materials placed on the job site during the preceding month, less five (5%) percent retainage (unless the Prime Contract calls for a different retainage percentage). Final Payment, including retainage, will be due not more than thirty (30) days after completion and acceptance of the work. Any contract resulting from this proposal shall be on the terms and conditions mutually acceptable to the Purchaser and Traffic Control Devices, Inc.

<p>ACCEPTED:</p> <p>The above prices, specifications and conditions are satisfactory and hereby accepted.</p> <p>Buyer: _____</p> <p>Signature: _____</p> <p>Date of Acceptance: _____</p>	<p>CONFIRMED:</p> <p>Traffic Control Devices, Inc.</p> <div style="text-align: center;">  </div> <p>Authorized Signature:</p> <p>Estimator: Rob Rebert 407-869-5300 r.rebert@tcd-usa.com</p>
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CITY OF WINTER PARK

401 South Park Avenue

Winter Park, Florida

32789-4386

PURCHASING DIVISION

407.643.1627

407.599.3448

cityofwinterpark.org

October 27, 2015

Mr. JC Breeding
Traffic Control Devices, Inc.
242 N. Westmonte Dr.
Altamonte Springs, FL 32714

RE: IFB-12-2014 - Traffic Signal Maintenance

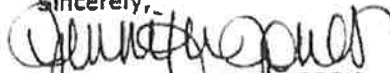
Dear Mr. Breeding:

The subject contract will expire on October 28, 2015 unless renewed by mutual consent. The City wishes to renew the contract using this Amendment from October 29, 2015 through October 28, 2016.

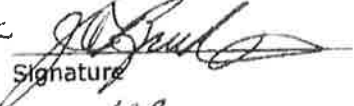
If you wish to renew the contract upon the same terms, conditions and prices, please sign and return the attached Amendment 1 no later than October 29, 2015.

Please confirm your acceptance by executing under the vendor area below and return to the address listed or via email to jjones@cityofwinterpark.org.

Sincerely,


Jennifer Jones, CPPB, FCCM
Senior Purchasing Agent

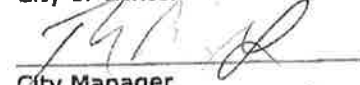
Traffic Control Devices


Signature

JCBREEDING
Print Name

10-27-15
Date

City of Winter Park


City Manager

10-29-15
Date

Purchasing Division

CITY OF WINTER PARK, FLORIDA



IFB-12-2014 Traffic Signal Maintenance

Price Sheet

1. \$ 61.50 /Hourly rate for regular time traffic signal maintenance from a Level II Technician. Regular time traffic signal maintenance shall be for Contractor providing service between 7:00am and 6:00pm (EST). The maintenance shall include all the materials, equipment and supplies.
*See attachment "A"
2. \$ 92.25 /Hourly rate for overtime traffic signal maintenance from a Level II Technician. Overtime traffic signal maintenance shall be for Contractor provided service between 6:01 pm and 6:59 am (EST), and on all weekends and legal holidays
3. \$ 45.00 /Hourly rate for regular time traffic signal maintenance from a Level I Technician. Regular time traffic signal maintenance shall be for Contractor providing service between 7:00am and 6:00pm (EST). The maintenance shall include all the materials, equipment and supplies.
*See attachment "A"
4. \$ 67.50 /Hourly rate for overtime traffic signal maintenance from a Level I Technician. Overtime traffic signal maintenance shall be for Contractor providing service between 6:01 pm and 6:59 am (EST), and on all weekends and legal holidays.

1. Contractor shall list all holidays for their Company below:

New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving
Day after Thanksgiving, Christmas Eve & Christmas Day

2. The City's holidays are as follows:

New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Day after Thanksgiving, Christmas Eve (Half Day), & Christmas

5. The Contractor shall charge the prevailing rental rate to the Owner on all standard construction equipment. The following specialized traffic light equipment shall be charged to the lesser of the prevailing rental rate for the Owner or the following designated cost per hour:

a) Bucket Truck	\$ <u>74.25</u> /hour
b) Lift Truck	\$ <u>74.25</u> /hour
c) Auger/Crane Truck	\$ <u>158.50</u> /hour
d) Service Vehicle	\$ <u>35.50</u> /hour

COMPANY NAME: Traffic Control Devices, Inc.

TELEPHONE: 407-869-5300

Email: d.hutchins@tcd-usa.com

AUTHORIZED SIGNATURE: _____

J.C. Breeding/VP

DATE: September 3, 2014



Insurance Requirements

Insurance Type	Required Limits
✓ Worker's Compensation	Statutory Limits of Florida Statutes, Chapter 440 and all Federal Government Statutory Limits
✓ Employer's Liability	\$500,000.00 each accident, single limit per occurrence
✓ Commercial General Liability (Occurrence Form) patterned after the current ISO form	\$1,000,000.00 single limit per occurrence \$2,000,000.00 aggregate for Bodily Injury Liability & Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products & Completed Operations & Contractual Liability.
✓ Indemnification	To the maximum extent permitted by Florida law, the Contractor/Vendor/Consultant shall indemnify and hold harmless City Of Winter Park, its officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor/Vendor/Consultant or anyone employed or utilized by the Contractor/Vendor/Consultant in the performance of the Agreement. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of City of Winter Park.
✓ Automobile Liability	\$1,000,000.00 each person; Bodily Injury & Property Damage, Owned/Non-owned/Hired; Automobile Included. \$2,000,000.00 each accident; Bodily Injury & Property Damage, Owned/Non-owned/Hired; Automobile Included.
Other	

Vendor shall ensure that all subcontractors comply with the same insurance requirements that he/she is required to meet. The same Vendor shall provide the City with certificates of insurance meeting the required insurance provisions.

The City of Winter Park must be named as "ADDITIONAL INSURED" on the Insurance Certificate for Commercial General Liability where required.

The Certificate Holder shall be named as City of Winter Park.

Thirty (30) Days Cancellation Notice required.



242 N. Westmonte Drive
Altamonte Springs, FL 32714
(407) 869-5300
(407) 882-0078

ATTACHMENT "A"

We are taken exception to the last sentence in items 1 and 3. This attachment explains how we incorporated our cost into what items.

Do to this being a Maintenance Contract there is no way for us to include materials, equipment and supplies in one item. Below explains what is included in each pay item.

For 1, 2, 3 & 4 on the price sheet the hourly rate only includes the labor for the Level II or Level I Technician.

All material shall be priced separately to include: material cost, plus tax and mark-up of 17.5%.

Equipment used shall be charged per 5a, 5b, 5c and 5d on the price sheet.

Thank you,


James C. Breeding/VP

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

VEHICLE REGISTRATION

STATE OF Florida

COUNTY OF Seminole

BEFORE ME, this day, personally appeared Traffic Control Devices, Inc.,
(Contractor's Name)

who says that all of the vehicles operated or caused to be operated by said Contractor, are registered
in the State of Florida, in accordance with Section 337.11(13) F.S. (2010).


(Contractor's Signature)

Typed Name: James C. Breeding

Position: Vice-President

Company Name: Traffic Control Devices, Inc.

Company Address: 242 N. Westmonte Drive

Altamonte Springs, FL 32714

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

VEHICLE REGISTRATION

STATE OF Florida

COUNTY OF Seminole

The foregoing instrument was acknowledged before me this 11/20/2015 by
(Date)

James C. Breeding

(Name of Officer or agent, title of officer or agent)

of Traffic Control Devices, Inc., a

(Name of Corporation acknowledging)

Florida corporation, on behalf of the corporation. He/she is
(State or place of incorporation)

personally known to me or has produced n/a
(Type of identification)

as identification and did (did not) take an oath.

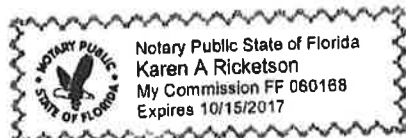
Karen A. Ricketson Notary Public, Commission No.

Karen A. Ricketson (Name of Notary typed, printed or stamped)

Title or Type of Document _____ (Optional)

Number of Pages _____ Date of Document _____ (Optional)

Signer(s) Other than Named Above _____ (Optional)



(SEAL ABOVE)

CITY OF WINTER PARK
PROFESSIONAL SERVICES AGREEMENT

The City of Winter Park, 401 Park Avenue South, Winter Park, FL 32789, (hereinafter "City"), enters this Agreement for professional services with Traffic Control Devices, Inc., (hereinafter "Contractor"), and for the consideration hereinafter specified, the adequacy of which is acknowledged, the parties agree as follows:

1. Scope of Services. The Contractor is contractually bound to provide the following described professional services: Traffic Signal Maintenance. If Contractor was selected pursuant to a form of competitive procurement issued in writing, then the terms, conditions and contractual requirements with respect to IFB-12-2014 (hereinafter referred to as the "IFB") shall be incorporated herein by reference and the requirements of the RFP are fully incorporated and are binding.

With respect to the Scope of Services and services provided, Contractor is bound and agrees as follows:

- a. All services rendered will be in compliance with the Contract, including any City issued RFP/competitive procurement specifications.
- b. The services will be rendered in a good, workmanlike and professional manner of a quality required of like contractors or professionals in Florida when providing such service.
- c. The services will be in compliance with all requirements of applicable local, state and federal laws.
- d. If a professional license is required for any part of the service provided hereunder, then only licensed professionals whose licenses are in good standing under

Florida law shall provide such service, and all of such service shall be provided in a manner required by Florida law with respect to such licensure.

2. Consideration/Payment. For rendition of these services, the City agrees to pay the Contractor as follows: Net 30. Contractor's Invoices shall be sufficiently detailed so that the City can identify reasonably the service provider or providers, dates of service, details regarding the service provided on specific dates, and if there is payment by hour, then each service shall be sub-billed in increments of six (6) minutes (.1 hour). Costs may be billed only if authorized, and shall be actual, incurred, and billed in detail by Contractor with the invoice. Backup documentation for all costs must be attached to the invoice or the cost item will not be payable. If travel and meals/lodging are reimbursable, then the state maximum for such travel expenses, including meals and lodging, shall be subject to the maximum limitations set out in Chapter 112, Florida Statutes, and there will be a requirement that any air travel will be payable only at the available coach rate.

3. Term of the Contract. This Contract is valid for 1 year subject to renewal options of 4 additional 1 year renewals at the sole discretion of the City. The Contract may be terminated sooner as follows:

- a. The Contract may be terminated for material breach that is not of an emergency nature by the party not in breach issuing a written notice to the other identifying the alleged material breach or breaches of contract. The party receiving notice shall thereafter have thirty (30) days within which to cure the default or the Contract shall be deemed terminated. If the nature of the default is such that it may not be cured within thirty (30) days, then it is sufficient if the party receiving notice commences cure within said thirty (30) day cure period and works continuously thereafter with reasonable dispatch to complete the cure of the default.

- b. City may terminate the Contract for any reason, including for its own convenience or without cause, by serving written notice of thirty (30) days on the Contractor. At the City's option, Contractor may continue to provide services during the thirty (30) day notice period or, will immediately remove its tools and personnel upon demand by the City. The City's sole obligation will then be to pay for Contractor's services rendered through the date of notice (directing removal from the project) or through the date of termination following the expiration of the thirty (30) day notice period, at the option of the City.
- c. Contractor may terminate the Contract for any reason, including for its own convenience or without cause, by serving written notice of sixty (60) days on the City. The City's sole obligation will then be to pay for Contractor's services rendered through the date of notice (directing removal from the project) or through the date of termination following the expiration of the sixty (60) day notice period, at the option of the City, whichever date applies.
- d. The Contract may be terminated immediately by notice by a party not in breach if the other party has committed a material breach that creates an emergency situation endangering the health, safety or welfare of persons or property.
- e. Invoices are due and payable within forty-five (45) days after receipt of the invoice by the City. If the City fails to identify problems with an invoice as required by Florida's Prompt Payment Act and upon expiration of forty-five (45) days from City's receipt of an invoice the Contractor may thereafter serve a written demand for payment of the invoice. The City shall thereafter have fifteen (15) days to cure by making any required payment. If City fails to cure or identify deficiencies in

the billing which excuse payment, the Contractor may thereafter terminate the Contract by further notice.

4. Contractor's Indemnification and Hold Harmless. Contractor, its successors and assigns shall hold harmless and indemnify the City and its agents and employees from and against any and all claims, losses, damages, lawsuits or demands of any type whatsoever made by any third party arising out of or related to Contractor's performance of this Contract or any matter relating to the performance of work under this Contract or the work itself. Without limitation, this duty to indemnify and hold harmless will include all third party claims related in any manner to an allegation of deficient work or failure to perform work called for under this Contract resulting in injury or damage to person or property. Notwithstanding this provision, the duty to indemnify and hold harmless will not apply if the cause of the loss or damage is shown to be substantially the fault or responsibility of the City as a result of its negligence or the intentional wrongdoing or reckless and gross negligence of any agent or employee of the City acting within the course and scope of his or her employment/agency.

5. Required Insurance. Contractor shall have and shall maintain continuously throughout the term of this Contract the following required insurance coverages:

- a. Commercial general liability: as stated in solicitation document.
- b. Workers compensation insurance as required by law for all personnel.
- c. Automobile/motor vehicle coverage: as stated in solicitation document.
- d. Errors and omissions or professional liability insurance: as stated in solicitation document.

All Insurance required shall be in a form and coverage acceptable to the City's Director of Risk Management. Contractor agrees to revise or replace such Insurance as may be requested by the Director of Risk Management from time to time during the term of the Contract. Contractor shall allow all of its Insurance documents to be reviewable upon request by the City. Contractor shall assign to the City all of its rights under its policies of Insurance upon demand by the City.

Contractor shall provide certificates of Insurance for its professional liability/errors and omissions, automobile/motor vehicle and commercial general liability coverages showing that the Insurance is in effect and will not be canceled without notice to the City, and such policies/certificates shall name the City of Winter Park as an additional Insured.

6. Miscellaneous.

- a. City reserves all of its authority, rights and privileges of sovereign immunity, including without limitation those rights, privileges and limitations of liability in Section 768.28, Florida Statutes. This Contract shall not be interpreted in any manner to waive or limit the City's rights of sovereign immunity.
- b. There are no third party beneficiaries to this Contract and only the City and Contractor shall have any rights that are enforceable under this Contract.
- c. This Contract shall be binding upon all successors to the Contractor. Notwithstanding, this Contract may not be assigned without the prior express written permission of the City.
- d. This Contract may not be amended except in writing approved in the manner required by the City's Code of Ordinances respecting contracts.

e. The exclusive venue and forum for resolution of any disputes arising out of or related to this Contract or the services provided hereunder shall mandatorily be in the court of appropriate jurisdiction in Orange County, Florida. The law of Florida shall apply with respect to the interpretation of the Contract and all rights and remedies of the parties to the Contract.

f. Any notice required or allowed by this Agreement shall be served by fax, email and express delivery or hand delivery showing the signature of the person to whom delivered as follows:

i. **Notice to the City:** Randy Knight, City Manager
City of Winter Park
401 Park Avenue South
Winter Park, FL 32789
Fax: 407- 691.6651
Email: rknight@cityofwinterpark.org

With a copy to: Usher L. Brown, Esquire, City Attorney
Brown, Garganese, Weiss & D'Agresta, P.A.
111 N. Orange Ave., Suite 2000
Orlando, FL 32801
Fax: 407-425-9596
Email: ulbrown@orlandolaw.net

ii. **Notice to Contractor:** _____

Fax: _____
Email: _____

With a copy to: _____

Fax: _____
Email: _____

g. Waiver of any default by a party shall not constitute a waiver of any future default.

- h. Contractor had an opportunity to negotiate this Contract and seek advice of its counsel. Accordingly, in interpreting this Contract the court shall not apply the rule that the Contract should be construed against the drafter and instead will treat the Contract as if it was drafted by the parties equally.
- i. No employee or agent of the City has any authority to modify or alter the terms of this Contract and Contractor is bound to know the limitations of the authority with each agent and employee of the City with whom it may deal. The Contractor is permitted to take direction consistent with the express terms of this Contract from the City Manager or designee, but such direction may not alter or vary the express written terms hereof without a subsequent formal written amendment to the Contract.

7. Time for Completion. Time is of the essence with respect to this Contract and Contractor shall promptly perform all work assigned in a good and workmanlike manner and shall complete the work on a timely basis. The City Manager or designee shall have the authority to issue a notice to proceed with respect to the services required hereunder. With respect to completion of work:

- a. Contractor shall complete its work under this Contract on or before N/A.
- b. If the work is assigned periodically, then the notice to proceed shall specify the completion date for the work assigned, and Contractor will agree to such completion date as may be stated in notices to proceed issued pursuant to the authority hereof.
- c. If Contractor fails to achieve timely completion, City shall be damaged, but the parties agree that the actual amount of damages that would be suffered by a failure to achieve timely completion is unable to be determined at this time reasonably.

Therefore, the parties agree that for each day following the deadline for completion that Contractor is not completed with its work, City may assess liquidated damages in the amount of N/A dollars (\$N/A) per day which may be set off against any monies otherwise due Contractor. The parties agree that this amount is not a penalty, but is a reasonable approximation of the damages that would be suffered in the future by the City in the event the Contractor fails to timely complete its work.

8. Retainage and Corrective Work. At the option of the City, it may withhold ten percent (10%) from each invoice payable to the Contractor as retainage to assure that the Contractor will complete the work and perform any corrective work. Upon tender of completion, the City shall have twenty (20) business days to identify any deficiencies in the work and Contractor agrees to promptly remedy and correct such matters, including completion of work identified as incomplete or insufficient.

9. Contractor May Not Alter These Terms. No purchase order, contract addendum or document of any type issued by Contractor will be acceptable and none of such will be allowed to amend or alter the requirements of this Contract and the competitive procurement referenced above. In the event such a document is issued by Contractor, it shall be null, void and of no effect.

10. Contractor's Warranty. Contractor warrants all of its work as good, workmanlike, sufficient, and compliant with the requirements of the Contract and all applicable laws and codes.

11. Effective Date. This Contract is effective on the date approved by the City Commission or signed by the Mayor/City Manager, whichever is the latest date.

CITY OF WINTER PARK

"CITY"


By: 

Printed Name: Randy Knight/Kenneth Bradley

Title: City Manager/Mayor

Date: 10/29/14

Attest:



Cindy Bonham, City Clerk

Date: 10/29/14

TRAFFIC CONTROL DEVICES, INC.

"CONTRACTOR"

By: 

Printed Name: J. BREEDING

Title: VICED PRESIDENT

Date: 10-16-14

Telephone 407.869.5300

Email: j.breeding@tcd-usa.com