

SECTION C

GENERAL TERMS AND CONDITIONS

ARTICLE 1 PRELIMINARY MATTERS

1.1 Contractor's Pre-Start Representative

Contractor represents that he has familiarized himself with, and assumes full responsibility for having familiarized himself 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 he has correlated his study and observations with the requirements of the Contract Documents. Contractor also represents that he 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 he deems necessary for the performance of the work in the Contract Documents and that he 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).
- 2.6** This Agreement is subject to all applicable provisions of Florida law governing public construction contracts, including but not limited to §287.05702, Florida Statutes, as amended. Any provision of this Agreement determined to be void or unenforceable under applicable law shall be severed and shall not affect the validity of the remaining provisions. Nothing contained herein shall be construed as a waiver of Contractor's right to seek time or cost adjustments otherwise permitted under Florida law, provided Contractor strictly complies with all contractual notice and documentation requirements.

ARTICLE 3 SUBSURFACE CONDITIONS, REFERENCE POINTS

3.1 Subsurface Conditions

The Contractor acknowledges that he has investigated prior to bidding and satisfied himself 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 he has satisfied himself 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 himself 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

The Contractor/Vendor/Consultant shall assume full responsibility and expense to obtain all necessary insurance as required by the City of Coconut Creek.

Neither Contractor/Vendor/Consultant 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 Contractor/Vendor/Consultant 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.

Throughout the term of this Contract, Successful Contractor/Vendor/Consultant and/or any and all subcontractors or anyone directly or indirectly employed by either of them shall maintain in force, at all times, 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 \$100,000.00 each accident. The Contractor/Vendor/Consultant's Worker's Compensation carrier will provide a Waiver of Subrogation to the City. The Contractor/Vendor/Consultant shall be responsible for the payment of all deductibles and self-insured retentions. The City requires that the Contractor/Vendor/Consultant purchase a bond to cover the full amount of the deductible or self-insured retention.

Contractor/Vendor/Consultant who are exempt from Florida's Workers' Compensation law must provide proof of such exemption issued by the Florida Department of Financial Services, Bureau of Workers' Compensation and by entering in to and signing this agreement certify that, based on the number of employees, the Contractor/Vendor/Consultant is not required to carry Workers' Compensation insurance under Florida Law.

4.2 General Liability

Commercial General Liability insurance with limits not less than \$1,000,000.00 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 \$1,000,000.00 each occurrence combined single limit for Bodily Injury and Property Damage including coverages 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 Information Security/Cyber Liability Insurance

~~Contractor/Vendor/Consultant must provide the City with evidence of Information Security/Cyber Liability Insurance with, at a minimum, \$3,000,000.00 per occurrence written on a “Claims-Made” basis covering City, its employees, subcontractors and agents for expenses, claims and losses resulting from wrongful acts committed in the performance of, or failure to perform, all services under this Agreement, including, without limitation, claims, demand and any other payments related to electronic or physical security, breaches of confidentiality and invasion of or breaches of privacy.~~

~~Information Security/Cyber Liability Insurance shall include Internet Media Liability including cloud computing and mobile devices for protection of private or confidential information whether electronic or non-electronic, network security and privacy; privacy against liability for system attacks, digital asset loss, denial or loss of service, introduction, implantation or spread of malicious software code, security breach, unauthorized access and use; including regulatory action expenses and notification and credit monitoring expenses.~~

4.5 Professional Liability/Errors and Omissions Coverage

~~Professional services will be provided under this Agreement; therefore, the Contractor/Vendor/Consultant must provide the City with evidence of Professional Liability insurance with, at a minimum of \$1,000,000.00 per occurrence and in the aggregate. “Claims-Made” forms are acceptable for Professional Liability insurance. Coverage shall include all claims arising out of the Contractor/Vendor/Consultant’s operations or premises, any person directly or indirectly employed by the Contractor/Vendor/Consultant, and the Contractor/Vendor/Consultant’s obligations under indemnification under this contract.~~

~~Contractor/Vendor/Consultant acknowledges that the City is relying on the competence of the Contractor/Vendor/Consultant to design the project to meet its functional intent. If it is determined during construction of the project that changes must be made due to Contractor/Vendor/Consultant’s negligent errors and omissions, Contractor/Vendor/Consultant shall promptly rectify them at no cost to City and shall be responsible for additional costs, if any, of the project to the proportional extent caused by such negligent errors or omissions.~~

4.6 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.

4.7 Environmental Liability/ Pollution Remediation and Legal Liability

The Contractor/Vendor/Consultant shall maintain Pollution Legal Liability and Remediation Insurance at a minimum limit of liability not less than \$1,000,000 Each Occurrence / \$2,000,000 Aggregate. The Contractor/Vendor/Consultant agrees the policy benefiting the City shall be maintained for a minimum three (3) year period following expiration of the Agreement.

4.8 General

- a) 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.
- b) 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.
- c) 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.
- d) 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
Procurement Division
4800 West Copans Road
Coconut Creek, Florida 33063
- e) The issuing agency shall include full name, address and telephone number in each insurance certificate issued.
- f) If these requirements are provided as part of a formal procurement procedure, Certificates of Insurance, in form and evidencing all required insurance and endorsements, shall be submitted with the respondent's bid. If Contractor/Vendor/Consultant is Successful Contractor, then prior to commencement of Contract, Contractor/Vendor/Consultant must submit revised Certificate of Insurance naming the City of Coconut Creek as additional insured for all liability policies.
- g) If Contractor/Vendor/Consultant is self-insured, they shall provide the City with a recent audited financial statement and description of how the self-insurance program is funded, along with a liability coverage statement signed by an authorized

corporate officer.

- h) No contract shall be executed by the City, nor activities under this Agreement shall commence, until the required letter of self-insurance and/or certificates of insurance have been received and approved by the Risk Manager of each party.

4.9 Insurance Company and Agent

All insurance policies herein required of the Contractor/Vendor/Consultant 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.

4.10 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 himself 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.

4.11 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), construction permits and licenses, etc. and shall pay for all governmental charges, 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. Lighting shall be provided by the Contractor in all spaces 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 All Service Refuse. Please contact them directly for dumpsters and/or rollofs at:

All Service Refuse
751 NW 31st Avenue
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 documented impact to the Project Schedule caused solely by the approved change in scope of work. A Change Order signed by the Contractor indicates his agreement therewith.

Failure of the City to respond to a Change Order proposal within any specified period shall not constitute approval.

- 6.2 **Commission Approval Contingency**
Notwithstanding any other provision herein, no Change Order shall be effective or binding unless executed by the City Manager within delegated authority limits or approved by the City Commission where required by the City Charter or Code of Ordinances.
- 6.3 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. ***Contractor proceeds at its own risk if work is performed without written authorization.***
- 6.4 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 *within ten (10) days of execution of the Change Order.*

6.5 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.

6.6 Delay Claims

Contractor shall be entitled to an extension of Contract Time for delays to the extent such delays are caused by the City and are not concurrent with delays caused by Contractor. If a delay is caused concurrently by the Contractor and the City, Contractor shall be entitled only to an equitable extension of time and shall not be entitled to monetary compensation for the period of concurrent delay. Contractor shall not be entitled to compensation for delays caused by acts of God, weather events, or other force majeure events beyond the control of the City. Any request for delay compensation or time extension shall be supported by a written time impact analysis demonstrating effect on the critical path of the Project Schedule. Nothing herein shall be construed as a waiver of Contractor's rights to seek damages where prohibited by applicable Florida law.

6.7 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.

Nothing in this section shall relieve Contractor of its obligations under the remaining scope of Work.

6.8 No Constructive Approval

Failure of the City to approve, deny, or respond to a request for a Change Order within any specified period shall not constitute approval of such request, nor entitle Contractor to proceed with additional work without written authorization.

6.9 Appropriation; Delegated Authority

All Change Orders are subject to lawful appropriation of funds by the City Commission. Any Change Order that exceeds the City Manager's delegated authority or causes the total Contract Price to exceed applicable approval thresholds under the City Charter or Code shall require City Commission approval prior to execution and shall not be binding until approved.

6.10 Documentation of Cost of Work

Where compensation for a Change Order is determined on a Cost of Work or force account basis, Contractor shall submit daily itemized cost reports reflecting labor classifications, hours worked, material quantities, equipment usage, and related costs. Such reports shall be submitted contemporaneously and signed by the City's authorized representative. Failure to provide contemporaneous documentation shall constitute a waiver of such costs.

6.11 Audit of Change Order Costs

Contractor shall maintain complete and detailed records of all Change Order costs for a period of five (5) years following Final Completion. The City shall have the right to inspect, examine, and audit such records upon seventy-two (72) hours written notice.

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

7.1 Concurrent Delay

If a delay is caused concurrently by the Contractor and the City, Contractor shall be entitled only to an equitable extension of time and shall not be entitled to monetary compensation for the period of concurrent delay.

7.2 Delay Claim Documentation

Any request for adjustment of Contract Time shall be supported by a written time impact analysis demonstrating the effect of the alleged delay on the critical path of the Project Schedule. Failure to provide such documentation **may result in denial** constitute a waiver of the request for time extension.

Such time impact analysis shall be submitted within ten (10) days of the event giving rise to the claim unless extended in writing by the City.

7.3 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.

7.4 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.

Contractor acknowledges that ordinary weather conditions typical for Broward County shall not constitute grounds for time extension.

7.5 Liquidated Damages

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.

- 7.6 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.

Failure to provide timely written notice shall bar the claim unless the City determines, in its sole discretion, that the City was not prejudiced by such failure.

- 7.7 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 7.6. Such delays shall only include those as a result of natural and/or man-made disasters, epidemics, abnormal weather conditions, or acts of God.

Excusable delays shall be non-compensable unless otherwise expressly provided in this Agreement.

7.8 Compensable Delay

Except as otherwise prohibited by applicable Florida law, Contractor shall not be entitled to compensation for delays caused by events beyond the City's control, including acts of God, abnormal weather, or force majeure events. ***Contractor may seek compensation for delays solely caused by the active interference, fraud, or bad faith of the City, provided Contractor strictly complies with all notice and documentation requirements of this Agreement. Nothing herein shall be construed as a blanket waiver of delay damages where such waiver is unenforceable under Florida law.*** Otherwise, Contractor shall be entitled only to extensions of the Contract Time as the sole remedy for delay.

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 ENTERING INTO THIS CONTRACT, EACH OF CONTRACTOR AND THE CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS CONTRACT. IF A PARTY FAILS TO

WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS CONTRACT OR SOLICITATION 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. All work done by the Contractor or any Sub-Contractor shall be done with minimal disturbance to the building occupants of the City. The noise level shall be kept at reasonable levels.
3. All bid prices shall remain in effect until the project is completed. Under extreme circumstances and documented by acceptable proof, the City, at its sole discretion, may agree to price adjustments. Otherwise, all bid prices shall remain firm.
4. All CONTRACTOR personnel and subcontractors 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 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 7:00 am and 6:00 pm Monday through Thursday. CONTRACTOR may request inspections on Fridays however, should City agree to perform such inspection(s), 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. Allowances:
 - 7.1. Permit Fee Allowance (Bid Item No. 04-21-26-10)
 - A. Included in the TOTAL BASE BID AMOUNT is the sum of 0.0 dollars (\$ 0.00) for obtaining building permits, inspections and certificates of completion required by the State of Florida, County Agencies, or by other local governmental entities.
 - B. Fees excluded from this allowance include but are not limited to re-inspection fees, expired permit fees, and contractor's overhead and profit.
 - C. Payment under the allowance item shall be made only for actual cost of the permits without any profit, overhead, processing, or administrative charges.
 - 7.2. Owner's Contingency Allowance (Bid Item No. 04-21-26-10)
 - A. Included in the TOTAL BASE BID AMOUNT is the sum of twenty five thousand dollars (\$25,000.00) for unforeseen conditions, owner directed modifications, and approved increases to contractor's scope of work.
 - B. Payment under this allowance shall only be made for contingency change orders approved by the owner.

- C. Payment under this allowance shall be limited to the actual cost plus 5% profit for sub-contractor and 5% profit for General Contractor.

8. Sale and Use Tax Exemption for City Furnished Materials

During the course of this project, the City of Coconut Creek (hereinafter referred to as "City") may issue a change order or change orders to delete from the contract certain items that the City desires to purchase directly and furnish to Contractor for use in the Project. Contractor agrees that if City desires to issue such Change Order(s), Contractor will assist the City in identifying appropriate materials and equipment to be included in the Change Order(s), will execute such Change Order(s) and will participate in this tax savings program at no additional cost to the City . Furthermore, Contractor agrees to abide by and comply with the following Special Conditions.

PROVISIONS GOVERNING STATE OF FLORIDA SALE AND USE TAX EXEMPTION FOR CITY FURNISHED MATERIALS:

Sales and Use Taxes: The City is exempt from paying sales and use taxes on materials and equipment purchased for, and incorporated into the Sawgrass Blvd. and Lyons Road Drainage Improvement, IFB No. 04-21-26-10 (hereinafter the "Project"). The City shall make direct purchases of all materials and equipment purchased for, or to be incorporated into the Project, as agreed to by the Contractor and agreed upon by the City in the form of a change order. All direct purchases of materials and equipment shall be made by the City with funds specifically allocated for the construction of the Project. The Contractor shall include the price for all construction materials in its bid. The Contractor shall provide the City a list of all intended suppliers, vendors and material men for consideration as City Purchased Materials. This list shall be submitted at the same time as the preliminary schedule of values. The Contractor shall submit price quotes from the vendors, as well as a description of the materials to be supplied, estimated quantities and prices and as provided below. The Contractor shall notify the City no later than **10 calendar days** after request by City of the requested materials and equipment to be purchased by the City for the Project.

- 1.1 The Contractor shall: (a) compile Contractor's and any Sub-Contractors' itemized requirement for materials and equipment, including quantities, unit costs, manufacturers' or vendors' catalogue or order numbers, delivery instructions, and other specific terms and information that are required to order the specific materials and equipment, and terms and conditions to be imposed on suppliers regarding delivery and submittal time requirements, and quantities thereof required by Contractor or Sub-Contractors in accordance with the applicable requirements of the Construction Contract, from time to time, during the construction of the Project, as materials and equipment need to be ordered for the Project, and submit such compilation to the City 's Representative: (b) prepare a requisition for such materials and equipment on the City 's form of requisition: and (c) deliver any such requisition to the City 's Representative no less than thirty (30) days prior to the date the manufacturer or vendor of the materials or equipment, as the case may be, requires orders for such materials or equipment to be placed to assure delivery of such materials or equipment to the Site in accordance with the Project Schedule (the "Order Date"). The requisition shall identify the Order Date. Upon receipt of any such requisition the City's Representative shall forward the same to the City's Procurement Department. The City shall issue a Purchase Order directly to the vendor of the materials or equipment, prior to the Order Date (a Purchase Order). The City shall include with any such Purchase Order, a copy of the City s sales and use tax exemption certificate. The City shall make direct payment to the vendor from the City's account.

- 1.2 The Contractor, upon the delivery of any such materials or equipment, shall verify the conformity of such materials or equipment with the terms of the Purchase Order and the Contract Documents. If the Contractor determines that the materials and equipment are conforming, the City shall take title and possession of such material and equipment before such materials and equipment are incorporated into the Project. If the Contractor determines that the materials and equipment are non-conforming, the Contractor shall immediately notify the City in writing and the City shall reject such material and equipment.
- 1.3 The City shall assume all risk of loss on all materials and equipment purchased pursuant to its sales and use tax exemption, subject to the provisions of section 1.10 below. The City shall maintain Builder's Risk Insurance for the full insurable value for all materials and equipment purchased as a result of the Owner Direct Purchasing Program herein. This coverage shall be in addition to all other coverage required in Section 1.11 below or as otherwise provided in these Construction Documents and Contract.
- 1.4 To the extent that materials and equipment are purchased pursuant to the City's sales and use tax exemption, the Contractor shall reduce the Contract Amount and the penal sum of its public construction bond by 1.06 times the cost of the materials and equipment purchased directly by the City.
- 1.5 The Contractor shall be fully responsible for all matters relating to the receipt of materials and equipment furnished by the City in accordance with this Supplemental Condition, including, but not limited to, the responsibility for verifying correct quantities, verifying documents or orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the materials and equipment at the time of delivery, and loss or damage to materials and equipment following acceptance of items due to the negligence of such Contractor or any Sub-Contractors or other party. The Contractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by such Contractor for the particular materials furnished. The Contractor shall provide or arrange for all services required for the unloading, handling and storage of such materials and equipment through installation.
- 1.6 The Contractor shall visually inspect all shipments from material and equipment vendors purchased directly by the City in accordance with this Supplemental Condition (the "City Furnished Materials") and approve the vendors' invoices for materials or equipment delivered, as City Furnished Materials are furnished to the Site in accordance with this Supplemental Condition. The Contractor shall assure that each delivery of the City Furnished Materials is accomplished by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the vendor conforming to the Purchase Order, together with such additional information as the City may require. The Contractor shall deliver to the City's Representative all invoices for materials and equipment upon verification by such Contractor that the materials and equipment conform exactly to the Contract Documents and the Purchase Order. Upon receipt of any invoice for City Furnished Materials, the City's Representative shall accept such materials and deliver such invoice to the City for payment directly to the vendor.
- 1.7 The Contractor shall inspect all City Furnished Materials to determine that such City Furnished Materials conform to the Contract Documents, including the Drawings and the Plans and Specifications, and to determine prior to incorporation into the Work whether any such City Furnished Materials are patently defective, and whether such City Furnished Materials are identical to the materials ordered and match the description of the bill of lading

and the Purchase Order. If Contractor discovers defective or non-conforming City Furnished Materials upon such visual inspection, Contractor shall: (1) not recommend acceptance of such non-conforming materials and equipment, (b) not utilize such non-conforming or defective materials in the Work; (c) not allow Sub-Contractor to utilize such non-conforming or defective materials in the Work; and (d) promptly notify the City's Representative, in writing, of the defective or non-conforming condition so that repair or replacement of those City Furnished Materials can occur without any undue delay or interruption to the Project. In the event that such Contractor fails to perform such inspection or otherwise incorporates into the Work such defective or non-conforming City Furnished Materials, the Contractor shall be responsible for the repair and replacement of defective or non-conforming materials, at its sole cost and expense.

- 1.8 The Contractor shall maintain written and detailed records of all City Furnished Materials incorporated into the Work from the stock of City Furnished Materials. The Contractor shall account monthly to the City's Representative and City for any City Furnished Materials delivered to the Site, indicating which City Furnished Materials have been incorporated into the Work.
- 1.9 The Contractor shall be responsible for obtaining and managing all warranties and guarantees for all City Furnished Materials. All repair, maintenance or damage-repair calls shall be forwarded by the City to the Contractor for resolution with the appropriate vendor, supplier or Sub-Contractor. The Contractor warrants represents and covenants that it shall be responsible for all warranties and guarantees of the City Furnished Materials.
- 1.10 After the City takes possession of the City Furnished Materials at the Site, possession of the City's Furnished Material shall immediately and automatically transfer to the Contractor without notice. The transfer of possession of City Furnished Materials from the City to the Contractor shall constitute a bailment for the mutual benefit of the City and such Contractor. The City shall be considered the bailor and such Contractor the bailee of the City Furnished Materials. City Furnished Materials shall be considered returned to the City for purposes of their bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project and they are accepted in writing by the City upon final completion and acceptance of the Project by the City.
- 1.11 The Contractor shall purchase and maintain builder's risk insurance sufficient to protect against loss of or damage to City Furnished Materials. Such insurance shall cover the full value of any City Furnished Materials between the time the City and or Contractor or its agents first takes title to and possession of any of such City Furnished Materials until final completion of the Work. The Contractor shall also maintain any other insurance with such deductible amounts that the City's Risk Manager deems necessary as it relates to the City Furnished Materials.
- 1.12 The City shall not be liable for any interruption or delay damages in the Project by virtue of ordering the City Furnished Materials, for any defects or other problems with the Project by virtue of ordering the City Furnished Materials, or for any extra costs resulting from any delay in the delivery of, or defects in, the City Furnished Materials.
- 1.13 The Contractor, on a monthly basis, shall review invoices submitted by all vendors of City Furnished Materials delivered to the Site during the prior month and either concur or object to the City's Issuance of payment to the vendors, based upon such contractor's records of materials delivered to the Site and whether any of the City Furnished Materials for which payment has not been made were either non-conforming or defective.

- 1.14 In order to arrange for the prompt payment to the vendor, the Contractor shall provide to the City's Representative a list of the acceptance of the goods or materials within fifteen (15) days of receipt of said goods or materials. Accompanying the list shall be a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the City. Upon receipt of the appropriate documentation, the City shall prepare a check payable to the vendor based upon the receipt of data provided. The City may elect to issue payment via purchase card. This check will be released, delivered and remitted directly to the vendor. The Contractor shall assist the City to immediately obtain partial or final release of waivers as appropriate. The City shall not make any payment without the appropriate Contractor's concurrence and approval, which shall be delivered to the City by the City's Construction Project Manager. There shall be no retention on City Furnished Materials against either the vendor, the Contractor(s) or the Subcontractor(s).
- 1.15 The Contractor and or the City may, in its or their reasonable discretion, require certain material and equipment vendors to provide a supply bond in the amount of one-hundred percent (100%) of the Purchase Order price. The supply bond, if required, shall be issued by a qualified surety company authorized to do business in the State of Florida and acceptable to the City. If the supply bond is required, the costs thereof will be added to the amount of the Purchase Order. The Contractor shall verify that a vendor can furnish a supply bond. All bonds will name the City and the Contractor as additional obligees.

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