



CITY OF FARMERS BRANCH TEXAS

CITY OF FARMERS BRANCH PURCHASING RIDER

Vendor/Contractor: Flock Group, Inc.

Cooperative Purchase Entity and Contract Number: _____

By submitting a response to a solicitation or bid, or by entering into a contract for goods or services and/or by accepting a purchase order, the contractor, consultant or vendor agrees that the below terms and conditions shall govern all agreements with the City of Farmers Branch, Texas, unless otherwise agreed to by a written amendment separate from the contract or purchase order, provided same is permissible by law. Absent a specific amendment, the below terms are binding and supersede any and all other terms and/or conditions whether oral or written.

As used herein, "Vendor" means the contractor, supplier, licensor, seller, consultant or other party, by whatever description may be used, in its Contract with the City. The "Contract" is the agreement between the Vendor and the City, including all attachments, exhibits, appendices, addenda and other matters that are intended to be a part of the agreement between the parties.

Application. This Purchasing Rider ("Rider") supplements and amends the Contract between the parties and takes precedence over any conflicting provision in the Contract, including but not limited to provisions in or an attachment to the Response to Solicitation or Bid, Contract, Agreement, Quote, Invoice or Purchase Order, as applicable. Any general terms or conditions proposed by Vendor as a part of its agreement with the City are subordinate to the terms of this Rider where in conflict.

Payment Provisions. The City's payments under the Contract, including the time of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code. The City reserves the right to withhold all or part of any payment if a genuine dispute exists as to the goods or services for which the payment is

intended. The City will remit any undisputed portion, and the parties will exercise diligence to resolve the dispute. No invoice, quote or purchase order submitted by Vendor will modify any term of this Rider or the Contract.

Multiyear Contracts. If the City Council does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the contract becomes effective, funds have not been appropriated, and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first day of the successive fiscal year. (Section 5, Article XI, Texas Constitution). It is understood and agreed the City shall have the right to terminate the Contract at the end of any City fiscal year if the governing body of the City does not appropriate funds sufficient to continue the contract, as determined by the City's budget for the fiscal year in question. The City may execute such termination by giving Vendor a written notice of termination at the end of its then current fiscal year.

Local Preference. The City Council supports the local preference option for purchasing. In accordance with Chapter 271.9051 of the State of Texas Local Government Code, the City Council may choose to award a competitive bid to a bidder whose principal place of business is in the City limits, provided that this bid is within 5% of the lowest bid price received, provided such action is not prohibited by law.

Abandonment or Default. A Vendor who abandons or defaults the work on the contract and causes the City to purchase goods, materials or services elsewhere may be charged for any increased cost of goods, materials and/or services related thereto; may be considered disqualified in

any re-advertisement of the service; and may not be considered in future bids for the same type of work for a period of three years for the same scope of work, goods or services.

Cancellation. the City reserves the right to cancel the contract without penalty based on the public convenience by providing 30 days prior written notice to the Vendor. Termination under this paragraph shall not relieve the Vendor of any obligation or liability that has occurred prior to cancellation, and the City shall pay Vendor for work performed or materials supplied up to the date of termination. If the City has prepaid, the Vendor shall refund the City's payment, prorated to the date of termination.

Compliance with other laws and certification of eligibility to contract. Any offer to contract with the City shall be considered an executed certification that the Vendor will comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, (as amended during the contracting period) and any orders and decrees of any court, administrative bodies or tribunals in any matter affecting the performance of the Contract, including without limitation, immigration laws, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations.

Liability Limitations. Any provision of the Contract is void and unenforceable if it: (1) limits or releases either party from liability that would exist by law in the absence of the provision; (2) creates liability for either party that would not exist by law in the absence of the provision; or (3) waives or limits either party's rights, defenses, remedies, or immunities that would exist by law in the absence of the provision.

Indemnity and Independent Vendor Status of Vendor. Vendor shall indemnify, hold harmless and defend the City, its officers, agents, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees and any and all other costs or fees arising out of the performance of the Contract and/or arising out of a willful or negligent act or omission of the Vendor, its officers, agents, and employees. It is understood and agreed that the Vendor and any employee or subcontractor of Vendor shall not be considered an employee of the City. The Vendor shall not be within protection or coverage of the City's workers' compensation insurance, health insurance, liability insurance or any other insurance that the City from time to time may have in force and effect. City specifically reserves the right to reject any and all Vendor's employees, representatives or sub-contractors and/or their employees for any cause, should the presence of any such person on City property or their interaction with City employees be found not in the best interest of the City or is found to interfere with the effective and efficient operation of the City's workplace.

Viruses and Malware. Vendor's indemnity obligations extend to its failure to implement and maintain reasonable

measures and precautions to protect the City and the City's facilities from data breaches and the introduction into the City's computer network of any programs, mechanisms, programming devices, malware or other computer code (i) designed to disrupt, disable, harm, or otherwise impede in any manner the operation of any software program or code, or any computer system or network (commonly referred to as "malware", "spyware", "viruses" or "worms"); (ii) that would disable or impair the operation thereof or of any software, computer system or network in any way based on the elapsing of a period of time or the advancement to a particular date or other numeral (referred to as "time bombs", "time locks", or "drop dead" devices); (iii) is designed to or could reasonably be used to permit a party or any third party to access any computer system or network (referred to as "trojans", "traps", "access codes" or "trap door" devices); or (iv) is designed to or could reasonably be used to permit a party or any third party to track, monitor or otherwise report the operation and use of any software program or any computer system or network by the other party or any of its customers. The Vendor will hold harmless, indemnify and defend the City from and against data breaches and malware, ransomware, viruses or other electronic software, routines, programs, codes or devices that may damage or impair the City's computer facilities arising from the Vendor's performance under this Agreement.

Confidentiality. Any provision in the Contract that attempts to prevent the City's disclosure of information that is subject to public disclosure under federal or Texas law is invalid.

Tax Exemption. The City is not liable to Vendor for any federal, state, or local taxes for which the City is not liable by law, including state and local sales and use taxes and federal excise tax. Accordingly, those taxes may not be added to any item. Texas limited sales tax exemption certificates will be furnished upon request.

Sovereign Immunity. Any provision of the Contract that seeks to waive the City's immunity from suit and/or liability is void unless agreed to by specific acknowledgement of the provision within the contract.

Governing Law and Venue. Texas law governs this Contract and any suit on this Contract must be filed in a court of proper jurisdiction in Dallas County, Texas.

Right to trial by Jury. Any provision of the Contract that seeks to waive an aggrieved Party's right to trial by jury is void.

Certificate of Interested Parties (TEC Form 1295). For contracts that require City Council approval or that is for services that would require a person to register as a lobbyist under Chapter 305 of the Texas Government Code, the City may not accept or enter into a contract until it has received from the Vendor a completed and signed Texas Ethics Commission (TEC) Form 1295 complete with a certificate number assigned by the (TEC), pursuant to Texas Government Code § 2252.908 and the rules promulgated

thereunder by the TEC. The Vendor understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering the Contract.

Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC's website, assigned a certificate number, printed, signed and provided to the City. The TEC Form 1295 may accompany the bid or may be submitted separately but must be provided to the City prior to the award of the contract. Neither the City nor its consultants have the ability to verify the information included in a TEC Form 1295, and neither have an obligation nor undertake responsibility for advising any potential Vendor with respect to the proper completion of the TEC Form 1295.

Energy Boycott. In accordance with Chapter 2274, Texas Government Code (Acts 2021, 87th Leg., S.B. 13), the City may not enter into a contract with a company, excluding a sole proprietorship, with 10 or more full-time employees for goods or services valued at \$100,000 or more unless the contract contains a written verification from the company that the company: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The signatory executing the Contract on behalf of Vendor verifies Vendor does not boycott energy companies and will not boycott energy companies during the term of the Contract. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and does not apply if the City determines the requirements of Subsection 2274.002(b) are inconsistent with the City's constitutional or statutory duties related to the issuance, incurrence or management of debt obligations or the deposit, custody, management, borrowing or investment of funds.

Firearms. In accordance with Chapter 2274, Texas Government Code (Acts 2021, 87th Leg., S.B. 19) the City may not enter into a contract with a company, excluding a sole proprietorship, with 10 or more full-time employees for goods or services valued at \$100,000 or more unless the contract contains a written verification from the company that the company: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The signatory executing the Contract on behalf of Vendor verifies Vendor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and does not apply if the City contracts with a sole-source provider or if the City does not receive any bids, if applicable, from a company that is able to provide the required verification.

Critical Infrastructure. In accordance with Chapter 2274, Texas Government Code, the City may not enter into a

contract or agreement with a company, excluding a sole proprietorship, with 10 or more full-time employees for goods or services valued at \$100,000 or more (1) if the company would be granted direct or remote access to or control of critical infrastructure in Texas, excluding access specifically allowed by the City for product warranty and support purposes and (2) if the City knows the company is (A) owned by or the a majority of stock or other ownership interest of the company is held or controlled by (i) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of such countries, or (B) headquartered in such countries. The signatory executing the Contract on behalf of Vendor represents that neither Vendor nor any of its parent companies, wholly-owned subsidiaries, majority-owned subsidiaries, and other affiliates is a company of which the City may not contract pursuant to Section 2274.0102, Texas Government Code. The foregoing verification is made solely to comply with Section 2274.0102, Texas Government Code.

Anti-Boycott Israel Verification. In accordance with Chapter 2271, Texas Government Code, the City may not enter into a contract with a company, excluding a sole proprietorship, with 10 or more full-time employees for goods or services valued at \$100,000 or more unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing the Contract on behalf of Vendor verifies that Vendor and its parent company, wholly-owned subsidiaries, majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent the Contract is a contract for goods or services, will not boycott Israel during the term of the Contract. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The signatory understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the signatory and exists to make a profit. This section does not apply to a Vendor which is a sole proprietorship and/or which has less than 10 full-time employees. This section does not apply to a contract valued at less than \$100,000.

Iran, Sudan, and Foreign Terrorist Organizations. The signatory executing the Contract on behalf of Vendor represents that neither Vendor nor any of its parent company, wholly-owned subsidiaries, majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>,
or
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the entity and each of its parent company,

wholly-owned subsidiaries, majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The signatory understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the signatory and exists to make a profit.

VENDOR:

Flock Group, Inc.

By _____
Signature

Name

Title

Date: _____