



# **CITY OF DELRAY BEACH**

100 NW 1<sup>st</sup> AVENUE, DELRAY BEACH, FL 33444

## **Bid 2016-099 Neighborhood Services Division Housing Rehabilitation Program (14-507)**

MAYOR	- CARY D. GLICKSTEIN
VICE MAYOR	- SHELLY PETROLIA
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Purchasing Department ♦ (561) 243-7161 ♦ [purchasing@mydelraybeach.com](mailto:purchasing@mydelraybeach.com)

**CITY OF DELRAY BEACH  
INVITATION TO BID  
BID 2016-099**

<b>Title:</b>	<b>Neighborhood Services Housing Rehabilitation Program (14-507)</b>
<b>Bidder Name:</b>	

**Addenda Enclosed** \_\_\_\_\_ **thru** \_\_\_\_\_

**Submission Deadline:** **May XX, 2016**  
**2:00 P.M.**

**Submissions Accepted Via:** **Mail or in Person**

**Submit to:** **City of Delray Beach  
Purchasing Division  
100 NW 1<sup>st</sup> Avenue  
Delray Beach, FL 33444**

**Comments:** **A fax copy will not be accepted as a  
sealed bid.**

**City of Delray Beach**

**Time Stamped In:**

# CITY OF DELRAY BEACH

## Bid 2016-099 Neighborhood Services Division Housing Rehabilitation Program 14-507

### Contents

INVITATION TO BID .....	2
SECTION 1: GENERAL CONDITIONS .....	7
SECTION 2: SPECIAL CONDITIONS .....	24
SECTION 3: SCOPE OF WORK .....	29
SECTION 4: FORMS FOR BID.....	30
Form 1 .....	31
Form 2 .....	32
Form 3.....	33
Form 4.....	34
Form 5.....	35
Form 6.....	36
Form 7 .....	37
Form 8.....	38
Form 9.....	39
Form 10.....	40
Form 11 .....	41
Form 12.....	42
Form 13.....	44
SECTION 5: WRITE UP.....	45
SAMPLE AGREEMENT .....	46
SECTION 6: ATTACHMENTS .....	66



# CITY OF DELRAY BEACH

TEL: (561) 243-7161

FAX: (561) 243-7166

## PURCHASING DEPARTMENT

### INVITATION TO BID

**BID NO: 2016-099**

**TITLE: Housing Rehabilitation Program  
14-507**

**ISSUE DATE: May XX, 2016**

**DEPARTMENT: Community Improvement  
(Neighborhood Services Division)**

**DUE DATE: May 23, 2016**

**TIME: 2:00 PM**

This Invitation to Bid (ITB), General Conditions, Instructions to Bidders, Special Conditions, Specifications, Addenda and/or any pertinent document form a part of this bid and by reference are made a part thereof.

**SCOPE OF SERVICES: Housing Rehabilitation Program**

**OPTIONAL PRE-BID CONFERENCE: May XX, 2016 @ 11:00 AM**

**DUE DATE: May XX, 2016 2:00PM** at which time all bids will be publicly opened and read.

### INSTRUCTIONS

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

Bidsync – [www.bidsync.com](http://www.bidsync.com)

Request via email [purchasing@mydelraybeach.com](mailto: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.

- A. **REQUIRED INFORMATION:** The City ITB contains various sections requiring completion. The bid form sections and all other requested information in this ITB must be completed prior to the Due Date and Time set for bid opening and included with the ITB or the bidder may be found non-responsive. Bidder may be required to complete and supply supplemental information at a date after bid opening. Failure to complete supplemental information requirements in a timely manner, prior to Commission award, may be used by the City in determining a Bidder's responsibility.
- B. **CORRESPONDENCE:** The number of this ITB must appear on all correspondence, or inquiries, pertaining to this ITB.

- C. **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.
- D. **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.
- E. **ADDENDA:** Any interpretations, corrections or changes to this ITB 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 ITB, 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.
- F. **SAMPLES:** Any catalog, brand names, or manufacturer's reference in this ITB is descriptive and not restrictive, and is used to indicate type and quality level desired for comparison purposes unless specifically excluded. Bidders must quote as listed or give equal. If item offered is other than as indicated, bidder must state the 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.
- G. **PRICING:** Bid proposal submitted on Exhibit A, must be held firm for one hundred eighty (180) days to allow for evaluation unless otherwise stated in this ITB.
- H. **BILLING INSTRUCTIONS AWARDED FIRM:** Invoices must be delivered to City of Delray Beach, Neighborhood Services, 100 NW 1st Avenue, Delray Beach, FL 33444.
- I. **TAXES:** The City 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.
- J. **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. The unit price for each of the several items in the proposal of each Bidder shall include its pro-rata share of overhead so that the sum of the products obtained by multiplying the quantity for each item by the unit price Bid represents the total Bid.
- K. **WARRANTY/GUARANTEE LAWS AND REGULATIONS:** By submittal of this bid in response to this ITB, in addition to the guarantees and warranties provided by law, Bidder expressly guarantees and warrants as follows:
- i. 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 Bidder will bear the cost of inspecting and/or testing articles rejected.
  - ii. That the articles to be delivered hereunder will not infringe on any valid patent, trademark, trade name, or copyright, and that the Bidder will, at Bidder'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.
- iii. 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.
  - iv. That nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of the City.
- L. **PACKAGING:** Unless otherwise indicated, items will be new, unused, and in first rate condition in containers suitable for damage-free shipment and storage.
- M. **F.O.B./DAMAGE:** Items shall be bid F.O.B. delivered, designated location, and shall include all delivery and packaging costs. The City 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.
- N. **PAYMENT TERMS:** Payment terms are net 45 unless otherwise specified by the City in the ITB.
- O. **ELECTRONIC BIDS:** Electronic bids are to be submitted through a secure mailbox at BidSync ([www.bidsync.com](http://www.bidsync.com)) until the date and time as indicated in this ITB. 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 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.
- P. **PRESENTATION OF BIDS – PAPER SUBMISSION:** Completed bids 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, Purchasing Office, 100 Northwest 1<sup>st</sup> 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 Bidder's name, return address, ITB number, ITB 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 ITB and to ensure their bid reaches the Purchasing Office on/or before the Due Date and Time (local time). Included in the container 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 Adobe<sup>®</sup> Portable Document Format (pdf).
- Q. **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.
- R. **LATE BIDS – PAPER SUBMISSION:** Bids received in the purchasing division after submission deadline shall be returned unopened and will be considered void and unacceptable. The City is not responsible for the lateness of mail carrier, weather conditions, etc.

- S. **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.
- T. **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 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 Agreement and, according to state law all bids received will be available for inspection at that time.
- U. **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.
- V. **EVALUATION:** Bids will be evaluated as outlined in the ITB.
- W. **AWARD OF BID:** The City 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.
- X. **SPLIT AWARD:** the City reserves the right to award a separate Agreement to separate Bidders for each item/group or to award one agreement for the entire bid. The City reserves the right to take into consideration agreement administration costs for multiple award contracts when determining low bid.
- Y. **EXECUTION OF AGREEMENT:** The Successful Bidder will be required to execute the Agreement, a sample of which is attached hereto and made a part hereof. The Agreement will incorporate the Successful Bidder's bid and any subsequent information requested from the Successful Bidder by the City during the evaluation process.
- The City will transmit the Agreement to the recommended bidder for execution. Bidder agrees to deliver two duly executed copies of the Agreement to the City within five (5) calendar days of receipt
- Z. **SEALED BIDS:** Sealed bids will be received in the Purchasing Office until the date and time as indicated above. Bids will be publicly opened and read aloud, immediately after the established closing time and date, at City Hall, 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, Florida, first floor Conference Room. Bidders and the general public are invited and encouraged to attend.

- AA. All bids shall be submitted in sealed container, mailed or delivered to the City of Delray Beach, Purchasing Department, 100 Northwest 1<sup>st</sup> Avenue, Delray Beach, Florida 33444. Bids time-stamped at a time later than the Due Date and Time, will not be considered for award and will be returned to the Bidder
- BB. **INQUIRIES:** Questions regarding this solicitation must be sent through email to purchasing, [purchasing@mydelraybeach.com](mailto:purchasing@mydelraybeach.com). To ensure a timely response, inquiries should be made by **May XX, 2016 at 5:00 p.m.** Information in response to inquiries may be published as an Addendum.
- CC. **CITY'S ACCEPTANCE:** Unless otherwise specified herein, the bidder will allow a minimum of one hundred eighty days (180) days from the last date for receiving of bids for acceptance of its bid by the City Manager and/or City Commission.



## **SECTION 1: GENERAL CONDITIONS**

### **Bid 2016-099**

### **Housing Rehabilitation Program**

Whenever used in any of the Agreement Documents, the following meanings shall be given to the terms herein defined:

#### **DEFINITION:**

Bid shall mean the Bidders response to this ITB.

Agreement means the Agreement executed by the City and the Contractor, of which these GENERAL CONDITIONS, PARTS I and II form a part.

Contractor means the person, firm or corporation entering into the Agreement with the Homeowner to construct and install the Improvements embraced in this Agreement.

Engineer means the City of Delray Beach, Community Improvement Department, serving the Local Public agency with architectural or engineering services, his successor, or any other person or persons employed by said Local Agency for the purpose of directing or having in charge the work embraced in this Agreement, the said engineer acting, directly or having in charge the work embraced in this Agreement, the said Engineer acting directly or indirectly through any Assistant Engineer having immediate charge of a portion thereof limited by the particular duties entrusted to him.

Local Government means the City (town, borough, or political subdivision) within which the Project Area is situated.

Agreement Documents means and shall include the following: Executed Agreement, Addenda (if any), Invitation to Bid, Instructions to Bidders, Signed Copy of Bid, General Conditions; Parts I and II, Special Conditions, Technical Specifications and Drawings.

Technical Specifications means that part of the Agreement documents which describes outlines and stipulates; the quality of workmanship required; and the methods to be used in carrying out the construction work to be performed under the Agreement.

Addendum or Addenda means any changes, revisions or clarifications of the Agreement Documents which have been duly issued by the Neighborhood Services Division to prospective Bidders prior to the time of receiving Bids.

Secretary means the Secretary of Housing and Urban Development, or other persons who may be at the time acting in the capacity or authorized to perform the functions of such secretary, or the authorized representative thereof.

#### **SUPERINTENDENCE BY CONTRACTOR**

a. Except where the Contractor is an individual and gives his/her personal superintendence to the work, the Contractor shall provide a competent superintendent, satisfactory to the City, on the work at all times during working hours with full authority to act for him/her. The Contractor shall also provide an adequate staff for the proper coordination and expediting of his/her work.

b. The Contractor shall lay out his/her work and he/she shall be responsible for all work executed by him/her under the Contract. He/she shall verify all figures and elevations before proceeding with the work and will be held responsible for any error resulting from his/her failure to do so.

## **SUBCONTRACTORS**

a. The Contractor shall not execute an agreement with any subcontractor or permit any subcontractor to perform any work included in the Agreement until he/she has submitted a non-collusion affidavit from the subcontractor in substantially the form as shown elsewhere in these Agreement Documents and has received written approval of such subcontractor from the City.

b. No proposed subcontractor shall be disapproved by the Neighborhood Services Division except for cause.

c. The contractor shall be as fully responsible to the Neighborhood Services Division for the acts and omissions of his/her subcontractors, and of persons either directly or indirectly employed by them, as he/she is for the acts and omissions of persons directly employed by him/her.

d. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to require compliance by each subcontractor with the applicable provisions of the Agreement.

e. Nothing contained in the Agreement shall create any contractual relations between any subcontractor and the City.

## **OTHER CONTRACTS**

The City may award, or may have awarded other contracts or agreements for additional work, and the Contractor shall cooperate fully with such other Contractors, by scheduling his/her own work with that to be performed under other contracts or agreements as may be directly by the City. The Contractor shall not commit, or permit any act which will interfere with the performance of work by any other Contractor as scheduled.

## **FITTING AND COORDINATION OF WORK**

a. The Contractor shall be responsible for the proper fitting of all work and for the coordination of the operations of all trades, subcontractor or material men engaged upon the Agreement. Contractor shall be prepared to guarantee to each of his subcontractors the locations and measurements which they may require for the fitting of their work to all surrounding work.

b. Pre-Construction Conference. At the awarding of the Agreement and the issuance of the "Notice to Proceed" order, a pre-construction conference will be held between the Contractor, a representative of the Neighborhood Services Division and any other persons designated by the City to have a material interest in the work. The time and place of this conference will be set by the Neighborhood Services Division. The Contractor shall bring with him to this conference a copy of his proposed work progress schedule for the job.

c. Notice to Proceed. For Agreements bearing a specified number of calendar days to

complete, as stated in the bid form, effective date for starting the work shall be so stated in writing by the "Notice to Proceed" issued by the Neighborhood Services Division. The effective date of the beginning of work stipulated in the "Notice to Proceed" shall be set at a date no later than ten (10) calendar days after the date of execution of the Agreement Documents, unless otherwise mutually agreed by the Contractor and the Neighborhood Services Division.

## **MUTUAL RESPONSIBILITY OF CONTRACTORS**

If, through acts of neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor shall settle with such other Contractor or subcontractor will so settle. If such other Contractor or subcontractor shall assert any claim against the City on account of any damage alleged to have been so sustained, the City will notify this Contractor who shall defend at his own expense any suit based upon such claim and, if any judgment or claims against the City shall be allowed, the Contractor shall pay or satisfy such judgment or claims and pay all costs and expenses in connection therewith.

## **PAYMENTS TO CONTRACTOR**

Payments shall be made on a job completion basis after approved final inspection of the work and loan closing except as follows:

Partial payments of up to 75% of the Agreement amount with a 10% retention of each draw at the listed percentage work completion of the Agreement to include only that part of the work completed in accordance with the plans and specifications, may be authorized at the discretion of the Neighborhood Services Division Office, where the Agreement amount for an individual project exceeds \$7,000.

All material and labor used in basing percentage of work completed must be in place and no payment shall be made for stored material. It is agreed that time is of the essence under this Agreement, and in the event that the Contractor shall fail in the full performance of the entire work within the specified time limit, said Contractor shall be liable under the Agreement for liquidated damages, a sum of Fifty Dollars (\$50.00) per each consecutive day the Agreement remains incomplete beyond the said time limit. The Contractor shall be responsible for all motel and furniture storage bills that are incurred by the Owner during relocation when the time limit is exceeded for completion. In the event of such default by the Contractor, The City's Neighborhood Services Division shall exercise the right to hold back this sum from compensation otherwise paid to the Contractor for the expressed and sole purpose of authorizing the Neighborhood Services Division to transfer this sum to the appropriate Neighborhood Services Block Grant Account in order to help defray the necessary increased costs expensed under the Program as a result of inexcusable delays caused by the Contractor. Excusable delays are outlined in General Conditions.

## **CHANGES IN THE WORK**

a. The Neighborhood Services Division may make changes in the scope of the work required to be performed by the Contractor under the Agreement of making the Agreement, and without relieving or releasing the Contractor from any of his/her obligations under the Agreement or any guarantee given by him pursuant to the Agreement provisions, and without affecting the validity of the guaranty bonds, and without relieving or releasing the surety or sureties of said bonds. All such work shall be executed under the terms of the original Agreement unless it is expressly provided otherwise.

b. Except for the purpose of affording protection against any emergency endangering health, life, limb or property, the Contractor shall make no change in the materials used or in the specified manner of constructing and/or installing the improvements or supply additional labor, services or materials beyond that actually required for the execution of the Agreement, unless in pursuance of a written order from the Neighborhood Services Division authorizing the Contractor to proceed with the change. No claim for an adjustment of the Agreement Price will be valid unless so ordered.

c. If applicable unit prices are contained in the Agreement (established as a result of either a unit price bid or a Supplemental Schedule of Unit Prices), the Neighborhood Services Division may order the Contractor to proceed with desired unit prices specified in the Agreement; provided that in case of a unit price contract the net value of all changes does not increase or decrease the original total amount shown in the Agreement by more than twenty-five percent (25%) in accordance with the Section entitled Unit Prices, under SPECIAL CONDITIONS.

d. If applicable unit prices are NOT contained in the Agreement or if the total net change increases or decreases the total Agreement Price more than twenty-five percent (25%), the Neighborhood Services Division shall, before ordering the Contractor to proceed with desired changes, request an itemized proposal from him covering the work involved in the change after which the procedure shall be as follows:

(1) If the proposal is acceptable, The Neighborhood Services Division will prepare the change order in accordance therewith for acceptance by the Contractor and

(2) If the proposal is not acceptable and prompt agreement between the two parties cannot be reached, the Neighborhood Services Division may order the Contractor to proceed with the work on a cost-plus limited basis. A cost-plus limited basis is defined as the net cost of the Contractor's labor, materials and insurance plus fifteen percent (15%) of said net cost to cover overhead and profit, the total cost not to exceed a specified limit.

e. Each change order shall include in its final form:

(1) A detailed description of the change in the work,

(2) The Contractor's proposal (if any) or a conformed thereof,

(3) A definite statement as to the resulting change in the Agreement price and/or time, and

(4) The statement that all work involved in the change shall be performed in accordance with Agreement requirements except as modified by the change order.

### **CLAIMS FOR EXTRA COST**

a. If the Contractor claims that any instructions by Drawings or otherwise, involve extra cost or extension of time, he/she shall within ten (10) days after the receipt of such instructions and in any event before proceeding to execute the work, submit his/her protest thereto in writing to the Neighborhood Services Division, stating clearly and in detail the basis of his/her objections. No such claims will be considered unless so made.

b. Any discrepancies which may be discovered between actual conditions and those represented by the Drawings and Maps shall at once be reported to the Neighborhood Services Division and work shall not proceed except at the Contractor's risk, until written instructions have been received by him/her from the Neighborhood Services Division.

c. If, on the basis of the available evidence, the Neighborhood Services Division determines that an adjustment of the Agreement Price and/or time is justifiable, the procedure shall be as provided in Section 108 thereof.

## **TERMINATION OF DELAYS**

In the event that any of the provisions of the Agreement are violated by the Contractor, or by any of his/her subcontractors, the Owner, with the approval of the City Neighborhood Services Division, may serve written notice upon the Contractor of his/her intention to terminate the Agreement and said notices will contain the reasons for such intention to terminate the Agreement. The Agreement shall, upon the expiration of a ten (10) day period, cease and terminate, unless within said ten (10) day period after serving of notice upon the Contractor, such violation or delay shall cease and satisfactory arrangements for correction be made. In the event of any such termination, the Owner, may, for the purpose of completing the work, take over the work by entering into a subsequent Agreement. In this event, the Contractor shall be liable to the Owner, as represented by the Neighborhood Services Division, for any costs in excess of the Agreement amount stipulated herein or as amended by subsequent change orders, which are incurred in the completion of the defaulted work. The Contractor agrees to relieve this liability by providing an amount equal to the excess costs incurred. Payment shall be made to the City for the expressed and sole purpose of depositing this amount in the appropriate Neighborhood Services Account as a reimbursement to the Program.

The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any excusable delays due to the following:

1. Acts of the Government restricting labor, equipment or materials by reason of national emergency.
2. Acts on the part of the Owner or the Neighborhood Services Division.
3. Causes beyond the control and without the fault or negligence of the Contractor including but not restricted to the following: Acts of God, acts of the public enemy, acts of the Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes and unusually severe weather. (This does not include stop work orders for code violations.)

It shall be the responsibility of the Contractor to notify the City's Neighborhood Services Division in writing of any such delay within ten (10) consecutive days. Upon receipt of such notification the Neighborhood Services Division will evaluate the cause and extent of delay. If upon the basis of the facts and the terms of this agreement, the delay is found properly excusable, the City Neighborhood Services Division shall extend the time for project completion for a period of time commensurate with the period of the excusable delay. In the event of Agreement termination, the provisions of the Agreement pertaining to: Conflict of Interest, Governmental Audit; and Record Retention shall remain in full force and effect until such time as the provision regarding record retention has elapsed.

## **ASSIGNMENT OR NOVATION**

The Contractor shall not assign or transfer, whether by an assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under the Agreement without the written consent of the Neighborhood Services Division, provided, however, that assignments to banks, trust companies, or other financial institutions may be made without the consent of the Neighborhood Services Division. No assignment or novation of the Agreement shall be valid unless the assignment or novation expressly provides that the assignment of any of the Contractor's rights or benefits under the Agreement is subject to a prior lien for labor performed services rendered materials, tools and equipment supplied for the performance of the work under this Agreement in favor of all persons, firms or corporations rendering such labor or services or supplying such materials, tools or equipment.

## **DISPUTES**

a. All disputes arising under this Agreement or its interpretation except those disputes covered by FEDERAL LABOR-STANDARDS PROVISION under GENERAL CONDITIONS, PART II, whether involving law or fact or both, or extra work and all claims for alleged breach of Agreement shall within ten (10) days of commencement of the dispute be presented by the Contractor to the Neighborhood Services Division for decision. All papers pertaining to claims shall be filed in quadruplicate. Such notice need not detail the amount of the claim but shall state the facts surrounding the claim in sufficient detail to identify the claim, together with its character and scope. In the meantime, the Contractor shall proceed with the work as directed. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) days of its commencement, the claim will be considered only for a period commencing ten (10) days prior to the receipt by the Neighborhood Services Division of notice thereof.

b. The Contractor shall submit in detail his claim and his proof thereof. Each decision by the Neighborhood Services Division will be in writing and will be mailed to the Contractor by registered or certified mail, return receipt requested, directed to his/her last known address.

If the Contractor does not agree with any decision by the Neighborhood Services Division, he shall in no case allow the dispute to delay the work but shall notify the Neighborhood Services Division promptly that he is proceeding with the work under protest and he may then exempt the matter in question from the final release.

## **TECHNICAL SPECIFICATIONS AND DRAWINGS**

Anything mentioned in the Technical Specifications and not shown in the write-up, or shown in the write-up and not mentioned in the Technical Specifications, shall be of like effect as if shown on or mentioned in both. In case of difference between write-up and Technical specifications, the write-up shall govern. In case of any discrepancy in write-up or Technical specifications, the matter shall be immediately submitted to the Neighborhood Services Division, without whose decision said discrepancy shall not be adjusted by the Contractor, save only at his own risk and expense.



## **SHOP DRAWINGS**

a. All required shop drawings, machinery details, layout drawings, etc., shall be submitted to the Neighborhood Services Division in duplicate for approval sufficiently in advance of requirements to afford ample time for checking, including time for correcting, resubmitting and rechecking, if necessary. The contractor may proceed, only at his own risk, with manufacture or installation of any equipment or work covered by said shop drawings, etc., until they are approved and no claim, by the Contractor, for extension of the Agreement time will be granted by reason of his failure in this respect.

b. Any drawings submitted without the Contractor's stamp of approval will not be considered and will be returned to him/her for proper resubmission. If any drawings show variations from the requirements of the Agreement because of standard shop practice or other reason, the Contractor shall make specific mention of such variation in his/her letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment of Agreement price and/or time otherwise the Contractor will not be relieved of the responsibility for executing the work in accordance with the Agreement even though the drawings have been approved.

c. If a shop drawing is in accord with the Agreement or involves only a minor adjustment in the interest of the City not involving a change in Agreement price or time, the Neighborhood Services Division may approve the drawing. The approval shall be general, shall not relieve the Contractor from his responsibility for adherence to the Agreement or for any error in the drawing and shall contain in substance the following:

The modification shown on the attached drawing is approved in the interest of the City and the Neighborhood Services Division to effect an improvement for the Project and is ordered with the understanding that it does not involve any change in the Agreement Price or time; that it is subject generally to all Agreement stipulation and covenants; and that it is without prejudice to any and all rights of the City under the Agreement and surety bond or bonds.

## **REQUESTS FOR SUPPLEMENTARY INFORMATION**

It shall be the responsibility of the Contractor to make timely requests of the Neighborhood Services Division for any additional information not already in his possession which should be furnished by the Neighborhood Services Division under the terms of this Agreement and which he/she will be required in the planning and execution of the work. Such requests may be submitted from time to time as the need is approached, but each shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Each request shall be in writing and list the various items and the latest date by which each will be required by the Contractor. The first shall be submitted within two weeks after Agreement award and shall be as complete as possible at that time. The Contractor shall, if requested, furnish promptly any assistance and information the Neighborhood Services Division may require in responding to these requests of the Contractor. The Contractor shall be fully responsible for any delay in his/her work or to others arising from his/her failure to comply fully with the provisions of this Section.

## **MATERIALS AND WORKMANSHIP**

- a. Unless otherwise specifically provided for in the Technical Specifications, all workmanship, equipment, materials and articles incorporated in the work shall be new and the best grade of the respective kinds for the purpose. Where equipment, materials, articles or workmanship are referred to in the Technical Specifications as "equal to" any particular standard, the Neighborhood Services Division shall decide the question of equality.
- b. The Contractor shall furnish to the Neighborhood Services Division for approval the manufacturer's detailed specifications for all machinery, mechanical and other special equipment, as to type, performance characteristics, and all other pertinent information as required and shall likewise submit for approval as required full information concerning all other materials or articles which he proposes to incorporate the work. (See Section 117 thereof.)
- c. Machinery, mechanical and other equipment, materials and articles installed or used without such prior approval shall be at the risk of subsequent rejection.
- d. Materials specified by reference to the number or symbol of a specific standard such as an A.S.T.M. Standard, a Federal Specification or other similar standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Invitation to Bid, except as limited to type, class or grade or modified in such reference. The standards referred to, except as modified in the Technical Specifications shall have full force and effect as though printed therein.
- e. The City may require the Contractor to dismiss from the work such employee or employees as the City or the Neighborhood Services Division may deem incompetent or careless or insubordinate.

## **SAMPLES, CERTIFICATES AND TESTS**

- a. The Contractor shall submit all material or equipment samples, certificates, affidavits, etc., as called for in the Agreement documents or required by the Neighborhood Services Division, promptly after award of the Agreement and acceptance of the Contractor's bond. No such material or equipment shall be manufactured or delivered to the site, except at the Contractor's own risk, until the required samples of certificates have been approved in writing by the Neighborhood Services Division. Any delay in the work caused by late or improper submission of samples or certificates for approval shall not be considered just cause for an extension of the Agreement time.
- b. Each sample submitted by the Contractor shall carry a label giving the name of the Contractor, the project for which it is intended, and the name of the producer. The accompanying certificate of letter from the Contractor shall state that the sample complies with Agreement requirements, shall give the name and brand of the product, its place of origin, the name and address of the producer and all specifications or other detailed information which will assist the Neighborhood Services Division in passing upon the acceptability of the sample promptly. It shall also include the statement that all materials or equipment furnished for use in the project will comply with the samples and/or certified statements.
- c. Approval of any materials shall be general only and shall not constitute a waiver of the City's right to demand full compliance with Agreement requirements. After actual deliveries, the Neighborhood Services Division will have such check tests made as it deems necessary in each



instance and may reject materials and equipment or accessories which for cause, even though such materials and articles have been given general approval. If materials, equipment or accessories which fail to meet check tests have been incorporated in the work, the Neighborhood Services Division will have the right to cause their removal and replacement by proper materials or to demand and secure such reparation by the Contractor as is equitable.

d. Except as otherwise specifically stated in the Agreement, the cost of sampling and testing will be divided as follows:

(1) The Contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes, except those samples taken on the project by the Neighborhood Services Division.

(2) The Contractor shall assume all costs of retesting materials which fail to meet Agreement requirements.

(3) The Contractor shall assume all costs of testing materials offered in substitution for those found deficient.

(4) The City will pay all other expenses.

## **PERMITS AND CODES**

a. The Contractor shall give all notices required by and comply with all applicable laws, ordinances, and codes of the Local Government. All construction work and/or utility installations shall comply with all applicable ordinances and codes including all written waivers. Before installing any work, the Contractor shall examine the Drawings, Bid Proposal Work Write-up and Technical Specifications for compliance with applicable ordinances and codes and shall immediately report any discrepancies to the Neighborhood Services Division. Where the requirements of the Drawings, Bid Proposal Work Write-Up and Technical Specifications fail to comply with such applicable ordinances or codes, the Neighborhood Services Division will adjust the Agreement by Change Order to conform to such ordinances or codes (unless waivers in writing covering the difference have been granted by the governing body or department) and make appropriate adjustment in the Agreement Price or stipulated unit prices.

Should the Contractor fail to observe the foregoing provisions and proceed with the construction and/or install any utility at variance with any applicable ordinance or code, including any written waivers (notwithstanding the fact that such installations is in compliance with the Drawings, Bid Proposal Work Write-Up and Technical Specifications), the Contractor shall remove such work without cost to the City but a Change Order will be issued to cover only the excess cost the Contractor would have been entitled to receive, if the change had been made before the Contractor commenced work on the items involved.

b. The Contractor shall at his/her expense, secure and pay to the appropriate department of the Local Government the fees or charges for all permits for street paving, sidewalks, sheds, removal of abandoned water taps, sealing of house connection drains, pavements costs, buildings, electrical, plumbing, water, gas and sewer permits required by the local regulatory body of any of its agencies.

c. The Contractor shall comply with applicable local laws and ordinances governing the disposal of surplus, excavation material, debris and rubbish on or off the Project Area and commit not trespassing on any public or private property in any operation due to or connected

with the improvements embraced in this Contract.

### **CARE OF WORK**

a. The Contractor shall be responsible for all damages to person or property that occur as a result of this fault or negligence in connection with the prosecution of the work and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance, whether or not the same has been covered in whole or in part by payments made by the City.

b. In an emergency affecting the safety of life, limb or property, including adjoining property, the Contractor, without special instructions or authorization from the City and/or Neighborhood Services Division, is authorized to act at his/her discretion to prevent such threatened loss or injury and he shall so act. He shall likewise act if instructed to do so by the City. Any compensation claimed by the Contractor on account of such emergency work will be determined by the local Public Agency as provided in Section 109 thereof.

c. The Contractor shall avoid damage as a result of his/her operations to existing sidewalks, streets, curbs, pavements, utilities (except those which are to be replaced or removed), adjoining property, etc., and he/she shall at his/her own expense completely repair any damage thereto caused by his/her operations.

d. The Contractor shall store up, brace, underpin, secure, and protect as may be necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be in any way affected by the excavations of other operations connected with the construction of the improvements embraced in this Contract. The Contractor shall be responsible for the giving of any and all required notices to any adjoining or adjacent property owner or other party before the commencement of any work. The Contractor shall indemnify and save harmless the City from any damages on account of settlements or the loss of lateral support of adjoining property and from all loss or expense and all damages for which the City may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

### **ACCIDENT PREVENTION**

a. No laborer or mechanic employed in the performance of this Agreement shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health or safety as determined under construction safety and health standards promulgated by the Secretary of Labor.

b. The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes shall be observed and the Contractor shall take or cause to be taken such additional safety and health measures as the City may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, Inc. to the extent that such provisions are not in conflict with applicable laws.

c. The Contractor shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. The Contractor shall promptly furnish the City with reports concerning these matters.

d. The Contractor shall indemnify and save harmless the City from any claims for damages, resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result of any work conducted under this Contract.

## **SANITARY FACILITIES**

The Contractor shall furnish, install, and maintain ample sanitary facilities for the workers. As the need arises, a sufficient number of enclosed temporary toilets shall be conveniently placed as required by the sanitary codes of the State and Local Government. Drinking water shall be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing and governing health regulations.

## **USE OF PREMISES**

a. The Contractor shall confine his equipment, storage of materials, and construction operations to the Agreement Limits as shown on the Drawings and as prescribed by ordinances or permits, or as may be desired by the Neighborhood Services Division and shall not unreasonably encumber the site or public rights-of-way with his materials and construction equipment.

b. The Contractor shall comply with all reasonable instructions of the City and all existing state and local regulations regarding signs, advertising, traffic, fires, explosives, danger signals, and barricades.

## **REMOVAL OF DEBRIS, CLEANING, ETC.**

The Contractor shall, periodically or as directed during the progress of the work, remove and legally dispose of all surplus excavated material and debris, and keep the Project Area and public rights-of-way reasonably clear. Upon completion of the work, he shall remove all temporary construction facilities debris and unused materials provided for the work, and put the whole site of the work and public rights-of-way in a neat and clean condition. Trash burning on the site of the work is prohibited.

## **INSPECTION**

a. All materials and workmanship shall be subject to inspection examination, or test by the City at any and all times during manufacture or construction and at any and all places where such manufacture or construction is carried on. The City shall have the right to reject defective material and workmanship or require its correction. Unacceptable workmanship shall be satisfactorily corrected. Rejected material shall be promptly segregated and removed from the Project Area and replaced with material of specified quality without charge therefore. If the Contractor fails to proceed at once with the correction of rejected workmanship or defective material, the City may, by or otherwise, have the defects remedied or rejected materials removed from the Project Area and charge the cost of the same against any monies which may be due the Contractor, without prejudice to any other rights or remedies of the Neighborhood Services Division.

b. The Contractor shall furnish promptly all materials reasonably necessary for any tests which may be required. (See Section 117 hereof.) All tests by the City will be performed in

such a manner as not to delay the work unnecessarily and will be made in accordance with the provisions of the Technical Specifications.

c. The Contractor shall notify the Neighborhood Services Division sufficiently in advance of backfilling or concealing any facilities to permit proper inspection. If any facilities are concealed without approval or consent of the Neighborhood Services Division, the Contractor shall uncover for inspection and recover such facilities all at his own expense, when so requested by the City.

d. Should it be considered necessary or advisable by the Neighborhood Services Division at any time before final acceptance of the entire work to make an examination of work already completed by uncovering same, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective in any important or essential respect, due to fault of the Contractor or his subcontractors, the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If however, such work is found to meet the requirements of the Contract, the actual cost of labor and material necessarily involved in the examination and replacement, plus 15 percent of such costs to cover superintendence, general expenses and profit shall be allowed the Contractor and he shall, in addition, if completion of the work of the entire Agreement has been delayed thereby be granted a suitable extension of time on account of the additional work involved.

e. Inspection of materials and appurtenances to be incorporated in the improvements embraced in this Agreement may be made at the place of production, manufacture or shipment, whenever the quantity justifies it, and such inspection and acceptance, unless otherwise stated in the Technical Specifications, shall be final, except as regards (1) latent defects, (2) departures from specific requirements of the Contract, (3) damage or loss in transit, or (4) fraud or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of materials as a whole or part will be made at the Project Site.

f. Neither inspection, testing, approval nor acceptance of the work in whole or in part, by the City or its agents shall relieve the Contractor or his/her sureties of full responsibility for materials furnished or work performed not in strict accordance with the Contract.

## **REVIEW BY THE CITY OF DELRAY BEACH**

The City, its authorized representatives and agents and the Representative for the Secretary, shall, at all time, have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this Contract, provided, however, that all instructions and approval with respect to the work will be given to the Contractor by the City of Delray Beach through its authorized representatives and agents.

## **DEDUCTION FOR UNCORRECTED WORK**

If the Neighborhood Services Division deems it not expedient to require the Contractor to correct work not done in accordance with the Agreement Documents, an equitable deduction from the Agreement Price will be made by agreement between the Contractor and the City and subject to settlement, in case of dispute, as herein provided.

## **INSURANCE**

The Contractor shall not commence work under this Agreement until he/she has obtained all the insurance required under this paragraph and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on his/her subcontract until the insurance required of the subcontractor has been so obtained and approved.

a. Compensation Insurance: The Contractor shall procure and shall maintain during the life of this Agreement Workmen's Compensation Insurance as required by applicable State or territorial law for all his employees to be engaged in work at the site of the project under this Agreement and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this Agreement is not protected under the Workmen's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

b. Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall procure and shall maintain during the life of the Contract, Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the amounts specified in the Special Conditions.

c. Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall either (1) require each of his subcontractors to procure and to maintain during the life of his/her subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in the Special Conditions specified in subparagraph (b) thereof.

d. Scope of Insurance and Special Hazards: The Insurance required under subparagraphs (b) and (c) hereof shall provide adequate protection for the Contractor and his subcontractors, respectively against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by anyone directly or indirectly employed by him/her and, also against any of the special hazards which may be encountered in the performance of this Agreement as enumerated in the Special Conditions.

e. Proof of Carriage of Insurance: The Contractor shall furnish the City with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be cancelled or materially altered, except after ten (10) days written notice has been received by the City."

## **PATENTS**

The Contractor shall hold and save the City, its agents, its officers, and employees harmless from liability of any nature or kind, including costs and expenses, for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured in the performance of the Contract, including its use by the City, unless otherwise specifically stipulated in the Technical Specifications.

## **WARRANTY OF TITLE**

No material, supplies, or equipment to be installed or furnished under this Agreement shall be

purchased subject to any chattel mortgage or under a conditional sale, lease-purchase or in any part thereof is retained by the seller or supplier. The Contractor shall warrant good title to all materials, supplies and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same together with all improvements and appurtenances constructed or placed thereon by him/her to the City free from any claims, liens, or charges. Neither the Contractor nor any person, firm or corporation furnishing any material or labor for any work covered by this Agreement shall have any right to a lien upon any improvement of appurtenance thereon. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any bond given by the Contractor for their protection of any rights under any law permitting such persons to look to funds due the Contractor in the hands of the City,. The provisions of this paragraph shall be inserted in all subcontracts and materials contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal Agreement is entered into for such materials.

### **GENERAL GUARANTY**

Neither the final certificate of payment nor any provision in the Agreement nor partial or entire use of the improvements embraced in this Agreement by the City of the public shall constitute an acceptance or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting there from which shall appear within a period of twelve (12) months from the date of the final acceptance of the work. The City will give notice of defective materials and work with reasonable promptness.

### **COMPLIANCE WITH AIR AND WATER ACTS**

In compliance with the Clean Air Act, as amended, 42 U.S.C. 1857 et. seq., The Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et. seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part, as amended from time to time, the Contractor agrees that:

- (1) No facility to be utilized in the performance of this Agreement or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.
- (2) He will comply with all requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1251) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- (3) He will promptly notify the Owner of any notification received from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility utilized or to be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities.
- (4) He will include or cause to be included the provisions of paragraph (1) through (4) of this section in every nonexempt subcontract and that he will take such action as the Government may direct as a means of enforcing such provisions.

### **EQUAL EMPLOYMENT OPPORTUNITY**



(1) If the Agreement amount is \$10,000 or less, the following shall apply:

**During the Performance of.....**

a. The Contractor will not discriminate against any employee or the applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner setting for the provision of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

c. The Contractor will cause the foregoing provisions to be inserted in all subcontracts, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor provided that the foregoing provisions shall not apply to Contracts or subcontracts for standard commercial supplies or raw materials.

(2) If the Agreement amount exceeds \$10,000, the following conditions shall apply:

During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action will include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The Contractor will send to each labor union or representative of workers with which he had a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. The Contractor will furnish all information and reports required by Executive Order 11246

of September 24, 1865, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the Department and Secretary of Labor for purposes or investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Contractor may be declared ineligible for further Government Contracts or Federally assisted construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or Bidder. the Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or Bidder as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to Protect the interests of the United States.

### (3) Non-Segregated Facilities

a. The Contractor certifies that he/she does not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The Contractor covenants that he/she will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she will not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. As used in this paragraph, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating places, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin because of habit, local custom, or otherwise. The Contractor agrees that prior to award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he will retain such certifications in his files.

### **INTEREST OF CERTAIN FEDERAL AND OTHER OFFICIALS**

a. No Members of or delegate to the Congress of the United States and no Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit to arise from same: Provided, that the foregoing provision of this Section shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

b. No member, officer, or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the Project is located, and no other public official of such locality or localities who exercises any functions or responsibilities in connection with the Project during his/her tenure or for one year thereafter shall have any interest, direct or indirect,



in any Contract or Subcontract, or the proceeds thereof, for work to be performed under this Contract.

The Contractor will include the provisions of paragraphs (a) and (b) in every Subcontract so that such provisions will be binding upon each Subcontract.

### **SECTION 3 CLAUSE**

a. The work to be performed under this Agreement is on a Project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, Section 3 requires that to be the greatest extent feasible opportunities for training and employment be given lower income residents of the Project area and Contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

b. The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

c. The Contractor will send to each labor organization or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

## **SECTION 2: SPECIAL CONDITIONS**

### **Bid 2016-099**

#### **1. INSPECTION OF SITE**

Each bidder should visit the site of the proposed work prior to optional pre-bid conference and fully acquaint himself with the existing conditions there relating to construction and labor and should fully inform himself as to the facilities involved, the difficulties and restrictions attending the performance of the Contract. The Bidder should thoroughly examine and familiarize himself with the Drawings, Technical Specifications and all other Agreement Documents. The Contractor by the execution of the Agreement shall in no way be relieved of any obligations under it due to his failure to receive or examine any form or legal instrument or to visit the site and acquaint himself with the conditions there existing and the City will be justified in rejecting any claim based on facts regarding which he should have been on notice as a result thereof.

#### **2. ALTERNATIVE BIDS**

No alternative bids will be considered unless specifically requested by the Neighborhood Services Division.

#### **3. BID GUARANTY**

a. The Bid must be accompanied by a Bid guaranty which shall not be less than 5 percent (5%) of the amount of the Bids. At the option of the Bidder, the guaranty may be a certified check, bank draft, negotiable U.S. Government Bond (at par value), or a bid bond in the form attached. The Bid Bond shall be secured by a guaranty or a surety company listed in the latest issue of U.S. Treasury Circular 570. The amount of such Bid Bond shall be within the maximum amount specified for such company in said Circular 570. No Bid will be considered unless it is accompanied by the required guaranty.

Certified check or bank draft must be made payable to the order of the City. Cash deposits will not be accepted. The Bid guaranty shall insure the execution of the Agreement and the furnishing of the surety bond or bonds by the successful Bidder, all as required by the Agreement Documents.

b. Revised Bids submitted before the opening of Bids, whether forwarded by mail or fax, if representing an increase in excess of two percent (2%) of the original Bid, must have the Bid guaranty adjusted accordingly; otherwise the Bid will not be considered.

c. Certified check or bank drafts of the amount thereof, Bid Bonds, and negotiable U.S. Government Bonds of unsuccessful Bidders will be returned as soon as practical after the opening of the Bids.

#### **4. COLLUSIVE AGREEMENTS**

Each Contractor accepting a contract through the City for any portion of the work contemplated by the documents on which bidding is based shall execute an affidavit substantially in the form herein provided, to the effect that he/she has not entered into a collusive agreement with any other person, firm or corporation in regard to any Bid submitted.

**5. NON-SEGREGATED FACILITIES AGREEMENT**

Each Contractor accepting a contract through the City shall execute an affidavit in the form herein providing to the effect that he/she will not maintain or provide for segregated facilities.

**6. STATEMENT OF BIDDER'S QUALIFICATIONS**

Each Bidder shall, upon request of the Neighborhood Services Division, furnish for that purpose (a copy of which is included in the Agreement Documents) a statement of the Bidders qualifications, his experience record in constructing the type of improvements embraced in the Agreement, his organization and equipment available for the work contemplated and, when specifically requested by the Neighborhood Services Division, a detailed financial statement.

The Neighborhood Services Division shall have the right to take such steps as it deems necessary to determine the ability of the Bidder to perform his obligations under the Agreement and the Bidder shall furnish all such information and data for this purpose as it may request. The right is reserved to reject any Bid where an investigation of the available evidence or information does not satisfy the City that the Bidder is qualified to carry out properly the terms of the Agreement.

**7. PROJECT SITE**

The Project Area or Areas consists of the following:

- - - See Exhibit A - - -

**8. TIME FOR COMPLETION**

a. The work which the Contractor is required to perform under this Agreement shall be commenced at the time stipulated by the City in the "Notice to Proceed" to the Contractor and shall be fully completed within (60) consecutive calendar days thereafter unless otherwise stated in the bid instructions.

**9. COMPENSATION, BASIS FOR PAYMENT, AND LIQUIDATED DAMAGES**

Payments shall be made on a job completion basis after approved final inspection of the work and loan closing except as follows:

a. Partial payments of up to 75% of the Agreement amount with a 10% retention of each draw at the listed percentage of work completion of the Agreement to include only that part of the work completed in accordance with the plans and specifications, may be authorized at the discretion of the Neighborhood Services Office, where the Agreement amount for an individual project exceeds \$7,000.

b. All materials and labor used in basing percentage of work completed must be in place and no payment shall be made for stored material. It is agreed that time is of the essence under this Agreement, and in the event that the Contractor shall fail in the full performance of the entire work within the specified time limit, said Contractor shall be liable under the Agreement for liquidated damages, a sum of Fifty Dollars (\$50.00) per each consecutive day the Agreement remains incomplete beyond the said time limit. The Contractor shall be responsible for all motel and furniture storage bills that are incurred by the Owner during relocation when the time limit is exceeded for completion. In the event of such default by the Contractor, the City's Neighborhood Services Division shall exercise the right to hold back this sum from compensation otherwise paid to the

Contractor, for the expressed and sole purpose of authorizing the Neighborhood Services Block Grant Account in order to help defray the necessary increased costs expensed under the Program as a result of inexcusable delays caused by the Contractor. Excusable delays are outlined in General Conditions.

**10. SPECIAL HAZARDS**

The Contractor's and his/her subcontractor's Public Liability and Property Damage Insurance shall provide adequate protection against the following special hazards:  
NONE

**11. CONTRACTOR'S AND SUBCONTRACTOR'S PUBLIC LIABILITY, VEHICLE LIABILITY AND PROPERTY DAMAGE INSURANCE**

As required under Section 127 of the General Conditions, the Contractor's Public Liability Insurance and Vehicle Liability Insurance shall be in an amount not less than \$200,000 for injuries, including accidental death, to any one person, and subject to same limit for each person, in an amount not less than \$300,000 on account of one accident, and Contractor's Property Damage Insurance in an amount not less than \$50,000.

The Contractor shall either (1) require each of his/her subcontractors to procure and to maintain during the life of his/her subcontract, Subcontractor's Public Liability and Property Damage Insurance of the type and in the same amounts as specified in the preceding paragraph, or (2) insure the activities of his/her subcontractors in his/her own policy.

**12. RESPONSIBILITIES OF CONTRACTOR**

Except as otherwise specifically stated in the Agreement Documents and Technical Specifications, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, heat, power, transportation, superintendence, temporary construction of every nature charges, levies, fee or other expenses and all other services and facilities of every nature whatsoever necessary for the performance of the Agreement and to deliver all Improvements embraced in this Agreement complete in every respect within the specified time.

**13. COMMUNICATIONS**

a. All notices, demands, requests, instructions, approvals, proposals and claims must be in writing.

b. Any notice to or demand upon the Contractor shall be sufficiently given if delivered at the Office of the Contractor stated on the signature page of the Agreement (or at such other office as the Contractor may from time to time designate in writing to the City), or if deposited in the United States mail in a sealed, postage-paid envelope, or delivered by fax, in each case address to such office.

c. All papers required to be delivered to the Neighborhood Services Division shall, unless otherwise specified in writing to the Contractor, be delivered to the City of Delray Beach, Neighborhood Services Division, 100 Northwest 1st Avenue, Delray Beach, Florida 33444, and any notice to demand upon the Neighborhood Services sufficiently given if so delivered, or if deposited in the United States mail in a sealed, postage-prepaid envelope, or by fax to said Agency at such address, or to such other representatives of the City may subsequently specified in writing to the Contractor for

such purpose.

d. Any such notice shall be deemed to have been given as the time of actual delivery of (in the case of mailing when the same should have been received in due course of post, or by fax, at the time of actual receipt, as the case may be.)

e. This section does not apply to decision given pursuant to Section 112 (b) of this Contract.

#### **14. JOB OFFICES**

a. The Contractor and subcontractors may maintain adequate facilities on the project area for a job office and storage facility as it is necessary for the proper conduct of the work, but only with prior approval from the City.

b. Upon completion of the Improvements, or as directed by the City, the Contractor shall remove all such temporary structures and facilities from the site, same to become his/her property, and leave the site of the work in the condition required by the Contract.

#### **15. PARTIAL USE OF SITE IMPROVEMENTS**

The City, at its election may give notice to the Contractor and place in use these sections of the Improvements which have been completed, inspected and can be accepted as complying with the Technical Specifications and if in its opinion, each such section is reasonably safe, fit and convenient, for the use and accommodation for which it was intended, provided:

a. The use of such sections of the Improvements shall in no way impede the completion of the remainder of the work by the Contractor.

b. The Contractor shall not be responsible for any damaged or maintenance costs due directly to the use of such sections.

c. The use of such sections shall in no way relieve the Contractor of his/her liability due to having used defective materials or to poor workmanship.

d. The period of guarantee stipulated in Section 130 hereof shall not begin to run until the date of the final acceptance of all work which the Contractor is required to construct under this Contract.

#### **16. AGREEMENT DOCUMENTS AND DRAWINGS**

The City will furnish the Contractor without charge as many copies of the Agreement Documents, including Technical Specifications and Drawings, as deemed necessary to carry out the provisions of the Contract.

#### **17. 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 fifteen thousand dollars \$15,000. 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.

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

### SECTION 3: SCOPE OF WORK

#### Bid 2016-099

- A. **PURPOSE:** Housing Rehabilitation Program
- B. **METHOD OF ORDERING:** A Purchase Order will be issued for this request. Invoice(s) for service shall refer to the appropriate purchase order number. Invoices must show the purchase order number and shall be submitted to the Neighborhood Services Division, 100 NW 1st Avenue, Delray Beach, FL 33444.
- C. **INFORMATION:** Any technical questions in regard to the submission of your bids and/or "Specifications" should be addressed in email to: [purchasing@mydelraybeach.com](mailto:purchasing@mydelraybeach.com).
- D. **TECHNICAL SPECIFICATIONS:** : See Attachment
- E. **BID FORMAT:**

Chapter 1	Bid Cover Page (Scope of Work)
Chapter 2	Bid Submittal Signature Page Form 1
Chapter 3	Exhibit A
Chapter 4	Forms 2-12
Chapter 5	Form 13 Acknowledgement of Addenda
Chapter 6	Technical Specifications

## **SECTION 4: FORMS FOR BID**

Each Proposer must complete and submit the forms included in this Section 4 of the Bid. A Proposer may be disqualified if its forms are not completed fully and in compliance with the instructions contained herein.

- Form 1. Proposer's Submittal
- Form 2. Bid Policy Statement
- Form 3. Noncollusion Affidavit of Prime Bidder
- Form 4. Certification Of Non-Segregated Facilities
- Form 5. Public Entity Crimes
- Form 6. Drug-Free Workplace
- Form 7. Conflict of Interest
- Form 8. Section 3 Clause
- Form 9. Anti-Kickback Affidavit
- Form 10. Certification of Eligibility of General Contactor
- Form 11. Best Management Practices for the Construction Industry
- Form 12. Generic Regulated Substances List
- Form 13. Acknowledgement of Addenda
- Exhibit A. Pages (1-3)
- Exhibit B. Insurance Requirements



**Form 1**  
**BID SUBMITTAL SIGNATURE PAGE**

By signing this Bid, the Proposer 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: \_\_\_\_\_

Street Address: \_\_\_\_\_

Mailing Address (if different from Street Address): \_\_\_\_\_

Telephone Number(s): \_\_\_\_\_

Fax Number(s): \_\_\_\_\_

Email Address: \_\_\_\_\_

Federal Employer Identification Number: \_\_\_\_\_

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title(Print or Type)

\_\_\_\_\_  
Date

By signing this document, the Proposer agrees to all terms and conditions of this Solicitation.

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

**Form 2**  
**BID POLICY STATEMENT**

1. Bidders must be qualified, prior to the awarding of Bid.
2. Upon acceptance to the program, should a new contractor be low bidder, that new contractor is subject to being awarded only one pilot job. This pilot job will end upon final payment of project. After which the contractor shall be awarded no more than three jobs at one given time, as determined by Neighborhood Services staff.
3. No contractor shall be awarded or have under construction more than three (3) jobs at any one time. Should a contractor be low bidder on more than three (3) bids, he/she will be given the choice of which three (3) jobs he/she wants and the remainder will be awarded to the next low bidder.
4. All bids received shall fall within a 10% range of our in-house bid. Neighborhood Services Division reserves the right to award any bid not within the 10% range to the next lowest bidder within the 10% range, after consultation with the low bidder.
4. Should there be any large difference between any line item on the In-house Estimate and the contractor's bid estimate, the contractor and Neighborhood Services Representative shall meet and make necessary adjustments to insure equitable payments.

**Form 3**  
**NONCOLLUSION AFFIDAVIT OF PRIME BIDDER**

State of Florida } County of Palm Beach } ss.  
\_\_\_\_\_, being first duly sworn, deposes and says that:

1. He is \_\_\_\_\_ of \_\_\_\_\_, the Bidder that has submitted the attached Bid;
2. He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
3. Such Bid is genuine and is not a collusive or sham Bid;
4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Agreement for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Delray Beach or any person interested in the proposed Contract; and
5. The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Signed) \_\_\_\_\_  
\_\_\_\_\_  
(Title)

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_,  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced: \_\_\_\_\_

Seal

**Form 4**  
**CERTIFICATION OF NON-SEGREGATED FACILITIES**

The Bidder certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control where segregated facilities are maintained. The bidder certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The bidder agrees that a breach of this certification will be a violation of the Equal Opportunity clause in any contract resulting from acceptance of this bid. As used in the certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The bidder agrees that (excepts where he has obtained identical certification from proposed sub-contractors for specific time periods) he will obtain identical certifications from proposed sub-contractors prior to the award of sub-contracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

DATE: \_\_\_\_\_, 20\_\_\_\_

Official Address:

\_\_\_\_\_ BY: \_\_\_\_\_

\_\_\_\_\_ (Title)

\_\_\_\_\_ (zip code) \_\_\_\_\_

**Form 5**  
**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.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Firm Name

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_,

by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced: \_\_\_\_\_

SEAL

**Form 6**  
**DRUG-FREE WORKPLACE**

If identical tie bids exist, preference will be given to the Bidders 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 Bidders 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 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.

---

Firm Name

---

Signature

---

Name and Title(Print or Type)

---

Date

**Form 7**  
**CONFLICT OF INTEREST DISCLOSURE FORM**

The award of this Agreement is subject to the provisions of Chapter 112, Florida Statutes. All Proposers must disclose within their proposal: the name of any officer, director, or agent who is also an employee of the City.

Furthermore, all Proposers must disclose the name of any City employee who owns, directly or indirectly, an interest in the Proposer's 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 contract.

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 due to any other Cities, Counties, contracts, or property interest for this proposal.

\_\_\_\_\_ The undersigned firm, by attachment to this form, submits information which may be a potential conflict of interest due to other Cities, Counties, contracts, or property interest for this proposal.

Acknowledged by:

---

Firm Name

---

Signature

---

Name and Title(Print or Type)

---

Date

**Form 8**  
**SECTION 3 CLAUSE**

A. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this Agreement agree to comply with HUD's requirements in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractor's commitment under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.



State of Florida }  
SS:  
County of Palm Beach }

Signature \_\_\_\_\_

Title

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_,  
by \_\_\_\_\_.

Notary Public

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced: \_\_\_\_\_

Seal

**Form 10**  
**CERTIFICATION OF ELIGIBILITY OF GENERAL CONTRACTOR**

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, who, after being by me first duly sworn, deposes and says of his/her personal knowledge that

- (1) He/she is the \_\_\_\_\_ of \_\_\_\_\_, hereinafter referred to as the "General Contractor"; who submitted a proposal to perform work for the following project:

Project Name: \_\_\_\_\_

- (2) He/she is fully informed that the Proposal submitted for work to be performed under the above mentioned contract, is being funded, in whole or in part, by a Federally-assisted or insured contract; and
- (3) The General Contractor nor any of its officers, partners, owners or parties of interest is not named on the current General Services Administration List of Parties Excluded from Federal Procurement or Non-procurement Programs prior to award of the contract; and
- (4) The General Contractor acknowledges that should the contractor be subsequently found ineligible after award of the Agreement, its Construction Contract shall be terminated and the matter referred to the Department of Labor, the Department of Housing and Urban Development, or the General Services Administration for its action; and
- (5) The General Contractor acknowledges the responsibility of informing all of its subcontractors that this Agreement is being funded, in whole or in part, by a Federally-assisted or insured contract; and
- (6) The General Contractor acknowledged the responsibility that all of its subcontractors are to sign a "Certification of Eligibility of Subcontractors: as a part of its contract with such subcontractors, and that the "General Contractor" will retain such certifications in its files. Furthermore, should the subcontractor be subsequently found ineligible after award of the Construction Contract, its contract with the "General Contractor" shall be terminated and the matter referred to the Department of Labor, the Department of Housing and Urban Development, or the General Services Administration, for its action.

\_\_\_\_\_  
Signature

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced: \_\_\_\_\_

**Form 11**  
**CERTIFICATION OF ELIGIBILITY OF SUB-CONTRACTORS**  
(for use by Subcontractors)

Certification Regarding Debarment Suspension, Ineligibility and Voluntary Exclusion-Lower-Tier Covered Transactions pursuant to 24 CFR, Code of Federal Regulations, Part 24.510(b) and HUD Handbook 1300.13 REV.1:

- (1) By signing and submitting this proposal, the prospective lower-tier participant, certifies that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transition by any Federal department or agency.  
Further, I, we, provide the certification set out below:  
I, and any principals of my firm, understand that the certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that I, we, knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department or agency with which this transaction originated may pursue available remedies.
- (2) Further, I, and any principal of my firm, shall provide immediate written notice to the person to which this proposal is submitted if at any time I, we, learn that my/our certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (3) By submitting this proposal, I, and any principals of my firm, agree that should the proposed covered transaction be entered into, I, we, will not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation In this covered transaction unless authorized by the agency with which this transaction originated.
- (4) I, and any principals of my firm, further agree by submitting this proposal that I/we, will include this Certification, without modification, in all lower tier covered transactions and in all solicitations for lower-tier covered transacting.

---

Firm Name

---

Signature

---

Name and Title(Print or Type)

---

Date

**Form 12**  
**BEST MANAGEMENT PRACTICES FOR THE CONSTRUCTION INDUSTRY**

- A. The general Contractor, or if none, the property owner, shall be responsible for assuring that each contractor or subcontractor evaluates each site before construction is initiated to determine if any site conditions may pose particular problems for the handling of any Regulated Substances. For instance, handling Regulated Substances in the proximity of water bodies or wetlands may be improper.
- B. If any regulated substances are stored on the construction site during the construction process, they shall be stored in a location and manner which will minimize any possible risk of release to the environment. Any storage container of 55 gallons, or 440 pounds, or more containing Regulated Substances shall have constructed below it an impervious containment system constructed of materials of sufficient thickness, density and composition that will prevent the discharge to the land, groundwater, or surface waters, of any pollutant which may emanate from said storage container or containers. Each containment system shall be able to contain 150% of the contents of all storage containers above the containment system.
- C. Each contractor shall familiarize him/herself with the manufacturer's safety data sheet supplied with each material containing a Regulated Substance and shall be familiar with procedures required to contain and clean up any releases of the Regulated Substance. Any tools or equipment necessary to accomplish same shall be available in case of a release.
- D. Upon completion of construction, all unused and waste Regulated Substances and containment systems shall be removed from the construction site by the responsible contractor and shall be disposed of in a proper manner as prescribed by law.

## GENERIC REGULATED SUBSTANCES LIST

Regulated Substances are substances that may cause significant harm to human health and the environment (including surface and groundwater). The Palm Beach County Unified Land Development Code (ULDC) Article 14 Chapter, Wellfield Protection, regulates that storage, handling, use and production of Regulated Substances within wellfield zones which may impair present and future drinking water supplies. In addition, the ULDC, Article 4 Chapter D. Excavation requires that Best Management Practices for the Construction Industries be followed for Agricultural, West County Agricultural Area, TYPE II, TYPE IIIA and TYPE IIIB excavation activities.

Substances and materials from the following categories that are stored, handled, used or produced, and located within a wellfield zone or located on property as part of excavation activities are considered to be Regulated Substances.

Acid and basic cleaning solutions	Medical, pharmaceutical, dental, veterinary
Antifreeze and coolants	and hospital solutions
Arsenic and arsenic compounds	Mercury and mercury compounds
Bleaches and peroxides	Metal finishing solutions
Brake and transmission fluids	Oils
Braine Solution	Paints, primers, thinners, dyes, stains, wood
Casting & Foundry chemicals	preservatives, varnishing and cleaning compounds
Caulking agents and sealants	Painting solvents
Cleaning solvents	PCB's
Corrosion and rust prevention solutions	Pesticides and herbicides
Cutting fluids	Plastic resins, plasticizers and catalysts
Degreasing and parts cleaning solvents	Photo development chemicals
Disinfectants	Poisons
Electroplating solutions	Polishes
Explosives	Pool chemicals
Fertilizers	Processed dust and particulates
Fire extinguishing chemicals	Radioactive sources
Food processing wastes	Reagents and standards
Formaldehyde	Refrigerants
Fuels and fuel additives	Roofing chemicals and sealers
Glues, adhesives and resins	Sanitizers, disinfectants bactericides and
Greases	algacides
Hazardous waste	Soaps, detergents and surfactants
Hydraulic fluid	Solders and fluxes
Indicators	Stripping compounds
Industrial and commercial janitorial supplies	Tanning industry chemicals
Industrial process chemicals	Transformer and capacitor oils/fluids
Industrial sludge and still bottoms	Waste oils and antifreeze
Inks, printing and photocopying chemicals	Water and wastewater treatment chemicals
Laboratory chemicals	
Liquid storage batteries	

**Form 13**  
**ACKNOWLEDGMENT OF ADDENDA**

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

<b>ADDENDUM NUMBER</b>	<b>DATE RECEIVED</b>	<b>PRINT NAME OF PROPOSER'S AGENT</b>	<b>TITLE OF PROPOSER'S AGENT</b>	<b>SIGNATURE OF PROPOSER'S AGENT</b>

## SECTION 5: WRITE UP

### Bid No. 2016-099 Housing Rehabilitation Program

#### A. COST : Complete Exhibit A

- Case 14-507 – 1621 NE 3<sup>rd</sup> Avenue, Delray Beach, FL 33444

#### B. JOINT BIDDING, CO-OPERATIVE PURCHASING AGREEMENT: Will extend same price, terms, and conditions of this bid to other Palm Beach, Martin and Broward County Governmental agencies?

☐ Yes

☐ No

#### C. BID INFORMATION WAS OBTAINED FROM:

☐ BidSync

☐ Newspaper Ad

☐ City Hall

☐ Other, please specify: \_\_\_\_\_



## **SAMPLE AGREEMENT**

BETWEEN

THE CITY OF DELRAY BEACH

and

\_\_\_\_\_  
for

\_\_\_\_\_  
QUOTE # \_\_\_\_\_

This is an Agreement ("Agreement"), made and entered into by and between: **COMPANY NAME**, hereinafter called the "Contractor" and **HOMEOWNER**, hereinafter referred to as the "Owner(s)".

**WHOSE** residence and project address is:

**LEGAL DESCRIPTION:** Insert Description

**P I D #** Insert Parcel #

### WITNESSETH:

In consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, between the Contractor and the Owner agree as follows:

## ARTICLE 1

### DEFINITIONS AND IDENTIFICATIONS

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - This Agreement includes Articles 1 through 11, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Board** - The City Commission of Delray Beach, Florida.
- 1.3 **Contract Administrator** - The City of Delray Beach (City) City Manager or the City Director of Neighborhood Services Division. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Contractor and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.4 **City Manager** - The administrative head of City appointed by the Board.
- 1.5 **City Attorney** - The chief legal counsel for City appointed by the Board.
- 1.6 **Project** - The Project consists of the services described in Article 2.

## ARTICLE 2

### SCOPE OF SERVICES

- 2.1 Contractor shall perform all work identified in this Agreement and Exhibit "A". The Scope of Services is a description of Contractor's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.
- 2.2 Contractor acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.
- 2.3 The Contractor shall furnish all supervision, technical personnel, labor, materials, equipment and all other appurtenance thereto and perform and complete all work in accordance with the Agreement documents as prepared by the City.

### ARTICLE 3

#### TERM AND TIME OF PERFORMANCE

- 3.1 The term of this Agreement shall begin on the date it is fully executed by the Parties and shall end on \_\_\_\_\_. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 3.2 All duties, obligations, and responsibilities of Contractor required by this Agreement shall be completed no later than \_\_\_\_\_. Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Agreement.
- 3.3 In the event services are scheduled to end due to the expiration of this Agreement, the Contractor agrees that it shall continue service upon the request of the Contract Administrator. The extension period shall not extend for greater than three months beyond the term of the Agreement. The Contractor shall be compensated for the service at the rate in effect when the extension is invoked by the City upon the same terms and conditions as contained in this Agreement as amended.

### ARTICLE 4

#### COMPENSATION

- 4.1 City will pay Contractor, on behalf of the homeowner's approval for the program in the manner specified in Section 4.3, the total amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for work actually performed and completed pursuant to this Agreement and \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for all reimbursables provided for in Section 4.2, which amounts shall be accepted by Contractor as full compensation for all such work and expenses. Contractor acknowledges that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Contractor for its services and expenses related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon Contractor's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

#### 4.2 METHOD OF BILLING AND PAYMENT

- 4.2.1 Contractor may submit invoices for compensation only after the services for which the invoices are submitted have been completed. Partial payments equal to 90% of the value of the work in place, not to exceed 75% of the Agreement amount may be made. All payment requests will require owner's signature. However, the City shall not be stopped from distributing funds if the City determines the owner has unreasonably failed to sign a payment request.

An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed.

4.2.2 City shall pay Contractor within thirty (30) calendar days of receipt of Contractor's proper invoice, or as required by Florida Law. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of Contractor to comply with a term, condition, or requirement of this Agreement.

4.2.3 Final payment will be made after:

1. The Contractor executes a lien release and warranty on forms furnished by the City, relative to work performed, materials furnished, and certification that all amounts due for labor and/or materials have been paid. The Contractor, by execution of the contract, holds the City and property owner harmless from all claims or liens for labor or materials furnished or used in performance of the work covered by this contract, whether furnished or used by the Contractor or any subcontractor.

2. The contractors and the Owner agree to defend, indemnify, and hold harmless the City and its officers, agents, and employees from and against any and all suits, claims, actions, legal proceedings, demands, or liabilities (and any and all costs, expenses, liabilities, including attorney's fees associated therewith, made against the City which arise, directly, or indirectly from the Contractor's or Owner's negligent acts, errors or admission during performance under this agreement).

3. The City conducts a final inspection and approves and accepts all work performed by the Contractor. Final acceptance of the job shall not subject the City to any legal responsibility or liability of any kind. The parties agree that the City is not a signatory to this Agreement and does not have any responsibilities under this Agreement either express or implied, except to settle disputes between the parties which do not constitute a breach of contract, to conduct a final inspection to approve work performed by the Contractor, and to hold and distribute funds. In the event that the performance by the Contractor is unsatisfactory or unacceptable for any reason, the Contractor agrees to correct any deficiencies at no additional cost to the City.

4. The Contractor will guarantee that all work performed is free from defects for a period of one year from the date of final acceptance of all work required by the contract. If any defects appear during the warranty year, the Contractor will correct as expeditiously as possible.

4.4 Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

4.5 Payment shall be made to Contractor at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ARTICLE 5

### INDEMNIFICATION

Contractor 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, Contractor, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement 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, Contractor 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 City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Contractor under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by City.

## ARTICLE 6

### INSURANCE

6.1 Contractor shall maintain at its sole expense, at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the

minimum insurance coverage designated in Exhibit "B" in accordance with the terms and conditions stated in this Article.

- 6.2 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be provided on forms no more restrictive than the latest edition of the applicable form filed by the Insurance Services Office. Contractor shall name City as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is City, Florida. This official title shall be used in all insurance documentation.
- 6.3 Within fifteen (15) days of notification of award, Contractor shall provide to City proof of insurance in the form of Certificate(s) of Insurance and applicable endorsements, Declaration pages, or insurance policies evidencing all insurance required by this Article. City reserves the right to obtain a certified copy of any policies required by the Article upon request. Coverage is not to cease and is to remain in force until the City determines all performance required of Contractor is completed. For Professional Liability Insurance, coverage shall remain in force for two (2) years after the completion of services unless a different time period is stated in Exhibit "B." City shall be notified of any restriction or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the work, proof of insurance renewal shall be provided to City upon expiration.
- 6.4 City reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements.
- 6.5 If Contractor uses a subconsultant or subcontractor, Contractor shall ensure that each subconsultant or subcontractor names the City of Delray Beach, Florida as an additional insured under the subconsultant's or subcontractor's Commercial General Liability, Business Automobile Liability, and Excess/Umbrella policies.

## ARTICLE 7

### TERMINATION

- 7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by City, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health, safety, or welfare. If City erroneously, improperly, or unjustifiably terminates for cause, such

termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if the Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if the Contractor provides a false certification submitted pursuant to Section 287.135, Florida Statutes. This Agreement may also be terminated by the Board:
- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 7.4 In the event this Agreement is terminated for convenience, Contractor shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. Contractor acknowledges that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are, hereby acknowledged by Contractor, for City's right to terminate this Agreement for convenience.
- 7.5 In the event this Agreement is terminated for any reason, any amounts due Contractor shall be withheld by City until all documents are provided to City pursuant to Section 9.1 of Article 9.

## ARTICLE 8

### THE CONTRACT

- 8.1 The executed Agreement documents shall consist of the following:
- a. This Contract
  - b. Lien Agreement
  - \* c. Signed Copy of Bid
  - d. Memorandum of Understanding
  - \* e. Notice to Proceed
  - \* f. Payment Requests
  - \* g. Warranty Documents
  - h. Lead Base Paint Receipt & Booklet (if required)
  - i. Subordination Policy (if required)
  - \* pertaining to contractor signature requirement



## ARTICLE 9

### LEAD BASED PAINT

- 9.1 In accordance with the Lead Based Paint Poisoning Prevention Act, no lead based paints shall be used in any area intended for human habitation.

## ARTICLE 10

### NON-DISCRIMINATION

- 10.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Failure by Contractor to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit the City, to terminate this Agreement or to exercise any other remedy provided under this Agreement, or under the Delray Beach Code of Ordinances or under applicable law, with all of such remedies being cumulative.

Contractor shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate.

Contractor shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of any State or Federal law. Contractor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Contractor shall take affirmative steps to prevent discrimination in employment against disabled persons.

By execution of this Agreement, Contractor represents that it has not been placed on the discriminatory Bidder list as provided in Section 287.134, Florida Statutes. City hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle City to terminate this Agreement and recover from Contractor all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

## ARTICLE 11

### MISCELLANEOUS

#### 11.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City, and, if a copyright is claimed, Contractor grants to City a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of City and shall be delivered by Contractor to the Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to Contractor shall be withheld until all documents are received as provided herein.

#### 11.2 PUBLIC RECORDS

City is a public agency subject to Chapter 119, Fla. Stat. Contractor shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, Purchaser agrees to:

- 11.2.1 Keep and maintain all records that ordinarily and necessarily would be required by the City.
- 11.2.2 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.
- 11.2.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
- 11.2.4 Meet all requirements for retaining public records and transfer, at no cost, to the City all records in possession of the Contractor at the termination of the Agreement 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 Contractor.
- 11.2.5 If Contractor does not comply with this section, the City shall enforce the Agreement provisions in accordance with the Agreement and may unilaterally cancel this Agreement in accordance with state law.

### 11.3 INSPECTOR GENERAL.

Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Contractor and its sub licensees and lower tier sub licensees. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor 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 this Agreement justifying its termination.

### 11.4 AUDIT RIGHTS, AND RETENTION OF RECORDS

City shall have the right to audit the books, records, and accounts of Contractor and its subcontractors that are related to this Project. Contractor and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of Contractor and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Second Party or its subcontractor, as applicable, shall make same available at no cost to City in written form.

Contractor and its subcontractors shall preserve and make available, at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Contractor shall ensure that the requirements of this Section 11.3 are included in all agreements with its subcontractor(s).

### 11.5 TRUTH-IN-NEGOTIATION REPRESENTATION

Contractor's compensation under this Agreement is based upon representations supplied to City by Contractor, and Contractor certifies that the information supplied is accurate, complete, and current at the time of contracting. City shall be entitled to recover any damages it incurs to the extent such representation is untrue.

#### 11.6 PUBLIC ENTITY CRIME ACT

Contractor represents that the execution of this Agreement 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 Bidder list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City 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 Bidder list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

In addition to the foregoing, Contractor 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 Contractor has been placed on the convicted Bidder list.

#### 11.7 INDEPENDENT CONTRACTOR

Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.

#### 11.8 THIRD PARTY BENEFICIARIES

Neither Contractor nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

#### 11.9 NOTICES

Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain

the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For City:

City Manager

City of Delray Beach

100 N.W. 1<sup>st</sup> Avenue

Delray Beach, Florida 33444

For Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### 11.10 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. In addition, Contractor shall not subcontract any portion of the work required by this Agreement, except as may specifically provided for herein. Notwithstanding the Termination provision of this Agreement, City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Contractor of this Agreement or any right or interest herein without City's written consent.

Contractor represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Contractor shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Contractor's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

#### 11.11 CONFLICTS

Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

None of Contractor's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Contractor is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Contractor shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

#### 11.12 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 Agreement, and each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

#### 11.13 COMPLIANCE WITH LAWS

Contractor 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 Agreement.

#### 11.14 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Contractor elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days of final court action, including all available appeals.

#### 11.15 JOINT PREPARATION

The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not,

solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

#### 11.16 INTERPRETATION

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

#### 11.17 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

#### 11.18 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement 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 Agreement, 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 Agreement 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 ENTERING INTO THIS AGREEMENT, CONTRACTOR AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT 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.**



#### 11.19 AMENDMENTS

The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. 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 Agreement and executed by the Board and Contractor or others delegated authority to or otherwise authorized to execute same on their behalf.

#### 11.20 PRIOR AGREEMENTS

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. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

#### 11.21 PAYABLE INTEREST

9.21.1 Payment of Interest. Except as required by the Prompt Payment laws, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor 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 Agreement.

9.21.2 Rate of Interest. In any instance where the prohibition or limitations of Section 9.21.1 are determined to be invalid or unenforceable, the annual rate of interest payable by City under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

#### 11.22 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. The attached Exhibits A and B are incorporated into and made a part of this Agreement.

#### 11.23 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

11.24 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

11.25 DISPUTE RESOLUTION

All internal disputes between the Owners and Contractor arising out of or related to the work shall be decided by Program Administrators. All other disputes constituting a breach of this agreement, which cannot be resolved by the Owner and Contractor, shall be resolved by a Court of competent jurisdiction pursuant to the laws of the State of Florida with venue in Palm Beach County, Florida.

**THIS AGREEMENT**, together with other documents enumerated in this ARTICLE 5, which said other documents are as fully a part of the Agreement as if hereto attached or herein repeated, forms the contract between the parties hereto. In the event that any provisions in any component part, the provision of the component part first enumerated in this ARTICLE 5 shall govern, except as otherwise specifically stated.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: HOMEOWNER and CONTRACTOR, also ATTESTED BY CITY REPRESENTATIVE signing by and through its \_\_\_\_\_, duly authorized to execute same.

\_\_\_\_\_  
OWNER

\_\_\_\_\_  
CONTRACTOR SIGNATURE

\_\_\_\_\_  
OWNER

By \_\_\_\_\_  
CONTRACTOR FIRM NAME

ATTEST:

\_\_\_\_\_  
CITY REPRESENTATIVE

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

(SEAL)

**EXHIBIT A**

**SCOPE OF SERVICES**

## **EXHIBIT B**

### **INSURANCE REQUIREMENTS OF THE CITY OF DELRAY BEACH**

Contractor shall not commence operations under the terms of this Agreement until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Delray Beach Risk Management. If you have any questions call (561) 243-7150.

A. The successful contractor shall not commence any work in connection with an agreement until it has obtained all of the following types of insurance and has provided proof of same to the County, in the form of a certificate *prior* to the start of any work, nor shall the successful contractor allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in Florida.

B. The successful contractor and/or subcontractor shall maintain the following types of insurance, with the respective limits:

1. AUTOMOBILE:

a. Combined Single Limit: \$300,000.00 per accident,

**OR**

b. Bodily Injury: \$300,000.00 per person,

**AND**

Property Damage: \$100,000.00 per accident;

2. GENERAL LIABILITY: Minimum limit of \$500,000 per occurrence and One Million Dollars (\$1,000,000.00) in the aggregate annually providing coverage for Premises and Operations, Products and Completed Operations, Fire Legal Liability, and Personal and Advertising Injury Liability. Insurance Policies must be obtained through insurance companies that are authorized to transact business in the State of Florida by the Department of Financial Services, and they must carry a minimum rating of A.M. Best of A- as to management and VII as to financial size.

3. GENERAL AGGREGATE: Two Million Dollars (\$2,000,000.00);

4. EXCESS COVERAGE: One Million Dollars (\$1,000,000.00);

5. PRODUCTS LIABILITY: Two Million Dollars (\$2,000,000.00);

6. WORKERS' COMPENSATION: Covering all employees and providing benefits as required by Florida Statute 440 and Employers' liability insurance which covers the statutory obligation for all persons engaged in the performance of the work required hereunder with limits not less than One Million Dollars (\$1,000,000.00) per occurrence regardless of the size of your firm. Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury

sustained by such employees in the course and scope of their employment.. Evidence of qualified self-insurance status will suffice for this subsection.

7. Motor Vehicle Liability Insurance covering all vehicles associated with Contractor operations to include all owned, non-owned and hired vehicles.

The coverage will be written on an occurrence basis with limits of liability not less than \$500,000.00 combined single limit per each occurrence.

C. The CONTRACTOR **shall name the City of Delray Beach as an Additional Insured**, to the extent of the services to be provided hereunder, on all required insurance policies, and provide the City with proof of same.

D. Certificates of Insurance: The successful contractor and/or subcontractor shall provide the City's Purchasing Department with a Certificate of Insurance evidencing such coverage for the duration of this Agreement. Said Certificate of Insurance shall be dated and show:

1. The name of the insured contractor,
2. The specified job by name and job number,
3. The name of the insurer,
4. The number of the policy,
5. The effective date,
6. The termination date,
7. A statement that the insurer will mail notice to the City at least thirty (30) days prior to any material changes in the provisions or cancellation of the policy.
8. The Certificate Holders Box must read as follows:

**100 NW 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444**

**Any other wording in the Certificate Holders Box shall not be acceptable.**

Non-conforming certificates will be returned for correction.

E. Waiver: Receipt of certificates or other documentation of insurance or policies or copies of policies by the City, or by any of its representatives, which indicates less coverage than is required, does not constitute a waiver of the successful contractor's obligation to fulfill the insurance requirements specified herein.

F. Subcontractors: The successful contractor shall ensure that any sub-contractor(s), hired to perform any of the duties contained in the Scope of Services of an Agreement, maintain the same insurance requirements set forth herein. In addition, the successful contractor shall maintain proof of same on file and made readily available upon request by the City.

G. Loss Deductible Clause: The City shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the successful contractor and/or subcontractor providing such insurance.

H. The certification or proof of insurance must contain a provision for notification to the City thirty (30) days in advance of any material change in coverage, non-renewal or cancellation.

Contractor shall furnish to the City, Certificate(s) of Insurance evidencing insurance required by the provisions set forth above, upon execution of the agreement. If any of the above coverages expire during the term of this Agreement, Contractor will provide a renewal certificate at least ten (10) days prior to expiration.

Mail to: City of Delray Beach, Attn. Risk Manager, 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, Florida 33444 with copies to Assistant City Manager and Neighborhood Services Division 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, FL 33444

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*The City reserves the unilateral right to modify the insurance requirements set forth at anytime during the process of solicitation or subsequent thereto.*

**Failure to submit this form including copies of current Insurance Certificates may be grounds for disqualification of your submittal.**

## **SECTION 6: ATTACHMENTS**

**Bid No. 2016-099  
Housing Rehabilitation Program**

### **EXHIBIT A**

Contractor Bid Proposal  
Pages (1-3)

Technical Specifications  
Pages (1-31)