

**Bid Tabulation Packet
for
Solicitation 2016-053**

Sod Materials

Bid Designation: Public



City of Delray Beach

Bid #2016-053 - Sod MaterialsCreation Date **Dec 16, 2015**End Date **Jan 19, 2016 2:00:00 PM EST**Start Date **Dec 22, 2015 8:00:59 AM EST**Awarded Date **Not Yet Awarded**

2016-053--01-01 Celebration Beruda					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
mullings engineering services, llc	First Offer - \$0.40	55000 / each	\$22,000.00		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item.			
Grelite Corp	First Offer - \$0.62	55000 / each	\$34,100.00		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes:			
2016-053--01-02 Celebration Beruda					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
mullings engineering services, llc	First Offer - \$160.00	1 / each	\$160.00		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item. (400 SF per pallet)			
Grelite Corp	First Offer - \$310.00	1 / each	\$310.00		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes:			
2016-053--01-03 Celebration Beruda					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
mullings engineering services, llc	First Offer - \$100.00	1 / roll	\$100.00		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item.(245 SF per roll)			
Grelite Corp	First Offer - \$155.00	1 / roll	\$155.00		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes:			
2016-053--01-04 Tifeagle Bermuda					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
mullings engineering services, llc	First Offer - \$0.00	10000 / each	\$0.00		Y
Product Code: Agency Notes:		Supplier Product Code: No bid Supplier Notes: No Bid			
Grelite Corp	First Offer - \$0.62	10000 / each	\$6,200.00		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes:			
2016-053--01-05 Tifeagle Bermuda					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
mullings engineering services, llc	First Offer - \$0.00	1 / each	\$0.00		Y
Product Code: Agency Notes:		Supplier Product Code: No Bld Supplier Notes: NO bid			
Grelite Corp	First Offer - \$310.00	1 / each	\$310.00		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes:			

2016-053--01-06 Tifeagle Bermuda					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
mullings engineering services, llc	First Offer - \$0.00	1 / roll	\$0.00		Y
Product Code:		Supplier Product Code: NO Bid			
Agency Notes:		Supplier Notes: No Bid			
Grelite Corp	First Offer - \$155.00	1 / roll	\$155.00		Y
Product Code:		Supplier Product Code:			
Agency Notes:		Supplier Notes:			
2016-053--01-07 Tifway 419 Bermuda					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
mullings engineering services, llc	First Offer - \$0.39	10000 / each	\$3,900.00		Y
Product Code:		Supplier Product Code:			
Agency Notes:		Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item.			
Grelite Corp	First Offer - \$2.98	10000 / each	\$29,800.00		Y
Product Code:		Supplier Product Code:			
Agency Notes:		Supplier Notes:			
2016-053--01-08 Tifway 419 Bermuda					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
mullings engineering services, llc	First Offer - \$156.00	1 / each	\$156.00		Y
Product Code:		Supplier Product Code:			
Agency Notes:		Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item. (400 SF per Pallet)			
Grelite Corp	First Offer - \$1,490.00	1 / each	\$1,490.00		Y
Product Code:		Supplier Product Code:			
Agency Notes:		Supplier Notes:			
2016-053--01-09 Tifway 419 Bermuda					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
mullings engineering services, llc	First Offer - \$96.00	1 / roll	\$96.00		Y
Product Code:		Supplier Product Code:			
Agency Notes:		Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item. (245 SF per roll)			
Grelite Corp	First Offer - \$745.00	1 / roll	\$745.00		Y
Product Code:		Supplier Product Code:			
Agency Notes:		Supplier Notes:			
2016-053--01-10 St. Augustine					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
mullings engineering services, llc	First Offer - \$0.35	30000 / each	\$10,500.00		Y
Product Code:		Supplier Product Code:			
Agency Notes:		Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item.			
Grelite Corp	First Offer - \$0.50	30000 / each	\$15,000.00		Y
Product Code:		Supplier Product Code:			
Agency Notes:		Supplier Notes:			
2016-053--01-11 St. Augustine					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
mullings engineering services, llc	First Offer - \$175.00	1 / each	\$175.00		Y

Product Code: Agency Notes:		Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item. (500 SF per Pallet)			
Grelite Corp	First Offer - \$250.00	1 / each	\$250.00		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes:			
2016-053--01-12 St Augustine					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
mullings engineering services, llc	First Offer - \$0.00	1 / roll	\$0.00		Y
Product Code: Agency Notes:		Supplier Product Code: NO Bid Supplier Notes: NOTE: This item does not come in rolls.			
Grelite Corp	First Offer - \$125.00	1 / roll	\$125.00		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes:			
2016-053--01-13 Bahia					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
mullings engineering services, llc	First Offer - \$0.25	20000 / each	\$5,000.00		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item.			
Grelite Corp	First Offer - \$0.40	20000 / each	\$8,000.00		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes:			
2016-053--01-14 Bahia					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
mullings engineering services, llc	First Offer - \$100.00	1 / each	\$100.00		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item. (400 SF per pallet)			
Grelite Corp	First Offer - \$180.00	1 / each	\$180.00		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes:			
2016-053--01-15 Bahia					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
mullings engineering services, llc	First Offer - \$52.00	1 / roll	\$52.00		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item. (200 SF per roll)			
Grelite Corp	First Offer - \$90.00	1 / roll	\$90.00		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes:			
2016-053--01-16 Removal & Installation					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
mullings engineering services, llc	First Offer - \$0.20	1 / each	\$0.20		Y
Product Code: Agency Notes:		Supplier Product Code: Supplier Notes: Price includes labor only, material will be provided using the other line items.			

Grelite Corp	First Offer - \$0.24	1 / each	\$0.24		Y
Product Code:		Supplier Product Code:			
Agency Notes:		Supplier Notes:			
2016-053--01-17 Removal & Installation					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
Grelite Corp	First Offer - \$0.24	1 / each	\$0.24		Y
Product Code:		Supplier Product Code:			
Agency Notes:		Supplier Notes:			
mullings engineering services, llc	First Offer - \$100.00	1 / each	\$100.00		Y
Product Code:		Supplier Product Code:			
Agency Notes:		Supplier Notes: Price includes labor only, material will be provided using the other line items. (500 SF per pallet)			
2016-053--01-18 Removal & Installation					
Supplier	Unit Price	Qty/Unit	Total Price	Attch.	Docs
Grelite Corp	First Offer - \$0.24	1 / roll	\$0.24		Y
Product Code:		Supplier Product Code:			
Agency Notes:		Supplier Notes:			
mullings engineering services, llc	First Offer - \$50.00	1 / roll	\$50.00		Y
Product Code:		Supplier Product Code:			
Agency Notes:		Supplier Notes: Price includes labor only, material will be provided using the other line items. (245 SF per roll)			

Supplier Totals

mullings engineering services, llc		\$42,389.20 (18/18 items)	
Bid Contact	SHELDON K MULLINGS	Address	6289 w sunrise blvd.
	MULLINGSENG@HOTMAIL.COM		suite 122
	Ph 954-583-2441		SUNRISE, FL 33467
Agency Notes:		Supplier Notes:	
Grelite Corp		\$96,910.72 (18/18 items)	
Bid Contact	Emmanuel Okwor	Address	2880 W. Oakland Park
	Melissa.Parnell@grelite.net		#206
	Ph 954-226-6439		Fort Lauderdale, FL 33311
	Fax 954-714-3316		
Agency Notes:		Supplier Notes:	

**

mullings engineering services, llc

Bid Contact **SHELDON K MULLINGS**
MULLINGSENG@HOTMAIL.COM
Ph 954-583-2441

Address **6289 w sunrise blvd.**
suite 122
SUNRISE, FL 33467

Item #	Line Item	Notes	Unit Price	Qty/Unit	Attch. Docs
2016-053--01-01	Celebration Beruda	Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item.	First Offer - \$0.40	55000 / each	\$22,000.00 Y
2016-053--01-02	Celebration Beruda	Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item. (400 SF per pallet)	First Offer - \$160.00	1 / each	\$160.00 Y
2016-053--01-03	Celebration Beruda	Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item. (245 SF per roll)	First Offer - \$100.00	1 / roll	\$100.00 Y
2016-053--01-04	Tifeagle Bermuda	Supplier Product Code: No bid Supplier Notes: No Bid	First Offer - \$0.00	10000 / each	\$0.00 Y
2016-053--01-05	Tifeagle Bermuda	Supplier Product Code: No Bid Supplier Notes: NO bid	First Offer - \$0.00	1 / each	\$0.00 Y
2016-053--01-06	Tifeagle Bermuda	Supplier Product Code: NO Bid Supplier Notes: No Bid	First Offer - \$0.00	1 / roll	\$0.00 Y
2016-053--01-07	Tifway 419 Bermuda	Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item.	First Offer - \$0.39	10000 / each	\$3,900.00 Y
2016-053--01-08	Tifway 419 Bermuda	Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time	First Offer - \$156.00	1 / each	\$156.00 Y

watering and one time light rolling.
 Note: Removal and leveling is not included in this line item. (400 SF per Pallet)

2016-053--01-09	Tifway 419 Bermuda	Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item. (245 SF per roll)	First Offer - \$96.00	1 / roll	\$96.00	Y
2016-053--01-10	St. Augustine	Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item.	First Offer - \$0.35	30000 / each	\$10,500.00	Y
2016-053--01-11	St. Augustine	Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item. (500 SF per Pallet)	First Offer - \$175.00	1 / each	\$175.00	Y
2016-053--01-12	St Augustine	Supplier Product Code: NO Bid Supplier Notes: NOTE: This item does not come in rolls.	First Offer - \$0.00	1 / roll	\$0.00	Y
2016-053--01-13	Bahia	Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item.	First Offer - \$0.25	20000 / each	\$5,000.00	Y
2016-053--01-14	Bahia	Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery, Installation, One time watering and one time light rolling. Note: Removal and leveling is not included in this line item. (400 SF per pallet)	First Offer - \$100.00	1 / each	\$100.00	Y
2016-053--01-15	Bahia	Supplier Product Code: Supplier Notes: Price includes Furnish, Delivery,	First Offer - \$52.00	1 / roll	\$52.00	Y

Installation, One time
watering and one time light
rolling.
Note: Removal and leveling
is not included in this line
item. (200 SF per roll)

2016-053--01-16	Removal & Installation	Supplier Product Code: Supplier Notes: Price includes labor only, material will be provided using the other line items.	First Offer - \$0.20	1 / each	\$0.20	Y
2016-053--01-17	Removal & Installation	Supplier Product Code: Supplier Notes: Price includes labor only, material will be provided using the other line items. (500 SF per pallet)	First Offer - \$100.00	1 / each	\$100.00	Y
2016-053--01-18	Removal & Installation	Supplier Product Code: Supplier Notes: Price includes labor only, material will be provided using the other line items. (245 SF per roll)	First Offer - \$50.00	1 / roll	\$50.00	Y
					Supplier Total	\$42,389.20

Supplier: mullings engineering services, llc



Sod Materials
Jan 19, 2016
2:00:00 PM EST

MAYOR
VICE MAYOR
DEPUTY VICE MAYOR
COMMISSIONER
COMMISSIONER
CITY MANAGER

- CARY D. GLICKSTEIN
- SHELLY PETROLIA
- AL JACQUET
- JORDANA JARJURA
- MITCH KATZ
- DONALD B. COOPER

Purchasing Department ♦ (561) 243-7161 ♦ purchasing@mydelraybeach.com

Supplier: mullings engineering services, llc

City of Delray Beach Instructions for Bidders

BID NOTIFICATION: The City of Delray Beach (City) utilizes the following procedures for notification of bid opportunities:

Bidsync – www.bidsync.com
DemandStar – www.demandstar.com
Request via email purchasing@mydelraybeach.com
City of Delray Beach – Hard copies are available at City Hall

These are the only forms of notification authorized by the City. The City shall not be responsible for receipt of notification and information from any source other than those listed. It shall be the bidder's responsibility to verify the validity of all bid information received by sources other than those listed.

REQUIRED INFORMATION: The City bid packets contain various sections requiring completion. The bid form section of the bid packet must be completed prior to the date and time set for bid opening and included with the bid packet or the bidder may be found non-responsive. Vendors may be required to complete and supply all information contained in the "supplemental information" portion of the packet at a date after bid opening. Failure to complete "supplemental information" requirements in a timely manner, prior to council award, may be used by the City in determining a vendor's responsibility.

CORRESPONDENCE: The number of this bid packet must appear on all correspondence, or inquiries, pertaining to this bid.

PREPARATION COST: The City will not be liable for any costs associated with the preparation, transmittal, or presentation of any bids or materials submitted in response to any solicitation.

NOTICE OF PUBLIC DOCUMENTS: Any and all materials initially or subsequently submitted as part of the bid process shall become the property of the City, and shall be treated as City documents subject to typical practice and applicable laws for public records.

ADDENDA: Any interpretations, corrections or changes to this bid packet will be made by addenda. Sole issuing authority shall be vested in the City of Delray Beach Purchasing Department. Addenda will be sent to all who are known to have received a copy of this bid packet, if the addenda contain changes to the "specification" or "bid form", bidders shall acknowledge receipt of all addenda or they may be declared non-responsive.

SAMPLES: Any catalog, brand names, or manufacturer's reference in this bid packet is descriptive and not restrictive, and is used to indicate type and quality level desired for comparison purposes unless specifically excluded. Please quote as listed or give equal. If item offered is other than as indicated, bidder must state make, model, and part number of product quoted. Equality will be determined by the City, per the specifications. Samples, if required, shall be furnished free of expense to the City. Samples should not be enclosed with bid unless requested.

PRICING: bid price(s) quoted, must be held firm for ninety (90) days to allow for evaluation unless otherwise stated in this document.

BILLING INSTRUCTIONS – AWARDED FIRM: Invoices must show the purchase order number and shall be submitted electronically to accountspayable@mydelraybeach.com or mailed to Accounts Payable, 100 NW 1st Avenue, Delray Beach, FL 33444.

TAXES: The City of Delray Beach is exempt from any sales tax imposed by the State and/or Federal Government. State Sales Tax Exemption Certificate No. 85-8012621559C-4 appears on each purchase order.

ERROR-QUANTITY: bid price must be submitted on units of quantity specified, extended, and total shown, in the event of discrepancies in extensions, the unit price shall govern.

WARRANTY/GUARANTEE LAWS AND REGULATIONS: By submittal of this bid, in addition to the guarantees and warranties provided by law, vendor expressly guarantees and warrants as follows:

- a. That the articles to be delivered hereunder will be in full conformity with the specifications or with the approved sample submitted, and agreed that this warranty shall survive acceptance of delivery and payment for the articles and that the vendor will bear the cost of inspecting and/or testing articles rejected.
- b. That the articles to be delivered hereunder will not infringe on any valid patent, trademark, trade name, or copyright, and that the vendor will, at vendor's own expense, defend any and all actions or suits charging such infringement and will save and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, losses, liabilities and suits arising there from.
- c. That the articles to be delivered hereunder will be manufactured, sold and/or installed in compliance with the provisions of all applicable federal, state and local laws and regulations.
- d. That nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of the City.

PACKAGING: Unless otherwise indicated, items will be new, unused, and in first rate condition in containers suitable for damage-free shipment and storage.

F.O.B./DAMAGE: Items shall be bid F.O.B. delivered, designated location, and shall include all delivery and packaging costs. The City of Delray Beach assumes no liability for goods delivered in damaged or unacceptable condition. The successful bidder shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by the City of damage.

PAYMENT TERMS: Payment terms are net 45 unless otherwise specified by the City in the bid packet.

ELECTRONIC BIDS: Electronic bids are to be submitted through a secure mailbox at BidSync (www.bidsync.com) until the date and time as indicated in this Solicitation document. It is the sole responsibility of the Bidder/Proposer to ensure their bid reaches BidSync before the Solicitation closing date and time. There is no cost to the Bidder/Proposer to submit a bid in response to a City of Delray Beach solicitation via BidSync. Electronic bid submissions may require the uploading of electronic attachments. The submission of attachments containing embedded documents or proprietary file extensions is prohibited. All documents should be attached as separate files.

PRESENTATION OF BIDS – PAPER SUBMISSION: Complete bid packets must be presented to the Purchasing Department in a sealed envelope unless otherwise indicated. All paper submissions must be received on or before the due date and time (local time) at the City of Delray Beach, Purchasing Office, 100 NW 1st Avenue, Delray Beach, Florida 33444. Normal City business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays. The Proposer's name, return address, BID number, BID title, due date and time must be noted on the envelope. It is the sole responsibility of the bidder to utilize the forms provided in the bid package and to ensure their bid reaches the Purchasing Office on/or before solicitation due date and time (local time). Included in the envelope shall be ONE (1) unbound original, TWO (2) copies of all bid forms, and one (1) electronic copy of all submitted materials on CD. The original should be marked "ORIGINAL". Each copy must be identical to the original and the file format on the CD should be in Portable Document Format (pdf).

ALTERING BIDS – PAPER SUBMISSION: Bid prices cannot be altered or amended after submission deadline. Any inter-lineation alteration, or erasure made before opening time must be initialed by the signer of the bid, guaranteeing authenticity.

LATE BIDS – PAPER SUBMISSION: Bid packets received in the purchasing division after submission deadline shall be returned unopened and will be considered void and unacceptable. The City of Delray Beach is not responsible for the lateness of mail carrier, weather conditions, etc.

WITHDRAWAL OF BIDS: Bidder agrees that a bid price may not be withdrawn or canceled by the bidder for a period of ninety (90) days following the date designated for the receipt of bids without written approval of the City.

BID OPENINGS: All bids submitted will be read at the City's scheduled bid opening for the designated project. However, the reading of a bid at bid opening should not be construed as a comment on the responsiveness of such bid or as any indication that the City accepts such bid as responsive. The City will make a determination

as to the responsiveness of bids submitted based upon compliance with all applicable laws, City of Delray Beach purchasing guidelines, and project documents, including but not limited to the bid specifications and required submittal documents. The City will notify the successful bidder upon award of the contract and, according to state law all bids received will be available for inspection at that time.

MINOR DEFECT: the City reserves the right to waive any minor defect, irregularity, or informality in any bid. The City may also reject any or all bids without cause prior to award.

EVALUATION: Bids will be evaluated as outlined in the bid document.

AWARD OF BID: The City of Delray Beach reserves the right to accept any Bid or combination of Bid alternates which, in the City's judgment will best serve the City's interest, reject any and all Bids, to waive any and all informalities and/or irregularities, and to negotiate terms with the Successful Bidder, and the right to disregard all non-conforming, non-responsive, unbalanced or conditional Bids. The City reserves the right to reject any or all Bids, or any part of any Bid, to waive any informality in any Bid, and to award the purchase in the best interest of the City. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit price. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

SPLIT AWARD: the City reserves the right to award a separate contract to separate vendors for each item/group or to award one contract for the entire bid. The City reserves the right to take into consideration contract administration costs for multiple award contracts when determining low bid.

DEFINITION: Bid shall mean a bid, proposal, or quotation.

Supplier: mullings engineering services, llc

CITY OF DELRAY BEACH GENERAL TERMS AND CONDITIONS

These instructions are standard for all contracts for commodities or services issued through the City of Delray Beach Purchasing Department. The City may delete, supersede, or modify any of these standard instructions for a particular contract by indicating such change in the Invitation to Bid (ITB), Special Conditions, Technical Specifications, Instructions, Proposal Pages, Addenda, and Legal Advertisement. In this general conditions document, Invitation to Bid (ITB) and Request for Proposal (RFP) are interchangeable.

PART I CONDITIONS:

- 1.1 PUBLIC ENTITY CRIMES:** Pursuant to F.S. 287.133, as amended, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit a proposal on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. Each Proposer must certify that the Proposer is not subject to these prohibitions regarding public entity crimes.
- 1.2 SCRUTINIZED COMPANIES:** This Section applies to any contract for goods or services of \$1 million or more. The Proposer certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2011), as may be amended or revised. The City may terminate a contract at the City's option if the Proposer is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2011), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2011), as may be amended or revised.
- 1.3 DEBARRED OR SUSPENDED PROPOSERS:** The Proposer certifies, by submission of a response to this solicitation, that neither it nor its principals and subcontractors are presently debarred or suspended by any Federal department or agency.
- 1.4 LOBBYING ACTIVITIES:** All Proposers are advised that the Palm Beach County Lobbyist Registration Ordinance (Section 2-351 of the Palm Beach County Code of Ordinances) applies to the City and this solicitation. Any violation of this requirement may cause the Proposer to be disqualified and prohibited from participating further in the RFP process.
- 1.5 COMPLIANCE WITH LAWS:** Proposer shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant any order.
- 1.6 NON-DISCRIMINATION:** There shall be no discrimination as to race, sex, color, creed, age or national origin in the operations conducted under this solicitation.
- 1.7 PUBLIC RECORDS:** Proposer shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, Proposer agrees to:
 - (a) Keep and maintain all records that ordinarily and necessarily would be required by the City.
 - (b) Provide the public with access to public records on the same terms and conditions that the City would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
 - (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
 - (d) Meet all requirements for retaining public records and transfer, at no cost, to the City all records in possession of the Proposer at the termination of the contract and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City. All records shall be transferred to the City prior to final payment being made to the Proposer.
 - (e) If Proposer 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.

Any language contained in the Proposer's response to the RFP purporting to require confidentiality of any portion of the Proposer's response to the RFP, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Proposer submits any documents or other information to the City which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 ("Public Records Laws"), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Proposer's response to the RFP constitutes a Trade Secret. The city's

determination of whether an exemption applies shall be final, and the proposer agrees to defend, indemnify, and hold harmless the city and the city's officers, employees, and agent, against any loss or damages incurred by any person or entity as a result of the city's treatment of records as public records. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR RESPONSE TO THE RFP AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR RESPONSE TO THE RFP OR ANY PART THEREOF AS COPYRIGHTED.

- 1.8 INSPECTOR GENERAL:** Proposer 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 purchases and contracts, and may demand and obtain records and testimony from Proposer and its sub licensees and lower tier sub licensees. Proposer understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Proposer or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of any order.
- 1.9 CONE OF SILENCE:** Proposer's are advised that a Cone of Silence is in effect at the time of submission. The Cone of Silence prohibits any communications, except written correspondence, between the Proposers or any Person representing the Proposers, and any member of the City Commission, the Commission's staff, any City employee authorized to act on behalf of the City to award the contract or Bid, or any member of the Selection Committee. The Cone of Silence will commence and take effect at the deadline for submitting bids. Section 36.13 of the City Code provides "[a]ny person participating in a competitive solicitation issued by the City shall comply with Section 2-355 of the Palm Beach County Code of Ordinances."
- 1.10 LOCAL PREFERENCE:** In accordance with the City of Delray Beach Code of Ordinances Sec. 36.14, the City shall give preference to a Local Business if the Local Business' bid is determined to be within five percent (5%) or five thousand dollars (\$5,000.00), whichever is less, of the lowest responsible and responsive proposer.
- 1.11 LITIGATION VENUE:** The Proposers waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Palm Beach County, Florida and that all litigation between them in the federal courts shall take place in the Southern District in and for the State of Florida.
- 1.12 INDEMNITY/HOLD HARMLESS AGREEMENT:** Proposer shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Proposer, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of any order including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Proposer shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by the City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of any order. To the extent considered necessary by the Chief Purchasing Officer and the City Attorney, any sums due Proposer under any order may be retained by City until all of City's claims for indemnification pursuant to any order have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by the City.

Part II DEFINITIONS/ORDER OF PRECEDENCE:

- 2.01 BIDDING DEFINITIONS** The City will use the following definitions in its general conditions, special conditions, technical specifications, instructions to bidders, addenda and any other document used in the bidding process:
- INVITATION TO BID (ITB) when the City is requesting bids from qualified Bidders.
- REQUEST FOR PROPOSALS (RFP) when the City is requesting proposals from qualified Proposers.
- BID – a price and terms quote received in response to an ITB.
- PROPOSAL – a proposal received in response to an RFP.
- BIDDER – Person or firm submitting a Bid.
- PROPOSER – Person or firm submitting a Proposal.
- RESPONSIVE BIDDER – A person whose bid conforms in all material respects to the terms and conditions included in the ITB.
- RESPONSIBLE BIDDER – A person who has the capability in all respects to perform in full the contract requirements, as stated in the ITB, and the integrity and reliability that will assure good faith performance.
- FIRST RANKED PROPOSER – That Proposer, responding to a City RFP, whose Proposal is deemed by the City, the most advantageous to the City after applying the evaluation criteria contained in the RFP.
- PROPOSER – Successful Bidder or Proposer who is awarded a Purchase Order or Contract to provide goods or services to the City.
- CONTRACTOR – Successful Bidder or Proposer who is awarded a Purchase Order, award Contract, Blanket Purchase Order agreement, or Term Contract to provide goods or services to the City.
- CONTRACT – A deliberate verbal or written agreement between two or more competent parties to perform or not to perform a certain act or acts, including all types of agreements, regardless of what they may be called, for the procurement or disposal of equipment, materials, supplies, services or construction.

CONSULTANT – Successful Bidder or Proposer who is awarded a contract to provide professional services to the City.

The following terms may be used interchangeably by the City: ITB and/or RFP; Bid or Proposal; Bidder, Proposer, or Proposer; Contractor or Consultant; Contract, Award, Agreement or Purchase Order.

- 2.02 SPECIAL CONDITIONS:** Any and all Special Conditions contained in this solicitation that may be in variance or conflict with these General Conditions shall have precedence over these General Conditions. If no changes or deletions to General Conditions are made in the Special Conditions, then the General Conditions shall prevail in their entirety,

PART III BIDDING AND AWARD PROCEDURES:

- 3.01 SUBMISSION AND RECEIPT OF BIDS:** To receive consideration, bids must be received prior to the bid opening date and time. Unless otherwise specified, Bidders should use the proposal forms provided by the City. These forms may be duplicated, but failure to use the forms may cause the bid to be rejected. Bids will be publicly opened in the Purchasing Department Office, or other designated area, in the presence of Bidders, the public, and City staff. Bidders and the public are invited and encouraged to attend bid openings. Bids will be tabulated and made available for review by Bidder's and the public in accordance with applicable regulations.
- 3.02 MODEL NUMBER CORRECTIONS:** If the model number for the make specified in this ITB is incorrect, or no longer available and replaced with an updated model with new specifications, the Bidder shall enter the correct model number on the bidder proposal page. In the case of an updated model with new specifications, Bidder shall provide adequate information to allow the City to determine if the model bid meets the City's requirements.
- 3.03 PRICES QUOTED:** Deduct trade discounts, and quote firm net prices. Give both unit price and extended total. In the case of a discrepancy in computing the amount of the bid, the unit price quoted will govern. All prices quoted shall be F.O.B. destination, freight prepaid (Bidder pays and bears freight charges, Bidder owns goods in transit and files any claims), unless otherwise stated in Special Conditions. Each item must be bid separately. No attempt shall be made to tie any item or items contained in the ITB with any other business with the City.
- 3.04 WARRANTIES OF USAGE:** Any quantities listed in this ITB as estimated or projected are provided for tabulation and information purposes only. No warranty or guarantee of quantities is given or implied. It is understood that the Contractor will furnish the City's needs as they arise.
- 3.05 APPROVED EQUAL:** When the technical specifications call for a brand name, manufacturer, make, model, or vendor catalog number with acceptance of APPROVED EQUAL, it shall be for the purpose of establishing a level of quality and features desired and acceptable to the City. In such cases, the City will be receptive to any unit that would be considered by qualified City personnel as an approved equal. In that the specified make and model represent a level of quality and features desired by the City, the Bidder must state clearly in the bid any variance from those specifications. It is the Bidder's responsibility to provide adequate information, in the bid, to enable the City to ensure that the bid meets the required criteria. If adequate information is not submitted with the bid, it may be rejected. The City will be the sole judge in determining if the item bid qualifies as an approved equal.
- 3.06 MINIMUM AND MANDATORY TECHNICAL SPECIFICATIONS:** The technical specifications may include items that are considered minimum, mandatory, or required. If any Bidder is unable to meet or exceed these items, and feels that the technical specifications are overly restrictive, the bidder must notify the Purchasing Department immediately. Such notification must be received by the Purchasing Department prior to the deadline contained in the ITB, for questions of a material nature, or prior to the deadline for questions. If no such notification is received prior to that deadline, the City will consider the technical specifications to be acceptable to all bidders.
- 3.07 MISTAKES:** Bidders are cautioned to examine all terms, conditions, specifications, drawings, exhibits, addenda, delivery instructions and special conditions pertaining to the ITB. Failure of the Bidder to examine all pertinent documents shall not entitle the bidder to any relief from the conditions imposed in the contract.
- 3.09 SAMPLES AND DEMONSTRATIONS:** Samples or inspection of product may be requested to determine suitability. Unless otherwise specified in Special Conditions, samples shall be requested after the date of bid opening, and if requested should be received by the City within seven (7) working days of request. Samples, when requested, must be furnished free of expense to the City and if not used in testing or destroyed, will upon request of the Bidder, be returned within thirty (30) days of bid award at Bidder's expense. When required, the City may request full demonstrations of units prior to award. When such demonstrations are requested, the Bidder shall respond promptly and arrange a demonstration at a convenient location. Failure to provide samples or demonstrations as specified by the City may result in rejection of a bid.
- 3.10 LIFE CYCLE COSTING:** If so specified in the ITB, the City may elect to evaluate equipment proposed on the basis of total cost of ownership. In using Life Cycle Costing, factors such as the following may be considered: estimated useful life, maintenance costs, cost of supplies, labor intensity, energy usage, environmental impact, and residual value. The City reserves the right to use those or other applicable criteria, in its sole opinion that will most accurately estimate total cost of use and ownership.
- 3.11 BIDDING ITEMS WITH RECYCLED CONTENT:** In addressing environmental concerns, the City of Delray Beach encourages

Bidders to submit bids or alternate bids containing items with recycled content. When submitting bids containing items with recycled content, Bidder shall provide documentation adequate for the City to verify the recycled content. The City prefers packaging consisting of materials that are degradable or able to be recycled. When specifically stated in the ITB, the City may give preference to bids containing items manufactured with recycled material or packaging that is able to be recycled.

- 3.12 USE OF OTHER GOVERNMENTAL CONTRACTS:** The City reserves the right to reject any part or all of any bids received and utilize other available governmental contracts, if such action is in its best interest.
- 3.13 QUALIFICATIONS/INSPECTION:** Bids will only be considered from firms normally engaged in providing the types of commodities/services specified herein. The City reserves the right to inspect the Bidder's facilities, equipment, personnel, and organization at any time, or to take any other action necessary to determine Bidder's ability to perform. The Purchasing Officer reserves the right to reject bids where evidence or evaluation is determined to indicate inability to perform.
- 3.14 BID SURETY:** If Special Conditions require a bid security, it shall be submitted in the amount stated. A bid security can be in the form of a bid bond or cashier's check. Bid security will be returned to the unsuccessful bidders as soon as practicable after opening of bids. Bid security will be returned to the successful bidder after acceptance of the performance bond, if required; acceptance of insurance coverage, if required; and full execution of contract documents, if required; or conditions as stated in Special Conditions.
- 3.15 PROHIBITION OF INTEREST:** No contract will be awarded to a bidding firm who has City elected officials, officers or employees affiliated with it, unless the bidding firm has fully complied with current Florida State Statutes and City Ordinances relating to this issue. Bidders must disclose any such affiliation. Failure to disclose any such affiliation will result in disqualification of the Bidder and removal of the Bidder from the City's bidder lists and prohibition from engaging in any business with the City.
- 3.16 RESERVATIONS FOR AWARD AND REJECTION OF BIDS:** The City reserves the right to accept or reject any or all bids, part of bids, and to waive minor irregularities or variations to specifications contained in bids, and minor irregularities in the bidding process. The City also reserves the right to award the contract on a split order basis, lump sum basis, individual item basis, or such combination as shall best serve the interest of the City. The City reserves the right to make an award to the responsive and responsible bidder whose product or service meets the terms, conditions, and specifications of the ITB and whose bid is considered to best serve the City's interest. In determining the responsiveness of the offer and the responsibility of the Bidder, the following shall be considered when applicable: the ability, capacity and skill of the Bidder to perform as required; whether the Bidder can perform promptly, or within the time specified, without delay or interference; the character, integrity, reputation, judgment, experience and efficiency of the Bidder; the quality of past performance by the Bidder; the previous and existing compliance by the Bidder with related laws and ordinances; the sufficiency of the Bidder's financial resources; the availability, quality and adaptability of the Bidder's supplies or services to the required use; the ability of the Bidder to provide future maintenance, service or parts; the number and scope of conditions attached to the bid.

If the ITB provides for a contract trial period, the City reserves the right, in the event the selected bidder does not perform satisfactorily, to award a trial period to the next ranked bidder or to award a contract to the next ranked bidder, if that bidder has successfully provided services to the City in the past. This procedure to continue until a bidder is selected or the contract is re-bid, at the sole option of the City.

- 3.17 LEGAL REQUIREMENTS:** Applicable provisions of all federal, state, county laws, and local ordinances, rules and regulations, shall govern development, submittal and evaluation of all bids received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a bid response hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any bidder shall not constitute a cognizable defense against the legal effect thereof.
- 3.18 BID PROTEST PROCEDURE: ANY PROPOSER OR BIDDER WHO IS NOT RECOMMENDED FOR AWARD OF A CONTRACT AND WHO ALLEGES A FAILURE BY THE CITY TO FOLLOW THE CITY'S PROCUREMENT ORDINANCE OR ANY APPLICABLE LAW MAY PROTEST TO THE CHIEF PURCHASING OFFICER, BY DELIVERING A LETTER OF PROTEST TO THE CHIEF PURCHASING OFFICER WITHIN THREE BUSINESS (3) DAYS AFTER A NOTICE OF INTENT TO AWARD IS POSTED.**

Any bidder, proposers or responders filing a protest shall simultaneously provide a Protest Bond to the City in the amount of five percent (5%) of the Protester's bid, proposal, or response amount or the amount of twenty thousand dollars (\$20,000.), whichever is less. If the protest is decided, in the protester's favor the entire protest bond is returned. If the protest is not decided in the protester's favor the protest shall be forfeited to the City. The protest bond shall be in the form of a cashier's check.

PART IV BONDS AND INSURANCE

- 4.01 PERFORMANCE BOND:** If a performance bond is required in Special Conditions, the Contractor shall within fifteen (15) working days after notification of award, furnish to the City a Performance Bond, payable to the City of Delray Beach, Florida, in the face amount specified in Special Conditions as surety for faithful performance under the terms and conditions of the contract. If the bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing Performance Bond. The Performance Bond must be executed by

a surety company of recognized standing, authorized to do business in the State of Florida and having a resident agent.

Acknowledgement and agreement is given by both parties that the amount herein set for the Performance Bond is not intended to be nor shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Contractor to the City in the event of a material breach of an Agreement by the Contractor.

- 4.02 INSURANCE:** If the Contractor is required to go on to City property to perform work or services as a result of ITB award, the Contractor shall assume full responsibility and expense to obtain all necessary insurance as required by City or specified in Special Conditions.

The Contractor shall provide to the Purchasing Department original certificates of coverage and receive notification of approval of those certificates by the City's Risk Manager prior to engaging in any activities under this contract. The Contractor's insurance is subject to the approval of the City's Risk Manager. The certificates must list the City as an ADDITIONAL INSURED for General Liability Insurance, and shall have no less than thirty (30) days written notice of cancellation or material change. Further modification of the insurance requirements may be made at the sole discretion of the City's Risk Manager if circumstances change or adequate protection of the City is not presented. Bidder, by submitting the bid, agrees to abide by such modifications.

PART V PURCHASE ORDER AND CONTRACT TERMS:

- 5.01 COMPLIANCE TO SPECIFICATIONS, LATE DELIVERIES/PENALTIES:** Items offered may be tested for compliance to bid specifications. Items delivered which do not conform to bid specifications may be rejected and returned at Contractor's expense. Any violation resulting in contract termination for cause or delivery of items not conforming to specifications, or late delivery may also result in:
- Bidders name being removed from the City's bidder's mailing list for a specified period and Bidder will not be recommended for any award during that period.
 - All City Departments being advised to refrain from doing business with the Bidder.
 - All other remedies in law or equity.
- 5.02 DELIVERY:** Time will be of the essence for any orders placed as a result of this ITB. The City reserves the right to cancel any orders, or part thereof, without obligation if delivery is not made in accordance with the schedule specified by the Bidder and accepted by the City.
- 5.03 PACKING SLIPS:** It will be the responsibility of the awarded Contractor, to attach all packing slips to the OUTSIDE of each shipment. Packing slips must provide a detailed description of what is to be received and reference the City of Delray Beach purchase order number that is associated with the shipment. Failure to provide a detailed packing slip attached to the outside of shipment may result in refusal of shipment at Contractor's expense.
- 5.04 PAYMENT TERMS AND CASH DISCOUNTS:** Payment terms, unless otherwise stated in this ITB, will be considered to be net 45 days after the date of satisfactory delivery at the place of acceptance and receipt of correct invoice at the office specified, whichever occurs last. Bidder may offer cash discounts for prompt payment but they will not be considered in determination of award. If a Bidder offers a discount, it is understood that the discount time will be computed from the date of satisfactory delivery, at the place of acceptance, and receipt of correct invoice, at the office specified, whichever occurs last.
- 5.05 TAX EXEMPTION:** The City of Delray Beach is exempt from State Sales Tax and Federal Excise Taxes. Where tax applies, the invoice must show gross, price, amount of tax, and net price. Exception certificate will be provided upon request.
- 5.06 PAYABLE INTEREST:** *Payment of Interest.* The City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Bidder waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to the bid. *Rate of Interest.* In any instance where the prohibition or limitations herein are determined to be invalid or unenforceable, the annual rate of interest payable by the City, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).
- 5.07 TOTAL BID DISCOUNT:** If Bidder offers a discount for award of all items listed in the bid, such discount shall be deducted from the total of the firm net unit prices bid and shall be considered in tabulation and award of bid.
- 5.08 BIDS FIRM FOR ACCEPTANCE:** Bidder warrants, by virtue of bidding, that the bid and the prices quoted in the bid will be firm for acceptance by the City for a period of one hundred twenty (120) days from the date of bid opening unless otherwise stated in the ITB.
- 5.09 VARIANCES:** For purposes of bid evaluation, Bidder's must indicate any variances, no matter how slight, from ITB General Conditions, Special Conditions, Specifications or Addenda in the space provided in the ITB. No variations or exceptions by a Bidder will be considered or deemed a part of the bid submitted unless such variances or exceptions are listed in the bid and referenced in the space provided on the bidder proposal pages. If variances are not stated, or referenced as required, it will be assumed that the product or service fully complies with the City's terms, conditions, and specifications.

By receiving a bid, City does not necessarily accept any variances contained in the bid. All variances submitted are subject to review and approval by the City. If any bid contains material variances that, in the City's sole opinion, make that bid conditional in nature, the City reserves the right to reject the bid or part of the bid that is declared, by the City as conditional.

- 5.10 ACCEPTANCE, CONDITION, AND PACKAGING:** The material delivered in response to ITB award shall remain the property of the Proposer until a physical inspection is made and the material accepted to the satisfaction of the City. The material must comply fully with the terms of the ITB, be of the required quality, new, and the latest model. All containers shall be suitable for storage and shipment by common carrier, and all prices shall include standard commercial packaging. The City will not accept substitutes of any kind. Any substitutes or material not meeting specifications will be returned at the Bidder's expense. Payment will be made only after City receipt and acceptance of materials or services.
- 5.11 SAFETY STANDARDS:** All manufactured items and fabricated assemblies shall comply with applicable requirements of the Occupation Safety and Health Act of 1970 as amended, and be in compliance with Chapter 442, Florida Statutes. Any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a result of any order must be accompanied by a completed Safety Data Sheet (SDS).
- 5.12 ASBESTOS STATEMENT:** All material supplied must be 100% asbestos free. Bidder, by virtue of bidding, certifies that if awarded any portion of the ITB the bidder will supply only material or equipment that is 100% asbestos free.
- 5.13 OTHER GOVERNMENTAL ENTITIES:** If the Bidder is awarded a contract as a result of this ITB, the bidder may, if the bidder has sufficient capacity or quantities available, provide to other governmental agencies, so requesting, the products or services awarded in accordance with the terms and conditions of the ITB and resulting contract. Prices shall be F.O.B. delivered to the requesting agency.
- 5.14 VERBAL INSTRUCTIONS PROCEDURE:** No negotiations, decisions, or actions shall be initiated or executed by the Contractor as a result of any discussions with any City employee. Only those communications which are in writing from an authorized City representative may be considered. Only written communications from Contractors, which are assigned by a person designated as authorized to bind the Contractor, will be recognized by the City as duly authorized expressions on behalf of Contractors.
- 5.15 INDEPENDENT CONTRACTOR:** The Contractor is an independent contractor under this Agreement. Personal services provided by the Proposer shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, procurement policies unless otherwise stated in this ITB, and other similar administrative procedures applicable to services rendered under this contract shall be those of the Contractor.
- 5.16 TERMINATION FOR CAUSE:** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the provisions of this Agreement, the City may upon written notice to the Contractor terminate the right of the Contractor to proceed under this Agreement, or with such part or parts of the Agreement as to which there has been default, and may hold the Contractor liable for any damages caused to the City by reason of such default and termination. In the event of such termination, any completed services performed by the Contractor under this Agreement shall, at the option of the City, become the City's property and the Contractor shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due to the City from the Contractor can be determined.
- 5.17 TERMINATION FOR CONVENIENCE:** The City reserves the right, in its best interest as determined by the City, to cancel contract by giving written notice to the Contractor thirty (30) days prior to the effective date of such cancellation.
- 5.18 CANCELLATION FOR UNAPPROPRIATED FUNDS:** The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.
- 5.19 RECORDS/AUDIT:** The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract for the duration of the contract and for three years after the final payment any agreement as a result of the bid, or until all pending audits, investigations or litigation matters relating to the contract are closed, whichever is later. The Contractor agrees to make available to the City or designee, during normal business hours all books of account, reports and records relating to any agreement as a result of this bid.
- 5.20 PERMITS, TAXES, LICENSES:** The successful Contractor shall, at their own expense, obtain all necessary permits, pay all licenses, fees and taxes, required to comply with all local ordinances, state and federal laws, rules and regulations applicable to business to be carried out under this contract.
- 5.21 LAWS/ORDINANCES:** The Contractor shall observe and comply with all Federal, state, local and municipal laws, ordinances rules and regulations that would apply to this contract.

5.22 UNUSUAL CIRCUMSTANCES: If during a contract term where costs to the City are to remain firm or adjustments are restricted by a percentage or CPI cap, unusual circumstances that could not have been foreseen by either party of the contract occur, and those circumstances significantly affect the Contractor's cost in providing the required prior items or services, then the Contractor may request adjustments to the costs to the City to reflect the changed circumstances. The circumstances must be beyond the control of the Contractor, and the requested adjustments must be fully documented. The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the City will reserve the following options:

1. The contract can be canceled by the City upon giving thirty (30) days written notice to the Contractor with no penalty to the City or Contractor. The Contractor shall fill all City requirements submitted to the Contractor until the termination date contained in the notice.
2. The City requires the Contractor to continue to provide the items and services at the firm fixed (non-adjusted) cost until the termination of the contract term then in effect.
3. If the City, in its interest and in its sole opinion, determines that the Contractor in a capricious manner attempted to use this section of the contract to relieve them of a legitimate obligation under the contract, and no unusual circumstances had occurred, the City reserves the right to take any and all action under law or equity. Such action shall include, but not be limited to, declaring the Contractor in default and disqualifying him for receiving any business from the City for a stated period of time.

If the City does agree to adjusted costs, these adjusted costs shall not be invoiced to the City until the Contractor receives notice in writing signed by a person authorized to bind the City in such matters.

5.23 ELIGIBILITY: If applicable, the Contractor must first register with the Department of State of the State of Florida, in accordance with Florida State Statutes, prior to entering into a contract with the City.

5.24 PATENTS AND ROYALTIES: The Contractor, without exception, shall indemnify and save harmless the City and its employees from liability of any nature and kind, including cost and expenses for or on account of any copyrighted, patented or un-patented invention, process, or article manufactured or used in the performance of the contract, including its use by the City. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

5.25 ASSIGNMENT: Contractor shall not transfer or assign the performance required by this ITB without the prior written consent of the City. Any award issued pursuant to this ITB, and the monies, which may become due hereunder, are not assignable except with the prior written approval of the City Commission or the City Manager or City Manager's designee, depending on original award approval.

Supplier: mullings engineering services, llc

Other Terms

1. LIMITATIONS ON COMMUNICATIONS -- CONE OF SILENCE:

Proposers are advised that a Cone of Silence will be in effect during this Bid. The Cone of Silence prohibits any communications, except written correspondence, regarding this Bid, between the Proposers or any Person representing the Proposers, and any member of the City Commission, the Commission's staff, any City employee authorized to act on behalf of the City to award the contract under this Bid, or any member of the Selection Committee. Failure to adhere to the Cone of Silence provisions is cause for rejection of a bid. The Cone of Silence will commence and take effect at the deadline for submitting proposals, as indicated in Section 1.7, above. All written correspondence with the City must be directed to the Chief Purchasing Officer, who is the only Person authorized to receive such documents.

Section 36.13 of the City Code provides "[a]ny person participating in a competitive solicitation issued by the City shall comply with Section 2-355 of the Palm Beach County Code of Ordinances." The County Code provides as follows:

- "a. 'Cone of silence' means a prohibition on any communication, except for written correspondence, regarding a particular request for proposal, request for qualification, bid, or any other competitive solicitation between:
 - (1) Any person or person's representative seeking an award from such competitive solicitation; and
 - (2) Any county commissioner or commissioner's staff, any member of a local governing body or the member's staff, a mayor or chief executive officer that is not a member of a local governing body or the mayor or chief executive officer's staff, or any employee authorized to act on behalf of the commission or local governing body to award a particular contract.
- b. For the purposes of this section, a person's representative shall include but not be limited to the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subcontractor or consultant of the person.
- c. The cone of silence shall be in effect as of the deadline to submit the proposal, bid, or other response to a competitive solicitation. The cone of silence applies to any person or person's representative who responds to a particular request for proposal, request for qualification, bid, or any other competitive solicitation, and shall remain in effect until such response is either rejected by the county or municipality as applicable or withdrawn by the person or person's representative. Each request for proposal, request for qualification, bid or any other competitive solicitation shall provide notice of cone of silence requirements and refer to this article.
- d. The provisions of this article shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection committees, contract negotiations during any public meeting, presentations made to the board or local municipal governing body as applicable, and protest hearings. Further, the cone of silence shall not apply to contract negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence at any time with any employee, county commissioner, member of a local municipal governing body, mayor or chief executive officer that is not a member of the local municipal governing body, or advisory board member or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.
- e. The cone of silence shall not apply to any purchases made in an amount less than the competitive bid threshold set forth in the county purchasing ordinance (County Code, chapter 2, article III, division 2, part A, section 2-51 et seq.) or municipal

- ordinance as applicable.
- f. The cone of silence shall terminate at the time the board, local municipal governing body, or a county or municipal department authorized to act on behalf of the board or local municipal governing body as applicable, awards or approves a contract, rejects all bids or responses, or otherwise takes action which ends the solicitation process.
 - g. Any contract entered into in violation of the cone of silence provisions in this section shall render the transaction voidable."

2. CONFLICT OF INTEREST:

- A. Bidder declares and certifies that no officer, employee or person whose salary is payable in whole or part from the City of Delray Beach is directly or indirectly interested in this bid or in the supplies, materials, equipment or services to which it relates or in any portion of the profits thereof; or
- B. The award is subject to provisions of State Statutes and City Ordinances. All bidders must disclose with their bid the name of any officer, director or agent who is also an employee of the City of Delray Beach. Further, all bidders must disclose the name of any City employee who owns, directly or indirectly, any interest in the bidder's firm or any of its' branches.

3. BID PROTEST: PROTEST OF AWARD / PROTEST BOND: Parties that are not actual bidders, proposers or responders, including, but not limited to, subcontractors, material and labor suppliers, manufacturers and their representatives, shall not have standing to protest or appeal any determination made.

After the notice of intent to award and agreement is posted, any actual bidder, proposer or responder who is aggrieved in connection with the pending award of the agreement or any element of the process leading to the award of the agreement may file a protest with the Chief Purchasing Officer by close of business on the third business day after posting (excluding the day of notification) or any right to protest is forfeited. It shall be the sole responsibility of such bidder, proposer or responder to verify the operating hours of City Hall. Notice of Intent to Reject all Bids, Proposals or Responses is subject to the protest procedure.

Note: Any bidder, proposers or responders filing a protest shall simultaneously provide a Protest Bond to the City in the amount of five percent (5%) of the Protester's bid, proposal, or response amount or the amount of fifteen thousand dollars (\$15,000.), whichever is less. If the protest is decided, in the protester's favor the entire protest bond is returned. If the protest is not decided in the protester's favor the protest shall be forfeited to the City. The protest bond shall be in the form of a cashier's check. Ord.No.29-13, Section 36.04

Protest shall be addressed to:
 City of Delray Beach
 Chief Purchasing Officer
 100 NW 1st Ave
 Delray Beach, FL 33444

4. ANTI-COLLUSION:

- A. Bidder certifies that this bid is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a bid for the same materials, services, supplies, or equipment and is in all respects fair and without collusion or fraud.
- B. No premiums, rebates or gratuities permitted; either with, prior to, or after any delivery of material or provision of services. Any such violation may result in contract cancellation, return of materials or discontinuation of services and the possible removal from the vendor bid list(s).

5. CITY POLICIES: Awarded contractor shall comply with the City of Delray Beach Equal Employment Opportunity Policy, Violence in the Workplace Policy, Drug and Alcohol Free Workplace Policy, General Complaint Policy and Sexual Harassment Policy. Copies of these policies may be obtained from the City of Delray Beach Human Resources Division. Violations of these policies may result in cancellation/termination of the contract.**6. NON-DISCRIMINATION:** The Bidder shall not discriminate against employees or applicants for employment because of race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. The Bidder will endeavor to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. These provisions apply to all subcontractors and it is the responsibility of the subcontractors to be in compliance.**7. DISCRIMINATION:** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

Supplier: mullings engineering services, llc

**CITY OF DELRAY BEACH
INVITATION TO BID
2016-053**

Title:	Sod Materials
Vendor Name:	

Addenda Enclosed _____ **thru** _____

Submission Deadline: Jan 19, 2016 / 2:00:00
PM EST

Submissions Accepted Via: Electronic, Mail, or in Person

Submit Paper Copies to: City of Delray Beach
Purchasing Division
100 NW 1st Avenue
Delray Beach, FL 33444

City of Delray Beach

Time Stamped In:

Supplier: mullings engineering services, llc

Proposal Submittal Signature Page

By signing this Proposal/Bid, the Proposer/Bidder certifies that it satisfies all legal requirements as an entity to do business with the City, including all Conflict of Interest and Code of Ethics provisions.

Firm Name:	Mullings Engineering Services, Landscaping Div. Inc.
Street Address:	6289 West Sunrise Blvd #122, Sunrise FL 33313
Mailing Address (if different from Street Address):	
Telephone Number(s):	9545832441
Fax Number(s):	866558-486
Email Address:	mullingseng@hotmail.com
Federal Employer Identification Number:	20-4688701

Mullings Engineering Services, Landscaping Div. Inc.

Firm Name

Sheldon Mullings

Signature

Sheldon Mullings, President

Name and Title

01/19/2016

Date

By signing this document, the Proposer agrees to all terms and conditions of the solicitation and the resulting contract/agreement.

THE EXECUTION OF THIS CONSTITUTES THE UNEQUIVOCAL OFFER OF PROPOSER TO BE BOUND BY THE TERMS OF ITS PROPOSAL/BID. FAILURE TO SIGN THIS SOLICITATION WHERE INDICATED ABOVE BY AN AUTHORIZED REPRESENTATIVE SHALL RENDER THE PROPOSAL/BID NON-RESPONSIVE. THE CITY MAY, HOWEVER, IN ITS SOLE DISCRETION, ACCEPT ANY PROPOSAL/BID THAT INCLUDES AN EXECUTED DOCUMENT WHICH UNEQUIVOCALLY BINDS THE PROPOSER TO THE TERMS OF ITS PROPOSAL/BID.

Supplier: mullings engineering services, llc

Conflict of Interest Disclosure Form

The award of this RFP/Bid is subject to the provisions of Chapter 112, Florida Statutes and Palm Beach County Ordinance Section 2-443. All Proposers/Bidders must disclose within their proposal: the name of any officer, director, or agent who is also an employee of the City of Delray Beach.

Furthermore, all Proposers/Bidders must disclose the name of any City employee or relative of a City employee who owns, directly or indirectly, an interest in the Proposers/Bidders firm or any of its branches.

The purpose of this disclosure form is to give the City the information needed to identify potential conflicts of interest for key personnel involved in the award of this RFP/Bid.

The term "conflict of interest" refers to situations in which financial or other personal considerations may adversely affect, or have the appearance of adversely affecting, an employee's professional judgment in exercising any City duty or responsibility in administration, management, instruction, research, or other professional activities.

Please check one of the following statements and attach additional documentation if necessary:

☒ To the best of our knowledge, the undersigned firm has no potential conflict of interest as defined in Chapter 112, Florida Statutes and Section 2-443, Palm Beach County Code of Ordinances.

☐ The undersigned firm, by attachment to this form, submits information which may be a potential conflict of interest as defined in Chapter 112, Florida Statutes and Section 2-443, Palm Beach County Code of Ordinances.

Acknowledged by:

Mullings Engineering Services, Landscaping Div. Inc.

Firm Name

Sheldon Mullings

Signature

Sheldon Mullings, President

Name and Title

01/19/2016

Date

Supplier: mullings engineering services, llc

Drug-Free Workplace

If identical tie bids exist, preference will be given to the vendors who submit a certification with their bid/proposal certifying they have a drug-free workplace in accordance with Section 287.087, Florida Statutes. The drug-free workplace preference is applied as follows:

IDENTICAL TIE BIDS: Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program.

As the person authorized to sign this statement, I certify that this firm complies fully with the following requirements:

- 1) This firm publishes a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) This firm informs employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) This firm gives each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), this firm notifies the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) This firm imposes a sanction on or requires the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- 6) This firm will continue to make a good faith effort to maintain a drug-free workplace through implementation of this section.

Mullings Engineering Services, Landscaping Div. Inc.

Firm Name

Sheldon Mullings

Signature

Sheldon Mullings, President

Name and Title

01/19/2016

Date

Supplier: mullings engineering services, llc

Public Entity Crimes

NOTIFICATION OF PUBLIC ENTITY CRIMES LAW

Pursuant to Section 287.133, *Florida Statutes*, you are hereby notified that a person or affiliate who has been placed on the convicted contractors list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity; may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals on leases or real property to a public entity; may not be awarded or perform work as a contractor, supplier, sub-Proposer, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 [F.S.] for Category Two [\$35,000.00] for a period of thirty-six (36) months from the date of being placed on the convicted contractors list.

Acknowledged by:

Mullings Engineering Services, Landscaping Div. Inc.

Firm Name

Sheldon Mullings

Signature

Sheldon Mullings, President

Name and Title

01/19/2016

Date

Supplier: **mullings engineering services, llc**

Acknowledgment of Addenda

The Proposer/Bidder hereby acknowledges the receipt of the following addenda, which were issued by the City and incorporated into and made part of this RFP/Bid. The Proposer/Bidder acknowledges that it is solely responsible for ensuring that it is aware of, and in receipt of, all addenda.

ADDENDUM NUMBER	DATE RECEIVED	PRINT NAME OF AGENT	TITLE OF AGENT	SIGNATURE OF AGENT
				MULLINGSENG@HOTMAIL.COM

Supplier: mullings engineering services, llc

**City of Delray Beach
Purchase Order Terms and Conditions**

1. **ACCEPTANCE:** This order is for the purchase of goods ("the Goods"). The Buyer's offer to the Seller and the Seller's acknowledgement to the Buyer shall constitute Seller's acceptance of such order including all of the terms and conditions herein set out. In the absence of such acknowledgement, commencement of delivery of the Goods and acceptance of such deliveries by Buyer shall constitute a firm contract on the terms and conditions hereof. This order is subject to the following terms and conditions and no others unless there is a signed agreement between the parties providing otherwise.
2. **WARRANTY-PRODUCT:** The Seller expressly warrants that the Goods shall be merchantable within the meaning of Article 2-314(2) of the Uniform Commercial Code as provided by Florida Law and in effect on the date of this order. In addition to all warranties which may be prescribed by law, the Goods shall conform to specifications, drawing, and description and shall be free from defects in materials and workmanship. Seller also warrants that to the extent the Goods are not manufactured pursuant to detailed designs furnished by Buyer they will be free from defects in design. Such warranties, including warranties prescribed by law shall run to Buyer, its successor, assigns, and customers, and to users of the Goods for a period of one (1) year after delivery unless otherwise stated.
3. **INDEMNITY:** Seller shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend Buyer, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Seller, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this order including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against Buyer by reason of any such claim, cause of action, or demand, Seller shall, upon written notice from Buyer, resist and defend such lawsuit or proceeding by counsel satisfactory to Buyer or, at Buyer's option, pay for an attorney selected by the City Attorney to defend Buyer. The obligations of this section shall survive the expiration or earlier termination of this order. To the extent considered necessary by the Chief Purchasing Officer and the City Attorney, any sums due Seller under this order may be retained by Buyer until all of Buyer's claims for indemnification pursuant to this order have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by the Buyer.
4. **INSURANCE:** Seller shall procure and maintain liability insurance, including contractual liability coverage, with minimum limits of \$300,000 combined single limits to be effective during period of warranty with such higher limits as Buyer shall reasonably request of Seller. Seller shall furnish to Buyer upon request a Certificate of Insurance evidencing the foregoing coverage and limits.
5. **COMPLIANCE WITH LAWS:** Seller shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this order.
6. **LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL:** This order shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Order, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Order shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its

residency or other jurisdictional device. **BY ACCEPTING THIS ORDER, SELLER AND BUYER HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS ORDER. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS ORDER AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

7. **MATERIALITY AND WAIVER OF BREACH:** Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this order and that each is, therefore, a material term hereof. Buyer's failure to enforce any provision of this order shall not be deemed a waiver of such provision or modification of this order. A waiver of any breach of a provision of this order shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this order.
8. **ALLOCATION OF RISK:** This risk for any damage to or destruction of the goods shall be borne by the Seller at all times until delivery to the control of the Buyer, which shall be the point at which the Buyer actually receives the goods for use and has accepted such.
9. **REPAIRS - NON ACCEPTANCE:** If any of the goods are delivered in a defective or non-working condition, efforts of the Buyer to correct such defect shall not constitute an acceptance where commercially reasonable in extent and cost, so that the Buyer may still reject the goods where the attempt to repair has proved unsuccessful.
10. **PLACE OF DELIVERY:** The goods shall be delivered to the City of Delray Beach, Florida, at address stated on the order.
11. **INSPECTION GOODS:** The Buyer shall have the right to inspect all goods before accepting delivery or making payment therefore. If rejected, the goods will be returned at Seller's risk, and all handling and transportation expenses, both ways, will be borne by and assumed by Seller. When material has been rejected by Buyer and returned for replacement, it is essential that Seller receive new shipping instructions from Buyer before making the replacement. Inspection and approval for acceptance shall be made by the appropriate user department. The expense of inspection shall be borne by the Buyer except as to goods which are properly rejected as non-conforming. Inspection shall be made within fourteen (14) calendar days of the delivery of goods.
12. **NOTICE OF DEFECTS:** It is expressly agreed that all claims for alleged damages or defective goods, shortage, or other cause shall be deemed waived unless made in writing and sent by Buyer within twenty (20) calendar days after Buyer learns of the alleged defect, damage, shortage, or other cause giving rise to the claim. However, any defects incapable of discovery shall not be deemed waived by the provisions herein, and this provision shall not be deemed a waiver of any warranties set forth herein or in any modification of this Order.
13. **FITNESS FOR PARTICULAR PURPOSE:** Buyer makes no warranties except as set forth herein provided that notwithstanding any other provisions to the contrary herein, Buyer may have sought the expertise of Seller with respect to the use of such goods. In that event, Seller hereby agrees that any document exhibiting a request by Buyer for goods for a particular purpose, a reliance by Buyer upon the expertise of Seller with respect to the use of the goods, or any other similar such request or reliance shall constitute a modification to the terms of this Order which shall effect a warranty of fitness for a particular purpose.
14. **TAX EXEMPTION:** The City of Delray Beach is exempt from State Sales Tax and Federal Excise Taxes. Where tax applies, the invoice must show gross, price, amount of tax, and net price. Exception certificate will be provided upon request.
15. **INDEPENDENT CONTRACTOR:** Seller is an independent contractor under this Order. Services provided by Seller pursuant to this Order shall be subject to the supervision of Seller. In providing such services, neither Seller nor its agents shall act as officers, employees, or agents of Buyer. No partnership, joint venture, or other joint relationship is created hereby. Buyer does not extend to Seller or Seller's agents any authority of any kind

to bind Buyer in any respect whatsoever.

- 16. PUBLIC ENTITY CRIME ACT:** Seller represents that the acceptance of this order will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to Buyer, may not submit a bid on a contract with Buyer for the construction or repair of a public building or public work, may not submit bids on leases of real property to Buyer, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with Buyer, and may not transact any business with Buyer in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this order and recovery of all monies paid by Buyer pursuant to this Order, and may result in debarment from Buyer's competitive procurement activities.

In addition to the foregoing, Seller further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Seller has been placed on the convicted vendor list.

- 17. THIRD PARTY BENEFICIARIES:** Neither Seller nor Buyer intends to directly or substantially benefit a third party by this Order. Therefore, the parties agree that there are no third party beneficiaries to this Order and that no third party shall be entitled to assert a right or claim against either of them based upon this Order.
- 18. ASSIGNMENT AND PERFORMANCE:** Neither this Order nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. Buyer may terminate this Order, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Seller of this Order or any right or interest herein without Buyer's written consent. Seller shall perform its duties, obligations, and services under this Order in a skillful and respectable manner. The quality of Seller's performance and all interim and final product(s) provided to or on behalf of Buyer shall be comparable to the best local and national standards.
- 19. SEVERANCE:** In the event a portion of this Order is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless Buyer or Seller elects to terminate this Order. An election to terminate this Order based upon this provision shall be made within seven (7) days of final court action, including all available appeals.
- 20. AMENDMENTS:** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Order and executed by the Buyer and Seller or others delegated authority to or otherwise authorized to execute same on their behalf.
- 21. PRIOR ORDERS:** This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Order that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.
- 22. PAYABLE INTEREST:** Payment of Interest. Buyer shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Seller waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Order. Rate of Interest. In any instance where the prohibition or limitations of this Section are determined to be invalid or unenforceable, the annual rate of interest payable by Buyer under this Order, whether as prejudgment interest or for any other purpose, shall be .025 percent simple

interest (uncompounded).

23. PUBLIC RECORDS: Seller shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, Seller agrees to:

- a. Keep and maintain all records that ordinarily and necessarily would be required by the Buyer.
- b. Provide the public with access to public records on the same terms and conditions that the Buyer would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
- d. Meet all requirements for retaining public records and transfer, at no cost, to the Buyer all records in possession of the Seller at the termination of the contract and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Buyer in a format that is compatible with the information technology systems of the Buyer. All records shall be transferred to the Buyer prior to final payment being made to the Seller.
- e. If Seller does not comply with this section, the Buyer shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

24. INSPECTOR GENERAL: Seller 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 Seller and its sub licensees and lower tier sub licensees. Seller understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Seller or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the Buyer to be a material breach of this Order.

Grelite Corp

Bid Contact **Emmanuel Okwor**
Melissa.Parnell@grelite.net
Ph 954-226-6439
Fax 954-714-3316

Address **2880 W. Oakland Park**
#206
Fort Lauderdale, FL 33311

Item #	Line Item	Notes	Unit Price	Qty/Unit	Attch. Docs
2016-053--01-01	Celebration Beruda	Supplier Product Code:	First Offer - \$0.62	55000 / each	\$34,100.00 Y
2016-053--01-02	Celebration Beruda	Supplier Product Code:	First Offer - \$310.00	1 / each	\$310.00 Y
2016-053--01-03	Celebration Beruda	Supplier Product Code:	First Offer - \$155.00	1 / roll	\$155.00 Y
2016-053--01-04	Tifeagle Bermuda	Supplier Product Code:	First Offer - \$0.62	10000 / each	\$6,200.00 Y
2016-053--01-05	Tifeagle Bermuda	Supplier Product Code:	First Offer - \$310.00	1 / each	\$310.00 Y
2016-053--01-06	Tifeagle Bermuda	Supplier Product Code:	First Offer - \$155.00	1 / roll	\$155.00 Y
2016-053--01-07	Tifway 419 Bermuda	Supplier Product Code:	First Offer - \$2.98	10000 / each	\$29,800.00 Y
2016-053--01-08	Tifway 419 Bermuda	Supplier Product Code:	First Offer - \$1,490.00	1 / each	\$1,490.00 Y
2016-053--01-09	Tifway 419 Bermuda	Supplier Product Code:	First Offer - \$745.00	1 / roll	\$745.00 Y
2016-053--01-10	St. Augustine	Supplier Product Code:	First Offer - \$0.50	30000 / each	\$15,000.00 Y
2016-053--01-11	St. Augustine	Supplier Product Code:	First Offer - \$250.00	1 / each	\$250.00 Y
2016-053--01-12	St Augustine	Supplier Product Code:	First Offer - \$125.00	1 / roll	\$125.00 Y
2016-053--01-13	Bahia	Supplier Product Code:	First Offer - \$0.40	20000 / each	\$8,000.00 Y
2016-053--01-14	Bahia	Supplier Product Code:	First Offer - \$180.00	1 / each	\$180.00 Y
2016-053--01-15	Bahia	Supplier Product Code:	First Offer - \$90.00	1 / roll	\$90.00 Y
2016-053--01-16	Removal & Installation	Supplier Product Code:	First Offer - \$0.24	1 / each	\$0.24 Y
2016-053--01-17	Removal & Installation	Supplier Product Code:	First Offer - \$0.24	1 / each	\$0.24 Y
2016-053--01-18	Removal & Installation	Supplier Product Code:	First Offer - \$0.24	1 / roll	\$0.24 Y
Supplier Total					\$96,910.72

Supplier: **Grelite Corp**



Sod Materials
Jan 19, 2016
2:00:00 PM EST

MAYOR
VICE MAYOR
DEPUTY VICE MAYOR
COMMISSIONER
COMMISSIONER
CITY MANAGER

- CARY D. GLICKSTEIN
- SHELLY PETROLIA
- AL JACQUET
- JORDANA JARJURA
- MITCH KATZ
- DONALD B. COOPER

Purchasing Department ♦ (561) 243-7161 ♦ purchasing@mydelraybeach.com

Supplier: Grelite Corp

City of Delray Beach Instructions for Bidders

BID NOTIFICATION: The City of Delray Beach (City) utilizes the following procedures for notification of bid opportunities:

Bidsync – www.bidsync.com
DemandStar – www.demandstar.com
Request via email purchasing@mydelraybeach.com
City of Delray Beach – Hard copies are available at City Hall

These are the only forms of notification authorized by the City. The City shall not be responsible for receipt of notification and information from any source other than those listed. It shall be the bidder's responsibility to verify the validity of all bid information received by sources other than those listed.

REQUIRED INFORMATION: The City bid packets contain various sections requiring completion. The bid form section of the bid packet must be completed prior to the date and time set for bid opening and included with the bid packet or the bidder may be found non-responsive. Vendors may be required to complete and supply all information contained in the "supplemental information" portion of the packet at a date after bid opening. Failure to complete "supplemental information" requirements in a timely manner, prior to council award, may be used by the City in determining a vendor's responsibility.

CORRESPONDENCE: The number of this bid packet must appear on all correspondence, or inquiries, pertaining to this bid.

PREPARATION COST: The City will not be liable for any costs associated with the preparation, transmittal, or presentation of any bids or materials submitted in response to any solicitation.

NOTICE OF PUBLIC DOCUMENTS: Any and all materials initially or subsequently submitted as part of the bid process shall become the property of the City, and shall be treated as City documents subject to typical practice and applicable laws for public records.

ADDENDA: Any interpretations, corrections or changes to this bid packet will be made by addenda. Sole issuing authority shall be vested in the City of Delray Beach Purchasing Department. Addenda will be sent to all who are known to have received a copy of this bid packet, if the addenda contain changes to the "specification" or "bid form", bidders shall acknowledge receipt of all addenda or they may be declared non-responsive.

SAMPLES: Any catalog, brand names, or manufacturer's reference in this bid packet is descriptive and not restrictive, and is used to indicate type and quality level desired for comparison purposes unless specifically excluded. Please quote as listed or give equal. If item offered is other than as indicated, bidder must state make, model, and part number of product quoted. Equality will be determined by the City, per the specifications. Samples, if required, shall be furnished free of expense to the City. Samples should not be enclosed with bid unless requested.

PRICING: bid price(s) quoted, must be held firm for ninety (90) days to allow for evaluation unless otherwise stated in this document.

BILLING INSTRUCTIONS – AWARDED FIRM: Invoices must show the purchase order number and shall be submitted electronically to accountspayable@mydelraybeach.com or mailed to Accounts Payable, 100 NW 1st Avenue, Delray Beach, FL 33444.

TAXES: The City of Delray Beach is exempt from any sales tax imposed by the State and/or Federal Government. State Sales Tax Exemption Certificate No. 85-8012621559C-4 appears on each purchase order.

ERROR-QUANTITY: bid price must be submitted on units of quantity specified, extended, and total shown, in the event of discrepancies in extensions, the unit price shall govern.

WARRANTY/GUARANTEE LAWS AND REGULATIONS: By submittal of this bid, in addition to the guarantees and warranties provided by law, vendor expressly guarantees and warrants as follows:

- a. That the articles to be delivered hereunder will be in full conformity with the specifications or with the approved sample submitted, and agreed that this warranty shall survive acceptance of delivery and payment for the articles and that the vendor will bear the cost of inspecting and/or testing articles rejected.
- b. That the articles to be delivered hereunder will not infringe on any valid patent, trademark, trade name, or copyright, and that the vendor will, at vendor's own expense, defend any and all actions or suits charging such infringement and will save and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, losses, liabilities and suits arising there from.
- c. That the articles to be delivered hereunder will be manufactured, sold and/or installed in compliance with the provisions of all applicable federal, state and local laws and regulations.
- d. That nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of the City.

PACKAGING: Unless otherwise indicated, items will be new, unused, and in first rate condition in containers suitable for damage-free shipment and storage.

F.O.B./DAMAGE: Items shall be bid F.O.B. delivered, designated location, and shall include all delivery and packaging costs. The City of Delray Beach assumes no liability for goods delivered in damaged or unacceptable condition. The successful bidder shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by the City of damage.

PAYMENT TERMS: Payment terms are net 45 unless otherwise specified by the City in the bid packet.

ELECTRONIC BIDS: Electronic bids are to be submitted through a secure mailbox at BidSync (www.bidsync.com) until the date and time as indicated in this Solicitation document. It is the sole responsibility of the Bidder/Proposer to ensure their bid reaches BidSync before the Solicitation closing date and time. There is no cost to the Bidder/Proposer to submit a bid in response to a City of Delray Beach solicitation via BidSync. Electronic bid submissions may require the uploading of electronic attachments. The submission of attachments containing embedded documents or proprietary file extensions is prohibited. All documents should be attached as separate files.

PRESENTATION OF BIDS – PAPER SUBMISSION: Complete bid packets must be presented to the Purchasing Department in a sealed envelope unless otherwise indicated. All paper submissions must be received on or before the due date and time (local time) at the City of Delray Beach, Purchasing Office, 100 NW 1st Avenue, Delray Beach, Florida 33444. Normal City business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays. The Proposer's name, return address, BID number, BID title, due date and time must be noted on the envelope. It is the sole responsibility of the bidder to utilize the forms provided in the bid package and to ensure their bid reaches the Purchasing Office on/or before solicitation due date and time (local time). Included in the envelope shall be ONE (1) unbound original, TWO (2) copies of all bid forms, and one (1) electronic copy of all submitted materials on CD. The original should be marked "ORIGINAL". Each copy must be identical to the original and the file format on the CD should be in Portable Document Format (pdf).

ALTERING BIDS – PAPER SUBMISSION: Bid prices cannot be altered or amended after submission deadline. Any inter-lineation alteration, or erasure made before opening time must be initialed by the signer of the bid, guaranteeing authenticity.

LATE BIDS – PAPER SUBMISSION: Bid packets received in the purchasing division after submission deadline shall be returned unopened and will be considered void and unacceptable. The City of Delray Beach is not responsible for the lateness of mail carrier, weather conditions, etc.

WITHDRAWAL OF BIDS: Bidder agrees that a bid price may not be withdrawn or canceled by the bidder for a period of ninety (90) days following the date designated for the receipt of bids without written approval of the City.

BID OPENINGS: All bids submitted will be read at the City's scheduled bid opening for the designated project. However, the reading of a bid at bid opening should not be construed as a comment on the responsiveness of such bid or as any indication that the City accepts such bid as responsive. The City will make a determination

as to the responsiveness of bids submitted based upon compliance with all applicable laws, City of Delray Beach purchasing guidelines, and project documents, including but not limited to the bid specifications and required submittal documents. The City will notify the successful bidder upon award of the contract and, according to state law all bids received will be available for inspection at that time.

MINOR DEFECT: the City reserves the right to waive any minor defect, irregularity, or informality in any bid. The City may also reject any or all bids without cause prior to award.

EVALUATION: Bids will be evaluated as outlined in the bid document.

AWARD OF BID: The City of Delray Beach reserves the right to accept any Bid or combination of Bid alternates which, in the City's judgment will best serve the City's interest, reject any and all Bids, to waive any and all informalities and/or irregularities, and to negotiate terms with the Successful Bidder, and the right to disregard all non-conforming, non-responsive, unbalanced or conditional Bids. The City reserves the right to reject any or all Bids, or any part of any Bid, to waive any informality in any Bid, and to award the purchase in the best interest of the City. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit price. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

SPLIT AWARD: the City reserves the right to award a separate contract to separate vendors for each item/group or to award one contract for the entire bid. The City reserves the right to take into consideration contract administration costs for multiple award contracts when determining low bid.

DEFINITION: Bid shall mean a bid, proposal, or quotation.

Supplier: Grelite Corp

CITY OF DELRAY BEACH GENERAL TERMS AND CONDITIONS

These instructions are standard for all contracts for commodities or services issued through the City of Delray Beach Purchasing Department. The City may delete, supersede, or modify any of these standard instructions for a particular contract by indicating such change in the Invitation to Bid (ITB), Special Conditions, Technical Specifications, Instructions, Proposal Pages, Addenda, and Legal Advertisement. In this general conditions document, Invitation to Bid (ITB) and Request for Proposal (RFP) are interchangeable.

PART I CONDITIONS:

- 1.1 PUBLIC ENTITY CRIMES:** Pursuant to F.S. 287.133, as amended, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit a proposal on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. Each Proposer must certify that the Proposer is not subject to these prohibitions regarding public entity crimes.
- 1.2 SCRUTINIZED COMPANIES:** This Section applies to any contract for goods or services of \$1 million or more. The Proposer certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2011), as may be amended or revised. The City may terminate a contract at the City's option if the Proposer is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2011), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2011), as may be amended or revised.
- 1.3 DEBARRED OR SUSPENDED PROPOSERS:** The Proposer certifies, by submission of a response to this solicitation, that neither it nor its principals and subcontractors are presently debarred or suspended by any Federal department or agency.
- 1.4 LOBBYING ACTIVITIES:** All Proposers are advised that the Palm Beach County Lobbyist Registration Ordinance (Section 2-351 of the Palm Beach County Code of Ordinances) applies to the City and this solicitation. Any violation of this requirement may cause the Proposer to be disqualified and prohibited from participating further in the RFP process.
- 1.5 COMPLIANCE WITH LAWS:** Proposer shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant any order.
- 1.6 NON-DISCRIMINATION:** There shall be no discrimination as to race, sex, color, creed, age or national origin in the operations conducted under this solicitation.
- 1.7 PUBLIC RECORDS:** Proposer shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, Proposer agrees to:
 - (a) Keep and maintain all records that ordinarily and necessarily would be required by the City.
 - (b) Provide the public with access to public records on the same terms and conditions that the City would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
 - (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
 - (d) Meet all requirements for retaining public records and transfer, at no cost, to the City all records in possession of the Proposer at the termination of the contract and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City. All records shall be transferred to the City prior to final payment being made to the Proposer.
 - (e) If Proposer 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.

Any language contained in the Proposer's response to the RFP purporting to require confidentiality of any portion of the Proposer's response to the RFP, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Proposer submits any documents or other information to the City which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 ("Public Records Laws"), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Proposer's response to the RFP constitutes a Trade Secret. The city's

determination of whether an exemption applies shall be final, and the proposer agrees to defend, indemnify, and hold harmless the city and the city's officers, employees, and agent, against any loss or damages incurred by any person or entity as a result of the city's treatment of records as public records. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR RESPONSE TO THE RFP AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR RESPONSE TO THE RFP OR ANY PART THEREOF AS COPYRIGHTED.

- 1.8 INSPECTOR GENERAL:** Proposer 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 purchases and contracts, and may demand and obtain records and testimony from Proposer and its sub licensees and lower tier sub licensees. Proposer understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Proposer or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of any order.
- 1.9 CONE OF SILENCE:** Proposer's are advised that a Cone of Silence is in effect at the time of submission. The Cone of Silence prohibits any communications, except written correspondence, between the Proposers or any Person representing the Proposers, and any member of the City Commission, the Commission's staff, any City employee authorized to act on behalf of the City to award the contract or Bid, or any member of the Selection Committee. The Cone of Silence will commence and take effect at the deadline for submitting bids. Section 36.13 of the City Code provides "[a]ny person participating in a competitive solicitation issued by the City shall comply with Section 2-355 of the Palm Beach County Code of Ordinances."
- 1.10 LOCAL PREFERENCE:** In accordance with the City of Delray Beach Code of Ordinances Sec. 36.14, the City shall give preference to a Local Business if the Local Business' bid is determined to be within five percent (5%) or five thousand dollars (\$5,000.00), whichever is less, of the lowest responsible and responsive proposer.
- 1.11 LITIGATION VENUE:** The Proposers waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Palm Beach County, Florida and that all litigation between them in the federal courts shall take place in the Southern District in and for the State of Florida.
- 1.12 INDEMNITY/HOLD HARMLESS AGREEMENT:** Proposer shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Proposer, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of any order including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Proposer shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by the City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of any order. To the extent considered necessary by the Chief Purchasing Officer and the City Attorney, any sums due Proposer under any order may be retained by City until all of City's claims for indemnification pursuant to any order have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by the City.

Part II DEFINITIONS/ORDER OF PRECEDENCE:

- 2.01 BIDDING DEFINITIONS** The City will use the following definitions in its general conditions, special conditions, technical specifications, instructions to bidders, addenda and any other document used in the bidding process:
- INVITATION TO BID (ITB) when the City is requesting bids from qualified Bidders.
- REQUEST FOR PROPOSALS (RFP) when the City is requesting proposals from qualified Proposers.
- BID – a price and terms quote received in response to an ITB.
- PROPOSAL – a proposal received in response to an RFP.
- BIDDER – Person or firm submitting a Bid.
- PROPOSER – Person or firm submitting a Proposal.
- RESPONSIVE BIDDER – A person whose bid conforms in all material respects to the terms and conditions included in the ITB.
- RESPONSIBLE BIDDER – A person who has the capability in all respects to perform in full the contract requirements, as stated in the ITB, and the integrity and reliability that will assure good faith performance.
- FIRST RANKED PROPOSER – That Proposer, responding to a City RFP, whose Proposal is deemed by the City, the most advantageous to the City after applying the evaluation criteria contained in the RFP.
- PROPOSER – Successful Bidder or Proposer who is awarded a Purchase Order or Contract to provide goods or services to the City.
- CONTRACTOR – Successful Bidder or Proposer who is awarded a Purchase Order, award Contract, Blanket Purchase Order agreement, or Term Contract to provide goods or services to the City.
- CONTRACT – A deliberate verbal or written agreement between two or more competent parties to perform or not to perform a certain act or acts, including all types of agreements, regardless of what they may be called, for the procurement or disposal of equipment, materials, supplies, services or construction.

CONSULTANT – Successful Bidder or Proposer who is awarded a contract to provide professional services to the City.

The following terms may be used interchangeably by the City: ITB and/or RFP; Bid or Proposal; Bidder, Proposer, or Proposer; Contractor or Consultant; Contract, Award, Agreement or Purchase Order.

- 2.02 SPECIAL CONDITIONS:** Any and all Special Conditions contained in this solicitation that may be in variance or conflict with these General Conditions shall have precedence over these General Conditions. If no changes or deletions to General Conditions are made in the Special Conditions, then the General Conditions shall prevail in their entirety,

PART III BIDDING AND AWARD PROCEDURES:

- 3.01 SUBMISSION AND RECEIPT OF BIDS:** To receive consideration, bids must be received prior to the bid opening date and time. Unless otherwise specified, Bidders should use the proposal forms provided by the City. These forms may be duplicated, but failure to use the forms may cause the bid to be rejected. Bids will be publicly opened in the Purchasing Department Office, or other designated area, in the presence of Bidders, the public, and City staff. Bidders and the public are invited and encouraged to attend bid openings. Bids will be tabulated and made available for review by Bidder's and the public in accordance with applicable regulations.
- 3.02 MODEL NUMBER CORRECTIONS:** If the model number for the make specified in this ITB is incorrect, or no longer available and replaced with an updated model with new specifications, the Bidder shall enter the correct model number on the bidder proposal page. In the case of an updated model with new specifications, Bidder shall provide adequate information to allow the City to determine if the model bid meets the City's requirements.
- 3.03 PRICES QUOTED:** Deduct trade discounts, and quote firm net prices. Give both unit price and extended total. In the case of a discrepancy in computing the amount of the bid, the unit price quoted will govern. All prices quoted shall be F.O.B. destination, freight prepaid (Bidder pays and bears freight charges, Bidder owns goods in transit and files any claims), unless otherwise stated in Special Conditions. Each item must be bid separately. No attempt shall be made to tie any item or items contained in the ITB with any other business with the City.
- 3.04 WARRANTIES OF USAGE:** Any quantities listed in this ITB as estimated or projected are provided for tabulation and information purposes only. No warranty or guarantee of quantities is given or implied. It is understood that the Contractor will furnish the City's needs as they arise.
- 3.05 APPROVED EQUAL:** When the technical specifications call for a brand name, manufacturer, make, model, or vendor catalog number with acceptance of APPROVED EQUAL, it shall be for the purpose of establishing a level of quality and features desired and acceptable to the City. In such cases, the City will be receptive to any unit that would be considered by qualified City personnel as an approved equal. In that the specified make and model represent a level of quality and features desired by the City, the Bidder must state clearly in the bid any variance from those specifications. It is the Bidder's responsibility to provide adequate information, in the bid, to enable the City to ensure that the bid meets the required criteria. If adequate information is not submitted with the bid, it may be rejected. The City will be the sole judge in determining if the item bid qualifies as an approved equal.
- 3.06 MINIMUM AND MANDATORY TECHNICAL SPECIFICATIONS:** The technical specifications may include items that are considered minimum, mandatory, or required. If any Bidder is unable to meet or exceed these items, and feels that the technical specifications are overly restrictive, the bidder must notify the Purchasing Department immediately. Such notification must be received by the Purchasing Department prior to the deadline contained in the ITB, for questions of a material nature, or prior to the deadline for questions. If no such notification is received prior to that deadline, the City will consider the technical specifications to be acceptable to all bidders.
- 3.07 MISTAKES:** Bidders are cautioned to examine all terms, conditions, specifications, drawings, exhibits, addenda, delivery instructions and special conditions pertaining to the ITB. Failure of the Bidder to examine all pertinent documents shall not entitle the bidder to any relief from the conditions imposed in the contract.
- 3.09 SAMPLES AND DEMONSTRATIONS:** Samples or inspection of product may be requested to determine suitability. Unless otherwise specified in Special Conditions, samples shall be requested after the date of bid opening, and if requested should be received by the City within seven (7) working days of request. Samples, when requested, must be furnished free of expense to the City and if not used in testing or destroyed, will upon request of the Bidder, be returned within thirty (30) days of bid award at Bidder's expense. When required, the City may request full demonstrations of units prior to award. When such demonstrations are requested, the Bidder shall respond promptly and arrange a demonstration at a convenient location. Failure to provide samples or demonstrations as specified by the City may result in rejection of a bid.
- 3.10 LIFE CYCLE COSTING:** If so specified in the ITB, the City may elect to evaluate equipment proposed on the basis of total cost of ownership. In using Life Cycle Costing, factors such as the following may be considered: estimated useful life, maintenance costs, cost of supplies, labor intensity, energy usage, environmental impact, and residual value. The City reserves the right to use those or other applicable criteria, in its sole opinion that will most accurately estimate total cost of use and ownership.
- 3.11 BIDDING ITEMS WITH RECYCLED CONTENT:** In addressing environmental concerns, the City of Delray Beach encourages

Bidders to submit bids or alternate bids containing items with recycled content. When submitting bids containing items with recycled content, Bidder shall provide documentation adequate for the City to verify the recycled content. The City prefers packaging consisting of materials that are degradable or able to be recycled. When specifically stated in the ITB, the City may give preference to bids containing items manufactured with recycled material or packaging that is able to be recycled.

- 3.12 USE OF OTHER GOVERNMENTAL CONTRACTS:** The City reserves the right to reject any part or all of any bids received and utilize other available governmental contracts, if such action is in its best interest.
- 3.13 QUALIFICATIONS/INSPECTION:** Bids will only be considered from firms normally engaged in providing the types of commodities/services specified herein. The City reserves the right to inspect the Bidder's facilities, equipment, personnel, and organization at any time, or to take any other action necessary to determine Bidder's ability to perform. The Purchasing Officer reserves the right to reject bids where evidence or evaluation is determined to indicate inability to perform.
- 3.14 BID SURETY:** If Special Conditions require a bid security, it shall be submitted in the amount stated. A bid security can be in the form of a bid bond or cashier's check. Bid security will be returned to the unsuccessful bidders as soon as practicable after opening of bids. Bid security will be returned to the successful bidder after acceptance of the performance bond, if required; acceptance of insurance coverage, if required; and full execution of contract documents, if required; or conditions as stated in Special Conditions.
- 3.15 PROHIBITION OF INTEREST:** No contract will be awarded to a bidding firm who has City elected officials, officers or employees affiliated with it, unless the bidding firm has fully complied with current Florida State Statutes and City Ordinances relating to this issue. Bidders must disclose any such affiliation. Failure to disclose any such affiliation will result in disqualification of the Bidder and removal of the Bidder from the City's bidder lists and prohibition from engaging in any business with the City.
- 3.16 RESERVATIONS FOR AWARD AND REJECTION OF BIDS:** The City reserves the right to accept or reject any or all bids, part of bids, and to waive minor irregularities or variations to specifications contained in bids, and minor irregularities in the bidding process. The City also reserves the right to award the contract on a split order basis, lump sum basis, individual item basis, or such combination as shall best serve the interest of the City. The City reserves the right to make an award to the responsive and responsible bidder whose product or service meets the terms, conditions, and specifications of the ITB and whose bid is considered to best serve the City's interest. In determining the responsiveness of the offer and the responsibility of the Bidder, the following shall be considered when applicable: the ability, capacity and skill of the Bidder to perform as required; whether the Bidder can perform promptly, or within the time specified, without delay or interference; the character, integrity, reputation, judgment, experience and efficiency of the Bidder; the quality of past performance by the Bidder; the previous and existing compliance by the Bidder with related laws and ordinances; the sufficiency of the Bidder's financial resources; the availability, quality and adaptability of the Bidder's supplies or services to the required use; the ability of the Bidder to provide future maintenance, service or parts; the number and scope of conditions attached to the bid.

If the ITB provides for a contract trial period, the City reserves the right, in the event the selected bidder does not perform satisfactorily, to award a trial period to the next ranked bidder or to award a contract to the next ranked bidder, if that bidder has successfully provided services to the City in the past. This procedure to continue until a bidder is selected or the contract is re-bid, at the sole option of the City.

- 3.17 LEGAL REQUIREMENTS:** Applicable provisions of all federal, state, county laws, and local ordinances, rules and regulations, shall govern development, submittal and evaluation of all bids received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a bid response hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any bidder shall not constitute a cognizable defense against the legal effect thereof.
- 3.18 BID PROTEST PROCEDURE: ANY PROPOSER OR BIDDER WHO IS NOT RECOMMENDED FOR AWARD OF A CONTRACT AND WHO ALLEGES A FAILURE BY THE CITY TO FOLLOW THE CITY'S PROCUREMENT ORDINANCE OR ANY APPLICABLE LAW MAY PROTEST TO THE CHIEF PURCHASING OFFICER, BY DELIVERING A LETTER OF PROTEST TO THE CHIEF PURCHASING OFFICER WITHIN THREE BUSINESS (3) DAYS AFTER A NOTICE OF INTENT TO AWARD IS POSTED.**

Any bidder, proposers or responders filing a protest shall simultaneously provide a Protest Bond to the City in the amount of five percent (5%) of the Protester's bid, proposal, or response amount or the amount of twenty thousand dollars (\$20,000.), whichever is less. If the protest is decided, in the protester's favor the entire protest bond is returned. If the protest is not decided in the protester's favor the protest shall be forfeited to the City. The protest bond shall be in the form of a cashier's check.

PART IV BONDS AND INSURANCE

- 4.01 PERFORMANCE BOND:** If a performance bond is required in Special Conditions, the Contractor shall within fifteen (15) working days after notification of award, furnish to the City a Performance Bond, payable to the City of Delray Beach, Florida, in the face amount specified in Special Conditions as surety for faithful performance under the terms and conditions of the contract. If the bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing Performance Bond. The Performance Bond must be executed by

a surety company of recognized standing, authorized to do business in the State of Florida and having a resident agent.

Acknowledgement and agreement is given by both parties that the amount herein set for the Performance Bond is not intended to be nor shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Contractor to the City in the event of a material breach of an Agreement by the Contractor.

- 4.02 INSURANCE:** If the Contractor is required to go on to City property to perform work or services as a result of ITB award, the Contractor shall assume full responsibility and expense to obtain all necessary insurance as required by City or specified in Special Conditions.

The Contractor shall provide to the Purchasing Department original certificates of coverage and receive notification of approval of those certificates by the City's Risk Manager prior to engaging in any activities under this contract. The Contractor's insurance is subject to the approval of the City's Risk Manager. The certificates must list the City as an ADDITIONAL INSURED for General Liability Insurance, and shall have no less than thirty (30) days written notice of cancellation or material change. Further modification of the insurance requirements may be made at the sole discretion of the City's Risk Manager if circumstances change or adequate protection of the City is not presented. Bidder, by submitting the bid, agrees to abide by such modifications.

PART V PURCHASE ORDER AND CONTRACT TERMS:

- 5.01 COMPLIANCE TO SPECIFICATIONS, LATE DELIVERIES/PENALTIES:** Items offered may be tested for compliance to bid specifications. Items delivered which do not conform to bid specifications may be rejected and returned at Contractor's expense. Any violation resulting in contract termination for cause or delivery of items not conforming to specifications, or late delivery may also result in:
- Bidders name being removed from the City's bidder's mailing list for a specified period and Bidder will not be recommended for any award during that period.
 - All City Departments being advised to refrain from doing business with the Bidder.
 - All other remedies in law or equity.
- 5.02 DELIVERY:** Time will be of the essence for any orders placed as a result of this ITB. The City reserves the right to cancel any orders, or part thereof, without obligation if delivery is not made in accordance with the schedule specified by the Bidder and accepted by the City.
- 5.03 PACKING SLIPS:** It will be the responsibility of the awarded Contractor, to attach all packing slips to the OUTSIDE of each shipment. Packing slips must provide a detailed description of what is to be received and reference the City of Delray Beach purchase order number that is associated with the shipment. Failure to provide a detailed packing slip attached to the outside of shipment may result in refusal of shipment at Contractor's expense.
- 5.04 PAYMENT TERMS AND CASH DISCOUNTS:** Payment terms, unless otherwise stated in this ITB, will be considered to be net 45 days after the date of satisfactory delivery at the place of acceptance and receipt of correct invoice at the office specified, whichever occurs last. Bidder may offer cash discounts for prompt payment but they will not be considered in determination of award. If a Bidder offers a discount, it is understood that the discount time will be computed from the date of satisfactory delivery, at the place of acceptance, and receipt of correct invoice, at the office specified, whichever occurs last.
- 5.05 TAX EXEMPTION:** The City of Delray Beach is exempt from State Sales Tax and Federal Excise Taxes. Where tax applies, the invoice must show gross, price, amount of tax, and net price. Exception certificate will be provided upon request.
- 5.06 PAYABLE INTEREST:** *Payment of Interest.* The City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Bidder waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to the bid. *Rate of Interest.* In any instance where the prohibition or limitations herein are determined to be invalid or unenforceable, the annual rate of interest payable by the City, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).
- 5.07 TOTAL BID DISCOUNT:** If Bidder offers a discount for award of all items listed in the bid, such discount shall be deducted from the total of the firm net unit prices bid and shall be considered in tabulation and award of bid.
- 5.08 BIDS FIRM FOR ACCEPTANCE:** Bidder warrants, by virtue of bidding, that the bid and the prices quoted in the bid will be firm for acceptance by the City for a period of one hundred twenty (120) days from the date of bid opening unless otherwise stated in the ITB.
- 5.09 VARIANCES:** For purposes of bid evaluation, Bidder's must indicate any variances, no matter how slight, from ITB General Conditions, Special Conditions, Specifications or Addenda in the space provided in the ITB. No variations or exceptions by a Bidder will be considered or deemed a part of the bid submitted unless such variances or exceptions are listed in the bid and referenced in the space provided on the bidder proposal pages. If variances are not stated, or referenced as required, it will be assumed that the product or service fully complies with the City's terms, conditions, and specifications.

By receiving a bid, City does not necessarily accept any variances contained in the bid. All variances submitted are subject to review and approval by the City. If any bid contains material variances that, in the City's sole opinion, make that bid conditional in nature, the City reserves the right to reject the bid or part of the bid that is declared, by the City as conditional.

- 5.10 ACCEPTANCE, CONDITION, AND PACKAGING:** The material delivered in response to ITB award shall remain the property of the Proposer until a physical inspection is made and the material accepted to the satisfaction of the City. The material must comply fully with the terms of the ITB, be of the required quality, new, and the latest model. All containers shall be suitable for storage and shipment by common carrier, and all prices shall include standard commercial packaging. The City will not accept substitutes of any kind. Any substitutes or material not meeting specifications will be returned at the Bidder's expense. Payment will be made only after City receipt and acceptance of materials or services.
- 5.11 SAFETY STANDARDS:** All manufactured items and fabricated assemblies shall comply with applicable requirements of the Occupation Safety and Health Act of 1970 as amended, and be in compliance with Chapter 442, Florida Statutes. Any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a result of any order must be accompanied by a completed Safety Data Sheet (SDS).
- 5.12 ASBESTOS STATEMENT:** All material supplied must be 100% asbestos free. Bidder, by virtue of bidding, certifies that if awarded any portion of the ITB the bidder will supply only material or equipment that is 100% asbestos free.
- 5.13 OTHER GOVERNMENTAL ENTITIES:** If the Bidder is awarded a contract as a result of this ITB, the bidder may, if the bidder has sufficient capacity or quantities available, provide to other governmental agencies, so requesting, the products or services awarded in accordance with the terms and conditions of the ITB and resulting contract. Prices shall be F.O.B. delivered to the requesting agency.
- 5.14 VERBAL INSTRUCTIONS PROCEDURE:** No negotiations, decisions, or actions shall be initiated or executed by the Contractor as a result of any discussions with any City employee. Only those communications which are in writing from an authorized City representative may be considered. Only written communications from Contractors, which are assigned by a person designated as authorized to bind the Contractor, will be recognized by the City as duly authorized expressions on behalf of Contractors.
- 5.15 INDEPENDENT CONTRACTOR:** The Contractor is an independent contractor under this Agreement. Personal services provided by the Proposer shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, procurement policies unless otherwise stated in this ITB, and other similar administrative procedures applicable to services rendered under this contract shall be those of the Contractor.
- 5.16 TERMINATION FOR CAUSE:** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the provisions of this Agreement, the City may upon written notice to the Contractor terminate the right of the Contractor to proceed under this Agreement, or with such part or parts of the Agreement as to which there has been default, and may hold the Contractor liable for any damages caused to the City by reason of such default and termination. In the event of such termination, any completed services performed by the Contractor under this Agreement shall, at the option of the City, become the City's property and the Contractor shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due to the City from the Contractor can be determined.
- 5.17 TERMINATION FOR CONVENIENCE:** The City reserves the right, in its best interest as determined by the City, to cancel contract by giving written notice to the Contractor thirty (30) days prior to the effective date of such cancellation.
- 5.18 CANCELLATION FOR UNAPPROPRIATED FUNDS:** The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.
- 5.19 RECORDS/AUDIT:** The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract for the duration of the contract and for three years after the final payment any agreement as a result of the bid, or until all pending audits, investigations or litigation matters relating to the contract are closed, whichever is later. The Contractor agrees to make available to the City or designee, during normal business hours all books of account, reports and records relating to any agreement as a result of this bid.
- 5.20 PERMITS, TAXES, LICENSES:** The successful Contractor shall, at their own expense, obtain all necessary permits, pay all licenses, fees and taxes, required to comply with all local ordinances, state and federal laws, rules and regulations applicable to business to be carried out under this contract.
- 5.21 LAWS/ORDINANCES:** The Contractor shall observe and comply with all Federal, state, local and municipal laws, ordinances rules and regulations that would apply to this contract.

5.22 UNUSUAL CIRCUMSTANCES: If during a contract term where costs to the City are to remain firm or adjustments are restricted by a percentage or CPI cap, unusual circumstances that could not have been foreseen by either party of the contract occur, and those circumstances significantly affect the Contractor's cost in providing the required prior items or services, then the Contractor may request adjustments to the costs to the City to reflect the changed circumstances. The circumstances must be beyond the control of the Contractor, and the requested adjustments must be fully documented. The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the City will reserve the following options:

1. The contract can be canceled by the City upon giving thirty (30) days written notice to the Contractor with no penalty to the City or Contractor. The Contractor shall fill all City requirements submitted to the Contractor until the termination date contained in the notice.
2. The City requires the Contractor to continue to provide the items and services at the firm fixed (non-adjusted) cost until the termination of the contract term then in effect.
3. If the City, in its interest and in its sole opinion, determines that the Contractor in a capricious manner attempted to use this section of the contract to relieve them of a legitimate obligation under the contract, and no unusual circumstances had occurred, the City reserves the right to take any and all action under law or equity. Such action shall include, but not be limited to, declaring the Contractor in default and disqualifying him for receiving any business from the City for a stated period of time.

If the City does agree to adjusted costs, these adjusted costs shall not be invoiced to the City until the Contractor receives notice in writing signed by a person authorized to bind the City in such matters.

5.23 ELIGIBILITY: If applicable, the Contractor must first register with the Department of State of the State of Florida, in accordance with Florida State Statutes, prior to entering into a contract with the City.

5.24 PATENTS AND ROYALTIES: The Contractor, without exception, shall indemnify and save harmless the City and its employees from liability of any nature and kind, including cost and expenses for or on account of any copyrighted, patented or un-patented invention, process, or article manufactured or used in the performance of the contract, including its use by the City. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

5.25 ASSIGNMENT: Contractor shall not transfer or assign the performance required by this ITB without the prior written consent of the City. Any award issued pursuant to this ITB, and the monies, which may become due hereunder, are not assignable except with the prior written approval of the City Commission or the City Manager or City Manager's designee, depending on original award approval.

Supplier: **Grelite Corp**

Other Terms

1. LIMITATIONS ON COMMUNICATIONS -- CONE OF SILENCE:

Proposers are advised that a Cone of Silence will be in effect during this Bid. The Cone of Silence prohibits any communications, except written correspondence, regarding this Bid, between the Proposers or any Person representing the Proposers, and any member of the City Commission, the Commission's staff, any City employee authorized to act on behalf of the City to award the contract under this Bid, or any member of the Selection Committee. Failure to adhere to the Cone of Silence provisions is cause for rejection of a bid. The Cone of Silence will commence and take effect at the deadline for submitting proposals, as indicated in Section 1.7, above. All written correspondence with the City must be directed to the Chief Purchasing Officer, who is the only Person authorized to receive such documents.

Section 36.13 of the City Code provides "[a]ny person participating in a competitive solicitation issued by the City shall comply with Section 2-355 of the Palm Beach County Code of Ordinances." The County Code provides as follows:

- "a. 'Cone of silence' means a prohibition on any communication, except for written correspondence, regarding a particular request for proposal, request for qualification, bid, or any other competitive solicitation between:
 - (1) Any person or person's representative seeking an award from such competitive solicitation; and
 - (2) Any county commissioner or commissioner's staff, any member of a local governing body or the member's staff, a mayor or chief executive officer that is not a member of a local governing body or the mayor or chief executive officer's staff, or any employee authorized to act on behalf of the commission or local governing body to award a particular contract.
- b. For the purposes of this section, a person's representative shall include but not be limited to the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subcontractor or consultant of the person.
- c. The cone of silence shall be in effect as of the deadline to submit the proposal, bid, or other response to a competitive solicitation. The cone of silence applies to any person or person's representative who responds to a particular request for proposal, request for qualification, bid, or any other competitive solicitation, and shall remain in effect until such response is either rejected by the county or municipality as applicable or withdrawn by the person or person's representative. Each request for proposal, request for qualification, bid or any other competitive solicitation shall provide notice of cone of silence requirements and refer to this article.
- d. The provisions of this article shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection committees, contract negotiations during any public meeting, presentations made to the board or local municipal governing body as applicable, and protest hearings. Further, the cone of silence shall not apply to contract negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence at any time with any employee, county commissioner, member of a local municipal governing body, mayor or chief executive officer that is not a member of the local municipal governing body, or advisory board member or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.
- e. The cone of silence shall not apply to any purchases made in an amount less than the competitive bid threshold set forth in the county purchasing ordinance (County Code, chapter 2, article III, division 2, part A, section 2-51 et seq.) or municipal

- ordinance as applicable.
- f. The cone of silence shall terminate at the time the board, local municipal governing body, or a county or municipal department authorized to act on behalf of the board or local municipal governing body as applicable, awards or approves a contract, rejects all bids or responses, or otherwise takes action which ends the solicitation process.
 - g. Any contract entered into in violation of the cone of silence provisions in this section shall render the transaction voidable."

2. CONFLICT OF INTEREST:

- A. Bidder declares and certifies that no officer, employee or person whose salary is payable in whole or part from the City of Delray Beach is directly or indirectly interested in this bid or in the supplies, materials, equipment or services to which it relates or in any portion of the profits thereof; or
- B. The award is subject to provisions of State Statutes and City Ordinances. All bidders must disclose with their bid the name of any officer, director or agent who is also an employee of the City of Delray Beach. Further, all bidders must disclose the name of any City employee who owns, directly or indirectly, any interest in the bidder's firm or any of its' branches.

3. BID PROTEST: PROTEST OF AWARD / PROTEST BOND: Parties that are not actual bidders, proposers or responders, including, but not limited to, subcontractors, material and labor suppliers, manufacturers and their representatives, shall not have standing to protest or appeal any determination made.

After the notice of intent to award and agreement is posted, any actual bidder, proposer or responder who is aggrieved in connection with the pending award of the agreement or any element of the process leading to the award of the agreement may file a protest with the Chief Purchasing Officer by close of business on the third business day after posting (excluding the day of notification) or any right to protest is forfeited. It shall be the sole responsibility of such bidder, proposer or responder to verify the operating hours of City Hall. Notice of Intent to Reject all Bids, Proposals or Responses is subject to the protest procedure.

Note: Any bidder, proposers or responders filing a protest shall simultaneously provide a Protest Bond to the City in the amount of five percent (5%) of the Protester's bid, proposal, or response amount or the amount of fifteen thousand dollars (\$15,000.), whichever is less. If the protest is decided, in the protester's favor the entire protest bond is returned. If the protest is not decided in the protester's favor the protest shall be forfeited to the City. The protest bond shall be in the form of a cashier's check. Ord.No.29-13, Section 36.04

Protest shall be addressed to:
City of Delray Beach
Chief Purchasing Officer
100 NW 1st Ave
Delray Beach, FL 33444

4. ANTI-COLLUSION:

- A. Bidder certifies that this bid is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a bid for the same materials, services, supplies, or equipment and is in all respects fair and without collusion or fraud.
- B. No premiums, rebates or gratuities permitted; either with, prior to, or after any delivery of material or provision of services. Any such violation may result in contract cancellation, return of materials or discontinuation of services and the possible removal from the vendor bid list(s).

5. CITY POLICIES: Awarded contractor shall comply with the City of Delray Beach Equal Employment Opportunity Policy, Violence in the Workplace Policy, Drug and Alcohol Free Workplace Policy, General Complaint Policy and Sexual Harassment Policy. Copies of these policies may be obtained from the City of Delray Beach Human Resources Division. Violations of these policies may result in cancellation/termination of the contract.**6. NON-DISCRIMINATION:** The Bidder shall not discriminate against employees or applicants for employment because of race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. The Bidder will endeavor to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. These provisions apply to all subcontractors and it is the responsibility of the subcontractors to be in compliance.**7. DISCRIMINATION:** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

Supplier: **Grelite Corp**

**CITY OF DELRAY BEACH
INVITATION TO BID
2016-053**

Title:	Sod Materials
Vendor Name:	

Addenda Enclosed _____ **thru** _____

Submission Deadline: Jan 19, 2016 / 2:00:00
PM EST

Submissions Accepted Via: Electronic, Mail, or in Person

Submit Paper Copies to: City of Delray Beach
Purchasing Division
100 NW 1st Avenue
Delray Beach, FL 33444

City of Delray Beach

Time Stamped In:

Supplier: **Grelite Corp**

Proposal Submittal Signature Page

By signing this Proposal/Bid, the Proposer/Bidder certifies that it satisfies all legal requirements as an entity to do business with the City, including all Conflict of Interest and Code of Ethics provisions.

Firm Name:	Grelite Corp
Street Address:	2880 W Oakland Park Blvd #206, Fort Lauderdale, FL 33311
Mailing Address (if different from Street Address):	
Telephone Number(s):	954.774.5553
Fax Number(s):	954.714.3316
Email Address:	Emmanuel.Okwor@grelite.net
Federal Employer Identification Number:	46-5459591

Grelite Corp

Firm Name

Eokwor

Signature

Emmanuel Okwor President

Name and Title

01/19/2016

Date

By signing this document, the Proposer agrees to all terms and conditions of the solicitation and the resulting contract/agreement.

THE EXECUTION OF THIS CONSTITUTES THE UNEQUIVOCAL OFFER OF PROPOSER TO BE BOUND BY THE TERMS OF ITS PROPOSAL/BID. FAILURE TO SIGN THIS SOLICITATION WHERE INDICATED ABOVE BY AN AUTHORIZED REPRESENTATIVE SHALL RENDER THE PROPOSAL/BID NON-RESPONSIVE. THE CITY MAY, HOWEVER, IN ITS SOLE DISCRETION, ACCEPT ANY PROPOSAL/BID THAT INCLUDES AN EXECUTED DOCUMENT WHICH UNEQUIVOCALLY BINDS THE PROPOSER TO THE TERMS OF ITS PROPOSAL/BID.

Supplier: **Grelite Corp**

Conflict of Interest Disclosure Form

The award of this RFP/Bid is subject to the provisions of Chapter 112, Florida Statutes and Palm Beach County Ordinance Section 2-443. All Proposers/Bidders must disclose within their proposal: the name of any officer, director, or agent who is also an employee of the City of Delray Beach.

Furthermore, all Proposers/Bidders must disclose the name of any City employee or relative of a City employee who owns, directly or indirectly, an interest in the Proposers/Bidders firm or any of its branches.

The purpose of this disclosure form is to give the City the information needed to identify potential conflicts of interest for key personnel involved in the award of this RFP/Bid.

The term "conflict of interest" refers to situations in which financial or other personal considerations may adversely affect, or have the appearance of adversely affecting, an employee's professional judgment in exercising any City duty or responsibility in administration, management, instruction, research, or other professional activities.

Please check one of the following statements and attach additional documentation if necessary:

☒ To the best of our knowledge, the undersigned firm has no potential conflict of interest as defined in Chapter 112, Florida Statutes and Section 2-443, Palm Beach County Code of Ordinances.

☐ The undersigned firm, by attachment to this form, submits information which may be a potential conflict of interest as defined in Chapter 112, Florida Statutes and Section 2-443, Palm Beach County Code of Ordinances.

Acknowledged by:

Grelite Corp

Firm Name

Eokwor

Signature

Emmanuel Okwor

Name and Title

01/19/2016

Date

Supplier: Grelite Corp

Drug-Free Workplace

If identical tie bids exist, preference will be given to the vendors who submit a certification with their bid/proposal certifying they have a drug-free workplace in accordance with Section 287.087, Florida Statutes. The drug-free workplace preference is applied as follows:

IDENTICAL TIE BIDS: Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State of by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program.

As the person authorized to sign this statement, I certify that this firm complies fully with the following requirements:

- 1) This firm publishes a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) This firm informs employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) This firm gives each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), this firm notifies the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) This firm imposes a sanction on or requires the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- 6) This firm will continue to make a good faith effort to maintain a drug-free workplace through implementation of this section.

Grelite Corp

Firm Name

Eokwor

Signature

Emmanuel Okwor President

Name and Title

1/19/2016

Date

Supplier: **Grelite Corp**

Public Entity Crimes

NOTIFICATION OF PUBLIC ENTITY CRIMES LAW

Pursuant to Section 287.133, *Florida Statutes*, you are hereby notified that a person or affiliate who has been placed on the convicted contractors list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity; may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals on leases or real property to a public entity; may not be awarded or perform work as a contractor, supplier, sub-Proposer, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 [F.S.] for Category Two [\$35,000.00] for a period of thirty-six (36) months from the date of being placed on the convicted contractors list.

Acknowledged by:

Grelite Corp

Firm Name

Eokwor

Signature

Emmanuel Okwor President

Name and Title

1/19/2016

Date

Supplier: Grelite Corp

Acknowledgment of Addenda

The Proposer/Bidder hereby acknowledges the receipt of the following addenda, which were issued by the City and incorporated into and made part of this RFP/Bid. The Proposer/Bidder acknowledges that it is solely responsible for ensuring that it is aware of, and in receipt of, all addenda.

ADDENDUM NUMBER	DATE RECEIVED	PRINT NAME OF AGENT	TITLE OF AGENT	SIGNATURE OF AGENT
N/A				

Supplier: **Grelite Corp**

**City of Delray Beach
Purchase Order Terms and Conditions**

1. **ACCEPTANCE:** This order is for the purchase of goods ("the Goods"). The Buyer's offer to the Seller and the Seller's acknowledgement to the Buyer shall constitute Seller's acceptance of such order including all of the terms and conditions herein set out. In the absence of such acknowledgement, commencement of delivery of the Goods and acceptance of such deliveries by Buyer shall constitute a firm contract on the terms and conditions hereof. This order is subject to the following terms and conditions and no others unless there is a signed agreement between the parties providing otherwise.
2. **WARRANTY-PRODUCT:** The Seller expressly warrants that the Goods shall be merchantable within the meaning of Article 2-314(2) of the Uniform Commercial Code as provided by Florida Law and in effect on the date of this order. In addition to all warranties which may be prescribed by law, the Goods shall conform to specifications, drawing, and description and shall be free from defects in materials and workmanship. Seller also warrants that to the extent the Goods are not manufactured pursuant to detailed designs furnished by Buyer they will be free from defects in design. Such warranties, including warranties prescribed by law shall run to Buyer, its successor, assigns, and customers, and to users of the Goods for a period of one (1) year after delivery unless otherwise stated.
3. **INDEMNITY:** Seller shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend Buyer, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Seller, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this order including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against Buyer by reason of any such claim, cause of action, or demand, Seller shall, upon written notice from Buyer, resist and defend such lawsuit or proceeding by counsel satisfactory to Buyer or, at Buyer's option, pay for an attorney selected by the City Attorney to defend Buyer. The obligations of this section shall survive the expiration or earlier termination of this order. To the extent considered necessary by the Chief Purchasing Officer and the City Attorney, any sums due Seller under this order may be retained by Buyer until all of Buyer's claims for indemnification pursuant to this order have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by the Buyer.
4. **INSURANCE:** Seller shall procure and maintain liability insurance, including contractual liability coverage, with minimum limits of \$300,000 combined single limits to be effective during period of warranty with such higher limits as Buyer shall reasonably request of Seller. Seller shall furnish to Buyer upon request a Certificate of Insurance evidencing the foregoing coverage and limits.
5. **COMPLIANCE WITH LAWS:** Seller shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this order.
6. **LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL:** This order shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Order, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Order shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its

residency or other jurisdictional device. **BY ACCEPTING THIS ORDER, SELLER AND BUYER HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS ORDER. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS ORDER AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

7. **MATERIALITY AND WAIVER OF BREACH:** Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this order and that each is, therefore, a material term hereof. Buyer's failure to enforce any provision of this order shall not be deemed a waiver of such provision or modification of this order. A waiver of any breach of a provision of this order shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this order.
8. **ALLOCATION OF RISK:** This risk for any damage to or destruction of the goods shall be borne by the Seller at all times until delivery to the control of the Buyer, which shall be the point at which the Buyer actually receives the goods for use and has accepted such.
9. **REPAIRS - NON ACCEPTANCE:** If any of the goods are delivered in a defective or non-working condition, efforts of the Buyer to correct such defect shall not constitute an acceptance where commercially reasonable in extent and cost, so that the Buyer may still reject the goods where the attempt to repair has proved unsuccessful.
10. **PLACE OF DELIVERY:** The goods shall be delivered to the City of Delray Beach, Florida, at address stated on the order.
11. **INSPECTION GOODS:** The Buyer shall have the right to inspect all goods before accepting delivery or making payment therefore. If rejected, the goods will be returned at Seller's risk, and all handling and transportation expenses, both ways, will be borne by and assumed by Seller. When material has been rejected by Buyer and returned for replacement, it is essential that Seller receive new shipping instructions from Buyer before making the replacement. Inspection and approval for acceptance shall be made by the appropriate user department. The expense of inspection shall be borne by the Buyer except as to goods which are properly rejected as non-conforming. Inspection shall be made within fourteen (14) calendar days of the delivery of goods.
12. **NOTICE OF DEFECTS:** It is expressly agreed that all claims for alleged damages or defective goods, shortage, or other cause shall be deemed waived unless made in writing and sent by Buyer within twenty (20) calendar days after Buyer learns of the alleged defect, damage, shortage, or other cause giving rise to the claim. However, any defects incapable of discovery shall not be deemed waived by the provisions herein, and this provision shall not be deemed a waiver of any warranties set forth herein or in any modification of this Order.
13. **FITNESS FOR PARTICULAR PURPOSE:** Buyer makes no warranties except as set forth herein provided that notwithstanding any other provisions to the contrary herein, Buyer may have sought the expertise of Seller with respect to the use of such goods. In that event, Seller hereby agrees that any document exhibiting a request by Buyer for goods for a particular purpose, a reliance by Buyer upon the expertise of Seller with respect to the use of the goods, or any other similar such request or reliance shall constitute a modification to the terms of this Order which shall effect a warranty of fitness for a particular purpose.
14. **TAX EXEMPTION:** The City of Delray Beach is exempt from State Sales Tax and Federal Excise Taxes. Where tax applies, the invoice must show gross, price, amount of tax, and net price. Exception certificate will be provided upon request.
15. **INDEPENDENT CONTRACTOR:** Seller is an independent contractor under this Order. Services provided by Seller pursuant to this Order shall be subject to the supervision of Seller. In providing such services, neither Seller nor its agents shall act as officers, employees, or agents of Buyer. No partnership, joint venture, or other joint relationship is created hereby. Buyer does not extend to Seller or Seller's agents any authority of any kind

to bind Buyer in any respect whatsoever.

- 16. PUBLIC ENTITY CRIME ACT:** Seller represents that the acceptance of this order will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to Buyer, may not submit a bid on a contract with Buyer for the construction or repair of a public building or public work, may not submit bids on leases of real property to Buyer, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with Buyer, and may not transact any business with Buyer in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this order and recovery of all monies paid by Buyer pursuant to this Order, and may result in debarment from Buyer's competitive procurement activities.

In addition to the foregoing, Seller further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Seller has been placed on the convicted vendor list.

- 17. THIRD PARTY BENEFICIARIES:** Neither Seller nor Buyer intends to directly or substantially benefit a third party by this Order. Therefore, the parties agree that there are no third party beneficiaries to this Order and that no third party shall be entitled to assert a right or claim against either of them based upon this Order.
- 18. ASSIGNMENT AND PERFORMANCE:** Neither this Order nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. Buyer may terminate this Order, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Seller of this Order or any right or interest herein without Buyer's written consent. Seller shall perform its duties, obligations, and services under this Order in a skillful and respectable manner. The quality of Seller's performance and all interim and final product(s) provided to or on behalf of Buyer shall be comparable to the best local and national standards.
- 19. SEVERANCE:** In the event a portion of this Order is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless Buyer or Seller elects to terminate this Order. An election to terminate this Order based upon this provision shall be made within seven (7) days of final court action, including all available appeals.
- 20. AMENDMENTS:** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Order and executed by the Buyer and Seller or others delegated authority to or otherwise authorized to execute same on their behalf.
- 21. PRIOR ORDERS:** This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Order that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.
- 22. PAYABLE INTEREST:** Payment of Interest. Buyer shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Seller waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Order. Rate of Interest. In any instance where the prohibition or limitations of this Section are determined to be invalid or unenforceable, the annual rate of interest payable by Buyer under this Order, whether as prejudgment interest or for any other purpose, shall be .025 percent simple

interest (uncompounded).

23. PUBLIC RECORDS: Seller shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, Seller agrees to:

- a. Keep and maintain all records that ordinarily and necessarily would be required by the Buyer.
- b. Provide the public with access to public records on the same terms and conditions that the Buyer would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
- d. Meet all requirements for retaining public records and transfer, at no cost, to the Buyer all records in possession of the Seller at the termination of the contract and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Buyer in a format that is compatible with the information technology systems of the Buyer. All records shall be transferred to the Buyer prior to final payment being made to the Seller.
- e. If Seller does not comply with this section, the Buyer shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

24. INSPECTOR GENERAL: Seller 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 Seller and its sub licensees and lower tier sub licensees. Seller understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Seller or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the Buyer to be a material breach of this Order.