

RESOLUTION NO. 76-20

("H" pursuant to Chapter 95, City of Delray Beach Code of Ordinances)

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, RELATING TO EMERGENCY MANAGEMENT; CONFIRMING A DECLARATION OF A STATE OF EMERGENCY; AUTHORIZING EMERGENCY PURCHASING AND PROCUREMENT PROCEDURES AND SUSPENDING CERTAIN CITY CODES, RULES AND REGULATIONS RELATING TO PURCHASING AND PROCUREMENT; THIS RESOLUTION SHALL BE VALID FOR THIRTY (30) DAYS AND AUTOMATICALLY RENEWED EVERY THIRTY (30) DAYS UNTIL FURTHER ACTION BY THE CITY COMMISSION.

WHEREAS, a State of Emergency in the City of Delray Beach was proclaimed by Delray Beach City Commission on March 13, 2020 due to the spread of the Novel Coronavirus Disease 2019 (COVID-19); and

WHEREAS, conditions arising from COVID-19 continue to seriously affect the safety and security of the lives of the citizens of Delray Beach; and

WHEREAS, adherence to certain local ordinances, rules and regulations establishing purchasing and procurement procedures can delay the process of restoring the City to conditions existing prior to the emergency; and

WHEREAS, Chapter 95 of the City of Delray Beach Code of Ordinances authorizes the enactment of emergency procurement procedures during a State of Emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The recitals and findings contained in the preamble to this resolution are hereby adopted by reference thereto and incorporated herein, as if fully set forth in this section.

Section 2. A declaration of a State of Emergency proclaimed on March 13, 2020 is hereby confirmed.

Section 3. Conditions created by COVID-19 have required the City to postpone or cancel public meetings in order to adhere to social distancing requirements mandated by the government.

Section 4. The emergency has caused disruption to the City's ability to procure goods and services essential to City business due to the State of Emergency declared on March 13, 2020.

Section 5. It is necessary for the City to continue to conduct its day to day business which includes engaging in the procurement of services, equipment, goods and/or materials that are essential for the life, health and safety of residents and employees.

Section 6. A valid public emergency exists justifying the waiver of formal competitive sealed bids and competitive selection procedures for the acquisition of such services, equipment, goods and/or materials, as may be required.

Section 7. By an affirmative vote of 4/5ths of the members of the City Commission, formal competitive sealed bid procedures for the procurement of services, equipment, goods and/or materials for the purpose of conducting City business during the state of emergency are hereby waived.

Section 8. The City Manager is hereby authorized to utilize City forces to participate in the burden, relief and disaster assistance as may be required.

Section 9. The City Manager is hereby authorized to: accept the most reasonable, responsive and responsible bid or quote (for necessary improvements, services, equipment, goods and/or materials associated during the state of emergency) and to execute the necessary purchase order(s), agreements, service authorizations, or change orders in a form acceptable to the City Attorney.

Section 10. The City Commission hereby ratifies, approves and confirms the City Manager's previous expenditure of monies for contracts and awards during the state of emergency.

Section 11. The City Manager is hereby permitted to proceed without express City Commission approval, execution of such purchase orders, contracts, service authorizations, change orders, and agreements and in his expenditures of monies for the aforesaid, during the state of emergency where such expenditure of monies for any contract and/or award in connection therewith, does not exceed \$150,000.00.


Section 12. The City Manager is instructed to submit to each City Commissioner a copy of each contract, agreement, purchase order, service authorization, or change order issued pursuant to this resolution in excess of \$65,000 on the same day said contract or purchase order is executed by him.

Section 13. The emergency renders it necessary to suspend local ordinances, rules and regulations dealing with purchasing and procurement.

Section 14. This resolution shall be valid for thirty (30) days and automatically renewed every thirty (30) days until further action by the City Commission.

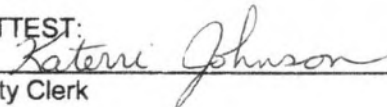
Section 15. That this resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED on this the 24 day of April, 2020.



George Gretsas, City Manager

ATTEST:



Kateri Johnson
City Clerk

MASTER CONTRACTOR/SERVICES AGREEMENT

THIS AGREEMENT is made by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 100 NW 1st Avenue, Delray Beach, FL 33444 and Tanner Industries, Inc., a Philadelphia Corporation, (hereinafter referred to as "Contractor"), authorized to do business in Florida, whose address is 1201 Hays Street, Tallahassee, FL 32301, this 1st day of April, 2020.

WHEREAS, the City desires to purchase anhydrous ammonia; and

WHEREAS, the City desires to procure these goods from Contractor, utilizing existing contract prices provided to City of Stuart, pursuant to its solicitation number ITB 2019-100; and

WHEREAS, in accordance with solicitation number ITB 2019-100, City of Stuart entered into a one-year agreement with Contractor for services effective October 1, 2018, through September 30, 2019, with an additional two (2) one-year renewal options; and

WHEREAS, the City of Stuart exercised its first renewal option on June 20, 2019, thereby extending the term to include October 1, 2019, through September 30, 2020; and

WHEREAS, the City desires to purchase services from Contractor on the same terms, conditions, and pricing provided under solicitation number ITB 2019-100, subject to the terms and conditions of this Agreement, the City's Purchasing ordinance, and Florida law; and

WHEREAS, the Contractor agrees to extend the terms, conditions, and pricing of solicitation number ITB 2019-100 to the City, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration of which the parties hereto acknowledge, the parties agree as follows:

1 The above recitals are true and correct and are incorporated herein by reference.

2 The Contractor shall provide to the City anhydrous ammonia, in accordance with and pursuant to the same terms, conditions, and pricing of solicitation number ITB 2019-100 procured by City of Stuart.

3 This Agreement shall terminate on September 30, 2020, unless ITB 2019-100 is renewed by City of Stuart, in which case this Agreement will automatically renew.

4 The City, at its sole discretion, reserves the right to terminate this Agreement with or without cause immediately upon providing written notice to Contractor. Upon receipt of such notice, the Contractor shall not incur any additional costs under the Agreement. The City shall be liable only for reasonable costs incurred by Contractor prior to the date of the notice of termination. The City shall be the sole judge of "reasonable costs."

5 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 attorney's 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 the 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 attorney's fees which may be incurred 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 the obligations of this section shall survive the term of this Agreement.

6 Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For CITY:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Manager

For CONTRACTOR:

Tanner Industries, Inc.
1201 Hays Street
Tallahassee, FL 32301-2525
Attn: Stephen B. Tanner - President

7 Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party.

8 This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.

9 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 OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

- a. Contractor shall comply with public records laws, specifically to:
 - i. Keep and maintain public records required by the City to perform the service.
 - ii. 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 Florida Statute or as otherwise provided by law.
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.
 - iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

- v. If the Contractor does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

10 Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

11 The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

12 The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- a. Terms and conditions as contained in this Agreement.
- b. Terms and Conditions of City of Stuart solicitation number ITB 2019-100.
- c. Contractor's response to solicitation number ITB 2019-100 and any subsequent information submitted by Contractor during the evaluation and negotiation process.

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IN WITNESS WHEREOF, the City and the Contractor executed this Agreement as of the day and year first above written.

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson
FOR Katerri Johnson, City Clerk

By: *Shelly Petrolia*
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin
Lynn Gelin, City Attorney

CONTRACTOR Tanner Industries, Inc.

By: *Matt Tanner*

Print Name: Matt Tanner

Title: Sales Administrator

(SEAL)

STATE OF PENNSYLVANIA
COUNTY OF BUCKS

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 19th day of MARCH, 2020, by MATT TANNER (name of person), as Sales Administrator (type of authority) for TANNER INDUSTRIES (name of party on behalf of whom instrument was executed).

Personally known OR Produced Identification
Type of Identification Produced _____

Commonwealth of Pennsylvania - Notary Seal
Samantha Tanner, Notary Public
Bucks County
My commission expires July 19, 2023
Commission number 1349030
Member, Pennsylvania Association of Notaries

Samantha Tanner
Notary Public – State of PENNSYLVANIA

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