

# SECTION B

## INSTRUCTIONS TO BIDDERS

### 1. Format

The Contract Documents are divided into parts, divisions, and sections in keeping with accepted industry practice to separate categories of subject matter for convenient reference thereto. Generally, there has been no attempt to divide the specification sections into work performed by the various building trades, work by separate subcontractors, or work required for separate facilities in the project.

### 2. Point of Contact

To ensure fair consideration for all Bidders, the City prohibits communication to or with any department, elected official or employee during the submission process, other than the Procurement and Contracts Manager, regarding the requirements for this submittal. Any such contact may be considered grounds for disqualification. The City shall not be responsible for oral interpretations given by any City employee or its representative.

All inquiries concerning clarifications of this solicitation or for additional information shall be submitted via the eBid System "Questions" tab or by email and directed as follows:

Althea Pemsel, Procurement Supervisor, Email: [apemsel@coconutcreek.net](mailto:apemsel@coconutcreek.net)

All responses to questions/clarifications will be issued via the eBid System in the form of an addendum to all Bidders registered for this project. Such contact is to be for clarification purposes only. Material changes, if any, to the specifications, or proposal procedures will only be transmitted via the eBid System by addendum.

### 3. Schedule of Events

The City will use the following tentative time schedule in the selection process. The City reserves the right to change and/or delay scheduled dates.

Event	Date
IFB Available	August 11, 2024
Pre-Bid Meeting (11:00 a.m. EST)	August 21, 2024
Last Date of Receipt of Questions	August 23, 2024 at 5:00pm
Last Date to Request Approved Equals	August 23, 2024 at 5:00pm
Addendum Release (if required)	Week of August 26th, 2024
Bid Due Date (11:00 a.m. EST)	September 17, 2024

#### 4. **General Description of the Project**

This project consists of constructing improvements at Sunshine Drive Park and Donaldson Park to include a half basketball court, playground, rubber pathway, canoe launch and exercise equipment. The two parks are located within ½ mile of each other and construction is expected to occur simultaneously between the two parks. The scope is indicated on the plans and is specified in applicable parts of these Contract Documents. Bidders shall rely on the plans, contract documents, and addenda in preparing their bid.

#### 5. **Definitions**

The City will use the following definitions in its general conditions, special conditions, technical specifications, instructions to bidders, addenda and any other document used in the bidding process. The terms may be used interchangeably by the City: IFB or RFP; Bid or Proposal; Bidder, Proposer, or Seller; Contractor or Consultant; Contract, Award, Agreement or Purchase Order.

**Addendum:** A document that is subsequently issued prior to the opening of bids, which clarify, supplement, delete, modify, correct or change the bidding documents or the contract documents.

**Agreement / Contract:** A deliberate verbal or written agreement between two or more competent parties to perform or not to perform a certain act or acts, including all types of agreements, regardless of what they may be called, for the procurement or disposal of equipment, materials, supplies, services or construction. Contract shall be inclusive of the term "Agreement" unless stated otherwise.

**Bid:** A price and terms quote received in response to an IFB.

**Bidder:** One who submits a bid directly to the City as distinct from a Sub-Contractor, who submits a bid to the Bidder.

**City:** Refers to the City of Coconut Creek, a municipal corporation of the State of Florida.

**Change Order:** A written signed and approved document by the City Manager or designee ordering a change in the contract price or contract time or a material change in work.

**Consultant:** Architect or Engineer who has contracted with City or who is an employee of City, to provide professional services for this project.

**Contract Administrator:** Means assigned City Director or designee responsible for the management of all actions required for initiating and issuing procurements, along with all contract-related actions performed during the course of the work from award until closeout of the contract.

**Contractor:** Successful Bidder who is awarded a Purchase Order, Contract, Blanket Purchase Order agreement, or Term Contract to provide goods or services to the City

**Invitation for Bids (IFB):** When the City is requesting bids from qualified Bidders.

**Responsive Bidder:** A person whose bid conforms in all material respects to the terms and conditions included in the IFB.

**Responsible Bidder:** A person who has the capability in all respects to perform in full the contract requirements, as stated in the IFB, and the integrity and reliability that will assure good faith performance.

**Seller:** Successful Bidder or Proposer who is awarded a Purchase Order or Contract to provide goods or services to the City.

**Successful Bidder:** Means the best, qualified, responsible and responsive Bidder to whom the City (on the basis of City's evaluation as hereinafter provided) makes an award.

## 6. Cone of Silence

6.1 "Cone of Silence" means a prohibition on any communication regarding a particular Request for Proposals (RFP), Request for Qualifications (RFQ), Invitation for Bids (IFB), or other competitive solicitation between:

- (a) Any person who seeks an award therefrom, including a potential vendor or vendor's representative, and
- (b) The City Commission, City Attorney, City Manager, and all City employees, and any non-employee appointed to evaluate or recommend selection in such procurement process.

The Cone of Silence shall not apply to communications with the Procurement Official to obtain clarification or information concerning the subject solicitation. Any such contact other than the Procurement Official may be considered grounds for disqualification. The City shall not be responsible for oral interpretations given by any City employee or its representative. For purposes of this section, "vendor's representative" means an employee, partner, director, or officer of a potential vendor, or consultant, lobbyist, or actual or potential subcontractor or sub consultant of a vendor, or any other individual acting through or on behalf of any person seeking an award.

6.2 The Cone of Silence shall be applicable to each RFP, RFQ, IFB, or other competitive solicitation during the solicitation and review of responses. At the time of issuance of the solicitation, the Procurement Official shall include in any advertisement and public solicitation for goods and services a statement disclosing the requirements of this section.

6.3 The Cone of Silence shall terminate at the time the City awards or approves a contract, votes to reject all bids or responses, or otherwise takes action which ends the solicitation and review process.

6.4 Nothing contained herein shall prohibit any potential vendor or vendor's representative from:

- (a) Making public presentations at duly noticed pre-bid conferences or at meetings before a duly noticed Selection Committee;
- (b) Communicating with the City Commission during any duly noticed public meeting;

- (c) Communicating verbally or in writing with any City employee or official for the limited purpose of seeking clarification or additional information, when such employee is specifically designated in the applicable RFP, RFQ, IFB, or other competitive solicitation documents;
- (d) Communicating in writing with the Procurement Official or other staff person specifically designated in the procurement document.

The potential vendor or vendor's representative shall deliver a copy of any such written communication to the Office of the City Clerk, who shall make copies available to the public upon request. The written communication shall include a reference to the RFP, RFQ, IFB, or other competitive bid document number.

- 6.5 Any violation of this rule shall be investigated by the Procurement Official and the City Attorney's Office and/or the City Manager's Office and may result in disqualification of said violating potential vendor or any recommendation for award, or any RFP award, or IFB, or RFQ award to said violating potential vendor or vendor's representative being deemed void or voidable. The potential vendor or vendor's representative determined to have violated this rule, shall be subject to penalties up to and including debarment. In addition, to any other penalty provided by law, violation of this rule by a City employee shall subject the employee to disciplinary action up to and including termination.

## **7. Non-Mandatory Pre-Bid Conference and Site Inspection**

All Bidders or their representatives are strongly urged to attend a non-mandatory pre-bid conference and site inspection on the date and time specified herein at the Coconut Creek Government Center, City Hall, 4800 West Copans Road, Coconut Creek, Florida 33063. This information session presents an opportunity for the Bidder to clarify any concerns regarding bid requirements. The Bidder is cautioned that, although the pre-bid conference is optional, no modification or any changes will be allowed in the pricing because of the failure of the Bidder to have attended the conference or visited the site.

The Bidder shall make a careful examination of the project site, shall familiarize themselves with existing conditions, and shall satisfy themselves as to the quantity and quality of materials and workmanship required for the work. Submission of a bid will be construed that the Bidder is acquainted sufficiently with the work to be performed. One shall carefully and thoroughly examine the Contract Documents before submitting a bid.

## **8. Document Interpretation**

The Contract Drawings governing the work proposed herein consist of the Drawings and all material made part of the contract document. These Contract Documents are intended to be mutually cooperative and to provide all details reasonably required for the execution of the proposed work. Any person contemplating the submission of a bid shall have thoroughly examined all of the various parts of these documents, and should there be any doubt as to the meaning or intent of said Contract Documents, the Bidder should contact

Althea Pemsel, Procurement Supervisor via email at apemsel@coconutcreek.net. The last day for receipt of questions will be in accordance with the Schedule of Events. Any interpretation or change in said Contract Documents will be made only in writing, in the form of Addenda to the Documents which will be furnished to all Bidders receiving a set of the Documents. Bidders shall submit with their bids, or indicate receipt of, all Addenda. The City will not be responsible for any other explanation or interpretations of said Documents not issued in writing by Addendum. All Addenda shall become part of the Contract Documents.

## **9. Bidder's Understanding**

Each Bidder shall inform themselves of the conditions relating to the execution of the work and it is assumed that he will inspect the site and make themselves thoroughly familiar with all the Contract Documents. Failure to do so will not relieve the Successful Bidder of his obligation to enter into a Contract and complete the contemplated work in strict accordance with the Contract Documents. It shall be the Bidder's obligation to verify for themselves and to his complete satisfaction all information concerning site and subsurface conditions.

Information derived from inspection of Drawings showing location of utilities and structures will not in any way relieve the Contractor from any risk, or from properly examining the sites and making such additional investigations as he may elect, or from properly fulfilling all the terms of the Contract Documents.

Each Bidder shall inform themselves of, and the Bidder awarded a Contract shall comply with, federal, state and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, design and construction standards, applicable regulations concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and non-burning requirements, permits, fees, and similar subjects.

## **10. Qualifications of Contractors**

Bids shall be considered only from firms normally engaged in performing the type of work specified within the contract documents. Bidders shall have five (5) years or more experience and must not be listed in the System for Award Management (SAM) as an excluded party. Bidder must have adequate organization, facilities, equipment, and personnel to ensure prompt and efficient service to the City. The prospective Bidders must meet the statutorily prescribed requirements before Award of Contract.

In determining a Bidder's responsibility and ability to perform the contract, the City has the right to investigate and request information concerning the ability to perform the work under this contract, financial condition, experience record, personnel, equipment, facilities, principal business location, organization of the Bidder, the Bidder's record with environmental regulations, and the claims/litigation history of the Bidder.

## **11. Licenses**

To be eligible for award of this project, the Bidder must possess at time of bid opening the following State Certified license:

- State of Florida Licensed General Contractor

All licenses required for Bidders whose businesses and professions are regulated by the Florida

Department of Business and Professional Regulation must be active and current. A copy of the State of Florida Certificate of Status or Good Standing, a copy of General Contractors License, and a copy of the Business Tax Receipt (must be in effect as required by Florida Statute 205.065 or as amended) must be provided with bid response.

## **12. Legal Requirements**

The Bidder shall observe and comply with all federal, state, county laws and local ordinances, rules and regulations that apply to this Contract. Failure to familiarize himself/herself with applicable laws will in no way relieve him/her from responsibility.

## **13. Addendum**

Changes in specification requirements will be issued on official addendum via the eBid System ([www.coconutcreek.net/fin/procurement](http://www.coconutcreek.net/fin/procurement)). The issuance of written addendum is the only official method whereby interpretation, clarification, changes or additional information can be given. It is the Bidder's responsibility to check the website prior to the proposal submittal deadline to ensure that the Bidder has a complete, up-to-date bid package.

## **14. Drawings**

Drawings will be made available electronically via the eBid System only.

## **15. Plans for Construction**

The Successful Bidder will be furnished four (4) sets of Contract Documents without charge. Any additional copies required will be furnished to the Bidder at reproduction cost.

## **16. Type of Bid**

When the bid for the work is to be submitted on a unit price basis, unit price bids will be accepted on all items of work set forth in the bid, except those designated to be paid for as a lump sum. The estimate of quantities of work to be done is tabulated in the bid and, although stated with as much accuracy as possible, is approximate only and is assumed solely for the basis of calculation upon which the award of Contract shall be made. Payment to the Contractor will be made on the measurement of the work actually

performed by the Contractor as specified in the Contract Documents. The City reserves the right to increase or decrease the amount of any class of work as may be deemed necessary, without any increase in the unit prices, unless otherwise specified in the Supplementary Conditions.

When the bid for the work is to be submitted on a lump sum basis, the lump sum price shall include all labor, materials, and equipment to complete the work described in the bid item included in the bid schedule. The bid items are intended to be general in nature and are not meant to be exhaustive in detail. Payment for all portions of the work associated with and necessary for the completion of a bid item shall be included in the lump sum price for that item whether or not it is mentioned specifically in the bid item description. All work described in the plans and specifications shall be accomplished and paid for as a part of one (1) or more bid items. If the Contractor believes that a portion of the work as described in the plans and specifications has not been included in any bid item, he shall bring this fact to the attention of the Administrator at least one (1) week before the bids are to be received. Otherwise, it shall be assumed that the Contractor's bid includes reimbursement for all work described in the plans and specifications.

**17. Changes in Quantities**

The City reserves the right to increase or decrease the amount of any class of unit price work that may be deemed necessary.

**18. Quantities in Bid Approximate Only**

If the bid form contains unit price items, the quantities stated therein are approximate only and are intended to serve as a basis for the comparison of bids and to fix the approximate amount of the cost of the project. The City does not express or imply that the actual amount of the work done in the performance of the contract will correspond with the quantities in the bid form; the amount of work done may be more or less than the said quantities and may be increased or decreased by the Contract Administrator as circumstances may require. The increase or decrease of any quantity shall not be regarded as grounds for an increase in the unit price or in the time allowed for the completion of the work, except as provided in the Contract Document. The Contractor will only be paid for the actual quantities of work performed and accepted by the Contract Administrator. The Contractor shall not be entitled to any compensatory damages in the event the quantities to be built are less than what are shown in the Bid Schedule.

**19. State and Local Sales and Use Taxes**

Unless Supplementary Conditions contains a statement that the City is exempt from State sales tax on materials incorporated into the work due to the qualification of the work under this Contract, all State and local sales and use taxes, as required by the laws and statutes of the State and its political subdivisions, shall be paid by the Contractor. Prices quoted in the bid shall include all nonexempt sales and use taxes, unless provision is made in the bid form to separately itemize the tax.

**20. Bids Firm for Acceptance**

Bidder warrants, by virtue of bidding that his bid and the prices quoted in his bid will be for acceptance by the City for a period of ninety (90) calendar days from the date of bid opening unless otherwise stated in the IFB.

**21. Bid Security**

Each Bidder shall include in their Bid Submittal a Bid Bond by the Due Date/Time (specified in the Schedule of Events stated herein) a certified check, cashier's check drawn on a local bank in good standing, or cash, or an acceptable Bid Bond issued by a Surety authorized to issue such bonds in the State of Florida in an amount equal to five percent (5%) of the amount of the bid payable to the City of Coconut Creek, Florida. This bid security shall be given as guarantee that the Bidder will not withdraw or modify his bid for a period of ninety (90) days after bid opening.as a guarantee that if the bid is accepted the Bidder will execute the contract.

The Attorney-in-Fact (Resident Agent) who executes this bond in behalf of the Surety must attach a notarized copy of his power-of-attorney as evidence of his authority to bind the Surety on the date of execution of the bond. If the Bidder elects to furnish a Bid Bond, he shall use the Bid Bond form found bound herewith, or one conforming substantially thereto in form and content.

**22. Return of Bid Security**

Within thirty (30) calendar days after the award of the Contract, the City will return the bid securities to all Bidders whose bids are not to be further considered in awarding the Contract. Retained bid securities will be held until the Contract has been finally executed, after which all bid securities, other than Bidders' bonds and any guarantees which have been forfeited, will be returned to the respective Bidders whose bids they accompanied.

**23. Performance and Payment Bonds**

The Successful Bidder shall file with the City a Performance Bond and a Payment Bond on the forms bound herewith, each in the amount of one hundred percent (100%) of the Contract Price in accordance with the requirement of Section 255.05 or 713.23, Florida Statutes as amended from time to time, as applicable, as security for the faithful performance of the Contract and the payment of all persons supplying labor and materials for the construction of the work, and to cover all guarantees against defective workmanship or materials for the construction of the work, and to cover all guarantees against defective workmanship or materials, or both, for a period of one (1) year after the day of final acceptance of the work by the City. The Surety furnishing this bond shall have a sound financial standing and a record of service satisfactory to the City, shall be authorized to do business in the State of Florida, and shall be listed on the current U.S. Department of Treasury Circular Number 570, or amendments thereto in the Federal Register, of acceptable Sureties for Federal projects. The attorney-in-fact (Resident Agent) who executes this Performance and Payment Bond in behalf of the Surety must



attach a notarized copy of his power-of-attorney as evidence of his authority to bind the Surety on the date of execution of the Bond.

All Contracts, Performance and Payment Bonds, and respective powers-of-attorney will have the same date.

**24. Cancellation for Unappropriated Funds**

The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

**25. Project Records**

City shall have the right to inspect and copy, at City's expense the books and records and accounts of Contractor which relate in any way to the Project, and to any claim for additional compensation made by Contractor, and to conduct an audit of the financial and accounting records of Contractor which relate to the project and to any claim for additional compensation made by Contractor. Contractor shall retain and make available to City all such books and records and accounts, financial or otherwise, which relate to the project and to any claim for a period of five (5) years following Final Completion of the project. During the project and the five (5) year period following Final Completion of the Project, Contractor shall provide City access to its books and records upon seventy-two (72) hours written notice.

If the project is funded by grants, either partially or fully, records shall be made available to the granting agency in requirements of its standards, when necessary.

**26. Solid Waste Collection Services – City's Franchise Agreement**

The City has contracted with Republic Services of Florida, Limited Partnership to furnish solid waste and recycling collection services. The City grants to Republic Services of Florida the sole and exclusive right, franchise, license and privilege to provide non-hazardous solid waste collection, removal and disposal services within the corporate limits of the City. The successful Contractor shall coordinate with Republic Services of Florida the level and type of service to be provided and the manner of collection of charges.

**27. Sworn Statement – Public Entity Crimes Statement**

Pursuant to Paragraph 2(a) of Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid for 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; and, may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for Category TWO (\$35,000) for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

**28. Drug-Free Workplace Programs**

Preference shall be given to businesses with Drug-Free Workplace programs. Whenever two (2) or more bids which are equal with respect to price, quality and service are received by the City for the procurement of commodities or contractual services, a bid received from a business that completes the attached Drug-Free Workplace Form certifying that it is a Drug-Free Workplace shall be given preference in the award process.

**29. Scrutinized Companies pursuant to Section 287.135 and 215.473**

Contractor must certify that the company is not participating in a boycott of Israel. Contractor must also certify that Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the City will not contract for the provision of goods or services with any scrutinized company referred to above. Contractor must submit the certification that is attached to this contract. Submitting a false certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to the Contractor of the City's determination concerning the false certification. The Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, the Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Contractor does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

Company understands and agrees that pursuant to Sections 287.135 and 287.473, Florida Statutes, the submission of a false certification; or being placed on the Scrutinized Companies that Boycott Israel List, or engaging in a boycott of Israel; or being placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or engaging in business operations in Cuba or Syria will be cause for the City to terminate this Agreement at the option of the City.

**30. Debarred or Suspended Bidders**

The Contractor (Bidder) certifies, by submission of a response to this solicitation, that neither it nor its principals are presently debarred or suspended by any Federal department or agency.

**31. Time of Completion**

The time of completion of the work to be performed under this Contract is in the essence of the Contract. Delays and extensions of time may be allowed only in accordance with the provisions stated in the appropriate section of the General Conditions. The time allowed for the completion of the work shall be stated in the bid.

**32. Confidential and/or Proprietary Information**

In accordance with Section 119.07(1) (a), Florida Statutes as amended from time to time and except as may be provided by other applicable state and federal law, the Invitation for Bids and the responses thereto are in the public domain. However, Bidders are requested to specifically identify in the submitted bid any financial information considered confidential and/or proprietary which may be considered exempt under Section 119.071, Florida Statutes as amended from time to time.

**33. Trade Secrets and Proprietary Confidential Business Information**

Documents submitted by Bidder which constitute trade secrets as defined in Sections 812.081 and 688.002, Florida Statutes, as amended from time to time, or proprietary confidential business information when held by the City as a utility owner, consistent with Section 119.0713(5), Florida Statutes, as amended from time to time, and which are clearly marked or stamped as confidential by the Bidder or Contractor at the time of submission to the City, will not be subject to public access. However, should a requestor of public records challenge Bidder's or Contractor's interpretation of the term "trade secrets" or "proprietary confidential business information," within five (5) calendar days of such challenge, Bidder or Contractor must provide a separate written affidavit that includes an indemnification and release guarantee, as approved by the City Attorney or designee, to the City to support its claim that the alleged trade secrets or proprietary confidential business information actually constitutes same as defined by law. Bidder or Contractor must demonstrate the need for confidentiality of the documentation by showing a business advantage or an opportunity to obtain an advantage if the documentation was released. Otherwise, Bidder or Contractor is required to timely seek a protective order in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County to prevent the City's release of the requested records.

**34. Request for Approved Equals**

Bidders may submit to the City requests for approved equals. Requests must be supported by evidence such as technical data, test results, or other pertinent information that demonstrates that the substitute offered is equal or better than the specification's requirements.

All requests for approved equals must be submitted on the Request for Approved Equals form and received by the City not later than the date indicated in the Schedule of Events. All registered Bidders shall be informed, via addendum of those requests determined by the City to be approved or not. The City reserves the right, in its sole discretion, to reject any proposed "equivalent" that it deems inferior to that which is specified.

Submit completed Request for Approved Equals Form via email to: Althea Pemsel, CPSM, C.P.M., Procurement Supervisor, Email: [apemsel@coconutcreek.net](mailto:apemsel@coconutcreek.net)

### 35. Modification and Withdrawal of Bid

- 35.1 All bids submitted shall be valid for a period of ninety (90) calendar days from the day of the bid opening. Bids may be modified or withdrawn **prior** to the due date for submitting electronic bids. Any bids not so withdrawn shall upon opening, constitute an irrevocable offer for goods and services until accepted by City Commission Award.
- 35.2 Bids may be retracted from the eBid System prior to the due date and time. Retracting a response allows the Bidder to change all or part of the response that was previously submitted. Retracting a response **does** not delete the response currently entered; however, by retracting your response, it is no longer submitted. You must click "Submit Response" on the Response Submission Tab for your retracted bid to be submitted again.
- 35.3 Withdrawal of a bid will not prejudice the rights of a Contractor to submit a new bid prior to the bid opening date and time. No bid may be withdrawn or modified after the date of bid opening has passed.
- 35.4 If within twenty-four (24) hours after bids are opened, and Contractor files a duly signed, written notice with the Procurement Office, and within five (5) calendar days thereafter demonstrates to the reasonable satisfaction of City, by clear and convincing evidence, that there was a material and substantial mistake in the preparation of its bid, or that the mistake is clearly evident on the face of the bid, but the intended correct bid is not similarly evident, Contractor may withdraw its bid and any bid security will be returned, if applicable.

### 36. Preparation of Bids

- (a) Bidders shall submit their response via the eBid System ([www.coconutcreek.net/fin/procurement](http://www.coconutcreek.net/fin/procurement)). Bidder shall upload the response **as one (1) file** to the eBid System. The maximum file size is 100 MB, however, that maximum applies to each file, not the bid itself. You are allowed an unlimited number of attachments with the 100 MB being the maximum file size.
- (b) Bidder's response shall not contain any alteration to the document posted other than entering data in spaces provided or including attachments as necessary. By submission of a response, Bidder affirms that a complete set of bid documents

was obtained from the eBid System and no alteration of any kind has been made to the solicitation.

- (c) **The bid shall be signed by a representative who is authorized to contractually bind the Bidder.** The Bidder shall sign his bid in the blank space provided. If the Bidder is a corporation, the legal name of the corporation shall be set forth above, together with the signature of the officer or officers authorized to sign Contracts on behalf of the corporation. If Bidder is a partnership, the true name of the firm shall be set forth above, together with the signature of the partner or partners authorized to sign Contracts in behalf of the partnership. If signature is by an agent, other than an officer of a corporation or a member of a partnership, a notarized power-of-attorney must be on file with the City prior to opening of bids or submitted with the bid.
  
- (d) Any bid shall be deemed non-responsive which contains materials omissions, or irregularities, or in which any of the prices are obviously unbalanced, or which in any manner shall fail to conform to the conditions of the published Invitation for Bids. Only one (1) bid from any individual, firm, partnership, or corporation, under the same or different names, will be considered. Should it appear to the City that any Bidder is interested in more than one (1) bid for work contemplated; all bids in which such a Bidder is interested will be rejected.

### **37. Bid Submission**

Bidder shall use the electronic eBid System to submit a response.

### **38. Basis of Award**

- (a) The Contract will be awarded to the responsive, responsible Bidder submitting the lowest acceptable bid. Responsive Bidder shall be defined as any person, firm or corporation submitting a bid for the work contemplated whose bid form is complete and regular, free of exclusions or special conditions and has no alternative bids for any items unless requested in the technical specifications. Responsible Bidder shall be defined as any person, firm, or corporation submitting a bid for the work contemplated who maintains a permanent place of business, has adequate equipment to do the work properly and within the time limit that is established, and has adequate status to meet his obligations contingent to the work. The City reserves the right to award the Contract that best serves the interests of the City.
  
- (b) If, at the time this Contract is to be awarded, the total of the lowest acceptable bid exceeds the funds estimated by the City as available, the City may reject all bids or take such other action, as best serves the City's interests.
  
- (c) The City of Coconut Creek, Florida, reserves the right to: waive informalities in any bid, delete or add any portion of the project, or extend or reduce the project within the limits of the work involved.

- (d) The City reserves the right to reject any and all bids for any reason where the City deems rejection to be in its best interest, or to reject any bid not in compliance with the Contract Documents.
- (e) A recommendation will be presented to the City Commission, based on lowest responsible and responsive bid which conforms to all requirements and whose evaluation by the City indicates to the City that the award will be in the best interest of the City. The City is the sole judge in evaluation considerations.
- (f) All Bidders will be notified in writing when the City Commission makes an award recommendation. The Contract award, if any, shall be made to the Bidder whose bid shall be deemed by the City Commission to be in the best interest of the City. The City Commission's decision of whether to make the award is in the best interest of the City and shall be final.

### **39. Award of Contract**

Within ninety (90) calendar days after the opening of bids, unless otherwise stated in the Invitation for Bids or Contract Documents, the City will accept one (1) of the bids or will act in accordance with Basis of Award, below. The acceptance of the bid will be by written notice of award, mailed or delivered to the office designated in the bid. In the event of failure of the lower responsible and responsive qualified Bidder to sign and return the Contract with acceptable Performance and Payment Bonds, as prescribed herein, the City may award the Contract to the next lowest responsible and responsive qualified Bidder. Such award, if made, will be made within one hundred twenty (120) days after the opening of bids.

The City reserves the right to reject any and all bids and is not bound to accept the lowest bid. Bids are awarded by the City and its decision shall be final. No Notice of Award will be given until the City has concluded such investigations as it deems necessary to establish the responsibility, qualifications and financial ability of the Bidders to do the work in accordance with the Contract Documents to the satisfaction of the City within the time prescribed. The City reserves the right to reject the bid of any Bidder who does not pass such investigation to the City's satisfaction. In analyzing bids, the City may take into consideration alternates and unit prices, if requested by the bid forms. If the Contract is awarded, the City will issue the Notice of Award and give the Successful Bidder a contract for execution or a purchase order within ninety (90) days after opening of bids.

### **40. Execution of Contract**

The Successful Bidder shall, within ten (10) calendar days after receiving notice of award, sign and deliver to the City the Contract hereto attached together with the acceptable bonds as required in these Documents. Within ten (10) calendar days after receiving the signed Contract with acceptable bonds from the Successful Bidder, the City's authorized agent will sign the Contract. Signature by both parties constitutes execution of the Contract.

#### **41. Failure to Execute Contract and Furnish Bond**

The Bidder who has a Contract awarded to him and who fails to promptly and properly execute the Contract and furnish the Performance and Payment Bond shall not only lose the contract but shall also forfeit the bid security that accompanied his bid, and the bid security shall be retained as liquidated damages by the City, and it is agreed that this sum is a fair estimate of the amount of damages the City will sustain in case the Bidder fails to enter into a Contract and furnish the bond as herein before provided. Bid security deposited in the form of cash, a certified check, or cashier's check drawn on a local bank in good standing shall be subject to the same requirements as a Bid Bond.

#### **42. Bid Protest Process**

Any bidder, proposer, or offeror who is aggrieved in connection with the solicitation or award of a contract must contact the procurement officer listed in the solicitation in writing (email or fax are acceptable) within three (3) working days after the posting of the notice of intent to award on the City's eBid System. A formal written protest shall be filed within five (5) working days after filing the notice of protest.

The notice of protest must be either, hand-delivered and date and time stamped by the Office of the City Clerk, or sent via Certified U.S. mail, return-receipt requested. Failure to file a protest within the time-frame specified herein shall constitute a full waiver of all rights to protest the City's decision regarding the award of bid.

- (a) Only a bidder whose bid is timely received and fully complies with all terms and conditions of the bid may protest an award.
- (b) The written protest shall state in detail the specific facts and law or ordinance upon which the protest of the proposed award is based and shall include all pertinent documents and evidence.
- (c) Upon receipt of a formal written protest, the City may stop award proceedings until resolution of the protest; however, the award proceedings shall not be stopped if the City Manager decides the award must continue without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.
- (d) Any and all costs incurred by a protesting party in connection with a protest pursuant to this section shall be the sole responsibility of the protesting party.

A protest shall be reviewed and evaluated administratively and a decision in writing shall be forwarded to the protesting firm within ten (10) working days. If the protesting firm does not agree with the administrative decision, they may appeal the decision in writing to the City Manager or designee within five (5) working days. The notice of appeal must be

either, sent Certified U.S. mail return-receipt requested or hand-delivered and date and time stamped by the Office of the City Clerk. The decision of the City Manager or designee will be final.

Any person who files a formal written protest shall post with the Chief Procurement Officer, at the time of filing the formal written protest a cashier's check made payable to the City of Coconut Creek in an amount equal to one percent (1%) of the City's estimate of the total amount of the contract or \$5,000.00, whichever is less.

If the decision of the City Manager or designee upholds the action taken by the City, then the deposit becomes non-refundable and the City shall retain the deposit as payment for a portion of the cost and expense, including but not limited to, time spent by City staff in responding to the protest and in conducting the evaluation of the protest. If the decision of the City Manager or designee does not uphold the action taken by the City, then the City shall return the amount of the cashier's check to the person or entity filing the protest.

**43. Antitrust Violations; Denial or Revocation of the Right to Transact Business with Public Entities; Denial of Economic Benefits**

Pursuant to Section 287.137, Florida Statutes effective July 1, 2021, a person or an affiliate who has been placed on the antitrust violator vendor list (electronically published and updated quarterly by the State of Florida) following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the

construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity. A finding that a person or affiliate was on the antitrust violator vendor list prior to entering this Agreement will be cause to terminate this Agreement at the option of the City.

**44. Environmental/Social Activism under Section 287.05701, Florida Statutes**

Pursuant to Section 287.05701, Florida Statutes, as may be amended, the City cannot give preference to a contractor based on social, political or ideological interests as defined in the statute. Contractor is also prohibited from giving preference to any of its subcontractors based on the above referenced factors. Violations of this Section will result in termination of this Agreement and may result in administrative sanctions and penalties by the Office of the Attorney General of the State of Florida.

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# SECTION C

## GENERAL TERMS AND CONDITIONS

### ARTICLE 1 PRELIMINARY MATTERS

#### 1.1 Contractor's Pre-Start Representative

Contractor represents that they has familiarized themselves with, and assumes full responsibility for having familiarized themselves with the nature and extent of the Contract Documents, work, locality, and with all local conditions and federal, state, county, and local laws, ordinances, rules and regulations that may in any manner affect performance of the work, and represents that they has correlated his study and observations with the requirements of the Contract Documents. Contractor also represents that they has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the specifications and made such additional surveys and investigations as they deems necessary for the performance of the work in the Contract Documents and that they has correlated the results of all such data with the requirements of the Contract Documents.

#### 1.2 Pre-construction Conference and Project Schedule

After delivery of the executed Agreement by City to Contractor, but before starting the work at the site, a pre-construction conference will be held. In that meeting, the Contractor shall present and submit a project schedule, identifying key milestones. Contractor's performance shall be monitored based upon this schedule.

#### 1.3 Rejection of Subcontractor

If, prior to the Notice of Award, the City has reasonable objection to and refuses to accept any Subcontractor, person or organization listed, the apparent low Bidder may, prior to Notice of Award either (i) submit an acceptable substitute without an increase in his bid price or (ii) withdraw his bid without forfeiting his bid security.

### ARTICLE 2 CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS

2.1 It is the intent of the specifications and drawings to describe a complete project to be constructed in accordance with the Contract Documents. The Contract Documents comprise the entire Agreement between the City and the Contractor. They may be altered only by a written modification by the City and Contractor. The words "Contract" and "Agreement" shall have the same meaning and are used interchangeably.

In the event of a discrepancy/conflict between the requirements of the drawings and the requirements of the specifications manual or between requirements within any of the contract documents, those requirements which best serve the City shall take precedent. Determination of which requirements best serve the City shall be solely at the discretion of the City. Contractor shall not be entitled to any additional compensation related to City's determination.

2.2 The words "furnish" and "furnish and install", "install", and "provide" or words with similar meaning shall be interpreted, unless otherwise specifically stated, to mean "furnish and install complete in place and ready for service".

**2.3** The work of all trades under this Contract shall be coordinated by the Contractor in such a manner as to obtain the best workmanship possible for the entire project, and all components of the work shall be installed or erected in accordance with the best practices of the particular trade.

All work shall meet the standards and codes of all regulatory agencies having jurisdiction over the Project whether or not mentioned in the Contract Documents. In case of conflict the most stringent standard shall prevail unless approved in advance by the Contract Administrator.

- 2.4** Manufacturer's literature, when referenced, shall be dated and numbered and is intended to establish the minimum requirements acceptable. Whenever reference is given to codes, or standard specifications or other data published by regulating agencies or accepted organizations, including but not limited to the National Electrical Code, applicable State Building Code, Federal Specifications, ASTM Specifications, various institute specifications, and the like, it shall be understood that such reference is to the latest edition including addenda in effect on the date of the bid.
- 2.5** Brand names where used in the technical specifications, are intended to denote the standard or quality required for the particular material or product. The term "equal" or "equivalent", when used in connection with brand names, shall be interpreted to mean a material or product that is similar and equal in type, quality, size, capacity, composition, finish, color and other applicable characteristics to the material or product specified by trade name, and that is suitable for the same use and capable of performing the same function, in the opinion of the Contract Administrator, as the material or product so specified. Proposed equivalent items must be approved by the Contract Administrator before they are purchased or incorporated in the work. (When a brand name, catalog number, model number, or other identification, is used without the phrase "or equal", the Contractor shall use the brand specified).

### **ARTICLE 3 SUBSURFACE CONDITIONS, REFERENCE POINTS**

#### **3.1 Subsurface Conditions**

The Contractor acknowledges that they has investigated prior to bidding and satisfied themselves as to the conditions affecting the work, including but not restricted to those bearing upon construction, transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides, water tables or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed to and during prosecution of the work. The Contractor further acknowledges that they has satisfied themselves as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work on the site or any contiguous site, as well as from information presented by the Drawings and Specifications made part of this Contract, or any other information deemed appropriate by the Contractor for the successful completion the project. Any failure by the Contractor to acquaint themselves with the site conditions will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The City assumes no responsibility for any conclusions or interpretations made by the Contractor.

#### **3.2 Differing Site Conditions**

- (a) The Contractor shall promptly, and before such conditions are disturbed, notify the City in writing, of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as

inherent in work of the character provided for in this contract. The City shall promptly investigate the conditions, and if it finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

- (b) No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in writing in (a) above to the Contract Administrator within three (3) calendar days; provided, however, the time prescribed therefore may be extended by the City.
- (c) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

#### **ARTICLE 4 INSURANCE REQUIREMENTS**

If the Contractor is required to go on to City of Coconut Creek property to perform work or services as a result of contract award, the Contractor shall assume full responsibility and expense to obtain all necessary insurance as required by City of Coconut Creek. Throughout the term of this Contract, Successful Bidder and/or any and all subcontractors or anyone directly or indirectly employed by either of them shall maintain in force insurance as follows:

##### **4.1 Workers' Compensation**

Statutory Limits of coverage to apply for all employees in compliance with all applicable State of Florida and federal laws. The policy must include Employers Liability with a limit of \$100,000 each accident.

##### **4.2 General Liability**

Commercial General Liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverage for premises/operations, contractual liability, personal injury, explosion, collapse, underground hazard, products/completed operations, broad form property damage, cross liability and severability of interest clause. This policy of insurance shall be written in an "occurrence" based format.

##### **4.3 Automobile Liability**

Comprehensive or Business Automobile Liability insurance with limits not less than \$500,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverage's for owned, hired, and non-owned vehicles and/or equipment as applicable. This policy of insurance shall be written in an "occurrence" based format.

##### **4.4 Builder's Risk Insurance**

Builder's Risk insurance is required in an amount not less than the replacement cost for the construction of the work. Coverage shall be "ALL RISK" coverage for one hundred percent (100%) of the completed value. The City reserves the right to require higher limits depending upon the scope of work under this agreement.

Neither Bidder nor any subcontractor shall commence work under this contract until they have obtained all insurance required under this section and have supplied the City with evidence of such coverage in the form of an insurance certificate and endorsement. The Bidder will ensure that all subcontractors will comply with the above guidelines and will maintain the necessary coverage

throughout the term of this Agreement. Policies shall be "Occurrence" form. Each carrier will give the City sixty (60) days' notice prior to cancellation.

The Bidder's Worker's Compensation carrier will provide a Waiver of Subrogation to the City. The Bidder shall be responsible for the payment of all deductibles and self-insured retentions. The City requires that the Bidder purchase a bond to cover the full amount of the deductible or self-insured retention.

Neither Bidder nor any subcontractor shall commence work under this contract until they have obtained all insurance required under this section and have supplied the City with evidence of such coverage in the form of an insurance certificate and endorsement. The Bidder will ensure that all subcontractors will comply with the above guidelines and will maintain the necessary coverage throughout the term of this Agreement. Policies shall be "Occurrence" form. Each carrier will give the City sixty (60) days' notice prior to cancellation.

The Bidder's Worker's Compensation carrier will provide a Waiver of Subrogation to the City. The Bidder shall be responsible for the payment of all deductibles and self-insured retentions. The City requires that the Bidder purchase a bond to cover the full amount of the deductible or self-insured retention.

#### **4.5 General**

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit and provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence limits specified above.

Should any required insurance lapse during the Contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option terminate this Agreement effective on the date of such lapse of insurance.

Auto Liability and General Liability policies shall be endorsed to provide the following:

- (a) Name as Additional Insured the City of Coconut Creek and its Officers, Agents, Employees and Commission Members.
- (b) That such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that insurance applies separately to each insured against whom claims are made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

All policies shall be endorsed to provide sixty (60) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to:

City of Coconut Creek  
4800 West Copans Road  
Coconut Creek, Florida 33063

The issuing agency shall include full name, address and telephone number in each insurance certificate issued. Certificates of Insurance, in form and evidencing all

required insurance and endorsements, shall be submitted with the respondent's bid. If Bidder is Successful Bidder, then prior to commencement of Contract, Bidder must submit revised Certificate of Insurance naming the City of Coconut Creek as Additional Insured for all liability policies.

#### **4.6 Insurance Company and Agent**

All insurance policies herein required of the Successful Bidder shall be written by a company with a A.M. Best rating of A-VII or better that is duly authorized and licensed to do business in the State of Florida and shall be executed by agents, thereof that are duly licensed as agents in said state.

**Note:** Include with your bid response a copy of **any** current Certificate of Insurance.

#### **4.7 Safety - Job Site**

The Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to U.S. Department of Labor (OSHA), Florida Department of Labor (DOL), and all other applicable federal, state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. The Successful Bidder's failure to thoroughly familiarize themselves with the aforementioned safety provisions shall not relieve him from compliance with the obligations and penalties set forth therein.

The City reserves the right, but is not obligated to make safety inspections at any time the Contractor is on public property and to ensure safety rules are not being violated. If violation becomes evident, the City may initiate its own action in addition to other government agencies.

#### **4.8 Occupational Health and Safety**

In compliance with Title 29 *CFR (Code of Federal Regulations)*, Section 1910.1200, any Hazardous Chemical items which are delivered from a Contract resulting from this Bid must be accompanied by a Material Safety Data Sheet (MSDS). The MSDS sheets must be maintained by the user agency and must include the following information:

- (a) The chemical name and the common name of the toxic substance.
- (b) The hazards or other risks in the use of the toxic substance, including:
  - 1) The potential for fire, explosion, corrosiveness, and reactivity;
  - 2) The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and
  - 3) The primary routes of entry and symptoms of overexposure.
- (c) The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of overexposure.
- (d) The emergency procedure for spill, fire, disposal, and first aid.
- (e) A description in lay terms of the known specific potential health risks posed by the toxic substances intended to alert any person reading this

information.

- (f) The year and month, if available, that the information was compiled and the name, address, and the emergency telephone number of the manufacturer responsible for preparing the information.

ALL TOXIC SUBSTANCES MUST BE LABELED FOR IDENTIFICATION IN ACCORDANCE WITH OSHA STANDARDS.

## **ARTICLE 5 CONTRACTOR'S RESPONSIBILITIES**

### **5.1 Supervision and Superintendence**

The Contractor will supervise and direct the work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor will employ and maintain a qualified supervisor or superintendent at the work site who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisors shall be present on each site at all times as required to perform adequate supervision and coordination of the work. (Copies of written communications given to the Superintendent shall be mailed to the Contractor's home office).

### **5.2 Labor, Materials and Equipment**

The Contractor will provide competent, suitably qualified personnel to lay out the work and perform construction as required by the Contract Documents. He will at all times maintain good discipline and order at the site.

### **5.3 Contractor Furnishes All Materials**

The Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, local telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the work.

### **5.4 Installation Instructions**

All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in the Contract Documents.

### **5.5 Contractor Responsibilities**

The Contractor shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between the City and any Subcontractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any persons due any Subcontractor or other person or organization, except as may otherwise be required by law. The City may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific work done in accordance with the schedule of values.

### **5.6 Subcontractors Terms**

The Contractor agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the City.

### **5.7 Permits**

The Contractor shall secure and pay for all maintenance of traffic (MOT), and licenses, etc. and shall pay for all governmental charges excluding city permits, inspection fees, and fines incurred by Contractor for his negligence, error or omission.

When such charges are normally made by the City and when so stated in the



Special Conditions, there will be no charges to the Contractor. The City would assist the Contractor, if possible, in obtaining such permits and licenses. However, the Contractor shall pay all public utility charges or fees to other government agencies, where applicable.

**5.8 Electric Power and Lighting**

Electrical power required during construction shall be provided by the Contractor. This service shall be installed by a qualified electrical contractor approved by the Contract Administrator.

The Contractor in all spaces shall provide lighting at all times where necessary for good and proper workmanship, for inspection or for safety. No temporary power shall be used off temporary lighting lines without specific approval of the Contractor.

**5.9 Taxes**

Cost of all sales and other taxes for which the Contractor is liable under the Contract shall be included in the Contract Price stated by the Contractor.

**5.10 Record Drawings**

The Contractor will keep one record copy of all Specifications, Drawings, Addenda, Modifications and Shop Drawings at the site in good order and annotated to show all changes made during the construction process. The Contractor must provide complete set of Record Drawings, on a USB flash drive and one full set of white lines, signed and sealed by a Registered Engineer in the State of Florida for all improvements. Final payment shall not be made to the Contractor unless completed record drawings have been submitted, approved and accepted by the City.

**5.11 Cleaning Up Site**

The Contractor shall clean up behind the work as much as is reasonably possible as the work progresses. Upon completion of the work, and before acceptance of final payment for the project by the City, the Contractor shall remove all his surplus and discarded materials, excavated material and rubbish from the roadways, sidewalks, parking areas, lawn and all adjacent properties; shall clean his portion of work involved in any building under this Contract, so that no further cleaning by the City is necessary prior to his occupancy; shall restore all property, both public and private, which has been disturbed or damaged during the prosecution of the work; and shall leave the entire project area in a neat and presentable condition.

**5.12 Cleaning Up General**

In case of dispute, the City may remove any debris and/or rubbish and charge the cost to the Contractor as the Contract Administrator shall determine to be just.

**5.13 Waste Removal Services**

Any Contractor or Subcontractor performing construction work within the City of Coconut Creek must use the City's franchised hauler for garbage removal services including construction related debris. The City's current franchised hauler is Republic Services of Florida. Please contact them directly for dumpsters and/or roll offs at:

Ft. Lauderdale, FL 33311  
(954) 583-1830

**5.14 Public Convenience and Safety**

The Contractor shall, at all times, conduct the work in such manner as to insure the least practicable obstruction to public travel. The convenience of the general public and of the residents along and adjacent to the area of work shall be provided for in a satisfactory manner, consistent with the operation and local conditions. "Street Closed" and other traffic control signs shall be placed immediately adjacent to the work, in a conspicuous position, at such locations as traffic demands and as required by MOT, approved by the City, County and/or State. At any time that streets are required to be closed, the Contractor shall notify law enforcement agencies before the street is closed and again as soon as it is opened. Access to fire hydrants and other fire extinguishing equipment shall be provided and maintained at all times.

**5.15 Sanitary Provisions**

The Contractor shall provide on-site office, and necessary toilet conveniences, secluded from public observation, for use of all personnel on the work, whether or not in his employ. They shall be kept in a clean and sanitary condition and shall comply with the requirements and regulations of the Public Authorities having jurisdiction. They shall commit no public nuisance. Temporary field office and sanitary facilities shall be removed by the Contractor at his own expense upon completion of the work, and the premises shall be left clean.

**5.16 Work in Street, Highway and Other Rights-of-Way**

Excavation, grading, fill, storm drainage, paving and any other construction or installations in rights-of-way of streets, highways, public carrier lines, utility lines either aerial, surface or subsurface), etc., shall be done in accordance with requirements of the Contract Documents or, if not mentioned, shall be restored to their original condition or better. Upon completion of the work, Contractor shall present to the City certificates, in triplicate, from the proper authorities stating that the work has been done in accordance with their requirements.

**5.17 Hurricane Precautions**

**5.17.1** During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning or alert, the Contractor, at no cost to the City, shall take all precautions necessary to secure the Project site in response to all threatened storm events, regardless of whether the notice has been given by the City or not by the City.

**5.17.2** Compliance with any specific storm or hurricane watch/warning or alert precautions before or after such events will not constitute additional work for payment and will be part of Contractor's insurance.

**5.17.3** Any additional work beyond the scope of this contract relating to hurricane warning or alert at the Project site will be addressed by a Change Order in accordance with Article 6 - Changes in the Work, if applicable.

**5.17.4** Suspension of the work caused by a threatened or actual hurricane event shall entitle the Contractor to additional contract time as noncompensable, excusable delay, and shall not give rise to a claim for compensable delay.

**5.18 Value Engineering**

Should either party request a substitution that changes the contract such as requesting substitution of materials, articles, pieces of equipment or any changes that reduce the Contract Price shall make such a request to Contract Administrator in writing. Contract Administrator in consultation with the Consultant will be the sole judge of acceptability and no substitute will be ordered, installed, used or initiated without Contract Administrator's prior written acceptance, which will be evidenced by a Change Order processed with all required approvals and an approved Shop Drawing. However, any substitution accepted by Consultant shall not result in any increase in the Contract Price or Contract Time. If City initiates change, the City will be responsible for any changes initiated on its behalf. By making a request for substitution, Contractor agrees to pay directly to Consultant all Consultant's fees and charges related to Consultant's review of the request for substitution, whether or not the Consultant accepts the request for substitution. Any substitution submitted by Contractor must meet the form, fit, function and life cycle criteria of the item proposed to be replaced and there must be a net dollar savings including Consultant review fees and charges.

If a substitution requested by the Contractor is approved, the net dollar savings shall be shared equally between Contractor and City and shall be processed as deductive Change Order. City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute approved after award of the Contract.

#### **5.19 Public Records**

Contractor shall keep such records and accounts and require any and all Contractors and subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to the project and any expenses for which Contractor expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by City and shall be kept for a period of five (5) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for City's disallowance of any fees or expenses based upon such entries.

City is a public agency subject to Chapter 119, Florida Statutes. To the extent Contractor is a Contractor acting on behalf of the City pursuant to Section 119.0701, Florida Statutes as amended from time to time, Contractor shall comply with all public records laws in accordance with Chapter 119, Florida Statute. In accordance with state law, Contractor agrees to:

- (a) Keep and maintain all records that ordinarily and necessarily would be required by the City in order to perform the services.
- (b) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the costs provided in Chapter 119, Florida Statute, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the contract if the Contractor does not transfer the records to the City.
- (d) Upon completion of the services within this Agreement, at no cost, either transfer to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the services. If the Contractor transfers all public records to the City upon

completion of the services, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the services, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

- (e) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLA. STAT., TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT 954-973-6774, PublicRecords@coconutcreek.net, 4800 West Copans Road, Coconut Creek, FL 33063.**

If Contractor does not comply with this Section, the City shall enforce the Agreement provisions in accordance herewith and may unilaterally cancel this Agreement in accordance with state law.

## **ARTICLE 6 CHANGES IN THE WORK**

- 6.1** Without invalidating the Agreement, the City may, at any time or from time to time, order additions, deletions or revisions in the work; these shall be authorized by Change Orders. Upon receipt of a Change Order approved in writing by the Contract Administrator, the Contractor will proceed with the work involved. All such work shall be performed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price, payment shall be adjusted or pro-rated by the unit price of the pay items in the Contract or based on mutually accepted price if there are no unit prices. An extension or shortening of the Contract Time may be granted by the City depending upon the changes in the scope of work. A Change Order signed by the Contractor indicates his agreement therewith.
- 6.2** Additional work performed by the Contractor without written authorization and signed Change Order will not entitle him to an increase in the Contract Price or an extension of the Contract Time.
- 6.3** It is the Contractor's responsibility to notify his surety of any changes affecting the general scope of the work or change in the Contract Price and the amount of the applicable bonds shall be adjusted accordingly. The Contractor shall furnish proof of such an adjustment to the City.
- 6.4** In no case shall denial of a change order serve as grounds for Contractor to delay or suspend work, unless directed otherwise in writing by City. City's denial or failure to act upon a change order shall not constitute grounds for suspension of work unless City directs otherwise in writing.
- 6.5** No claim for damages or any claim other than for an extension of time shall be made or asserted against the City by reason of any delays. The Contractor shall not be entitled to an increase in the contract sum or payment or compensation of any kind

from the City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs for acceleration or inefficiency arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance was avoidable or unavoidable; provided however, that this provision shall not preclude recovery of damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the City or its agents. Otherwise, the Contractor shall be entitled only to extensions of the contract time as the sole and exclusive remedy for such resulting delay in accordance with and to the extent provided for herein.

**6.6** In the event, the City and Contractor are unable to come to an agreement for a change order, the City reserves the right to assume the ownership of the scope of work under that change order and complete the work either by its own work-force or its own separate Contractor. The City would be responsible and liable for the work completed by its work-force or its Contractor only. The remaining project shall still be the responsibility of the Contractor along with any liability associated with it. In the event City chooses to assume ownership of any portion of the scope of work, Contractor shall make every reasonable effort to accommodate City's workforce or City's own separate Contractor in the performance of such scope.

## **ARTICLE 7 TIME FOR COMPLETION, LIQUIDATED DAMAGES AND CHANGE OF CONTRACT TIME**

**7.1** The date of beginning and the time for completion of the work are essential conditions of the Contract Documents and the work embraced shall be commenced on a date specified in the Notice to Proceed.

**7.2** The Contractor will proceed with the work at such rate of progress to insure full completion within the contract time. It is expressly understood and agreed, by and between the Contractor and the City, that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.

**7.3** If the Contractor shall fail to complete the work within the contract time, or extension of time granted by the City, then the Contractor will pay to the City the amount of five hundred dollars (\$500.00) for liquidated damages for each calendar day that the Contractor shall be in default after the agreed upon completion date.

It is understood and agreed that deductions at the rates stipulated shall be made from the total contract price for each and every calendar day after and exclusive of the day within which completion was required, and up to and including the date of completion and acceptance by the City.

Completion of the work, as mentioned above, shall include startup and testing of portions of the project, unless explicitly excluded.

The amount as set forth as liquidated damages is understood and agreed not to be a penalty; the said sum being specifically agreed upon in advance as the measure of damage to the City resulting from the delay in completion of the work.

The expiration of the time stipulated without the work having been completed shall in itself constitute a default without the necessity of any notice being given by the City to the Contractor.

The Contractor agrees and consents that the Contract price reduced by the aggregate of the entire damages so deducted shall be accepted by the Contractor in full satisfaction for work done under the Contract.

- 7.4** The contract time may only be changed by a Change Order approved in writing by the Contract Administrator. Any claim for an extension in the contract time shall be based on written notice delivered to the City within ten (10) days of the occurrence of the event giving rise to the claim.

All claims for adjustment in the contract time shall be determined by the City, if City and Contractor cannot otherwise agree.

- 7.5** The contract time will be extended in an amount equal to time lost due to delays beyond the control of and through no fault or negligence of Contractor if a claim is made therefore as provided in paragraph 7.4. Such delays shall only include those as a result of natural and/or man-made disasters, epidemics, abnormal weather conditions, or acts of God.

- 7.6** No claim for damages other than for an extension of time shall be made or asserted against City by reason of any delays except as provided herein. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Otherwise, Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

## **ARTICLE 8 GUARANTEE**

- 8.1** The Contractor shall guarantee all materials and equipment furnished and work performed for a period of one (1) year from the date of acceptance of the project and/or system. The Contractor warrants and guarantees for a period of one (1) year from the date of acceptance that the completed project and/or system is free from all defects due to faulty materials or workmanship and the Contractor shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The City will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make such repairs, adjustments, or the work that may be made necessary by such defects, the City may do so and charge the Contractor the cost thereby incurred. The Performance Bond shall remain in full force and effect through the guarantee period. This Article shall be governed by the City Code.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

- 9.1** **Payments to Contractor**

- 9.1.1** Payments to the Contractor shall be made on the basis of the Bid Schedule as full and complete payment for furnishing materials, labor, tools, and equipment, and for performing operations necessary to complete the work included in the Contract Documents.
- 9.1.2** The prices stated in the Contract Document include costs and expenses for taxes, labor, equipment, materials, commissions, transportation charges and expenses, patent fees and royalties, labor for handling materials during inspection, other costs and expenses for performing and completing the work as shown on the details and specified herein.
1. The Basis of Payment for an item at the price shown in the Bid Schedule form shall be in accordance with its description of the item and as related to the work specified.
  2. Unit prices will be applied to the actual quantities furnished and installed in conformance with the Contract Documents.
- 9.1.3** At least ten (10) days before each progress payment falls due (but not more often than once a month), the Contractor will submit to the Contract Administrator a monthly payment estimate filled out and signed by the Contractor covering the work performed during the period covered by the monthly payment estimate and supported by such data as the Contract Administrator may reasonably require.
- 9.1.4** No payment shall be requested on the basis of materials and equipment delivered and suitably stored at or near site. Payment shall be made only after work has been completed and accepted by the Contract Administrator. The Contractor shall replace at his expense any stored materials, which are either damaged or stolen before installation. The Contract Administrator will, within ten (10) days after receipt of each monthly payment estimate, either indicate in writing his approval of payment or return the monthly payment estimate to the Contractor indicating in writing his reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the monthly payment estimate. The City, will within thirty (30) days of presentation of any approved monthly payment estimate, pay the Contractor a progress payment on the basis of the approved monthly payment estimate. A retainage of five percent (5%) will be deducted from the monthly payment. Retainage monies will be released upon satisfactory completion and final inspection of the project.
- 9.1.5** The quantities listed in the Bid Schedule will not govern final payment.
1. Payment to the Contractor will be made only for actual quantities of Contract items constructed in accordance with the Drawings and Specifications.
  2. Upon completion of construction, if the actual quantities show either an increase or decrease from the quantities given in the Bid Schedule, an adjustment in payment will be made.
  3. This adjustment will be based upon the increase or decrease in quantity and the Contract Unit Price.
- 9.1.6** Payment will not be made for excess material placed; materials wasted or disposed of in a manner not called for under the Contract.
1. This includes rejected material not unloaded from vehicles, material rejected after it has been placed, and material placed outside of the plan or payment limit lines.

2. No compensation will be allowed for disposing of rejected or excess material.

## **9.2 Retainage Release**

The Contractor may apply for the return of the retainage held if the Contractor has satisfactorily completed the work in accordance with the Contract and satisfied the requirements of the Contract relating to retainage. The City shall pay the Contractor the amount retained for the Work, less the reasonable value of incorrect or incomplete Work, liquidated damages or both. Final payment of such withheld sum shall be made upon correction or completion of such Work and resolution of all issues, including liquidated damages. The release of retainage shall not become due until all work is one hundred percent (100%) completed and accepted by the Contract Administrator. The requirements of retainage release include the following:

1. Repair and/or replacement of faulty or defective Work.
2. As-built drawings are submitted to and accepted by the Contract Administrator.
3. All Code requirements, inspections, testing and certificates of approval are conformed with, submitted and accepted by the Contract Administrator.
4. The City is satisfied all payrolls, bills for materials and equipment and other indebtedness connected with the work for which the City might in any way be responsible have been paid or otherwise satisfied to the extent and in such form as may be designated by the City.
5. Release of Lien is submitted by Contractor and subcontractor(s) and accepted by the City.
6. The Contractor's completion of Punch List.
7. Warranties are submitted to and accepted by the City.

## **9.3 City's Right to Withhold Payment**

The City may withhold in whole or in part, final payment or any progress payment to such extent as may be necessary to protect itself from loss on account of:

1. Defective Work not remedied.
2. Claims filed or reasonable evidence indicating the probable filing of claims by other parties against the Contractor.
3. Failure of the Contractor to make payments to Subcontractors or Suppliers for materials or labor.
4. Damage to another Contractor not remedied.
5. The Contractor has incurred liability for liquidated damages.
6. Reasonable evidence that the Work cannot be completed for the unpaid balance of the contract sum.
7. Reasonable evidences that the Work will not be completed within the Contract time.
8. Failure to carry out the Work in accordance with the Contract Documents.

## **9.4 Waiver of Liens**

Prior to Final Payment of the Contract Sum, a final waiver of lien shall be submitted by all suppliers, subcontractors, and/or Contractors who worked on the project that is subject of the Agreement. Payment of the invoice and acceptance of such payment by the Contractor shall release the City from all claims of liability to the Contractor in connection with the Agreement.

## **9.5 Contractor's Warranty of Title**

The Contractor warrants and guarantees that title to all work, materials and equipment covered by an Application for Payment, whether incorporated in the project or not, will have passed to the City prior to the making of the Application for



Payment, free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "Liens"); and that no work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor or by any other person performing the work at the site or furnishing materials and equipment for the project, subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

**9.6 Labor Harmony**

Contractor agrees that all labor employed by Contractor, its agents or subcontractors for work on City property must be in harmony with all other labor being used by City or other contractors working on City's property. Contractor agrees to give City immediate notice of any threatened or actual dispute and will provide assistance as determined necessary by City to resolve any such dispute. Contractor, its agents or subcontractors, will remove from City's property any person objected to by City in association with the work.

**9.7 Third Parties Beneficiaries**

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

**9.8 Agreement Subject to Funding**

The award of this solicitation to any specific Proposer is subject to necessary budget appropriations by the City Commission of the City of Coconut Creek in the annual budget for each fiscal year in which the services are provided, and is subject to termination without any penalty due to lack of funding.

**9.9 Remedies**

**9.9.1 Damages**

The City reserves the right to recover any ascertainable actual damages incurred as a result of the failure of the Contractor to perform in accordance with the requirements of this Agreement, or for losses sustained by the City resultant from the Contractor's failure to perform in accordance with the requirements of this Agreement.

**9.9.2 Correction of Work**

If, in the judgment of the City, work provided by the Contractor does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, the City reserves the right to require that the Contractor correct all deficiencies in the work to bring the work into conformance without additional cost to the City, and / or replace any personnel who fail to perform in accordance with the requirements of this Agreement. The City is the sole judge of non-conformance and the quality of workmanship.

**9.10 Disentanglement**

Contractor will complete the transition of any terminated work from Contractor and its subcontractors to City and/or any replacement providers City designates (collectively, the "Replacement Provider"), without causing any interruption of or adverse impact on the work, any other services and/or services provided by Third Parties (the "Disentanglement"). Without limiting the aforementioned obligations, Contractor will:

- a) Cooperate by promptly taking all steps required to assist City in completing the Disentanglement related to the work it had previously performed.

- b) Provide all information regarding the work that these parties will need to perform the Disentanglement.
- c) Promptly and orderly conclude all work as directed. This may include the documentation of work in progress and other measures to provide an orderly transition as set forth in Labor Harmony.

#### **9.11 Prohibited Telecommunications Equipment**

Contractor represents and certifies that it and its applicable subcontractors do not and will not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. By submitting a proposal or quote hereunder, Contractor represents and certifies that Contractor and its applicable subcontractors must not provide or use such covered telecommunications equipment, system, or services for any scope of work performed for the City for the entire duration of this Agreement. If Contractor is notified of any use or provisions of such covered telecommunications equipment, system, or services by a subcontractor at any tier or by any other source, Contractor must promptly report the information in 40 CFR § 52.204-25(d)(2) to City.

#### **9.12 Severability; Waiver of Provisions**

Any provision in this Solicitation, and any document that forms a material part of the agreement between the awarded proposer and the City, that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party will not constitute a waiver of that provision nor will it affect the enforceability of that provision or of the remainder of the agreement.

#### **9.13 Data Management; Data Security Standards**

Proposer must agree to comply with the City's written demands regarding cooperation (and any applicable financial responsibilities) for timely data breach incident reporting, response activities/fact-gathering, public and other governmental agency notification requirements, severity level assessment, after-action reporting. Consistent with Sections 282.3185(5) & (6), and 501.171, Fla. Stats., as amended from time to time. And specifically in the context of data breaches that involve Protected Health Information pursuant to Health Insurance Portability and Accountability Act (HIPAA), Proposer must comply with all requirements of the Health Information Technology for Economic and Clinical Health Act (HITECH); Section 105 of Title I of the Genetic Information Nondiscrimination Act of 2008 (GINA); and 45 C.F.R. Parts 160, 162 and 164 and Final Omnibus Rule eff. March 26, 2013). To ensure safety of personal data, Proposer must comply with the 2016 European Union's General Data Privacy Regulation (GDPR) that became effective in the European Union on May 25, 2018. For any system integration between the City's network systems and that of the Proposer, the Proposer hereby agrees to comply with ISO/IEC 27001 for its internal system, and any integration with the City's network and information technology systems.

**9.14 WAIVER OF JURY TRIAL**

**BY SUBMITTING A QUOTE WITH THE INTENT TO FORM A CONTRACTUAL RELATIONSHIP WITH THE CITY THEREUPON, THE BIDDER AND/OR CONTRACTOR EXPRESSLY AGREES AND THE CITY ALSO EXPRESSLY AGREES TO WAIVE ANY RIGHTS TO REQUEST A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS SOLICITATION, QUOTE AND/OR PROPOSAL. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS SOLICITATION OR QUOTE/PROPOSAL AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL WILL BE LIABLE FOR THE REASONABLE ATTORNEY'S FEES AND COSTS OF THE OTHER PARTY CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS MUST BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

**9.15 Discriminatory Vendor List**

Contractor hereby acknowledges its continuous duty to disclose to the City if the Contractor or any of its affiliates, as defined by Section 287.134(1)(a), Florida Statutes, are placed on the Discriminatory Vendor List. Pursuant to Section 287.134(2)(a), Florida Statutes: "An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity."

**ARTICLE 10 CONTRACT TERMINATION**

**10.1 City's Right to Terminate Contract – Cause**

If the Contractor fails to begin the work within ten (10) calendar days from the Notice to Proceed date specified, or fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of the work, or shall perform the work unsuitably, or cause it to be rejected as defective and unsuitable, or shall fail to continue the prosecution of the work pursuant to the approved schedule, or if Contractor shall fail to perform any material term set forth in the contract documents or if Contractor shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the work in an acceptable manner, the Contract Administrator

may give notice in writing to the Contractor and its surety (delivered by certified mail, return receipt requested) of such delay, neglect or default, specifying the same. If the Contractor, within a period of ten (10) calendar days after receipt of such notice fails to proceed and perform in a manner satisfactory to the Contract Administrator then the City may terminate the services of the Contractor by issuing Notice of Termination, exclude the Contractor from project site and take the prosecution of the work out of the hands of the Contractor, and appropriate or use any or all materials and equipment on the project site as may be suitable and acceptable. In such case, the Contractor shall not be entitled to receive any further payment until the project is completed. The City may enter into an agreement with another Contractor for the completion of the project according to the terms and provisions of the Contract Documents, or use such other methods as in City's sole

opinion shall be required for the completion of the project according to the terms and provisions of the Contract Documents. All damages, costs and charges incurred by the City, together with the costs of completing the work under Contract, shall be deducted from any monies due or which may become due to said Contractor. In case the expense so incurred by the City shall be less than the sum which would have been payable under the Contract, if it had been completed by said Contractor, then the said Contractor shall only be entitled to receive remuneration for the work satisfactorily completed notwithstanding the difference.

If such costs exceed the unpaid balance, then the Contractor shall be liable and shall pay to the City the amount of said excess immediately upon City's demand of same.

If after Notice of Termination, it is determined for any reason that the Contractor was not in default, the rights and obligations of the City and Contractor shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth in paragraph below.

#### **City's Right to Terminate Contract – Convenience**

The performance of work under this Contract may be terminated for convenience in writing by the City upon ten (10) calendar days written notice to the Contractor (delivered by certified mail, return receipt requested). In such case, the Contractor shall be paid for all work executed and expenses incurred prior to the appointed date for termination. Upon written proof of reasonable expenses incurred by the Contractor relating to the commitments, which had become firm prior to the appointed date for termination the City may make such payments, at its sole discretion. For services performed only, payment shall include reasonable profit. No payment shall be made for profit for work/services, which have not been performed.

Upon receipt of Notice of Termination (for cause or convenience) pursuant to paragraphs above, the Contractor shall promptly discontinue all affected work unless the Notice of Termination directs otherwise and deliver or otherwise make available to City all data, drawings, specifications, reports, purchased materials, estimates, summaries and such other information as may have been required by the Contract Documents whether completed or in process.

Where the Contractor's services have been so terminated by the City, said terminations shall not affect any rights of the City against the Contractor then existing or which may thereafter accrue. Any retention or payment of moneys by the City due the Contractor shall not release the Contractor from liability.

#### **10.2 Contractor's Right to Stop Work or Terminate Contract**

If the work should be stopped under order of any court or other public authority for a period of more than thirty (30) days, through no act or fault of the Contractor or of anyone employed by him/her/it, or if the City fails to make its best efforts to pay the Contractor within forty-five (45) days after presentation of a reasonable payment request, which has been corrected as required by the City, then the Contractor may, upon seven (7) days written notice to the City, stop work to terminate this Contract and recover from the City payment for all work executed. The City expressly reserves all other rights and remedies as may exist in law or in equity under the circumstances set forth hereunder.

## **SECTION D**

### **SPECIAL CONDITIONS AND SUPPLEMENTARY CONDITIONS**

1. Normal work hours for this project are 7:00 a.m. to 7:00 p.m. Mondays through Fridays, 8:00 am to 7:00 pm Saturdays and 8:00 am to 6:00 pm Sundays and National Holidays as per City Code, Section 14-28. Any work done outside these hours shall require permission from the City.
2. Sunshine Drive Park will be closed to the public during construction however; Donaldson Park will remain open with only active construction areas allowed to be closed during construction.
3. Both parks are located within neighborhoods and all work done by the Contractor or any Sub-Contractor shall be done with minimal disturbance to the residents and staff. The noise level shall be kept at reasonable levels.
3. The Contractor shall be solely responsible for pedestrian and vehicle safety and control within and adjacent to the work site and shall provide the necessary warning devices, barricades, signage and personnel necessary to provide safety, protection, and warning to persons and vehicles within the area. Contractor shall leave work site clean, neat and orderly throughout the course of the project.
4. All Contractor's and Subcontractor's personnel shall demonstrate and maintain a courteous and responsible demeanor toward all persons while conducting business within the City. The City reserves the right to have Contractor permanently remove (from servicing the City) any of Contractor's and Subcontractor's personnel that, in the opinion of the City, is not maintaining a professional, courteous, and responsible demeanor at all times.
5. Contractor understands that building inspections take place during normal business hours between 7:00a.m. and 6:00p.m. Monday through Thursday. Contractor may request inspections on Fridays, however; should City agree to perform such inspection(s), and Contractor will incur additional fees that will be solely at Contractor's own expense.
6. It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and accordingly the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.
7. Contractor shall restore any damage to property caused by Contractor or their Subcontractors to its original condition and to the satisfaction of the City, at Contractor's expense.
8. Response to the IFB shall include a schedule for completion. Awarded vendor shall be required to meet this schedule to avoid penalties.
9. All bid prices shall remain in effect until the project is completed.