

# **CITY OF DANIA BEACH, FLORIDA**



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## **CITY HALL RESTROOM RENOVATIONS**

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### **CITY INVITATION TO BID (“ITB.”) NO. 23-002**

#### **Prepared by:**

City of Dania Beach, Florida  
100 W. Dania Beach Boulevard  
Dania Beach, Florida 33004

**MARCH 13, 2023**

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**CITY OF DANIA BEACH, FLORIDA**

**INVITATION TO BID FOR  
“CITY HALL RESTROOM RENOVATIONS”  
ITB 23-002**

**NOTICE TO BIDDERS**

NOTICE IS GIVEN that the City of Dania Beach, Florida (the “City” or “Owner”) will be accepting sealed Bids for its “**CITY HALL RESTROOM RENOVATIONS, ITB 23-002**”.

Bids will be accepted on DemandStar until April 12, 2023, at 10:00 AM. Bids received after this time will be rejected.

All submissions will remain confidential and exempt from public record disclosure requirements until the response opening is conducted.

**PROJECT DOCUMENTS**

Documents may be obtained from [www.demandstar.com](http://www.demandstar.com) or from the City Website at [www.daniabeachfl.gov](http://www.daniabeachfl.gov).

**MANDATORY PRE-BID CONFERENCE**

A MANDATORY Pre-bid conference will be held on March 24, 2023, at 10:00AM in the Northwest Conference Room at City Hall located at 100 W. Dania Beach Blvd, Dania Beach, FL 33004. All Bidders and interested persons are required to attend the meeting, which will outline the Project as described in the Bid, and provide an opportunity for questions and answers for all interested persons. Any interpretations, clarifications or additional information not disclosed in this Bid and determined to be necessary by the Owner in response to questions, will be issued by means of addendum or addenda, which addendum or addenda will be posted to the City website, [www.daniabeachfl.gov](http://www.daniabeachfl.gov), and [www.demandstar.com](http://www.demandstar.com) for all interested persons identified by the Owner as having received the Bid Documents. The Bidder is required to check these sites to see if there has been any addendum or addenda posted for this Bid. Only questions answered and information supplied by means of such addendum or addenda will be considered as binding.

Oral interpretations, clarifications or other information will have no legal and binding effect. Bids from those who have failed to attend will not be opened. Bidders arriving past the indicated time will not be eligible to submit a Bid.

**\*Note: City Hall is closed to the public on Friday's; bidders will be granted access by the security guard at the main entrance. \***

## BID DOCUMENTS

Bids must be submitted electronically on DemandStar, the City's designated electronic bidding system. All bid document files must be clearly labeled **"CITY HALL RESTROOM RENOVATIONS, ITB 23-002"**.

All bid prices shall be guaranteed firm for a minimum of one hundred twenty (120) calendar days after the submission of the bid. No bidder may withdraw a bid within ninety (90) calendar days after the bid opening date.

Pursuant to Florida law, all Bids are exempt public records until thirty (30) days after opening, or award of bid, whichever is sooner. In the event presentations are necessary, all non-presenting bidders will be required to exit the room during the presentations of each of the other bidders as portions of selection committee meetings at which presentations are made are exempt from Florida's public meeting laws.

A certified check, cashier's check, bank officer's check, or bid bond for Ten Thousand Dollars (\$10,000.00), made payable to the City of Dania Beach shall accompany each proposal.

Bids will be publicly opened and read aloud immediately after the submission deadline on the Bid due date referenced above using RingCentral meeting software, in the presence of the City Clerk or designee on the above stated date. Award of a contract will be made at a subsequent City Commission meeting

All bidders are advised that the City has not authorized the use of the City seal by individuals or entities responding to City bids. Bidders shall demonstrate successful performance of projects of a similar magnitude, scope and value as this project.

The City Commission of the City of Dania Beach reserves the right to reject any and all bids, to waive any informality in a bid and to make an award in the best interests of the City, as Owner.

CITY OF DANIA BEACH, FLORIDA  
Published on: March 13, 2023

**“CITY HALL RESTROOM RENOVATIONS”  
ITB 23-002**

**SITE PLANS, DRAWINGS AND TECHNICAL SPECIFICATIONS ARE  
POSTED ON CITY WEBSITE AND DEMANDSTAR**

## **SECTION 1 - INTRODUCTION AND INFORMATION**

### **1.1 SCOPE**

**1.1.1** The City of Dania Beach, Florida (the “City” or “Owner”), is actively seeking bids from qualified Contractors (the “Contractor”), for a project known as “**CITY HALL RESTROOM RENOVATIONS, ITB 23-002**”. The Project consists of the renovation of the first floor men’s and women’s restrooms, first floor ADA unisex restroom and second floor men’s and women’s restrooms.

**1.1.2** By submitting a bid, the Bidder acknowledges that he, she, or it is familiar with the scope of services prior to submitting a bid. Failure of a Bidder to be familiar with the requirements of the Project Work does not relieve the Contractor of the responsibility for completion of all required services for the Project.

**1.1.3** It shall also be the Bidder's responsibility to visit the proposed Project Site to become thoroughly familiar with the nature and extent of the Work to be performed and all local existing site conditions, and to make his or her own estimate of the facilities and difficulties attending the execution of the Work; no allowance shall be made by the Owner for the Bidder's failure to do so.

**1.1.4** Bids will be considered if submitted by qualified Contractors who or which have experience, including similar previous work in the provision of the requested services. Contractors offering full service will receive the highest consideration.

#### **1.1.5 Applicants should include the following items in the submitted Bid:**

Letter of Transmittal;

- a. Anticipated time line to begin delivery of services;
- b. A breakdown of the costs for the delivery of services described above.
- c. Résumés of key personnel who will actually be assigned to the Project Work and a description of the role of each person within the company.
- d. **NOTE:** The City expects those personnel listed to be those who will be actually performing the Project Work. Substitutions (Contractors only) will be permitted only upon written approval of the City’s representative or designee who is in charge of the Project.
- e. A list of five (5) similar projects performed in South Florida (see the form to be used which is included as Exhibit “A”, “Bidder Qualifications”; it is made a part of and is incorporated into the ITB by this reference) and it includes the following information:
  - 1) Name of each entity for which the work was performed;
  - 2) Brief description of the scope of work;
  - 3) Amount of initial contract award; and
  - 4) Name of contact person and contact information with the entity who can knowledgeably discuss your company’s performance.
- f. Indication that the Contractor can provide increased levels of service (additional hours) at the same cost per hour; and
- g. Any other information that the Contractor feels is relevant to assist the City in evaluating Contractor’s qualifications.
- h. The City intends to award an agreement to the lowest, responsive, responsible Bidder for the requested services specified in the ITB, taking into consideration experience, staffing, equipment, materials, references and past performance. The City reserves the right to reject any and all bids, to waive any informality in a bid

and to make an award in the best interests of the City. In case of disputes in the award of the agreement, the decision of the City shall be final and binding on both parties.

- i. If the Bidder to whom or to which an award is made fails to enter into an agreement, the award may be annulled and the agreement offered to the next most qualified Bidder or to the Bidder which offered the next lowest, responsive and responsible bid in the opinion of the City. **THE CONTRACTOR AND ANY SUBCONTRACTOR(S) SHALL NOT COMMENCE WORK ON THE PROJECT UNTIL AN AGREEMENT HAS BEEN FULLY EXECUTED BY BOTH PARTIES.**

## **SECTION 2 - NO BIDS**

If a Bidder does not intend to bid, please indicate the reason, such as insufficient time to respond, do not offer product or service, unable to meet specifications, schedule would not permit, or any other reason. Failure to bid prior to the date and time scheduled for the bid opening may result in the Bidder being deleted from the City's bidders' registration list for the services requested in the Invitation to Bid.

## **SECTION 3 - CAUSES FOR REJECTION OF A BID**

**3.1** No bid will be considered or accepted that, in the opinion of the City, is informal or unbalanced, or contains inadequate or unreasonable prices for any items; each item must carry its own proportion of the cost as nearly as is practicable. However, the City shall be under no obligation to investigate the correctness of any bid, and the Bidder by signing the bid shall be deemed to have verified that no errors appear in the bid as submitted. Any alterations, erasures, interlineations or failures of a bid to contain all items called for in the ITB may result in rejection of the bid.

**3.2** If any Bidder violates any provision in the ITB, such Bidder may be disqualified from performing the Project Work, or from furnishing the requested services for which the bid was submitted, and the Bidder may be further disqualified from bidding on any future bids for work, for goods, or for services for the City.

**3.3** The Bidder shall complete the "**Bid Form**", which is attached as Exhibit "B"; it is made a part of and is incorporated into the ITB by this reference.

## **SECTION 4 - INTERPRETATION AND CLARIFICATION OF BIDDING DOCUMENTS**

**4.1** All questions requiring interpretation or clarification of the bidding documents shall be made in writing and shall be delivered to the City (and its Consultant, if applicable) to [procurement@daniabeachfl.gov](mailto:procurement@daniabeachfl.gov) by 5:00 P.M. on April 5, 2023. Questions received after this time will not be addressed.

**4.2** For information pertaining to this ITB, email the Procurement Administrator at [procurement@daniabeachfl.gov](mailto:procurement@daniabeachfl.gov). Such contact shall be for clarification purposes only. Material



changes, if any, to the scope of services or Proposal procedures will be transmitted only by written addendum.

**4.3** Interpretations or modifications of the bidding documents made in any manner other than Addendum or Addenda issued by the City shall not be binding and shall have no effect.

**4.4** The Bidder, prior to submitting a bid, shall ascertain that it has received any Addendum or Addenda issued by the City for this Project, and that shall be acknowledged in writing by an authorized representative.

**4.5** Costs for those matters not questioned and not addressed in an Addendum or Addenda, shall be the responsibility of the Bidder, and Bidder shall be responsible to include such costs within the submitted Bid.

**4.6** **Bidders shall use the Bid Document Forms furnished in the ITB.** Bid Base Amounts shall be furnished in both words and numerals, and in case of a discrepancy between the two, the amount written in words shall govern.

**4.7** In the event of a mathematical error in the extension of any unit price, or addition of total price, the unit price shall prevail.

**4.8** **Insurance Coverage:** Bidders who are responding to the Invitation to Bid (“ITB”) **MUST** comply with all of the insurance requirements specified in Section 27 (“Insurance Requirements”) of the Bid Documents and the Agreement upon award to the successful Bidder.

## **SECTION 5 - GENERAL CONDITIONS**

**5.1** **Purpose:** The purpose of the Invitation to Bid is to establish between the City and the Contractor an agreement to perform the project work. The successful Bidder shall provide a Performance Bond for One Hundred Ten percent (110%) of the contract price made payable to the City of Dania Beach, Florida, within fourteen (14) days of notification of the award of the agreement. A copy of the Performance Bond form is attached as Exhibit “C”; it is made a part of and is incorporated into the ITB by this reference.

**5.2** **Documentation:** Bidder shall submit in its bid the following:

- a. Evidence that the Bidder is certified and licensed to perform the required services in the State of Florida. The successful Bidder must be in compliance with all applicable laws and regulations;
- b. A statement stating the number of years the Contractor has been a qualified provider of the requested services; and
- c. A complete Bidder’s Questionnaire form which is attached as Exhibit “E”; it is made a part of and is incorporated into the ITB by this reference.

**5.3** **Bidder Expenses:** Bidders are solely responsible for their own expenses in preparing and submitting Bids, and for any meetings, negotiations or discussions with the City or its representatives and consultants, relating to or arising from this ITB. The City and its representatives, agents, consultants and advisors shall not be liable to any Bidder for any claims, whether for costs, expenses, losses or damages, or loss of anticipated profits, or for any

other matter whatsoever, incurred by any Bidder in preparing and submitting a Bid, or participating in negotiations for a contract, or any other activity related to or arising out of this ITB.

**5.4 No Contract:** By submitting a Bid and participating in the process as outlined in this ITB, Bidders expressly agree that no contract of any kind is formed under or arises from this ITB prior to the complete signing by both parties of a formal written contract.

**Conflict of Interest:** Bidders shall disclose any potential conflicts of interest and existing business relationships they may have with the City. If requested by the City, a Bidder should provide all pertinent information regarding ownership of the entity within forty-eight (48) hours of the City's request.

**5.5 General Conditions:** The agreement to be awarded will be subject to the provisions of the United States Constitution, Florida laws, statutes and ordinances of the United States of America, the State of Florida, Broward County and the City of Dania Beach.

## **SECTION 6 - SPECIAL CONDITIONS**

6.1 Any and all Special Conditions contained in the ITB that may be in variance or conflict with the General Conditions shall have precedence over the General Conditions. If no changes or deletions to General Conditions are made in the Special Conditions, then the General Conditions shall prevail in their entirety.

6.2 The Notice of Invitation to Bid, Bidder's Questionnaire, Specifications, Exhibits, Addendum or Addenda, the legal advertisement of the ITB and any other pertinent documents form a part of the ITB, and ultimately, the agreement; all of the documents are made a part of and are incorporated into the ITB and the awarded agreement.

## **SECTION 7 - PUBLIC ENTITY CRIMES STATEMENT**

A person or affiliate who, or which has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to 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 an agreement with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 F. S. for CATEGORY TWO, which is \$35,000.00, for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. A form to that effect, as mentioned above, must be submitted by the Bidder. A copy of the Sworn Statement on Public Entities Crimes is attached as Exhibit "F"; a copy is made a part of and is incorporated into the ITB by this reference.

## **SECTION 8 – PRICES, TERMS ARE TO BE FIRM**

**8.1** The Bidder warrants by virtue of its Bid that the prices, terms and conditions contained in the ITB shall be firm for a period of no less than one hundred twenty (120) calendar days from the date of the bid opening.

**8.2** The bid prices shall include all permit fees, royalties, license fees, taxes and other costs arising from the use of the materials and equipment in any way involved in the Project Work, as well as all costs of packaging, transporting and delivery of any materials and equipment to the designated location within the City, and the site cleanup. If the Project exceeds a cost of \$50,000.00, the agreement is subject to the City's Prevailing Wages' Ordinance, Code of Ordinances; a copy is attached as Exhibit "G" and it is made a part of and is incorporated into the ITB by this reference.

**8.3** The City may require the addition or deletion of services from the Contractor if the requirements and needs of the City change, in City's sole opinion. This may entail additional services and additional locations. The Contractor shall provide the City with costs for these additional services and additional locations or both, based upon the cost structure utilized in establishing the pricing for listed locations in initially contracted areas. Deletion of locations, services, or both shall be handled in the same manner as described above. If the costs offered are not acceptable to the City, the City reserves the right to procure the additional services from one or more other Contractors.

## **SECTION 9 - BID SECURITY**

**9.1 Bid Security:** Simultaneously with the delivery of an executed Bid to the Owner, the Bidder shall furnish to the Owner a Bid Security in the amount of Ten Thousand Dollars (\$10,000.00) as security for the faithful execution of an Agreement with the Owner in the event of a bid award by the City Commission.

**9.2** Bid security may be in the form of a cashier's check payable to the City of Dania Beach and drawn on a Florida bank, or a Bid Bond (see Exhibit "K") issued by a surety meeting the qualifications stated in these Instructions to Bidders. Bonds shall be submitted on the forms provided by the Owner. Bonds shall be returned subsequent to award of the Agreement by the City Commission and execution by the successful Bidder and the appropriate City officials. If the Bidder fails to submit the required executed agreement within fourteen (14) calendar days after an award, the Bidder agrees that the City may retain the bid security deposit as the City's liquidated damages.

**9.3** Failure of the successful Bidder to execute an Agreement, to furnish Performance and Payment Bonds when required, and to furnish Certificates of Insurance in the minimum amounts specified in the Bid shall be just cause for the rescission of the agreement award and the retention of the Bid Security deposit by the Owner. Such retention shall be considered not as a penalty, but as liquidation of the claims of the Owner for damages it sustained, which are not otherwise readily ascertainable. Award may then be made to the next ranked Bidder, or all Bids may be rejected.

## **SECTION 10 - PROTECTION OF PROPERTY**

**10.1** The successful Bidder shall at all times guard against damage or loss to City property or property of other persons, vendors or Contractors and shall be responsible for replacing or repairing any such damage or loss. The Contractor will be required to report any such damages immediately to the City's representative in charge of the Project. The successful Bidder shall ensure that the area in which the sidewalks are being replaced that pedestrians, and the general public are not injured nor have access to the area (safety screening) in which work is proceeding.

**10.2** The City reserves the right to repair any damages created by the Contractor and to deduct the appropriate amount from any payment due to the Contractor. In all cases, the decision of the City is final.

## **SECTION 11 - TRASH**

Contractor shall be responsible for the daily removal of trash and debris from the Project work sites and upon completion of the Project Work.

## **SECTION 12 - INSTRUCTIONS TO BIDDERS**

**12.1 Form Documents:** The bid and its accompanying statements must be made on the forms provided in the ITB. The forms must be submitted in good order and with all the blanks completed. The bid must be signed by a representative of the Bidder duly authorized to do so, and, in the case the bid is signed by a deputy or subordinate, the principal's written authority to do so must accompany the bid.

**12.2 Taxes:** The City is exempt from any taxes related to the requested services, which may otherwise be imposed by the state or federal government. This exemption does not transmit to suppliers in their purchases of goods or services, used in work or goods supplied to the City. The Contractor shall pay all applicable sales, consumer, use and other similar taxes required by law. The Contractor is responsible for reviewing the pertinent state statutes involving the sales tax and complying with all requirements.

## **SECTION 13 - RETENTION OF RECORDS AND RIGHT TO ACCESS**

The successful Bidder shall preserve and make available all financial records, supporting documents, statistical records, and any other documents pertinent to the agreement for a period of three (3) years after termination or conclusion of the agreement, or if an audit has been initiated and audit findings have not been resolved at the end of these three (3) years, the records shall be retained by the City until resolution of audit finding.

## **SECTION 14 - NON-COLLUSION STATEMENT**

By submitting a bid, the Bidder affirms that the bid is without previous understanding, agreement, or connection with any person, business, or corporation and that the bid is in all respects fair, and made without collusion or fraud. The Non-Collusion Affidavit form must be executed by the

Bidder; a copy of the form is attached as Exhibit "H"; it is made a part of and is incorporated into the ITB by this reference.

### **SECTION 15 - FLORIDA TRENCH SAFETY ACT**

The Bidder shall include with its Bid, when applicable, all documentation required by the Florida "Trench Safety Act", Section 553.63, Florida Statutes. The unit prices and total prices presented in the Bid, and those presented in any subsequent change orders shall include the Bidder's cost for compliance with the applicable trench safety standards.

### **SECTION 16 - MINIMUM AND MANDATORY TECHNICAL SPECIFICATIONS**

The technical specifications may include items that are considered minimum, mandatory, or required. If any Bidder is unable to provide these items, and feels that the technical specifications are overly restrictive, the Bidder must notify the City of Dania Beach in writing immediately. Such notification must be received by the City prior to the deadline contained in the ITB, for questions of a material nature, at least ten (10) calendar days prior to the bid opening date. If no such notification is received prior to that deadline, the City will consider the technical specifications to be acceptable to the Bidder.

### **SECTION 17 - PUBLIC RECORDS**

**17.1 Bid Submissions Shall Become City Property:** All submissions become the property of the City and will not be returned to the Bidder. The City will hold all submissions in confidence unless otherwise required by law.

**17.2 Contractor's Obligations:** Bidders should be aware the City is a "public body" as defined in Florida Statutes, Section 119.011(2) and that it is subject to Florida Statutes, Section 119.0701(2) (a), and the related provisions of the Florida Public Records Law. If awarded this project, the following will apply:

**17.2.1 Documents to Be City Property:** Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with the contract are and shall remain the property of the City.

**17.2.2 Maintenance of Records:** Bidder agrees to keep and maintain public records in Bidder's possession or control in connection with Bidder's performance under the contract. Bidder additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Bidder shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract, and following completion of the contract until the records are transferred to the City.

**17.2.3 Response to Public Records Requests:** Upon request from the City custodian of public records, Bidder shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

**17.2.4 Delivery of Records:** Upon completion of the contract or in the event of termination by either party, any and all public records relating to the contract in the possession of the Bidder shall be delivered by the Bidder to the City Manager, at no cost to the City, within seven (7) days. All such records stored electronically by Bidder shall be delivered to the City in a format that is compatible with the City's information technology systems. Once the public records have been delivered upon completion or termination of the contract, the Bidder shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

Any compensation due to Bidder shall be withheld until all records are received as provided in this ITB.

**17.2.5 Failure to Comply:** Bidder's failure or refusal to comply with the provisions of this section shall result in the immediate termination of the contract by the City.

**17.3 Florida Public Records Law:** Pursuant to Section 119.0701(2) (a), Florida Statutes:

**IF THE BIDDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BIDDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, THE BIDDER MUST CONTACT THE CITY CUSTODIAN OF PUBLIC RECORDS.**

<b>Custodian of Records:</b>	Elora Riera, City Clerk
<b>Mailing Address:</b>	100 W. Dania Beach Boulevard Dania Beach, Florida 33004
<b>Telephone number:</b>	954-924-6800, Ext. 3623
<b>Email:</b>	<a href="mailto:eriera@daniabeachfl.gov">eriera@daniabeachfl.gov</a>

## **SECTION 18 - SUCCESSORS AND ASSIGNS**

The City and Contractor, respectively, will bind themselves, their partners, successors, assigns and legal representatives to the agreement. Neither party to the agreement shall assign or subcontract it or any portion of it, without the advance written consent of the other.

## **SECTION 19 - QUALIFICATION OF BIDDERS**

**19.1 Bidders' Qualifications:** The Bidder shall complete the Bidders' Qualifications Form (Exhibit "A") attached, along with any other evidence of satisfactory experience and ability to perform the proposed Work. The failure of Bidder to demonstrate successful performance of projects of a similar magnitude, scope and value as this project may be deemed to be grounds for declaring the Bidder to be non-responsible.

**19.2 Certified Financial Statement:** If requested by the Owner, the Bidder shall submit a certified financial statement, prepared within thirty (30) days of submission of the bid, indicating current financial resources, liabilities, capital equipment, and financial history performance.

**19.3 Disqualification:** A Bidder shall be disqualified and its unopened Bid shall be rejected by the City for any one or more of the following reasons:

- a. Reason to believe that collusion exists among the Bidders.
- b. The Bidder is or has been involved directly or indirectly in litigation or arbitration against the Owner within the past ten (10) years.
- c. The Bidder has defaulted on any previous contract with the Owner within the past ten (10) years or is in arrears on an existing contract.
- d. The submittal of more than one Bid from an individual, firm, partnership, corporation or association under the same or different names. All such parties shall be disqualified.
- e. Untimely bids shall be automatically and absolutely disqualified and returned unopened. Excuses for the untimely submittal shall not be accepted. The time of bid receipt documented by the City Clerk's office shall determine the timeliness of the Bid.

**19.4 Non-responsible Bidder:** A Bidder may be determined by the Owner to be "non-responsible" once Bids are opened, and a Bid may be rejected for any one or more of (but not limited to) the following reasons:

- a. Determination of a lack of competency as may be revealed by qualification statements, financial statements, experience records or other information disclosed to Owner by other sources.
- b. The Bidder's uncompleted or pending workload on other projects, which in the judgment of the Owner may cause detrimental impact on timely completion of the Work.
- c. The appearance of an unbalanced Bid, as determined by the Owner.
- d. If the Bidder makes one or more false statements or provides false information in connection with any portion of the bidding documents.
- e. If the Bidder fails to demonstrate successful performance and completion of projects of a similar magnitude, scope or value as this project.

**19.5 Non-responsive Bidder:** A Bidder may be deemed to be non-responsive and a Bid may be rejected for any of, but not limited to, the following reasons:

- a. If the Bidder fails to submit a complete Bid, including but not limited to, submitting evidence of all insurance coverages required by the Bid and the Contract Documents.
- b. If the Bidder fails in any way to abide by any of the provisions of the Contract Documents.

## **SECTION 20 - CONTRACTOR'S RELATION TO THE CITY- INDEPENDENT CONTRACTOR**

It is expressly agreed upon and understood that the Contractor will be in all respects an independent contractor as to the Project Work, and that the Contractor is in no respect an agent or employee of the City. The agreement will specify the Project Work to be done by the Contractor, but the method to be employed to accomplish the work shall be the responsibility of the Contractor, unless otherwise provided in writing in the agreement. Contractor and its employees are not entitled to

any of the benefits that the City provides for City employees.

## **SECTION 21 - EMPLOYEES OF THE CONTRACTOR**

**21.1** Contractors shall only designate employees who are sufficiently skilled to provide the required services specified in the ITB. Any person employed to provide the services who fails, refuses or neglects to obey the instructions of the City's representative in anything relating to these services, or who appears to be disorderly, insubordinate, or incompetent shall upon the order of City's representative, be immediately relieved by the Contractor from the Project Work. Any interference with, or any abusive or threatening conduct toward any City representative, its assistants or inspectors by the Contractor, its employees or agents, or any member of the public shall be grounds for the City to terminate the agreement and re-let the work. The Contractor shall furnish all labor, materials, supplies and equipment necessary to properly maintain all Project Work areas in an acceptable and safe condition.

**21.2** Contractor agrees that it and its officers shall be held fully responsible, except as otherwise prohibited by law, for all acts of their employees while in their employ.

## **SECTION 22 - AVAILABILITY OF FUNDS**

The obligations of the City under the awarded agreement will be subject to the availability of funds.

## **SECTION 23 - LICENSES, PERMITS, AND FEES**

In accordance with the Public Bid Disclosure Act, Section 218.80, Florida Statutes, each license, permit, or fee a Contractor will have to pay the City before or during the work, items or services to be provided or the percentage method or unit method of all licenses, permits, and fees required by the City and payable to the City by virtue of the work, items, or services as part of the agreement are as follows:

- a. Contractor shall have and maintain during the term of the agreement any and all appropriate City licenses, fees (and business tax receipts, if applicable), which shall be paid in full in accordance with the City's fee structure for such items. **THERE WILL NOT BE ANY PERCENTAGE REDUCTION OR WAIVING OF CITY LICENSES, FEES (OR BUSINESS TAX RECEIPTS, IF APPLICABLE).**
- b. During the performance of the agreement, there may be times when the Contractor will be required to obtain a permit for such work, or in connection with the items or services. It is the responsibility of the Contractor to ensure that it has the appropriate permits as may become necessary during the performance of the work. Any fees related to the required permits in connection with the agreement will be the sole responsibility of the Contractor.
- c. Licenses, permits, and fees may be required by Broward County, the state of Florida or the federal government.
- d. City will reimburse permit fee costs related to dewatering and National Pollutant Discharge Elimination System (NPDES).



## **SECTION 24 - TERMINATION OF AGREEMENT**

If the successful Bidder who or which is awarded the contract fails to provide the services, or shall in any other manner commit a breach of the agreement and fails to remedy the same within five (5) calendar days after receipt of written notice from the City, the City may terminate the agreement resulting from the ITB without any further notice to the Contractor. City representatives will review the construction services periodically to assure that the requirements of the agreement are being met. If any work is unsatisfactory, the Contractor shall be contacted, and the discrepancies corrected at no additional cost to the City. If deficiencies are not corrected within five (5) working days, the City may, at its option, perform the required services or contract to have them performed and deduct the cost of those services from the agreement cost.

## **SECTION 25 - TERMINATION OF AGREEMENT FOR CAUSE**

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under the agreement, or if the Contractor shall violate any of the provisions of the agreement, the City may upon written notice to the Contractor, terminate the right of the Contractor to proceed under the agreement, or as to such part or parts of the agreement for which there has been a default, and may hold the Contractor liable for any damages caused to the City by reason of such default and termination. In the event of such default and termination, any completed services performed by the Contractor under the agreement shall, at the option of the City become the City's property and the Contractor shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of set-off until such time as the amount of damages due to the City from the Contractor can be determined. The City reserves the right to terminate the agreement upon thirty (30) calendar days' written notice, without cause.

## **SECTION 26 - INDEMNIFICATION AND HOLD HARMLESS PROVISIONS**

26.1 The selected Contractor shall, in addition to any other obligation to indemnify the City and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the City, including its agents, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), or costs arising out of any actual or alleged:

- a. bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, or any other damage or loss arising out of or resulting or claimed to have resulted in whole or in part from any actual or alleged act or omission of the Contractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable in the performance of the work;
- b. any violation of law, statute, ordinance, governmental administrative order, rule, regulation, or infringement of patent rights by Contractor in the performance of the work;
- c. liens, claims, actions made by the Contractor or other party performing the work; and

- d. claims of whatsoever nature related to collection practices or any actions of a contradictory nature pursuant to the Agreement or in an attempt to collect monies due or claimed to be due to the City.

**26.2 Indemnification for Construction Contracts.** In the event that the performance of services under the Contract is deemed to be a “construction contract” pursuant to §725.06, Florida Statutes, as it may be amended from time to time, the following indemnification shall apply:

To the fullest extent permitted by Chapter 725, Florida Statutes, as it may be amended, the Contractor agrees to indemnify and hold harmless the Owner, its officers, employees, and assigns from liabilities, damages, losses, and costs including, but not limited to reasonable attorney fees, to the extent caused by the negligence, recklessness, or intentionally wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the provisions in the Contract Documents.

## **SECTION 27 - INSURANCE REQUIREMENTS**

**27.1 Insurance Required Before Commencement of Work:** The Contractor shall not commence Work under the Agreement until Contractor has obtained all insurance required under this Section, and not until such time that the coverages are approved by the Risk Manager of the City. The Contractor shall not allow any employee of Contractor or any Subcontractor to commence Work on any subcontract until the Subcontractor and all Coverages required of any Subcontractor have been obtained and approved by the Risk Manager of the City. In addition, Contractor shall be responsible for any and all policy deductibles and self-insured retentions.

**27.2 Insurance Requirements:** Coverages shall be in force until all Work required to be performed under the terms of the Agreement, including any applicable warranty period, is satisfactorily completed as evidenced by the formal written acceptance by the City. In the event insurance certificates provided to City indicate that the insurance shall terminate and lapse during the period of the Agreement, including any applicable warranty period, then in that event, the Contractor shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed Certificate of Insurance as proof that equal and like coverages for the balance of the period of the Agreement, including any extension of it, and including any applicable warranty period, is in effect. **THE CONTRACTOR AND ANY SUBCONTRACTOR SHALL NOT PERFORM OR CONTINUE WORK PURSUANT TO THE AGREEMENT, UNLESS ALL COVERAGES REMAIN IN FULL FORCE AND EFFECT. ANY DELAY IN THE WORK CAUSED BY A LAPSE IN COVERAGE SHALL BE NON-EXCUSABLE, SHALL NOT BE GROUNDS FOR A TIME EXTENSION, AND WILL BE SUBJECT TO ANY OTHER APPLICABLE PROVISIONS DESCRIBED IN THE AGREEMENT OR ELSEWHERE IN THE BID DOCUMENTS CONCERNING CONTRACTOR DELAY.**

**27.3 Required Minimum Coverages:** The below coverages are minimum limit requirements. Umbrella or Excess Liability policies are acceptable to provide the total required liability limits, as long as the Risk Manager of the City reviews and approves in writing the insurance limits on each of the policies. The City must approve any changes to these specifications and has the right to review and amend coverage requirements. The CONTRACTOR shall be held

responsible for any modifications, deviations, or omissions in these insurance requirements. CONTRACTOR shall be responsible for any deductible amounts.

**27.4 GENERAL LIABILITY INSURANCE** is to include bodily injury, broad form property damage, products/completed operations, blanket contractual liability, and personal/advertising injury with limits of no less than One Million Dollars (\$1,000,000.00) per occurrence, and Two Million Dollars (\$2,000,000.00) annual aggregate.

**27.5 SPECIAL PROVISIONS AS TO GENERAL LIABILITY INSURANCE (to be confirmed on or attached to the Official Certificate of Insurance):**

- a. Annual Aggregate shall apply “Per Job”;
- b. “The City of Dania Beach, Florida” is added as a named “Additional Insured”;
- c. Additional Insured status is included for Products completed operations coverage for a period of no less than five (5) years following the completion of the Work or Project;
- d. Additional insured coverage shall be no more restrictive than Insurance Services Office (ISO) form CG 2037 (07 04);
- e. Contractor’s insurance shall be primary and non-contributory;
- f. Waiver of Subrogation in favor of the City;
- g. 30 Days’ Notice of Cancellation or modification to City (if not available on the insurance policies, then Contractor has responsibility for notification); and
- h. Copy of Additional Insured Endorsement or other endorsements may be attached to the Certificate.

**27.6 WORKERS’ COMPENSATION INSURANCE** must be provided for all persons fulfilling this agreement whether employed, contracted, temporary, or subcontracted for the life of the agreement, including any applicable warranty period(s), and it is to apply to all “statutory employees” of Contractor (as that phrase is defined by Chapter 440, Florida Statutes), in compliance with the “Workers’ Compensation Law” of the State of Florida and all applicable federal laws, for the benefit of the Contractor, its employees, and Subcontractors.

**27.7** In the case any work is sublet as otherwise addressed in the Agreement or Bid Documents, the Contractor shall require any Subcontractors similarly to provide Workers’ Compensation Insurance for all of the latter’s employees, in addition to any coverage afforded by the Contractor, by furnishing Statutory Limits Part A, and no less than One Million Dollars (\$1,000,000.00) Employers’ Liability Limits Part B.

**27.8 IN NO EVENT SHALL THE CONTRACTOR BE PERMITTED TO UTILIZE IN THE PROSECUTION OF THE WORK, THE FOLLOWING:**

- A) ANY EMPLOYEE, SUBCONTRACTOR OR SUBCONTRACTOR EMPLOYEE WHO IS EXEMPTED OR PURPORTED TO BE EXEMPT FROM WORKERS’ COMPENSATION INSURANCE COVERAGE; OR
- B) ANY EMPLOYEE, SUBCONTRACTOR OR SUBCONTRACTOR EMPLOYEES WHO WILL BE COVERED BY AN EMPLOYEE LEASING ARRANGEMENT.

**27.9 SPECIAL PROVISIONS AS TO WORKERS' COMPENSATION INSURANCE (to be confirmed on or attached to the Official Certificate of Insurance) :**

- A) 30 Days' Notice of Cancellation or Modification to City (if not available on the insurance policies, then Contractor has responsibility for notification); and
- B) Waiver of Subrogation.

**27.10 AUTOMOBILE LIABILITY INSURANCE** shall be maintained with combined single limits of no less than One Million Dollars (\$1,000,000.00), to include coverage for owned, hired, and non-owned vehicles.

**27.11 SPECIAL PROVISIONS AS TO AUTOMOBILE LIABILITY INSURANCE (to be confirmed on or attached to the Official Certificate of Insurance):**

- A) "The City of Dania Beach" is added as a named "Additional Insured";
- B) 30 Days' Notice of Cancellation or modification to City (if not available on the insurance policies, then Contractor has responsibility for notification); and
- C) Waiver of Subrogation.

**27.12 Proof of Insurance:** The following are requirements that must be met regarding the Bidder's delivery of Certificates of Insurance for all coverages required in the Agreement and Bid Documents:

**27.12.1** "Preliminary" certificate means that certificates of insurance verifying all general insurance requirements (as noted below) must be included with Bid at submittal on the date and time of the Bid opening. If the "preliminary" certificates are not included with a Bid submittal, then the City has the right to consider the submitted Bid as non-responsive on the date and time of the Bid opening. "Preliminary" Certificates may be issued without documentation of all "Special Provisions". However, Contractor does understand that all provisions, including "Special Provisions" noted below are expected to be fully documented on or attached to the "Official" Certificates of Insurance as described below.

**27.12.2** "Official" Certificates of Insurance must be delivered to the City Clerk's office and Risk Manager of the City. If the "Official" certificates are not delivered before or on the fourteenth (14<sup>th</sup>) Business Day after the issuance by the City of the "Notice of Intent to Award", then the City has the right to consider the awarded Agreement to the successful Bidder as void and to negotiate a contract with the next lowest responsive and responsible Bidder. "Special Provisions", as referenced below under each type of insurance requirement shall be fully confirmed on or attached to the "Official" certificates.

**27.12.3** All Certificates of Insurance must clearly identify the contract to which they pertain, including a brief description of the subject matter of the contract. The certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days' prior written notice has been given to City. If this coverage is not provided, then Contractor is responsible for such notice to City. Insurance policies for required coverages shall be issued by companies authorized to do business under the laws of the State of Florida and any such companies' financial ratings must be no less than A-VII in the latest edition of the "BEST'S

KEY RATING GUIDE”, published by A.M. Best Guide. In the event that the insurance carrier’s rating shall drop, the insurance carrier shall immediately notify the City in writing.

**SECTION 28 – SAFETY**

**28.1** The successful Bidder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project Work. The successful Bidder shall comply with the rules and regulations of the Florida Department of Commerce regarding industrial safety (Florida Statutes, Section 440.56) and with the standards set forth in the federal Occupational Safety and Health Act of 1970 (OSHA), and its amendments.

**28.2** Bidder, by submitting a bid, certifies that all materials and equipment to be supplied for the Project will meet all federal and state requirements, including but not limited to, the Occupational Safety and Health Act (OSHA).

**SECTION 29 - WARRANTY**

The Contractor shall warrant to the City that materials and equipment furnished under the agreement will be of good quality and new unless otherwise required or permitted by the Contract Documents; that the Work will be free from defects, and that the Work will conform to the terms and conditions of the agreement. Work not conforming to those terms and conditions, including substitutions not properly approved and authorized may be considered defective. The Contractor's warranty may exclude damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient City maintenance, improper operation, or normal wear and tear under normal usage. The Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All manufacturers’ product warranties shall be registered in the City’s name and for its sole benefit.

**SECTION 30 - RESPONSIBLE BIDDER**

No bid will be accepted from, nor will any agreement be awarded to, any person or entity who or which is in arrears to the City of Dania Beach upon any debt or agreement, who or which is in default as surety or otherwise upon any obligation to the City, who is deemed irresponsible or unreliable by the City, or who or which has been found guilty or convicted of a Public Entity crime in any federal or state trial court of record.

**SECTION 31 - CONTRACTOR'S FINANCIAL/EXPERIENCE RECORD**

The City shall have the right to investigate the financial condition and experience record of the Bidder, and determine to its satisfaction the competency of the Bidder to undertake the requested services in the ITB.

**SECTION 32 - BILLING PROCEDURE**

The preferred method for invoices is to send via email to [ap@daniabeachfl.gov](mailto:ap@daniabeachfl.gov). A copy may also be mailed to City Hall.

Attn: Accounts Payable  
100 West Dania Beach Boulevard  
Dania Beach, Florida 33004

with a copy to:

City of Dania Beach Public Services Department  
Attn: Fernando Rodriguez  
1201 Stirling Road  
Dania Beach, Florida 33004

The City will pay to the Contractor for the faithful performance of the Contract, in lawful money of the United States, and subject to adjustments as provided in the Contract Documents, the amounts equal to the sum of the unit, lump sum price or both established for each separately identified work item, times the estimated quantity of that item, as indicated in the Schedule of Prices.

As provided in the Bid, the quantities entered in the Schedule of Prices for each item of work is an estimate only and the final Contract amount and the total payment made to the Contractor will be based on the actual number of units of each work item incorporated in the Work of the Contract. It is understood that the unit prices quoted or established for work items will be used for computing the amount to be paid to the Contractor, based on the quantities actually constructed as determined by the applicable measurement and payment portion of the Specifications.

### **SECTION 33- PROGRESS PAYMENTS**

The Contractor may requisition payments for work completed during the project at intervals of not more than once a month. The Contractor's requisition shall show a complete breakdown of the project components, the quantities completed and the amount due, together with properly executed Releases of Liens by all subcontractors, suppliers and materialmen who were included in the Contractor's current and previous applications for payment and any other supporting documentation as may be required by the City or Contract Documents. The City shall make payment to the Contractor within thirty (30) calendar days after approval of the Contractor's requisition for payment.

Five percent (5%) of all monies earned by the Contractor shall be retained by the City until the work is totally completed as specified and accepted by the City.

The City may withhold in whole or in part, 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 payment to subcontractors or suppliers for materials or labor.
4. Damage to another Contractor not remedied.
5. Liability for liquidated damages that has been incurred by the Contractor.
6. Reasonable evidence that the work cannot be completed for the unpaid balance of the

Contract Sum.

7. Reasonable evidence that the work will not be completed within the Contract Time.
8. Persistent failure to carry out the work in accordance with the Contract Documents.

When the above grounds are removed or resolved or the Contractor provides a surety bond or consent of surety satisfactory to the City, which will protect the City in the amount withheld, payment may be made in whole or in part

### **SECTION 34 - BID PROTEST PROCEDURE**

**34.1** After a Notice of Intent to Award a contract is posted, any actual or prospective Bidder claiming to be aggrieved in connection with the pending award of the Contract or any element of the process leading to the award of the Contract may protest to the City Manager. A protest must be filed by 5:00 PM on the third (3<sup>rd</sup>) Business Day after posting at City Hall of the Notice of Award (excluding the day that the Notice is posted) or any right to protest is waived. The protest must be in writing, must identify the name and address of the protester, and must include a factual summary of, and the basis for, the protest. Filing shall be considered complete when the protest and a Bid Protest Bond are timely received by the City Manager's Office.

**34.2** A Bid Protest Bond shall accompany the written protest, to compensate City for the expenses of administering the protest. If the protest is decided in the protester's favor, the entire deposit shall be returned to the protester. If the protest is not decided in the protester's favor, the deposit shall be retained by the City. The deposit shall be in the form of a cashier's check, and shall be the one percent (1%) of the amount of the pending award to the initial successful Bidder or five thousand (\$5,000.00) dollars, whichever is less.

**34.3** The Protest Committee shall have the authority to review, settle, and resolve all protests. Members of the Protest Committee will be appointed by the City Manager. If the Protest Committee determines that the pending award of a contract or any element of the process leading to the award involved a significant violation of law, applicable rule or regulation, all steps necessary and proper to correct the violation shall be taken. If the Protest Committee determines that the protest has merit, the City Manager shall direct that all appropriate steps are to be taken to remedy it.

**34.4** In the event of a timely protest, the City Manager shall stay the award of the Contract unless, after consulting with the City Attorney and a representative from the City's Department for which the services are being obtained, the City Manager determines that the award of the Contract without delay is necessary to protect the substantial interests of the City. The continuation of the bid award process under these circumstances shall not preempt or otherwise affect the protest.

### **SECTION 35 - LITIGATION**

**35.1** In addition to any other provision of this ITB, the City may, in its absolute discretion, reject a Bid if the Bidder, or any officer or director of the Bidder submitting the Bid, is or has been engaged directly or indirectly in legal action against the City, its elected or appointed officers, representatives or employees in relation to any matter.

**35.2** In determining whether or not to reject a Bid under this section, the City will consider whether the litigation is likely to affect the Bidder's ability to work with the City, its consultants and representatives and whether the City's experience with the Bidder indicates that there is a risk that the City will incur increased staff and legal costs in the administration of the contract if it is awarded to the Bidder.

**35.3** A contract with the successful Bidder will include the following:

GOVERNING LAW; CONSENT TO JURISDICTION. The law of the State of Florida shall govern the contract. The contract is not subject to arbitration. **THE PARTIES EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY FOR ANY DISPUTES ARISING FROM, OR IN ANY WAY CONNECTED WITH THIS AGREEMENT. THE PARTIES UNDERSTAND AND AGREE THAT THIS WAIVER IS A MATERIAL CONTRACT TERM.**

**35.4** All claims, counterclaims, disputes and other matters in question between City and the Contractor arising out of, relating to or pertaining to the Contract, the breach of it, the services of it, or the standard of performance required in it, are to be addressed by resort to non-binding mediation as authorized under the laws and rules of Florida; provided, however, that in the event of any dispute between the parties, the parties agree to first negotiate with each other for a resolution of the matter or matters in dispute and, upon failure of such negotiations to resolve the dispute, the parties shall resort to mediation. If mediation is unsuccessful, any such matter may be determined by litigation in a court of competent jurisdiction in Broward County, Florida, or the Federal District Court of the Southern District of Florida and appropriate appellate courts for such venue and jurisdiction. If City or Contractor incurs any expense in enforcing the terms of the Contractor, whether suit is brought or not, each party shall bear its own costs and expenses including, but not limited to, court costs and reasonable attorney fees.

## **SECTION 35 - CONTRACT AWARD AND EXECUTION**

**35.1 Bid Opening and Evaluation:** The City will publicly open and announce all bids it receives by total amount in accordance with the terms of the advertisement. The City will verify all bidders have properly submitted and executed all required bid documents and forms; review all bids for accuracy; prepare a tabulation of the bids showing the item details and total bid for all responsible bids; check for conformance of all bids to the engineer's estimate; evaluate unbalanced bid items; confirm the bid tabulations; and provide a recommendation for award of bid or recommendation for re-advertisement, if appropriate, to the City Commission.

**35.2 Rejection of Bids:** The City may reject bids in the following circumstances:

- (a) where the low bid differs from the engineer's estimate by an unreasonable amount (reasonable conformance pursuant to 23 CFR 635.114(c))
- (b) where obvious unbalancing of unit prices has occurred, or
- (c) where competition is considered to be inadequate relative to the size, type, and location of the project.



**35.3 Prohibition of Negotiations with Contractors or Bidders:** Negotiations with contractors are not permitted during the advertisement, award, or execution period of the contracting process.

**35.4 Contract Award and Execution:** The City will enter into a contract with the lowest priced and the most responsive and responsible bidder. If the City is unable to come to terms with the lowest priced and the most responsive and responsible bidder, the City shall initiate the award process with the next lower priced most responsive and responsible bidder, and so on, until a contract is executed.

The City is under no obligation to accept any Bid submitted. The City reserves the right in its sole discretion to waive informalities in, or, at any time in the process and to reject any or all Bids at any time.

All costs incurred in the preparation and presentation of any Bid shall be wholly absorbed by the Bidder. All supporting documentation and manuals submitted with any Bid will become the property of the City of Dania Beach unless otherwise requested by the Bidder at the time of submission.

## **SECTION 36 – CONE OF SILENCE**

**36.1 Cone of Silence: Definitions:** “Cone of Silence,” as used in this ITB, means a prohibition on any communication regarding a particular Request for Proposal (“RFP”), Request for Qualification (“RFQ”) or Invitation to Bid (“ITB”), between:

a potential vendor, service provider, Bidder, bidder, lobbyist, or consultant, and:

a City Commission member, City’s professional staff including, but not limited to, the City Manager and her staff, or any member of the City’s Selection Committee.

**Restriction; Notice:** A Cone of Silence shall be imposed upon this ITB upon the advertisement of the ITB. At the time of imposition of the Cone of Silence, the City Manager or designee shall provide for public notice of the Cone of Silence by posting a notice at City Hall. The City Manager shall issue a written notice as to the Cone of Silence to the affected departments, file a copy of such notice with the City Clerk, with a copy to each City Commissioner, and shall include in any public solicitation for goods or services a statement disclosing the requirements of this section.

**Termination of Cone of Silence:** The Cone of Silence shall terminate at the beginning of the City Commission meeting (whether a regular or special meeting) at which the City Manager makes a written recommendation of award to the City Commission. However, if the City Commission refers the City Manager’s recommendation back to the City Manager or staff for further review, the Cone of Silence shall be re-imposed until such time as the City Manager makes a subsequent written recommendation.

**Exceptions to Applicability:** The provisions of this section shall not apply to:

- a. Oral communications at pre-bid conferences;

- b. Oral presentations before the Selection Committee;
- c. Public presentations made to the City Commission members during any duly noticed public meeting;
- d. Communications in writing at any time with any City employee, unless specifically prohibited by the ITB. The Bidder shall file a copy of any written communication with the City Clerk. The City Clerk shall make copies available to any person upon request;
- e. Communications regarding the ITB between a potential vendor, service provider, Bidder, lobbyist or consultant and the City's Procurement and Contract Services Agent or City employee designated as responsible for administering the procurement process for the ITB, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;
- f. Communications with the City Attorney and his staff;
- g. Duly noticed site visits to determine the competency of a Bidder regarding the ITB during the time period between the opening of Bids and the time the City Manager makes a written recommendation;
- h. Any emergency procurement of goods or services pursuant to City Code;
- i. Responses to the City's request for clarification or additional information;
- j. Contract negotiations during any duly noticed public meeting;
- k. Communications to enable City staff to seek and obtain industry comment or perform market research, provided all related communications between a potential vendor, service provider, Bidder, lobbyist, or consultant and any member of the City's professional staff including, but not limited to, the City Manager and his staff are in writing or are made at a duly noticed public meeting.

**Penalties:** Violation of this section by a particular Bidder shall render any ITB award or contract to the Bidder voidable by the City Commission or City Manager. Any person who violates a provision of this section may be prohibited from serving on a City selection or evaluation committee. In addition to any other penalty provided in this ITB, violation of any provision of this section by a City employee may subject the employee to disciplinary action. Please contact the City Attorney for any questions concerning "Cone of Silence" compliance.

## **SECTION 37 - ADDITIONAL GENERAL CONDITIONS**

### **37.1 Liquidated Damages:**

Liquidated Damages will be assessed as stated in the contract for each non-compliant day that any requirements listed in this section are not met.

#### **37.1.1 Staging of Material in Right-Of-Way:**

Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. Staging area shall be fenced and screened from public sight. Contractor shall not store material such as pipes, drainage structures and equipment within a right of way without prior approval by the City. Material shall be properly secured and screened neatly and will not remain on right of way for more than a week. All equipment must be stored in a designated staging area.

#### **37.1.2 Site Restoration:**

**37.1.2.1** Contractor shall remove all excess material and shall clean up and restore the site to its original condition or better. All damage, as a result of work under this Contract, done to existing structures, pavement, driveways, paved areas, curbs and gutters, sidewalks, shrubbery, grass, trees, fences, walls, utility poles, utility pipe lines, conduits, drains, catch basins, flagstones, rocked graveled or stabilized areas or driveways, and including all obstructions not specifically named in this provision, shall be repaired, or replaced, as determined by the Engineer. Site restoration shall be done in a timely manner as the work progresses. Site restoration work shall be completed on private property within 30 days after being disturbed.

#### **37.1.3 Access:**

As applicable, Contractor shall provide one lane open to through-traffic for each section of construction in each direction at all times unless a complete road closure is required. The Contractor shall make every effort to provide access to driveways at the end of the working day. If a driveway is not accessible, homeowners should have access to a neighboring swale area for temporary parking. When vehicular access to homes is not possible for parking of vehicles, an area for parking shall be provided within one block of the furthest home affected. This condition is to be avoided whenever possible and not last more than three (3) days. Vehicular access must be provided by the end of each business working day. The parking area location shall be coordinated by the Contractor, with the City's approval." In the event that this option is approved by the City, the Contractor shall notify affected residents at least 48 hours in advance.

**37.2 Date of Commencement and Substantial Completion:** The Date of Commencement is the date from which the Contract Time is measured, and shall be the date set forth in the NOTICE TO PROCEED as issued by the City. Should the Contractor incur costs prior to the issuance of the NOTICE TO PROCEED, any such costs shall be incurred at the Contractor's risk, and the City shall not reimburse the Contractor for any such costs under any circumstances. Notwithstanding the foregoing, City may reimburse Contractor for actual costs incurred relating to performance and

payment bonds and insurance, with submittal of invoices, in the event that City terminates this Contract for convenience, as provided in the General Conditions. If Contractor fails to commence the Work within one (1) week of the date set forth in the NOTICE TO PROCEED, City may terminate the Contract immediately, without providing an opportunity to cure.

The Contractor shall achieve Substantial Completion not later than one hundred fifty-five (155) calendar days and Final Completion of the entire Work not later than one hundred eighty-five (185) calendar days, each commencing with the date set forth in the NOTICE TO PROCEED as issued by the City, subject to adjustments of this Contract Time as provided in the Contract Documents.

**EXHIBIT "A"**

**BIDDER QUALIFICATIONS**

**ITB NO. 23-002**

The Bidder, as a result of this Bid, MUST hold a county or municipal business tax receipt in its area of its fixed business location. The following information MUST be completed and submitted with the Bid to be considered:

1. Legal Name and Address:

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

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

City, State, Zip: \_\_\_\_\_ Telephone/Fax: \_\_\_\_\_

2. Specify type of entity Check One: Corporation ( ) Partnership ( ) Individual ( )  
Other ( ) \_\_\_\_\_ SPECIFY

3. If Corporation, state:  
Date of Incorporation: \_\_\_\_\_ State in which Incorporated: \_\_\_\_\_

4. If an out-of-state Corporation or entity, must be currently authorized to do business in Florida by the Office of the Florida Secretary of State:

5. Name and Title of Principal Officers	Date Elected:
_____	_____
_____	_____
_____	_____

6. The length of time in business: \_\_\_\_\_ years
7. The length of time (continuous) in business in Florida: \_\_\_\_\_ years
8. Provide a list of at least five commercial or government references that the successful Bidder has supplied service/commodities meeting the requirements of the City of Dania Beach specifications, within the last five (5) years (see attached).
9. A copy of a county or municipal Business Tax Receipt.

10. SIMILAR PROJECTS WITHIN THE LAST FIVE (5) YEARS

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Project Title

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Address

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Owner

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Owner's Telephone Number

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Contract Value

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Percent Complete          Completion Date

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Project Title

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Address

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Owner

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Owner's Telephone Number

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Contract Value

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Percent Complete          Completion Date

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Project Title

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Owner

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Owner's Telephone Number

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Contract Value

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Percent Complete          Completion Date

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Project Title

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Owner's Telephone Number

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Contract Value

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Percent Complete          Completion Date

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Project Title

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Owner's Telephone Number

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Contract Value

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Percent Complete          Completion Date

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Project Title

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Address

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Owner

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Owner's Telephone Number

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Contract Value

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Percent Complete          Completion Date

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Project Title

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Owner

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Project Title

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Owner

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Owner's Telephone Number

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Contract Value

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Percent Complete          Completion Date

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Project Title

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Address

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Owner

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Owner's Telephone Number

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Contract Value

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Percent Complete          Completion Date

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Project Title

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Address

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Owner

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Owner's Telephone Number

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Owner's Telephone Number

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Contract Value

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Contract Value

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Percent Complete                  Completion Date

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Percent Complete                  Completion Date

11. Have you ever failed to complete any work awarded to you?  
Yes                  No                  If yes, attach a separate sheet of explanation.
12. Within the last five years, has any officer or partner of your organization ever been an officer or partner of another organization that failed to complete an Agreement?  
Yes                  No                  If yes, attach a separate sheet of explanation.
13. Within the last five years, have you ever had a performance, payment or bid bond called?  
Yes                  No                  If yes, attach a separate sheet of explanation.
14. Have you, any officer or partner of your organization, or the organization been involved in any litigation or arbitration against the City?  
Yes                  No                  If yes, attach a separate sheet of explanation.
15. Within the last five years, have you, any officer or partner of your organization, or the organization or parent company or its subsidiaries been involved in any litigation or arbitration against any other Florida public entity?  
Yes                  No                  If yes, attach a separate sheet of explanation.
16. Within the last five years, have you, any officer or partner of your organization, or the organization or parent company or its subsidiaries been involved in any litigation or arbitration against any private entity for an amount greater than \$100,000?  
Yes                  No                  If yes, attach a separate sheet of explanation.
17. Has your organization or any of its partners, officers, or key personnel, or its subsidiaries or parent company been charged or indicted for any criminal activity within the last five years?  
Yes                  No                  If yes, attach a separate sheet of explanation.
18. Has your organization or any of its partners, officers, or key personnel, or its subsidiaries or parent company been convicted or fined for any criminal activity within the last five years?  
Yes                  No                  If yes, attach a separate sheet of explanation.
19. Within the last five years, have you, any officer or partner of your organization, or the organization been investigated by any local, state, or federal law enforcement agency, criminal justice agency or inspector general office?  
Yes                  No                  If yes, attach a separate sheet of explanation.



20. Within the last five years, have you, any officer or partner of your organization, or the organization communicated with any local, state, or federal law enforcement agency, criminal justice agency or inspector general office relating to goods or services provided or performed for any governmental entity?

Yes                      No                      If yes, attach a separate sheet of explanation.

21. Within the last five years, have there been any reports or audits relating to you, any officer or partner of your organization, or the organization issued by any local, state, or federal law enforcement agency, criminal justice agency or inspector general office.

Yes                      No                      If yes, attach a separate sheet of explanation.

22. Within the last five years, have you, any officer or partner of your organization, or the organization failed to disclose or made misrepresentations to any governmental entity regarding conflicts of interest or potential or apparent conflicts of interest.

Yes                      No                      If yes, attach a separate sheet of explanation

Note: Information requested in the ITB and submitted by the Bidders will be analyzed by the City of Dania Beach and will be a factor considered in awarding any resulting contract. The purpose is to insure that the successful Bidders in the sole opinion of the City of Dania Beach can sufficiently and efficiently perform all the required services in a timely and satisfactory manner as will be required by the subject contract. If there are any terms or conditions that are in conflict, the most stringent requirement shall apply.

**END OF BIDDER QUALIFICATIONS**

**EXHIBIT “B”**

**BID FORM**

**ITB 23-002**

**“CITY HALL RESTROOM RENOVATIONS”**

**Bid Form is posted on City Webpage and DemandStar**

**EXHIBIT "C"**

**PERFORMANCE BOND**

Any singular reference to Contractor, Surety, Owner, or any other party shall be considered plural where applicable.

**CONTRACTOR** (name and address):

**SURETY** (name and principal place of business):

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**OWNER:**

City of Dania Beach, Florida  
100 West Dania Beach Boulevard  
Dania Beach, Florida 33004

**CONSTRUCTION CONTRACT**

Date:

Amount:

Date:

Amount:

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**Description**

(name and location): The Project consists of the renovation of restrooms on the first and second floors of City Hall.

**City Bid No. 23-002**

**BOND**

Date (not earlier than  
Construction Contract  
Date):

\_\_\_\_\_

Amount:

\_\_\_\_\_

Modifications to this Bond:

None \_\_\_\_\_ See Page(s) \_\_\_\_\_

**CONTRACTOR AS PRINCIPAL**  
(Corporate Seal)

**SURETY**  
(Corporate Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

(Any additional signatures please include at the end of page 5)

**FLORIDA RESIDENT AGENT**

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

1. **DEFINITIONS**

- (A) **Balance of the Contract Price:** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
  - (B) **Construction Contract:** The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes to them.
  - (C) **Contractor Default:** Failure of the Contractor, which failure has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
  - (D) **Owner Default:** Failure of the Owner, which failure has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms of it.
2. The Contractor and the Surety, jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated into this document by this reference.
3. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences.
4. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
- (A) The Owner has notified the Contractor and the Surety at its address described in paragraph ten (10) below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen (15) calendar days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, to subsequently declare a Contractor Default; and
  - (B) The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than twenty (20) calendar days after the Contractor and the Surety have received; and

- (C) The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a Contractor selected to perform the Construction Contract in accordance with the terms of the Contract with the Owner.
5. When the Owner has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety's expense take one of the following actions:
- (A) Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or
  - (B) Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
  - (C) Obtain bids or negotiated Bids from qualified Contractors acceptable to the Owner for a Contract for performance and completion of the Construction Contract, arrange for a Contract to be prepared for execution by the Owner and the Contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified Surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in paragraph six (6) in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or
  - (D) Waive its right to perform and complete, arrange for completion, or obtain a new Contractor acceptable to the Owner and with reasonable promptness under the circumstances:
    - 1. After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or
    - 2. Deny liability in whole or in part and notify the Owner citing reasons therefor.
6. If the Surety does not proceed as provided in paragraph four (4) with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen (15) calendar days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds, on in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
7. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to

commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

- (A) The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- (B) Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and
- (C) Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

#### Liquidated Damages

Time is of the essence regarding this Invitation to Bid Construction and the work contemplated hereunder and the City may suffer financial loss and inconvenience if the work is not completed to the satisfaction of the City by the time stipulated in the Contract. Therefore, failure to timely complete the work shall result in the awarded Bidder being subject to liquidated damages, but not as penalty, in the amount of \$1,665.00 per calendar day, as set forth in 23 CFR 635.127, for each and every calendar day the work remains incomplete or the items remain undelivered. As compensation due the City for loss of use and for additional costs incurred by the City due to such non-completion of the work, the City shall have the right to deduct the liquidated damages from any amount due, or that may become due to the awarded Bidder under the Contract, or to invoice the awarded Bidder for such damages if the costs incurred exceed the amount due to the awarded Bidder. The awarded Bidder and the City agree that the amount for liquidated damages is not punitive, and is intended to compensate the City for difficult to quantify losses.

- 8. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.
- 9. The Surety waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
- 10. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two (2) years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

11. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the first page of this document.
12. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with such statutory or legal requirement shall be deemed deleted from this document and provisions conforming to such statutory or other legal requirement shall be deemed incorporated into it. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

**MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

**CONTRACTOR AS PRINCIPAL**  
(Corporate Seal)

**SURETY**  
(Corporate Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Dated: \_\_\_\_\_, 20\_\_

**END OF PERFORMANCE BOND**



**EXHIBIT "D"**

**PAYMENT BOND**

Any singular reference to Contractor, Surety, Owner or any other party shall be considered plural where applicable.

**CONTRACTOR** (name and address):

**SURETY** (name and principal place of business):

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

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

**OWNER:**

City of Dania Beach, Florida  
100 West Dania Beach Boulevard  
Dania Beach, Florida 33004

**CONSTRUCTION CONTRACT**

Project Name: **"CITY HALL RESTROOM RENOVATIONS"**

City's Bid No.: **23-002**

Date: \_\_\_\_\_ Amount: \_\_\_\_\_

The Project consists of the renovation of restrooms on the first and second floors of City Hall.

**BOND**

Date (not earlier than  
Construction Contract

Date): \_\_\_\_\_

Amount: \_\_\_\_\_

Modifications to this Bond: None \_\_\_\_\_

**CONTRACTOR AS PRINCIPAL**  
(Corporate Seal)

See Page(s) \_\_\_\_\_

**SURETY**  
(Corporate Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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Name

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Name

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Title

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Title

(Any additional signatures please include at the end of page 5)

**FLORIDA RESIDENT AGENT**

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Address

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Telephone

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Facsimile

1. **DEFINITIONS**

- (A) **Claimant:** An individual or entity having a direct Contract with the Contractor or with a Subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
  - (B) **Construction Contract:** The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes to it.
  - (C) **Owner Default:** Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms of the Contract.
2. The Contractor and the Surety, jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated into this document by this reference.
3. With respect to the Owner, this obligation shall be null and void if the Contractor:
- (A) Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - (B) Defends, indemnifies and holds harmless the Owner, its elected officials, employees, agents and Consultant from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Work, pursuant to the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
4. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
5. The Surety shall have no obligation to Claimants under this Bond until:
- (A) Claimants who are employed by or have a direct Contract with the Contractor have given notice to the Surety (at the address described in paragraph 13) and sent a copy of the notice to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - (B) Claimants who do not have a direct Contract with the Contractor:
    - 1. Have furnished written notice to the Contractor and sent a copy, or notice of it, to the Owner, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2. Have either received a rejection in whole or in part from the Contractor, or not received within thirty (30) days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
  3. Not having been paid within the above thirty (30) days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice of it, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
6. If a notice required by paragraph four (4) is given by the Owner to the Contractor, or to the Surety, that is sufficient compliance.
7. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and, at the Surety's expense, take the following actions:
  - (A) Send an answer to the Claimant, with a copy to the Owner, within forty-five (45) days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
  - (B) Pay or arrange for payment of any undisputed amounts.
8. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
11. The Surety waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work, part of the work is located, or after the expiration of one (1) year from the date: 1) on which the Claimant gave the required notice; or 2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of one (1) or two (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with the statutory or legal requirement shall be deemed deleted from this Bond and provisions conforming to such statutory or other legal requirement shall be deemed incorporated into this Bond. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

**MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

**CONTRACTOR AS PRINCIPAL**  
(Corporate Seal)

**SURETY**  
(Corporate Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title  
Dated: \_\_\_\_\_, 20\_\_\_\_\_

**END OF PAYMENT BOND**

**EXHIBIT "E"**

**BIDDER'S QUESTIONNAIRE**

The undersigned guarantees the truth and accuracy of all statements and answers contained below:

1. How many years has your organization been in business? \_\_\_\_\_
2. List below (or on an attached sheet, if necessary) the names, addresses and telephone numbers of organizations, governmental, private or both located in Broward, Miami-Dade or Palm Beach Counties, for which you are now, or have within the past five (5) years, provided services similar to that called for in the Invitation to Bid.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. List below (or on an attached sheet, if necessary) all pertinent information and data that would indicate the ability of your organization and management personnel to perform satisfactorily.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Have you personally completed a plan for performance of the work?  
\_\_\_\_\_
5. Have you ever failed to complete work awarded to you? If so, when, where and why?  
\_\_\_\_\_  
\_\_\_\_\_
6. What equipment do you own that is available for work?  
\_\_\_\_\_  
\_\_\_\_\_
7. Has your company ever been debarred or held in default in Broward, Miami-Dade, or Palm Beach Counties or elsewhere by any other governmental entity? \_\_\_\_\_
8. How many employees (Contractors only) will be assigned to perform the services? \_\_\_\_\_
9. How many supervisors will be assigned to perform the services? \_\_\_\_\_

10. Will personnel be part of a regular crew assigned to perform the services?  
Yes \_\_\_\_\_ No \_\_\_\_\_
11. Will you be able to provide service for emergency situations? Yes \_\_\_\_\_ No \_\_\_\_\_  
If so, how much notice is required? \_\_\_\_\_
12. What equipment do you own that is available to complete the Project?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please attach copies of any licenses, awards, certificates, etc., that you may have.

**EVERY PIECE OF EQUIPMENT MUST HAVE ORIGINAL FACTORY GUARDS AND SHIELDS INSTALLED AND FUNCTIONING AT THE TIME OF WORK.**

**END OF BIDDER'S QUESTIONNAIRE**

**EXHIBIT "F"**

**Sworn Statement Under Section §287.133(3)(a), Florida Statutes on Public Entity Crimes**

(This form must be signed in the presence of a Notary Public or other officer authorized to administer oaths.)

1. This sworn statement is submitted with Invitation to Bid No. 23-002.

2. This sworn statement is submitted by: \_\_\_\_\_  
(name of entity submitting sworn statement)  
its business address is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Federal Identification Number  
(FEIN) is: \_\_\_\_\_  
(if applicable)

Social Security Number: \_\_\_\_\_  
(if the entity has no FEIN, include the Social Security Number  
of the individual signing this sworn statement)

3. My name is: \_\_\_\_\_  
(PRINT NAME of individual signing this document)

and my relationship to the entity is: \_\_\_\_\_  
(President, General Partner, etc. as applicable)

4. I understand that a "public entity crime" as defined in Section 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

5. I understand that "convicted" or "conviction" as defined in Section 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere (also known as "No Contest").

6. I understand that an "affiliate" as defined in Section 287.133(1)(a), Florida Statutes, means:



- (a) A predecessor or successor of a person or a corporation convicted of a public entity crime; or
- (b) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima-facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

7. I understand that a "person" as defined in Section 287.133(1)(e), Florida Statutes, means any natural person or any entity organized under the laws of any state or of the United States with the legal power to enter into a binding agreement and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

8. Based on information and belief, the statement which that I have marked below is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies):

\_\_\_\_\_ Neither the entity submitting the sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members or agents who are active in management of the entity nor any affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members or agents who are active in management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989 and

(Please now indicate which additional statement below applies):

\_\_\_\_\_ There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. (Please attach a copy of the final order)

\_\_\_\_\_ The person or affiliate was placed on the convicted list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please attach a copy of the final order)

\_\_\_\_\_ The person or affiliate has not been placed on the convicted vendor list. (Please describe any action taken by or pending with the Florida Department of General Services)

\_\_\_\_\_  
**SIGNATURE** (of person whose name first appears above)

\_\_\_\_\_  
Date

STATE OF FLORIDA )  
COUNTY OF \_\_\_\_\_ )

Sworn to and subscribed before me on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation/partnership, on behalf of the corporation/partnership who (check one) [ ] is personally known to me or [ ] has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
**PRINTED** Name of Notary

My commission expires:

**EXHIBIT “G”**  
**PREVAILING WAGE ORDINANCE**  
**CITY OF DANIA BEACH PREVAILING WAGES ORDINANCE,**  
**SECTION 8-141, CITY CODE OF ORDINANCES**

**Sec. 8-141. Rate of wages, fringe benefits on City construction contracts.**

(a) ***Establishment of minimum wages.*** Every construction contract in excess of Fifty Thousand Dollars (\$50,000.00) to which Dania Beach is a party shall include a provision that the rate of wages and fringe benefits, or cash equivalent, for all laborers, mechanics and apprentices and similar jobs (i.e., non-office), listed by the department of labor, employment standards administration, wage and hour division and employed by any Contractor or subcontractor on the work covered by the contract shall not be less than the prevailing rate of wages and fringe benefit payments or cash equivalent for similar skills or classifications of work as established by the general wage determinations issued under the Davis-Bacon and Related Acts, U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, for Broward County, Florida.

(b) ***Implementation of the department of labor general wage determinations.*** The prevailing wage rate and fringe benefit payments to be used in the implementation of this section shall be those last published by the U.S. Department of Labor as noticed in the federal register and reported in the general wage determinations issued under the Davis-Bacon and Related Acts prior to the date of issuance of specifications by Dania Beach in connection with its invitation for bids.

(c) ***Notice requirement.*** On the date an employee commences work on a construction contract to which this section applies, the Contractor shall be required to post a notice in a prominent place at the work site stating the requirements of this section.

(d) ***Preemption by federal funding.*** When construction contracts involve federal funding or are otherwise subject to the provisions of the Davis-Bacon Act (40 U.S.C. 276(a)), this section shall not apply; and the minimum wages to be paid the various classes of laborers, mechanics and apprentices shall be based upon the wages determined by the secretary of labor in accordance with the Davis-Bacon Act (40 U.S.C. 276(a)).

(e) ***Exceptions.*** The provisions of this section shall not apply to any existing contract or construction project in which a notice for bids or Invitation to Bid has been advertised in the public media prior to the effective date of this section or to any developer agreement whereby Dania Beach is requiring the construction of certain improvements including, but not limited to, road construction, as condition of the issuance of a development permit or to any construction project performed by Dania Beach utilizing its own employees.

(Ord. No. 23-98, § 1, 12-8-98)



**EXHIBIT "I"**  
**INDEPENDENCE AFFIDAVIT**

The undersigned individual, being duly sworn, deposes and says that:

I am \_\_\_\_\_ of \_\_\_\_\_, the Bidder that has submitted the attached Bid;

I hereby certify to the best of my knowledge that neither I nor any of those persons residing in my household have or have had during the past five years, any relationships (professional, financial, familial or otherwise) with the City (or any of its districts), its elected or appointed officials, its employees or agents, or any member or alternate member of the Selection Committee.

A "relationship" for the purpose of this affidavit shall include but not be limited to employer/employee, consultant, contractor, subcontractor, associate, officer, partnership, joint venture, ownership greater than one percent, landlord/tenant, or creditor/debtor, gift donor/recipient (in excess of \$100.00), past or on-going personal relationships, or joint involvement with charitable/voluntary activities. **Relationship includes having a prior or current contract with the City.**

Except as set forth below, I hereby certify to the best of my knowledge that neither I nor any of those persons residing in my household have received any promise of compensation, remuneration, gift, discount, or other gratuity in exchange for my Bid.

I understand and agree that I shall give the City written notice of any other relationships (as defined above) that I enter into with the City (or any of its districts), its elected or appointed officials, its employees or agents, or any member or alternate member of the Selection Committee during the period of the Agreement.

I set forth below any exceptions to the aforementioned (if none, write "None"):

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

\_\_\_\_\_  
Signature (Blue ink only)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared  physical presence or  online notarization, on \_\_\_\_\_ as \_\_\_\_\_, of \_\_\_\_\_, an organization authorized to do business in the State of Florida, and acknowledged and executed the foregoing statement as the proper official of \_\_\_\_\_ for the use and purposes mentioned in it and affixed the official seal of the entity, and that the instrument is the act and deed of that entity. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

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

\_\_\_\_\_  
**PRINT** Name of Notary Public

My commission expires:

**EXHIBIT "J"**

**REFERENCES**

Bidder shall provide a minimum of three references.

Name of company: \_\_\_\_\_

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

\_\_\_\_\_

Telephone number: \_\_\_\_\_

Email address: \_\_\_\_\_

Principal contact person(s): \_\_\_\_\_

\_\_\_\_\_

Year contract initiated and terminated: \_\_\_\_\_

Name of company: \_\_\_\_\_

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

\_\_\_\_\_

Telephone number: \_\_\_\_\_

Email address: \_\_\_\_\_

Principal contact person(s): \_\_\_\_\_

\_\_\_\_\_

Year contract initiated and terminated: \_\_\_\_\_

Name of company: \_\_\_\_\_

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

\_\_\_\_\_

Telephone number: \_\_\_\_\_

Email address: \_\_\_\_\_

Principal contact person(s): \_\_\_\_\_

Year contract initiated and terminated: \_\_\_\_\_

**EXHIBIT "K"**

**BID BOND**

**BIDDER**

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Address

**FLORIDA RESIDENT AGENT**

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Address  
  
\_\_\_\_\_  
Phone Fax

**SURETY**

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Address

**OWNER**

City of Dania Beach, Florida  
100 West Dania Beach Boulevard  
Dania Beach, Florida 33004  
Telephone: (954) 924-6800  
Facsimile: (954) 921-2604

**PROJECT: CITY HALL RESTROOM RENOVATIONS**  
**ITB No. 23-002**

_____ <b>Bid Due Date</b>	_____ <b>Bond Number</b>	_____ <b>Bond Date</b>	\$ _____ <b>Penal Sum</b>
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IN WITNESS OF THE FOREGOING, Surety and Bidder, intending to be legally bound, subject to the terms included in this section, do each cause this Bid Bond to be duly executed on its behalf by its respective, authorized officer, agent, or representative.

**IDENTITY OF BIDDER**

\_\_\_\_\_  
Corporate Name and Seal  
(or other Full Legal Name)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Attest

\_\_\_\_\_  
Attest

**IDENTITY OF SURETY**  
**(Attach Power of Attorney)**

\_\_\_\_\_  
Corporate Name and Seal  
(or other Full Legal Name)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Attest

\_\_\_\_\_  
Attest



The above addresses shall be used for giving of required notices. Any singular reference to Bidder, Surety, Florida Resident Agent, Owner or other party shall be considered a plural where applicable.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to City upon default of Bidder, the penal sum set forth on the face of this Bond. In no event shall Bidder's and Surety's obligation exceed the penal sum set forth on the face of this Bond.
2. Default of Bidder shall occur upon the failure of the Bidder to deliver within the time required by the Bid and Contract Documents (or any extension of time agreed to in writing by City) a fully executed Agreement, Insurance Agent Statement, all certificates of insurance, and any Performance and Payment Bonds.
3. This obligation shall be null and void if:
  - 31 City accepts Bidder's bid and Bidder delivers within the time required by the bidding and contract documents (or any extension of time agreed to in writing by City) the executed Agreement, the Insurance Agent Statement, and the Performance and Payment Bonds, or
  - 32 All bids are rejected by City, or
  - 33 City fails to issue a Notice of Award to Bidder within the time specified in the ITB documents (or any extension of time agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph five (5) below).
4. Payment under the Bid Security Bond will be due and payable upon default by Bidder and within thirty (30) calendar days after receipt by Bidder, and Surety of written notice of default from City's City Clerk, which notice will be given with reasonable promptness, identifying the Bid; Security Bond and the Project, including a statement of the amount due.
5. Surety waives notice of any and all defenses based on, or arising out of, any time extension to issue a Notice of Award agreed to in writing by City and Bidder, provided that the total time for issuing the Notice of Award, including extensions shall not in the aggregate exceed One Hundred Twenty (120) days from the ITB due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to thirty (30) calendar days after the notice of default required in paragraph four (4) above is received by Bid and Surety, and in no case later than one (1) year after bid due date.
7. Any suit or action under this Bond shall be commenced only in a Florida court of competent jurisdiction. Any award granted shall not be subject to prejudgment interest.
8. Notices required under this Bid Bond shall be in writing and sent to Bid and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf

of Surety to execute, seal and deliver such Bond and bind the Surety.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included in it as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of such statute shall govern and the remainder of this Bond that is not in conflict shall continue in full force and effect.

**EXHIBIT "L"**

**BID SECURITY**

ATTACH BID BOND HERE



**EXHIBIT “N”**

**CERTIFICATION TO ACCURACY OF BID**

The Bidder, by executing this form, certifies and attests that all forms, affidavits and documents related to the document that it has enclosed in the Bid in support of its Bid are true and accurate. Failure by the Bidder to attest to the truth and accuracy of such forms, affidavits and documents shall result in the Bid being deemed non-responsive and such Bid will not be considered.

By submitting a Bid to do the work, the Bidder certifies that a careful review of the ITB and the Agreement has taken place and that the Bidder is fully informed and understands the requirements of the ITB and the expected Agreement and the quality and quantity of services to be performed.

The undersigned individual, being duly sworn, deposes and says that:

- A. He/She is \_\_\_\_\_ of \_\_\_\_\_, the Bidder that has submitted the attached Bid;
- B. He/She is fully informed respecting the preparation and contents of the attached Bid and of all forms, affidavits and documents submitted in support of such Bid;
- C. All forms, affidavits and documents submitted in support of this Bid and included in this Bid are true and accurate;
- D. No information that should have been included in such forms, affidavits and documents has been omitted; and
- E. No information that is included in such forms, affidavits or documents is false or misleading.

**EXHIBIT "N"**

**CERTIFICATION TO ACCURACY OF BID  
(continued)**

\_\_\_\_\_  
Signature (Blue ink only)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared  physical presence or  online notarization, on \_\_\_\_\_ as \_\_\_\_\_, of \_\_\_\_\_, an organization authorized to do business in the State of Florida, and acknowledged and executed the foregoing statement as the proper official of \_\_\_\_\_ for the use and purposes mentioned in it and affixed the official seal of the entity, and that the instrument is the act and deed of that entity. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

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

\_\_\_\_\_  
**PRINT** Name of Notary Public

My commission expires:

**EXHIBIT "O"**

**DRUG-FREE WORKPLACE CERTIFICATION FORM**

Whenever two (2) or more bids/Bids, which are equal with respect to price, quality, and service, are received by the CITY OF DANIA BEACH for the procurement of commodities or contractual services, a bid/Bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of controlled substances is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in number(1).
4. In the statement specified in number (1), notify the employees that as a condition for working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction on or plea of guilty or no contest to any violation of Chapter 893, Florida Statutes or of any controlled substance law of the United States or any singular state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of Section 287.087, Florida Statutes.

This Certification is submitted by \_\_\_\_\_ the  
(PRINT Name of Authorized Agent)

\_\_\_\_\_ of \_\_\_\_\_

(Title)

(Bidder Name)

who does certify that said Company has implemented a drug-free workplace program, which meets the requirements of Section 287.087, Florida Statutes, which are identified in numbers (1) through (6) above.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

## AGREEMENT

THIS IS AN AGREEMENT (“Agreement”) dated \_\_\_\_\_, 2023, between the City of Dania Beach, Florida, a Florida municipal corporation (“City”), with its principal place of business located at 100 West Dania Beach Boulevard, Dania Beach, Florida 33004 and \_\_\_\_\_ (“Contractor”), with a mailing address of \_\_\_\_\_.

In consideration of the mutual covenants, terms and conditions contained in this Agreement, and for other good and valuable consideration, the adequacy and receipt of which are acknowledged and agreed upon, the parties agree as follows:

1. Definitions.

**City.** The City of Dania Beach, Florida.

**City Code.** The City of Dania Beach Code of Ordinances.

**Force Majeure:** Any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of such party including, but is not limited to fire, earthquakes, hurricanes, tornadoes, storms, lightning, epidemic, pandemic, war, riot, civil disturbance, sabotage, and governmental actions. **“Force majeure” does not include where the City’s actions or inactions or lack of compliance with the Agreement delay the Contractor.**

**Governmental Approvals:** All governmental and quasi-governmental approvals from applicable city, county and other agencies and authorities required to develop the Property, including, but not limited to, development of regional impact approvals, site plan approvals, comprehensive land use plan approvals, plat approvals and recordation, public dedications, environmental approvals, zoning approvals, building permits and all other governmental approvals required in connection with the development of any Improvements at the Property (and the expiration of all appeal periods with respect thereto), modification or vacation of easements or both, and other matters pertaining to the Property.

**Governmental Authority.** Any federal, state, county, municipal or other governmental department, entity, authority, commission board, bureau, court, agency, or any instrumentality of any of them now existing or hereafter created, having jurisdiction over the Property or any portion thereof.

**Governmental Requirement.** Any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, order, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued. Contractor shall comply with all Governmental Requirements applicable to the operations and Property, including, without limitation, those prohibiting discrimination by reason of race, color, religion, sex, marital status, sexual orientation, gender identity, national origin, or handicap in the development, construction, management, Agreement, use, occupancy of the operation and Property or any portion thereof.

**Work.** The labor and materials required to complete the construction of the Improvements



on the Property, and any related buildings or structures not located on the Property, in a good and workmanlike manner in accordance with the Plans and all applicable Governmental Requirements.

2. Scope of Services. The Contractor agrees to provide construction services (“Services” or “Work”) associated with the City’s ITB (Invitation to Bid) No. \_\_\_\_\_ entitled \_\_\_\_\_, which Bid is incorporated by this reference into this Agreement as Exhibit “A”. This Agreement encompasses the Contractor’s response; provided, however that if there is any conflict between the terms of the Agreement and the Contractor’s response to City, the Agreement is controlling. The Services are identified and described in the Contractor’s response as Exhibit “B” which exhibit is incorporated by reference into this Agreement.

3. Subcontracts. It is expressly agreed to by the parties that the City shall approve in advance in writing any Subcontractors and the fees to be paid them by Contractor, prior to any such Subcontractor proceeding with any such work. Contractors shall only designate employees who are sufficiently skilled to provide the required services specified in this Agreement. Any person employed to provide the services who fails, refuses or neglects to obey the instructions of the City's representative in anything relating to these services, or who appears to be disorderly, insubordinate, or incompetent shall upon the order of City's representative, be immediately relieved by the Contractor from the Project Work. Any interference with, or any abusive or threatening conduct toward any City representative, its assistants or inspectors by the Contractor, its employees or agents, or any member of the public shall be grounds for the City to terminate the agreement and re-let the work. The Contractor shall furnish all labor, materials, supplies and equipment necessary to properly maintain all Project Work areas in an acceptable and safe condition. It is expressly agreed to by the parties that the City shall approve in advance in writing any subcontractors and the fees to be paid them by Contractor, prior to any such subcontractor proceeding with any such work.

4. Contractor agrees that it and its officers shall be held fully responsible, except as otherwise prohibited by law, for all acts of their employees while in their employ.

4.1 Code Related Inspections. The Contractor recognizes that the City of Dania Beach, Development Services Department, is a department within the City of Dania Beach, separate and apart from the City of Dania Beach’s Engineering Department, that is charged with the inspection of improvements to real property for code compliance. The Contractor agrees that it will not assert, as a City caused delay, or as a defense of any delay on the part of the Contractor, any good-faith action or series of actions on the part of the Development Services Department, including, but not limited to, the Development Services Department’s refusal to accept any portion of the Contractor's Work. If it is ultimately determined by the Architect and City that such delay was not the result of Contractor's failure to comply with the Agreement Documents, the Contractor may be entitled to make a claim for extension of Agreement Time only as its exclusive remedy, in accordance with the terms of the Agreement.

4.2 Commercial Activities. Contractor shall not establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on lands

owned or controlled by City. Contractor shall not allow its employees to engage in any commercial activities on the site.

4.3 Cooperation With Others. City and other contractors may be working at the site during the performance of this Agreement. Contractor shall fully cooperate with the City, City's designated Representative, and other separate contractors to avoid any delay or hindrance of their work. City may require that certain facilities be used concurrently by Contractor and other parties, and Contractor shall comply with such requirements. The City shall provide for coordination of the activities of the City's own forces, and of each separate contractor, with the Work of the Contractor, who shall cooperate and participate with other separate contractors and the City in reviewing their construction schedules.

4.3 The below listed documents are to be used by the Contractor and City during the administration of this Agreement. Additional administrative forms may supplement this list upon written notice by the City (or City's Project representative). City reserves the right to modify these forms as it deems necessary. Contractor shall maintain logs for Items A-K and provide to City monthly.

- A. Request for Information
- B. Field Instruction
- C. Field Bulletin
- D. Construction Change Proposal
- E. Change Order
- F. Construction Change Directive
- G. Submittal Transmittal
- H. Deficiency Report
- I. Non-Conformance Report
- J. Contractor's Daily Report
- K. Substitution Report

4.4 Contractor shall provide and maintain all utilities in work areas to meet the requirements of the Agreement. Such utilities shall be furnished by the Contractor and shall include, but not be limited to, the following:

- A. Public telephone service for the Contractor's use.
- B. Construction power as required at each point of construction.
- C. Water as required throughout the construction.

4.5 Prior to final acceptance of the Work, the Contractor shall, at its expense, satisfactorily remove and dispose of all temporary utilities developed to meet the requirements of the Agreement. The City will assume the utility costs directly related to its usage of areas in which the Work has been certified as Substantially Complete.

4.6 Coordination And Correlation Of Drawings And Specifications. The Contractor represents that the Contractor, its Subcontractors, material and equipment suppliers have carefully and diligently compared Phasing, Demolition, Landscaping, Architectural, Structural, Electrical,

Underground, Civil and Site Drawings and Specifications, and have compared and reviewed all general and specific details on the Drawings. Contractor shall not be liable to the City for damages or costs resulting from errors, omissions, or inconsistencies in the Agreement Documents, or for differences between field conditions and the Agreement Documents, unless the Contractor recognized, or in the exercise of its due diligence, should have recognized the issue and knowingly failed to report it to the City. Contractor shall have the right to rely on the completeness and accuracy of information, Drawings, Specifications, and other Agreement Documents provided by the City or Design Consultants.

4.7 Agreement Interpretation. All claims of Contractor, and all questions the Contractor may have relating to interpretation or clarification of this Agreement or its acceptable fulfillment shall be submitted immediately, in writing, to City for resolution. City, or its representatives, will render its determination concerning such resolution within an appropriate period, not to exceed five (5) calendar days, unless additional time is needed due to the novelty or complexity of the interpretation or clarification requested, which determination shall be considered final and conclusive unless Contractor files a timely written protest pursuant, as a Dispute. The Contractor's written protest shall state clearly and in detail the basis thereof, and the relief it seeks, if any. City will consider Contractor's protest and render its decision thereon within five (5) calendar days. If Contractor does not agree with the City's decision, the Contractor shall immediately deliver written notice to that effect to the City. If questions of interpretation are not responded to by the Architect or City within the time frame above, and in a manner so as not to impede the natural progress of the Work as scheduled, and such delay impacts the critical path of the Work, Contractor shall be entitled to adjustment in the performance time as its exclusive remedy. Contractor is solely responsible for requesting instructions or interpretations and is solely liable for any cost and/or expenses arising from its failure to do so. Contractor's failure to protest City's determinations, instructions, clarifications or decisions within five (5) calendar days after receipt thereof shall constitute a waiver by Contractor of all its rights to further protest, judicially or otherwise.

#### 5. Date Of Commencement And Substantial Completion

5.1 The Date of Commencement is the date from which the Agreement Time is measured and shall be the date set forth in the Notice to Proceed as issued by the City. Should the Contractor incur costs prior to the issuance of the Notice to Proceed, any such costs shall be incurred at the Contractor's risk, and the City shall not reimburse the Contractor for any such costs under any circumstances. Notwithstanding the foregoing, City may reimburse Contractor for actual costs incurred relating to performance and payment bonds and insurance, with submittal of invoices, in the event that City terminates this Agreement for convenience, as provided in the General Conditions. If Contractor fails to commence the Work within thirty (30) days of the date set forth in the Notice to Proceed, City may terminate the Agreement immediately, without providing an opportunity to cure.

5.2 The Contractor shall achieve Substantial Completion not later than \_\_\_\_\_ **calendar days** and Final Completion of the entire Work not later than \_\_\_\_\_ **calendar days** or, each commencing with the date set forth in the Notice to Proceed as issued by the City, subject to adjustments of this Agreement Time as provided in the Agreement Documents.

5.3 Term. The term of this Agreement shall be through and including \_\_\_\_\_, or completion of the Services, whichever date is sooner.

6. Payment for Services.

6.1 City agrees to pay Contractor a not-to-exceed fee of \_\_\_\_\_ based on the tasks and associated fees attached as Exhibit “B” and incorporated into the Agreement by this reference

6.2 No travel and meal costs will be reimbursable unless incurred outside of Miami-Dade, Broward and Palm Beach Counties, which costs shall be approved in writing in advance by the City. Any such costs are payable at the City reimbursement rate.

6.3 The Agreement Sum is based upon the cost agreed upon by the parties, for the satisfactory performance of the Work in accordance with the Agreement Documents.

6.4 The value of any construction Work covered by a Change Order or of any claim for an increase or decrease in the Agreement Sum shall be determined in one of the following ways at the City's option:

(A) Where the Work involved is covered by unit prices contained in the Agreement Documents, by application of unit prices to the quantities of items involved without additional fees.

(B) By mutual acceptance of a lump sum price.

6.5 Contractor may expend funds only for allowable costs resulting from obligations incurred during the specified Agreement period.

6.6 Any balance of unobligated funds which have been advanced or paid must be refunded to the City.

6.7 Any funds paid in excess of the amount to which the Contractor or sub-contractor is entitled under the terms of the Agreement must be refunded to the City.

6.8 Any additional information as required in Section 215.97, Florida Statutes.

6.9 Any necessary additional work, as determined by City, which is not covered by the approved written proposal, shall not be undertaken without a written amendment to this Agreement executed by both parties in advance of any work.

6.10 Contractor shall submit its invoices in the format and with supporting documentation as may be required by City

7. Billing Procedure.

7.1 The preferred method for invoices is to send via email to [ap@daniabeachfl.gov](mailto:ap@daniabeachfl.gov). A copy may also be mailed to City Hall.

City of Dania Beach Finance Department

Attn: Accounts Payable  
100 West Dania Beach Boulevard  
Dania Beach, Florida 33004

with a copy to:

City of Dania Beach Public Services Department  
Attn: Fernando Rodriguez  
1201 Stirling Road  
Dania Beach, Florida 33004

7.2 The City will pay to the Contractor for the faithful performance of the Agreement, in lawful money of the United States, and subject to adjustments as provided in the Agreement Documents, the amounts equal to the sum of the unit, lump sum price or both established for each separately identified work item, times the estimated quantity of that item, as indicated in the Schedule of Prices.

**7.2.1 Taxes:** The City is exempt from any taxes related to the requested services, which may otherwise be imposed by the state or federal government. This exemption does not transmit to suppliers in their purchases of goods or services, used in work or goods supplied to the City. The Contractor shall pay all applicable sales, consumer, use and other similar taxes required by law. The Contractor is responsible for reviewing the pertinent state statutes involving the sales tax and complying with all requirements..

7.3 As provided in the Bid, the quantities entered in the Schedule of Prices for each item of work is an estimate only and the final Agreement amount and the total payment made to the Contractor will be based on the actual number of units of each work item incorporated in the Work of the Agreement. It is understood that the unit prices quoted or established for work items will be used for computing the amount to be paid to the Contractor, based on the quantities actually constructed as determined by the applicable measurement and payment portion of the Specifications.

7.4 Based upon Applications for Payment submitted to the City by the Contractor and Certifications of Payment issued by the City, the City shall make progress payments on account of the Agreement Sum to the Contractor as provided below, elsewhere in the Agreement Documents and in accordance with Part VII of Chapter 218, Florida Statutes, as it may be amended from time to time, entitled the "Local Government Prompt Payment Act."

7.5 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

(A) Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Agreement Documents. The Schedule of Values shall allocate the entire Agreement Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the City may require. This Schedule, unless objected to by the City, shall be used as a basis for reviewing the Contractor's Applications for Payment.

(B) Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

7.6 Subject to the provisions of the Agreement Documents, the amount of each progress payment shall be computed as follows:

(A) Payment for services performed may be made on a monthly basis upon approval of the Application for Payment by the designated official of the City. The Agreement may include phases of performance to be negotiated. There will be separate phases for design responsibilities and for construction responsibilities. Retainage will be withheld on all payments as authorized by state law until City acceptance of the Project and City has received evidence of satisfactory completion of the Agreement.

(B) Ten percent (10 %) of monies earned by the Contractor shall be retained by City until Final Completion and acceptance by City, except for the following items: General Conditions and self-performed work performed on a cost reimbursement basis, if any. After fifty percent (50%) of the Work has been completed, Contractor may request that the Agreement Administrator reduce the retainage to five (5%) percent of all monies previously earned and all monies earned thereafter, and City shall grant such request, provided that there are no pending claims by the City for delay or otherwise, and provided further that there are no pending third party claims against the City as a result of the Work, including claims for non-payment by Contractor's lower-tiered subcontractors and suppliers ("Claims"). At any time thereafter, Agreement Administrator may increase retainage back to ten percent (10%) of all monies previously earned and all monies earned thereafter, if in the sole discretion of the Agreement Administrator, such increase is necessary to protect the City from any Claims, and such retainage may be deducted from any monies then due or that is to become due the Contractor. After ninety (90%) percent of the Work has been completed, and provided that there are no pending Claims, the Agreement Administrator may reduce the retainage to two and one-half (2-1/2%) percent of all monies previously earned and all monies earned thereafter. Subsequent to Final Completion and prior to Final Payment, Agreement Administrator may reduce retainage to a nominal amount at the sole discretion of the Agreement Administrator. Any reduction in retainage shall be in the sole discretion of the Agreement Administrator, and Contractor shall have no entitlement to a reduction. City shall hold retainage in the amount of two and one-half percent (2-1/2%) or such reduced amount as applicable, until the expiration of any applicable warranty period(s) to ensure completion of Contractor's warranty obligations and maintenance of all required insurance coverages during the warranty period(s). Any interest earned on retainage shall accrue solely to the benefit of City.

(C) City may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

- (1) Defective Contractor or Subcontractor Work not remedied.
- (2) Claims filed or reasonable evidence indicating probable filing of claims by other parties against Contractor.
- (3) Failure of Contractor to make payments properly to subcontractors or for material or labor.

- (4) Damage to another subcontractor not remedied.
- (5) Failure of Contractor to provide any and all documents required by the Agreement Documents.

7.7 Application for Payment after the first Application shall be accompanied by a Certification of Payment form, provided by the City, from the Contractor and each Supplier and Subcontractor, in amounts equal to those stated in the PRIOR Application for the Contractor and each Subcontractor and each Subcontractor, Material/Labor Supplier so due payment. The Application for Payment for Retainage shall be accompanied by a final Certification of Payment and Release of Claim form from the Contractor, each Supplier and Subcontractor in amounts equal to those stated in the Schedule of Values.

8. Final Payment. Final payment, constituting the entire unpaid balance of the Agreement Sum, shall be made by the City to the Contractor when:

(A) the Agreement has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work, if any, which obligation survives final payment and continues thereafter;

(B) a final Certification of Payment has been issued by the City; such final payment shall be made by the City not more than thirty (30) days after the issuance of the Contractor's final Certification of Payment;

(C) final Certification of Payment has been furnished from the Contractor, Suppliers and Subcontractors; and

(D) a Consent of Surety, if any, for final payment.

9. Payment and Performance Bond. The Contractor agrees that before commencing any work or construction the Contractor shall maintain, at all times, a valid payment and performance bond, consistent with the requirements contained in the ITB, attached as Exhibit B. The executed Bonds shall be attached to this Agreement as Exhibit C.

10. Protection Of Property. The Contractor shall at all times guard against damage or loss to City property or property of other persons, vendors or Contractors and shall be responsible for replacing or repairing any such damage or loss. The Contractor will be required to report any such damages immediately to the City's representative in charge of the Project. The City reserves the right to repair any damages created by the Contractor and to deduct the appropriate amount from any payment due to the Contractor. In all cases, the decision of the City is final.

11. Florida Trench Safety Act. The Contractor shall include with its Bid, when applicable, all documentation required by the Florida "Trench Safety Act", Section 553.63, Florida Statutes. The unit prices and total prices presented in the Bid, and those presented in any subsequent change orders shall include the Contractor's cost for compliance with the applicable trench safety standards.

12. Trash. Contractor shall be responsible for the daily removal of trash and debris from the Project work sites and upon completion of the Project Work.

13. Public Bid Disclosure Act. In accordance with the Public Bid Disclosure Act, Section 218.80, Florida Statutes, each license, permit, or fee a Contractor will have to pay the City before or during the work, items or services to be provided or the percentage method or unit method of all licenses, permits, and fees required by the City and payable to the City by virtue of the work, items, or services as part of the agreement are as follows:

(A) Contractor shall have and maintain during the term of the agreement any and all appropriate City licenses, fees (and business tax receipts, if applicable), which shall be paid in full in accordance with the City's fee structure for such items. **THERE WILL NOT BE ANY PERCENTAGE REDUCTION OR WAIVING OF CITY LICENSES, FEES (OR BUSINESS TAX RECEIPTS, IF APPLICABLE).**

(B) During the performance of the agreement, there may be times when the Contractor will be required to obtain a permit for such work, or in connection with the items or services. It is the responsibility of the Contractor to ensure that it has the appropriate permits as may become necessary during the performance of the work. Any fees related to the required permits in connection with the agreement will be the sole responsibility of the Contractor.

(C) Licenses, permits, and fees may be required by Broward County, the state of Florida or the federal government.

(D) City will reimburse permit fee costs related to dewatering and National Pollutant Discharge Elimination System (NPDES).

14. Safety. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project Work. The Contractor shall comply with the rules and regulations of the Florida Department of Commerce regarding industrial safety (Florida Statutes, Section 440.56) and with the standards set forth in the federal Occupational Safety and Health Act of 1970 (OSHA), and its amendments. Contractor, by submitting a bid, certifies that all materials and equipment to be supplied for the Project will meet all federal and state requirements, including but not limited to, the Occupational Safety and Health Act (OSHA).

15. Warranty. The Contractor shall warrant to the City that materials and equipment furnished under the agreement will be of good quality and new unless otherwise required or permitted by the Agreement Documents; that the Work will be free from defects, and that the Work will conform to the terms and conditions of the agreement. Work not conforming to those terms and conditions, including substitutions not properly approved and authorized may be considered defective. The Contractor's warranty may exclude damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient City maintenance, improper operation, or normal wear and tear under normal usage. The Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All manufacturers'



product warranties shall be registered in the City's name and for its sole benefit.

16. Construction Quality. Contractor agrees to perform all work ("Work") required to complete the construction of the Improvements on the Property in a good and workmanlike manner.

16.1 Standards of Construction. Any and all construction of Improvements shall be performed in such a manner as to provide that the Improvements shall: (i) Be structurally sound and safe for its intended use, and free from any unusual hazards; (ii) Be designed for use for only those purposes permitted under Section 13 hereof; (iii) Be fire resistant to the extent required by the provisions of the local applicable building codes and shall not be used for the manufacture or storage of flammable, explosive or hazardous materials in violation of applicable law; (iv) Substantially comply with the Approved Conceptual Plans; (v) Comply with the terms and provisions of this Agreement; and (vi) Comply with all applicable laws, ordinances, rules, regulations and procedures of all applicable Governmental Authorities. The City may refuse to grant approval if the proposed facilities as shown on such plans and specifications will fail to meet the criteria set forth above.

16.2 Comply with Applicable Law. All Improvements constructed or installed by the Contractor, its agents, or contractors, shall conform to all applicable state, federal, county, and local statutes, ordinances, building codes, fire codes, and rules and regulations, as amended.

16.3 Contractor's Obligations During Construction. Prior to the Completion Date, Contractor shall:

- (A) Provide scaffolding, hoists, temporary structures, light, heat, power, toilets, temporary utility connections, equipment, tools and materials and other requirements for the performance of the Work;
- (B) Maintain the Property in a clean and orderly condition, at all times, taking into consideration the public beachfront nature of the Project, and remove all paper, cartons and other debris from the Property;
- (C) Preserve all properties adjacent to or leading to the Property, and restore and repair any such properties damaged as a result of construction of the Work, whether such properties are publicly or privately owned;
- (D) Implement and maintain at all times a comprehensive hurricane and flood plan for the Property and the Work, and provide a copy of same to the City, if requested;
- (E) Provide construction fencing.
- (F) As Built. Within one hundred twenty (120) days after the date a CO is issued for Improvements constructed by Contractor during the term of this Agreement, the Contractor shall at its expense, provide the City with a complete set of "as built" plans and specifications, including mylar reproducible "record" drawings, and, if available, one set of machine readable disks (or comparable) containing electronic data in an AUTOCAD format that meets the City's graphic standards of the "as-constructed" or "record" plans for such Improvements. The "as built" plans submitted by Contractor must show the square footage of each Improvement depicted in such plans.
- (G) Use diligent effort to complete the Work in a commercially reasonable time under

the circumstances and in accordance with this Agreement. At all times make diligent effort to have proper supervision of the general contractor or other employees or agents of the Contractor upon the Property site.

(i) Employees Of The Contractor. Contractors shall only designate employees who are sufficiently skilled to provide the required services specified in the ITB. Any person employed to provide the services who fails, refuses or neglects to obey the instructions of the City's representative in anything relating to these services, or who appears to be disorderly, insubordinate, or incompetent shall upon the order of City's representative, be immediately relieved by the Contractor from the Project Work. Any interference with, or any abusive or threatening conduct toward any City representative, its assistants or inspectors by the Contractor, its employees or agents, or any member of the public shall be grounds for the City to terminate the agreement and re-let the work. The Contractor shall furnish all labor, materials, supplies and equipment necessary to properly maintain all Project Work areas in an acceptable and safe condition. Contractor agrees that it and its officers shall be held fully responsible, except as otherwise prohibited by law, for all acts of their employees while in their employ.

- (H) Contractor Progress Reports. At the request of City, Contractor will deliver written reports of the progress of construction to the City Manager or his or her designee.
- (I) City's Representative. The City may designate one or more employees or agents to be the City's Representative for the Project so that he or she may, subject to site conditions and during normal business hours, visit and the Property.
- (J) Certificates of Final Completion. After Contractor completes the Work, the City will deliver to Contractor, a recordable Certificate of Final Completion certifying that, to the best of the City's knowledge, Contractor has satisfied all its obligations to the City for the construction of the specified Improvements.

16.4 Site Conditions Contractor has the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, staging, parking, disposal, handling and storage of materials; availability, quantity and quality of labor, water and electric power; availability and condition of roads; climatic conditions, location of underground utilities as depicted on Agreement documents, and through verification with local utility companies and the City, physical conditions of existing construction, topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials to be encountered; the nature of the ground water conditions; equipment and facilities needed preliminary to and during performance of the Agreement; and all other matters which would be reasonably known to a licensed general contractor with expertise in streetscape and related infrastructure construction as in any way affecting performance of the Agreement, or the cost associated with such performance. The failure of Contractor to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully and timely performing the Agreement.

16.5 The City shall not be responsible for any conclusions or interpretations made by the Contractor based on the information made available by the City. The City shall not be responsible for any understanding reached or representation made concerning conditions which can affect the Work by any of Contractor's officers, employees, agents, subcontractors, material men, or suppliers before execution of this Agreement, unless that understanding or representation is expressly stated in this Agreement.

16.6 The provisions of this Section 16 shall be deemed a complete waiver by the Contractor of claims for equitable adjustment in Agreement Time or Price, or both, unless due to (1) subsurface or concealed conditions which differ materially from those indicated on the Agreement Documents, or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction of the character provided in the Agreement Documents; provided however, that claims under this Section 16 shall be denied in the event that the conditions were reasonably inferable from activities, testing and investigations performed in connection with the Pre-Con Agreement, and which would otherwise provide to Contractor an expectation that the conditions could be similar elsewhere in the Project.

16.7 Warranty. Unless otherwise provided elsewhere in the Agreement, all materials and equipment incorporated into any Work covered by the Agreement shall be new and, where not specified, of the highest grade and quality for their intended use, and all workmanship shall be in accordance with construction practices acceptable to City. Unless otherwise provided in the Agreement, Contractor warrants all equipment, materials, and labor furnished or performed under this Agreement, against defects in design, materials and workmanship, for a period of twelve (12) months (unless longer guarantees or warranties are provided for elsewhere in the Agreement in which case the longer periods of time shall prevail) from and after Substantial Completion of the Work under the Agreement, regardless of whether the same were furnished or performed by Contractor or by any of its subcontractors of any tier. Even in the event that the City assumes partial utilization of portions of the Work prior to completion of all Work, the Warranties for that portion shall also extend for twelve (12) months from Substantial Completion of the entire Work, so that all warranties are running concurrently upon Substantial Completion of the total Project.

16.8 Upon receipt of written notice from City of any defect in any such equipment, materials, or labor during the applicable warranty period due to defective design, materials or workmanship, the affected item or parts thereof shall be redesigned, repaired or replaced by Contractor at a time and in a manner acceptable to City in compliance with the Agreement Documents, at its expense.

16.9 Contractor warrants such redesigned, repaired or replaced Work against defective design, materials and workmanship for a period of twelve (12) months from and after the date of acceptance thereof. Should Contractor fail to promptly make the necessary redesign, repair, replacement and tests, after written notice from City specifying the defects, City may perform or cause to be performed the same, at Contractor's sole cost and expense.

16.10 Contractor shall perform such tests as City may require verifying that such redesign, repairs and replacements comply with the requirements of this Agreement. All costs incidental to

such redesign, repair, replacement, and testing, including the removal, replacement, and reinstallation of equipment and materials necessary to gain access, shall be borne exclusively by Contractor. However, if such testing determines that the Work is not defective, than City shall compensate Contractor for such costs of testing and any effects on previously completed work.

16.11 Contractor and its Surety shall be liable for the satisfaction and full performance of the warranties as set forth herein, and any damage to other parts of the Work caused by the Contractor's failure to perform pursuant to this section 16.

16.12 The Contractor shall commence Work to remedy or replace the defective, deficient Work within five (5) calendar days after receiving written (including transmittals by email) notice from the City, subject to allowance for long-lead items. If the Contractor fails to remedy or remove or replace that Work or material which has been found to be defective, or reasonably commence corrective action, then the City may remedy or replace the defective or deficient Work at the Contractor's expense; provided, however, all repairs to natural gas, telephone, radio, computer security, water, electric, air conditioning services and all emergency services shall be commenced within twelve (12) hours of notification, or by 7:00 a.m. whichever is earlier, and Contractor shall complete the repairs in an expeditious manner befitting the nature of the deficiency. The Contractor shall immediately pay the expenses incurred by the City for remedying the defects. If the City is not paid within ten (10) calendar days, the City may pursue any and all legal remedies it may have against the Contractor and its Surety.

16.13 The Contractor is required to provide a designated telephone number for warranty related emergencies which occur outside the normal workday. The Contractor is solely responsible for ensuring that all warranty Work is completed in the manner described above. If the City agrees, in writing, a subcontractor may be the point of contact for notices regarding warranty items, but such agreement shall not absolve the Contractor of its responsibility.

16.14 Ingress/Egress. Contractor's access to the Work area will be permitted only through approaches that will be designated by City, and then only in such manner that Contractor's traffic will not interfere with City's operations and Merchants/Tenants adjacent to the activity area(s). Contractor shall, at all times, maintain reasonably free unimpeded ingress and egress at the site. Contractor personnel are not to enter into any areas of the jobsite other than Work areas and areas of designated access. Contractor shall safely maintain, at all times during the performance of the Work, both vehicular and pedestrian traffic in, around, and adjacent to the Project.

16.15 Preconstruction Conference. As soon as practicable after execution of this Agreement, and prior to commencing any Work, a pre-construction conference will be coordinated by the Contractor and the City. In attendance at said conference will be City, Architect, and any of their representatives as may be deemed advisable. The purpose of said conference is to determine procedures related to the smooth progress of the Project, review of any items requiring clarification, maintenance of traffic, merchant and pedestrian accessibility, related safety issues, and procedures for the processing and distribution of all documents and correspondence related to the Agreement, among other things.

16.16 Meetings. The Contractor shall, at its expense, as requested by City, attend any and all meetings called by City to discuss the Work under the Agreement. Such meetings shall be conducted and recorded by the City with typed minutes of each meeting distributed to all attendees.

16.17 Delivery, Unloading And Storage Contractor shall, at its expense, receive, unload, store in a secure place, and deliver from storage to the construction site all materials, plant and equipment required for the performance of the Agreement. The storage facilities, methods of storing and security provisions shall meet City's approval and manufacturer's recommendations. Materials and equipment subject to degradation by outside exposure shall be stored in a weather tight enclosure.

16.18 Work Area. All Contractor's Work areas on the jobsite will be assigned by City. Contractor shall confine its office, shops, storage, assembly and equipment and vehicle parking to the areas so assigned. Before commencing Work, the Contractor shall provide a temporary office on the site of the Work, which shall have a telephone where a representative of the Contractor may be reached at all times during normal working hours. Should Contractor find it necessary or advantageous to use any additional land outside the Project site for any purpose whatever, Contractor shall, provide and make its own arrangements for the use of such additional land.

16.19 Plant, Equipment And Facilities. Contractor shall provide and use on any Work only such construction plant and equipment as are capable of producing the quality and quantity of work and materials required by the Agreement and within the time or times specified in the Agreement. Before proceeding with any Agreement Work or with erection of any facilities, including, but not limited to, temporary structures, machinery, equipment, offices and warehouses, Contractor shall furnish City such information and drawings relative to such equipment, plant facilities as City may request.

16.20 Upon written order of City, Contractor shall discontinue operation of unsatisfactory plant and equipment or facilities and shall either modify or remove the unsatisfactory items from the site.

16.21 Contractor shall not remove construction plant or equipment from the site before the Work is finally accepted without City's written approval. Such approval shall not be unreasonably withheld.

16.22 Contractor-Furnished Materials, Equipment And Workmanship. Only new, unused items of recent manufacture, of designated quality, but in no event less than the standard quality for the improvements, free from defects, will be accepted. Rejected items shall be removed immediately from the Work and replaced with items of specified quality. Failure by City to order removal of rejected materials and equipment shall not relieve Contractor from responsibility for quality of the materials supplied nor from any other obligation under the Agreement Documents.

16.23 Contractor shall continuously check architectural and structural clearances for accessibility of equipment and mechanical and electrical systems. No allowance of any kind will be made for Contractor's negligence to foresee means of installing equipment into position inside structures.

16.24 No Work defective in construction or quality, or deficient in meeting any requirement of the Agreement Drawings and Specifications, will be acceptable regardless of City's failure to discover or to point out defects or deficiencies during construction; nor will the presence of field representatives at the Work or the satisfaction of the Work meeting applicable code requirements relieve Contractor from responsibility for the quality and securing progress of Work as required by the Agreement Documents. The City shall notify the Contractor of

defective or unacceptable Work if the City discovers such. Defective Work revealed within the time required by warranties (whether expressed or implied) shall be remedied in accordance with Section 15, entitled, "Warranty." No payment, whether partial or final, shall be construed as an acceptance of defective Work or improper materials.

16.25 Contractor shall waive "common practice" and "common usage" as construction criteria wherever details and specifications or governing codes and ordinances require greater quantity or better quality than common practices and common usage would require. Contractor shall order and schedule delivery of materials in reasonable time to avoid delays in construction. Delays in delivery of equipment or material purchased by the Contractor or its Trade Contractors shall not be considered as a cause for an adjustment of the Agreement Time or a basis for damages or compensation. The Contractor shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials. If an item is found to be unavailable, Contractor shall notify City immediately of recommended substitute(s) to permit City's selection of a suitable substitute.

16.26 City will exercise sole authority for determining conformance of workmanship, materials, equipment and systems with the requirements of the Agreement. Review and approval of all items proposed by Contractor for incorporation into the Work will be by City. This function by City will apply both to approvals for the Agreement as initially signed, and to approvals for changes to Agreement by modifications during progress of the Work. Reference to manufacturers' names, brands and models is to establish the type and quality desired. Substitutions may be permitted unless specifically noted otherwise in this Agreement.

16.27 When materials, equipment, or systems are specified by performance only, without reference to specific manufacturer's brands or models, Contractor shall submit its own choice for City's review and approval, supported by sufficient evidence of conformity with the Agreement Documents.

Substitutions. Prior to proposing any substitute item, Contractor shall satisfy itself that the item proposed is, in fact, equal or better to that specified, that such item will fit into the space allocated, that such item affords comparable ease of operation, maintenance and service, that the appearance, longevity and suitability for the climate are comparable, and that by reason of cost savings, reduced construction time, or similar demonstrable benefit, the substitution of such item will be in City's interest, and will in no way impact detrimentally upon the Project completion date and schedule. The burden of proof of equality of a proposed substitution for a specified item shall be upon Contractor prior to City's decision on such substitution. Contractor shall support its request with sufficient test data and other means to permit City to make a fair and equitable decision on the merits of the proposal. Contractor shall submit drawings, samples, data, certificates, and additional information as may be required by the City for proposed substitute items.

16.28 Any item by a manufacturer other than those specified or of brand name or model number or of generic species other than those specified will be considered a substitution. City will be

the sole judge of whether or not the substitution is equal in quality, utility and economy to that specified. Contractor shall allow an additional seven (7) calendar days for City's review of substitution. All requests for substitutions with submittal data must be made at least fourteen (14) calendar days prior to the time Contractor must order, purchase, or release for manufacture or fabrication. Materials and methods proposed as substitutions for specified items shall be supported by certification of their approval for use by all governmental agencies having jurisdiction over use of specific material or method. Substitutions may not be permitted in those instances where the products are designed to match artistic design, specific function or economy of maintenance.

16.30 Expediting The equipment and material furnished under this Agreement may be subject to expediting by City, at City's expense. City shall be allowed reasonable access to the shops, factories, and other places of business of the Contractor and its subcontractors and suppliers, for expediting purposes. As required by City, Contractor shall supply schedules and progress reports for City's use in expediting and Contractor shall cooperate with City and require its subcontractors and suppliers to cooperate with City in such expediting. Any expediting performed by City shall not relieve Contractor of its sole and primary responsibility for timeliness of delivery of the equipment and material to be furnished under this Agreement.

16.31 Field Layout Of Work All Work under this Agreement shall be constructed in accordance with the lines and grades shown on the Agreement Drawings or as approved by the City in writing. Elevation of existing ground, structures and appurtenances are believed to be reasonably correct but are not guaranteed to be absolute and therefore are presented only as an approximation. All survey work for construction control purposes shall be made by a land surveyor registered in the State of Florida, with demonstrated experience in the Project area, and who shall be employed by the Contractor at Contractor's expense. The Contractor shall establish all base lines for the location of the principal component parts of the Work together with permanent benchmarks and temporary benchmarks adjacent to the Work. Based upon the information provided by the Agreement Drawings, the Contractor's surveyor shall develop and make all detail surveys necessary for construction including establishment or construction of grid coordinates as shown on the Agreement Drawings, location of property boundaries, stakes for all working points, lines and elevations. City shall provide surveys necessary for utility easements.

The Contractor shall have the responsibility to carefully preserve all benchmarks, reference points and stakes. In case of destruction thereof by the Contractor resulting from his negligence, or for any other reason, it shall be held liable for any expense and damage resulting therefrom and shall be responsible for any mistakes that may be caused by the unnecessary loss or disturbance of such benchmarks, reference points and stakes. Existing or new control points, property markers, and monuments that will be established or are destroyed during the normal course of construction shall be reestablished by the Contractor, and all reference ties recorded therefor shall be furnished to the City. All computations necessary to establish the exact position of the Work shall be made and preserved by the Contractor.

16.32 Contractor Furnished Drawings, Data And Samples. Review and permission to proceed by City as stated in this Agreement does not constitute acceptance or approval of design details, calculations, analyses, test methods, certificates or materials developed or selected by the Contractor and does not relieve Contractor from full compliance with contractual obligations. Drawings, samples, catalogues, data and certificates required shall be submitted to the City for review. All correspondence from the Contractor to the City shall be numbered sequentially and the submittal number shall be referenced. Submittal drawings (shop, erection or setting diagrams) and schedules, required for work of various trades, shall be checked before submission by technically qualified employees of Contractor for accuracy, completeness and compliance with Agreement requirements. These drawings and schedules shall be stamped and signed by Contractor certifying to such check. The certification stamp shall read as follows:

"I certify that I have checked this submittal for accuracy, completeness and compliance with Agreement requirements, and it has been coordinated with all other submittals and Agreement Documents."

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SIGN

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DATE

16.33 Drawings. Where drawings are required for (a) fabrication of Contractor furnished equipment; (b) installing Contractor furnished material or equipment; or (c) planning and performance of the Work under Agreement; such drawings shall be originally generated and submitted by and at the expense of the Contractor before fabrication, installation or performance is commenced. Each submittal shall be made not less than fourteen (14) calendar days prior to the time that the drawings are required in accordance with the schedule. Allow at least seven (7) calendar days for review by the Engineer. Such drawings shall include, but not be limited to, matchmarks, erection diagrams and other details, such as field connections for proper installation, erection of the equipment, and performance of the Work.

16.34 Samples. Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. Samples of all items of related systems (i.e., adjacent surfaces requiring similar colors but manufactured of different materials) must be submitted in the same time frame before the approval process can begin. Where samples are required, they shall be submitted by and at the expense of the Contractor. Such submittal shall be made not less than thirty five (35) calendar days prior to the time that the materials represented by such samples need to be ordered for incorporation into any Work in accordance with the schedule. Allow at least seven (7) calendar days for City's review. Materials represented by such samples shall not be manufactured, delivered to the site or incorporated into any Work without such review. Each sample shall bear a label showing the Contractor's name, date submitted, Project name, name of the item, manufacturer's name, brand name, model number, supplier's name, and reference to the appropriate drawing, Technical Specification section and paragraph number, all as applicable. Samples that have been reviewed may, at Architect's and City's option, be returned to the Contractor for incorporation into the Work.



16.35 Catalogues, Data and Certificates. Where catalogues, data or certificates are required, one (1) digital copy and one (1) copy of each shall be submitted by and at the expense of the Contractor. Such submittal shall be made not less than fourteen (14) calendar days prior to the time that the materials represented by such catalogues, data or certificates must be ordered for incorporation into any Work in accordance with the BAR CHART schedule. Allow at least 7 calendar days for Architect and City's review. Material represented by such shall not be fabricated, delivered to the site or incorporated into any Work without such review. Certificates shall clearly identify the material being certified and shall include but not be limited to providing the following information: Contractor's name, Project name, name of the item, manufacturer's name, and reference to the appropriate drawing, Technical Specification section and paragraph number all as applicable. All catalogues, data and certificates submitted by the Contractor shall be certified and dated by the Contractor on the face of each catalogue, data and certificate to be correct and shall be furnished in accordance with these requirements and the requirements of the Technical Specifications.

16.36 Construction Schedule. Within ten (10) calendar days after the date of the City's issuance of a Notice to Proceed, the Contractor shall prepare and submit to the City a BAR CHART construction schedule in graphically depicting the activities contemplated to occur as a necessary incident to performance of the Work required to complete the Project, showing the sequence in which the Contractor proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The City's initial approval for the purposes of this Section, and any other provisions in the Agreement Documents related to the Contractor's responsibility to prepare and submit schedules shall be limited to a determination that the activities, durations and logic are reasonable. The construction schedule shall be complete in all respects, covering, in addition to activities and interfaces with other Contractors at the site of the Work, offsite activities such as design, fabrication, an allowance for weather delays, submittals, procurement and jobsite delivery of Contractor furnished material and equipment. The schedule shall be a BAR CHART Critical Path type network drawn to a time scale using arrow or precedence type diagramming. The construction schedule activities shall mirror the payment application breakdown.

16.36.1 The construction schedule shall include the following:

- (a) Brief description of each activity.
- (b) All submittals, samples, approvals, fabrication, and deliveries for equipment and materials.
- (c) Activities showing scheduled start and finish, late start and finish, and float.
- (d) Relations between activities.
- (e) Duration of activities. No activity should be scheduled for more than 19 workdays.
- (f) Contractual and other major milestones including phasing.
- (g) Schedule activities to include labor and material.
- (h) An allowance for delays due to weather. Agreement Time extensions for weather delays

will be granted only when all of the conditions and criteria for evaluation of time extensions have been met pursuant to the General Conditions.

- (i) Upon acceptance of the original Schedule, the Early Start and Early Finish dates for all activities shall be fixed as Planned Start and Planned Finish dates. Any further revisions to the schedule must be submitted in writing and approved by the City.
- (j) The detailed BAR CHART schedule submittal shall include one (1) digital color copy and one (1) color copy of the following:
  - (k) Time Scaled Network Diagram.
  - (l) Bar Chart in the following formats:
    - (m) Sorted by activity.
    - (n) Sorted by total float.
    - (o) Sorted by early start.
    - (p) Precedence and Successor report.
    - (q) Narrative report.
    - (r) Computer diskette. (One copy)
    - (s) Submittals shall be organized under Standard CSI format.
- (t) The detailed BAR CHART Schedule shall be updated monthly and submitted along with an updated CD accompanied by an Application for Payment. Contractor shall meet with the City and Architect/Engineer of Record to review and verify:
  - i. Actual start and finish dates for completed activities.
  - ii. Remaining duration required to complete each activity started, scheduled to start, but not completed.
  - iii. Logic and time, for change orders that are to be incorporated into the diagram and computer produced schedules.
  - iv. Percentage for completed and partially completed activities.

16.37 Following development and submittal of the construction schedule as aforesaid, the Contractor shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or will affect the progress of the performance of the Work yet to be performed in contrast with the planned progress of performance of such Work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision.

16.38 The Contractor shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules:

A. Subcontractor Construction (Sub-networks) - Upon the award of each subcontract, the Contractor shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the Specifications, taking into account the Work schedule of the other subcontractors. The construction schedule shall include as many

activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.

B. Occupancy Schedule - The Contractor shall jointly develop with the Engineer and City a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to City occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final City occupancy.

16.39 The Contractor shall submit a written narrative report as a part of his monthly review and update in a form agreed upon by the Contractor and the City. The narrative report shall include a description of problem areas; current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates; and an explanation of corrective action taken or proposed.

16.40 The Contractor shall have in its employ for the length of this Project, at least one qualified scheduling specialist whose responsibility as to this Agreement will be to prepare, plan and draft the construction schedules, monitor the construction progress, analyze scheduling problems for resolution, update the Construction Schedule as required in the Agreement, and maintain updated information as required regarding the interface with other contracts. The costs associated herewith, and all scheduling activities, are included in the Lump Sum.

16.41 The Contractor agrees that whenever it becomes apparent from the current progress review meeting or the computer produced calendar dated schedule that the Agreement completion date will not be met, the Contractor shall execute some or all of the following remedial actions at Contractor's sole cost and expense:

- A. Increase construction manpower in such quantities and crafts as necessary to eliminate the backlog of Work.
- B. Increase the number of working hours per shift, shifts per working day, working days per week, the amount of construction equipment, or any combination of the foregoing to eliminate the backlog of Work.
- C. Reschedule the Work in conformance with the specification requirements.

16.42 Prior to proceeding with any of the above actions, the Contractor shall notify the City of the proposed schedule changes. Such actions shall be incorporated by the Contractor into the diagram before the next update, at no additional cost.

16.43 Responsibility For Work Security Contractor shall, at its expense, at all times conduct all operations under the Agreement in a manner to avoid the risk of loss, theft or damage by vandalism, sabotage or other means to any property. Contractor shall promptly take all reasonable precautions which are necessary and adequate against any conditions which involve a risk of loss, theft or damage to its property, at a minimum. Contractor shall continuously inspect all its Work, materials, equipment and facilities to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such condition. Contractor shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall furnish these reports to City within three days of each incident.

16.44 Protection Of Work In Progress, Materials And Equipment Contractor shall be responsible for and shall bear any and all risk of loss or damage to Work in progress, all materials delivered to the site, and all materials and equipment involved in the Work until completion and final acceptance of Work under this Agreement. Excluded from Contractor's responsibility is any loss or damage which results from acts or omissions of the City or its representatives or other contractors. Permanent openings or thoroughfares for the introduction of work and materials to the structure and construction site shall be protected so that upon completion, the entire Work will be delivered to the City in proper, whole and unblemished condition.

16.45 Protection Of Existing Property Contractor shall so conduct its operations as not to damage, close, or obstruct any utility installation, highway, road or other property until permits therefore have been obtained. If facilities are closed, obstructed, damaged or rendered unsafe by Contractor's operations, Contractor shall, at its expense, make such repairs and provide temporary guards, lights and other signals as necessary or required for safety and the welfare of persons on the jobsite and the general public.

16.46 Contractor shall conduct its operation so as not to damage any existing buildings or structures. The Contractor shall verify that means and methods of construction used inside, adjacent to, under or over existing buildings will not cause damage. The Contractor shall provide protection methods which ensure the safety of persons on the jobsite and the general public. Unless otherwise specifically provided in the Agreement, Contractor shall not do any Work that would disrupt or otherwise interfere with the operation of any pipeline, telephone, electric, radio, gas, transmission line, ditch or other structure, nor enter upon lands in their natural state until approved by City. Thereafter, and before it begins such Work, Contractor shall give due notice to City of its intention to start such Work. Contractor shall not be entitled to any extension of time or any extra compensation on account of any postponement, interference, or delay cause by any such line, ditch or structure on or adjacent to the site of the Work. If Contractor has exercised due diligence, such as, but not limited to, conducting soft digs, securing utility locates, as well as other activities both during its Pre-Con

performance and thereafter, Contractor shall not be held responsible for any damages caused to any lines, cables, pipes, or pipelines which are not depicted on the surveys, studies, reports, investigations and legal descriptions of the site supplied to the Contractor.

Contractor shall preserve and protect all cultivated and planted areas and vegetation such as trees, plants, shrubs and grass on or adjacent to the Project, which, as determined by City, do not reasonably interfere with the performance of this Agreement. Contractor shall be responsible for damage to any such areas and vegetation and for unauthorized cutting of trees and vegetation, including, without limitation, damage arising from the performance of its work through operation of equipment or stockpiling of materials. All cost in connection with any repairs or restoration necessary or required by reason of any such damage or unauthorized cutting shall be borne by Contractor.

16.47 Labor. Contractor shall employ only competent and skilled personnel to perform the Work. Contractor shall, if requested to do so by City, remove from the jobsite any personnel of Contractor whom City determines unfit or acting or working in violation of any provision of this Agreement.

Work assignments and the settlement of jurisdictional disputes shall conform with either the Rules, Regulations and Procedures of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry, and any successor agreement thereto, or any other mutually established method of determining work assignments and settling jurisdictional disputes. Contractor shall comply with and shall cooperate with City in enforcing jobsite conditions and job work rules which directly affect the performance of the Work including, but not limited to, starting and quitting time, smoking regulations, check-in and check-out procedures, job site safety regulations and security regulations, emergency plans and procedures, and daily clean-up.

The Contractor and subcontractors shall be bound by and comply with all Federal, State and local laws with regard to minimum wages, overtime work, hiring, and discrimination. All work necessary to be performed after regular working hours, on Saturdays, legal and City holidays, shall be performed without additional expense to the City. The Contractor shall comply with the Copeland Anti-Kick Back Act (19 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR Part 3). This act provides that each Contractor or subcontractor shall be prohibited from inducing by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

16.48 Equal Employment Opportunity During the performance of this Agreement, the Contractor agrees as follows:

- (a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, or national origin. The Contractor will take affirmative action to ensure that applicants and employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising;

layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth provisions of this nondiscrimination clause.

- (b) The Contractor will, in all solicitations or advertisements for employees placed for, by, or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, or national origin.
- (c) The Contractor will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the City and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The Contractor will include the provisions of paragraphs A through F in every subcontract or purchase unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor or purchase order as may be directed to the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.
- (h) All regulations, guidelines, and standards lawfully adopted under the governing statutes.

#### 16.49 Safety & Protection Of Persons & Property

16.49.1 Responsibility For Safety And Health. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to be performed under the terms of the Agreement ("Work"). The Contractor shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the City and Users who may be affected thereby. The Contractor shall set forth in writing its safety precautions and programs in connection with the Work and submit the same to the City. The City may, but shall not be obligated to, make suggestions and recommendations to the Contractor with respect thereto.

16.49.2 All Work, whether performed by the Contractor, its Sub- Contractors or Sub-subcontractors, or anyone directly or indirectly employed by any of them, and all equipment, appliance, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to:

- (a) all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970, as amended and all State, Local, City and County rules and regulations now or hereafter in effect; and
- (b) all codes, rules, regulations and requirements of the City and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

16.49.3 Should the Contractor fail to provide a safe area for the performance of the Work or any portion thereof, the City shall have the right, but not the obligation, to suspend Work in the unsafe area. All costs of any nature resulting from the suspension, by whomsoever incurred, shall be borne by the Contractor.

16.49.4 The Contractor shall provide, or cause to be provided, to each worker on the Job Site the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Job Site who fails or refuses to use the same. The City shall have the right, but not the obligation, to order the Contractor to send a worker home for the day or to discharge a worker for his or her failure to comply with safe practices, with which order the Contractor shall promptly comply.

16.49.5 The Contractor shall defend, indemnify and hold the City, the City's Representative and their respective officers, directors, agents, employees and assigns, harmless from and against any and all liability, public or private, penalties, contractual or otherwise, losses, damages, costs, reasonable attorneys' fees, expenses, causes of action, claims or judgments to the extent resulting from any failure of the Contractor, its subcontractors or sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, to comply with the provisions of this General Condition

16.49.6 In any and all claims against those indemnified hereunder by any employee of the Contractor, any subcontractor or sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way to any limit(s) on the amount or type of damage, compensation or benefits payable by or for the Contractor or any subcontractor or sub-subcontractor under any workers' compensation acts, disability benefit acts or other employee benefit acts.

16.50 Protection Of Work And Property; Responsibility For Loss. The Contractor shall, throughout the performance of the Agreement, maintain adequate and continuous protection of all completed Work and temporary facilities against loss or damage from whatever cause, shall protect the property of the City and third parties from loss or damage from whatever cause arising out of the performance of the Agreement and shall comply with the requirements of the City and its insurance carriers and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to the property. The City, their representatives or insurance carriers may, but shall not be required to, make periodic patrols of the Job Site as a part of its normal safety, loss control and security programs. In such event, however, the Contractor shall not be relieved of its aforesaid responsibilities and the City shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the Contractor by this Agreement.

Until final acceptance of the Work by the City the Contractor shall have full and complete charge and care of and, except as otherwise provided in this subparagraph or elsewhere in this Agreement, shall bear all risk of loss of, and injury or damage to, the Work or any portion thereof (specifically including City furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) from any cause whatsoever, except to the extent caused by City, its representatives, or contractors.

16.51 Surface And Subsurface Water. Surface or subsurface water or other fluid shall not be permitted to accumulate in excavations or under or in the structures. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved by the City in writing. The proposed location and coordination of temporary channels and conduits conducting accumulated water from the Job Site shall be permitted by the proper regulatory agency and submitted to the City for its prior written approval. All such Work shall be done at the sole expense of the Contractor.

16.52 Emergencies. In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the Work or its performance, the Contractor shall act immediately to prevent threatened damage, injury or loss to remedy said violation, whichever is applicable. Failure by Contractor to take necessary emergency action shall entitle the City to take whatever action it deems reasonably necessary, including, but not limited to, suspending the Work. The City may offset any and all costs or expenses of whatever nature, including reasonable attorneys'



fees, paid or incurred by the City in taking such emergency action against any sums then or thereafter due to the Contractor. The Contractor shall defend, indemnify and hold the City harmless against any and all costs or expenses pursuant to this Section, by whomsoever incurred.

16.53 City's Standards. The City reserves the right, but assumes no duty, to establish and enforce standards, and to change the same from time to time, for the protection of persons and property, with which the Contractor shall comply, and to review the efficacy of all protective measures taken by the Contractor. The exercise of or failure to exercise any or all of these rights by the City shall not relieve the Contractor of its duties and responsibilities under this Agreement, and the City shall not thereby assume, nor be deemed to have assumed, any such duties or responsibilities of the Contractor.

16.54 Project Site Protection Contractor, at its expense, shall maintain such protection as provided in the subsection 16.49, entitled "Safety & Protection Of Persons & Property" in a satisfactory condition until removal is authorized by City. Contractor, at its expense, shall make all necessary repairs to property damaged by construction operations. Repairs shall be made in a manner satisfactory to City. The Contractor will provide parking for its employees within the designated work areas. Contractor employees will not be allowed to park in areas which are used by any facilities which remain in operation.

16.55 Fire Prevention Contractor shall, at its expense, conform to all Federal, State, and local laws and regulations pertaining to burning, fire prevention and control within or adjacent to the Project. Necessary precautions to avoid and eliminate fire hazards shall be the responsibility of the Contractor. This includes keeping the Agreement Work area clear of all trash at all times. All tarpaulins used for any purpose during construction of any Work shall be made of material resistant to fire, water and weather and shall bear UL labels. Lighting of any fires on premises is strictly forbidden. Controlled burning shall be with the consent of the City. Contractor shall provide portable fire extinguishers properly labeled, located and compatible with the hazard of each work area and shall instruct its personnel in their use. Wherever welding and burning are conducted, inflammable materials shall be protected and a fire watch shall be provided by Contractor to be present during the burning and welding operation to ensure that protective measures are taken and that no fires result from such operation. The fire watch shall have fire extinguisher equipment readily available and know-how for proper use.

16.56 Illumination. When any work is performed at night or where daylight is shut off or obscured, Contractor shall, at its expense, provide artificial light sufficient to permit work to be carried on efficiently, satisfactorily and safely, and to permit thorough inspection. During such time periods the access to the place of work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in a first-class manner, securely fastened in place at all points, and shall be kept as far as possible from telephone wires, signal wires, and wires used for firing blasts.

16.57 Dust Control. The Contractor, for the duration of the Agreement, shall, at its expense, maintain all excavations embankments, haul roads, access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry-accepted methods of dust control

suitable for the area involved and approved by City will be permitted.

16.58Water Pollution. Contractor shall, at its expense, provide suitable facilities to prevent the introduction of any substance or materials into any stream, river, lake or other body of water which may pollute the water or constitute substances or materials deleterious to fish and wildlife.

16.59Air Pollution. The Contractor shall, at its expense, so perform its work as not to discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules and regulations of all Federal, State and local air and water pollution requirements including, but not limited to: Registering with the Dania Beach County Health Department, Air Pollution Board, any equipment requiring operating permits by said Board; Adhering to all Broward County Air Pollution Board Regulations.

16.60Explosives & Hazardous Materials. Contractor shall obtain all required Federal, State and local permits and licenses and shall be responsible for the safe and proper handling, labeling, transporting, storage and use of any explosive or hazardous materials brought onto or encountered within the site, and at its expense, make good any damage caused by its handling, transporting, storage and use. The Contractor will notify the City immediately if explosive or hazardous materials are encountered on the site. Transporting explosive or hazardous materials onto the site will require prior written approval from the City. The Contractor shall maintain and post as necessary Material Hazard Data Sheets for all applicable Hazardous Materials used in the course of his work.

In the event that hazardous material is improperly handled or stored by the Contractor, its subcontractors, any sub-subcontractors, or any employee or agent of any of the aforementioned which results in contamination of the site, Contractor shall immediately notify the City and the appropriate governmental authority and shall take whatever action is necessary or desirable to remediate the contamination at the Contractor's sole cost and expense. Further, Contractor shall indemnify and hold harmless from any and all cost, expense, action, or liability whatsoever resulting from such contamination and/or remedial activities. If without negligence on the part of the Contractor or anyone for whom it is responsible, Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing the Work as required by the Agreement Documents, the City shall pay for the direct costs of remediation as approved beforehand by City, in writing, which shall be paid from the Contingency Fund.

16.62Inspection: Rejection Of Materials And Workmanship. All materials and equipment furnished and work performed shall be properly inspected by Contractor, at its expense, and shall at all times be subject to quality surveillance, observations or quality audit by City. Contractor shall provide safe and adequate facilities and all samples, drawings, lists and documents necessary for such quality surveillance, observation or quality audit. For this purpose, City shall be afforded full and free access to the shops, factories or places of business of Contractor and its subcontractors and suppliers for such quality surveillance, observation or quality audit and to determine the status of the Work. If Contractor covers all or any portion of the Work prior to any quality surveillance or test by City, the cost of any necessary uncovering and replacing shall be borne by Contractor. Neither the failure to make such quality surveillance,

observance or quality audit, nor to discover defective workmanship, materials, or equipment, nor acceptance of or payment to Contractor for such work, materials or equipment shall prejudice the rights of City thereafter to correct or reject the same as hereinafter provided.

If any material, equipment or workmanship is determined by City, either during performance of the Work or on final quality surveillance, or during any applicable warranty period (expressed or implied), to be defective or not complying with the requirements of this Agreement, City shall notify Contractor in writing that such material, equipment or work is rejected and the City reserves the right to withhold payment on any such item. Thereupon, Contractor shall, at its own expense, immediately remove and replace or correct such defective material, equipment or work by making the same comply strictly with all requirements of the Agreement.

16.63 Testing. Unless otherwise provided in the Agreement, Drawings and Specifications shop testing of materials or work shall be performed by the Contractor and in accordance with the Technical Specifications. Field testing of materials or work shall be performed by City. Should tests in addition to those required by the Specifications be desired by City, Contractor will be advised in reasonable time to permit such testing. Such additional tests will be at City's expense unless such additional tests are required due to Contractor's work or materials having failed any initial test. In this event, such additional (re-test) tests shall be at Contractor's expense. Contractor shall furnish samples as requested and shall provide reasonable assistance and cooperation as necessary to permit tests to be performed on materials or work in place including reasonable stoppage of work during testing. Contractor shall provide reasonable and accurate notice of when construction activities which require City's testing services are required. Contractor shall be responsible for stand-by and other costs associated with the testing agency if that construction activity is delayed or canceled.

16.64 Progress. Contractor shall give City full information in advance as to its plans for performing each part of the Work. If at any time during the progress of work, Contractor's actual progress is inadequate to meet the requirements of the Agreement, City may so notify Contractor who shall thereupon take such steps as may be necessary to improve its progress. If within a reasonable period as determined by City, Contractor does not improve performance to meet the currently approved Agreement construction schedule, City may require an increase in Contractor's labor force, the number of shifts, overtime operations, additional days of work per week and an increase in the amount of construction plant; all without additional cost to City. Neither such notice by City nor City's failure to issue such notice shall relieve Contractor of its obligation to achieve the quality of work and rate of progress required by the Agreement.

Failure of Contractor to comply with the reasonable instructions of City may be grounds for determination by City that Contractor is not prosecuting its work with such diligence as will assure completion within times specified. Upon such determination, City may terminate Contractor's right to proceed with the performance of the Agreement, or any separable part thereof, in accordance with the applicable provisions of this Agreement.

16.65 Changes City may, at any time, without invalidating the Agreement and without notice to the Surety(ies), make changes in the Work by issuing Change Orders, as well as Contingency Fund Change Orders addressed elsewhere in the Agreement Documents. City will issue written orders to Contractor for any changes, except that in the event of an emergency which City

determines immediately endangers life or property, City may issue oral orders to Contractor for any work required by reason of such emergency. Such orders will be confirmed in writing as soon as practicable. Such orders, whether written or oral, may be accompanied by drawings and data as are necessary to show the extent of such ordered work. Contractor shall commence such changed work so that all dates set forth in Contractor's current construction schedule, as accepted by City, will be met. In the event of an emergency which City determines immediately endangers life or property, Contractor shall immediately commence such changes as required by City in order to mitigate or remove the emergency condition. Failure to commence any such change in timely fashion shall entitle City to invoke the provisions of "Termination for Cause".

Unless otherwise required, Contractor shall, within twenty-one (21) calendar days following receipt of a written Change request from City, submit in writing to City a Agreement Change Proposal for accomplishing such change, which proposal shall reflect the increase or decrease, if any, in cost to City of performing the change under the Agreement in comparison to what the cost would have been, had such change not been offered.

## 17. Liquidated Damages

17.1 Liquidated Damages will be assessed as stated in the Agreement for each non-compliant day that any requirements listed in this section 17 are not met. The parties have agreed that since they are unable to ascertain the amount of damages which would be suffered by City as a result of Contractor's failure to timely complete all Work required by the date set forth above. Therefore, failure to timely complete the work shall result in the awarded Bidder being subject to liquidated damages, but not as penalty, in the amount of \$500.00 per calendar day, as set forth in 23 CFR 635.127, for each and every calendar day the work remains incomplete, or the items remain undelivered. This payment is considered to be City's liquidated damages, and it is not a penalty. It shall be assessed against the Contractor until substantial and final completion, respectively, are achieved.

### 17.2 Staging of Material in Right-Of- Way:

Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. Staging area shall be fenced and screened from public sight. Contractor shall not store material such as pipes, drainage structures and equipment within a right of way without prior approval by the City. Material shall be properly secured and screened neatly and will not remain on right of way for more than a week. All equipment must be stored in a designated staging area.

17.3 Site Restoration: Contractor shall remove all excess material and shall clean up and restore the site to its original condition or better. All damage, as a result of work under this Agreement, done to existing structures, pavement, driveways, paved areas, curbs and gutters, sidewalks, shrubbery, grass, trees, fences, walls, utility poles, utility pipe lines, conduits, drains, catch basins, flagstones, rocked graveled or stabilized areas or driveways, and including all obstructions not specifically named in this provision, shall be repaired, or replaced, as determined by the Engineer. Site restoration shall be done in a timely manner as the work progresses. Site restoration work shall be completed on private property within 30 days after being disturbed.

17.4 Access: As applicable, Contractor shall provide one lane open to through-traffic for each section of construction in each direction at all times unless a complete road closure is required.

The Contractor shall make every effort to provide access to driveways at the end of the working day. If a driveway is not accessible, homeowners should have access to a neighboring swale area for temporary parking. When vehicular access to homes is not possible for parking of vehicles, an area for parking shall be provided within one block of the furthest home affected. This condition is to be avoided whenever possible and not last more than three (3) days. Vehicular access must be provided by the end of each business working day. The parking area location shall be coordinated by the Contractor, with the City's approval." In the event that this option is approved by the City, the Contractor shall notify affected residents at least 48 hours in advance.

17.5 Date of Commencement and Substantial Completion: The Date of Commencement is the date from which the Agreement Time is measured and shall be the date set forth in the Notice to Proceed as issued by the City. Should the Contractor incur costs prior to the issuance of the Notice to Proceed, any such costs shall be incurred at the Contractor's risk, and the City shall not reimburse the Contractor for any such costs under any circumstances. Notwithstanding the foregoing, City may reimburse Contractor for actual costs incurred relating to performance and payment bonds and insurance, with submittal of invoices, in the event that City terminates this Agreement for convenience, as provided in the General Conditions. If Contractor fails to commence the Work within one (1) week of the date set forth in the Notice to Proceed, City may terminate the Agreement immediately, without providing an opportunity to cure.

17.6 The Contractor shall achieve Substantial Completion not later than \_\_\_\_\_(xxx) calendar days and Final Completion of the entire Work not later than \_\_\_\_\_(xxx) calendar days, each commencing with the date set forth in the Notice to Proceed as issued by the City, subject to adjustments of this Agreement Time as provided in the Agreement Documents.

18. Audit. As the funding for this project comes from FRDAP, Contractor, by entering into this Agreement, the Contractor agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the Contractor is appropriate, the Contractor agrees to comply with any additional instructions provided by the Department to the Contractor regarding such audit. The Contractor further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

19. Indemnification of City.

19.1 The Contractor shall, in addition to any other obligation, indemnify the City and to the fullest extent permitted by law, protect, defend and hold harmless the City, including its agents, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), or costs arising out of any actual or alleged:

- (A) bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting from such property, or any other damage or loss arising out of or resulting or claimed to have resulted in whole or in part from any actual or alleged act or omission of the Contractor or its Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable in the performance of the work;
- (B) any violation of law, statute, ordinance, governmental administrative order, rule, regulation, or infringement of patent, copyright or trademark rights by Contractor or its Subcontractors in the performance of the work;
- (C) liens and claims made by the Contractor or its Subcontractors; and

19.2 Indemnification for Construction Contracts. In the event that the performance of services under the Agreement is deemed to be a “construction Agreement” pursuant to §725.06, Florida Statutes, as it may be amended from time to time, the following indemnification shall apply:

To the fullest extent permitted by Chapter 725, Florida Statutes, as it may be amended, the Contractor agrees to indemnify and hold harmless the City, its officers, employees, and assigns from liabilities, damages, losses, and costs including, but not limited to reasonable attorney fees, to the extent caused by the negligence, recklessness, or intentionally wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the provisions in the Agreement Documents. safety

20. Environmental Matters.

20.1 Defined Terms for Purposes of this Section.

**Environmental Condition** means any set of physical circumstances in, on, under, or affecting the Property that may constitute a threat to or endangerment of health, safety, property, or the environment, including but not limited to:

- (A) The presence of any hazardous Substance, except in such quantities and concentrations as are routinely found in nature or in products used in ordinary business or commercial activities;
- (B) Any underground storage tanks, as defined in Subtitle I of the Hazardous and Solid

Waste Amendments of 1984, 42 U.S.C. 6991 et. seq., or the regulations thereunder, for the storage of hazardous wastes, oil, petroleum products, or their byproducts;

(C) Any PCB, asbestos or any other substances specifically regulated under the Toxic Substances Control Act, 15 U.S.C. 2601 or regulations issued thereunder; and

(D) Any open dump or system of refuse disposal for public use without a permit, as prohibited by 42 U.S.C. 6945 and/or Florida law equivalent, or the regulations issued thereunder.

**Environmental Laws** means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq.; the Toxic Substances Control Act, 15 U.S.C. 2601 et. seq.; the Clean Water Act, 33 U.S.C. 1251 et seq.; the Clean Air Act, 42 U.S.C. 7401 et. seq.; the Oil Pollution Act, 33 U.S.C. 2701 et. seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et. seq.; the Refuse Act of 1989, 33 U.S.C. 407; the Occupational Safety and Health Act, 29 U.S.C. 651 et. seq., as such laws have been amended or supplemented from time to time, the regulations promulgated under these laws; and any analogous Governmental Requirements.

**Environmental Requirements** means all present and future Governmental Requirements, including without limitation, the Environmental Laws, authorizations, judgments, decrees, concessions, grants, orders, agreements or other restrictions or requirements relating to any Environmental Conditions or any Hazardous Substances on the Property.

**Hazardous Substance** means any substances or materials identified to be toxic or hazardous according to any of the Environmental Laws, including without limitation, any asbestos, PCB, radioactive substances, methane, volatile hydrocarbons, acids, pesticides, paints, petroleum based products, lead, cyanide, DDT, printing inks, industrial solvents or any other material or substance that has in the past or could presently or at any time in the future cause or constitute a health, safety or other environmental hazard to any person or property. The term Hazardous Substances includes hazardous wastes, hazardous substances, extremely hazardous substances, hazardous materials, toxic substances, toxic chemicals, oil, petroleum products and their by-products, and pollutants or contaminants as those terms are defined in the Environmental Laws.

**Environmental Permit** means any Governmental Approval required under any Environmental Law in connection with the ownership, use or operation of the Property for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances, or the sale, transfer or conveyance of the Property, and all supporting documentation thereof.

**Environmental Claim** means any accusation, allegation, notice of violation, claim, demand, abatement or other order or direction (conditional or otherwise) by any Governmental Authority or any person for personal injury (including without limitation, sickness, disease, or death), tangible or intangible property damage, damage to the environment, nuisance, pollution, contamination or other adverse effects on the environment, or for fines, penalties, or restrictions, resulting from or based upon:

(A) The existence or release, or continuation of any existence of a release (including without limitation, sudden or non-sudden, accidental or non-accidental leaks or spills) of, or exposure to, any substance, chemical, material, pollutant, contaminant, or audible noise

or other release or emission in, into or onto the environment (including without limitation, the air, ground, water or any surface) at, in, by, from or related to the Property; or  
(B) The environmental aspects of the transportation, storage, treatment or disposal of materials in connection with the activities on the Property; or  
(C) The violation, or alleged violation, of any Governmental Requirements relating to Environmental Requirements on the Property; but excluding any of violations arising solely from the intentional actions of the City and its agents.

20.2 Corrective Action Work means any and all activities of removal, response, investigation, testing, analysis, remediation taken to:

- (A) Prevent, abate or correct an existing or threatened Environmental Condition at, about, affecting, or affected by the Property; or
- (B) Comply with all applicable Environmental Requirements.

20.3 Environmental Indemnification. Contractor covenants and agrees, at its sole cost and expense, to defend (with counsel selected by Contractor, after consulting with the City), indemnify and hold harmless the City, its successors, and assigns from and against any and all Environmental Claims, whether meritorious or not, brought against the City by any Governmental Authority resulting from acts of the Contractor:

20.4 This indemnity includes, without limitation, indemnification against: all costs of removal, response, investigation, or remediation of any kind; all costs of disposal of such Hazardous Substances as necessary to comply with Environmental Laws; all costs associated with any Corrective Action Work; all costs associated with claims for damages to persons, property, or natural resources; any loss from diminution in the value of the Property; and the City's Attorneys' Fees, consultants' fees, court costs and expenses incurred in connection with any Environmental Claims brought against the City.

- (A) Contractor's indemnification of City is only for Environmental Claims which arise out of or are caused by actions or events occurring after the Effective Date of the Property Agreement.
- (B) This indemnification is to be interpreted as broadly as possible and is in addition to all other rights of the City under this Agreement.
- (C) Payments by Contractor under the Environmental Indemnification will not reduce Contractor's obligations and liabilities under any other provision of this Agreement.
- (D) Neither the Contractor nor the general contractor, nor any other contractor in privity with Contractor, has a duty to indemnify the City in connection with any Environmental Claims that are due to the negligent conduct of the City or its agents.
- (E) Compliance. Contractor agrees to comply with all existing and future federal, state, county, and municipal environmental laws, administrative code provisions, ordinances, rules and regulations, and the requirements of any development order covering the Property issued pursuant to Chapter 380, Florida Statutes, all as may be amended.

21. Insurance Requirements. The Contractor shall not commence Work under the Agreement until Contractor has obtained all insurance required under this Article. The Contractor shall not



allow any employee of Contractor or any Subcontractor to commence Work until all Coverages required have been obtained and approved by the Risk Manager of the City. In addition, Contractor shall be responsible for any and all policy deductibles and self-insured retentions.

**All Certificates of Insurance must clearly identify the Agreement to which they pertain, including a brief description of the subject matter of the Agreement.** The certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days' prior written notice has been given to City. If this coverage is not provided, then Contractor is responsible for providing such notice to City. Insurance policies for required coverages shall be issued by companies authorized to do business under the laws of the State of Florida and any such companies' financial ratings must be no less than A-VII in the latest edition of the "BEST'S KEY RATING GUIDE", published by A.M. Best Guide. In the event that the insurance carrier's rating shall drop, the insurance carrier shall immediately notify the City in writing.

Coverages shall be in force until all Work required to be performed under the terms of the Agreement is satisfactorily completed as evidenced by the formal written acceptance by the City. In the event insurance certificates provided to City indicate that the insurance shall terminate and lapse during the period of the Agreement, including any applicable warranty period, then in that event, the Contractor shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed Certificate of Insurance as proof that equal and like coverages for the balance of the period of the Agreement, including any extension of it, and including any applicable warranty period, is in effect. **THE CONTRACTOR SHALL NOT PERFORM OR CONTINUE WORK PURSUANT TO THE CONTRACT, UNLESS ALL COVERAGES REMAIN IN FULL FORCE AND EFFECT. ANY DELAY IN THE WORK CAUSED BY A LAPSE IN COVERAGE SHALL BE NON-EXCUSABLE, SHALL NOT BE GROUNDS FOR A TIME EXTENSION, AND WILL BE SUBJECT TO ANY OTHER APPLICABLE PROVISIONS DESCRIBED IN THE CONTRACT OR ELSEWHERE IN THE PROPOSAL DOCUMENTS CONCERNING CONTRACTOR DELAY.**

The below coverages are minimum limit requirements. Umbrella or Excess Liability policies are acceptable to provide the total required liability limits, as long as the Risk Manager of the City reviews and approves in writing the insurance limits on each of the policies. The City must approve any changes to these specifications and has the right to review and amend coverage requirements. The Contractor shall be held responsible for any modifications, deviations, or omissions in these insurance requirements. Contractor shall be responsible for any deductible amounts.

**GENERAL LIABILITY INSURANCE** is to include bodily injury, broad form property damage, products/completed operations, blanket contractual liability, and personal/advertising injury with limits of no less than One Million Dollars (\$1,000,000.00) per occurrence, and Two Million Dollars (\$2,000,000.00) annual aggregate.

**SPECIAL PROVISIONS AS TO GENERAL LIABILITY INSURANCE:  
(to be confirmed on or attached to the Official Certificate of Insurance)**

- The City of Dania Beach, Florida” is to be added as a named “Additional Insured”;
- Annual Aggregate shall apply “Per Job”
- Additional Insured status is included for Products completed operations coverage for a period of no less than five (5) years
- Additional insured coverage shall be no more restrictive than Insurance Services Office (ISO) form CG 2037 (-7 04);
- Contractor’s Insurance shall be primary and non-contributory
- Waiver of Subrogation in favor of the City
- 30 Days’ Notice of Cancellation or modification to City (if not available on the insurance policies, then Contractor has responsibility for notification);
- Copy of Additional Insured Endorsement or other endorsements may be attached to the Certificate.

**WORKERS’ COMPENSATION INSURANCE** shall be maintained by Contractor and any Subcontractors during the life of the Agreement, including any applicable warranty period(s), and it is to apply to all “statutory employees” of Contractor (as that phrase is defined by Chapter 440, Florida Statutes), in compliance with the “Workers’ Compensation Law” of the State of Florida and all applicable federal laws, for the benefit of the Contractor, its employees, and Subcontractors.

In the case any work is sublet as otherwise addressed in the Agreement or Bid Documents, the Contractor shall require any Subcontractors similarly to provide Workers’ Compensation Insurance for all of the latter’s employees, in addition to any coverage afforded by the Contractor, by furnishing statutory limits Part A, and Employers’ Liability Part B with limits of \$100,000.00 each accident, \$100,000.00 each employee and \$500,000.00 policy limit for disease.

IN NO EVENT SHALL THE CONTRACTOR BE PERMITTED TO UTILIZE IN THE PROSECUTION OF THE WORK, THE FOLLOWING:

- A) ANY EMPLOYEE, SUBCONTRACTOR OR SUBCONTRACTOR EMPLOYEE WHO IS EXEMPTED OR PURPORTED TO BE EXEMPT FROM WORKERS’ COMPENSATION INSURANCE COVERAGE; OR
- B) ANY EMPLOYEE, SUBCONTRACTOR OR SUBCONTRACTOR EMPLOYEES WHO WILL BE COVERED BY AN EMPLOYEE LEASING ARRANGEMENT.

SPECIAL PROVISIONS AS TO WORKERS’ COMPENSATION INSURANCE:  
(to be confirmed on or attached to the Official Certificate of Insurance)

- 30 Days’ Notice of Cancellation or modification to City (if not available on the insurance policies, then Contractor has responsibility for notification); and
- Waiver of Subrogation.

**AUTOMOBILE LIABILITY INSURANCE** shall be maintained with combined single limits of no less than One Million Dollars (\$1,000,000.00), to include coverage for owned, hired, and non-owned vehicles.

**SPECIAL PROVISIONS AS TO AUTOMOBILE LIABILITY INSURANCE (to be confirmed on or attached to the Official Certificate of Insurance):**

- A) “The City of Dania Beach” is added as a named “Additional Insured”;
- B) 30 Days’ Notice of Cancellation or modification to City (if not available on the insurance policies, then Contractor has responsibility for notification); and
- C) Waiver of Subrogation.

22. Assignment of Agreement. The Contractor acknowledges, understands and agrees that its performance under this Agreement is or may be contingent upon the City receiving timely services from other Contractors (the “Supporting Contractors”). The Contractor agrees to use its best efforts to coordinate its services with the services of the Supporting Contractors and further agrees that in the event the rendition of any services of any of the Supporting Contractors is delayed, such delay will not entitle the Contractor to any additional compensation or payment of any kind. Furthermore, the Contractor shall not be entitled to an increase in compensation, or be entitled to payment of any kind from the City, for damages or expenses incurred which are direct, indirect or consequential or other costs and lost profits of any kind including, but not limited to, costs of acceleration, inefficiency or extended overhead, arising because of any other delay, disruption, interruption, interference or hindrance from any cause whatsoever, whether such delay, disruption or interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by the Contractor for hindrances or delays caused solely by fraud, bad faith or active malicious interference on the part of the City. The Contractor shall only be entitled to extensions of time for performance as the exclusive and sole remedy for delay. In recognition of the fact that Contractor is not entitled to costs of acceleration arising out of the delays caused by Supporting Contractors, Contractor shall not be required to accelerate its services where delays have resulted from Supporting Contractors, unless the City agrees to compensate Contractor for such accelerated efforts.

23. Public Records Law. Contractor shall maintain books, records, documents and other evidence directly pertinent to performance of work under this Agreement in accordance with generally accepted accounting principles and practices. The Contractor shall also maintain the financial information and data used by the Contractor in the preparation of support of any claim for reimbursement for any out-of-pocket expense or cost. The City shall have access to such books, records, documents and other evidence for inspection, audit and copying during normal business hours. The Contractor will provide proper facilities for such access and inspection. Audits conducted under this section shall observe generally accepted auditing standards and established procedures and guidelines of the City. The Florida Public Records Act, Chapter 119 of the Florida Statutes, may have application to records or documents pertaining to this Agreement and Contractor acknowledges that such laws have possible application and agrees to comply with all such laws.

Upon request from the City custodian of public records, Contractor shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

#### 24. Retention Of Records And Right To Access

24.1 The Contractor shall preserve and make available all financial records, supporting documents, statistical records, and any other documents pertinent to the agreement for a period of **five (5) years** after termination or conclusion of the agreement, or if an audit has been initiated and audit findings have not been resolved at the end of these **five (5) years**, the records shall be retained by the City until resolution of audit finding.

The Contractor shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (5) years** from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The Contractor shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3) years** from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

24.2 Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City.

24.3 Upon completion of Work under this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the City Manager, at no cost to the City, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the City in a format that is compatible with the City's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

24.4 Any compensation due to Contractor shall be withheld until all records are received as provided in this Agreement.

24.5 Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.

#### 25. Section 119.0701(2)(a), Florida Statutes

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.**

**Custodian of Records:** ELORA RIERA  
**CITY CLERK**  
**Mailing Address:** 100 W. Dania Beach Boulevard  
Dania Beach, Florida 33004  
**Telephone number:** 954-924-9800, Ext. 3623  
**Email:** [eriera@daniabeachfl.gov](mailto:eriera@daniabeachfl.gov)

26. No Waiver. Failure of the City to insist upon strict performance of any provision or condition of this Agreement, or to enforce any right contained in it, shall not be construed as a waiver or relinquishment for the future of any such provision, condition or right, but the same shall remain in full force and effect.

27. Declaration of Default. The failure of the Contractor a) to supply enough properly skilled workers or materials, or b) its failure to make prompt payments to subcontractors, or for materials or labor, or c) to obey laws, ordinances, rules, regulations or orders of public agencies having jurisdiction, or d) to comply in any way with the Agreement Documents, shall be sufficient grounds for the City to find the Contractor in material default, and that sufficient cause exists to terminate the Agreement for cause, and to withhold payment or any part thereof until the cause or causes giving rise to the default has/have been eliminated by the Contractor and approved by the City. If a finding of default is made by the City, the Contractor and its Surety shall remain responsible for performance of the requirements of the Agreement Documents unless and until the City terminates the Agreement. Upon a finding of default, the City shall set a reasonable time, but in no event in excess of seven (7) calendar days after written notice from City detailing the default, within which the Contractor and its Surety shall eliminate the cause or causes of default. When the basis for finding of default no longer exists, the City shall notify the Contractor and its Surety, in writing, that the default has been corrected, and that the Contractor is no longer in default. If the Contractor fails to correct the default within the time allowed, the City, without further notice to Contractor or its Surety, may immediately terminate the Agreement and the employment of the Contractor, without otherwise waiving its rights against the Contractor or its Surety. To the extent that the time limits herein conflict with those set forth in the Performance Bond, the time limits in this section shall take precedence.

28. Termination Or Suspension Of Agreement

28.1 Termination By The Contractor:

A. The Contractor may terminate the Agreement if the Work is stopped for a period of thirty (30) days through no act or fault of the Contractor, Subcontractor, Sub-subcontractor, their agents or employees, or any other persons performing portions of the Work under the Agreement with the Contractor, for any of the following reasons:

1. issuance of an order of a court or other public authority having jurisdiction, and
2. an act of government, such as a declaration of national emergency, making material unavailable.

B. If one of the above reasons exists, the Contractor may, upon five (5) additional days' written notice to the City, terminate the Agreement and recover from the City payment for Work performed.

28.2 Termination By The City For Cause:

(A) The City may terminate the Agreement if the Contractor:

- (1) persistently or repeatedly refuses or fails to supply enough properly skilled workers, proper equipment, materials, or fails to adhere to the schedule established as adjusted from time to time pursuant to the terms of the Agreement;
- (2) fails to comply with laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction, including City;
- (3) commits any act or omission that evidences a lack of integrity or honesty or which reflects negatively on the City, including but not limited to the company of its owners, officers and agents being charged with any act of moral turpitude or any environmental violation;
- (4) fails to obtain or maintain all insurance Coverage required by the Agreement Documents; or
- (5) otherwise, is guilty of substantial breach of a provision of the Agreement or Agreement Documents; or
- (6) One or more of the following circumstances, uncorrected for more than thirty (30) days unless, within the specified 30-day period, Contractor (including its receiver or trustee in bankruptcy) provides to Department adequate assurances, reasonably acceptable to Department, of its continuing ability and willingness to fulfill its obligations under the Agreement: i. Entry of an order for relief under Title 11 of the United States Code; ii. The making by Contractor of a general assignment for the benefit of creditors; iii. The appointment of a general receiver or trustee in bankruptcy of Contractor's business or property; and/or iv. An action by Contractor under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation; or
- (7) If Contractor or its Surety(ies) do(es) not cure such failure within seven (7) calendar days from receipt of notification, or sooner if consideration of safety to persons is involved, or if Contractor or its Surety(ies) fails to provide satisfactory evidence that such default will be corrected, City may, without further notice to Contractor, terminate in whole or in part Contractor's right to proceed with work by written notice and prosecute

the Work to completion by Agreement or by any other method deemed expedient. City may take possession of and utilize any materials, plant, tools, equipment, and property of any kind furnished by Contractor and necessary to complete the Work.

(8) Contractor, and its sureties, shall be liable, jointly and severally, to City for all costs in excess of the Agreement price for such terminated work reasonably and necessarily incurred in the completion of the Work, as adjusted by Change Orders, if any, including cost of administration of any Agreement awarded to others for completion, plus Liquidated Damages.

(9) The commitment of any material breach of this Agreement by Contractor, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement; or

(10) Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Contractor by a state or other licensing authority; or

(11) Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Agreement; or

(12) Failure to maintain the insurance required by this Agreement.

28.3 Upon termination for default, Contractor shall:

(a) immediately discontinue work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of work terminated;

(b) inventory, maintain and turn over to City all materials, plant, tools, equipment, and property furnished by Contractor or provided by City for performance of work;

(c) promptly obtain cancellation upon terms satisfactory to City of all purchase orders, subcontracts, rentals, or any other agreements existing for performance of the terminated work or assign those agreements to City as directed;

(d) cooperate with City in the transfer of information and disposition of work in progress so as to mitigate damages;

(e) comply with other reasonable requests from City regarding the terminated work; and

(f) continue to perform in accordance with all of the terms and conditions of the Agreement such portion of work that is not terminated.

(g) When the City terminates the Agreement, the Contractor shall not be entitled to receive any further payment until the Work is completed and approved by the Engineer of Record.

(h) All damages, costs and charges incurred by City shall be deducted from any monies due or which may become due to Contractor. In case the damages and expenses so incurred by City shall exceed the unpaid balance, then Contractor shall be liable and shall pay to City the amount of such excess.

28.4 If, after Notice of Termination or Suspension of Contractor's right to proceed, it is determined for any reason that Contractor was not in default, the rights and obligations of City and Contractor shall be the same as if the Notice of Termination had not been issued, pursuant to the Termination for Convenience clause as set forth below.

28.5 Termination By The City For Convenience:

The Agreement may be terminated for convenience by City upon fifteen (15) days' advance written notice to Contractor and the Contractor's surety, if any (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, the Contractor shall be paid for all acceptable work performed prior to termination and shall not be entitled to any other costs, fees or payments. City may, at its option and convenience, terminate the Agreement, in whole or in part, at any time by written notice thereof to Contractor, whether or not Contractor is in default. Upon any such termination, Contractor hereby waives any claims for damages from the termination, including, without limiting the generality thereof, loss of anticipated profits on Work not performed on account thereof, home office overhead, lost bonding capacity, and consequential damages. As the sole right and remedy of Contractor, City shall pay Contractor in accordance with Subparagraphs below; provided, however, that those provisions of the Agreement, which by their very nature survive final acceptance under the Agreement, shall remain in full force and effect after such termination

- (a) Upon receipt of any such notice, Contractor and its Surety shall, unless the notice requires otherwise;
- (b) Immediately discontinue work on the date and to the extent specified in the notice.
- (c) Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the Agreement that is not terminated;
- (d) Promptly make every reasonable effort to obtain cancellation upon terms satisfactory to City of all orders and subcontracts to the extent they relate to the performance of work terminated;
- (e) If requested by the City in writing, assign to the City, all right, title and interest of the Contractor under the subcontracts terminated. Such Assignment shall not include assumption of Contractor's obligations or liabilities under any subcontract. The City shall have the right (but not the obligation) to assume the Contractor's obligations under any subcontracts assigned. Neither this paragraph or any assignment of subcontracts, shall constitute the City's assumption of Contractor's or other obligations under any such subcontract absent a written document executed by the City and the subcontractor in which the City expressly acknowledges an assumption of Contractor's obligations, and then only



to the extent specified. In no event will the City assume any obligation of the Contractor under the subcontracts that arise out of or relate to Contractor's default prior to such assignment;

- (f) The Contractor shall include in all subcontracts, equipment leases and purchase orders, a provision requiring the subcontractor, equipment lessor, or supplier, to consent to the assignment of their subcontract or purchase order to the City;
- (g) Assist City, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by City under the Agreement; and,
- (h) Complete performance of any work that is not terminated.
- (i) Upon any such termination, City will pay to Contractor an amount determined in accordance with the following (without duplication of any item):
- (j) All amounts due and not previously paid to Contractor for work completed in accordance with the Agreement prior to such notice, and for work thereafter completed as specified in such notice.
- (k) The reasonable cost of settling and paying claims arising out of the termination of work under subcontracts or orders.
- (l) The verifiable costs incurred prior to notice of termination.
- (m) Any other reasonable costs which can be verified to be incidental to such termination of Work, including demobilization costs.
- (n) In the case of such termination for City's convenience, Contractor shall be entitled to receive payment for Work actually executed, and verifiable costs incurred by reason of such termination, along with an amount not to exceed ten (10) percent for profit and overhead on such verifiable costs incurred.
- (o) The City's Termination for Convenience shall be without waiver or prejudice to, all of the City's claims, rights and remedies arising out of or related to any default, breach of Agreement, damages or other claims the City may have against Contractor, or Contractor's subcontractors, material suppliers of any tier, or any other person or entity at the time of termination or arising thereafter.
- (p) Contractor hereby acknowledges acceptance of the risk and cost of the foregoing and acknowledges and agrees to the foregoing limitation on Contractor's claims or damages arising out of, or relating to, a termination for convenience by the City.
  
- (q) Contractor shall submit within 30 calendar days after receipt of notice of Termination, for Convenience, a written proposal for payment, including all incurred costs and other entitlements described herein. City shall review, analyze, and verify such proposal, and negotiate an equitable adjustment, and the Agreement shall be amended in writing accordingly.

## 29. Suspension By The City For Cause

The City may order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as deemed necessary by the City, if the Contractor fails to maintain all insurance Coverage required by the Agreement Documents. Any delay in the Work caused by a lapse in Coverage shall be deemed non-excusable, shall not be grounds for a time extension, and shall be subject to any other applicable provisions in the Agreement and Agreement Documents concerning Contractor delay.

## 30. Suspension By The City For Convenience

(A) The City may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part, for such period of time as the City may determine, and the Contractor shall be entitled to an appropriate time extension, provided the suspension delays the critical path of the Work.

(B) If such suspension exceeds thirty (30) consecutive days, Contractor may also be entitled to an adjustment in the Agreement Sum for increases in the cost of performance of the Agreement resulting directly from the suspension, delay, or interruption, including reasonable profit on such increased cost; provided however, that no adjustment will be made to the extent:

- (1) that performance is, was, or would have been so suspended delayed, or interrupted by another cause for which Contractor is responsible;
- (2) that Contractor fails to adequately document the cost increase;
- (3) that the Contractor would have incurred the cost increase regardless of the suspension, delay, or interruption, or
- (4) that an equitable adjustment is made or denied under another provision of the Agreement or Agreement Documents.

## 31. Termination for Cause

If the Contractor fails to provide the services, or shall in any other manner commit a breach of the agreement and fails to remedy the same within five (5) calendar days after receipt of written notice from the City, the City may terminate the agreement, without any further notice to the Contractor. City representatives will review the construction services periodically to assure that the requirements of the agreement are being met. If any work is unsatisfactory, the Contractor shall be contacted, and the discrepancies corrected at no additional cost to the City. If deficiencies are not corrected within five (5) working days, the City may, at its option, perform the required services or contract to have them performed and deduct the cost of those services from the agreement cost.

### 31A. Receipt Of Notice Of Termination Or Suspension

Upon receipt of Notice of Termination or suspension, Contractor shall deliver or otherwise make available to City all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Agreement or Agreement Documents, whether completed or in process. Upon receipt of any such written notice, Contractor shall, unless the notice requires otherwise:

- (a) immediately discontinue work on the date and to the extent specified in the notice;
- (b) place no further orders or subcontracts for material, services, or facilities with respect to suspended work other than to the extent required in the notice;
- (c) promptly make every reasonable effort to obtain suspension, upon terms satisfactory to City, of all orders, subcontracts and rental agreements to the extent they relate to performance of work suspended;
- (d) continue to protect and maintain the Work including those portions on which work has been suspended, and
- (e) take any other reasonable steps to minimize costs associated with such suspension.

In addition to all amounts that would otherwise be due for Work performed prior to the suspension, as compensation for such suspension, Contractor will be reimbursed for the following verifiable costs (without profit) and without duplication of any item, to the extent that such costs directly result from such suspension of work:

- (a) standby charge to be paid to Contractor during the period of suspension of work which standby charge shall be sufficient to compensate Contractor for keeping, to the extent required in the notice, its organization and equipment committed to the Work in a standby status;
- (b) All reasonable costs associated with mobilization and demobilization of Contractor's plant, forces and equipment; and
- (c) An equitable amount to reimburse Contractor for the cost of maintaining and protecting that portion of the Work upon which work has been suspended.

32. Ownership of Documents. All correspondence, studies, data, analyses, documents, instruments, applications, memorandums and the like, including drawings and specifications prepared or furnished by Contractor (and any Subcontractor) pursuant to this Agreement shall become owned by and be the property of the City and the City shall consequently obtain ownership of them by any statutory law or common law and other reserved rights, including copyright; however, such documents are not intended or represented by Contractor to be suitable for reuse by City on extensions of the work or on any other work or project. Any such reuse, modification or adaptation of such document without written verification or permission by Contractor for the specific purpose intended will be at City's sole risk and without liability or legal exposure to Contractor or to any Subcontractors. If City alters any such documents, City will expressly acknowledge same so that no third party will be in doubt as to the creation or origination of any such document.

33. Force Majeure. Under any and all provisions of this Agreement, neither the City nor

Contractor, as the case may be, will be considered in breach of or in default of any of their respective non-monetary and monetary obligations under the Agreement as a result of an unavoidable delay due to strikes, lockouts, acts of God, inability to obtain labor or materials, riot, war, hurricane, tornado, weather related events or conditions, pandemics, epidemics, shutdowns due to government restrictions, utility company delays, or other similar causes beyond the commercially reasonable control of a party (in each case, an event of “Force Majeure”). Upon the occurrence of a Force Majeure, the applicable time-period will be extended for each day of the period of the Force Majeure event.

34. Remedies Cumulative. Waiver. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, are intended to be cumulative and concurrent. The exercise by either party of any one or more of its remedies will not preclude the exercise by a party, at the same or different times, of any other remedies for the same default or breach, or of any of its remedies for any other default or breach by the other party. The waiver by a party of any default or Event of Default under this Agreement will not extend to or affect any other existing or subsequent Event of Default, or impair any rights, powers, or remedies of a party in connection with any other default or Event of Default. A party’s delay or omission in exercising any right, power or remedy will not be construed as a waiver of any default or Event of Default or constitute acquiescence to the default.

35. Notices. Except as provided above, whenever either party desires to give notice to the other, it must be given by written notice, sent by certified U.S. mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

City: Ana M. Garcia, ICMA-CM, City Manager  
City of Dania Beach, Florida  
100 West Dania Beach Boulevard  
Dania Beach, Florida 33004

With a copy to: Eve A. Boutsis City Attorney  
City of Dania Beach  
100 West Dania Beach Boulevard  
Dania Beach, Florida 33004

Contractor:

36. Governing Law. The parties agree that this Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

37. Bankruptcy. It is agreed upon that if the Contractor is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective upon the date and at the time the bankruptcy petition is filed. Upon such filing of Bankruptcy, Contractor will automatically be in default of this Agreement and the provisions of Article 9 will be enforced at City's discretion.

## 38. Dispute Resolution

### 38.1 Claims And Disputes

A. The responsibility to substantiate a Claim shall rest with the party making the Claim. All Claims must be made in writing and addressed to the City and the Contractor.

B. Process for Resolving a Claim. The Contractor shall review the Claim and make a recommendation to the City. The City shall render a final decision regarding the Claim. A decision by the City shall be required as a condition precedent to litigation of a Claim between the Contractor and City as to all such matters arising prior to the date final payment is due, regardless of: 1) whether such matters relate to execution and progress of the Work; or 2) the extent to which the Work has been completed.

C. Time Limits on Claims. Claims by the Contractor must be made within thirty (30) days after occurrence of the event giving rise to such Claim or within thirty (30) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims by the Contractor or its respective subcontractors must be made by written notice to the City. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

D. Continuing Agreement Performance. Pending final resolution of a Claim, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Agreement and the City shall continue to make payments in accordance with the Agreement Documents.

E. Claims for Concealed or Unknown Conditions. If conditions are encountered at the Project site which are: 1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Agreement Documents; or 2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist in the locale of the Project site and generally not recognized as inherent in construction activities of the character provided for in the Agreement Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions. The Contractor shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, Contractor shall recommend to the Consultant, with the City's approval, an equitable adjustment in the Agreement Sum, Agreement

Time, or both. If the Consultant-determines that the conditions at the Project site are not materially different from those indicated in the Agreement Documents and that no change in the terms of the Agreement is justified, the Consultant shall so notify the City and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within twenty-one (21) days after the Consultant has given notice of the decision. If the Consultant and Contractor cannot agree on an adjustment in the Agreement Sum or Agreement Time, the adjustment shall be referred to the City for final determination.

F. Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Agreement Sum, written notice as provided in these Conditions shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Consultant believes additional cost is involved for reasons including but not limited to: 1) a written interpretation from the Contractor; 2) an order by the City to stop the Work where the Contractor was not at fault; 3) a written order for a minor change in the Work issued by the Contractor; 4) failure of payment by the City; 5) termination of the Agreement by the City; or 6) City's suspension of Work, then the Claim shall be filed in accordance with the procedure established in this Agreement.

G. Claims for Additional Time.

1. If the Contractor wishes to make Claim for an increase in the Agreement Time, written notice as provided in these Conditions shall be given. The Contractor's Claim shall include an estimate of cost and a probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

2. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

H. Injury or Damage to Person or Property. If either party to the Agreement suffers injury or damage to person or property because of an act or omission of the other party, or any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after first observance of the injury or damage. The notice shall provide sufficient detail to enable the other party to investigate the matter.

## 38.2 Resolution Of Claims And Disputes

A. The Contractor shall review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: 1) request additional supporting data from the claimant; 2) submit a schedule to the parties indicating when the Contractor expects to take action; or 3) suggest a compromise. The Consultant may, at the City's direction,

notify the surety, if any, of the nature and amount of the Claim. The Contractor shall notify the City or the Claimant. The City shall make the final determination of whether to pay or dispute the Contractor's Claim.

B. If a Claim has been resolved, the Contractor shall prepare or obtain appropriate documentation.

C. If a Claim has not been resolved, the party making the Claim shall, within ten days (10) after the Contractor preliminary response, take one or more of the following actions: 1) submit additional supporting data requested by the Contractor; 2) modify the initial Claim; or 3) notify the Contractor that the initial Claim remains valid.

D. The Contractor shall notify the parties in writing of the City's decision within seven days of receipt of: 1) additional supporting data; 2) a request to modify the initial Claim; or 3) that the initial Claim stands and the City's decision shall be final and binding on the parties but subject to review by a court of competent jurisdiction. The Contractor shall prepare or obtain appropriate documentation regarding the Claim. If there is a surety and there appears to be a possibility of a Contractor's default, the Contractor may, at the City's direction, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

38.3 All claims, counterclaims, disputes and other matters in question between City and Contractor arising out of, relating to or pertaining to this Agreement, the breach of it, the services of it, or the standard of performance required in it, shall be addressed by resort to non-binding mediation as authorized under the laws and rules of Florida; provided, however, that in the event of any dispute between the parties, the parties agree to first negotiate with each other for a resolution of the matter or matters in dispute and, upon failure of such negotiations to resolve the dispute, the parties shall resort to mediation.

39. Venue; Fees.

39.1 If mediation is unsuccessful, any such matter may be determined by litigation in a court of competent jurisdiction in Broward County, Florida, or the Federal District Court of the Southern District of Florida and appropriate appellate courts for such venue and jurisdiction. To be clear, should mediation fail, all claims, counterclaims, disputes and other matters in question between City and Contractor arising out of, relating to or pertaining to this Agreement, or the breach of it, or the services of it, or the standard of performance required in it, shall be addressed by resort to non-binding mediation as authorized under the laws and rules of Florida. **IN ANY LITIGATION, THE PARTIES AGREE TO EACH WAIVE ANY TRIAL BY JURY OF ANY AND ALL ISSUES. THE PARTIES UNDERSTAND AND AGREE THAT THIS WAIVER IS A MATERIAL AGREEMENT TERM.**

39.2 Operations During Dispute. In the event that a dispute arises between the City and the Contractor relating to this Agreement, or its performance or compensation, the Contractor agrees to continue to render services in full compliance with all terms and conditions of this Agreement as required by the City.

40. Legal Representation. It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement.

41. Prevailing Party's Attorneys' Fees. If either party institutes legal proceedings in connection with the Agreement, the prevailing party will be entitled to recover its costs of suit, including without limitation, its Attorneys' Fees.

42. Headings. Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

43. Exhibits. Each exhibit referred to in this Agreement forms an essential part of this Agreement and each such exhibit is incorporated by this reference.

44. Severability. If any provision of this Agreement or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

45. All Prior Agreements Superseded. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written.

46. Independent Contractors. Contractor, any Subcontractors and their respective employees and agents shall be and remain independent Contractors and not employees of City with respect to all of the acts and services performed under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties to this Agreement. All agents, employees and Subcontractors of the Contractor retained to perform services pursuant to this Agreement shall comply with all laws of the United States concerning work eligibility.

47. The Contractor understands and agrees that the City, during any fiscal year, is not authorized to expend money, incur any liability, or enter into any Agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year and that any Agreement, verbal or written, made in violation of this subsection is null and void and that consequently, no money may be paid on such Agreement beyond such limits. Nothing contained in this Agreement shall prevent the making of contracts for periods exceeding one (1) year, but any Agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Contractor shall not proceed with services under this Agreement without City's written verification that the funds necessary for Contractor compensation and other necessary



expenditures are budgeted as available within the appropriate fiscal year budget.

48. Contractor warrants and represents that no elected official, officer, agent or employee of the City has a financial interest, directly or indirectly, in this Agreement or the compensation to be paid under it and, further, that no City employee who acts in the City of Dania Beach as a “purchasing agent” as defined in Chapter 112, Florida Statutes, nor any elected or appointed officer of the City of Dania Beach, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the Contractor and, further, that no such City employee, purchasing agent, City elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the Contractor. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the Contractor.

49. Contractor shall comply with all federal, state and City laws applicable to the Contractor services and specifically those covering Equal Opportunity Employment, the Americans with Disabilities Act (“ADA”) eligibility to perform services as specified in the Florida Public Entity Crime law and the Florida Building Code. The Contractor is expected to fully comply with all provisions of all laws and the City reserves the right to verify the Contractor’s compliance with them. Failure to comply with any laws will be grounds for termination of the Agreement for cause.

50. In the event of any conflict between any provisions of this Agreement and any provision in any attached Exhibit, the parties agree that the provisions of this Agreement are controlling (including, but not limited to, all terms and provisions governing compensation). Further, any prior Agreement related to the services is rescinded and replaced by this Agreement.

51. Contractor agrees to perform its obligations under this Agreement in accordance with the degree of skill and care exercised by multimedia Contractors performing similar services under similar conditions. Contractor makes no other representations and no warranties, whether express or implied, with respect to the quality of its performance under this Agreement.

52. Sovereign Immunity. Contractor acknowledges that the Florida Doctrine on Sovereign Immunity bars all claims by Contractor against the City other than claims arising out of this Agreement. Specifically, the Contractor acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Agreement. Further, the Contractor recognizes the City is a sovereign with regulatory authority that it exercises for the health, safety, and welfare of the public. This Agreement in no way estops or affects the City's exercise of that regulatory authority. In addition, the City retains the full extent of its sovereign immunity in relation to the exercise of its regulatory authority. The Contractor acknowledges that it has no right and will not make claim based upon any of the following:

A. Claims based upon any alleged breach by the City of implied warranties for representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the Contractor. All obligations of the parties are only as set forth in this Agreement;

- B. Claims based upon negligence or any tort arising out of this Agreement;
- C. Claims upon alleged acts or inaction by the City, its commissioners, attorneys, administrators, Contractors, agents, or any Contractor employee;
- D. Claims based upon an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by an authorized representative for the City and Contractor.

53. Financial records. The Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. Contractor shall maintain adequate records to justify all charges and costs incurred in performing the services for at least three (3) years after completion of this Agreement. Contractor agrees that the City, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to this Agreement during normal business hours. All such materials shall be maintained by Contractor at a location in Broward County, Florida; provided that if any such material is located outside Broward County, then, at the City's option the City shall pay Contractor for travel, per diem, and other costs incurred by Contractor to examine, audit, excerpt, copy or transcribe such material at such other location. The City shall make a reasonable effort to maintain the confidentiality of such audit report( s).

54. Scrutinized Companies. Contractor shall certify that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2018), and that it is not engaged in a boycott of Israel. The City may terminate this Agreement at the City's option if Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2018), as may be amended or revised, or been placed on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2018), as may be amended or revised, or is engaged in a boycott of Israel.

55. Verification of Employment Eligibility. Contractor represents that Contractor and each Subcontractor has registered with and uses the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If Contractor violates this section, Municipality may immediately terminate this Agreement for cause and Contractor shall be liable for all costs incurred by Municipality due to the termination.

56. Successors And Assigns. The City and the Contractor each binds itself, its officers, directors, qualifying agents, partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Agreement. Contractor shall not assign, transfer, convey or otherwise hypothecate the Agreement or its right, title or interest in or to the same or any part thereof, or allow legal action to be brought in its name for the benefit of others, without previous written consent of the City, and concurred with by the Contractor's Surety. Contractor acknowledges that the City has entered into this Agreement

with Contractor after a comprehensive competitive award process, and evaluation of Contractor's particular qualifications and skills to perform the Work. Therefore, Contractor agrees that the City may withhold the consent to assignment referred to herein for any reason the City deems appropriate, in its sole and exclusive discretion.

57. Time is of the Essence. Time is of the essence in the performance of all obligations of each party under this Agreement.

58. No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Agreement is intended or is to be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners or creating or establishing the relationship of a joint venture between the City and Contractor, or as constituting Contractor as the agent or representative of the City for any purpose or in any manner whatsoever.

59. Recording; Documentary Stamps. A memorandum of this Agreement, in the form attached as Exhibit H, will be recorded by the City in the Public Records of Broward County, Florida. The cost of recording, and the cost of any required documentary stamps, will be paid in full by the City. The parties will cooperate in structuring the transactions contemplated by this Agreement to reduce such costs, provided the structure does not have any adverse consequence for the City.

60. Governing Law. This Agreement will be governed by the laws of the State of Florida. This Agreement is subject to and must comply with the Charter and City Code of the City of Dania Beach, as they exist on the date of execution of the Agreement. Any conflicts between this Agreement and the Charter and City Code will be resolved in favor of the City's Charter. Venue for any disputes arising out of this Agreement and for any actions involving the enforcement or interpretation of this Agreement will be in the State courts of the 17<sup>th</sup> Judicial Circuit of Broward County, Florida.

61. Third Party Beneficiaries. Neither Contractor nor City intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

62. Negotiated Agreement. Both parties have substantially contributed to the drafting and negotiation of this Agreement and this Agreement shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other. The parties hereto acknowledge that they have thoroughly read this Agreement, including all exhibits and attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

63. Incorporation by Reference. The truth and accuracy of each "Recital" clause set forth above is acknowledged by the parties. The attached Exhibits to this Agreement are incorporated into and made a part of this Agreement and all exhibits subsequently attached to this Agreement pursuant to the terms hereof shall be deemed incorporated into and made a part of this Agreement.

64. Conflicts of Interest: City Representatives not Individually Liable. No elected official, representative, or employee of the City has any personal interest, direct or indirect, in this Agreement. No elected official, representative or employee will participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she has an interest, directly or indirectly. No elected official, representative or employee of the City will be personally liable to Contractor or any successor in interest for any amount which may become due to Contractor, for any obligations of City under the Agreement, or in the event of any default or breach by the City.
65. Section. Section headings are for convenience only and do not affect the interpretation of this Agreement.
66. Counterparts. This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument. This Agreement is effective only after execution and delivery by the parties.
67. Entire Agreement. This Agreement (including the Exhibits) constitutes the sole agreement of the parties with respect to its subject matter. It supersedes any prior written or oral agreements or communications between the parties.
68. Amendments. No amendment to this Agreement is binding on either party unless in writing and signed by both parties. The City is not obligated to spend any money or undertake any obligation in connection with an amendment proposed by Contractor. If Contractor requests an amendment to the Agreement or any other action by City, Contractor must reimburse City for all third-party costs incurred by City (including but not limited to costs of third-party consultants and attorneys). Before the City takes action regarding any request, Contractor must deposit with the City the estimated amount of third-party costs, as reasonably determined by the City.
69. Holidays. The parties agree that whenever a notice or performance due under the Agreement falls on a Saturday, Sunday or on a legal holiday recognized by the City, the notice or performance will be postponed to the next following business day.
70. Other governmental entities may elect to purchase the goods and services specified in this Agreement, which shall be made available upon the same terms and conditions as those specified in this Agreement.
71. Survival. A termination of the Agreement will not release Contractor from its obligation to indemnify City for any acts which occurred prior to the termination of the Agreement, unless otherwise agreed upon by City and Contractor or by judicial decree. Upon termination or expiration of this Agreement, the Contractor shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration, unless relieved of such obligation or liability by action of a court or rule of law.

DRAFT

**IN WITNESS OF THE FOREGOING**, the parties have set their hand and seal the day and year first written above.

ATTEST:

**CITY OF DANIA BEACH, FLORIDA,  
a Florida municipal corporation**

\_\_\_\_\_  
THOMAS SCHNEIDER, CMC  
CITY CLERK

\_\_\_\_\_  
ARCHIBALD J. RYAN IV  
MAYOR

APPROVED AS TO FORM  
AND CORRECTNESS

\_\_\_\_\_  
EVE A. BOUTSIS  
CITY ATTORNEY

\_\_\_\_\_  
ANA M. GARCIA, ICMA-CM  
CITY MANAGER

DRAFT

**WITNESSES:**

**CONTRACTOR:**

\_\_\_\_\_

**SIGNATURE**

\_\_\_\_\_  
**PRINT Name**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINT Name**

\_\_\_\_\_

**SIGNATURE**

\_\_\_\_\_  
**PRINT Name**

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

STATE OF FLORIDA)  
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, on \_\_\_\_\_, 2023 by \_\_\_\_\_ . He/she is personally known to me or has produced \_\_\_\_\_ as identification.

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Name