



**CONTINUING PURCHASE AGREEMENT**

**THIS IS AN AGREEMENT (“Agreement”)**, dated the \_\_\_\_ day of \_\_\_\_\_, **2020**  
(the “Effective Date”) by and between:

**THE CITY OF PEMBROKE PINES**, a municipal corporation of the State of Florida with a business address of **601 City Center Way, Pembroke Pines, Florida 33025** (hereinafter referred to as the "CITY")

and

**TECHNOLOGY INTERNATIONAL, INC.**, a profit corporation as listed with the Florida Division of Corporations, and with a business address of **1349 S. International Pkwy, #2411, Lake Mary, FL 32746** (hereinafter referred to as the “CONTRACTOR”). CITY and CONTRACTOR may hereinafter be referred to collectively as the "Parties."

**WITNESSETH:**

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONTRACTOR agree as follows:

**ARTICLE 1**  
**PREAMBLE**

In order to establish the background, context and form of reference for this Agreement, and to generally express the objectives and intentions of the respective Parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow, and may be relied upon by the Parties as essential elements of the mutual considerations upon which this Agreement is based.

1.1 On **October 22, 2019**, the CITY advertised its **IFB # CS-19-04** entitled **Pines Point and Pines Place Air Conditioning Units** (hereinafter “**IFB # CS-19-04**”), a copy of which is attached hereto as **Exhibit “A,”** and by this reference made a part hereof, which set forth the CITY's desire to hire a firm to provide Pines Point and Pines Place Air Conditioning Units; and,

1.2 On **November 19, 2019**, the bids were opened at the offices of the City Clerk; and,

1.3 On \_\_\_\_\_, **2020**, the CITY awarded the bid to CONTRACTOR and authorized the proper CITY officials to negotiate and enter into an agreement with CONTRACTOR to provide the Commodities more particularly described herein below,

1.4 CITY desires to engage CONTRACTOR to provide air conditioning units (the “Commodities”) as required herein by the CITY.



## **ARTICLE 2**

### **PURCHASE OF GOODS**

- 2.1 CITY agrees to purchase and CONTRACTOR agrees to provide Pines Point and Pines Place housing developments with the Commodities which are the subject of this Agreement.
- 2.2 CONTRACTOR shall provide the Commodities as broadly identified in **Exhibit "A"** attached hereto and by this reference made a part hereof, and CONTRACTOR's response thereto, attached hereto and by this reference made a part hereof as **Exhibit "B"**. CONTRACTOR shall provide the Commodities in accordance with the twelve (12) weeks delivery timeline as provided for in **Exhibit "B"**.
- 2.3 The Parties acknowledge that this Agreement is a term contract and that CITY shall purchase and CONTRACTOR shall provide the Commodities on an as-needed basis upon the written request of the CITY. Nothing contained herein or in any exhibit or amendment hereto, shall require the CITY to purchase any specific quantity of Commodities.
- 2.4 As needed, the CITY shall submit a purchase order to the CONTRACTOR for a specified amount of Commodities. CONTRACTOR shall then provide the specified amount of Commodities in accordance with the purchase order, and submit to the CITY an invoice for those Commodities.
- 2.5 CITY agrees it shall submit to CONTRACTOR a purchase order for the Commodities on an as-needed basis. CONTRACTOR agrees that it shall provide such Commodities within twelve (12) weeks of issuance of a purchase order from CITY and has the ability to fulfill such orders as CITY requires.
- 2.6 CONTRACTOR acknowledges that it has the capacity, ability and/or inventory to provide the Commodities to the CITY on an as-needed basis and in accordance with the twelve (12) weeks delivery timeline from date of issuance of the CITY's purchase order for all air conditioning units as more specifically listed in **Exhibit "A"**. CONTRACTOR shall provide at least twenty-four (24) hour notice prior to any delivery, and shall provide the quantities listed on the CITY's purchase order.
- 2.7 CONTRACTOR agrees that the CITY shall be able to purchase the Commodities at the same price identified in **Exhibit "B"** for the term of this Agreement. CONTRACTOR shall not increase, but may decrease the price, listed for the Commodities for the term of this Agreement.

## **ARTICLE 3**

### **TERM AND TERMINATION**

- 3.1 CONTRACTOR shall provide the Commodities as identified herein and in **Exhibits "A"** and **"B"** attached hereto and by this reference made a part hereof, on an as-needed basis and in accordance with the delivery requirements set forth in Article 2 of this Agreement, for an initial



**one (1) year period** commencing as of the Effective Date of this agreement and ending after a period of one (1) year.

3.2 This Agreement may be renewed for **one (1) additional, one (1) year term** upon mutual written consent, evidenced by a written Amendment to this Agreement extending the term thereof.

3.3 This Agreement may be terminated by CITY for convenience, upon thirty (30) business days of written notice by the CITY to the CONTRACTOR for such termination in which event CONTRACTOR shall be paid its compensation for the Commodities provided to termination date, as well as any and all services reasonably related to termination. In the event that CONTRACTOR abandons this Agreement or causes it to be terminated, CONTRACTOR shall indemnify CITY against loss pertaining to this termination.

3.4 In the event CONTRACTOR abandons or terminates this Agreement or causes it to be terminated by CITY for any reason, CONTRACTOR shall indemnify CITY against any loss pertaining to this termination. For purposes of this Agreement, termination by CITY for cause includes, but is not limited to, any of the following circumstances:

3.4.1 CONTRACTOR's failure to keep, perform and observe each and every provision of this Agreement and such failure continues for a period of more than **seven (7) days** after CITY's delivery of a written notice to CONTRACTOR of such breach or default;

3.4.2 CONTRACTOR becomes insolvent;

3.4.3 CONTRACTOR takes the benefit of any present or future insolvency statute;

3.4.4 CONTRACTOR makes a general assignment for the benefit of creditors,

3.4.5 CONTRACTOR files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its reorganization or the readjustment of its indebtedness under the Federal Bankruptcy laws or under any other law or statute of the United States or any state thereof;

3.4.6 CONTRACTOR consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property;

3.4.7 A petition under any present or future insolvency laws or statute is filed against CONTRACTOR and such petition is not dismissed within **seven (7) days** after its filing;  
or

3.4.8 Any assignment of this Agreement in whole or in part, or any of CONTRACTOR's rights and obligations hereunder.



**ARTICLE 4**  
**COMPENSATION AND METHOD OF PAYMENT**

4.1 CONTRACTOR shall be entitled to invoice CITY based on CITY's purchase order(s) and in accordance with the unit pricing listed in the attached **Exhibit "B"**. Any invoices shall include, but not be limited to, date of service, description of the Commodities, and any other information reasonably required by CITY. The total annual compensation under this Agreement **SHALL NOT EXCEED SEVENTY-EIGHT THOUSAND, ONE HUNDRED FIFTY DOLLARS (\$78,150.00)**, annually.

4.2 Upon delivery, the CITY shall make final inspection of the Commodities. If this inspection shows that the Commodities have been delivered in a satisfactory manner and in accordance with the specifications of this Agreement or purchase order submitted by the CITY, the CITY shall receive the same. Final payment due the CONTRACTOR shall be withheld until inspection is made by the CITY. This inspection will be done in a reasonable and timely manner. Upon acceptance, CONTRACTOR shall submit to CITY an invoice for the Commodities provided.

4.3 CITY, upon approval of an invoice, will make its best efforts to pay CONTRACTOR within thirty (30) days of receipt of proper invoice the total shown to be due on such invoice.

4.4 If any of the Commodities has to be rejected for any reason, the CONTRACTOR shall be required to repair or replace the Commodities to the satisfaction of the CITY. Warranty repairs may be accomplished on CITY property if space is available, at the discretion of the CITY. Title to or risk of loss or damage to all Commodities shall be the responsibility of the CONTRACTOR until acceptance of the Commodities by the CITY, unless such loss or damages have been proven to be the result of negligence by the CITY.

4.5 All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

4.6 Payment will be made to CONTRACTOR at:

**Technology International, Inc.**  
**1349 S. International Pkwy, #2411**  
**Lake Mary, FL 32746**

4.7 Should the Parties decide to renew the term of this Agreement pursuant to Section 3.2 herein, and in the event that CONTRACTOR provides adequate evidence to CITY to substantiate a price increase, the purchase price of the Commodities contained herein may be adjusted no more than an amount equal to the increase in the "Consumer Price Index" or "CPI" for the current year as of two (2) months prior to the beginning of any renewal term of this Agreement. However, in no event shall the increase be greater than **three percent (3%)** for each year subsequent to the initial term. The purchase price shall be subject to an annual CPI increase for each year of any renewal term.



4.8 The term "Consumer Price Index" is defined as the Consumer Price Index for all Urban Consumers, U.S. City Average (1982-84=100) All items, published by the United States Department of Labor, Bureau of Labor Statistics. The increase in the CPI shall be computed by subtracting the CPI used to calculate the purchase price for the current year from the CPI reported on the U.S. Department of Labor, Bureau of Statistic's website available at <http://data.bls.gov/cgi-bin/surveymost?cu> for the month that is one hundred twenty (120) days prior to the first day of the upcoming year.

**ARTICLE 5**  
**RESERVED**

**ARTICLE 6**  
**WARRANTY OF COMMODITIES**

6.1 The Commodities, and each individual good or item, including all components and all installed accessories and equipment, shall be guaranteed by the CONTRACTOR to be free of defective parts and workmanship. This warranty shall be for a period of **three hundred sixty-five (365) days** or the time designated in the standard factory warranty, whichever is longer.

The warranty will be the same as that offered to the commercial trade and shall be honored by any of the manufacturer's authorized dealers. The warranty will cover parts, labor and any necessary shipping for repair or replacement of the Commodities, or each individual good or item, including all components and all installed accessories and equipment. The warranty shall start at the time of the CITY's acceptance of the Commodities.

6.2 CONTRACTOR warrants and guarantees that the Commodities, and each individual good or item, including all components and all installed accessories and equipment, shall be fit for the intended use of the Commodities and CONTRACTOR shall provide a warranty as to fitness of the Commodities for a period of **three hundred sixty-five (365) days** or the time designated in the standard factory warranty, whichever is longer. The warranty will cover parts, labor and any necessary shipping for repair or replacement of the Commodities, or each individual good or item, including all components and all installed accessories and equipment.

**ARTICLE 7**  
**CHANGES TO SCOPE OF WORK**

7.1 The Parties may request changes that would increase, decrease, or otherwise modify the quantities and / or Commodities to be provided under this Agreement as described in Article 2 of this Agreement. These changes may affect the compensation accordingly. Such changes or additional commodities must be in accordance with the provisions of the CITY's Code of Ordinances, and must be contained in a written amendment, executed by the Parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this Agreement.

7.2 In no event will the CONTRACTOR be compensated for any Commodities which have not been described either herein or in a separate written agreement executed by the Parties hereto.



**ARTICLE 8**  
**RESERVED**

**ARTICLE 9**  
**INDEMNIFICATION**

9.1 CONTRACTOR shall indemnify and hold harmless the CITY, its trustees, elected and appointed officers, agents, servants, assigns and employees, from and against any and all claims, demands, or causes of action whatsoever, and the resulting losses, costs, expenses, reasonable attorneys' fees, including paralegal expenses, liabilities, damages, orders, judgments, or decrees, sustained by the CITY or any third party arising out of, by reason of, or resulting from the CONTRACTOR's acts, errors, or omissions or consequence of the provision of the Commodities furnished pursuant to this Agreement.

9.2 CONTRACTOR shall indemnify and hold harmless the CITY, its trustees, elected and appointed officers, agents, servants, assigns and employees, from and against any and all claims, demands, or causes of action whatsoever, and the resulting losses, costs, expenses, reasonable attorneys' fees, including paralegal expenses, liabilities, damages, orders, judgments, or decrees, sustained by the CITY or any third party arising out of, by reason of, or resulting from any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any invention, process, material, property or other work manufactured or used in connection with the performance of the Agreement, including the use of the Commodities by the City.

9.3 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR.

9.4 Upon acceptance of all of the Commodities 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.

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

**ARTICLE 10**  
**INSURANCE**

10.1 The CONTRACTOR shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the CONTRACTOR or its employees, agents, servants, partners, principals or subcontractors. The CONTRACTOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where



applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. The CONTRACTOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

10.2 CONTRACTOR shall not perform under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONTRACTOR allow any subcontractor to perform on any subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

10.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

10.4 Certificates of Insurance shall provide for thirty (30) days' prior written notice to the CITY in case of cancellation or material changes in the policy limits or coverage states. If the carrier cannot provide thirty (30) days' notice of cancellation, either the CONTRACTOR or their insurance broker must agree to provide notice.

10.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the CONTRACTOR shall furnish, at least forty-five (45) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

10.6 REQUIRED INSURANCE

CONTRACTOR shall be required to obtain all applicable insurance coverage, as indicated below, prior to performing its obligation under this Agreement:

Yes No

✓  10.6.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000



- 3. Personal & Advertising Injury Limit - \$1,000,000
- 4. General Aggregate Limit - \$2,000,000
- 5. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement.

**The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

10.6.2 Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of the CONTRACTOR engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

- 1. Workers' Compensation: Coverage A – Statutory
- 2. Employers Liability: Coverage B \$500,000 Each Accident  
\$500,000 Disease – Policy Limit  
\$500,000 Disease – Each Employee

If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption along with a written request for CITY to exempt CONTRACTOR, written on CONTRACTOR letterhead.

Yes No

10.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

- 1. Any Auto (Symbol 1)  
Combined Single Limit (Each Accident) - \$1,000,000
- 2. Hired Autos (Symbol 8)  
Combined Single Limit (Each Accident) - \$1,000,000
- 3. Non-Owned Autos (Symbol 9)  
Combined Single Limit (Each Accident) - \$1,000,000

If work under this Agreement includes transportation of hazardous materials, policy shall include pollution liability coverage equivalent to that provided by the latest version of the ISO pollution liability broadened endorsement for auto and the latest version of the ISO Motor Carrier Act endorsement, equivalents or broader language.



as meet the various state notification requirements. This coverage shall be maintained for a period of no less than the later of three (3) years after delivery of goods/services or final payment of the Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY.

**The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

\* 10.6.8 Crime Coverage shall include employee dishonesty, forgery or alteration, and computer fraud in an amount of no less than \$1,000,000 per loss. If CONTRACTOR is physically located on CITY's premises, a third-party fidelity coverage extension shall apply.

Yes No

\* 10.6.9 Garage Liability & Garage-keepers Legal Liability for those that manage parking lots for the CITY or service CITY vehicles. Coverage must be written on an occurrence basis, with limits of liability no less than \$1,000,000 per Occurrence, including products & completed operations. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment of this Agreement.

**The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

\* 10.6.10 Liquor Liability for those in the business of selling, serving or furnishing of any alcoholic beverages, whether licensed or not, shall carry a limit of liability of no less than \$1,000,000 per occurrence. Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement.

**The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

\* 10.6.11 Sexual Abuse & Molestation for any agreement involving a vulnerable population. Limits shall be no less than \$500,000 per occurrence. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment of this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY.



**The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

\*

10.6.12 Builder's Risk Insurance shall be "All Risk" for one hundred percent (100%) of the completed value of the project that is the subject of this Agreement with a deductible of not more than five percent (5%) for Named Windstorm and \$20,000 per claim for all other perils. The Builder's Risk Insurance shall include interests of the CITY, the CONTRACTOR and subcontractors of the project. The CONTRACTOR shall include a separate line item for all costs associated with the Builder's Risk Insurance Coverage for the project. The CITY reserves the right at its sole discretion to utilize the CONTRACTOR's Builder's Risk Insurance or for the CITY to purchase its own Builder's Risk Insurance for the Project. Prior to the CONTRACTOR purchasing the Builder's Risk insurance for the project, the CONTRACTOR shall allow the CITY the opportunity to analyze the CONTRACTOR's coverage and determine who shall purchase the coverage. Should the CITY utilize the CONTRACTOR's Builder's Risk Insurance, the CONTRACTOR shall be responsible for all deductibles. If the CITY chooses to purchase the Builder's Risk Coverage on the project, the CONTRACTOR shall provide the CITY with a change order deduct for all premiums and costs associated with the Builder's Risk insurance in their schedule. Should the CITY choose to utilize the CITY's Builder's Risk Program, the CITY shall be responsible for the Named Windstorm Deductible and the CONTRACTOR shall be responsible for the All Other Perils Deductible.

If and when 100% is not available or reasonable, the CITY Risk Manager is to make the determination as to what limits are appropriate for the given project.

Yes No

\*

10.6.13 Other Insurance

10.7 REQUIRED ENDORSEMENTS

10.7.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the Liability Policies required herein.

10.7.2 Waiver of all Rights of Subrogation against the CITY.

10.7.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the CITY.

10.7.4 CONTRACTOR's policies shall be Primary & Non-Contributory.

10.7.5 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY.

10.7.6 The City of Pembroke Pines shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

10.8 Any and all insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of



such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement.

10.9 The CITY reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Agreement.

10.10 The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the CONTRACTOR has assumed in the indemnification/hold harmless section(s) of this Agreement.

## **ARTICLE 11**

### **NON-DISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYMENT**

11.1 During the performance of the Agreement, neither the CONTRACTOR nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, 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. CONTRACTOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONTRACTOR further agrees that CONTRACTOR will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

## **ARTICLE 12**

### **INDEPENDENT CONTRACTOR**

12.1 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 all 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 Workers' 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, H.U.D., 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 has 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.

**ARTICLE 13**  
**RESERVED**

**ARTICLE 14**  
**AGREEMENT SUBJECT TO FUNDING**

14.1 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 Pembroke Pines in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

**ARTICLE 15**  
**UNCONTROLLABLE FORCES**

15.1 Neither CITY nor CONTRACTOR 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.

**ARTICLE 16**  
**GOVERNING LAW AND VENUE**

16.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all actions or claims arising out of or related to this Agreement shall be in Broward County, Florida.

**ARTICLE 17**  
**SIGNATORY AUTHORITY**

17.1 CONTRACTOR shall provide CITY with copies of requisite documentation evidencing that the signator for CONTRACTOR has the authority to enter into this Agreement.



**ARTICLE 18**  
**RESERVED**

**ARTICLE 19**  
**BANKRUPTCY**

19.1 It is agreed that if CONTRACTOR is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective on the date and at the time the bankruptcy petition is filed.

**ARTICLE 20**  
**MERGER; AMENDMENT**

20.1 This Agreement constitutes the entire agreement between CONTRACTOR and CITY, and all negotiations and oral understandings between the Parties are merged herein. This Agreement can be supplemented or amended only by a written document executed by both CONTRACTOR and CITY with the same formality and equal dignity herewith.

**ARTICLE 21**  
**DISPUTE RESOLUTION**

21.1 **Arbitration.** In addition to any other remedy provided hereunder, CITY, at its option, may use arbitration to resolve any controversy or claim arising out of or relating to this Agreement if arbitration is elected by CITY. Any controversy or claim arising out of or relating to this Agreement, or breach thereof, may be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered into by any court having jurisdiction thereof. In the event arbitration is elected by CITY, such controversy or claim shall be submitted to one arbitrator selected from the National Panel of The American Arbitration Association.

21.2 **Operations During Dispute.**

21.2.1 In the event that a dispute, if any, arises between CITY and CONTRACTOR relating to this Agreement, performance or compensation hereunder, CONTRACTOR shall continue to provide all of the requested Commodities in full compliance with all terms and conditions of this Agreement as interpreted by CITY regardless of such dispute.

21.2.2 CONTRACTOR expressly recognizes the paramount right and duty of CITY to provide adequate maintenance of CITY's property, and further agrees, in consideration for the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court, but will negotiate with CITY for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute, may present the matter to a court of competent jurisdiction in an appropriate suit therefore instituted by it or by CITY.

21.2.3 Notwithstanding the other provisions in this Article, CITY reserves the right to terminate this Agreement at any time, whenever the Commodities provided by CONTRACTOR fail



to meet reasonable standards of the trade after CITY gives written notice to the CONTRACTOR of the deficiencies as set forth in the written notice within fourteen (14) calendar days of the receipt by CONTRACTOR of such notice from CITY.

**ARTICLE 22**  
**PUBLIC RECORDS**

22.1 The City of Pembroke Pines is a public agency subject to Chapter 119, Florida Statutes. The CONTRACTOR shall comply with Florida's Public Records Law. Specifically, the CONTRACTOR shall:

22.1.1 Keep and maintain public records required by the CITY to perform the service;

22.1.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

22.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession after the CONTRACTOR transfers the records in its possession to the CITY; and

22.1.4 Upon completion of the Agreement, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by the CONTRACTOR 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.

22.2 The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement, for which, the CITY may terminate the Agreement in accordance with the terms herein.

**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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK**  
**601 CITY CENTER WAY, 4<sup>th</sup> FLOOR**  
**PEMBROKE PINES, FL 33025**



(954) 450-1050

[mgraham@ppines.com](mailto:mgraham@ppines.com)

**ARTICLE 23**  
**MISCELLANEOUS**

23.1 **Ownership of Documents.** Reports, surveys, plans, studies and other data provided in connection with this Agreement are and shall remain the property of CITY whether or not the Commodities for which they are made are accepted by the CITY. CITY hereby agrees to use CONTRACTOR's work product for its intended purposes.

23.2 **Legal Representation.** It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both Parties.

23.3 **Records.** CONTRACTOR shall keep such records and accounts and require any and all subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONTRACTOR expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of ten (10) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries. All records shall be maintained and available for disclosure, as appropriate, in accordance with Chapter 119, Florida Statutes.

23.4 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONTRACTOR shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns.

It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

23.5 **No Contingent Fees.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.



23.6 **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONTRACTOR and CITY designate the following as the respective places for giving of notice:

CITY Charles F. Dodge, City Manager  
City of Pembroke Pines  
601 City Center Way, 4<sup>th</sup> Floor  
Pembroke Pines, Florida 33025  
Telephone No. (954) 450-1040

Copy To: Samuel S. Goren, City Attorney  
Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308  
Telephone No. (954) 771-4500  
Facsimile No. (954) 771-4923

CONTRACTOR **Rifat Habib, Business Development Executive  
Technology International, Inc.  
1349 S. International Pkwy., #2411  
Lake Mary, FL 32746  
E-mail: tii@tii-usa.com  
Telephone No: (407) 359-2373**

23.7 **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

23.8 **Headings.** Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

23.9 **Exhibits.** Each exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

23.10 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

23.11 **Extent of Agreement.** This Agreement represents the entire and integrated agreement



between the CITY and the CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral.

23.12 **Waiver.** Failure of CITY to insist upon strict performance of any provision or condition of this Agreement, or to execute any right therein contained, shall not be construed as a waiver or relinquishment for the future of any such provision, condition, or right, but the same shall remain in full force and effect.

23.13 **Attorneys' Fees.** In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

23.14 **Counterparts and Execution.** This Agreement may be executed in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

23.15 **Compliance with Statutes:** It shall be the 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.

23.16 **Scrutinized Companies.** CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services if:

23.16.1 Any amount of, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

23.16.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

23.16.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or

23.16.2.2 Is engaged in business operations in Syria.



23.17 **No Third Party Beneficiaries.** The Commodities to be provided by the CONTRACTOR are intended solely for the benefit of the CITY. No person or entity not a signatory to this Agreement shall be entitled to rely on the CONTRACTOR's performance of its obligations hereunder, and no right to assert a claim against the CONTRACTOR by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Agreement or the performance of the CONTRACTOR's services hereunder.

23.18 **Reserved.**

23.20 **Domestic Partnership.**

23.20.1 CONTRACTOR certifies that it is aware of the requirements of Section 35.39 of the CITY's Code of Ordinances and certifies that (**check only one box below**):

- CONTRACTOR currently complies with the requirements of Section 35.39 of the CITY's Code of Ordinances; or
- CONTRACTOR will comply with the conditions of Section 35.39 of the CITY's Code of Ordinances; or
- CONTRACTOR will not comply with the conditions of Section 35.39 of the CITY's Code of Ordinances; or
- CONTRACTOR does not comply with the conditions of Section 35.39 of the CITY's Code of Ordinances because of the following allowable exemption (**check only box below**):
  - CONTRACTOR does not provide benefits to employees' spouses in traditional marriages; or
  - CONTRACTOR provides an employee the cash equivalent of benefits because CONTRACTOR is unable to provide benefits to employees' Domestic Partners or spouses despite making reasonable efforts to provide them. To meet this exception, CONTRACTOR shall provide a notarized affidavit that it has made reasonable efforts to provide such benefits. The affidavit shall state the efforts taken to provide such benefits and the amount of the cash equivalent. Case equivalent means the amount of money paid to an employee with a Domestic Partner or spouse rather than providing benefits to the employee's Domestic Partner or spouse. The case equivalent is equal to the employer's direct expense of providing benefits to an employee's spouse; or
  - CONTRACTOR is a religious organization, association, society, or any non-profit charitable or educational institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society; or
  - CONTRACTOR is a governmental agency.

23.20.2 Except where federal or state law mandates to the contrary, a contractor awarded a contract pursuant to a competitive solicitation shall provide benefits to Domestic Partners



and spouses of its employees, irrespective of gender, on the same basis as it provides benefits to employees' spouses in traditional marriages.

23.20.3 CONTRACTOR shall provide the City Manager and his/her designee, access to its records for the purpose of audits and/or investigations to ascertain compliance with the provisions of this Article, and upon request shall provide evidence that the CONTRACTOR is in compliance with the provisions of this Article upon the renewal of this AGREEMENT or when the City Manager or his/her designee receives a complaint or has reason to believe CONTRACTOR may not be in compliance with the provisions of this Article. Records shall include but not be limited to providing the City Manager and his/her designee with certified copies of CONTRACTOR's records pertaining to its benefits policies and its employment policies and practices.

23.20.4 CONTRACTOR must conspicuously make available to all employees and applicants for employment the following statement:

**“During the performance of a contract with the City of Pembroke Pines, Florida, the CONTRACTOR will provide Equal Benefits to its employees with spouses, as defined by Section 35.39 of the City of Pembroke Pines Code of Ordinances, and its employees with Domestic Partners and all Married Couples”.**

23.20.5 By executing this Agreement, CONTRACTOR certifies that it agrees to comply with the above and Section 35.39 of the City of Pembroke Pines Code of Ordinances, as may be amended from time to time.

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



IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

**CITY:**

CITY OF PEMBROKE PINES, FLORIDA

ATTEST:

\_\_\_\_\_  
MARLENE D. GRAHAM, CITY CLERK

By: \_\_\_\_\_  
CHARLES F. DODGE, CITY MANAGER

APPROVED AS TO FORM:

\_\_\_\_\_  
Name: \_\_\_\_\_  
OFFICE OF THE CITY ATTORNEY

**CONTRACTOR:**

**TECHNOLOGY INTERNATIONAL, INC.**

By: Michael J. Rosenberg  
Name: Michael J. Rosenberg  
Title: Business Manager

STATE OF Florida )  
COUNTY OF Seminole )

**BEFORE ME**, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Michael J. Rosenberg as Business Manager of **TECHNOLOGY INTERNATIONAL, INC.**, a company authorized to conduct business in the State of Florida, and acknowledged execution of the foregoing Agreement as the proper official of **TECHNOLOGY INTERNATIONAL, INC.**, for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

**IN WITNESS OF THE FOREGOING**, I have set my hand and official seal at in the State and County aforesaid on this 28<sup>th</sup> day of January, **2020**.

M. Shaji Habib  
NOTARY PUBLIC

M. Shaji Habib  
(Name of Notary Typed, Printed or Stamped)

