



The City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

PURCHASING DEPARTMENT

INVITATION TO BID CONSTRUCTION

ITBC NO.: 2019-023

TITLE: BEACH MASTER PLAN, PHASE 2 CONSTRUCTION

PROJECT NO.: 15-008 (2)

DUE DATE AND TIME: March 21, 2019 AT 2:00 PM

INSTRUCTIONS

Bids must be received on or before the due date and time (local time). Bids shall be submitted electronically only, in accordance with the instructions below. All Bids will be publicly opened at City Hall, unless otherwise specified.

Bids will be accepted through a secure mailbox at BidSync (www.bidsync.com) until the Due Date and Time indicated in this ITBC. BidSync does not accept electronic Bids after the Due Date and Time. It is the sole responsibility of the Bidder to ensure its electronic Bid submission is complete prior to the solicitation Due Date and Time. Electronic submission of bids will require the uploading of forms and/or attachments as designated in this ITBC. Electronic submission must include a signed original of the Solicitation Summary form. The submission of forms and attachments containing embedded documents or proprietary file extensions is prohibited.

If the Solicitation Summary form is not included, the City may deem the Bid non-responsive. Bids must contain all information required to be included in the submittal, as described in this Solicitation.

BROADCAST

The City of Delray Beach utilizes electronic online services for notification and distribution of its Solicitation documents. The City's Solicitation information can be obtained from: (a) Purchasing webpage on the City of Delray Beach [website](#); (b) Bid Sync website – www.bidsync.com; or (c) Request via email purchasing@mydelraybeach.com.

Bidders who obtain Solicitations from sources other than those named above are cautioned that the Bid package may be incomplete. The City will not evaluate incomplete Bid packages. BidSync is an independent entity and is not an agent or representative of the City. Communications to Bid Sync does not constitute communications to the City. The City is not responsible for errors and omissions occurring in the transmission or downloading of any documents, addenda, plans, or specifications from these websites. In the event of any discrepancy between information on these websites and the hard copy Solicitation documents, the terms and conditions of the hard copy documents will prevail.

CONTACT PERSON

Any questions regarding the specifications and Solicitation process must be submitted in writing through the "Question" feature on www.bidsync.com. Requests for clarification and additional information must be received prior to the Deadline for Submission of Questions on March 11, 2019 at 5:00pm.



**The City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, FL 33444**

LEGAL ADVERTISEMENT

**INVITATION TO BID CONSTRUCTION NO. 2019-023
Beach Master Plan, Phase 2 Construction**

The City of Delray Beach is seeking Bids from qualified contractors for the construction of the Beach Master Plan, Phase 2.

Invitation to Bid Construction documents are available beginning February 15, 2019 on the Purchasing webpage on the City of Delray Beach [website](#) and on the Bid Sync website – https://www.mydelraybeach.com/business/current_solicitation_opportunities.php.

Bids will be accepted through a secure mailbox at BidSync (www.bidsync.com) until the Deadline for Submission as indicated in this ITBC. The Due Date and Time for submission of Bids is March 21, 2019, at 2:00 p.m. local time. At that time, the Bids will be publicly opened and read aloud at City Hall. Late Bids will not be accepted.

The City will not hold a pre-bid conference for this solicitation.

It is the responsibility of the Bidder to ensure all pages are included in the submission. All Bidders are advised to closely examine the Solicitation package. Any questions regarding the completeness or substance of the Solicitation package or scope of services must be submitted in writing using the 'Question' feature on www.bidsync.com.

The City of Delray Beach is exempt from Federal and State Taxes for tangible personal property tax.

The City of Delray Beach reserves the right to accept or reject any or all Bids, in whole or in part, with or without cause, to waive any irregularities and/or technicalities, and to award the contract on such coverage and terms it deems will best serve the interests of the City.

CITY OF DELRAY BEACH

Table of Contents

SECTION 1: SPECIAL TERMS AND CONDITIONS..... 5

SECTION 2: SCOPE OF WORK AND TECHNICAL SPECIFICATIONS..... 27

SECTION 3: MINIMUM QUALIFICATIONS..... 28

SECTION 4: BID FORMS AND AFFIDAVITS 29

SECTION 5: SAMPLE AGREEMENT FORMAT..... 35

SECTION 6: EXHIBITS 38

SECTION 7: GENERAL TERMS AND CONDITIONS 39

SECTION 8: REFERENCES 49

SECTION 1: SPECIAL TERMS AND CONDITIONS

1. **PURPOSE**
The purpose of this Solicitation is to obtain bids from contractors for the construction of the Beach Master Plan, Phase 2, in accordance with the terms, conditions, and specifications contained in this Invitation to Bid Construction.
2. **CONTRACT MEASURES AND PREFERENCES**
Intentionally Omitted.
3. **PRE-BID CONFERENCE**
The City will not hold a Pre-Bid Conference for this solicitation.
4. **TERM OF CONTRACT**
The Contract shall commence upon the date of the duly executed Agreement and shall remain in effect until such time as the construction services acquired in conjunction with this solicitation have been completed and accepted by the City's authorized representative and upon completion of the expressed and/or implied warranty periods.
5. **METHOD OF AWARD: LOWEST PRICE**
The City will award this contract to the responsive and responsible Bidder who submits the lowest price to perform the work, based on the option (alternates) selected by the City.
6. **PRICES SHALL BE FIXED AND FIRM**
If the Bidder is awarded a contract under this Solicitation, the prices offered by the Bidder shall remain fixed and firm during the performance of the Work, except for any change orders or variations, which must meet the prior approval and authorization of the City.
7. **EXAMINATION OF CITY FACILITIES OR EQUIPMENT**
Prior to submitting its offer, it is recommended that the Bidder visit the site of the proposed work and become familiar with any conditions which may in any manner affect the work to be done or affect the equipment, materials and labor required. The Bidder is also advised to examine carefully any drawings, specifications, or equipment, and become thoroughly aware regarding any and all conditions and requirements that may in any manner affect the work to be performed under the Contract. No additional allowances will be made because of lack of knowledge of these conditions.
8. **SUBSTITUTIONS AND PRODUCT OPTIONS**
Furnish and install Products specified, under options and conditions for substitutions stated in this Section.
 - a. **Product List:**
 - i. Within 14 days after award of Contract, submit to the City or its authorized agents, inspectors or representatives (also referred to herein as "Consultant") five copies of complete list of major Products which are proposed for installation.
 - ii. Tabulate Products by specification section number and title.
 - iii. For products specified only by reference standards, list for each such Product:

- A. Name and address of manufacturer.
 - B. Trade Name.
 - C. Model or catalog designation.
 - D. Manufacturer's data:
 - I. Reference standards.
 - II. Performance test data.
- b. awarded Bidder's Options:
- i. For Products specified only by reference standard, select product meeting that standard, by any manufacturer.
 - ii. For products specified by naming several products or manufacturers, select any one or those products and manufacturers names which complies with Specifications.
 - iii. For products specified by naming only one or more products or manufacturers and stating "or equal," submit a request as for substitutions, for any product or manufacturer which is not specifically named.
- c. Substitutions:
- i. Within a period of 14 days before award of Contract, Consultant will consider formal requests from the awarded Bidder for substitution of products in place of those specified. After the end of that period, the request will only be considered only in the case of product unavailability or other conditions beyond the control of the awarded Bidder.
 - ii. Submit a separate request for each substitution. Support each request with:
 - A. Complete data substantiating compliance of the proposed substitution with requirements stated in the Contract Documents:
 - I. Product identification, including manufacturer's name and address.
 - II. Manufacturer's literature; identify:
 - 1) Product description.
 - 2) Reference standards.
 - 3) Performance and test data.
 - III. Samples, as applicable.
 - IV. Name and address of similar projects on which product has been used, and the date of each installation
 - B. Itemized comparison of the proposed substitution with product specified; List significant variations.
 - C. Data relating to changes in the construction schedule.
 - D. Any effect of the substitution on separate contracts.
 - E. List of changes required in other work or products.
 - F. Accurate cost data comparing proposed substitution with product specified.
 - G. Designation of required license fees or royalties.
 - H. Designation of availability of maintenance services, and sources of replacement materials.
 - iii. Substitutions will not be considered for acceptance when:
 - A. They are indicated or implied on Shop Drawings or product data submittals without a formal request from awarded Bidder.
 - B. They are requested directly by a subcontractor or supplier.
 - C. No Data relating to changes in construction schedule.

- D. Any effect of substitution on separate contracts.
- E. List of changes required in other work or products.
- F. Accurate cost data comparing proposed substitution with product specified.
- G. Designation of required license fees or royalties.
- H. Designation of availability of maintenance services, sources of replacement materials.
- I. Acceptance will require substantial revision of Contract Documents.
- iv. Substitute products shall not be ordered or installed without written acceptance of Consultant and City.
- v. Consultant will determine the acceptability of proposed substitutions.
- d. Awarded Bidder's Representation:
 - i. In making formal request for substitution awarded Bidder represents that:
 - A. He has investigated proposed product and has determined that it is equal to or superior in all respects to that specified.
 - B. He will provide the same warranties or bonds for substitution as for product specified.
 - C. He will coordinate installation of accepted substitution into the Work, and will make such changes as may be required for the Work to be complete in all respects.
 - D. He waives claims for additional costs caused by substitution which may subsequently become apparent.
 - E. Cost data is complete and includes related costs under his Contract, but not:
 - I. Costs under separate contracts.
 - II. Consultant's costs of redesign or revision of Contract Documents.
- e. Consultant Duties:
 - i. Review awarded Bidder's requests for substitutions with reasonable promptness.
 - ii. Notify awarded Bidder, in writing, of decision to accept or reject requested substitution.

9. LIQUIDATED DAMAGES

Time is of the essence regarding this Invitation to Bid Construction and the work contemplated hereunder and the City may suffer financial loss and inconvenience if the work is not completed to the satisfaction of the City by the time stipulated in the Contract. Therefore, failure to timely complete the work shall result in the awarded Bidder being subject to liquidated damages, but not as penalty, in the amount of amount of 0.014% of the Guaranteed Maximum Price for each and every calendar day the work remains incomplete or the items remain undelivered. As compensation due the City for loss of use and for additional costs incurred by the City due to such non-completion of the work, the City shall have the right to deduct the liquidated damages from any amount due, or that may become due to the awarded Bidder under the Contract, or to invoice the awarded Bidder for such damages if the costs incurred exceed the amount due to the awarded Bidder. The awarded Bidder and the City agree that the amount for liquidated damages is not punitive and is intended to compensate the City for difficult to quantify losses.

10. **INSURANCE**

The awarded Bidder shall not commence any performance pursuant to the terms of this Solicitation until certification or proof of insurance has been received by the Purchasing Department and approved by the City's Risk Management Division.

The required insurance coverage is to be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of A- VIII or better, in accordance with the latest edition of AM Best's Insurance Guide. This insurance shall be documented in certificates of insurance which provides that the City of Delray Beach shall be notified at least thirty (30) days in advance of cancellation, non-renewal, or adverse change. The receipt of certificates or other documentation of insurance or policies or copies of policies by the City or by any of its representatives, which indicate less coverage than is required, does not constitute a waiver of the awarded Bidder's obligation to fulfill the insurance requirements herein. Deductibles must be acceptable to the City of Delray Beach.

The awarded Bidder must submit a current Certificate of Insurance, naming the City of Delray Beach as an additional insured and list as such on the insurance certificate. New certificates of insurance are to be provided to the City upon expiration.

The awarded Bidder shall provide insurance coverage as follows, and shall carry:

- a. Workers' Compensation Insurance – as required by law.
- b. Employer's Liability Insurance - \$100,000 per occurrence, \$100,000 for each disease, and \$500,000 for aggregate disease
- c. Comprehensive General Liability Insurance – with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for Bodily Injury and Property Damage.
- d. Builders Risk/Installation Floater Insurance - The awarded Bidder shall take out and maintain, as applicable, during the life of this Contract, "all risk" type builders risk insurance satisfactory to the City for the completed value of the Project, which shall protect the awarded Bidder and the City as their interests may appear, for the following hazards to the work, encompassing structures in the course of construction, including foundations, additions, attachments and all permanent fixtures belonging to and constituting a part of said structures, as well as materials and equipment suitably stored at the site and awarded Bidder's construction equipment, materials, and temporary structures:
 - i. Premises and/or Operations on an occurrence basis.
 - ii. Independent contractors.
 - iii. Products and/or Completed Operations Liability on an occurrence basis.
 - iv. Explosion, Collapse, and Underground Coverages.
 - v. Broad Form Property Damage.
 - vi. Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.
 - vii. Personal Injury Coverage with Employees and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

- e. Professional Liability Insurance – To include coverage for contractor pollution exposure, with minimum limits of \$1,000,000 per claim and in the aggregate.
- f. Automobile Liability Insurance - for owned, non-owned and hired vehicles – with a limit of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

If no deductible for insurance is referenced above, the City reserves the right to require such deductibles which shall be determined by the Risk Management Division, but not less than \$25,000 per claim.

The Comprehensive General Liability insurance policy must include coverage that is not more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Offices, and the policy must include coverage's for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the Employee and Contractual Exclusions removed.

11. **PERFORMANCE BOND AND CONSTRUCTION BOND**

The Bidder to whom a contingent award is made shall duly execute and deliver to the City a Performance Bond and a Construction Bond, both in an amount equal to 100% of the total contract price, payable to the City, as surety for faithful performance under the terms and conditions of the contract. The Performance Bond and Construction Bond shall be delivered to the City contemporaneously with contract execution. The bonds shall be substantially in the format of the examples that are a part of this Solicitation.

Both required Bonds must be executed by a surety company of recognized standing, authorized to do business in the State of Florida, and having a resident agent. Bonds may not be canceled, terminated, or revised unless the City has been provided with thirty (30) days' advanced written notice of such action by the surety. The surety must insert the registered agent to accept service of process in the State of Florida, directly on each bond document.

Acknowledgement and agreement is given by both parties that the performance and construction bonds do not limit the liability of the awarded Bidder to the City in the event of a material breach of the contract agreement by the awarded Bidder. The bonds may be used to recover liquidated damages on behalf of the City.

If the awarded Bidder fails to deliver the bonds at the same time as contract execution, the City may declare the awarded Bidder in default of the contractual terms and conditions, and the awarded Bidder shall surrender any bid bond, and the City shall not accept any offers or bids from that Bidder for a twelve (12) month period following such default.

12. **CERTIFICATIONS**

Any Bidder that submits an offer in response to this Solicitation shall, at the time of such offer, hold all necessary certifications issued by the State or County Examining Board qualifying the

Bidder to perform the work proposed for this project. If other professions or trades are required in conjunction with this Solicitation and such work/services will be performed or provided by a subcontractor(s), an applicable Certificate of Competency issued to the subcontractor(s) shall be submitted with the Bidder's offer; provided, however, that the City may at its option and in its best interest allow the Bidder to supply the subcontractor(s) certificate to the City during the evaluation period.

13. **BID BOND/GUARANTY**
Intentionally Omitted.

14. **METHOD OF PAYMENT: INVOICE FOR COMPLETED WORK (PROGRESS PAYMENTS)**
The awarded Bidder shall submit an invoice to the City for progress payments for work that has been completed and has been inspected and accepted by the City. The date of the invoices shall not exceed thirty (30) calendar days from the completion of that portion of the work. Under no circumstances shall the invoice be submitted to the City in advance of the completion and acceptance of the work. The invoice shall contain the following basic information: the awarded Bidder's name and address, invoice number, date of invoice, description of the goods or service, the contract number, purchase order number, and any discounts.

The City will allow progress payments for the work to be performed under this contract. Such progress payments shall be only for work that has been completed and verified by the City.

The City prides itself on paying its vendors promptly and efficiently, and as such requires that vendors accept payment via wire transfer, ACH (direct deposit), or an appropriate electronic payment method. The City is averse to issuing paper checks and seeks to discontinue this practice. All payments shall be made in accordance with the Florida Prompt Payment Act, Section 218.74, Florida Statutes, upon presentation of a proper invoice by the awarded Bidder.

Payment shall be made for the items listed on the Bid Form on the basis of the work actually performed and completed, such work including but not limited to, the furnishing of all necessary labor, materials, equipment, transportation, clean up, and all other appurtenances to complete the construction and installation of the work to the configuration and extent as shown on the drawings and described in the specifications.

The City does not pay for items ordered and/or stored on site unless specifically approved by City and directed by the Consultant. Payment for pay items are paid once the item is installed, measured in place, completed and accepted.

It is intended that all license and other miscellaneous administrative costs, overhead and profit, and all other costs to the awarded Bidder not specifically identified in the item descriptions be distributed among and included in the unit prices stated. No additional payment shall be made for transportation, communications, office maintenance, and other incidental work or services, and no further payment shall be made for remobilization unless all of the work is suspended by the Consultant for a period in excess of three months and through no fault to the awarded Bidder.

The awarded Bidder's attention is called to the fact that the quotations for the various items of work are intended to establish a total price for completing the work in its entirety. No separate

payment will be made for any item that is not specifically set forth in the Bid Schedule, and all costs therefore shall be included in the prices named in Bid Schedule for various appurtenant items of work.

All required manufacturer testing and certification shall be included in the unit prices bid. Density testing required for compacted backfilling, and concrete strength and materials testing required at the time of construction shall be arranged for and paid for by the awarded Bidder.

- a. Applications for Payment: Submit Applications for Payment to Consultant in a format acceptable to the City and with the Pay Application Spreadsheet in accordance with the schedule established by Conditions of the Contract and herein.
 - i. Format and Data Required: Submit applications in accordance with the example provided by the Consultant with itemized data typed on the 8-1/2 inch x 11 inch Pay Application Spreadsheet. Provide all the information required on the Pay Application Spreadsheet.
 - ii. Preparation of Application for Each Progress Payment:
 - A. Prior to preparation of the Application Form, the awarded Bidder and Consultant shall meet in the field and verify the quantities of items to be included in the Pay Application. This shall take place at least one week prior to the submission of the Pay Application.
 - B. Application Form Requirements:
 - I. Fill in required information, including that for Change Orders executed prior to date of submittal of application.
 - II. Fill in Project Name, City Project Number, City Purchase Order Number.
 - III. Fill in summary of dollar values to agree with respective totals indicated on Pay Application Spreadsheet.
 - IV. Execute certification with signature of a responsible officer of Contract firm.
 - C. Pay Application Spreadsheet:
 - I. Fill in total list of all scheduled component items of Work, with item number and scheduled dollar value for each item.
 - II. Fill in dollar value in each column for each scheduled line item when work has been performed or products stored.
 - 1) Round off values to nearest dollar, or as specified for Schedule of Values.
 - III. List each Change Order executed prior to date of submission at the end of the Pay Application Spreadsheet.
 - 1) List by Change Order Number, and description, as for an original component item of work.
 - D. Other Required Documentation:
 - I. Prior to the acceptance of the Pay Application, submit all required documentation including but not limited to:
 - 1) Updated Construction Schedule
 - 2) National Pollution Discharge Elimination System ("NPDES") GSP Weekly and Rainfall Event Reports as required by the Stormwater Pollution Prevention Plan ("SWPPP")

- 3) Color Photographs
 - 4) Updated Request for Information ("RFI") Log
 - 5) Updated Shop Drawing Submittal Log
 - 6) Updated Change Order Log
 - 7) Updated Progress Drawings
 - 8) Release of Liens
 - 9) Notice to Owners
- iii. Substantiating Data for Progress Payments:
- A. When the City or the Consultant requires substantiating data, awarded Bidder shall submit suitable information, with a cover letter identifying:
 - I. Project Name and Location (Limits)
 - II. City Project Number
 - III. Application number and date.
 - IV. Detailed list of enclosures.
 - V. For stored products:
 - 1) Item number and identification as shown on application.
 - 2) Description of specific material.
 - B. Submit one copy of data and cover letter for each copy of application.
- iv. Preparation of Application for Final Payment:
- A. Fill in Application form as specified for progress payments.
 - B. Use Pay Application Spreadsheet for presenting the final statement of accounting as specified in Section 01700 - Contract Closeout.
- iv. Submittal Procedure:
- A. At least ten days before the submission of the first Application for Payment a conference attended by awarded Bidder, City, Consultant and others as appropriate will be held to finalize the schedules submitted in accordance with the Agreement Documents.
 - B. Submit Applications for Payment to Consultant at the times stipulated.
 - C. Submit two (2) original Application forms and required documentation and 1 (one) electronic copy of same.
 - D. After the Consultant finds the Payment Application to be properly completed and correct, they will transmit the certification for payment to City, with a copy to the awarded Bidder.
 - E. The City has twenty days from receipt to approve the Payment Application or provide written notice to the awarded Bidder of why the Payment Application is not approved. The rejection must be written and must specify where the deficiency in the Payment Application is and the action necessary to make the Payment Application proper. If a Payment Application is rejected and the awarded Bidder resubmits a corrected Payment Application which corrects the deficiency specified in writing by the City, the corrected Payment Application must be approved or rejected on the later of:
 - I. Ten business days after the corrected payment or invoice is stamped as received
 - II. The first business day after the next regularly scheduled meeting of the governing body held after the corrected Payment Application is stamped as received.

- F. The awarded Bidder may send the City an overdue notice. If the Payment Application is not rejected within 4 business days after delivery of the overdue notice, the Payment Application shall be deemed accepted, except for any portion of the Payment.
- G. Application that is fraudulent or misleading. If a dispute between the City and the awarded Bidder cannot be resolved, the dispute must be resolved in accordance with the provisions of the Florida Prompt Payment Act, Florida Statute 218.70.

15. ADDITIONAL FACILITIES OR PRODUCTS

Although this Solicitation and resultant Contract may identify specific facilities or products, it is hereby agreed and understood that any City department or agency facility or related product may be added to this Contract at the option of the City, for similar products or services. The awarded Bidder shall be invited to submit price quotes for these additional facilities or products. If these quotes are determined to be fair and reasonable, then the additional work will be awarded to the awarded Bidder by formal modification of the Contract or Purchase Order. The City may determine to obtain price quotes for the additional facilities from non-contract awarded Bidder(s) in the event that fair and reasonable pricing is not obtained from the awarded Bidder, or for other reasons, at the City's discretion.

16. CATALOGS AND PRICE LISTS

Intentionally Omitted.

17. CLEAN UP

The awarded Bidder shall keep the construction site free of rubbish and other materials and restore to their original conditions those portions of the site not designated for the alteration by the Contract Documents. Clean up and restoration shall be accomplished on a continuing basis throughout the contract period and in such a manner as to maintain a minimum of nuisance and interference to the general public and residents in the vicinity of the work.

The awarded Bidder shall also remove, when no longer needed, all temporary structures and equipment used in his operation. It is the intent of this specification that the construction areas and those other areas not designated for alteration by the Contract Documents shall be immediately restored to original condition as upon completion of the project.

18. DEMONSTRATION OF EQUIPMENT

Intentionally Omitted.

19. HOURLY RATE

Any hourly rate quoted shall be deemed to provide full compensation to the awarded Bidder for labor, equipment use, travel time, and any other element of cost or price. This rate is assumed to be at straight-time for all labor, except as otherwise noted.

20. MOTOR VEHICLE LICENSE REQUIREMENT

Intentionally Omitted.

21. PATENTS AND ROYALTIES

The awarded Bidder, without exception, shall indemnify and hold harmless the City and its employees from liability of any nature or kind, including cost and expenses for, or as a result of, any copyrighted, patented, or unpatented invention, process, or article manufactured by the awarded Bidder. The awarded Bidder has no liability when such claim is solely and exclusively due to the combination, operation, or use of any article supplied hereunder with equipment or data not supplied by awarded Bidder, or is based solely and exclusively upon the City's alteration of the article. The City will provide prompt written notification of a claim of copyright or patent infringement.

Further, if such a claim is made or is pending, the awarded Bidder may, at its option and expense, procure for the City the right to continue use of, replace or modify the article to render it noninfringing. (If none of the alternatives are reasonably available, the City agrees to return the article on request to the awarded Bidder and receive reimbursement, if any, as may be determined by a court of competent jurisdiction.) If the awarded Bidder uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the contract prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

22. PRE-CONSTRUCTION CONFERENCE

Prior to the start of construction, the awarded bidder may be required to attend a Pre-Construction Conference with City officials who are designated to represent the City for this project.

23. RELEASE OF CLAIM REQUIRED

Pursuant Section 255.05, Florida Statutes all payments to the subcontractors shall be made by the awarded Bidder within ten (10) days of receipt of the partial payment from the City. With the exception of the first partial payment, the awarded Bidder must pay all of its subcontractors and suppliers who have performed any work or supplied any materials for the project within ten (10) days after receipt of the partial payment by the awarded Bidder for monies due such subcontractors and suppliers as a result of a percentage of the work completed. The awarded Bidder must provide the City's project manager with duly executed affidavits (subcontractor's statement of satisfaction) or releases of claim from all subcontractors and suppliers who have performed any work or supplied any materials for on the project as of that date. The affidavit or releases shall certify that said subcontractors and suppliers have been paid their proportionate share of all previous partial payments to the awarded Bidder. In the event such affidavits cannot be furnished, the awarded Bidder may submit an executed consent of surety to requisition payment, identifying the subcontractors and suppliers with the amounts for which the statement of satisfaction cannot be furnished. If the awarded Bidder fails to provide consent of surety to requisition payment, the amount in dispute will be withheld until either the statement of satisfaction is furnished, or the consent of surety to requisition payment is furnished.

24. SUBCONTRACTORS OF WORK SHALL BE IDENTIFIED

As part of its Bid, the Bidder must identify any and all subcontractors that will be used in the performance of the proposed work, their capabilities and experience, and the portion of the work to be done by the subcontractor. The competency of the subcontractor(s) with respect to experience, skill, responsibility and business standing shall be considered by the City when

making the award in the best interest of the City. If the Bidder fails to identify any and all sub-contractors in the Bid, the Bidder may be allowed to submit this documentation if such action is in the best interest of the City.

25. CHANGES

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the contract. If such changes increase or decrease the amount due under the contract, or the time required for performance of the work, an equitable adjustment shall be authorized by Change Order.

The City may, at any time make changes in the details of the Work. The awarded bidder shall proceed with the performance of any changes in the work so ordered by the City, unless the awarded bidder believes that such changes entitles it to a change in the contract price or time, or both, in which event the awarded bidder shall give the City immediate written notice thereof after the receipt of the ordered change. Thereafter, the awarded bidder shall document the basis for the change in contract price or time within ten (10) calendar days. All changes resulting in a request for added time must be accompanied by a Time Impact Analysis.

Changes in the scope of work may be accomplished by change order, construction change directive, or field order. Any one of these documents shall be interpreted as further instruction from the City.

A change order shall be based upon agreement between the City and the awarded bidder; a construction change directive may or may not be agreed to by the awarded bidder; a field order for a minor change in the work may be issued by the City.

Changes in the work shall be performed under applicable provisions of the contract documents, and the awarded bidder shall proceed promptly, unless otherwise provided in the change order, construction change directive, or field order.

A change order will be prepared and signed by the City and awarded bidder, stating their agreement upon all of the following:

- a. a change in the scope of work;
- b. the amount of the adjustment in the contract price, if any; and
- c. the extent of the adjustment in the contract time, if any.

The issuance of a change order shall be full and final settlement for any issue or item addressed in the change order. No change order will be accepted or processed with any "reservation of rights" notations or clauses.

26. FAILURE TO DELIVER OR COMPLETE WORK

Should the awarded Bidder fail to deliver or complete the work within the time stated in the Contract, it is hereby agreed and understood that the City reserves the authority to cancel the Contract with the awarded Bidder and secure the services of another vendor to purchase the items or complete the work. If the City exercises this authority, the City shall be responsible for

paying the awarded Bidder for work which was completed and items delivered and accepted by the City in accordance with the Contract specifications. The City may, at its option, demand payment from the awarded Bidder, through an invoice or credit memo, for any additional costs over and beyond the original Contract price, which were incurred by the City, as a result of having to secure the services of another vendor.

27. WORK COVERED BY CONTRACT DOCUMENTS

The work covered by these specifications comprises, in general, the furnishing of all labor, equipment, materials, and performing all operations to construct the improvements, including but limited to roadway, water, sewer, drainage, structural, landscaping, and electrical improvements for the City as described and specified further in the Technical Specifications and as shown on the Contract Drawings, Addenda, or Amendments to the Contract Documents.

Except as specifically noted, the awarded Bidder shall provide and pay for:

- a. Labor, materials, tools, construction equipment, and machinery.
- b. Water and utilities required for construction.
- c. Other facilities and services necessary including all required testing, for proper execution and completion of the work.

The awarded Bidder shall comply with all codes, ordinances, rules, regulations, orders, permits and other legal requirements of the City.

Roadway restoration/reconstruction for any individual street shall be completed within 30 calendar days subsequent to substantial completion of underground utility construction on a street by street basis. The submitted construction schedule shall indicate this construction sequence.

28. OTHER FORMS OR DOCUMENTS

If the City is required by the awarded Bidder to complete and execute any other forms or documents in relation to this Solicitation, the terms, conditions, and requirements in this Solicitation shall take precedence to any and all conflicting or modifying terms, conditions or requirements of the Bidder's forms or documents.

29. SILTATION AND BANK EROSION

The awarded Bidder shall take adequate precautions to minimize siltation and bank erosion in the vicinity of canals or ditches, in discharging well point systems or during other construction activities.

30. STORAGE OF MATERIALS

Suitable storage facilities shall be furnished by the awarded Bidder. All materials, supplies and equipment intended for use in the work shall be suitably stored by the awarded Bidder to prevent damage from exposure, admixture with foreign substances, or vandalism or other cause. All hazardous materials must be stored in compliance with all pertinent requirements concerning their safe use and storage. The Consultant will refuse to accept, or sample for testing, materials, supplies or equipment that have been improperly stored, as determined by the Consultant.

Materials found unfit for use shall not be incorporated in the work and shall immediately be removed from the construction or storage site. Delivered materials shall be stored in manner acceptable to the City before any payment for same will be made. Materials strung out along the line of construction will not be allowed unless the materials will be installed within one week from the time of unloading and stringing out.

31. PRESERVATION OF PROPERTY

The awarded Bidder shall preserve from damage all property along the line of the work, or which is in the vicinity of or is in any way affected by the work, the removal or destruction of which is not called for by the plans. Wherever such property is damaged due to the activities of the awarded Bidder, it shall be immediately restored to its original condition by the awarded Bidder at no cost to the City.

In case of failure on the part of the awarded Bidder to restore such property, or make good such damage for injury, the City may, after 48 hours' notice to the awarded Bidder, proceed to repair, rebuild or otherwise restore such property as may be deemed necessary and the cost thereof will be deducted from any monies due or which may become due the awarded Bidder under this contract.

32. PUBLIC SAFETY AND CONVENIENCE

The awarded Bidder shall at all times so conduct his work as to ensure the least possible obstruction to traffic, or inconvenience to the general public and residents in the vicinity of the work. No road or street shall be closed to the public, except with the permission of the City and other jurisdictional governmental authority, if any. Fire hydrants on or adjacent to the work shall be kept accessible. Provisions shall be made by the awarded Bidder to ensure public access to sidewalks, public telephones, and the proper functioning of all gutters, sewer inlets, drainage ditches, and irrigation ditches. No open excavation shall be left overnight. All open excavation within the roadway shall be backfilled and a temporary asphalt patch applied prior to darkness each day. A cold asphalt patch is acceptable.

33. SAFETY AND OSHA COMPLIANCE

The awarded Bidder shall comply in all respects with all Federal, State and Local safety and health regulations. Copies of the Federal regulations may be obtained from the U.S. Department of Labor, Occupation Safety and Health Administration (OSHA), Washington, DC 20210 or their regional offices.

The awarded Bidder shall comply in all respects with the applicable Workers' Compensation Law.

34. AWARDED BIDDER'S USE OF PREMISES

Coordinate use of premises under direction of City through Consultant. Awarded Bidder may request complete use of the project site for construction from Consultant. Contract shall not use any private property or municipal property outside of the project boundary not governed by a Temporary Construction Easement, License Agreement, or other legally binding agreement allowing such use.

Assume full responsibility for the protection and safekeeping of equipment and materials stored on the site.

Move any stored Products, under awarded Bidder's control, which interfere with operations of the City or separate Contractor.

35. SCHEDULE OF VALUES

- a. Submit to the Consultant a Schedule of Values allocated to the various portions of the Work, within ten days after award of contract.
- b. Upon the request of the Consultant, support the values with data which will substantiate their correctness.
- c. The Schedule of Values, unless objected to by the Consultant, shall be used only as the basis for the awarded Bidder's Applications for Payment.
- d. The finalized schedule of values will be acceptable to the City as to form and substance.
- e. Form and Content of Schedule of Values:
 - i. Type schedule on 8-1/2-inch X 11-inch white paper; awarded Bidder's standard forms and automated printout will be considered for approval by Consultant upon awarded Bidders request. Identify schedule with:
 - A. Title of Project
 - B. Location (Limits)
 - C. City Project Number
 - D. Consultant
 - E. Name and Address of awarded Bidder
 - F. Date of Submission
 - ii. Schedule shall list the installed value of the component parts of the Work, in sufficient detail to serve as a basis for computing values for progress payments during construction.
 - iii. Follow Section 1025 of these Specifications as the format for listing component items.
 - A. Identify each line item with the number and title of the respective major section of the specifications.
 - iv. For the various portions of the Work:
 - A. Each item shall include a directly proportional amount of the awarded Bidder's overhead and profit.
 - B. For items on which progress payments will be requested for stored materials, break down the value into:
 - I. The cost of the materials delivered and unloaded, with taxes paid.
 - II. The total installed value.
 - v. The sum of all values listed in the schedule shall equal the total Contract Sum.
- f. Sub-schedule of Unit Material Values:
 - i. Submit a sub-schedule of unit costs and quantities for:
 - A. Products specified under a unit cost allowance in Section 01020.
 - B. Products on which progress payments will be requested for stored products.
 - ii. The form of submittal shall parallel that of the Schedule of Values, with each item identified the same as the line item it the Schedule of Values.
 - iii. The unit quantity for bulk materials shall include an allowance for normal waste.
 - iv. The unit values for the materials shall be broken down into:

- A. The cost of the material delivered and unloaded at the site, with taxes paid.
 - B. Installation costs, including awarded Bidder's overhead and profit.
- v. The installed unit value multiplied by the quantity listed shall equal the cost of that item in the Schedule of Values.

36. CHANGE ORDER PROCEDURES

- a. Properly document change order proceedings.
 - i. Provide full written data required to evaluate changes.
 - ii. Maintain detailed records of work done on time and material/force account basis.
 - iii. Provide full documentation to Consultant on request.
- b. Designate in writing the member of awarded Bidder's organization:
 - i. Person authorized to accept changes in the Work.
 - ii. Person responsible for informing others in the awarded Bidder's employ of the authorization of changes in the Work.
- c. City will designate in writing the person who is authorized to execute Change Orders.
- d. Preliminary Procedures:
 - i. City or Architect may initiate changes by submitting a Proposal Request to awarded Bidder. Request will include:
 - A. Detailed description of the Change, products, and location of the change in the Project.
 - B. Supplementary or revised Drawings and Specifications.
 - C. The projected time span for making the change, and a specific statement as to whether overtime work is, or is not, authorized.
 - D. A specific period of time during which the requested price will be considered valid.
 - E. Such request is for information only, and is not an instruction to execute the changes, nor to stop Work in progress.
 - ii. awarded Bidder may initiate changes by submitting a written notice to Architect, containing:
 - A. Description of the proposed changes.
 - B. Statement of the reason for making the changes.
 - C. Statement of the effect on the Contract Sum and the Contract Time.
 - D. Statement of the effect on the work of separate contractors.
 - E. Documentation supporting any change in Contract Sum or Contract Time, as appropriate.
- e. Construction-Change Authorization
 - i. In lieu of Proposal Request, Consultant may issue a construction change authorization for awarded Bidder to proceed with a change for subsequent inclusion in a Change Order.
 - ii. Authorization will describe changes in the Work, both additions and deletions, with attachments of revised Contract Documents to define details of the change and will designate the method of determining any change in the Contract Sum and any change in Contract Time.
 - iii. City and Consultant will sign and date the Construction Change Authorization as authorization for the awarded Bidder to proceed with the changes.

- iv. awarded Bidder shall sign and date the Construction Change Authorization to indicate agreement with the terms therein.
- f. Documentation of Proposals and Claims:
 - i. Support each quotation for a lump-sum proposal, and for each unit price which has not previously been established, with sufficient substantiating data to allow Consultant to evaluate the quotation.
 - ii. On request provide additional data to support time and cost computations:
 - A. Labor required.
 - B. Equipment required.
 - C. Products required.
 - I. Recommended sources of purchase and unit cost.
 - II. Quantities required.
 - D. Taxes, insurance and bonds.
 - E. Credit for work deleted from Contract, similarly documented.
 - F. Overhead and profit.
 - G. Justification for any change in Contract Time.
 - iii. Support each claim for additional costs, and for work done on a time-and-material/force account basis, with documentation as required for a lump-sum proposal, plus additional information:
 - A. Name of City's authorized agent who ordered the work, and date of the order.
 - B. Dates and times work was performed, and by whom.
 - C. Time record, summary of hours worked, and hourly rates paid.
 - D. Receipts and invoices for:
 - I. Equipment used, listing dates and times of use.
 - II. Products used, listing of quantities.
 - III. Subcontractors.
 - iv. Document requests for substitutions for Products as specified in Section 01630.
- g. Preparation of Change Orders:
 - i. Consultant will prepare each Change Order.
 - ii. City's Form, per example provided by the Consultant.
 - iii. Change Order will describe changes in the Work, both additions and deletions, with attachments of revised Contract Documents to define details of the change.
 - iv. Change Order will provide an accounting of the adjustment in the Contract Sum and in the Contract Time.
- h. Lump-Sum/Fixed Price Change Order:
 - i. Content of Change Orders will be based on either:
 - A. Consultant's Proposal Request and awarded Bidder's responsive Proposal as mutually agreed between City and awarded Bidder; or
 - B. awarded Bidder's Proposal for a change, as recommended by Consultant.
 - ii. City and Consultant will sign and date the Change Order as authorization for the awarded Bidder to proceed with the changes.
 - iii. awarded Bidder shall sign and date the Change Order to indicate agreement with the terms therein.
- i. Unit Price Change Order:
 - i. Content of Change Orders will be based on either:

- A. Consultant's definition of the scope of the required changes; or
 - B. awarded Bidder's Proposal for a change, as recommended by Consultant; or
 - C. Survey of completed work.
 - ii. The amounts of the unit prices to be:
 - A. Those stated in the Agreement.
 - B. Those mutually agreed upon between City and awarded Bidder.
 - iii. When quantities of each of the items affected by the Change Order can be determined prior to start of the work:
 - A. City and Consultant will sign and date the Change Order as authorization for awarded Bidder to proceed with the changes.
 - B. awarded Bidder shall sign and date the Change Order to indicate agreement with the terms herein.
 - iv. When quantities of the items cannot be determined prior to start of the work:
 - A. Consultant or City will issue a construction change authorization directing awarded Bidder to proceed with the change on the basis of unit prices and will cite the applicable unit prices.
 - B. At completion of the change, Consultant will determine the cost of such work based on the unit process and quantities used.
 - C. awarded Bidder shall submit documentation to establish the number of units of each item and any claims for a change in Contract Time.
 - D. Consultant will sign and date the Change Order to establish the change in Contract Sum and in Contract Time.
 - E. City and awarded Bidder will sign and date the Change Order to indicate their agreement with the terms therein.
- j. Time and Material/Force Account Change Order/Construction Change Authorization:
 - i. Consultant and City will issue a Construction Change Authorization directing awarded Bidder to proceed with the changes.
 - ii. At completion of the change, awarded Bidder shall submit itemized accounting and supporting data as provided in the Article "Documentation of Proposals and Claims" of this Section.
 - iii. Consultant will determine the allowable cost for such work, as provided in General Conditions and Supplementary Conditions.
 - iv. Consultant will sign and date the Change Order to establish the change in Contract Sum and in Contract Time.
 - v. City and awarded Bidder will sign and date the Change Order to indicate their agreement therewith.
- k. Correlation with awarded Bidder's Submittals:
 - i. Periodically revise Schedule of Values and Request for Payment forms to record each change as a separate item of Work, and to record the adjusted Contract sum.
 - ii. Periodically revise the Construction Schedule to reflect each change in Contract Time.
 - A. Revise sub-schedules to show changes for other items of work affected by the changes.
 - iii. Upon completion of work under a Change Order, enter pertinent changes in Record Documents.

37. CONTRACT CLOSEOUT

- a. Substantial Completion:
 - i. When awarded Bidder considers work has reached substantial completion, he shall submit to the Consultant the following:
 - A. Written notice that the work is substantially complete in accordance with Contract Documents.
 - B. A list of items yet to be completed or corrected and explanations thereof.
 - ii. Within a reasonable time upon receipt of such notice, the Consultant will make an inspection, if necessary, to determine the status of completion.
 - iii. Should the Consultant determine that the work is not substantially complete:
 - A. The Consultant will promptly notify the awarded Bidder in writing, giving the reasons thereof.
 - B. Awarded Bidder shall remedy the deficiencies in the work and send a second written notice of Substantial Completion to the Consultant.
 - C. Upon receipt of the second notice, the Consultant will reinspect the Work.
 - iv. When the Consultant finds that the Work is substantially complete, he will issue a Certificate of Substantial Completion with a tentative list of items to be completed or corrected before final inspection.
- b. Final Inspection After Completion:
 - i. When awarded Bidder considers the Work is complete with all minor deficiencies completed or corrected, he shall submit written certification that:
 - A. Contract Document requirements have been met.
 - B. Work has been inspected for compliance with Contract Documents.
 - C. Work has been completed in accordance with Contract Documents.
 - D. All minor deficiencies have been corrected or completed and the Work is ready for final inspection.
 - E. Project record documents are complete and submitted.
 - ii. Within a reasonable time upon receipt of such certification, the Consultant will make an inspection to verify the status of completion.
 - iii. Should the Consultant determine that the work is incomplete or defective:
 - A. The Consultant will promptly notify the awarded Bidder in writing, listing the incomplete or defective work.
 - B. Awarded Bidder shall remedy the deficiencies in the work and send a second written certification to the Consultant that the Work is complete.
 - C. Upon receipt of the second certification, the Consultant will reinspect the Work.
 - iv. When the Consultant determines that the work is acceptable, under the Contract Documents, he shall request the awarded Bidder to make closeout submittals.
- c. Final Cleaning:
 - i. Execute prior to final inspection.
 - ii. Clean site; sweep paved areas, rake clean other surfaces.
 - iii. Remove waste and surplus materials, rubbish, and construction facilities from the Project and from the site.
- d. awarded Bidder's Closeout Submittals:

- i. Project Record Documents
 - A. At Contract closeout, submit documents with transmittal letter containing date, Project title, awarded Bidder's name and address, list of documents, and signature of awarded Bidder.
 - B. Drawings; legibly marked to record actual construction:
 - I. Horizontal and vertical locations of underground utilities and appurtenances referenced to permanent surface improvements.
 - II. Drawings shall be signed and sealed by a surveyor registered in the State of Florida.
 - C. Specifications and Addenda; Legibly mark each Section to record.
 - D. Changes made by Field Order or by Change Order.
 - ii. Evidence of payment and Release of Liens.
- d. Final Adjustment of Accounts:
- i. Submit a final statement of accounting to the Consultant
 - ii. Statement shall reflect all adjustments to the Contract Sum:
 - A. The original Contract Sum
 - B. Additions and deductions resulting from:
 - I. Previous change orders or written amendment
 - II. Allowances
 - III. Unit prices
 - IV. Deductions for uncorrected work
 - V. Penalties and bonuses
 - VI. Deductions for liquidated damages
 - VII. Other adjustments
 - C. Total Contract Sum as adjusted
 - D. Previous payments
 - E. Sum remaining due

38. PROJECT RECORD DOCUMENTS

- a. Maintain at the site of the City a record copy of:
 - i. Drawings
 - ii. Specifications
 - iii. Addenda
 - iv. Change Orders and other modifications to the Contract
 - v. Approved Shop Drawings, Product Data and Samples
 - vi. Field Test Records
- b. Maintenance of Documents and Samples:
 - i. Store documents and samples in awarded Bidder's field office apart from documents used for construction.
 - A. Provide files and racks for storage of documents.
 - B. Provide locked cabinet or secure storage space for storage of samples.
 - ii. File documents and samples in accordance with Construction Specifications Institution ("CSI") format.
 - iii. Maintain documents in a clean, dry, legible condition and in good order. Do not use record documents for construction purposes.
 - iv. Make documents and samples available at all times for inspection by City's Representative.

- c. Marking Devices:
 - i. Provide felt tip marking pens for recording information in the color code designated by City's Representative.
- d. Recording:
 - i. Label each document, "PROJECT RECORD" in neat large printed letters, or by rubber stamp.
 - ii. Record information concurrently with construction progress. Do not conceal any work until required information is recorded.
 - iii. Drawings: Legibly mark to record actual construction (hard copy):
 - A. Horizontal and vertical locations of underground utilities and appurtenances referenced to permanent surface improvements.
 - B. Location of internal utilities and appurtenances concealed in the construction, referenced to visible and accessible features of the structures.
 - C. Field changes of dimension and detail.
 - D. Changes made by Field Order or by Change Order.
 - E. Details not on original Contract Drawings.
 - iv. Specifications and Addenda; legibly mark each Section to record:
 - A. Manufacturer, trade name, catalog number, and supplier of each produce and item of equipment actually installed.
 - B. Changes made by Field Order or by Change Order.
- e. As-Built Plans (Record Drawings):
 - i. The awarded Bidder shall maintain full size (24"x36") field drawings to reflect the "as-built" items of work as the work progresses. Upon completion of the work, the awarded Bidder shall prepare a record set of "as-built" drawings on full-size, reproducible material and an electronic file in AutoCAD 2013 Format or Latest Version. One set of full-size design drawings on reproducible material will be furnished to the awarded Bidder by the CONSULTANT at the current square foot price. An electronic file of the design drawings on a compact disk will be furnished to the awarded Bidder by the CONSULTANT at no additional cost. No additional payment will be made for those "as-built" drawings.
 - ii. The cost of maintaining record changes, and preparation of the Record Drawings shall be included in the unit prices bid for the affected items. Upon completion of the work the awarded Bidder shall furnish the CONSULTANT the reproducible "as-built" Drawings and the electronic files. The completed Record drawings shall be delivered to the Consultant at least 48 hours prior to final inspection of the work. The Final inspection will not be conducted unless the Record Drawings are in the possession of the CONSULTANT.
 - iii. The completed (or final) record drawings shall be certified by a Professional Land surveyor registered in the State of Florida. This certification shall consist of the surveyor's embossed seal bearing his registration number, the surveyor's signature and date on each sheet of the drawing set. In addition, the key sheet, cover sheet or first sheet of the plans set shall list the business address and telephone number of the surveyor.
 - iv. Representative items of work that should be shown on the record drawings as verified, changed or added are shown below:
 - A. Plans:

- I. Structure types, location with grade of rim and flow-line elevations.
 - II. Sewer type, length, size and elevations.
 - III. Utility type, length, size and elevation in conflict structures.
 - IV. All maintenance access structures, valves and hydrants within right-of way.
 - V. Spot (critical) elevations at plateaued intersections, P.C., P.T., midpoint of all intersections.
 - VI. Sewer laterals shall be stationed between maintenance access structures.
- v. Pavement Marking and Signing Plans: Sign location where installed if different from plans.
- vi. Water and Sewer Plans: Location (horizontal and vertical) of all pipe lines, structures, fittings, valves and appurtenances and water /sanitary sewer pipe crossings.
- vii. The awarded Bidder shall submit three sets of progress record drawings with each application for payment. These drawings shall accurately depict the work completed and for which payment is being requested.
- viii. As-built drawings shall include the following criteria at a minimum.
- A. As-builts of water lines shall include the following information:
 - I. Top of pipe elevations and horizontal location every 100th linear foot.
 - II. Locations and elevations of all fittings including bends, tees, gate valves, double detector check valves, fire hydrant, etc.
 - III. All tie-ins to existing lines shall be as-built.
 - IV. The ends of all water services at the buildings or homes shall be as-built or where the water service terminates.
- ix. As-builts of all gravity sanitary sewer lines include the following information:
- A. Rims, inverts and length of piping between structures, as well as slopes.
 - B. The stub ends of all sewer laterals shall be located and if there are any cleanouts installed on the sewer laterals then the invert elevation of these cleanouts shall be obtained.
 - C. Lift station as-builts shall consist of top of wet well elevation, invert elevation of the incoming line, bottom of the wet well and as-builts of the compound area.
- x. Force main as-builts shall be prepared the same as the water line as-builts.
- xi. As-builts of all drainage lines shall include the following information:
- A. Rims, inverts and length of piping between structures and weir elevations if applicable.
 - B. The size of the piping shall be verified by the survey crew at the time of as-built.
- xii. All rock as-builts for parking lot, roadways and swales areas shall consist of the following:
- A. Rock elevations at all high and low points, and at enough intermediate points to confirm slope consistency and every 50' for roadways.
 - B. Rock as-builts shall be taken at all locations where there is a finish grade elevation shown on the design plans.
 - C. All catch basin and manhole rim elevations shall be shown.

- D. Elevations around island areas will also be required.
- E. As-builts shall be taken on all paved and unpaved swales prior to placement of asphalt and/or topsoil/sod, at enough intermediate points to confirm slope consistency and conformance to the plan details.
- xiii. Lake and canal bank as-builts shall include a key sheet of the lake for the location of cross sections. Lake and canal bank cross sections shall be plotted at a minimum of every 100 lf, unless otherwise specified. As-builts shall consist of the location and elevation of the top of bank, edge of water and the deep cut line, with the distance between each shown on the drawing.
- xiv. Retention area as-built elevations shall be taken at the bottom of the retention area and at the top of bank. If there are contours indicated on the design plans, then they shall be as-built, as well.
- xv. If a change is made via field order or deviation to any structure, pipeline, etc., a new location shall be noted on the as-builts. The CONSULTANT may request additional as-built information to verify horizontal or vertical locations.
- f. Submittal:
 - i. At Contract closeout, deliver Record Documents to City's Representative, or presentation to the City.
 - ii. A complete set of "As-Built" Drawings shall be prepared and delivered to the City's Representative for the City. Work shall be performed by a Registered Professional Land Surveyor and shall include, but not be limited to the following:
 - A. Valve boxes, splice boxes, pull boxes, all underground utilities-waterlines, electrical runs, irrigation system, storm drainage pipe and structures, finished necessary grades, benches, curbs, fences walls signs, light fixtures and other items as necessary.
 - iii. Accompany submittal with transmittal letter in duplicate, containing:
 - A. Date.
 - B. Project title and number.
 - C. awarded Bidder's name and address.
 - D. Title and number of each Record Document.
 - E. Signature of awarded Bidder or his authorized representative.

END OF SECTION 1

SECTION 2: SCOPE OF WORK AND TECHNICAL SPECIFICATIONS

1. GENERAL REQUIREMENTS

The work required under this Solicitation includes the construction of Phase 2 of the Beach Master Plan to improve the beach's intersections and install promenade lighting. Phase 1 included all the wider, reconstructed sidewalks, landscaping and irrigation, and new amenities including benches, showers, surfboard racks, doggie waste stations and chilled water fountains. Construction of Phase 1 was completed in 2018. Phase 2 of the project includes installation of beach pedestrian lighting for the beach promenade, and intersection improvements focusing on pedestrian roadway crosswalks along South Ocean Boulevard. The anticipated budget for this project is \$3,400,000.

2. DRAWINGS

Drawings for this project are herein incorporated into this solicitation as Exhibit A, Drawings.

3. SPECIFICATIONS

Specifications for this project are herein incorporated into this solicitation as Exhibit B, Specifications.

4. PROJECT TIMELINE

The awarded Bidder shall agree to substantially complete the construction no later than 180 days after the Notice to Proceed is issued. Final completion shall occur no later than 30 days after substantial completion is accepted by the City. The City, at its discretion may allow for time extensions for unforeseen and unexpected delays. FDOT-related construction (crosswalks and intersections) shall not commence before July 8, 2019.

5. BASE BID ITEM NOS. 1 THROUGH 58

Includes bid items for general conditions, demolition, on-site items, landscape items, Utilities, and miscellaneous construction. Refer to Exhibit B, Specifications, for a complete listing of bid items and descriptions.

6. ALTERNATE, BID ITEM NOS. 59 THROUGH 67

Option to add electrical utilities. Refer to Exhibit B, Specifications, for a complete listing of bid items and descriptions.

7. ALTERNATE, BID ITEM NOS. 68 THROUGH 89

Option to add civil roadway improvements at Venetian Drive and Gleason Street. Refer to Exhibit B, Specifications, for a complete listing of bid items and descriptions.

8. ALTERNATE, BID ITEM NOS. 90 THROUGH 93

Option to add maintenance items. Refer to Exhibit B, Specifications, for a complete listing of bid items and descriptions.

END OF SECTION 2

SECTION 3: MINIMUM QUALIFICATIONS

Bidder shall submit information and documentation requested in this Section that confirms it meets the following qualification requirement(s). For the purposes of this ITBC, a responsible Bidder is a Bidder that meets the minimum qualification requirements below.

1. Bidder has a Florida State General Contractor's license or a current certificate of competency issued by Palm Beach County Examining Board having jurisdiction over licensing of Contractors in the type of work involved in this contract. **Provide proof, in the form of a copy of license(s), that the Bidder meets this qualification.**

END OF SECTION 3

SECTION 4: BID FORMS AND AFFIDAVITS

1. BID FORMS AND AFFIDAVITS

The forms listed below shall be completed by an official having legal authorization to contractually bind the company or firm. Each signature/acknowledgement via www.BidSync.com represents a binding commitment upon the Proposer to provide the goods and/or services offered to the City if the Proposer is determined to be the most responsive and responsible Proposer.

- a. Submittal Page
(Complete applicable web form on www.BidSync.com)
- b. Acknowledgement of Addenda
(Complete applicable web form on www.BidSync.com)
- c. Bid Submittal Signature Page
(Complete applicable web form on www.BidSync.com)
- d. Pricing
(Complete applicable web form on www.BidSync.com)
- e. Conflict of Interest Disclosure Form
(Complete applicable web form on www.BidSync.com)
- f. Notification of Public Entity Crimes Law
(Complete applicable web form on www.BidSync.com)
- g. Notification of Public Records Law
(Complete applicable web form on www.BidSync.com)
- h. Drug-Free Work Place
(Complete applicable web form on www.BidSync.com)
- i. Non-Collusion Affidavit
- j. Sample Performance Bond
(Only to be completed by the awarded Bidder)
- k. Sample Letter of Credit Format
(Only to be completed by the awarded Bidder)
- l. Solicitation Summary
(Complete applicable web form on www.BidSync.com)

NON-COLLUSION AFFIDAVIT

There is no web form available on www.bidsync.com for this form. Please print and complete this form.

STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, personally appeared _____, who, after being by me first duly sworn, deposes and says of his/her personal knowledge that:

- a. He/She is _____ of _____, the Bidder that has submitted a Bid to perform work for the following:

ITBC No.: _____ Title: _____

- b. He/She is fully informed respecting the preparation and contents of the attached Request for Bids, and of all pertinent circumstances respecting such Solicitation.

Such Bid is genuine and is not a collusive or sham Bid.

- c. 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 Solicitation and contract for which the attached Bid has been submitted or to refrain from proposing in connection with such Solicitation and 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 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 or any person interested in the proposed contract.
- d. 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.

Signature

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 20____, by _____, who is personally known to me or who has produced _____ as identification.

SEAL

Notary Signature _____

Notary Name: _____

Notary Public (State): _____

My Commission No: _____

Expires on: _____

SAMPLE PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that - _____

(Insert full name and address or legal title of awarded Bidder)

as Principal, hereinafter called Contractor, and _____,
(Name of Insurer)

as Surety, hereinafter called Surety, are held and firmly bound unto the City of Delray Beach, Palm Beach County, Florida.

As Obligee, hereinafter called the City, in the amount of _____

(\$ _____), for the payment whereof, Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severably, firmly by the presents.

WHEREAS, Contractor has by written agreement dated _____, 20____, entered into Contract No. _____ with the City in accordance with the Solicitation specifications prepared by the City, which Contract is by reference made a part hereof and is hereinafter referred as the Contract, for the performance of the following Work:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the City.

Whenever Contractor shall be and declared by the City to be in default under the Contract, the City having performed City's obligations thereunder, the Surety may promptly remedy the default or shall promptly:

- a. Complete the Contract in accordance with its terms and conditions; or
- b. Obtain a Bid or Bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the most responsible Bidder, or if the City elects, upon determination by the City and the Surety jointly of the most responsible Bidder, arrange for a Contract between such Bidder and the City, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for

which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by the City to Contractor under the contract and any amendments thereto, less the amount properly paid by the City to the Contractor.

Any suit under this bond must be instituted before the expiration of twenty-five (25) months from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the City named herein or the heirs, executors, administrators, or successors of the City.

Signed and sealed this _____ day of _____, 20__.

(Principal) (Seal)

(Witness)

(Title)

(Name of Insurer) Surety (Seal)

(Witness)

By: _____
(Attorney-in-Fact)

SAMPLE LETTER OF CREDIT FORMAT

LETTER OF CREDIT NO.: _____
ISSUANCE DATE: _____

APPLICANT:

{Name of Corporation} _____
{Address} _____
{City, State, Zip} _____

BENEFICIARY:

CITY OF DELRAY BEACH
100 N.W. 1ST AVENUE
DELRAY BEACH, FL 33444

FOR U.S.D. \$ _____
DATE OF EXPIRATION: _____

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. _____ IN FAVOR OF THE BENEFICIARY, THE CITY OF DELRAY BEACH, FLORIDA (HEREINAFTER "PBG") FOR THE ACCOUNT OF THE ABOVE-REFERENCED APPLICANT, AVAILABLE BY YOUR DRAFTS DRAWN ON (Insert name of Bank) PAYABLE AT SIGHT FOR ANY SUM OF MONEY NOT TO EXCEED A TOTAL OF (Insert the amount of money), THE AMOUNT REFERENCED ABOVE.

DEMANDS OF THE LETTER OF CREDIT MUST BE ACCOMPANIED BY A STATEMENT FROM THE CITY MANAGER OF THE CITY OF DELRAY BEACH CERTIFYING EITHER: (1) THAT SAID LETTER OF CREDIT IS ABOUT TO EXPIRE AND HAS NOT BEEN RENEWED, OR (2) THAT WORK HAS NOT BEEN COMPLETED IN ACCORDANCE WITH THE PLANS, SPECIFICATIONS, AND AGREEMENTS (INCLUDING ANY AMENDMENTS THEREOF) FOR THE FOLLOWING PROJECT: **{Name of Project}** _____ (THE 'PROJECT').

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED FOR PERIODS OF ONE YEAR FROM EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, WITHOUT ANY AMENDMENT, UNLESS THIRTY (30) DAYS BUT NO MORE THAN SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE WE SHALL NOTIFY PBG IN WRITING BY CERTIFIED MAIL RETURN RECEIPT REQUESTED, OR BY COURIER VIA HAND DELIVERY AT THE ABOVE-LISTED ADDRESS, THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH ADDITIONAL PERIOD.

WE HEREBY AGREE WITH THE DRAWERS, ENDORSERS, AND BONA FIDE HOLDERS OF ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THE CREDIT THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION TO **{Name of Bank}** _____ (THE 'BANK'), WHICH IS DULY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF FLORIDA IN ACCORDANCE WITH THE TERMS HEREOF. IF A DRAFT, AS DESCRIBED IN THIS LETTER OF CREDIT, IS PRESENTED PRIOR TO THE EXPIRATION DATE AND IN CONFORMITY WITH THE TERMS OF THIS LETTER OF

CREDIT AND UPON PRESENTATION IT IS WRONGFULLY DISHONORED BY THE BANK, THE BANK AGREES TO PAY REASONABLE ATTORNEYS FEES AND COSTS, INCLUDING FEES AND COSTS ON APPEAL, INCURRED BY THE CITY OF DELRAY BEACH TO ENFORCE THIS LETTER OF CREDIT SHOULD THE CITY PREVAIL.

DOCUMENTS MUST BE PRESENTED FOR PAYMENT TO:

{Name of Bank Branch} _____

{Address} _____

{City, State, Zip} _____

ATTN: **{Department}** _____

ALL DRAWINGS UNDER THIS LETTER OF CREDIT MUST BE ACCOMPANIED BY THE ORIGINAL LETTER OF CREDIT INSTRUMENT WHICH WILL BE RETURNED TO THE BENEFICIARY AFTER ENDORSING THE BACK OF SAME WITH THE AMOUNT OF EACH DRAWING BY US.

PARTIAL DRAWINGS ARE PERMITTED.

THE AMOUNT OF ANY DRAFT DRAWN UNDER THIS CREDIT MUST BE ENDORSED ON THE REVERSE OF THE ORIGINAL CREDIT. ALL DRAFTS MUST BE MARKED "DRAWN UNDER **{Name of Bank}** _____ LETTER OF CREDIT NUMBER _____ DATED _____, 20__."

THIS CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600", AND TO THE PROVISIONS OF FLORIDA LAW. IF A CONFLICT BETWEEN THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW SHALL PREVAIL. IF A CONFLICT BETWEEN THE LAW OF ANOTHER STATE OR COUNTRY AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW SHALL PREVAIL. VENUE FOR ANY DISPUTES RELATING TO THE ENFORCEMENT OF THIS LETTER OF CREDIT SHALL BE PALM BEACH COUNTY, FLORIDA.

{Name of Bank} _____

BY: _____

{Name} _____

{Title} _____

END OF SECTION 4

SECTION 5: SAMPLE AGREEMENT FORMAT

Below is the standard agreement format for this Invitation to Bid Construction. This is a sample agreement only and is subject to revisions. **DO NOT COMPLETE.**

AGREEMENT

THIS AGREEMENT is hereby made and entered into this ____ day of _____, 20__, (the “effective date”) by and between the City of Delray Beach, a Florida municipal corporation (“City”), whose address is 100 N.W. 1st Avenue, Delray Beach, Florida 33444, and _____, a <state> corporation (hereafter referred to as “Contractor”) <authorized to do business in Florida>, whose address is _____.

WHEREAS, the City desires to retain the services of the Contractor to provide the goods and services in accordance with the City’s Invitation to Bid Construction No. 2019-023, and the Contractor’s response thereto, all of which are incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth, the Contractor and the City agree as follows:

ARTICLE 1. INCORPORATION OF INVITATION TO BID CONSTRUCTION

The terms and conditions of this Agreement shall include and incorporate the terms, conditions, and specifications set forth in the City’s Invitation to Bid Construction No. 2019-023, and the Contractor’s response to the Invitation to Bid Construction, including all documentation required thereunder.

ARTICLE 2. DESCRIPTION OF GOODS OR SCOPE OF SERVICES

The Contractor shall provide the goods and/or perform those services identified in the specifications accompanying the City’s Invitation to Bid Construction, which are incorporated herein by reference.

ARTICLE 3. COMPENSATION

The City shall pay to the Contractor, in compliance with the Pricing Schedule attached hereto and incorporated herein, according to the terms and specifications of the referenced Invitation to Bid Construction.

ARTICLE 4. MISCELLANEOUS PROVISIONS

a. Notice Format. All notices or other written communications required, contemplated, or permitted under this Agreement shall be in writing and shall be hand delivered, telecommunicated, or mailed by registered or certified mail (postage prepaid), return receipt requested, to the following addresses:

- i. As to the City: City of Delray Beach

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

- ii. with a copy to: City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Attorney
Email:

- iii. As to the Contractor: _____

Attn.: _____
Email: _____

b. Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

c. Effective Date. The effective date of this Agreement shall be as of the date it has been executed by both the parties hereto.

ARTICLE 5. CONTRACT TERM

This term of this Agreement shall be from the effective date through the completion of work and full acceptance by the City, unless terminated earlier in accordance with terms set forth in the ITBC.

(Remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereinafter written.

CITY OF DELRAY BEACH, FLORIDA

[SEAL]

By: _____
Mark R. Lauzier, City Mayor

ATTEST:

By: _____
Katerri Johnson, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Lynn Gelin, Interim City Attorney

CONTRACTOR

[SEAL]

By: _____

Printed Name

Title

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, as _____ (name of officer or agent, title of officer or agent), of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ (type of identification) as identification.

Notary Public – State of _____

END OF SECTION 5

SECTION 6: EXHIBITS

1. EXHIBITS
 - a. Exhibit A: Drawings
 - b. Exhibit B: Specifications

END OF SECTION 6

SECTION 7: GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

- a. *Bid: any offer(s) submitted in response to an Invitation to Bid.*
- b. *Bidder: person or firm submitting a Bid in response to an Invitation to Bid.*
- c. *Bid Solicitation or Invitation to Bid: this Solicitation documentation, including any and all addenda.*
- d. *Bid Submittal Form: describes the goods or services to be purchased, and must be completed and submitted with the Bid.*
- e. *City: shall refer to the City of Delray Beach, Florida.*
- f. *Contract or Agreement: Invitation to Bid, all addenda issued thereto, all affidavits, the signed agreement, and all related documents which comprise the totality of the contract or agreement between the City and the Bidder.*
- g. *Contractor: awarded Bidder or Bidder who is awarded a contract to provide goods or services to the City.*
- h. *Invitation to Bid: formal request for Bids from qualified Bidders.*
- i. *Purchasing Department: Purchasing Department of the City of Delray Beach, Florida.*
- j. *Responsible Bidder: Bidder which has the capability in all respects to perform in full the contract requirements, as stated in the Invitation to Bid, and the integrity and reliability that will assure good-faith performance.*
- k. *Responsive Bidder: Bidder whose Bid conforms in all material respects to the terms and conditions included in the Invitation to Bid.*

2. CONE OF SILENCE

Pursuant to Section 2-355 of Palm Beach County Ordinance No. 2011-039, and the purchasing policies of the City of Delray Beach, all Solicitations, once advertised and until the appropriate authority has approved an award recommendation, are under the "Cone of

Silence". This limits and requires documentation of communications between potential Bidders and/or Bidders on City Solicitations, the City's professional staff, and the City Council members.

3. ADDENDUM

The Purchasing Department may issue an addendum in response to any inquiry received, prior to the close of the Solicitation period, which changes, adds, or clarifies the terms, provisions, or requirements of the Solicitation. The Bidder should not rely on any representation, statement, or explanation, whether written or verbal, other than those made in the Solicitation document or in the addenda issued. Where there appears to be a conflict between the Solicitation and any addenda, the last addendum issued shall prevail. It is the vendor's responsibility to ensure receipt of all addenda, and any accompanying documentation. The vendor is required to submit with its Bid or Bid a signed "Acknowledgment of Addenda" form, when any addenda have been issued.

4. LEGAL REQUIREMENTS

This Solicitation is subject to all legal requirements contained in the applicable City Ordinances and Resolutions, as well as all applicable City, State, and Federal Statutes. Where conflict exists between this Bid Solicitation and these legal requirements, the authority shall prevail in the following order: Federal, State, and local.

5. CHANGE OF BID

Prior to the scheduled Bid opening a Bidder may change its Bid by submitting a new Bid (as indicated on the cover page) with a letter on the firm's letterhead, signed by an authorized agent stating that the new submittal replaces the original submittal. The new submittal shall contain the letter and all information as required for submitting the original Bid. No changes to a Bid will be accepted after the Bid has been opened.

6. WITHDRAWAL OF BID

A Bid shall be irrevocable unless the Bid is withdrawn as provided herein. Only a written letter received by the Purchasing Department prior to the Bid opening date may withdraw a Bid. A Bid may also be withdrawn ninety (90) days after the Bid has been opened and prior to award, by submitting a letter to the Purchasing

**to sign the Signature Page of the Bid shall
render the Bid non-responsive.**

- and Contracts Director. The withdrawal letter must be on company letterhead and signed by an authorized agent of the Bidder.
7. **CONFLICTS WITHIN THE BID SOLICITATION**
Where there appears to be a conflict between the General Terms and Conditions, Special Conditions, the Technical Specifications, the Bid Submittal Form, or any addendum issued, the order of precedence shall be: the last addendum issued, the Bid Submittal Form, the Technical Specifications, the Special Conditions, and then the General Terms and Conditions.
8. **PROMPT PAYMENT TERMS**
It is the policy of the City of Delray Beach that payment for all purchases by City departments shall be made in a timely manner. The City will pay the awarded Bidder upon receipt and acceptance of the goods or services by a duly authorized representative of the City. In accordance with Section 218.74, Florida Statutes, the time at which payment shall be due from the City shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. Proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the City Manager or designee, not later than sixty (60) days after the date on which the proper invoice was received by the City.
9. **DISCOUNTS (PROMPT PAYMENTS)**
The Bidder may offer cash discounts for prompt payments; however, such discounts will not be considered in determining the lowest price during Bid evaluation. Bidders are requested to provide prompt payment terms in the space provided on the Bid submittal signature page of the Solicitation.
10. **PREPARATION OF BIDS**
a. The Bid forms define requirements of items to be purchased, and must be completed and submitted with the Bid. Use of any other forms will result in the rejection of the Bidder's offer. The Bid submittal forms must be legible. Bidders shall use typewriter, computer, or ink. All changes must be crossed out and initialed in ink. Failure to comply with these requirements may cause the Bid to be rejected.
b. An authorized agent of the Bidder's firm must sign the Bid submittal form. **Failure**
- c. The Bidder may be considered non-responsive if Bids are conditioned upon modifications, changes, or revisions to the terms and conditions of this Solicitation.
- d. The Bidder may submit alternate Bid(s) for the same Solicitation provided that such offer is allowable under the terms and conditions. The alternate Bid must meet or exceed the minimum requirements and be submitted as a separate Bid submittal marked "Alternate Bid".
- e. When there is a discrepancy between the unit prices and any extended prices, the unit prices will prevail.
- f. Late Bids will not be accepted and will be returned to the sender unopened. It is the Bidder's responsibility to ensure timely delivery by the due date and time, and at the place stated in this Solicitation. No exceptions will be made due to weather, carrier, traffic, illness, or other issues.
11. **CANCELLATION OF BID SOLICITATION**
The City of Delray Beach reserves the right to cancel, in whole or in part, any Invitation to Bid when it is in the best interest of the City.
12. **AWARD OF CONTRACT**
a. The contract may be awarded to the responsive and responsible Bidder meeting all requirements as set forth in the Solicitation. The City reserves the right to reject any and all Bids, to waive irregularities or technicalities, and to re-advertise for all or any part of this Bid Solicitation as deemed in its best interest. The City shall be the sole judge of its best interest.
b. The City reserves the right to reject any and all Bids if it is determined that prices are excessive, best offers are determined to be unreasonable, or it is otherwise determined to be in the City's best interest to do so.
c. The City reserves the right to negotiate prices **with the responsive and responsible low Bidder**, provided that the scope of work of this Solicitation remains the same.
d. The Bidder's performance as a prime contractor or subcontractor on previous

- City contracts shall be taken into account in evaluating the Bid received for this Bid Solicitation.
- e. The City will provide a copy of the Bid Tabulation to all Bidders responding to this Solicitation.
- f. The Bid Solicitation, any addenda and/or properly executed modifications, the signed Agreement, the purchase order, and any change order(s) shall constitute the contract.
- g. The Purchasing and Contracts Director will decide all tie Bids.
- h. Award of this Bid may be predicated on compliance with and submittal of all required documents as stipulated in the Bid Solicitation.
- i. The City reserves the right to request and evaluate additional information from any Bidder after the submission deadline as the City deems necessary.
13. **CONTRACT EXTENSION**
The City reserves the right to automatically extend any agreement for a maximum period not to exceed ninety (90) calendar days in order to provide City departments with continual service and supplies while a new agreement is being solicited, evaluated, and/or awarded.
14. **WARRANTY**
All warranties express and implied shall be made available to the City for goods and services covered by this Bid Solicitation. All goods furnished shall be fully guaranteed by the awarded Bidder against factory defects and workmanship. At no expense to the City, the awarded Bidder shall correct any and all apparent and latent defects that may occur within the manufacturer's standard warranty.
15. **ESTIMATED QUANTITIES**
Estimated quantities or dollars are for Bidder's guidance only: (a) estimates are based on the City's anticipated needs and/or usage; and (b) the City may use these estimates to determine the low Bidder. No guarantee is expressed or implied as to quantities or dollars that will be used during the contract period. The City is not obligated to place any order for the given amount subsequent to the award of this Bid Solicitation.
16. **NON-EXCLUSIVITY**
It is the intent of the City to enter into an agreement with the awarded Bidder that will satisfy its needs as described herein. However, the City reserves the right as deemed in its best interest to perform, or cause to be performed, the work and services, or any portion thereof, herein described in any manner it sees fit, including but not limited to, award of other contracts, use of any contractor, or perform the work with its own employees.
17. **CONTINUATION OF WORK**
Any work that commences prior to and will extend beyond the expiration date of the current contract period shall, unless terminated by mutual written agreement between the City and the awarded Bidder, continue until completion at the same prices, terms, and conditions.
18. **BID PROTEST**
a. A recommendation for contract award or rejection of award may be protested by a Bidder. The Bidder may file a written protest with the City Clerk's office. The Bidder shall file its written protest with the City Clerk, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., excluding legal holidays. Protests shall contain the name, address, and phone number of the petitioner, name of the petitioner's representative (if any), and the title and Bid number of the Solicitation. The protest shall specifically describe the subject matter, facts giving rise to the protest, and the action requested from the City.
b. The written protest must be received no later than seventy-two (72) consecutive hours (excluding Saturdays, Sundays, and legal holidays) after the time of initial posting of the intended award. Failure to file a timely formal written protest within the time period specified shall constitute a waiver by the Bidder of all rights of protest.
c. In the event of a timely protest, the City will not proceed further with award of the contract and agreement until all administrative remedies are exhausted, or until the City Manager determines the award of the contract is immediately necessary to protect the public health, welfare, or safety.
19. **LAWS AND REGULATIONS**
The awarded Bidder shall comply with all laws and regulations applicable to provide the goods

or services specified in this Bid Solicitation. The Bidder shall be familiar with all federal, state, and local laws that may affect the goods and/or services offered.

required by the US Department of Homeland Security. The City shall have no responsibility to check or verify the legal immigration status of any employee of the awarded Bidder.

20. LICENSES, PERMITS AND FEES

The awarded Bidder(s) shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations, and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the City or an awarded Bidder for failure to obtain and maintain required licenses, certifications, permits, and/or inspections shall be borne by the awarded Bidder.

25. INDEMNIFICATION

The awarded Bidder shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the agreement by the awarded Bidder or its employees, agents, servants, partners, principals, or subcontractors. The awarded Bidder shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The awarded Bidder expressly understands and agrees that any insurance protection required by this contract agreement or otherwise provided by the awarded Bidder shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City or its officers, employees, agents, and instrumentalities as herein provided.

21. SUBCONTRACTING

Unless otherwise specified in this Bid Solicitation, the awarded Bidder shall not subcontract any portion of the work without the prior written consent of the City. The ability to subcontract may be further limited by the Special Conditions. Subcontracting without the prior consent of the City may result in termination of the contract for default.

26. COLLUSION

A Bidder recommended for award as the result of a competitive Solicitation for any City purchases of supplies, materials, and services (including professional services, other than professional architectural, engineering, and other services subject to Sec. 287.055 Florida Stats.), purchase, lease, permit, concession, or management agreement shall, within five (5) business days of the filing of such recommendation, submit an affidavit under the penalty of perjury, on a form provided by the City, stating either that the contractor is not related to any of the other parties Bidding in the competitive Solicitation or identifying all related parties, as defined in this Section, which Bid in the Solicitation; and attesting that the contractor's Bid is genuine and not a sham or collusive or made in the interest or on behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other Bidder to put in a sham Bid, or any other person, firm, or corporation to refrain from proposing, and that the Bidder has

22. ASSIGNMENT

The awarded Bidder shall not assign, transfer, hypothecate, or otherwise dispose of this contract, including any rights, title, or interest therein, or its power to execute such contract to any person, company, or corporation without the prior written consent of the City. Assignment without the prior consent of the City may result in termination of the contract for default.

23. SHIPPING TERMS

Unless otherwise specified in the Bid Solicitation, prices quoted shall be F.O.B. Destination. Freight shall be included in the proposed price.

24. RESPONSIBILITIES AS EMPLOYER

The employee(s) of the awarded Bidder shall be considered to be at all times its employee(s), and not an employee(s) or agent(s) of the City or any of its departments. The awarded Bidder shall provide physically competent employee(s) capable of performing the work as required. The City may require the awarded Bidder to remove any employee it deems unacceptable. All employees of the awarded Bidder shall wear proper identification.

It is the awarded Bidder's responsibility to ensure that all its employees and subcontractors comply with the employment regulations

- not in any manner sought by collusion to secure to the Bidder an advantage over any other Bidder. In the event a recommended Bidder identifies related parties in the competitive Solicitation its Bid shall be presumed to be collusive and the recommended Bidder shall be ineligible for award unless that presumption is rebutted to the satisfaction of the City. Any person or entity that fails to submit the required affidavit shall be ineligible for contract award.
27. **MODIFICATION OF CONTRACT**
The contract may be modified by mutual consent, in writing, through the issuance of a modification to the contract, a supplemental agreement, purchase order, or change order, as appropriate.
28. **TERMINATION FOR CONVENIENCE**
The City, at its sole discretion, reserves the right to terminate any contract entered into pursuant to this Invitation to Bid (ITB) with or without cause immediately upon providing written notice to the awarded Bidder. Upon receipt of such notice, the awarded Bidder shall not incur any additional costs under the contract. The City shall be liable only for reasonable costs incurred by the awarded Bidder prior to the date of the notice of termination. The City shall be the sole judge of "reasonable costs."
29. **TERMINATION FOR DEFAULT**
The City reserves the right to terminate this contract, in part or in whole, or place the vendor on probation in the event the awarded Bidder fails to perform in accordance with the terms and conditions stated herein by providing written notice of such failure or default and by specifying a reasonable time period within which the awarded Bidder must cure any such failure to perform or default. If the awarded Bidder fails to cure the default within the time specified, the City may then terminate the subject contract by providing written notice to the awarded Bidder. The City further reserves the right to suspend or debar the awarded Bidder in accordance with the appropriate City ordinances, resolutions, and/or policies. The vendor will be notified by letter of the City's intent to terminate. In the event of termination for default, the City may procure the required goods and/or services from any source and use any method deemed in its best interest. All re-procurement costs shall be borne by the incumbent Bidder.
30. **FRAUD AND MISREPRESENTATION**
Any individual, corporation, or other entity that attempts to meet its contractual obligations with the City through fraud, misrepresentation, or material misstatement, may be debarred for up to five (5) years. The City, as a further sanction, may terminate or cancel any other contracts with such individual, corporation, or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.
31. **ACCESS AND AUDIT OF RECORDS**
The City reserves the right to require the awarded Bidder to submit to an audit by an auditor of the City's choosing at the awarded Bidder's expense. The awarded Bidder shall provide access to all of its records, which relate directly or indirectly to this Agreement, at its place of business during regular business hours. The awarded Bidder shall retain all records pertaining to this Agreement, and upon request, make them available to the City for three (3) years following expiration of the Agreement. The awarded Bidder agrees to provide such assistance as may be necessary to facilitate the review or audit by the City to ensure compliance with applicable accounting and financial standards.
32. **OFFICE OF THE INSPECTOR GENERAL**
Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present, and proposed County programs, contracts, transactions, accounts and records. The Inspector General (IG) has the power to subpoena witnesses, administer oaths, require the production of records, and monitor existing projects and programs. The Inspector General may, on a random basis, perform audits on all City contracts.
33. **PRE-AWARD INSPECTION**
The City may conduct a pre-award inspection of the Bidder's site or hold a pre-award qualification hearing to determine if the Bidder is capable of performing the requirements of this Bid Solicitation.
34. **PROPRIETARY AND/OR CONFIDENTIAL INFORMATION**
Bidders are hereby notified that all information submitted as part of, or in support of Bid submittals will be available for public inspection after the opening of Bids in compliance with Chapter 119 of the Florida Statutes, popularly known as the "Public Record Law." The Bidder shall not submit any information in response to this Solicitation which the Bidder considers to be

a trade secret, proprietary, or confidential. The submission of any information to the City in connection with this Solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection which would otherwise be available to the Bidder. In the event that the Bidder submits information to the City in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the Bid as protected or confidential, the City may, in its sole discretion, either (a) communicate with the Bidder in writing in an effort to obtain the Bidder's withdrawal of the confidentiality restriction, or (b) endeavor to redact and return that information to the Bidder as quickly as possible, and if appropriate, evaluate the balance of the Bid. The redaction or return of information pursuant to this clause may render a Bid non-responsive.

35. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Any person or entity that performs or assists the City of Delray each with a function or activity involving the use or disclosure of "individually identifiable health information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996. HIPAA mandates for privacy, security, and electronic transfer standards include, but are not limited to:

- a. Use of information only for performing services required by the contract or as required by law;
- b. Use of appropriate safeguards to prevent non-permitted disclosures;
- c. Reporting to the City of Delray Beach any non-permitted use or disclosure;
- d. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Bidder and reasonable assurances that IIHI/PHI will be held confidential;
- e. Making Protected Health Information (PHI) available to the customer;
- f. Making PHI available to the customer for review and amendment, and incorporating any amendments requested by the customer;

g. Making PHI available to the City of Delray Beach for an accounting of disclosures; and

h. Making internal practices, books, and records related to PHI available to the City of Delray Beach for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records and/or electronic transfer of data). The Bidder must give its customers written notice of its privacy information practices, including specifically, a description of the types of uses and disclosures that would be made with protected health information.

36. ADDITIONAL FEES AND SURCHARGES

Unless provided for in the contract/agreement, the City will not make any additional payments such as fuel surcharges, demurrage fees, or delay-in-delivery charges.

37. COMPLIANCE WITH FEDERAL STANDARDS

All items to be purchased under this contract shall be in accordance with all governmental standards, to include, but not be limited to, those issued by the Occupational Safety and Health Administration (OSHA), the National Institute of Occupational Safety Hazards (NIOSH), and the National Fire Protection Association (NFPA).

38. COMPLIANCE WITH FEDERAL REGULATIONS DUE TO USE OF FEDERAL FUNDING

If the goods or services to be acquired under this Solicitation are to be purchased, in part or in whole, with Federal funding, it is hereby agreed and understood that Section 60-250.4, Section 60-250.5, and Section 60-741.4 of Title 41 of the United States Code, which addresses Affirmative Action requirements for disabled workers, is incorporated into this Solicitation and resultant contract by reference.

39. BINDING EFFECT

All of the terms and provisions of this contract/agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and permitted assigns.

40. SEVERABILITY

In the event any term or provision of any contract or agreement entered into pursuant to this Solicitation is found by a court of competent jurisdiction to be invalid, the remaining terms and provisions shall continue to be effective and

shall be interpreted and given meaning to the greatest possible extent in the absence of any severed terms or provisions.

41. GOVERNING LAW AND VENUE

This contract and all transactions contemplated by this agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida without regard to any contrary conflicts of law principle. Venue of all proceedings in connection herewith shall lie exclusively in Palm Beach County, Florida, and each party hereby waives whatever its respective rights may have been in the selection of venue.

42. ATTORNEY'S FEES

It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.

43. EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION

The City of Delray Beach complies with all laws prohibiting discrimination on the basis of age, race, gender, religion, creed, political affiliation, sexual orientation, physical or mental disability, color or national origin, and therefore is committed to assuring equal opportunity in the award of contracts and encourages small, local, minority, and female-owned businesses to participate.

During the performance of this contract, the awarded Bidder agrees it will not discriminate or permit discrimination in its hiring practices or in its performance of the contract. The awarded Bidder shall strictly adhere to the equal employment opportunity requirements and any applicable requirements established by the State of Florida, Palm Beach County and the federal government.

The awarded Bidder further acknowledges and agrees to provide the City with all information and documentation that may be requested by the City from time to time regarding the Solicitation, selection, treatment and payment of subcontractors, suppliers, and vendors in connection with this Contract.

44. AVAILABILITY OF CONTRACT TO OTHER CITY DEPARTMENTS

It is agreed and understood that any City department or agency may access this contract and purchase the goods or services awarded herein. Each City department will issue a separate purchase order to the awarded Bidder for the department's specific purchases.

45. CRIMINAL HISTORY BACKGROUND CHECKS

Prior to hiring a contract employee or contracting with a Bidder, the City may conduct a comprehensive criminal background check by accessing any Federal, State, or local law enforcement database available. The contract employee or Bidder will be required to sign an authorization for the City to access criminal background information. The costs for the background checks shall be borne by the City.

46. LABOR, MATERIALS, AND EQUIPMENT

Unless specified elsewhere in the Solicitation or resultant contract, all labor, materials, and equipment required for the performance of the requirements of the Contract shall be supplied by the awarded Bidder.

47. MINIMUM WAGE REQUIREMENTS

The awarded Bidder shall comply with all minimum wage and living wage requirements, such as Living Wage requirements, minimum wages based on Federal Law, minimum wages based on the Davis-Bacon Act, and the provisions of any other wages laws, as may be applicable to this Contract.

48. PACKING SLIP AND DELIVERY TICKET

A packing slip and/or delivery ticket shall accompany all items during delivery to the City. The documents shall include information on the contract number or purchase order, any back order items, and the number or quantity of items being delivered.

49. PURCHASE OF OTHER ITEMS

The City reserves the right to purchase other related goods or services, not listed in the Solicitation, during the contract term. When such requirements are identified, the City may request price quote(s) from the awarded Bidder(s) on the contract. The City, at its sole discretion, will determine if the prices offered are reasonable, and may choose to purchase the goods or services from the awarded Bidder, another contract vendor, or a non-contract vendor.

50. PUBLIC RECORDS

Florida law provides that municipal records shall at all times be available to the public for

inspection. Chapter 119, Florida Statutes, the Public Records Law, requires that all material submitted in connection with a Bid response shall be deemed to be public record subject to public inspection upon award, recommendation for award, or thirty (30) days after Bid opening, whichever occurs first. Certain exemptions to public disclosure are statutorily provided for in Section 119.07, Florida Statutes. If the Bidder believes any of the information contained in his/her/its Bid is considered confidential and/or proprietary, inclusive of trade secrets as defined in Section 812.081, Florida Statutes, and is exempt from the Public Records Law, then the Bidder, must in its response, specifically identify the material which is deemed to be exempt and state the legal authority for the exemption. All materials that qualify for exemption from Chapter 119, Florida Statutes or other applicable law must be submitted in a separate envelope, clearly identified as "EXEMPT FROM PUBLIC DISCLOSURE" with the firm's name and the Bid number clearly marked on the outside. The City will not accept Bids when the entire Bid is labeled as exempt from disclosure. The City's determination of whether an exemption applies shall be final, and the Bidder agrees to defend, indemnify, and hold harmless the City and the City's officers, employees, and agents, against any loss or damages incurred by any person or entity as a result of the City's treatment of records as public records.

The awarded Bidder(s) shall keep and maintain public records and fully comply with the requirements set forth at Section 119.0701, Florida Statutes, as applicable; failure to do so shall constitute a material breach of any and all agreements awarded pursuant to this Solicitation.

51. **CONFLICTS OF INTEREST**
All Bidders must disclose with their Bid the name of any officer, director, or agent who is also an employee of the City of Delray Beach. Further, all Bidders must disclose the name of any City employee who has any interest, financial or otherwise, direct or indirect, of five percent (5%) or more in the Bidders' firm or any of its branches. Failure to disclose any such affiliation will result in disqualification of the Bidder from this Invitation to Bid and may be grounds for further disqualification from participating in any future Bids with the City.
52. **PUBLIC ENTITY CRIMES**
As provided in Section 287.133(2) (a), Florida Statutes, a person or affiliate who has been

placed on the convicted vendors list following a conviction for a public entity crime may not submit a Bid on a contract to provide any goods or services to a public entity; may not submit a Bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit Bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity.

53. **OTHER GOVERNMENTAL AGENCIES**
If a Bidder is awarded a contract as a result of this ITB, the Bidder shall allow other governmental agencies to access this contract and purchase the goods and services under the terms and conditions at the prices awarded, as applicable.
54. **COMPLETION OF WORK AND DELIVERY**
All work shall be performed and all deliveries made in accordance with good commercial practice. The work schedule and completion dates shall be adhered to by the awarded Bidder(s), except in such cases where the completion date will be delayed due to acts of nature, force majeure, strikes, or other causes beyond the control of the awarded Bidder. In these cases, the awarded Bidder shall notify the City of the delays in advance of the original completion so that a revised delivery schedule can be appropriately considered by the City.
55. **FAILURE TO DELIVER OR COMPLETE WORK**
Should the awarded Bidder(s) fail to deliver or complete the work within the time stated in the contract, it is hereby agreed and understood that the City reserves the authority to cancel the contract with the awarded Bidder and secure the services of another vendor to purchase the items or complete the work. If the City exercises this authority, the City shall be responsible for reimbursing the awarded Bidder for work that was completed, and items delivered and accepted by the City in accordance with the contract specifications. The City may, at its option, demand payment from the awarded Bidder, through an invoice or credit memo, for any additional costs over and beyond the original contract price which were incurred by the City as a result of having to secure the services of another vendor.
56. **CORRECTING DEFECTS**
The awarded Bidder shall be responsible for promptly correcting any deficiency, at no cost to

the City, within three (3) calendar days after the City notifies the awarded Bidder of such deficiency in writing. If the awarded Bidder fails to correct the defect, the City may (a) place the awarded Bidder in default of its contract; and/or (b) procure the products or services from another source and charge the awarded Bidder for any additional costs that are incurred by the City for this work or items, either through a credit memorandum or through invoicing.

57. ACCIDENT PREVENTION AND BARRICADES

Precautions shall be exercised at all times for the protection of persons and property. All awarded Bidders performing services or delivering goods under this contract shall conform to all relevant OSHA, State, and County regulations during the course of such effort. Any fines levied by the above-mentioned authorities for failure to comply with these requirements shall be borne solely by the awarded Bidder. Barricades shall be provided by the awarded Bidder when work is performed in areas traversed by persons, or when deemed necessary by the City.

58. OMISSIONS IN SPECIFICATIONS

The specifications and/or statement of work contained within this Solicitation describe the various functions and classes of work required as necessary for the completion of the project. Any omissions of inherent technical functions or classes of work within the specifications and/or statement of work shall not relieve the Bidder from furnishing, installing, or performing such work where required to the satisfactory completion of the project.

59. MATERIALS SHALL BE NEW AND WARRANTED AGAINST DEFECTS

The awarded Bidder hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by the awarded Bidder in conjunction with this Solicitation and resultant contract shall be new, warranted for their merchantability, and fit for a particular purpose. In the event any of the materials supplied to the City by the awarded Bidder are found to be defective or do not conform to specifications, (1) the materials may be returned to the awarded Bidder at the Bidder's expense and the contract cancelled; or (2) the City may require the awarded Bidder to replace the materials at the Bidder's expense.

60. TOXIC SUBSTANCES/FEDERAL "RIGHT TO KNOW" REGULATIONS

The Federal "Right to Know" Regulation implemented by the Occupational Safety and

Health Administration (OSHA) requires employers to inform their employees of any toxic substances to which they may be exposed in the workplace, and to provide training in safe handling practices and emergency procedures. It also requires notification to local fire departments of the location and characteristics of all toxic substances regularly present in the workplace.

Accordingly, the awarded Bidder(s) performing under this contract are required to provide two (2) complete sets of Material Safety Data Sheets to each City department utilizing the any awarded products that are subject to these regulations. This information should be provided at the time when the initial delivery is made, on a department-by-department basis.

61. TAXES

The City of Delray Beach is exempt from Federal and State taxes for tangible personal property.

62. BIDDER'S COSTS

The City shall not be liable for any costs incurred by Bidders in responding to this Invitation to Bid.

63. SUBSTITUTION OF PERSONNEL

It is the intention of the City that the awarded Bidder's personnel proposed for the contract shall be available for the initial contract term. In the event the awarded Bidder wishes to substitute personnel, the awarded Bidder shall propose personnel of equal or higher qualifications, and all replacement personnel are subject to the City's approval. In the event the substitute personnel are not satisfactory to the City, and the matter cannot be resolved to the satisfaction of the City, the City reserves the right to cancel the contract for cause.

64. FORCE MAJEURE

The City and the awarded Bidder are excused from the performance of their respective obligations under the contract when and to the extent that their performance is delayed or prevented by any circumstances beyond their control, including fire, flood, explosion, strikes or other labor disputes, natural disasters, public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance provided that:

- a. The non-performing party gives the other party prompt written notice describing the

- particulars of the force majeure, including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the force majeure.
- b. The excuse of performance is of no greater scope and of no longer duration than is required by the force majeure.
 - c. No obligations of either party that arose before the force majeure causing the excuse of performance are excused as a result of the force majeure.
 - d. The non-performing party uses its best efforts to remedy its inability to perform.

Notwithstanding the above, performance shall not be excused under this section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the awarded Bidder shall not constitute a force majeure. The term of the contract shall be extended by a period equal to that during which either party's performance is suspended under this section.

65. **NOTICES**
- Notices shall be effective when received at the addresses specified in the contract/agreement. Changes in respective addresses to which such notices are to be directed may be made from time to time by either party by written notice to the other party. Facsimile and email transmissions are acceptable notice effective

when received; however, facsimile and email transmissions received after 5:00 p.m. or on weekends or holidays will be deemed received on the next business day. The original of the notice must also be mailed to the receiving party.

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the successful Proposer and the City of Delray Beach.

66. **POOL CONTRACTS**
- During the term of contracts and agreements that are executed as vendor pools, awarding vendors in prequalified pools of vendors, either as a general pool or by categories, sub-categories, or groups, the City reserves the right to add new vendors to these contracts for goods or services not awarded for the original Solicitation or as part of the general pool category, sub-category or group. To be eligible to be added to these pool contracts, a vendor must meet the same eligibility requirements established in the original Invitation to Bid.

67. **FISCAL FUNDING OUT**
- The City's obligation pursuant to any contract or agreement entered into in accordance with this Solicitation is specifically contingent upon the lawful appropriation of funds. Failure to lawfully appropriate funds for any contract or agreement awarded shall result in automatic termination of the contract or agreement.

END OF SECTION 7

SECTION 8: REFERENCES

The City may conduct reference check(s) to ensure Bidder is responsible and capable to perform satisfactory services. Bidder shall provide the following information for three or more client references.

- 1. Owner Name**
- 2. Owner's Primary Contact for Work Provided**
 - a. Name**
 - b. Title**
 - c. Phone Number**
 - d. Email Address**
- 3. Project Information**
 - a. Name**
 - b. Address**
 - c. Brief Description**
 - d. Start/End Date**
 - e. Number of Change Orders and/or Amendments**
 - f. Within Budget?**

END OF SECTION 8