



CITY OF WEST PALM BEACH
Procurement Division
401 Clematis Street
West Palm Beach, FL 33401
Tel: 561-822-2100
Fax: 561-822-1564

INVITATION TO BID

Construction

ITB 25.26.117 SS

Pilgrim Road and Plymouth Road Utilities Improvements

Project Nos. 51999941/32399875

The City of West Palm Beach ("City") is accepting bids from experienced, qualified and responsible contractors to construct water main and gravity sanitary sewer main replacement, drainage installation, roadway restoration, curb, gutter and sidewalk restoration as shown in the construction drawings and described in the technical specifications for the Project.

Solicitation documents may be acquired electronically and free of charge by registering and logging onto the City's third-party website, *DemandStar* at: <https://network.demandstar.com/for-business>. The solicitation and any addenda posted by the City on *DemandStar* are the only official procurement documents. The City does not post procurement solicitations on other third-party sites and is not responsible for the content posted on any third-party site other than *DemandStar*.

Time is of the essence and any Bid received after **3:00 pm, June 2, 2026**, whether by mail or otherwise, will be rejected. Bidders are responsible for ensuring their Bid is time-stamped by Procurement personnel by the deadline. The City shall not be responsible for any delays caused by any occurrence. **Bidders shall submit one (1) original, one (1) electronic version on a USB flash drive and one (1) copy of the bid in a sealed envelope, marked in the lower left-hand corner with the Bidder's name, solicitation number, title, submittal deadline date and time.**

IMPORTANT: Contact by a Bidder (or anyone representing a Bidder) regarding this solicitation with the Mayor, any City Commissioner, officer, or City employee other than an employee of the West Palm Beach Procurement Division is grounds for disqualification.

Publish Date: April 24, 2026, DemandStar

Sharon Sepulveda, CPPB
Procurement Supervisor

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ITB SCHEDULE

The Procurement Division may change any of these dates or times, as it deems necessary. All times are local time, West Palm Beach, Florida.

Final Questions Due	May 14, 2026
Bid Submittal Deadline	June 2, 2026, at 3:00 p.m. Procurement Division West Palm Beach City Hall 401 Clematis Street – 5th Floor West Palm Beach, FL 33401
Public Bid Opening	
Date & Time	June 2, 2026, at 3:00 p.m.
Location	West Palm Beach City Hall 401 Clematis Street, 5th Floor, Room 519 West Palm Beach, FL 33401

PROCUREMENT CONTACT

Questions or requests for information regarding this solicitation, should be addressed only to:

City of West Palm Beach
Procurement Division – 5th Floor
401 Clematis Street – City Hall
West Palm Beach, FL 33401

Sharon Sepulveda, Procurement Supervisor

Email: procurement@wpb.org
Direct: 561.494.1056
Main: 561.822.2100
TTY: 800.955.8771

ITB 25.26.117 SS
Pilgrim Road and Plymouth Road Utilities Improvements
Project No. 51999941/32399875

PROJECT SCOPE

The City of West Palm Beach ("City") is accepting bids from experienced, qualified and responsible contractors to furnish and assume full responsibility for all labor, materials, equipment, machinery, tools, transportation, delivery, disposal of waste and surplus material, appliances, fuel, power, light, telephone, water, sanitary facilities, temporary facilities and all other appurtenances and incidentals necessary for the furnishing, performance, testing, start-up and successful completion of the Work as shown on the Construction Drawings and associated Technical Specifications, including the costs for all supervision, servicing, taxes, bonds and insurance, permitting fees, traffic control, security, miscellaneous costs, warranties, general conditions, overhead and profit for the complete and proper replacement of water mains and gravity sanitary sewer mains, drainage installation, roadway restoration, curb, gutter and sidewalk restoration, preparation and implementation of maintenance of traffic plan(s), coordination with franchise utilities, and traffic engineering.

The City intends to award one contract.

GENERAL PROJECT INFORMATION

Location: The Project is located on Plymouth Road and Pilgrim Road within the Southend Neighborhood Association (SENA), West Palm Beach, Florida 33405.

Self-Performance Requirement: The selected Contractor shall be required to commit to and self-perform twenty-five percent (25%) of the Work (labor) on the Project.

Construction Drawings and Technical Specifications:

Construction Drawings prepared by Craven Thompson and Associates, Inc. titled "Pilgrim Road and Plymouth Road Utilities Improvements 100% Set City of West Palm Beach, Palm Beach County, Florida, City Project #51999941", dated January 2026, set forth in Exhibit A-Construction Drawings.

Technical Specifications prepared by Craven Thompson and Associates, Inc. titled "City of West Palm Beach Pilgrim Road and Plymouth Road Water, Sewer and Drainage Improvements", dated April 2026, set forth in Exhibit B-Technical Specifications.

Project Background:

Plymouth Road is a collector street with a fifty (50) foot-wide public road right-of-way that runs east and west between South Olive Avenue and South Flagler Drive. The existing driveways within the Project limits are in fair condition. Privacy hedges are in the parkway areas along both sides of the street. Pilgrim Road is a dead-end residential street, also with fifty (50) foot wide public road right-of way that runs east and west with public access from South Olive Avenue. The Right-of-Way limits are, in general, from the back of the existing north and south sidewalks. The existing sidewalk (four (4) feet wide), and driveways within the Project limits are in fair condition. Palm trees are in the parkway areas along both sides of the street, refer to Figure 2 Pilgrim Road and Plymouth Road, looking east from South Olive Avenue.

The estimated project budget is approximately \$2,876,800.

Figure 1. Pilgrim and Plymouth Rd, Project Location Map



The existing water mains on Pilgrim and Plymouth Road are both near the north edge of pavement on the respective streets. Available record information indicates that the three (3) inch transit water main on Pilgrim Road was installed in the 1940's and Plymouth Road in the 1960's. All water services are copper.

Per a geotechnical engineering report performed on Pilgrim Road in July 2022, the water table was found at a depth of six (6) feet and six point three (6.3) feet below ground surface in Borings B-1 and B-2.

Figure 2. Pilgrim Road and Plymouth Road, looking east from South Olive Avenue.



Plymouth Rd



Pilgrim Rd

Project Description:

The following Project description is for general information only and should not be construed to be a complete description of all Work required. Reference should be made to the construction drawings and technical specifications, along with the General Conditions. The Work to be completed shall generally include, but not be limited to, the following:

1. Install approximately one thousand eight hundred thirty-two (1,832) linear feet of eight (8) inch ductile iron pipe and five (5) linear feet of six (6) inch ductile iron pipe, removal and proper disposal/abandonment in place of the existing water main and connect to the existing water distribution system. The Work includes pigging and flushing, pressure testing of newly installed water main, bacteriological testing, water service installations, trench restoration, mill and resurfacing, protection and support of existing utilities.
2. Install approximately one thousand twenty-three (1,023) linear feet of twelve (12) inch PVC and five hundred ninety-three (593) linear feet of eight (8) inch PVC gravity sewer including sanitary sewer laterals, remove and properly dispose of the existing sanitary sewer pipe. Connect to existing sewer manholes. The work includes dewatering, lamping, post CCTV, trench restoration, mill and resurfacing, protection and support of existing utilities, clean-out installations, and rehabilitation of existing sanitary sewer manholes. Alternate to perform re-route of sewer lateral service, rear to front on twenty-five (25) private property.
3. Install approximately six hundred seventy-two (672) linear feet of fifteen (15) inch RCP and forty (40) LF of twelve (12) inch reinforced concrete pipe storm pipe, including manholes and other drainage structures. Remove and properly dispose of the existing stormwater pipe. Connect to existing storm sewer manholes. The Work includes dewatering, lamping, post CCTV, trench restoration, mill and resurfacing, protection and support of existing utilities. Rehabilitation of existing storm manholes.

CONTRACTOR'S RESPONSIBILITIES

1. The Contractor is responsible for visiting the Project site and familiarizing himself/herself with the existing Project conditions and Project requirements prior to submitting his/her bid.
2. The Work shall cause minimal disruption and be performed in an expedited, highly coordinated manner by the Contractor.
3. The Contractor is responsible for documenting the existing site conditions via taking photographs and pre and post construction videos. Pre and post construction videos and photographs shall be submitted to the designated City Project Manager. Contractor agrees the City is, and will remain, the sole and exclusive owner of all right, title, and interest, throughout the world, to all pre and post construction videos, photographs and any copies of the pre and post construction videos and photographs. The City reserves all rights and licenses to all pre and post construction videos and photographs not expressly granted herein. Contractor shall not duplicate or utilize pre and post construction videos and photographs without prior specific written authorization from the City.
4. The Contractor will be responsible for maintenance of traffic to provide access to private properties at all times during construction.
5. Contractor shall always exercise good housekeeping during the progress of the Work.
6. The Contractor shall be responsible for timely notification to all residents who will be inconvenienced during the work. Notification shall be given at least forty-eight (48) hours in advance via flyers/door hangers.
7. The Contractor shall be responsible for field verification to determine the location of all existing utilities within the Project limits, whether shown on the construction drawings or not. The Contractor shall protect and support all existing utilities and comply with the Trench Safety Act where applicable.
8. The Contractor is responsible to verify the material and diameter/size of all existing pipes included in the Scope of Work before ordering any materials (lining, inline valves, pipes, etc.).
9. The Contractor is responsible for maintaining uninterrupted service to existing utilities. Contractor shall timely coordinate with existing utility providers to adjust existing utilities, as applicable, to avoid conflicts to execute the Work, where possible.
10. The Work shall be complete in place, ready for continuous service, and shall include any repairs, replacement and/or restoration required because of damages caused during this construction. The Contractor shall restore all areas altered due to execution of the Project.
11. Execute the Work in accordance with applicable City requirements and ordinances (noise, construction hours, dust control, etc., including the latest City Standard Construction Details found at: <https://www.wpb.org/Departments/Engineering/Engineering-Standards-Details> and latest City Approved

Material List found at: <https://www.wpb.org/Departments/Engineering/Engineering-Forms-Permits-and-Applications>.

12. The Contractor is responsible for obtaining all required permits and complying with all requirements and permit conditions to execute the Work including, but not limited to, the City of West Palm Beach Right of Way permit, and **any applicable** South Florida Water Management District (SFWMD), Florida Department of Environmental Protection (FDEP), Army Corps of Engineers (ACOE) and/or any other related regulatory permit.
13. The Contractor shall furnish all materials, equipment and labor which is reasonably and properly inferable and necessary for the proper completion of the Work, whether specifically indicated in the Contract Documents or not.

CONTRACT TERMS

In the event of conflict with the Standard Terms and Conditions of this ITB, the Contract Terms will control and supersede the Standard Terms.

Construction General Conditions. The City's standard construction General Conditions applicable to the Project are contained in this ITB and shall be part of the Contract, except as may be modified by the provisions of this Section.

Construction Bond. Refer to General Condition 13.

Required ☒ Not Required ☐

In accordance with Florida Statutes, Sec. 255.05, if construction bond is required, within ten (10) days of receipt of the fully executed Contract, Contractor will record the required public construction bond with the Clerk of the Court in the Public Records of Palm Beach County and provide a certified copy of the recorded bond to Owner prior to commencing Work and submittal of first invoice. Receipt by City of a copy of the recorded bond will be required before Notice to Proceed will be issued.

Time of Completion. Refer to General Condition 11. The Work to be performed under this Project shall commence on the date of Notice to Proceed (NTP). The Work shall be substantially completed and then fully completed within the time periods indicated below, with such extensions of time as are provided for in the General Terms and Conditions.

Substantial Completion: **ONE HUNDRED EIGHTY (180)** calendar days after NTP.

Final Completion **TWO HUNDRED TWENTY FIVE (225)** calendar days after NTP, but not less than 45 days from Substantial Completion.

Liquidated Damages. Refer to General Condition 19. If said Work is not completed within the specified times, the Contractor shall be liable and hereby agrees to pay to City as liquidated damages, and not as a penalty, the sum indicated below for each and every day or part of a day thereafter that said Work remains incomplete.

TWO THOUSAND SIX HUNDRED SIXTY SEVEN DOLLARS (\$2,667) per calendar day for each day or part of a day after scheduled substantial completion that Substantial Completion is not achieved.

TWO THOUSAND SIX HUNDRED SIXTY SEVEN DOLLARS (\$2,667) per calendar day for each day or part of a day after scheduled final completion and Final Completion is not achieved.

Insurance. Refer to General Condition 15 for insurance requirements, unless a modification to such requirements is listed below:

E-Verify.

a) In compliance with Section 448.095, Fla. Stat., Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of new employees hired by Contractor during the term of this Contract. Contractor shall require all subcontractors performing services under this Contract to verify the employment eligibility of new employees hired by the subcontractor during the term of this Contract. Contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this Contract.

b) The City, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Contractor acknowledges that upon termination of this Contract by City for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the City as a result of termination of any contract for a violation of this section.

c) Contractor or its subcontractor shall insert in any subcontracts the clauses set forth in this section and shall require subcontractors to include these clauses in any lower tier subcontracts.

Local Workforce Participation. In accordance with Sec. 66-76 of the City's Code of Ordinances, City construction contracts for utility work and road and right-of-way work with a contract price in excess of \$200,000 and with an on-site labor component greater than or equal to 25% of the contract value, shall have local workforce participation of 15%, unless not applicable per Sec. 255.0991 Fla. Stat. or federal or grant funding source. **N/A.**

☐ (Applicable if checked) N/A % on-site labor requirement – 15% from local workforce.

If applicable, 15% of the on-site labor shall be residents of the City of West Palm Beach (not mailing address). Local workforce participation may include employees of both the contractor and its subcontractors to meet the requirement. The city residency of the onsite labor component will be subject to verification by the city.

Job Fair. For applicable contracts with a contract price over \$1,000,000, the contractor shall be required to hold one job fair within the city for the purpose of encouraging local workforce participation.

Subcontractor Utilization Reporting Form & Updated Construction Timeline. The Contractor will complete the Subcontractor Utilization reporting form and submit such form with each submittal of its Payment Application to the City. The Subcontractor Utilization Report shall include all subcontractors and suppliers providing services and or materials for this Contract.

Contractor shall provide an updated schedule with each submittal of a Payment Application to the City. The updated schedule will show the baseline and the current status of each Work item.

Waiver of Chapter 558, Florida Statutes. Pursuant to Section 558.005(1), Contractor and City agree to opt out of the requirements of Chapter 558, Florida Statutes.

Additional Contract Terms. N/A.

PROCUREMENT TERMS

CONTACT PROHIBITED. No person, firm, or corporation, may lobby or contact the Mayor, any City Commissioner, officer, city employee or agent, other than an employee of the WPB Procurement division or the Office of Small Business Programs regarding a solicitation for the procurement of goods, services, or construction services. Contact shall mean any form of communication or interaction seeking to influence the selection or award of a contract, including instigation of an organized effort or mass communication, by a bidder, potential bidder or representative of a bidder.

Contact with the Office of Small Business Programs shall be for equal opportunity purposes only. The only permissible contact regarding a procurement solicitation shall be with the Procurement Official, procurement staff, or with the evaluation committee at a duly noticed public meeting.

ANY VIOLATION OF THIS PROVISION IS GROUNDS FOR DISQUALIFICATION.

This condition is in effect from the date of publication of this solicitation and shall remain in effect until the City executes a contract or otherwise takes action which ends the solicitation process for the services under this solicitation.

Pre-Bid Conference. Refer to the solicitation scheduled to determine if a pre-bid conference is scheduled.

If scheduled, a pre-bid conference will provide potential bidders the opportunity to ask questions and receive clarification concerning the Project and to emphasize safety factors, hazards, or potential interference of other projects. If a pre-bid conference is scheduled, attendance is strongly encouraged. If a site inspection is scheduled it will be the only opportunity to inspect the Project site and attendance is recommended as no individual appointments will be made.

Please bring your copy of the Invitation to Bid to the pre-bid conference.

In accordance with the Americans with Disabilities Act, any person who believes he or she has a disability requiring the use of a special accommodation at either the scheduled site inspection, pre-bid conference or bid opening should contact the Procurement Department at 561-822-2100, at least five (5) days prior to the event to advise of his/her special requirements.

Permits and Fees. In accordance with the Public Bid Disclosure Act, the Contractor will be required to make payment to the City of West Palm Beach for the following permits or licenses, impact, inspection or other fees for this Project under the Contract: (F.S. 218.80)

<u>Permit</u>	<u>Fee/Amount or calculation</u>
Right of Way Permit	Refer to City Website (wpb.org) for current permit fees.
https://www.wpb.org/government/engineering/engineering-forms-permits-and-applications	

Other governmental entities that may require additional permits or fees include: South Florida Water Management District (SFWMD), FDEP, and U.S. Army Corps of Engineers (USACE).

<https://www.sfwmd.gov/document/form-0445-miningdewatering-permit-application-0>

Licenses. The Bidder must have at the time of bid submittal a current State of Florida Underground Utility and Excavation Contractor license.

Any subcontractor(s) that will perform excavation and/or mechanical pipeline work must have at the time of bid submittal a State of Florida Underground Utility and Excavation Contractor license.

Business Tax. The Bidder will also be required, at the time of contract execution, to have a business tax receipt or certificate of registration.

Bid Equalization. If the estimated construction value is not less than \$25,000 and not more than \$500,000, then the Contractor awarded the contract must be the Small Business prime bidder that is determined to be the best

value for the City, so long as the bid of the Small Business prime bidder does not exceed the bid of the Contractor otherwise providing the best value to the City by more than three percent (3%). Bid equalization will not apply to: (i) contracts let under the sheltered market program; or (ii) when all bids received are from Small Business prime contractors; or (iii) when otherwise prohibited by federal, state or grant requirements (based on funding source).

Direct Purchase. The City/Owner may, in its discretion, decide to directly purchase specific equipment or materials included in the Contractor's bid in order to achieve sales tax savings. A change order will be issued to reduce the contract price for the direct purchase(s). Contractor will approve the material quantities and prices for the Purchase Order issued. Materials will be shipped as directed by the Contractor. Contractor will be responsible for storing and protection all direct purchase items. The direct purchase of materials and/or equipment by City/Owner does not relieve the Contractor of the responsibility to ensure that the equipment and material so purchased meets the specifications required for the work/project. All direct purchase equipment and materials shall be subject to the same warranties as any materials or equipment purchased or provided by Contractor.

Service Disabled Veteran Business Enterprise. When considering two or more qualified bids, and at least one of which is from a certified service-disabled veteran business enterprise, as defined in Fla. Stat. Sec. 295.187, and such bid is equal with respect to all relevant considerations, including price, quality and service, such contract shall be awarded to the certified service-disabled veteran business enterprise.

Federal Labor / Employment Laws. In accordance with Fla. Stat. Sec. 255.20, any Bidder may be considered ineligible to bid by the City if the Bidder has been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 years.

Social, Political or Ideological Interests. Pursuant to Sec. 287.05701, Fla. Stat., the City may not request documentation or consider a Bidder's social, political or ideological interests when determining if a Bidder is a responsible.

Volume of Construction Work. Pursuant to Sec. 255.0992, Fla. Stat., when evaluating bids for a public works project, a bidder may not be penalized for performing a larger volume of construction work or reward a bidder for performing a smaller volume of construction work for the City or its agencies.

Public Entity Crimes Act. In accordance with the Public Entity Crimes Act (Section 287.133, Florida Statutes), Bidder and any parent corporations, affiliates, subsidiaries, members, shareholders, partners, officers, directors or executives, and any sub-consultants shall not be presently debarred, proposed for debarment or declared ineligible to bid or participate in any federal, state or local government agency projects and are not and have not been placed on the Convicted Vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date of the Bid. Violation of this section may result in termination of any contract awarded and recovery of any monies paid; and may result in debarment from City's competitive procurement activities.

Convicted Vendor List. In accordance with Fla. Stat. Sec. 287.133, Bidder and any parent corporations, affiliates, subsidiaries, members, shareholders, partners, officers, directors or executives, and any sub-consultants shall not have been placed on the Convicted Vendor List maintained by the State of Florida within 36 months prior to the submittal of the Bid.

Discriminatory Vendor List. In accordance with Fla. Stat. Sec. 287.134, Bidder shall not have ever been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services.

Scrutinized Companies List. Pursuant to Fla. Stat. Sec. 287.135, Bidder shall not be listed on the Scrutinized Companies that Boycott Israel List, maintained by the State of Florida, and is not engaged in a boycott of Israel. Bidder further represents that it is not on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engages in business activities in Sudan or Cuba. Violation of this section may result in termination of the awarded contract and recovery of all monies paid; and may result in debarment from City's competitive procurement activities.

Foreign Country of Concern. Pursuant to Fla. Stat. Sec. 287.138, Contractor represents that Contractor is not owned by a government of a foreign country of concern and no government of a foreign country of concern has a controlling interest in the Contractor. Contractor is not organized under the laws of and does not have a principal place of business in a foreign country of concern. For purposes of this section, "foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic,

including any agency of or any other entity of significant control of such foreign country of concern. Contractor shall submit the required affidavit with its bid.

No Coerced Labor. In accordance with Florida law, the Contractor hereby represents that it does not use coercion for labor or services as defined in Section 787.06, Florida Statutes. Contractor shall submit the required affidavit with its bid.

EQUAL OPPORTUNITY TERMS

The City of West Palm Beach is committed to working within our community. The City encourages small businesses to become certified by the City of West Palm Beach. For information and assistance in becoming certified, please contact:

City of West Palm Beach
Office of Small Business Programs
401 Clematis Street, 2nd Floor, West Palm Beach, FL 33401
Sandra Hammerstein, Program Compliance
(561) 822-1273 or SHammerstein@wpb.org

Contact with Office of Small Business Programs staff may only be for purposes of compliance with Small Business program requirements.

Small Business Participation. In an effort to address inequity in contract awards, the City has established a Small Business ("SB") Program. The SB Program is set forth in Chapter 66 of the City's Code of Ordinances and is incorporated in this ITB by reference. However, Bidders are encouraged to read it in its entirety.

In accordance with the Small Business Ordinance, **the minimum required SB participation level under the contract resulting from this ITB is thirteen percent (13%) of the total contract value.**

Certified Small Businesses. Only firms certified as small businesses by the City of West Palm Beach, Palm Beach County or the School Board of Palm Beach County and domiciled in Palm Beach County may be utilized to meet the small business participation level of the ITB.

Subcontractor Utilization Plan. The Bid must include a Subcontractor Utilization Plan detailing compliance with the required SB participation which shall reflect the intent of the bidder and small business subcontractor(s) to establish a business relationship as well as the type of work and percentage of work that the small business subcontractor will perform. Failure to submit a complete Subcontractor Utilization Plan shall be grounds for disqualification from participation in the solicitation.

The Subcontractor Utilization Plan is made up of the following:

- 1) **Statement of Small Business Participation – Form SB01.** Indicate each SB firm to be subcontracted with and the type of services to be performed and estimated percentage of total work. Dollar amounts can be left blank for the Bid. This form is due with your Bid.
- 2) **SB Letter of Intent – Form SB03.** If proposing to use a SB subcontractor, the SB subcontractor must sign Form SB03. A Form SB03 shall be submitted for each SB subcontractor. If the SB will be the prime firm, Form SB03 is not required.

Letter of Certification. Include a copy of the City of West Palm Beach, Palm Beach County or the School Board of Palm Beach County certification as SB for prime or subcontractors.

Any Bid failing to meet the required small business participation level shall be deemed non-responsive and shall be disqualified, except where the director of small business programs determines that such disqualification would not be in the best interests of the City under the particular circumstances. When the lowest bid does not include small business participation at the required participation level, the next lowest bid that meets the required participation level will be considered for award provided that bid is not more than fifteen percent (15%) greater than the lower bid.

Failure to meet the SB commitment established by an executed contract may be deemed a material breach of the contract. SB participation level may not be met by subcontractors that do not perform a commercially useful function or that are not qualified or certified to provide the services.

A copy of each executed subcontract with each SB listed in the Bid shall be submitted to the City within twenty (20) calendar days of execution of a contract with the City.

If after contract award, the contractor chooses not to utilize the SB subcontractor(s) identified in its Bid or Subcontractor Utilization Plan, the bidder may face penalties unless approved in writing by the procurement official.

Subcontractor Utilization Reporting Form & Updated Construction Timeline. The Contractor will complete the Subcontractor Utilization reporting form and submit such form with each submittal of its Payment Application to the City. The Subcontractor Utilization Report shall include all subcontractors and suppliers providing services and or materials for this Contract.

Contractor shall provide an updated Work schedule with each submittal of a Payment Application to the City. The updated Work schedule will show the baseline and the current status of each Work item.

BID EVALUATION

Minimum Qualification. To be evaluated for award, Bidders must meet the following minimum qualifications:

1. **Bid.** The Bid must be timely received by City Procurement personnel by the submittal deadline.
2. **Bid Security.** The required bid bond or security must be timely received.
3. **Signatures.** The Bid (Forms B2 and B3) and all documents requiring signature are included and have been signed by an appropriate officer.
4. **Licenses.**
 - a. Bidder shall be properly licensed / registered to perform work in the State of Florida, Palm Beach County, and the City of West Palm Beach.
 - b. Bidder must have at time of bid submittal a State of Florida Underground Utility and Excavation Contractor's license.
 - c. Any subcontractor(s) that will perform excavation and/or mechanical pipeline work must have at the time of bid submittal a State of Florida Underground Utility and Excavation Contractor license.
5. **Prime Contractor Minimum Experience.** Bidder must provide detailed summary of prior experience evidencing successful completion of at least three (3) projects similar in size and scope comprising of utility work within public rights-of-way which included installation of water main ranging from 6" to 12" diameter, storm water pipe ranging from 12" to 15" diameter at depths of six to ten (6 -10) feet and associated structures, handling and proper disposal of transite pipe, installation of 8-inch gravity sewer main installation including sewer laterals, rear to front sewer conversions including work on private property, and road restoration within a residential neighborhood. Bidder must fully and accurately complete Form F1 Prime Contractor Prior Experience. By submitting a Bid, Bidder authorizes the City to conduct a reference investigation as needed. Submit completed Form F2 Reference Questions Prime Contractor.
6. **Subcontractor Minimum Experience.** For any subcontractor performing pipeline rehabilitation work, Bidder must provide a detailed summary of the subcontractor's prior experience evidencing subcontractor's successful completion of at least three (3) projects similar in size and scope comprising of utility work within public Rights-of-Way which included installation of water main ranging from 6" to 12" diameter, storm water pipe ranging from 12" to 15" diameter at depths of six to ten (6 -10) feet and associated structures, handling and proper disposal of transite pipe, installation of 8-inch gravity sewer main installation including sewer laterals, rear to front sewer conversions including work on private property, and road restoration within a residential neighborhood. (Form G Prior Experience Subcontractor).
7. **Small Business Participation.** The bid includes a Subcontractor Utilization Plan and a commitment to meet or exceed the established minimum small business participation level for the Project.
8. **Surety.** During the lifetime of the organization, as presently named, Contractor must not have defaulted to a bonding company/ surety for the completion of any projects.
9. **Convicted Vendor List.** Contractor has not been placed on the Convicted Vendor List kept by the Florida Department of Management Services, within thirty-six (36) months of bid submittal.
10. **Discriminatory Vendor List.** Contractor has not been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services.
11. **Scrutinized Company.** For bids of any amount, Contractor is not on the Scrutinized Companies that Boycott Israel List or is not engaged in a boycott of Israel. For bids over \$1 million, Contractor is not on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or engaged in business activities in Syria or Cuba.
12. **Foreign Countries of Concern.** Contractor has provided the required Affidavit.
13. **No Coerced Labor.** Contractor has provided the required Affidavit.

Evaluation Factors. Bids will be evaluated based on the following evaluation factors, in addition to those factors established in the City's Procurement Code, in determining the lowest responsive and responsible contractor offering the best value to the City. Price alone is not the determining factor.

1. Contractor firm experience and reference responses. Skill, workmanship, and experience demonstrated by the Bidder, and its subcontractor(s), in performing the same type of work or services as those sought by the City. Past performance of Contractor and its subcontractor(s) on similar projects or work, including the number of change orders for prior contracts.
2. Ability to meet the requirements of the solicitation and Project, including adherence to specifications and requirements.
3. Project manager/key staff qualifications and experience. (Form H)
4. Proposed construction schedule and ability to meet time requirements.
5. Base Bid amount and Schedule of Bid Items. Ability to complete projects within bid amount and budget.
6. Past performance of Bidder and its subcontractor(s) on similar projects or work, including the number of change orders for prior contracts.
7. Firm capacity in terms of personnel, equipment and workload.
8. Firm capacity in terms of financial viability and ability to provide required bond and insurance.
9. Ability and commitment to self-perform a minimum of twenty-five percent (25%) of the work on the Project.
10. Contractor safety information.
11. Compliance with the Small Business participation requirements..
12. Any suspension or debarment by any government entity; Any prior conviction for bribery, theft, forgery, embezzlement, honest services fraud, falsification or destruction of records, or other offense indicating a lack of business integrity or honesty; any prior violation of State, City or County ethical standards. Suspension or debarment by the City or another government entity.
13. Consideration of any other factors or requirements specific to the ITB and such other information as may be obtained by the City in making a best value determination.

BID SUBMITTAL

To ensure acceptance of your bid, Bidders must comply with the following instructions:

BIDDER'S RESPONSIBILITY. It is the responsibility of each Bidder, before submitting a Bid, to:

- a. Examine the Invitation to Bid and ITB Documents thoroughly;
- b. Visit and physically inspect the Project site to determine existing conditions, including:
(i) conditions relating to access, egress, transportation, debris disposal, parking and storage of materials; (ii) availability of labor; and (iii) physical conditions at the site;
- c. Take into account federal, state and local laws and regulations that may affect costs, progress, performance, furnishing the Work or contract award;
- d. Carefully correlate Bidder's observations with the ITB Documents;
- e. Carefully review the ITB Documents and notify the Procurement agent of any conflicts, errors, or discrepancies in the ITB Documents of which Bidder knows or reasonably should have known.
- f. Verify whether any addenda have been issued and obtain same.

Any failure by Bidder to take these steps will not relieve the Bidder from the responsibility for estimating properly the difficulty and cost of successfully performing the Work without additional expense to City.

Bidder shall check all specifications and drawings furnished with the ITB and shall, prior to the Inquiry Deadline, notify City Procurement, in writing, of any illegibility, error, omission, defect, conflict, ambiguity or discrepancy discovered in such specifications and drawings and shall comment as appropriate upon construction feasibility and practicality. Contractor shall not receive additional time or compensation to correct any condition caused by any illegibility, error, omission, defect, conflict, ambiguity or discrepancy which Bidder could have discovered with a reasonably careful review of the drawings and specifications.

The submission of a Bid shall constitute an incontrovertible representation by Bidder that the Bidder has complied with the above requirements and that without exception, the Bid is premised upon performing the furnishing the Work required by the Contract Documents and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all term and conditions for performance and furnishing the Work.

ADDENDA. Any addenda or other modification to the Bid documents will be issued by the City prior to the date and time of Bid Submittal Deadline, as a written addenda distributed to all prospective bidders who have obtained the Bid package directly from City or its authorized representative. Such written addenda or modification shall be part of the Bid documents and shall be binding upon each Bidder. Each Bidder is responsible for obtaining, reviewing and executing each addendum and submitting each addendum with its Bid. Each Bidder is required to acknowledge receipt of any and all addenda in writing and submit with their Bid. **Bidders are cautioned to check the DemandStar web page prior to submitting their Bid.** The City shall not be responsible if a Bidder fails to receive any addendum issued. No Bidder may rely upon any oral or verbal modification or interpretation in preparing its Bid. No interpretation of the Invitation to Bid will be made for any Bidder, except by written addendum.

FORM OF BID. Unless otherwise instructed, **all Bids must be submitted on the provided Bid forms.** An original and the designated number of copies of each Bid are required. The City may require an electronic copy and/or electronic spreadsheet of the bid prices. A complete Bid package, and all other required documents must be submitted in order for the Bid to be considered.

USE OF CITY LOGOS, TRADEMARKS OR SEALS. Bidder shall not duplicate or utilize the City's logo, trademarks or seals in its Bid package or any other documents or materials without prior specific City authorization.

BID SUBMITTAL.

One (1) original, one (1) electronic version on a USB flash drive and one (1) copy of the Bid must be submitted in a sealed envelope, marked on the outside lower left-hand corner of the envelope with the firm name, Bid number, project title, and Bid submittal deadline. Bids shall be accompanied by a Bid Bond, certified check, or cashier check, in an amount not less than five percent (5%) of the Bid. Bids submitted by telephone, facsimile or email shall not be accepted. Bids shall be mailed or hand-delivered to:

City of West Palm Beach
Procurement Division

West Palm Beach City Hall
401 Clematis Street-5th Floor
West Palm Beach, FL 33401

Time is of the essence and any Bid received after the Bid Submittal Deadline will be returned unopened and will be rejected and will not be considered. The Bidder assumes responsibility for having the Bid delivered on time at the place specified. Bidders are cautioned to allow adequate time for security screening at the delivery site. A valid photo ID may be required for personal delivery. The time of receipt will be determined by the Procurement Division time clock. Bidders are responsible for ensuring that their Bid is stamped by the City Procurement Division personnel by the Bid Submittal Deadline. The City will in no way be responsible for delays or late receipt caused by any occurrence or any third-party courier.

All Bids must be submitted on the provided Bid forms. Bids submitted on Bidder Letterhead or quotation forms will not be accepted.

All Bids must be typed or written in ink, and must be signed in ink by an officer or employee having authority to bind the company or firm. Failure to submit a duly signed bid shall be cause for rejection of the bid.

Mandatory: All Bids must include the **Schedule of Bid Prices** in **both** a signed **paper** format and an **electronic spreadsheet** format (provided with ITB package). **Failure to submit an electronic spreadsheet format of the bid tabulation shall be cause for rejection of the Bid.**

*****IMPORTANT:** The electronic Schedule of Bid Prices shall be submitted with the original paper Bid package by means of a compact disk, flash drive or other digital data storage device. The paper Schedule of Bid Prices and the electronic version shall be materially consistent and contain the same information. In case of a discrepancy, the signed paper Schedule of Bid Prices shall prevail.

AVOID BID REJECTION:

Bids may be rejected for noncompliance to requirements after review by the Procurement Official.

- ▶ All Bids must be submitted on the provided Bid forms.
- ▶ **Forms B2 and B3** must be signed by an officer authorized to bind the Bidder.
- ▶ All Forms must be fully completed.
- ▶ Electronic spreadsheet Schedule of Bid Items must accompany the Bid.

ERRORS / CORRECTIONS. Bids having corrections must be initialed in ink by the Bidder. If a correction is necessary, draw a single line through the entered figure and enter the corrected figure above it and initial the correction. Do not erase or "white out" errors. Any illegible entries, pencil bids or corrections not initialed will not be accepted. In the event of mathematical extension error(s), the unit price will prevail and the Bidder's total offer will be corrected accordingly. In the event of addition errors, the extended line item will prevail and the Bidder's total will be corrected accordingly. Bidders shall not be allowed to modify their Bids. Bid containing substantial errors may be withdrawn provided request to withdraw is made prior to the bid opening time and date.

BID PRICES. All Bid prices shall remain valid for not less than ninety (90) days after the Bid Submittal Deadline or other time stated in this ITB. Prices must be stated in the units specified on the Schedule of Bid Items Form (**Form B3**).

SPECIFICATIONS. Technical specifications define the minimum acceptable standard. When the specification calls for "Brand Name or Equal," the brand name product is acceptable. Alternates will be considered upon demonstrating the other product meets stated specifications and is equivalent to the brand product in terms of quality, performance and desired characteristics. Minor differences that do not affect the suitability of the supply or service for the City's needs may be accepted. Burden of proof that the product meets the minimum standards or is equal to the brand name, product, is on the Bidder. The City reserves the right to reject bids that the City deems unacceptable.

SUBSTITUTIONS. If Bidder wishes to offer a substitution for a specified item of materials or equipment, the proposed substitution must be listed on the Substitution Sheet in the Bid Package (**Form B4**). In each case, the difference in price between the base bid and the price for the proposed substitution shall be specified or if there is

no price difference, that shall be specifically indicated. The Bid shall reflect the Bidder's price for the item specified in the Schedule of Bid Prices; not the proposed substitution. The best value bid will be established considering the base Bid, not any proposed substitution.

SUBCONTRACTING. If a Bidder intends to subcontract any portion of the Work, the Schedule of Subcontractors (**Form B6**) must be fully completed and submitted with the Bid. The name, address, phone number and extent of Work and value of the Work to be performed should be included for all subcontractors, *including* any Small Business contractors that will also be listed on the Small Business forms. All Small Business subcontractors must be listed on both Form B6 – Schedule of Subcontractors in addition to the applicable Small Business forms. The City reserves the right to reject any Bid if the bid names a subcontractor who has previously failed in the proper performance of a contract with the City, or failed to deliver on time contracts of a similar nature, or who, in the City's determination, is not in a position to perform under this award. The City reserves the right to inspect all facilities of any subcontractor in order to make a determination as to the foregoing.

BASELINE WORK SCHEDULE. Bidder shall submit, as part of its Bid package, a proposed Work schedule with adherence to the substantial completion and final completion deadlines (**Form B7**). By executing the Contract, Bidder confirms that it is capable of properly completing the Work within the completion date set forth in the Contract Documents.

DRUG-FREE WORKPLACE. The City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City. Bidder shall be required to enforce a drug-free workplace for all Bidder personnel working under the contract. Specifically, all Bidder personnel who are working under the City's contract must be notified in writing by Bidder that they are prohibited from the manufacture, distribution, dispensation, possession or unlawful use of a controlled substance in the workplace. Bidder agrees to prohibit the use of intoxicating substances by all Bidder personnel and will ensure the Bidder personnel do not use or possess illegal drugs while in the course of performing their duties. Drug Free Certification (**Form B8**) must be included with the Bid.

SAFETY PLAN. Bidder shall submit, as part of its Bid package, the precautions that will be taken for the protection of all persons involved in the Project, the public, and all employees or representatives of City (**Form L**). Bidder shall ensure compliance with all applicable safety standards and regulations, including, but not limited to the following, as applicable:

- Florida Trench Safety Act – Ch. 553, Part III, Florida Statutes
- OSHA 1926.650, Subpart S
- City of West Palm Beach Confined Space Safe Entry Procedures
- FDOT 2016-2017 Design Standards 600-670 / Traffic Control Through Work Zones
- OSHA 1926.352 / Welding, Cutting, and Brazing - General Requirements

Trench Safety Compliance **Form (B9)** is included in the Bid forms.

LOCAL WORKFORCE. **N/A.** If applicable, Bidder and its subcontractors shall agree to produce all documents and records relating to compliance with this section upon request from the City.

PROJECT MANAGER/ KEY STAFF. Bidder shall submit, as part of its Bid package, the name, qualifications, experience and resume of the Project Manager and key staff of Bidder will commit to the Project (**Form H**). The Project Manager named by Bidder will be a material consideration for the City in awarding the contract. By submitting a bid, Bidder agrees that it will, at all times during the progress of the Work, assign the Project Manager full-time to the Project.

DAILY REPORT FORMAT. Bidder shall submit as part of its Bid package, a sample copy of its daily reporting format for reporting the progress of construction **Form (K)**. This format shall include but not be limited to the detailing of all labor, equipment and materials used in the construction of the Project along with the areas worked, type of work performed, problems encountered and daily weather conditions at the work areas.

CONTRACT LITIGATION / LEGAL PROCEEDINGS. Bidder shall identify any pending indictments, lawsuits, past litigation relevant to subject matter of this solicitation, providing a statement of any litigation or pending lawsuits that have been filed against the firm in the last five years **Form (M)**.

If the action has been filed, state and describe the litigation or lawsuit filed, and identify the court or agency before which the action was instituted, the applicable case or file number, and the status or disposition for such reported action. If no litigation or lawsuit has been filed against the firm, provide a statement to that effect.

NON-COLLUSION. By submittal of a Bid, Bidder certifies that its bid is made independently and free from collusion. Failure of a Bidder to disclose any relationship required by law or ethics provisions shall be reason for debarment by the City.

CONFLICT OF INTEREST. Bidders must disclose with its Bid the name of any officer, director, or agent of Bidder who is also an employee of the City of West Palm Beach. Further, all Bidders must disclose the name of any City of West Palm Beach employee who owns, directly or indirectly, an interest of ten percent (10%) or more in the Bidder's firm or any of its affiliates.

CONVICTED VENDOR LIST. Bidder represents that submittal of its Bid and execution of a contract will not violate Section 287.133, Florida Statutes and certifies that Bidder and any parent corporations, affiliates, subsidiaries, members, shareholders, partners, officers, directors or executives, and any sub-Bidders have not been placed on the Convicted Vendor List maintained by the State of Florida within 36 months prior to the Bid submittal.. Violation of this section may result in termination of the Contract and recovery of all monies paid, and may result in debarment from City's competitive procurement activities.

DISCRIMINATORY VENDOR LIST. In accordance with Fla. Stat. Sec. 287.134, Bidder represents that it has never been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services. Violation of this section may result in termination of the contract and recovery of all monies paid, and may result in debarment from City's competitive procurement activities.

SCRUTINIZED COMPANIES LIST. Pursuant to Fla. Stat. Sec. 287.135, Bidder represents that Bidder is not on the Scrutinized Companies that Boycott Israel List, maintained by the State of Florida, and is not engaged in a boycott of Israel. Bidder further represents that it is not on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engages in business activities in Sudan or Cuba. Violation of this section may result in termination of the contract and recovery of all monies paid, and may result in debarment from City's competitive procurement activities.

FOREIGN COUNTRY OF CONCERN. Pursuant to Fla. Stat. Sec. 287.138, Contractor represents that Contractor is not owned by a government of a foreign country of concern and no government of a foreign country of concern has a controlling interest in the Contractor. Contractor is not organized under the laws of and does not have a principal place of business in a foreign country of concern. For purposes of this section, "foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern. Contractor shall provide the required affidavit.

NO COERCED LABOR. In accordance with Florida law, the Contractor hereby represents that it does not use coercion for labor or services as defined in Section 787.06, Florida Statutes. Contractor shall provide the required affidavit.

BID BONDS OR DEPOSITS. Each Bid must be accompanied by a bid bond or a deposit in a sum of not less than five percent (5%) of the total bid amount. Bid bonds and deposits amounting to less than one hundred dollars need not be submitted. Only the following types of bonds or deposits will be accepted: (1) Bid bond signed by a surety company authorized to do business in the State of Florida; (2) Cash; (3) Cashier Check or Certified check drawn on a financial institution acceptable to City and made payable to the "City of West Palm Beach". The City reserves the right to hold the bid security until a contract is properly executed. If any Bidder presented with a contract by the City fails to execute such contract, the City shall be entitled to retain the deposit or enforce the bond.

PROCUREMENT PROCESS

CONTACT PROHIBITED. No person, firm, or corporation, may lobby or contact the Mayor, any City Commissioner, officer, city employee or agent, other than an employee of the WPB Procurement division or the Office of Small Business Programs regarding a solicitation for the procurement of goods, services, or construction services. Contact shall mean any form of communication or interaction seeking to influence the selection or award of a contract, including instigation of an organized effort or mass communication, by a bidder, potential bidder or representative of a bidder.

Contact with the Office of Small Business Programs shall be for equal opportunity purposes only. The only permissible contact regarding a procurement solicitation shall be with the Procurement Official, procurement staff, or with the evaluation committee at a duly notice public meeting.

ANY VIOLATION OF THIS PROVISION IS GROUNDS FOR DISQUALIFICATION.

This condition is in effect from the date of publication of this solicitation and shall remain in effect until the City executes a contract or otherwise takes action which ends the solicitation process for the services under this solicitation.

Clarification/Interpretation & Addenda Registration

No interpretation or changes to the meaning of the ITB will be made to any firm orally, except by written addendum. All questions that change the scope of work or alter the contents of these documents will be answered via addendum. The addenda will form an integral part of the proposal and shall modify and become part of the ITB document.

To receive any Addenda issued, each Bidder is required to register on DemandStar at:
<https://network.demandstar.com/for-business>

Inquiries regarding the Small Business Program may be directed to:

Sandra Hammerstein, Program Compliance Officer
(561) 822-1273
SHammerstein@wpb.org

Inquiry Deadline. Any and all inquiries regarding this ITB or the Project (other than the Small Business Program) must be directed in writing, by US mail, fax or email to the purchasing agent indicated in this ITB.

No interpretation of the Invitation to Bid will be made for any Bidder, except by written addendum. No Bidder may rely upon any oral or verbal modification or interpretation in preparing its Bid. Only written addenda will be legally binding.

ITB DOCUMENTS. This Invitation to Bid consists of this document along with all plans, drawings and/or technical specifications related to this procurement, all of which are incorporated herein by this reference. It is the responsibility of the Bidder to ensure that all pages are included. All Bidders are advised to closely examine this package. Submission of a Bid implies a full understanding of the Invitation to Bid, the General Conditions, the drawings and specifications, any supplemental general conditions or special terms, and the Project and the Work. Failure to read, examine and understand the solicitation will not excuse any failure to comply with the requirements of the solicitation or any resulting contract, nor shall such failure be a basis for claiming additional compensation. This Invitation to Bid includes the City's standard General Conditions, which generally are not negotiable. Any modification to the standard General Conditions will be identified in this ITB.

If a Bidder suspects an error, omission or discrepancy in this solicitation, the Bidder must immediately, and in any case not later than ten (10) calendar days in advance of the Bid Submittal Deadline, notify the Procurement Official and the procurement specialist identified in the front of this ITB.

MODIFICATION / WITHDRAWAL. Bidder shall not be allowed to modify its Bid. A Bid containing substantial errors may be withdrawn provided request to withdraw is made prior to the bid opening time and date. Written requests to withdraw a Bid must be addressed and labeled in the same manner as the Bid and marked as "Withdrawal". Requests for withdrawal after the bid opening may result in forfeiture of the bid bond or security.

BID OPENING. Bids shall be opened by Procurement Division staff at the time indicated in this ITB. At such public meeting, the name of the Bidder and the total Bid amount shall be announced. The City reserves the right to postpone the date for receipt and opening of bids and will make a reasonable effort to provide prior notice of such postponement.

COST JUSTIFICATION. In the event only one response is received, the City may require that the Bidder submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the bid price is fair and reasonable. The City may enter into negotiations with the sole bidder.

DUN & BRADSTREET REPORT. The City may review the Bidder's rating and payment performance to assist in determining a Bidder's financial responsibility and financial viability when being evaluated for a contract award.

CONTRACT AWARD. The selection of a Bidder shall be based on the best value to the City. Best value means the overall value to the City in the City's sole discretion, as determined by considering the evaluation factors and selection criteria set out in this ITB and the factors in Sec. 66-71 of the City Code (Procurement Code). **Where a bid includes alternate(s), price means the base bid, not including any alternate(s). The City reserves the right to award, or not award, the alternate.** The decision of the City shall be final. The selected Bidder will be notified in writing of the City's intent to award a contract and notice of the intended award will be posted to the Procurement web page. Award of a contract cannot be assigned by Bidder.

STATE-APPROPRIATED FUNDS. If all or a portion of the contract will be paid from state-appropriated funds which have been appropriated at the time of competitive selection, selection will not be based on any preference for maintaining an office or place of business within the City, or hiring employees or subcontractors from within the City, or Bidder's prior payment of local taxes, fees or assessments.

CONTRACT. Bidder must be prepared for the City to accept the Bid as submitted. The successful Bid shall become an integral part of the contract. **Within ten (10) days of receipt, the awarded Bidder shall execute the Contract and provide the City with the certificate(s) of insurance for the contract.** Inability to timely meet this requirement may result in delays that will deem the Bidder to not be in the best interest of the City, and the City may withdraw the contract and provide a notice of intent to award to another bidder.

The City and Bidder will be contractually bound only if and when a written contract between the parties is executed by the appropriately authorized City officials and Contractor officers. The contract may require approval by the City Commission.

In the event a contract is not executed with the selected Bidder, the City reserves the right to retain the bid security, if one was required, and to select the next "best value" bidder and to contract with said bidder.

NO ASSIGNMENT. The selected Bidder(s) will be precluded from assigning, transferring, conveying, subletting or otherwise disposing of the award rights and ensuing contracts, if any, or of any or all of the rights, titles or interest therein, if any, without prior written consent of the City. At all times during the term of the contract, the selected Bidder shall act as an independent contractor and at no time shall the selected Bidder be considered an agent or partner of the City.

The successful Bidder will be required to assume responsibility for all services offered in its Bid whether or not such services are provided by Bidder or a subcontractor. Further, the selected Bidder shall be the sole point of contact with regard to all contractual matters.

APPLICABLE LAWS. The contract shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law without regard to conflicts of law provisions. The City and Bidder shall submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties shall agree that proper venue for any suit concerning this Agreement shall be Palm Beach County, Florida, or the Federal Southern District of Florida. Bidder shall agree to waive all defenses to any suit filed in Florida based upon improper venue or *forum*

nonconveniens. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY SHALL WAIVE ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THE CONTRACT.

Procurement Code. Chapter 66 of the Code of Ordinances of the City of West Palm Beach shall govern this ITB. Bidder shall, in its Bid and any resulting contract or provision of services, comply fully with all applicable local, state and federal laws and regulations.

BUSINESS TAX. The Bidder will also be required, at the time of contract execution, to have a business tax receipt or certificate of registration in accordance with the following:

- No person, contractor or subcontractor may conduct business within the City without a business tax receipt or certificate of registration.
- A contractor who holds a valid countywide contractor's license, in addition to a county business tax receipt, shall register with the City.
- Any person engaging in any business, occupation or profession within the City without a permanent business location or branch office in the City, but holding a valid and currently effective business tax receipt issued by the county or another incorporated municipality, shall be issued a certificate of registration upon registering with the business tax official.

COSTS. All costs incurred by any Bidder in responding to this Invitation to Bid are the sole responsibility of the Bidder.

PROTEST PROCEDURE. Protest procedures are provided in Section 66-151 of the City Code of Ordinances. A protest must be addressed to the Procurement Official, in writing, identifying the protester, the solicitation and the basis for the protest and must be received by the Procurement Official within seven (7) calendar days of the first date that the aggrieved person knew or should have known of the facts giving rise to the protest, but no later than seven (7) calendar days after the issuance of a Notice of Intent to Award. The protest shall be considered filed when it is received by the Procurement Official. Protests shall be accompanied by the required bond or security. Failure to file a protest in accordance with the requirements of the Procurement Ordinance shall constitute a waiver of said protest.

STANDARD TERMS

The following terms shall govern this ITB and the resulting Contract:

City is Document Gatekeeper. This ITB is issued directly by the City of West Palm Beach and City shall be the sole distributor of all addenda and/or revisions to these documents. It is the responsibility of the Bidder to confirm the legitimacy of procurement opportunities or notices directly with the Procurement Division. City is not responsible for any solicitations advertised by subscriptions, publications, websites (other than City's website or *DemandStar*) or other sources not connected with City and the Bidder should not rely on such sources for information regarding any solicitation made by City.

Official Solicitation Document. Changes to the ITB made by a Bidder may not be acknowledged or accepted by City. Award or acceptance of a contract does not constitute acceptance of a changed term, condition or specification, unless specifically acknowledged and agreed to by City. The copy of the ITB published and maintained by City shall be the official solicitation document.

Copying of Bids. Bidder grants to City permission to copy all parts of its Bid, including without limitation any documents and/or materials copyrighted by the Bidder. The City's right to copy shall be for internal use in evaluating the Bid.

Public Records. City is governed by the Sunshine law and the Public Records law of the State of Florida.

- A. **Bid Documents.** Bid packages shall become the property of City and shall not be returned. Bid documents received by the City are exempt from public disclosure until such time as the City provides notice of intent to award or until 30 days after bid opening, whichever is earlier. If the City rejects all bids and intends to reissue the ITB, then the rejected bids remain exempt from public disclosure until such time as the City provides notice of intent to award, or until the City withdraws the reissued ITB. A bid shall not be exempt from public disclosure longer than 12 months after the initial City notice rejecting all bids.
- B. **Exemption from Disclosure.** Bidders must claim the applicable exemptions to disclosure of information provided in their Bid package by identifying the materials to be protected, and must identify the applicable legal authority for the exemption under state statutes. Such information must be identified accordingly on each and every page of the Bid package where applicable. No claim of confidentiality or proprietary information in all or any portion of a Bid package will be honored unless a specific exemption from the public records law exists and it is cited in the Bid package. If a Bidder believes any of the information contained in its Bid package is exempt from the public records law, the Bidder must specifically identify the material which is deemed to be exempt and cite the legal authority for the exemption; otherwise, the City will treat all material received as public records. City reserves the right to make any final determination of the applicability of the Public Records Laws.
- C. **City Documents and Records.** Contractor shall comply with Chapter 119, Florida Statutes, regarding public records. Contractor shall keep and maintain all documents, records, correspondence, computer files, emails, and/or reports prepared in order to perform the work under this Contract. A request to inspect or copy public records relating to this Contract must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Contractor of the request, and the Contractor shall provide the records to the City or allow the records to be inspected or copied within a reasonable time at the cost that would not exceed the cost allowed by law. All records stored electronically must be provided to the City, upon request, in a format that is compatible with the information technology systems of the City. Upon completion of the contract, Contractor shall transfer, at no cost, to the City all public records in possession of Contractor. The Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed. Records that are exempt or confidential and exempt from public records disclosure requirements may include plans, drawings and records related to the physical security of City buildings or security systems and shall not be disclosed by Contractor, except as authorized by law and specifically authorized by City. Failure of the Contractor to provide public records to the City within a reasonable time or allowable cost may be subject to penalties under Sec. 119.10, Fla. Stat., and may be cause for termination of the Contract by the City, in addition to any other remedies available under the Contract or by law.

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 CITY CLERK, WHO IS THE CITY'S CUSTODIAN OF PUBLIC RECORDS, AT:

Office of the City Clerk
City of West Palm Beach
401 Clematis Street
West Palm Beach, FL 33401
561-822-1210
CityClerk@wpb.org

- D. **Exemption.** Records that are exempt or confidential are exempt from public records disclosure requirements. Exempt records may include plans, drawings and records related to the physical security of City buildings or security systems and shall not be disclosed by Bidder, except as authorized by law and specifically authorized by City. Bidder shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

Right to Audit. The City shall have the right to audit Bidder's books and records, at the City's expense, upon prior notice, with regard to the work under the contract. Bidder shall allow the City or its representative to interview all current or former employees to discuss matters pertinent to the Contract. If an audit inspection discloses overpricing or overcharges (of any nature) by Bidder to the City in excess of one-half of one percent (.5%) of the total contract billings, (1) the reasonable costs of the City's Internal Audit department shall be reimbursed to the City by the Bidder and (2) a 15% penalty of the overpricing or overcharges shall be assessed. Any adjustments and/or payments which must be made as a result of the audit inspection, including any interest, audit costs and penalties shall be made by the Bidder within 45 days from presentation of City's findings to Bidder.

Inspector General. The Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the award, negotiation and performance of the contract, and may demand and obtain records and testimony from the Bidder and its subcontractors and lower tier subcontractors. Bidder shall agree that in addition to all other remedies and consequences provided by law, the failure of Bidder or its subcontractor or lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of the contract justifying its termination.

Records Maintenance. The Bidder awarded the contract under this ITB shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least ten (10) years after final payment, or the final resolution of any related litigation. City shall have access to all records, documents, and information collected and/or maintained by Contractor and its subcontractors, material men and suppliers in the course of the contract. If records are unavailable locally, it shall be Bidder's responsibility to ensure that all required records are provided to City at Bidder's expense.

Commencement of Work. If a Bidder begins any billable work prior to the City's final approval and execution of the contract, Bidder does so at its own risk.

Background Check. The City may conduct criminal, driver history, and all other background checks of Bidder personnel who would perform work under the contract or who will have access to the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent or other Bidder personnel that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.

E-Verify. In compliance with Section 448.095, Fla. Stat., the awarded Bidder shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of new employees hired by Bidder during the term of the contract. Bidder shall require all subcontractors performing services under the contract to verify the employment eligibility of new employees hired by the subcontractor during the term of the contract. Bidder shall require each of its subcontractors to provide Bidder with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's

affidavit as part of and pursuant to the records retention requirements of the contract.

The City, Bidder, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Bidder acknowledges that upon termination of this Agreement by City for a violation of this section by Bidder, Bidder may not be awarded a public contract for at least one (1) year. Bidder further acknowledges that Bidder is liable for any additional costs incurred by the City as a result of termination of any contract for a violation of this section.

Bidder or its subcontractor shall insert in any subcontracts the clauses set forth in this section and shall require subcontractors to include these clauses in any lower tier subcontracts.

Performance Evaluations: Performance evaluations will be prepared for all contractors and construction management firms on City construction projects. The goals of the evaluation is to provide the contractor with genuine feedback on its ability to complete the construction project in a timely and cost effective manner, and to help the City select the most qualified contractor on future projects. Such performance evaluations will be considered as a factor in future procurements. Performance Evaluations will be prepared following completion of the work associated with a contract. For contracts spanning several years, at the discretion of the City, more frequent performance evaluations may be made.

The evaluation will be completed by the City's project manager and reviewed by the department director for concurrence. The contractor will be provided with a copy of the review and an opportunity to comment. The parties will use good faith efforts to resolve any dispute; however, the ultimate conclusion on the performance evaluation is a decision of the City. Any contractor comments timely provided will be made part of the evaluation, as well as any subsequent City review of comments received.

Performance evaluations are intended to include an evaluation with respect to: the quality of the work, adherence to the project schedule without delay or disruption in the progress of the project; adherence to the budget and contract price and consideration of pay application submittals, payments to subcontractors and change orders for additional costs; whether the contractor is approaching the change order and claims process in a reasonable manner; and, whether there is an appropriate focus on safety. The City may also evaluate other categories of information that are relevant to a particular project.

Use of City Name; Logos or Seal. Contractor will not use the name of the City of West Palm Beach in any advertising or publicity without obtaining the prior written consent of the City. Contractor will not use the City logos or seals in any document or report without the prior written consent of the City.

News Releases / Publicity. News releases, publicity releases, or advertisements relating to this ITB or resulting contract or work authorizations shall not be made without prior City approval.

Independent Contractor. It is expressly understood that the relationship of Contractor to the City will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor's employees or subcontractors, not City employees. Accordingly, Contractor and Contractor's employees or subcontractors are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify and hold harmless the City from all such claims.

Termination for Non-Appropriation. The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under the awarded contract, the City will have the right to terminate the contract, without penalty, on the last day of the fiscal period for which funds were legally available.

Ethics Requirements. All Bidders and the awarded Contractor shall comply with the ethics requirements of the City Code and the Palm Beach County Ethics Code. No Bidder may employ, directly or indirectly, the mayor any

member of the City Commission or any director or department head of the City. The City Code prohibits any employee of member of their immediate family or close personal relation to receive a benefit or profit from any contract entered into with the City, either directly or through any firm of which they are a member, or any corporation of which they are a stockholder of an interest of 10% or more, or any business entity in which they have a significant or controlling financial interest. The City will not accept gifts, gratuities or products from Bidders and affiliates or agents.

Neither the Agency nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any City commissioner, mayor or officer, during tenure or for 2 years thereafter, has any interest, direct or indirect. If any such present or former commissioner, mayor or officer involuntarily acquires or had acquired prior to the beginning of tenure any such interest, such interest shall be immediately disclosed to the City.

Lobbying Certification. Bidder certifies to the best of its knowledge and belief that no funds or other resources received from the State in connection with the contract will be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

Compliance with Applicable Laws. Bidder must obtain all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of business. Bidder must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of the awarded contract and must comply with the same at its own expense.

State of Florida Division of Corporations Information. It is the Bidder's responsibility to comply with all state business requirements. All corporations, companies and partnerships must have the authority to transact business in the State of Florida and be in good standing with the Florida Secretary of State. If the Bidder is an out-of-state or foreign corporation, company or partnership, the Bidder must obtain the authority to conduct business in the State of Florida. Corporations, companies or partnerships that are not in good standing with the Florida Secretary of State at the time of a submission to this ITB may be deemed non-responsible. If successful in obtaining a contract award under this ITB, the Bidder must remain in good standing throughout the contractual period of performance.

Taxes. Bidder shall be responsible for the payment of all taxes related to or arising out of Bidder's work or services under an awarded contract, including by way of illustration but not limited to, federal income tax, social security tax, unemployment insurance taxes and any other taxes or business taxes, as required. The City is exempt from paying state and local sales taxes and will furnish an exemption certificate upon request. Bidder is not entitled to use the City's tax exemption for its own purposes.

Non-Discrimination. In performing under the contract, Bidder shall not discriminate against any person because of race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status or sexual orientation. Bidder and its subcontractors shall not unlawfully discriminate (as proscribed by federal, state, county, city and any other local law) against any employee, city employee working with the Bidder or its subcontractor, or applicant for employment with such Bidder or subcontractor on the basis of that person's race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status, or sexual orientation, or association with members of such protected classes. The Bidder or subcontractor shall take action to ensure that applicants are not discriminated against and that employees are treated equally during employment

Safety and Environmental Laws. In performing the work, the Bidder shall comply with all Occupational Safety and Health Administration (OSHA), State and County Safety and Occupational Health Standards, applicable environmental laws and any other applicable rules, regulations and permits. Bidder bears full responsibility for training, safety, and providing necessary equipment for all Bidder personnel throughout the term of the Contract. Upon request, Bidder will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.

Federal and State Immigration Laws. Bidder agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under any contract awarded. Bidder will ensure and keep appropriate records to demonstrate that all Bidder personnel have a legal right to live and work in the United States. The knowing employment by Bidder or its sub-contractors of any alien not authorized to work by the immigration laws or the Attorney General of the United States is prohibited.

Reservations of Rights by City; Disclosure and Disclaimer.

Bidders interested in pursuing this opportunity are urged to make such evaluations as they deem advisable and to reach independent conclusions concerning statements in this ITB and any supplemental materials and drawings, based on their own investigation. Any reliance on the contents of this ITB, or on any other prior communications with the City or its employees, representatives or advisors shall be at Bidder's own risk. Bidders should rely exclusively on their own investigations, interpretations and analyses in connection with this ITB.

City reserves the right to issue written addenda regarding this Invitation to Bid (ITB) to clarify, comment, correct, supplement, amend or otherwise modify this ITB prior to the Bid Submittal Deadline.

The City may seek clarification of the Bid from Bidder at any time, and failure to respond is cause for rejection.

The City reserves the right to inspect all facilities of Bidders.

Submission of a Bid confers on Bidder no right to an award or to a subsequent contract. All decisions on compliance, evaluation, terms and conditions shall be made solely at the City's discretion and made to favor the City.

The City does not warrant or represent that any award will be made as a result of the issuance of this ITB. Any recipient of this ITB or Bidder who responds hereto agrees to be bound by the terms of this ITB. Any Bid submitted pursuant to this ITB is at the sole risk and responsibility of Bidder.

This ITB is not to be construed as an offer by the City. This ITB may be withdrawn or cancelled, either before or after the Bid Submittal Deadline, and may or may not be re-bid when determined to be in the best interests of the City. Any withdrawal or cancellation of this ITB, either before or after selection of a bidder, shall be without liability or obligation on the part of the City or its employees. Any action taken by the City regarding this ITB, in making an award, withdrawal or cancellation of award, or failure or refusal to make any award, or in any withdrawal or cancellation of this ITB, either before or after issuance of an award, shall be without any liability or obligation on the part of the City, its employees, its advisors, or agents.

Bids may be considered irregular and may be rejected if the Bid: 1) does not strictly conform to the requirements of the Invitation to Bid; 2) is incomplete; 3) any Bid Form is altered; 4) contains additions not called for; 5) is conditional; 6) contains prices that are, in the opinion of City, unbalanced either in excess or below the reasonable cost analysis values; 7) the Bid is in excess of the approved budget for the Project.

The City reserves the right to waive any non-material irregularities and technicalities, except timeliness and signature requirements. Any Bid received without an authorized signature or past the Bid Submittal Deadline will be rejected.

Any or all Bids may be accepted or rejected, in whole or in part, with or without cause, when determined by the City to be in the best interest of the City. The City reserves the right to rebid the solicitation; to reject non-responsive or non-responsible bids; to reject unbalanced bids; to reject bids where the terms, prices, and/or awards are conditioned upon another event; to reject individual bids for failure to meet any requirement; to award by item, part or portion of an item, group of items, or total; to make multiple awards; to waive minor irregularities, defects, omissions, technicalities or form errors in any Bid. This Invitation to Bid may be cancelled and may or may not be re-bid when determined to be in the best interests of the City.

Any or all Bids may be accepted or rejected, in whole or in part, with or without cause, when determined by the City to be in the best interest of the City. Nothing in this ITB is intended to restrict the City in any way in the selection of the Bidder/Bid that best meets the needs of the City.

The City reserves the right to reject the Bid of any Bidder who has previously failed in the performance of an award or to deliver contracts of a similar nature on time or who is not in a position to perform properly under this award.

No binding contract will exist between the Bidder and the City until a written contract is fully executed by the parties.

This ITB is being issued by City without any warranty or representation, express or implied, as to its content, accuracy or completeness and no Bidder or other party shall have recourse to the City or its agents or advisors if any information herein contained shall be inaccurate or incomplete. This ITB is made subject to correction of errors or omissions, or withdrawal without notice.



WEST PALM BEACH

CITY OF WEST PALM BEACH
CONSTRUCTION CONTRACT

Project:

S A M P L E

Project No.:

ITB No. ****

Contract No.

Contractor Firm: _____

Contractor Address: *****

Email: _____

Telephone No. _____

FEI/EIN # _____

Location:

City Project Manager:

City Professional: _____. If no Professional listed, City's Project Manager shall perform the responsibilities of the Professional.

THIS CONTRACT is made and entered into by and between the **CONTRACTOR** identified above and the **CITY OF WEST PALM BEACH**, a municipal corporation of the State of Florida, whose address is 401 Clematis Street, West Palm Beach, Florida 33401 (the "**City**").

WHEREAS, the City caused to be prepared specifications, drawings and other contract documents for certain work and issued an Invitation to Bid ("**ITB**") for the above-described project; and

WHEREAS, the Contractor submitted its Bid in response; and

WHEREAS, the City determined that the Contractor's Bid represents the best value to City and wishes to contract with Contractor under the terms and conditions contained in the Invitation to Bid;

NOW THEREFORE, in consideration of the promises and mutual covenants and obligations herein contained, and subject to the terms and conditions herein stated, the City and Contractor understand and agree as follows:

1. **Scope of Work.**

1.2 The Contractor shall furnish all construction services necessary for the complete and proper construction of the Project, if not expressly indicated or called for in the Contract Documents, and includes all labor, equipment, machinery, tools, materials, manufactured articles, supplies, documents, permits, traffic control, transportation, security and other services and incidentals, including fuel, power, light, water, sanitary facilities, temporary facilities and essential communications, and the costs of bonds, insurance, permitting, taxes warranties, general conditions, overhead and miscellaneous costs, necessary to construct _____ as described in

the ITB and shown in the Contract Drawings and described in the technical specifications for the Project, and to fulfill Contractor's obligations under this Contract as described in the Scope of Work detailed in the ITB:

1.2 (from ITB)

1.3 Technical specifications and drawings for the Project prepared by _____, dated _____, project number _____ (the "**Contract Drawings**").

1.4 The work shall include the items described in the Base Bid (plus Alternates: N/A).

(collectively, the "**Project or the Work**").

2. **Contract Price.** The City agrees to pay the Contractor for the completion of all Work and the Project. Contractor will accept, as full compensation for completion of the Work the sum of:

_____ and XX/100 Dollars (the "**Contract Price**"),

subject only to adjustment as provided in the General Conditions. Payments shall be made in accordance with the General Conditions.

☐ (check if applicable) **Contingency.** City and Contractor agree the Project budget shall include City's contingency, which shall be utilized in accordance with the General Conditions, in the amount of _____.

3. **Contract Time.** Time is of the essence of this Contract. Contractor shall proceed with the Work and shall conform to the Project schedule. Work shall commence on the date indicated in the Notice to Proceed issued by City and fully completed in accordance with the General Conditions, with such extensions of time as are provided in the General Conditions (the "Contract Time").

Substantial Completion shall be: _____ days from Notice to Proceed.

Final Completion shall be: _____ days from Notice to Proceed.
(Final completion shall not be less than 45 days from Substantial Completion).

4. **Liquidated Damages.** As of the date of this Contract, the actual damages City and the public may suffer as a result of the failure to complete the Work within the Contract Time are not ascertainable. If said Work is not substantially completed, and then fully completed, within the Contract Time, as may be adjusted, the Contractor shall be liable and hereby agrees to pay to the City as liquidated damages, and not as a penalty, for each and every calendar day or part of a day that said Work remains incomplete, the following sum:

Liquidated Damages: _____ (\$_____) per calendar day for each day or part of a day after scheduled substantial completion that Substantial Completion is not achieved.

_____ (\$_____) per calendar day for each day or part of a day after scheduled final completion and Final Completion is not achieved.

5. **Construction Bond.** Refer to General Condition 13.

Unless indicated below, Contractor will record the required public construction bond with the Clerk of the Court in the Public Records of Palm Beach County and provide a certified copy of the recorded bond(s) prior to commencing Work and submittal of first invoice. Contractor acknowledges that City will not make any payments without receipt of the recorded bond, if a bond is required.

☐ (check if applicable) Construction bond(s) not required and Contract Price is less than \$200,000.

Project Mgr. Initials: _____.

6. **Grant Requirements.** ☐ (check if applicable) This Contract is funded by a grant and the grant requirements applicable to this Contract are made part of the Contract Documents.

Grant: _____

7. **Equal Opportunity Compliance.**

7.1 **Small Business Participation.** ☐ (check if applicable). The City's Small Business Program is set forth in Sec. 66-221 of the City Code, and is incorporated into this Contract by this reference. Terms in this section shall have the meanings established in the Code.

☐ (check if applicable) Contractor is an eligible Small Business will perform at least 25% of the Work.

☐ (check if applicable) The small business participation for this Contract is

SB participation _____% of the total Contract Price.

Contractor shall maintain all relevant records and information necessary to document compliance with the Small Business Ordinance and shall allow City to inspect and audit such records. Failure to meet the SB commitment established in this Contract may be deemed a material breach of the contract. SB commitments may not be met by subcontractors that do not perform a commercially useful function or that are not qualified or certified to provide the services. A copy of each executed subcontract with each SB listed in the Bid shall be submitted to the City within 20 calendar days of execution of a contract with the City. If after contract award, the Contractor chooses not to utilize the SB subcontractor(s) identified in its Bid or subcontractor utilization plan, Contractor may face penalties unless approved in writing by the Office of Small Business Programs.

7.2 **Subcontractor Utilization Reporting Form & Updated Construction Timeline:**

The Contractor will complete the Subcontractor Utilization reporting form and submit such form with each submittal of its Payment Application to the City. The Subcontractor Utilization Report shall include all subcontractors and suppliers providing services and or materials for this Contract.

Contractor shall provide an updated schedule with each submittal of a Payment Application to the City. The updated schedule will show the baseline and the current status of each work item.

8. **E-Verify.**

8.1 In compliance with Section 448.095, Fla. Stat., Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of new employees hired by Contractor during the term of this Contract. Contractor shall require all subcontractors performing services under this Contract to verify the employment eligibility of new employees hired by the subcontractor during the term of this Contract. Contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this Contract.

8.2 The City, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Contractor acknowledges that upon termination of this Agreement by City for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the City as a result of termination of any contract for a violation of this section.

8.3 Contractor or its subcontractor shall insert in any subcontracts the clauses set forth in this section and shall require subcontractors to include these clauses in any lower tier subcontracts.

9. **Local Workforce Participation.** ☐ (check if applicable) The provisions of Sec. 66-76 of the City's Code of Ordinances are incorporated by this reference.

____% on-site labor requirement. Local workforce participation – 15% of on-site labor

from persons residing within the municipal boundaries of the City of West Palm Beach (not mailing address). Local workforce participation may include employees of both the contractor and its subcontractors to meet the requirement.

Verification. The contractor shall provide the names, addresses and employer of each local workforce employee and shall certify compliance with these local workforce requirements as a part of each pay application and invoice.

Job Fair. For contracts with a contract price over \$1,000,000, the contractor shall be required to hold one job fair within the city for the purpose of encouraging local workforce participation.

Records. Contractor agrees to produce all documents and records necessary to prove compliance with the Local Workforce Ordinance and agrees to require all subcontractors to do the same.

Violations. Contractor acknowledges that this Contract may be voidable if Contractor fails to comply with the Local Workforce requirements.

10. **Change Order.**

10.1 Except as otherwise provided in the General Conditions, this Contract shall only be modified by a written Change Order executed by Contractor and City. Commencing Work without a written change order or Change Directive executed by Owner in advance of commencement of work waives any claim by Contractor to an adjustment to the contract price and the contract time related to such Work.

10.2 It is expressly and specifically agreed that any and all claims for changes to the contract time due to delay shall be waived if not submitted in strict accordance with the requirements of the General Conditions.

10.3 Contractor waives all of its rights, including, but not limited to, claims for contract time and contract price adjustments if the Contractor fails to strictly comply with the requirements of General Condition 20.

11. **Contractor's Understanding.** It is understood and agreed that the Contractor has, by careful examination, satisfied itself as to the nature and location of the Work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of the equipment and facilities needed preliminary to and during the prosecution of the Work, and the general and local conditions. Execution of this Contract by the Contractor is a representation that the Contractor has visited the site, reviewed any design criteria furnished by City, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Contractor deems both his inspection of the site and review of information furnished by City to be an adequate investigation. Contractor represents that the plans and specifications are consistent, practical, feasible and constructible within the scheduled construction time. Contractor affirmatively covenants that Contractor has observed no defects or discrepancies in the plans, specifications or site and that if during construction any discrepancies, defects, etc., are discovered by or made known to Contractor, Contractor shall immediately communicate same to the City.

12. **Records Maintenance.**

12.1 Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least ten (10) years after final payment, or the final resolution of any related litigation. City shall have access to all records, documents, and information collected and/or maintained by Contractor and its subcontractors, material men and suppliers in the course of the contract. If records are

unavailable locally, it shall be Contractor's responsibility to ensure that all required records are provided to City at Contractor's expense.

12.2 Public Records. Contractor shall comply with Chapter 119, Florida Statutes, regarding public records. Contractor shall keep and maintain all plans, drawings, calculation, construction documents, technical specifications, sketches, photographs, videos, illustrations, tracings, specifications, maps, correspondence, computer files, emails, and/or reports prepared in order to perform the Work under this Contract. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed. Records that are exempt or confidential and exempt from public records requirements may include plans, drawings and records related to the physical security of City buildings or security systems and shall not be disclosed by Contractor, except as authorized by law and specifically authorized by City.

12.3 A request to inspect or copy public records relating to this Contract must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Contractor of the request, and the Contractor shall provide the records to the City or allow the records to be inspected or copied within a reasonable time at the cost that would not exceed the cost allowed by law. All records stored electronically must be provided to the City, upon request, in a format that is compatible with the information technology systems of the City.

12.4 Upon completion of the contract, Contractor shall transfer, at no cost, to the City all public records in possession of Contractor. Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

12.5 Failure of the Contractor to provide public records to the City within a reasonable time or allowable cost may be subject to penalties under Sec. 119.10, Fla. Stat., and may be cause for termination of the Contract by the City, in addition to any other remedies available under the Contract or by law.

12.6 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 CITY CLERK, WHO IS THE CITY'S CUSTODIAN OF PUBLIC RECORDS, AT:

Office of the City Clerk
City of West Palm Beach
401 Clematis Street
West Palm Beach, FL 33401
561-822-1210
CityClerk@wpb.org

13. **Ethics Requirements.**

13.1 Contractor shall comply with the ethics requirements of the City Code and the Palm Beach County Ethics Code.

13.2 Conflicts of Interest.

- a. Contractor represents that it has not given or accepted a kickback in relation to the Contract and has not solicited the Contract by payment or acceptance of a gratuity or offer of employment.
- b. Contractor represents that it has not solicited the Contract by payment of a gift or gratuity or offer of employment to the mayor or members of the City of West Palm Beach commission, any official, department director, head of any City of West Palm Beach agency, employee of the City of West Palm Beach, any City of West Palm Beach agency or selection committee, or member of any board, committee, or agency of the City of West Palm Beach or any of their immediate family or close personal relation (the "Conflict Group").
- c. Contractor represents that it does not employ, directly or indirectly any member of the Conflict Group.

- d. Contractor represents that neither it nor its subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any City commissioner, mayor or officer, during tenure or for 2 years thereafter, has any interest, direct or indirect.
- e. Contractor represent that no member of the Conflict Group is a stockholder of an interest of 10% or more, in any business entity affiliated with Contractor.
- f. Contractor represents that it has not knowingly given, directly or indirectly, any gift with a value greater than \$100 in the aggregate in any calendar year to any member of the Conflict Group that provides regulation, oversight, management or policy-setting recommendations regarding Contractor or its business.
- g. In the event Contractor is permitted to utilize subcontractors to perform any Work under the Contract, Contractor agrees to prohibit such subcontractors, by written contract, from having any such conflicts of interest.

13.3 Lobbying Certification. Contractor certifies to the best of its knowledge and belief that no funds or other resources received from the state in connection with the Contract will be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

13.4 Non-Collusion. Contractor certifies that it has not entered into any agreement to commit a fraudulent, deceitful, unlawful or wrongful act, or any act which may result in an unfair advantage over other bidders or contractors. (Fla. Stat. Sec. 838.22).

13.5 Inspector General. Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of the Contract, and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractor or lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by City to be a material breach of the Contract justifying its termination.

14. Representations of Contractor

14.1 Authority. Contractor hereby represents and warrants to the City that it has full power and authority to enter into and fully perform its obligations under this Contract without the need for any further corporate or governmental consents or approvals, and that the persons executing this Contract are authorized to execute and deliver it.

14.2 Duly Licensed. Contractor represents that it is duly licensed to perform the Services under this Contract and that it will continue to maintain all licenses and approvals required to conduct its business.

14.3 Compliance with Laws. Contractor shall comply with all applicable City, State and Federal laws relating to the scope of work under this Contract, now or hereafter in effect. It shall not be grounds for a change order that Contractor failed to investigate the codes and regulations of all applicable government agencies with jurisdiction over the Work.

14.4 Non-Discrimination. In performing under the Contract, Contractor shall not discriminate against any person because of race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status or sexual orientation. Contractor or its subcontractor shall not unlawfully discriminate (as proscribed by federal, state, county, city and any other local law) against any employee, city employee working with Contractor or its subcontractor, or applicant for employment with such Contractor or subcontractor on the basis of that person's race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status, or sexual orientation, or association with members of such protected classes. Contractor and its subcontractor(s) shall take action to ensure that applicants are not discriminated against and that employees are treated equally during employment.

14.5 Convicted Vendor List. Contractor represents that the execution of this Contract will not violate Section 287.133, Florida Statutes and certifies that Contractor and any parent corporations, affiliates, subsidiaries, members, shareholders, partners, officers, directors or executives, and any sub-Contractors have not been placed on the Convicted Vendor List maintained by the State of Florida within 36 months prior to the submittal of the

Proposal to under the ITB. Violation of this section may result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

14.6 Discriminatory Vendor List. In accordance with Fla. Stat. Sec. 287.134, Contractor represents that it has never been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services. Violation of this section may result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

14.7 Scrutinized Companies List. Pursuant to Fla. Stat. Sec. 287.135, Contractor represents that Contractor is not on the Scrutinized Companies that Boycott Israel List, maintained by the State of Florida, and is not engaged in a boycott of Israel. Contractor further represents that it is not on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engages in business activities in Sudan or Cuba. Violation of this section may result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

14.8 Foreign Country of Concern. Pursuant to Fla. Stat. Sec. 287.138, Contractor represents that Contractor is not owned by a government of a foreign country of concern and no government of a foreign country of concern has a controlling interest in the Contractor. Contractor is not organized under the laws of and does not have a principal place of business in a foreign country of concern. For purposes of this section, "foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern. Contractor has provided the required affidavit.

14.9 No Coerced Labor. In accordance with Florida law, the Contractor hereby represents that it does not use coercion for labor or services as defined in Section 787.06, Florida Statutes. Contractor has provided the required affidavit.

14.10 Federal Labor / Employment Laws. In accordance with Fla. Stat. Sec. 255.20, Contractor represents that it has not been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 years.

14.11 Unauthorized Aliens. The knowing employment by Contractor or its sub-contractors of any alien not authorized to work by the immigration laws or the Attorney General of the United States is prohibited and shall be a default of this Contract which results in unilateral termination. Contractor further represents that it is not in violation of any laws relating to terrorism or money laundering, including Executive Order No. 13224 on Terrorist Financing.

14.12 Safety and Environmental Laws. In performing the work, the Contractor shall comply with all Occupational Safety and Health Administration (OSHA), State and County Safety and Occupational Health Standards, applicable environmental laws and any other applicable rules, regulations and permits. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel throughout the term of the Contract. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.

14.13 Apprentices. If Contractor employs apprentices on the Project, Contractor shall notify the City, in writing, of the use of apprentices, and the behavior of Contractor and City shall be governed by the provisions of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. Contractor will include a provision similar to the foregoing sentence in each subcontract.

14.14 Lobbying Certification. Contractor certifies to the best of its knowledge and belief that no funds or other resources received from the state in connection with the Contract will be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

15. Indemnification. Contractor shall indemnify and hold harmless the City, its commissioners, officers, employees and agents ("Indemnified Parties"), from and against any and all claims, obligations, liability, expenses, losses and causes of action, including attorneys' fees and costs, to the extent the same are caused by: (i) an act, negligence, recklessness or intentional wrongful misconduct of Contractor or its subcontractors, or the officers, employees or agents of either, while engaged in or about the performance of the Work; or while in or about the

project site or premises; or (ii) arising from accident or any injury to Contractor or its subcontractors while engaged in or about the performance of the Work, or while in or about the project site or premises, not caused by act of the Indemnified Parties or other contractors of City; or (iii) arising out of the violation of federal, state, county or municipal laws, ordinances or regulations by Contractor or its subcontractor; or (iv) arising from liens or claims for services rendered for labor or materials furnished in or for the performance of the Work. This paragraph shall not be construed to require Contractor to indemnify the Indemnified Parties for such Indemnified Parties' own negligence, or intentional acts. Nothing in this paragraph shall be construed as a contractual waiver by the City of the protections and limits of sovereign immunity under Sec 768.28, Florida Statutes, nor a waiver of any defense the City may have and shall not be construed as consent to be sued by third parties based on any claims arising under this Contract. Contractor and City agree that any liability of the City under this Contract shall be limited to the amounts set forth in Sec. 728.68, Florida Statutes. This paragraph shall survive the expiration or termination of the Contract. (725.06 F.S. and 768.28 F.S.).

16. **Liens.** Contractor acknowledges that no liens may attach to the subject improvements and property as a public project. Nevertheless, Contractor agrees to keep the project, the buildings thereon and the property free of liens for or on account of any work done or materials furnished under the Contract. In the event any such lien is filed, Contractor shall, within five (5) days after written notice by City, discharge the lien(s) or cause a satisfaction of such lien(s) to be recorded in the Public Records of Palm Beach County, Florida, or post a bond sufficient to release the lien(s) and cause the Clerk of the Circuit Court of Palm Beach County to discharge such lien, as may be appropriate. In the event Contractor fails to so discharge or bond the lien(s), City shall have the right, but not the obligation, to discharge or bond the lien(s) and shall have the right to retain out of any payment then due or thereafter to become due to the Contractor, monies sufficient to discharge the amount of such lien(s) and City's costs and reasonable attorneys' fees incurred.

17. **Independent Contractor.** Contractor represents that it is properly experienced, licensed, equipped and financed to perform the Work. Contractor acknowledges and agrees that it is an independent contractor of City and is not an employee of City and shall maintain control over its employees, subcontractors and work methods. All persons employed by Contractor, either directly or indirectly, are Contractor's employees or subcontractors, not City employees. Accordingly, Contractor and Contractor's employees or subcontractors are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor more specifically acknowledges that it: will not be covered by City's workers' compensation insurance; and will be solely and exclusively responsible for payment of all federal and state income, social security, unemployment and disability taxes due. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify and hold harmless the City from all such claims.

18. **Use of City Name; Logos or Seal.** Contractor will not use the name of the City of West Palm Beach in any advertising or publicity without obtaining the prior written consent of the City. Contractor will not use the City logos or seals in any document or report without the prior written consent of the City.

19. **News Releases / Publicity.** News releases, publicity releases, or advertisements relating to this ITB or resulting contract or work authorizations shall not be made without prior City approval.

20. **Termination for Non-Appropriation.** The Contract is expressly conditioned upon the availability of funds lawfully appropriated and available for the purposes set out herein as determined in the sole discretion of City. If funding for the Contract is in multiple fiscal years, funds must be appropriated each year prior to costs being incurred. Nothing in this paragraph shall prevent the making of contracts with a term of more than one year, but any contract so made shall be executory only for the value of the work or services to be rendered or paid for in succeeding fiscal years. In the event funds to finance the Contract become unavailable, City may terminate the Contract without penalty on the last day of the fiscal period for which funds were legally available. City shall be the sole and final authority as to the availability of funds.

21. **Right to Audit.** Contractor must maintain adequate records of the services for at least three (3) years from project occupancy. Owner, during Contractor's business hours and with at least twenty-four (24) hours prior notice to Contractor, must have the right to audit Contractor's books and records, at Owner's expense, with regard to the accounts and services provided to or on behalf of Owner under this Contract to ensure that all aspects of the Contract are being met. Failure by Contractor to permit such audit will be cause for termination of this Contract by Owner for cause. In addition to the foregoing, Contractor consents to Owner requesting from the insurance carrier's

confirmation of all fees paid to Contractor arising out or related to Owner's insurance coverages during the term of the Contract.

22. **No Verbal Agreements.** No verbal agreement or conversation with any officer, agent or employee of City either before or after execution of the Contract shall affect or modify any of the terms or obligations contained in any of the documents comprising said Contract. All Contract amendments or Change Orders shall be in writing and executed by the authorized representatives of both City and Contractor.

23. **Survival.** The Contract Documents and the obligation of Contractor to perform corrective Work survive final completion of the Work and final payment.

24. **Legal Remedies.** City and Contractor may exercise those legal remedies as may be available to them with respect to any dispute arising out of the Contract Documents for which Engineer's decision is not final and a dispute resolution process is not otherwise described in the Contract Documents and which City and Contractor are unable to resolve through change order or mediation.

25. **Waiver of Chapter 558, Florida Statutes.** Pursuant to Section 558.005(1), Contractor and Owner agree to opt out of the requirements of Chapter 558, Florida Statutes.

26 **Governing Law; Jurisdiction; Venue; Litigation.**

26.1 The Contract Documents shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law without regard to conflicts of law provisions.

26.2 Contractor and City submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit concerning this Agreement shall lie exclusively in Palm Beach County, Florida, or the Federal Southern District of Florida. Contractor agrees to waive all defenses to any suit filed in Florida based upon improper venue or *forum nonconveniens*.

26.3 **WAIVER OF JURY TRIAL.** THE OWNER AND CONTRACTOR HEREBY MUTUALLY KNOWINGLY, WILLINGLY AND VOLUNTARILY WAIVE THE RIGHT TO TRIAL BY JURY, AND NO PARTY NOR ANY ASSIGNEE, SUCCESSOR, OR LEGAL REPRESENTATIVE OF THE PARTIES (ALL OF WHOM ARE HEREINAFTER REFERRED TO AS THE "PARTIES") SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEEDING BASED UPON OR ARISING OUT OF THE CONTRACT DOCUMENTS, OR ANY COURSE OF ACTION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS RELATING TO THE CONTRACT. THE PARTIES ALSO WAIVE ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES. THE WAIVER CONTAINED HEREIN IS IRREVOCABLE, CONSTITUTES A KNOWING AND VOLUNTARY WAIVER AND SHALL BE SUBJECT TO NO EXCEPTION. NEITHER THE OWNER NOR THE CONTRACTOR HAS IN ANY WAY AGREED WITH OR REPRESENTED TO THE OTHER OR ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

26.4 In the event suit is filed to construe or enforce this Agreement, each party in such suit shall bear its own costs and expenses incurred in connection therewith, including, but not limited to, attorneys' fees and costs through trial and appeal.

27. **Notices.** All written notices and other communications required or provided for under this Contract shall be sent by certified mail, return receipt requested, postage prepaid, in the case of mailing, or by overnight or same day courier, or hand delivered, to the following address and person bearing the following title for each party hereto or such other addressee or person as shall be designated by a party in a written notice given in the manner required hereby:

to City:

City of West Palm Beach

Attn.: Director of Engineering
P.O. Box 3366
(401 Clematis Street (33401))
West Palm Beach, FL 33402-3366

with a copy, *not to constitute notice, to:*

City of West Palm Beach
Attn.: City Attorney
P.O. Box 3366
West Palm Beach, FL 33402-3366

to Contractor:

[to Contractor at the address listed on the first page of
this Contract to the attention of the Project Manager]

28. **Specific Waiver.** Any waiver issued by City of any provision of the Contract Documents shall only be effective if issued in writing by City and shall be specific, shall apply only to the particular matter concerned, and shall not apply to other similar or dissimilar matters. Either party's failure to enforce strict performance of any covenant, term, condition, promise, agreement or undertaking set forth in the Contract shall not be construed as a waiver or relinquishment of any other covenant, term, condition, promise, agreement or undertaking set forth herein, or waiver or relinquishment of the same covenant, term, condition, promise, agreement or undertaking at any time in the future.

29. **Headings: Index.** The headings contained in this Contract are provided for convenience only.

30. **Severability.** The invalidity, illegality or unenforceability of any provision of the Contract Documents shall not affect the validity, legality or enforceability or any other provision of the Contract Documents and the Contract Documents shall be construed and enforced in all respects as if the invalid, illegal or unenforceable provision is not contained herein.

31. **Assignment.** Contractor shall not assign the Contract as a whole or in part without the written consent of City, which may be withheld, conditioned or delayed, in City's sole discretion. Contractor shall not assign any monies due or to become due to it hereunder without the previous written consent of City and its surety, with Contractor acknowledging that until the final payment request is approved, the amount of monies due or to become due to Contractor or that may be due from Contractor to City has not been fixed or finally determined. Assigning the Contract shall not relieve Contractor or its surety from any contract obligations.

32. **No Third Party Beneficiaries.** Nothing in this Contract is intended to create, or will create, any benefits, rights or responsibilities in any third parties.

33. **Contract Documents.** The term "Contract" and or "Contract Documents" shall include all the terms and conditions and Project requirements contained in this Contract, the Invitation to Bid, on the City website(s), and the following documents, all of which taken together are incorporated herein and form the Contract Documents. The Contract Documents constitute the entire agreement between Contractor and City and supersedes all prior verbal and written agreements, understandings, negotiations and discussions between the parties hereto. The terms and conditions of any Invitation to Bid issued regarding the Project and work is incorporated herein and made a part of this Contract. No verbal agreement or conversation with any officer, agent or employee of City either before or after execution of the Contract shall affect or modify any of the terms or obligations contained in any of the documents comprising this Contract. For convenience sake, all of the Contract Documents may not be attached to this Contract, but make up the Contract Documents, regardless of whether they are attached.

- Contract
- General Conditions
- Grant Requirements
- Invitation to Bid (ITB) and any addenda (may not be attached)
- Contractor's Bid, Schedule of Bid Items (Forms B2 and B3) and all Bid submittals

- Baseline Construction Schedule
- Substitution Sheet (Form B4)
- Contractor's Material Suppliers List (Form B5)
- Schedule of Subcontractors – including suppliers (Form B6)
- Drug Free Certification (Form B8)
- Trench Safety Compliance Form (if applicable) (Form B9)
- Public Utilities Environmental Policy (if applicable, for utility project) (Form B10)
- Small Business Commitment Forms (if applicable) (Forms SB01 & SB03)
- Public Construction bond (when recorded)
- Technical Specifications and Construction Drawings

The following Contract Documents may be found at

<https://www.wpb.org/government/engineering/engineering-forms-permits-and-applications>

City's Approved Materials List
City's Engineering Standard Details

The Contract Documents are complementary, and wherever possible the provisions of the documents shall be construed in such manner as to avoid conflicts between provisions of the various documents. In the event of conflict, the more specific or more recent document shall control, generally in the order provided above.

CONSTRUCTION GENERAL CONDITIONS **

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GC 2.2	Construction Drawings and Specifications.
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GC 22	Warranty Inspection
GC 23	Royalties and Patents

GC 1 DEFINITIONS The following definitions will apply regardless of whether the word(s) is capitalized, if the context is appropriate.

“Addenda” is a document issued prior to the opening of bids which clarifies, corrects or changes the bidding requirements or the proposed Contract Documents.

“Change Order” shall mean a written order issued by Owner and accepted by Contractor, authorizing additions, deletions, or revisions in the Work, or an adjustment in the contract price, or contract times, issued on or after the Effective Date of the Contract.

“claim” shall mean, except with respect to insurance claims under GC 15, a demand or assertion by Owner or Contractor, pursuant to GC 9.7 and GC 20, seeking an adjustment of the contract price or contract times, or both, or relief with respect to the terms of the Contract.

“Change Directive (CD)” is a document issued to authorize Work when a change order is not yet issued or has not yet been agreed upon. A CD may be issued unilaterally by Owner. A subsequent Change Order shall be issued for each CD.

“Construction Drawings” or “drawings” are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

“Contract” is the written instrument which is evidence of the agreement between Owner and Contractor covering the Work and incorporates and includes the Contract Documents.

“Contract date” shall be the date on which the Contract is signed by the last of the two parties to sign and deliver.

“Contract Documents” or “Contract” consist of the Contract between Owner and Contractor, the public construction bond (or payment and performance bonds), the General Conditions, any supplemental or special terms or conditions of the Contract, Construction Drawings, specifications, bidding documents, addenda, and other documents listed in the Contract, regardless of whether physically attached to the Contract, and any amendments or change orders issued and duly executed after execution of the Contract.

“Contractor” shall mean the entity contracting with Owner to perform the Work or its authorized representative. Contractor shall be lawfully licensed to perform the Work.

“Contract Price” is the total amount payable by Owner to Contractor for performance of the Work under the Contract Documents.

“Daily Log” is defined in GC 4.3.5.

“day” shall mean calendar day, unless otherwise specifically indicated. Where the performance of any act is directed, the time shall be computed so as to exclude the first and include the last day of the prescribed period. When the last day of a period falls on a Saturday, Sunday or legal holiday (observed by the party) the period shall end on the next day that is not a Saturday, Sunday or legal holiday.

“Engineer/Architect” shall be used and shall be understood to mean the professional engineer or architect consultant or consulting firm retained by Owner as the engineer or Architect of record.

“Field Order” shall mean written direction by Engineer/Architect to Contractor directing minor changes in the Work which do not involve adjustment to the contract price or contract time and which are not inconsistent with the intent of the Contract Documents. A subsequent Change Order shall be executed for each Field Order issued.

“fifty percent (50%) completion” of the Work is defined as that point in time where fifty percent (50%) of the overall value of Work items incorporated and which will remain in place subsequent to Final Completion of the Work have been completed, based upon the schedule of bid prices contained in the Contract. As such, and by

way of example, the value of Contractor's mobilization, general conditions, supervision or like items which do not involve permanent incorporation of Work do not apply to the determination of "Fifty Percent (50%) Completion" of the Work for purposes of establishing entitlement to a reduction of retainage.

"Final Certification" is the document issued to Owner by Engineer/Architect upon finding the Work acceptable under the Contract Documents and all requirements fully performed.

"Final completion" shall be deemed to have occurred when Engineer/Architect certifies that, to the best of Engineer/Architect's knowledge, information and belief, the Work has been fully completed in accordance with the terms and conditions of the Contract Documents and all conditions in these General Conditions have been met; all conditions and requirements of any permits and regulatory agencies have been satisfied; any documents required by the Contract Documents have been received by Engineer/Architect; any other items or documents required to be provided by Contractor have been received by Engineer/Architect.

"GC" means General Condition.

"Notice to Proceed" is the written notice given by Owner to Contractor fixing the date on which the Contract time will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

"Owner" or "City" is the City of West Palm Beach. The Owner's authorized representative for execution of the Contract and any amendments or change orders is the Mayor of the City of West Palm Beach, as agent for the Owner.

"Project" or "project" is the total construction, of which the Work performed under the Contract Documents may be the whole or a portion; and may include construction by Owner and/or separate contractors.

"schedule of bid prices" shall be a Contractor prepared and maintained schedule allocating portions of the contract price to various portions of the Work and used as a basis for reviewing Contractor's application for payment.

"shop drawings" are drawings, diagrams, illustrations, schedules and other data specially prepared for the Work by Contractor or its Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. Shop drawings are not Contract Documents but are used to demonstrate how Contractor proposed to conform to the design concept of the Contract Documents for those portions of the Work for which the Contract Documents require submittals.

"specifications" are that portion of the Contract Documents consisting of the Engineer/Architect's written requirements for materials, equipment, systems, standards and workmanship for the Work and performance of related services.

"Subcontractor" or "subcontractor" is a person or entity in direct or indirect contract with Contractor, or with any other subcontractor, to perform a portion of the Work.

"substantial completion" shall be deemed to have occurred when the Work has progressed to the point where, in the opinion of Engineer/Architect, the Work is sufficiently complete, in accordance with the Contract Documents, so that Owner can utilize the Work and the entire project for its intended purposes, including but not limited to the completion of all specified systems and items relating to life safety and regulatory use, with the exception of incidental or incomplete items except where a lack of completion of such incidental or incomplete items of Work will adversely affect the complete operation of other areas of the Work. Additional conditions (if any) needed to achieve Substantial Completion of the Work and which are project specific are set forth in the Special Terms or Supplemental Conditions. A certificate of occupancy (or a temporary certificate of occupancy for limited or conditional occupancy) must be issued for substantial completion to be achieved; however, the issuance of a certificate of occupancy is not determinative of the achievement or date of substantial completion.

"Supplemental Conditions" are that part of the Contract Documents which amends or supplements these General Conditions.

"Work", means the construction services required of Contractor by the Contract Documents, or necessary for the complete and proper construction of the Project, if not expressly indicated or called for in the Contract Documents, and includes all labor, equipment, tools, materials, manufactured articles, supplies, documents, permits, transportation and services, including fuel, power, water and essential communications, to be provided by Contractor to fulfill Contractor's obligations under the Contract. Work may refer to the whole or a portion of the Project.

The terms "Owner", "Contractor", "Engineer/Architect" and "Subcontractor" are treated throughout the Contract as if each were of the singular number and masculine gender.

GC 2 CONTRACT DOCUMENTS

2.1 Execution, Correlation and Intent of Documents.

2.1.1 The Contract Documents shall be executed by Owner and Contractor. The Contract may be executed by digital or electronic means by consent of both parties.

2.1.2 The Contract Documents, including the contract, the Bid Package, and the ITB, which are incorporated into the contract, are intended to include all items necessary for the proper execution and completion of the Work by Contractor and embody the entire agreement and understanding of the parties with respect to the Project and the Work and supersede all prior and contemporaneous agreements and understandings, oral or written, relating to said subject matter. Any labor, services, materials, supplies, equipment or documentation that may reasonably be inferred from the Contract documents or trade usage or prevailing custom as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

2.1.3 The Contract Documents are complementary, and wherever possible the provisions of the documents shall be construed in such manner as to avoid conflicts between provisions of the various documents. In the event of a conflict between or among any of the terms of the Contract Documents, the order of precedence for deciding which document shall control shall be as follows:

First Priority:	Approved Change Orders, Addendums or Amendments
Second Priority:	Specifications (quality)
Third Priority:	Drawings (location)
Fourth Priority:	Supplemental Conditions or Special Terms
Fifth Priority:	Contract
Sixth Priority:	General Conditions
Seventh Priority:	Invitation to Bid
Eighth Priority:	Contractor's Bid

2.1.4 In any event of inconsistency, however, the latest, and more stringent, or technical, or the lesser quantity requirements shall control the work to be performed by Contractor, as determined by Engineer.

2.1.5 Organization of the Specifications into sections or arrangements of the Construction Drawings shall not control how the Work is distributed to subcontractors or among the trades.

2.1.6 The Contract Documents make no attempt to fix the scope of work of any subcontractor nor the responsibilities of the subcontractors.

2.1.7 Unless otherwise stated in the Contract Documents, words that have well-known conventional or technical or construction-industry meanings are used in the Contract Documents in accordance with such meanings.

2.1.8 Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to laws or regulations, shall mean the standard, specification, manual, code, or laws, or regulations in effect at the time of bid opening or on the Contract date if there were no bids.

2.1.9 The following Contract Documents may be found at:

Owner's Approved Materials List
Owner's Engineering Standard Details
Owner's Right-of-Way Construction Standards (if applicable)

2.2 Construction Drawings and Specifications.

2.2.1 Owner, through Engineer/Architect, shall furnish Construction Drawings and specifications which represent the requirements of the Work as far as practical to be performed under the Contract Documents. Owner or Engineer/Architect will provide Contractor with copies of all drawings and specifications, not to exceed four (4) complete sets, for the execution of the Work.

2.2.2 Contractor shall, immediately upon receipt of the specifications and Construction Drawings, check all specifications and Construction Drawings furnished and shall promptly notify Owner, in writing, of any illegibility, error, omission, defect or discrepancy discovered in such specifications and drawings and shall comment as appropriate upon construction feasibility and practicality. Contractor shall obtain written interpretation or clarification from Engineer/Architect prior to proceeding with any Work affected by such illegibility, error, omission, defect or discrepancy. Contractor shall be responsible for obtaining building permits for the Work based on the specifications and Construction Drawings. Contractor shall perform work only in accordance with the specifications and permitted Construction Drawings and any subsequent revisions thereto.

2.2.3 If the permit approval process requires a change to the scope of the work, Contractor shall notify Owner and Engineer within seven (7) days of Contractor being informed of the required change or receipt of the permitted Construction Drawings and such notification shall contain a written description of the change and its impact on the cost and schedule, if any. Failure to provide such notice within seven (7) days shall be a complete waiver by Contractor of all additional cost and time and Contractor shall perform and additional work at its expense and complete the Work according to schedule and in no event shall Contractor recover delay or consequential damages.

2.3 Ownership and Use of Drawings and Specifications

2.3.1 Any and all Construction Drawings produced for Owner become the property of Owner without additional payment by Owner. The Contract Documents, in whole or in part, are to be used by Contractor only with respect to the project and the Work, and shall not be used by Contractor for any other purpose without written authorization by Owner. This prohibition shall survive completion or termination of the Contract. Contractor may retain copies of Contract Documents for record purposes.

2.3.2 For security reasons, building plans, construction drawings, security features and technical details and specifications of City of West Palm Beach or Owner owned facilities are not public documents. These documents may be shared by Contractor with those employees and subcontractors as needed to perform the Work. However, Contractor and its subcontractors shall not release such plans, drawings, and specifications to any other third party without Owner's prior written approval.

2.4 **Electronic Data.** Unless specifically stated in Supplemental Conditions or Special Terms, and excepting the electronic documents referenced in GC 2.1.9, the data, specifications and drawings that may be relied upon are limited to the printed copies (hard copies). If the parties intend to transmit any data, information or documentation in digital form, with the intent of reliance on such transmission, and not solely for the convenience of the receiver, the parties to the transmissions shall establish protocols for such transmissions.

GC 3 OWNER

3.1 Owner shall be responsible for obtaining any easements necessary for the Work to be performed at the indicated site.

3.2 The furnishing of any surveys, utility locations, or other site information by Owner does not relieve Contractor of its responsibilities under the Contract Documents. Owner makes no representation or warranty as to the accuracy of any information provided to Contractor.

3.3 Unless otherwise provided in the Contract Documents, Owner shall provide Contractor with at least one (1) but no more than four (4) complete set(s) of Contract Documents.

3.4 Unless otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer/Architect.

3.5 Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's or any Subcontractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor or any Subcontractor to comply with laws and regulations applicable to the performance of the Work.

3.6 Owner's Right to Stop Work.

If Contractor fails to correct Work that is not in accordance with the Contract Documents, or repeatedly fails to perform Work in compliance with the Contract Documents, Owner may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such stop the Work order has been eliminated or resolved to Owner's satisfaction.

3.7 Owner's Right to Perform Work.

Owner reserves the right, but is not obligated, to perform or complete all or a portion of the Work in the event of Contractor's failure to perform the Work in accordance with the Contract Documents, after written notice of such failure and a five (5) day period to cure such failure(s). Owner's exercise of its right to perform the Work shall be without prejudice to any other remedies Owner may have. In such event, a change order shall be issued deducting Owner's costs, including additional compensation to Engineer/Architect, from payments thereafter due to Contractor. The amounts deducted shall be subject to review by Engineer/Architect. If payments due to Contractor are not sufficient to cover the amount, Contractor shall pay the difference to Owner.

GC 4 CONTRACTOR

4.1 Contractor Responsibilities.

4.1.1 Contractor shall supervise, inspect and direct the Work, competently, timely and efficiently, in accordance with the Contract Documents. Contractor shall be held liable to Owner for the performance of all Work provided for under the Contract Documents.

4.1.2 Contractor shall employ and or subcontract with subcontractors that are qualified to successfully complete the Work and within the contract time specified.

4.1.3 Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, heat, utilities, travel, lodging, insurance, facilities and services necessary for the proper execution and completion of the Work.

4.1.4 Contractor shall be solely responsible for all construction means, methods, techniques, sequences, procedures and safety programs in connection with the performance of the Work. Contractor shall be solely responsible for the engagement, management and performance of any subcontractors used to perform any portion of the Work, and for the acquisition, installation and performance of any materials and equipment used or incorporated as part of the Work.

4.1.5 Contractor shall be liable to Owner for materials and equipment furnished. This shall include all materials and equipment whether manufactured and/or fabricated by other persons. In the event that an agent or other representative of Owner approved the installation or erection of any item of material or equipment and Contractor feels the same is not fabricated in good workmanlike manner, Contractor shall forthwith advise Engineer/Architect and Owner of such situation in writing.

4.1.6 Contractor shall maintain a log of daily Work activities, including manpower records, weather, delays, major decisions, etc., and provide a copy of same to Owner upon request.

4.1.7 Contractor shall maintain a current roster of subcontractors with name and contact telephone numbers for key personnel and provide a copy of same to Owner at the beginning of the project and at any time the information is revised.

4.1.8 Contractor shall provide a safety program for the project and conduct a safety meeting prior to commencing work and at regular intervals, no less than once per month, during the prosecution of the Work.

4.1.9 For street and utility construction, Contractor shall give notice of commencement of construction to all nearby properties which may be affected by the Work at least seven (7) calendar days prior to commencement of construction. Owner's project manager will assist Contractor in determining those properties requiring notice.

4.1.10 Contractor shall not perform any Work unless Contractor has provided a recorded public construction bond in compliance with GC 4.8.2 and GC 13.

4.1.11 Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

4.2 **Contractor Review.**

4.2.1 Contractor shall carefully study and review the Construction Drawings, plans and specifications to assure itself and Owner that Contractor has observed no defects or discrepancies in the Construction Drawings or specifications and such plans are consistent, practical, feasible and constructible within the scheduled construction time. It is recognized that Contractor's review is made in Contractor's capacity as a licensed contractor and not as a design professional, unless otherwise specifically provided in the Contract Documents.

4.2.2 Contractor shall, by careful examination, satisfy itself, to the extent it deems necessary, as to the nature and location of the Work, the conformation of the ground and site, access and transportation of materials, the character, quality and quantity of the materials, storage, handling and disposal of materials, the character and storage of the equipment and facilities needed preliminary to and during the prosecution of the Work, the availability, quantity and quality of labor, water and electric power; availability and condition of roads; climatic conditions; location of underground utilities; existing site conditions, topography and ground conditions; subsurface geology and hydrology, and nature and quantity of surface and subsurface materials to be encountered; the general and local conditions and all other matters which can in any way affect the performance of the Contract. Execution of the Contract by Contractor is a representation that Contractor has visited the site, reviewed any design criteria furnished by Owner, become generally familiar with conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. No change shall be made to the contract price on account of minor differences between actual field conditions and the Contract Documents. Contractor's failure to assess the site conditions will not relieve it from the responsibility for properly estimating the costs and schedule of performing the Work.

4.2.3 If Contractor, whether prior to or during construction, discovers or becomes aware of any discrepancies, defects, errors or omissions in the Construction Documents, or any issues or concerns regarding the Work site or constructability of the Work, Contractor shall immediately report them in writing to Owner and Engineer/Architect.

4.2.4 Subsoil Conditions. Unless otherwise stipulated in the Construction Documents, no subsoil or de-watering investigations have been made by Owner. Contractor shall satisfy itself as to all subsoil and de-watering conditions and appropriate means and methods to address any such conditions during execution of the Work as necessary. Contractor shall be responsible for coordinating and scheduling geotechnical services based on Contractor's testing requirements.

4.2.5 Underground Utilities and Facilities.

a. Where applicable, Contractor shall be responsible for locating all underground utilities and facilities. Owner does not guarantee that all lines are shown, or that the ones indicated are in their true location. It shall be the Contractor's responsibility to identify and locate all underground and overhead utility lines or equipment affecting or affected by the Project. Owner shall not be responsible for the accuracy or completeness of any information or data provided regarding underground utilities or facilities. No additional payment will be made to the Contractor

because of discrepancies in actual and plan location of utilities, and additional costs suffered as a result thereof. All charges by electrical/gas utility companies for temporary support of its utilities shall be paid for by the Contractor. All costs of permanent electrical/gas utility relocation to avoid conflict shall be the responsibility of the utility company involved. No additional payment will be made to the Contractor for utility relocations, whether or not said relocation is necessary to avoid conflict with other lines.

b. Contractor shall schedule the work in such a manner that the work is not delayed by the relocating or supporting of utilities. No compensation will be paid to the Contractor for any loss of time or delay.

c. All overhead, surface or underground structures and utilities encountered are to be carefully protected from injury or displacement. All damage to such structures is to be completely repaired within a reasonable time; needless delay will not be tolerated. Owner reserves the right to remedy such damage by ordering outside parties to make such repairs at the expense of the Contractor. All such repairs made by the Contractor are to be made to the satisfaction of the utility owner. All damaged utilities must be replaced or fully repaired. All repairs are to be inspected by the utility owner prior to backfilling.

4.3 **Supervision & Labor**

4.3.1 Contractor shall supervise, direct and inspect the Work using Contractor's best skill and attention. Contractor shall enforce discipline and order at the Work site. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

4.3.2 **Contractor's Project Manager**

a. The Project Manager named by Contractor in the Bid documents was a material consideration for Owner awarding the Bid to Contractor. To ensure that the work will be performed to the requirements of the Contract Documents, Contractor shall, at all times during the progress of the Work, assign the Project Manager to the Project. Contractor shall advise Owner and Engineer/Architect, in writing, within ten (10) calendar days after the date of Owner's issuance of a Notice to Proceed, the local address and contact information, including cell phone number, of the Project Manager. Contractor will ensure that Owner and Engineer/Architect shall be able to reach the Project Manager at his cell phone number at all working hours and during emergencies. Contractor shall not remove or replace the Project Manager during the pendency of the Project, without the prior written consent of Owner, unless the Project Manager ceases to be in Contractor's employ. In the event Contractor must replace the Project Manager during the pendency of the Project (e.g., death or disability of the Project Manager, or Project Manager is no longer in the employ of Contractor, but not because needed or wanted on another Contractor project), Contractor shall, unless otherwise impossible, give Owner at least ten (10) calendar days prior notice of the need to replace the Project Manager and proposed three (3) replacement candidates for Owner review and approval. At any time Owner may request and Contractor shall replace the individual performing as Project Manager with an individual acceptable to Owner.

b. The Project Manager shall represent Contractor and all notices and directions given to him shall be binding as if given to Contractor. Important directions shall be confirmed in writing upon the written request of Contractor.

4.3.3 **Labor**. Contractor, and subcontractors retained by Contractor, shall employ only competent, skilled and suitably qualified personnel to perform the work. Contractor shall remove from the jobsite any personnel of Contractor or subcontractors who is unfit or not properly skilled in the tasks assigned to him, or working in violation of any provision of the Contract. Contractor and all subcontractors shall be bound by and comply with all applicable Federal, State and local laws regarding labor.

4.3.4 **Hours**. Except as otherwise required for safety or protection of persons or the Work, or adjacent property, and except as otherwise provided in the Contract Documents, all Work at the project site shall be performed Monday through Friday, 8 am to 5 pm. If the Contract Documents specifically require work to be performed beyond normal working hours, weekends or legal holidays, or should the nature of the Work or the completion time require work to be performed at said times, or should Contractor, with Owner's permission, elect to perform work at said times, any additional costs resulting from working at said times are Contractor's sole responsibility. All work performed after regular working hours, on Sundays or legal holidays, shall be performed without additional expense to Owner.

4.3.5 Daily Log. On a daily basis, the Contractor shall record, at a minimum, the following information in a log ("Daily Log"): the day, date, weather conditions, any impact of the weather on the work, time of commencement of work on that day, the work being performed, materials, labor, personnel, equipment and subcontractors at the project site; visitors to the site, including Owner's representatives and regulatory representatives; any event that caused or contributed a delay to the critical path of the work schedule, or would likely result in a potential change order; any special or unusual conditions or occurrences encountered; any safety issues; and the time of termination of work for the day. The daily log shall be kept on the Project site and shall be available at all time for inspection and copying by Owner and its representatives and Engineer/Architect. In the event the Owner or the Engineer provide for an electronic web-based document management system, the Contractor shall upload the Daily Log to the document management system on a daily basis.

4.4 **Contractor Obligations; Materials & Equipment**

4.4.1 Unless otherwise stipulated, Contractor shall provide and pay for all materials, labor, tools, equipment, services, utilities, permit fees, insurance costs, bond costs, transportation, home office overhead, and other facilities, costs and services necessary for the execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated or to be incorporated in the Work.

4.4.2 Unless otherwise specified, only new, unused materials, equipment and items of recent manufacture, of designated quality, free from defects, will be accepted. All workmanship will be of good quality. Contractor shall, if requested, furnish evidence satisfactory to Owner as to the kind, quality and manufacturer of materials. Owner will be the final authority for determining conformance of workmanship, materials, equipment and systems with the requirements of the Contract Documents.

4.4.3 No work defective in construction, quantity or quality, or deficient in meeting any requirement of the Contract Documents, Construction Drawings or specifications, will be acceptable regardless of Owner's failure to discover such defects during construction; nor will inspection by Engineer/Architect relieve Contractor from ensuring the quality and efficacy of the Work as required by the Contract. No payment, whether partial or final, shall be construed as an acceptance of defective or unacceptable work or improper materials and equipment.

4.4.4 Approved Materials. Refer to the specific technical specifications for the Project and <https://www.wpb.org/government/engineering/engineering-forms-permits-and-applications>

4.4.5 Samples. Where samples are required, samples shall be submitted to the Engineer for Engineer's approval, by and at the expense of Contractor. Materials represented by such samples shall not be manufactured, delivered to the site or incorporated into the Work without such review. At least twenty-one (21) calendar days shall be allowed for Engineer's/Owner's review.

4.5 **Substitution**

4.5.1 The naming of a specified product of specific manufacturers for equipment or materials in the specifications or Contract Documents shall be interpreted as establishing a minimum standard of quality and performance. It shall not be construed as eliminating the selection of other than the named equipment or materials equal to those specified, unless the equipment or materials are specifically designated as not permitting substitution. If Contractor objects to equipment or materials specifically designated as not permitting substitution as not being suitable for the Work, Contractor shall promptly notify Engineer/Architect in writing, absent which, Contractor shall be deemed to accept the suitability of such equipment or materials for the Work and shall be responsible if such equipment or materials are not suitable for the Work. Upon receipt of a timely objection notice, Engineer/Architect shall review the objection and render a determination to Contractor of whether a substitute will be permitted.

4.5.2 Contractor may make substitutions only with the prior written consent of Owner, after evaluation and approval by Engineer/Architect, and in accordance with a change order or change directive. The burden of proof that such an item offered is equal in all respects to that specified shall be Contractor's. By making a request for substitution, Contractor represents:

- Contractor has investigated the proposed substitute item, material and/or process and determined that it is equal or superior in all respects 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;

- That by reason of costs savings, reduced construction time or similar demonstrable benefit, the substitution of such item will be in Owner's interest;
- There will be no detrimental impact to the project schedule;
- That Contractor will provide the same or better warranty for the substitute item as the specified item;
- That the cost data presented at the time of request for review is complete and includes all related costs under the Contract, including costs for review by design professionals, and Contractor waives all other claims for additional costs related to the substitution that are not presented with the request.

By making a request for substitution, Contractor agrees to pay directly to Engineer/Architect all Engineer/Architect's fees and charges related to Engineer/Architect's review of the request for substitution, whether or not the request for substitution is accepted by Engineer/Architect. If a substitution is approved, the net dollar savings shall be shared equally between Contractor and Owner and shall be processed as a deductive Change Order.

4.5.3 All requests for substitutions shall be in writing, with supporting information, shall be submitted by and at the expense of Contractor. Contractor shall submit drawings, samples, data and additional information as may be required by Owner or Engineer/Architect. At least thirty (30) calendar days shall be allowed for Owner's/Engineer's review and an additional thirty (30) calendar days shall be allowed for change order approval. Contractor may not submit a claim for a time extension because of timing related to review and approval of a request for substitution.

4.5.4 The above representations do not obligate Owner to consent to the substitution. Owner or its Engineer/Architect shall make the determination as to the acceptability of any substitution. Approval of a substitution shall not relieve Contractor from the responsibility for compliance with all requirements of the Contract. Contractor shall coordinate the change with all trades and bear the expense for any changes in other parts of the work caused by any substitution.

4.6 **Quality Assurance**

4.6.1 Contractor shall develop, implement and maintain a plan for the Work with quality assurance and management and control of the construction services. Contractor shall maintain a continuous presence at the Work site and an adequate inspection system and perform such inspections as will assure that the Work performed conforms to the requirement of the Contract Documents.

4.6.2 Contractor shall allow Engineer/Architect full access to the Work for inspection of the Work. When requested by Engineer/Architect, the Contractor shall meet with Engineer/Architect at reasonable times and furnish all information requested. Neither Owner nor Engineer/Architect shall be liable to Contractor for compensation or claims for delay or interference on account of any such meeting, or the supply of information, or tests or inspections. Contractor acknowledges that the time schedule for completion of the Work has incorporated the activities of Owner and/or Engineer/Architect in administration of the Contract or in performing tests or inspections, and such activities shall not relieve Contractor of its obligations to perform the Work in accordance with the Contract Documents.

4.6.3 **Warranty.** For a period of one (1) year after the date of Final Completion of the complete Work (and not from final completion of component parts of the Work) or for such longer periods of time as may be set forth with respect to specific warranties contained in the specifications (the "Warranty Period"), Contractor warrants to Owner that the Work will conform to the requirements of the Contract Documents Contractor warrants to Owner that the Work will conform to the requirements of the Contract Documents and will be free from defects and fit for the purpose for which they were intended. Work, materials or equipment not conforming to these requirements may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by or under Contractor, improper or insufficient maintenance by Owner, improper operation by Owner or normal wear and tear and normal usage. Warranty by Contractor shall not be construed as a waiver by Owner of any other contract or legal remedy.

4.7 **Permits & Fees.**

4.7.1 All permits or licenses necessary for the performance of the Work or required by law or ordinance, **including building permits**, shall be secured, maintained, and paid for by Contractor, unless otherwise provided in

the Contract Documents. Contractor shall be responsible for all governmental fees, including but not limited to utility fees and connection fees.

4.7.2 Building Construction. For construction of a building, Contractor shall secure building permits, right-of-way permits and all other applicable permits from the City of West Palm Beach for the Work, and Owner shall be responsible for all City of West Palm Beach construction plan and permit review fees. Contractor acknowledges that Owner has no control over the City of West Palm Beach review and issuance of building permits in its regulatory capacity, and Owner is not responsible for claims related to delay in issuance of building permits for the Work.

4.7.3 Surface and Subsurface Water. Contractor shall obtain all permits required from each applicable regulatory agency with respect to the control of surface and subsurface water by Contractor during the Work, including, but not limited to dewatering permits, with copies submitted to Owner, unless otherwise provided for in Supplemental Conditions.

4.7.4 Inspection Fees. Contractor shall be responsible for all inspection fees charged by regulatory/governmental agencies.

4.7.5 Right-of-Way Permit. For street and utility construction and as otherwise applicable, Contractor shall obtain a City of West Palm Beach right-of-way permit for each required road closure. Contractor shall submit detailed Maintenance of Traffic (MOT) plans, signed and sealed by a professional engineer, for each phase of the Work. During the times Contractor is working in the project area, Contractor shall utilize flagmen, traffic control devices and variable message boards on a full time basis, where and when needed, to facilitate the movement of traffic along and around the project Work. All MOT plans shall be reviewed and approved by Owner prior to implementation of work by Contractor. Contractor shall not close or obstruct any highway, road or other property until the necessary permits have been obtained.

4.7.6 Contractor shall immediately remedy any permit violations and shall be responsible for any damages, remediation, fines or penalties assessed by such agencies for permit violations.

4.8 Notice to Proceed; Schedule

4.8.1 Notice to Proceed. Contract times will commence to run on the date indicated in the Notice to Proceed issued by Owner, unless otherwise provided in the Contract Documents. Unless otherwise provided in the Contract, if a public construction bond or performance/payment bond(s), is required by the Contract Documents, such bond must be received by Owner prior to issuance of a Notice to Proceed.

4.8.2 Commencement of Work. If a public construction bond or performance/payment bond(s), is required by the Contract Documents, Contractor may not commence any Work until Contractor has provided Owner with a certified copy of the bond(s) evidencing that such bond(s) have been recorded with the Clerk of the Court in the Public Records of Palm Beach County.

4.8.3 Project Schedule. Within ten (10) calendar days after the date of Owner's issuance of a Notice to Proceed, Contractor shall prepare and submit to Owner and to Engineer/Architect, for review and approval, a project schedule utilizing the Critical Path Method (CPM) graphically depicting the activities contemplated to occur as a necessary incident to performance of the Work required to complete the Work within the substantial completion and final completion dates shown in the Contract, showing the sequence in which Contractor proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The construction schedule shall be complete in all respects, covering approvals, mobilization and demobilization, construction, permit close-out, and Owner occupancy, in addition to activities and interfaces with other contractors at the Work Site, offsite activities such as design, fabrication, allowance for weather delays (if appropriate), submittals, procurement and jobsite delivery of Contractor furnished material and equipment, and shall have a completion date that corresponds to the Contract Documents. By executing the Contract, Contractor confirms that it is capable of properly completing the Work within the completion date set forth in the Contract Documents. The time limit for the completion of the Work as described in the Contract Documents is of the essence of the Contract.

4.8.4 Contractor shall take all actions necessary to remain on schedule, at Contractor's sole cost and expense, including but not limited to:

1. Increase manpower as necessary to eliminate work backlog.

2. Increase the number of working hours per shift, shifts per working day, working days per week, construction equipment, or any combination of the foregoing to recover the construction schedule.
3. Reschedule the Work in conformance with specification requirements.

4.8.5 Testing & Inspections. Contractor must provide a minimum of five (5) calendar days' prior notice for specified testing or inspections that are to be performed by Owner or separate contractors. Such notice, testing and inspections shall be included in Contractor's construction schedule.

4.8.6 Monthly Construction Schedule. For Projects with schedules exceeding ninety (90) calendar days, or where required by the Contract Documents for shorter duration projects, with each pay request, Contractor shall submit an updated and current construction schedule, formatted to fit in a three-ring binder, 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 which will affect the progress of the performance of the Work yet to be performed, along with the updated CPM schedule and planned progress of performance of such Work, including a three (3) to five (5) week "look ahead" schedule. Included with the progress schedule shall be a narrative description of the progress schedule. Each such schedule shall be submitted to Owner and Engineer/Architect. Failure of Contractor to prepare and submit the updated construction schedule(s) shall be sufficient grounds for Owner to find Contractor in material default and shall be sufficient cause to terminate the Contract or to withhold payment to Contractor until a current construction schedule is submitted.

4.8.7 Schedule Changes. The construction schedule may only be changed by an executed change order. If Owner approves a Change Order extending the Contract time, such extension of Contract time shall extend the construction schedule and completion date and substantial completion date for such reasonable time as Owner shall determine in the Change Order.

4.8.8 Contractor agrees to complete the Work and project in accordance with the construction schedule, as amended by any approved and duly executed Change Orders.

4.8.9 Waiver. Contractor agrees that failure to timely request a time extension constitutes a waiver by Contractor of such claim for time extension.

4.8.10 Float. Neither Owner nor Contractor shall be considered to own the schedule "float" time.

4.9 **Survey; Lines, Grades Levels and Dimensions**

4.9.1 Where applicable to the Work, and unless otherwise specified, Engineer/Architect shall furnish all land survey control points, base lines and benchmarks for the location of the Work. Contractor shall locate and lay out all work from datum and dimension points given on the Construction Drawings. Contractor shall establish and verify lines and grades, levels, elevations and dimensions, as required. Contractor shall take measurements and verify dimensions of existing and new work. Contractor is responsible for the preservation of all lines, points, and elevations furnished and shall bear the expense of resetting same if Contractor or any of its subcontractors move or destroy or render inaccurate any such lines, points and elevations. Contractor shall provide five (5) calendar days written notice to Engineer/Architect as to its needs for lines, levels, elevations or dimensions.

4.9.2 If Contractor, in the course of the work finds any discrepancy between the Construction Drawings and the physical conditions of the Work Site, or any errors or omissions in the specifications or in the layout as given, Contractor shall immediately inform Engineer/Architect and Owner, in writing, and Engineer/Architect will review the same and provide corrective instructions, if any are necessary. Any of the Work done after such discovery, until authorized, will be done at Contractor's risk.

4.9.3 Survey. Contractor shall be responsible for any necessary surveying services, including construction layout and final project record drawings in alignment with the land survey control points. All survey work shall be performed by an independent, third party surveyor licensed to practice in the State of Florida, hired by Contractor and surveys shall be signed and sealed. All elevations shall be based on State Plane Coordinates NGVD-29.

4.9.4 For street, utility and other horizontal construction, where Contractor-supplied drawings are required for planning or performance of the Work, such drawings shall include, but not be limited to, matchmarks, erection diagrams and other details such as field connections for installation. Such drawings shall be submitted by and at the expense of Contractor. At least twenty-one (21) calendar days shall be allowed for review by Owner. If drawings show variations from the Contract requirements, Contractor shall describe such variations in writing at the time of submission. Review and permission to proceed by Owner does not constitute acceptance or approval of design details, calculations, analyses, test methods or materials developed or selected by Contractor and does not relieve Contractor from full compliance with the Contract Documents.

4.10 **Record Documents**

4.10.1 **Record Set.** Contractor shall maintain at the work site one (1) copy of all permitted Construction Drawings and specifications, marked and kept current, to indicate all field changes, and selections made during construction. The record set shall include:

- a. Construction Drawings
- b. Specifications
- c. Addenda
- d. Change orders, Construction Change Directives, Field Orders and other modifications to the Contract
- e. Approved shop drawings, product data, and samples
- f. Permits

The record set documents, together with all approved samples and a counterpart of all approved Shop Drawings, shall be available to Owner, Engineer/Architect and all trades performing at the project. Upon final completion of the Work and prior to final payment, these record documents, samples and shop drawings shall be delivered to Owner.

4.10.2 The Record set and As-Built Construction Drawings shall neatly, correctly and accurately show all changes made during construction from the Contract Documents and shall reflect surveyed information. The indicated revisions shall be neat and legible.

4.10.3 **Final As-Built Documents.** Prior to final inspection, Contractor shall provide Owner with "Record" or final "as-built" Construction Drawings and specifications, including all documents listed above, and which comply with the following requirements:

- One (1) complete set of mylar or paper marked-up as-built construction drawings with "RECORD" or "AS BUILT" clearly printed on each sheet and signed by Contractor;
- One (1) complete paper set of marked-up specifications with "RECORD" or "AS-BUILT" clearly printed on the cover.
- One (1) electronic copy of all documents, signed and sealed drawings and specifications in ".pdf" format;
- As-built survey, where applicable, prepared by and sealed by an independent third party land surveyor registered with the State of Florida on State Plane Coordinates certifying the elevation and location of improvements;
- For street, utility and other horizontal construction, certified drawings showing horizontal and vertical locations, lines and grade of buried pipe line(s) four (4) inches or larger in diameter and exterior to buildings, and other buried facilities (e.g. valves, tanks, vaults, storm inlets, ducts, etc.) installed or discovered as a result of the Work and which comply with Owner's Final Record Drawing Requirements found at <https://www.wpb.org/government/engineering/engineering-forms-permits-and-applications>
- For street, utility and other outdoor horizontal construction, certified drawings showing building corners, sidewalks, paved areas and the location of all above ground structures within the Work Site.
- A list of each piece of equipment incorporated into the Work having an individual value of \$500 or greater. The list shall include, at a minimum, manufacturer, make and model number, catalog number, supplier, quantity installed, and value of equipment, and operation and maintenance manuals and warranties where appropriate for such equipment.

4.10.4 Pay requests shall be submitted with copies of marked As-Built Drawings.

4.10.5 Final pay request and connections to any existing utility main will not be approved until all final as-built documents are reviewed and accepted by Engineer/Architect.

4.11 **Work Site**

4.11.1 **Access.** Contractor's access to the Work Site and storage areas shall be as shown on the Construction Drawings and as designated by Owner. Access routes may also be used by Owner and its employees and other contractors. No other access points shall be allowed unless approved by Owner. All contractor traffic authorized to enter the Work Site shall be experienced in the route or guided by contractor personnel. Contractor is responsible for immediate cleanup of any debris deposited along the access route as a result of its construction traffic. In the event Owner provides conditions or reasonable restrictions on the use or access to the lands upon which or adjacent to which the Work is to be done, Contractor shall comply with all such conditions or restrictions. Any delay in the furnishing of these lands by Owner shall be deemed proper cause for an equitable adjustment in both contract price and time of completion.

4.11.2 **Owner Access.** Owner, and its duly authorized employees, Engineer/Architect, and representatives of all governmental agencies having jurisdiction over Work areas or any part thereof, shall, at all reasonable times, have access to such areas and the premises used by Contractor. Contractor shall also arrange for Owner, Engineer/Architect to have access at all reasonable times to all places where equipment or materials are being manufactured, produced or fabricated for use under the Contract.

4.11.3 **Contractor Area; Staging Area; Storage.** Contractor's work area on the job site will be assigned by Owner. Contractor shall confine its office, storage, assembly, equipment and parking, as appropriate, to the areas so assigned. Contractor shall identify, at the pre-construction meeting, proposed locations for secure storage areas for materials, equipment, employee and subcontractor parking, and, where applicable, staging areas, construction trailers, etc. The use of private property shall be at the cost of Contractor. Contractor shall provide evidence of the property owner's agreement to use said property to Owner. As a condition of final payment, Contractor shall provide Owner with written release from the property owner advising that the property owner has no claims against Contractor arising out of Contractor's use of the private property.

4.11.4 **Delivery Unloading & Storage.** Contractor shall, at its expense, receive, unload, and store in a secure place, all materials, plant and equipment required for the performance of the Contract. Any material and equipment to be stored outside which are subject to degradation by outside exposure shall be stored in a weather-tight storm resistant enclosure provided by Contractor at its expense. Where necessary, delivery of materials, plant or equipment from off-site storage to the Work Site shall be at Contractor's expense.

4.11.5 **Utilities.** Unless otherwise provided in the Contract Documents, Contractor shall, at its expense, arrange for, develop and maintain all utilities in work areas, including, but not limited to: construction power, water, wastewater as required throughout construction, and telephone service, if needed. Prior to final acceptance of the work, Contractor shall, at its expense, remove all temporary utilities.

4.11.6 **Sanitary Facilities.** Where required by the work site, Contractor shall provide and maintain daily adequate sanitary facilities for the use by Contractor's labor force.

4.11.7 **Fire Protection.** All necessary precautions to avoid and eliminate fire hazards shall be the responsibility of Contractor. Contractor shall provide portable fire extinguishers, properly labeled, located and compatible with the hazard of each work area and shall instruct personnel in their use.

4.11.8 **Illumination.** When required, Contractor shall, at its expense, provide artificial light sufficient to permit the Work to be carried on satisfactorily and safely.

4.11.9 **Dust Control.** Contractor shall, at its expense, take measures to minimize the amount of dust and air-borne particulates created by construction activities. For street, utility and other horizontal construction, this requirement applies to all excavations, roads, plant sites, borrow areas and all other work areas. Code-required or industry-accepted methods of dust and air-borne particulates control suitable for the area involved and approved by Owner will be permitted.

4.11.10 Noise Control. Contractor shall make every effort to minimize noises caused by Contractor's operations. Equipment shall be equipped with silencers or mufflers designed to operate with the least possible noise in compliance with Federal, State and local laws and regulations and City ordinances.

4.11.11 Pollution Control. Contractor shall, at its expense, perform its Work so as not to discharge from any source into the atmosphere, or any body of water, or the ground or groundwater, any source, smoke, dust, particulates or other contaminants in violation of the federal, state, and local pollution laws, rules, regulations and orders (collectively, the "discharge law"). Contractor shall, at its expense, provide suitable facilities to prevent any such discharges. In the event of a discharge which results in contamination of the Work Site or adjacent properties, Contractor shall immediately notify Owner and the appropriate governmental authority and shall take whatever action is necessary, required by discharge law or desirable to remediate the contamination at Contractor's sole expense. Contractor shall pay all fines, penalties and damages resulting from any such discharges. Contractor shall indemnify and hold harmless Owner from any expense, fine, penalty, obligation, action or liability resulting from such discharge and remedial actions.

4.11.12 Existing Utilities and Substructures. For street, utility and other horizontal construction, Contractor shall be responsible for locating existing utilities and facilities prior to commencement of work. Contractor shall contact all utility companies and call SUNSHINE at (800) 432-4770 at least forty-eight (48) hours prior to commencement of construction work, so utilities can locate and protect facilities, if required by the utility company.

4.11.13 Florida Lumber. Whenever available, Contractor shall use lumber, timber and other forest products produced and manufactured in Florida provided the price, fitness and quality of such products are equal to substitute products. (F.S. 255.20(3))

4.11.14 Cutting and Patching. Contractor is responsible for all cutting, drilling, patching, fastening or anchoring of all new and existing construction required to complete the Work. Contractor shall not damage any portion of the Work Site, the Work or existing construction or work of other contractors except with the written consent of Owner and any separate contractor. Contractor shall restore all area to the conditions existing prior to the cutting, drilling, patching, fastening or anchoring, unless otherwise required by the Contract Documents.

4.11.15 Cleaning Up. Upon completion of any portion of the Work, Contractor shall remove at its own expense from Owner's property all temporary structures, equipment and surplus materials not required for later stages of work, rubbish, and waste materials resulting from its operations. Contractor shall clean the site and shall remove stains, spills and other foreign deposits. Contractor shall not burn waste materials at the site, shall not bury debris or excess materials and shall not discharge volatile or other harmful or dangerous materials into the environment. Contractor shall remove temporary protection devices unless otherwise directed by Owner. For street, utility or other horizontal construction, Contractor shall sweep paved areas and rake clean landscaped areas. Any costs incurred by Owner as a result of Contractor's failure to clean up shall be deducted from the contract price.

4.11.16 Debris Disposal. All debris shall be legally disposed of at licensed disposal site(s). Contractor shall make its own arrangements, at its own cost, for the lawful disposal of rubbish and waste materials. If requested by Owner, Contractor shall provide evidence of proper disposal.

4.11.17 Salvage. Owner reserves the right to retain any surplus or salvage materials. Contractor shall store or re-locate any materials to be retained by Owner as directed by Owner.

4.11.18 Water Catchment Area. The City is the owner of the Water Catchment Area located in Palm Beach County, Florida (the "Water Catchment Area"). The Water Catchment Area serves as a natural surface water supply source for the City of West Palm Beach and has been designated as a Class I potable water supply pursuant to the Special Laws of the Florida Legislature, Ch. 67-2169, as amended, and is protected by State and Federal laws. Grassy Waters Preserve and the M-Canal are part of the City's Water Catchment Area. If the work site is within the Water Catchment Area, Contractor's work and activities in the Water Catchment Area shall in no way be inconsistent with the Special Act or the laws and regulations governing water supply sources.

4.12 Protection of the Work and Property.

4.12.1 Contractor shall be solely responsible for initiating and continuously maintaining adequate protection of all Work and stored materials, equipment and supplies from damage, loss, theft or damage from

whatever cause, and shall take all reasonable precautions to protect the property of Owner and third parties from damage, theft, injury or loss arising in connection with this Contract. Contractor shall comply with the requirements of Owner and its insurance carriers and all applicable laws, codes and regulations with respect to prevention of damage.

4.12.2 Contractor shall immediately notify Owner and Engineer/Architect verbally of incidents of loss, theft or vandalism, and Contractor shall prepare and maintain accurate written reports of incidents of loss, theft or vandalism and shall furnish these reports to Owner within three (3) calendar days of each incident.

4.12.3 For street, utility and other horizontal construction, Contractor shall preserve and protect all cultivated and planted areas and vegetation such as trees, plants, shrubs and grass on or adjacent to the site, which, as determined by Owner, do not reasonably interfere with the performance of the Work. Contractor shall be responsible for damage to any such areas and vegetation and for unauthorized cutting of trees and vegetation. Contractor shall leave all adjacent property in as good condition as it was prior to beginning of the Contract. Where practical, Contractor shall erect a temporary fence around the work site.

4.12.4 For street, utility and other horizontal construction, existing utilities and facilities shall be located prior to commencement of Work. Contractor shall video tape the existing surface conditions of the Work site and adjacent areas before commencing Work, after each discrete portion of the Work and when project is complete. Contractor shall submit two (2) copies of the video tape to Engineer/Architect prior to submittal for final payment.

4.12.5. Risk of Loss. Commencing on the date of the Notice to Proceed and continuing until final acceptance of the Work by Owner, Contractor shall have full and complete charge and shall bear all risk of loss of, and injury or damage to, the Work performed under this Contract, or any portion thereof, including materials and equipment, and Owner-furnished supplies and equipment, from any cause whatsoever. Contractor shall rebuild, repair, restore and make good any damages, injury, or loss to the Work and to the property of Owner or third parties, except such as may be directly due to errors in the Contract Documents which Contractor could not have discovered through due diligence, or caused by agents or employees of Owner, unless such loss or damage would be covered by any policy of insurance maintained by Contractor. All costs in connection with any repairs or restoration necessary or required as a result of damage shall be borne by Contractor.

4.13 Concealed or Unknown Conditions.

4.13.1 If Contractor encounters conditions at the Work Site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, or (3) are not observable prior to bidding or inferable by the type of construction and local conditions on the Project site, Contractor shall promptly provide written notice to Owner and Engineer/Architect before conditions are disturbed, and in no event more than five (5) calendar days after first observance of the conditions. Engineer/Architect will promptly investigate such conditions and, if Engineer/Architect determines that the conditions are a material difference which will cause an increase or decrease in Contractor's costs or time required for performance of the Work, will recommend an equitable adjustment in the contract price or contract time, or both. Any such recommended adjustment must be approved by Owner through issuance of a Change Order to be effective. If Engineer/Architect determines that the conditions do not materially differ from those indicated in the Contract Documents, or that no equitable adjustment is justified, Engineer/Architect shall promptly notify Owner and Contractor in writing, stating the reasons. If either party disputes the Engineer/Architect's determination or recommendation, that party may make a claim in accordance with GC 20.

4.13.2 Contractor shall not be entitled to any adjustment in the contract price or contract time if Contractor knew of the existence of such conditions at the time of submission of a bid or becoming bound under the Contract; or the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation or test of the site by Contractor, as indicated in the Contract Documents, prior to making such commitment; or Contractor failed to give written notice as provided in GC 4.2.2 and GC 4.13.1.

4.13.3 If, in the course of the Work, Contractor encounters human remains or recognizes the existence of burial markers or archaeological sites not indicated in the Contract Documents, Contractor shall immediately suspend any Work that would affect the remains or sites and shall notify Owner and Engineer/Architect. Owner

shall take any action necessary to obtain the authorization required to resume Work. Contractor shall continue to suspend such operations until otherwise instructed by Owner, but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Price or Contract Time arising from the existence of such remains or features may be made as provided in GC 8 and GC 9.

4.14 **Safety**

4.14.1 Commencing on the date of the Notice to Proceed and continuing until final acceptance of the Work by Owner, Contractor shall take all necessary precautions for the protection of all persons involved in the Work, the public, and all employees or representatives of Owner. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor will provide to each worker on the Work Site the proper safety equipment for the duties being performed by the worker and will not permit any worker on the Work Site who fails or refuses to use the safety equipment. All Work and all equipment, machinery, materials and tools shall be in compliance with and conform to all applicable laws, ordinance, rules and regulations.

4.14.2 For Work impacting streets and public rights-of-way, Contractor shall provide and maintain flagmen, traffic control devices, barricades, signs and variable message boards on a full time basis, where and when needed, to facilitate the movement of traffic along and around the project Work. All MOT plans shall be reviewed and approved by Owner.

4.14.3 If Owner or Engineer/Architect observe an unsafe or hazardous condition at the Work Site, such hazard or safety condition shall be brought to Contractor's attention. Contractor shall stop Work until such hazard or safety condition is remedied by Contractor.

4.14.4 **OSHA**. In performing the work, the Contractor shall comply with all Occupational Safety and Health Administration (OSHA), State and County Safety and Occupational Health Standards, all applicable environmental laws and any other applicable rules, regulations and permits.

4.14.4 **Hurricane Plan**. If any Work is to be performed during hurricane season, Contractor shall provide Owner with Contractor's hurricane plan prior to the commencement of any Work. The hurricane plan shall describe the actions to be taken to secure the Work Site(s) in the event a named tropical storm or hurricane is predicted to affect the Work Site. Contractor shall abide by Owner's requirements, Required Storm Preparation Process, found at <https://www.wpb.org/government/engineering/engineering-forms-permits-and-applications>

4.14.5 **Explosives and Hazardous Materials**. Contractor shall obtain all required federal, state and local permits and licenses and shall be responsible for the safe and proper handling, transportation, storage and use of any explosive or hazardous material brought onto or encountered within the site. Contractor will notify Owner immediately if explosive or hazardous materials are encountered on the site. Contractor shall maintain and post as necessary, Material Hazard Data Sheets for all applicable hazardous materials used in the course of the Work. In the event that hazardous material is improperly handled or stored by Contractor or its sub-contractors, which results in contamination of the Work Site, Contractor shall immediately notify Owner and the appropriate governmental authority and shall take whatever action is necessary, required by law, regulation or order, or desirable to remediate the contamination at Contractor's sole cost and expense. Contractor shall indemnify and hold harmless Owner from any expense, fine, penalty or obligation, action or liability resulting from such contamination and remedial actions.

4.15 **Progress; Reporting**

4.15.1 **Weekly Reporting**: Copies of all daily reports prepared by Contractor and his subcontractors shall be submitted to Owner on a weekly basis for the preceding seven (7) calendar days.

4.15.2 **Bi-Weekly Reporting**: Contractor shall be required to submit to Owner, on a bi-weekly basis, two (2) hard copies of 8 1/2"x 11" color photographs, along with electronic/digital versions of such photographs, indicating the progress of the Work over the preceding fourteen (14) days and identifying the dates that the Work shown was performed.

4.15.3 Progress Meetings. Contractor shall, at its expense, attend any and all meetings called by Engineer/Architect or Owner to discuss the Work under the Contract. Owner, or its Engineer/Architect, will distribute typed minutes of each meeting to all attendees prior to the next progress meeting. Failure of Contractor to promptly object to the typed minutes at or before the next progress meeting shall constitute Contractor's agreement with the content of the typed minutes.

4.15.4 Document Management. If Owner or Engineer/Architect has provide and electronic document management system for the Project, all reports, minutes and objections reference in CG 4. 15 must be uploaded to the system contemporaneously with he required timing for delivery of such reports, minutes and objections. Failure to timely upload documents to the system will constitute a failure to comply with the requirements for providing or giving notice of such reports, minutes or objections.

4.15.5 If at any time Contractor's actual progress is inadequate to meet the completion time requirements of the Contract and this lack of progress is the sole fault of Contractor, Owner may so notify Contractor who shall thereupon, at its expense, provide Owner and Engineer/Architect, a plan within five (5) calendar days of what steps Contractor will take to improve its progress to meet the approved schedule, and Contractor shall promptly and diligently implement its plan. If within a reasonable period as determined by Owner, Owner determines that Contractor is not prosecuting its plan with such diligence as will assure completion with the times scheduled and Contractor fails to take reasonable actions to timely cure, Owner may declare a default of the Contract.

4.16 Shop Drawings; Samples and Submittals

4.16.1 Contractor shall submit to Engineer/Architect's approval, a complete list of items for which shop drawings are to be submitted, along with the schedule for such submittals and shall identify the critical items. The schedule of submittals shall be coordinated with Contractor's construction schedule and allow Engineer/Architect a reasonable time to review such submittals. Approval of this list by Engineer/Architect shall in no way relieve Contractor from submitting complete Shop Drawings and providing materials, equipment, etc., fully in accordance with the Contract Documents. Contractor shall keep the schedule for submittals current.

4.16.2 Contractor shall thoroughly review and check the Shop Drawings and each and every copy shall show Contractor's approval thereon. Contractor represents by approving and submitting the shop drawings, product data, samples and similar submittals that Contractor has reviewed them for conformance to the Contract Documents, and verified the materials, measurements and field criteria related thereto. If catalog sheets or prints of manufacturers' standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink. If the Shop Drawings show or indicate departures from the Contract requirements, Contractor shall make specific mention thereof in its letter of transmittal. Failure to point out such departures shall not relieve Contractor from its responsibility to comply with the Contract Documents.

4.16.3 Contractor shall submit to Engineer/Architect those shop drawings, product data, samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of separate contractors.

4.16.4 Contractor shall perform no portion of the Work for which shop drawings, product data, samples or other submittals are required by the Contract Documents until such submittal has been reviewed and approved by Engineer/Architect.

4.16.5 Contractor shall not be relieved of responsibility for conformance to the Contract Documents by Engineer/Architect's approval of show drawings, product data, samples or similar submittal, unless Contractor has specifically informed Engineer/Architect of such variance or deviation at the time of submittal and either: (i) Engineer/Architect has given written approval of the specific deviation as a minor change in the Work by field order; or (ii) a Change Order or Change Directive authorizing the deviation has been issued. Engineer/Architect's approval does not relieve Contractor of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals.

4.16.6 No approval will be given to partial submittals of Shop Drawings for items which interconnect and/or are interdependent where necessary to properly evaluate the design. It is Contractor's responsibility to assemble the Shop Drawings for all such interconnecting and/or interdependent items, check them and then make one

submittal to Engineer/Architect along with its comments as to compliance, noncompliance, or features requiring special attention.

4.16.7 Contractor shall make any corrections to the submittal required by Engineer/Architect and shall resubmit revised submittals for review. Contractor shall direct specific attention, in writing, to any revisions other than the corrections called for by Engineer/Architect on previous submittals. In the absence of such written notice, Engineer/Architect's approval does not apply to such unidentified revisions.

4.16.8 Contractor shall keep one set of Shop Drawings marked with Engineer/Architect's approval at the job site at all times.

GC 5 INSPECTION & TESTING

5.1 Inspection.

5.1.1 Access for Inspection. Owner, Engineer/Architect and their representatives shall at all times have access to the Work whenever it is in preparation or progress. Contractor shall give Engineer/Architect timely notice of its readiness for inspection when the Contract Documents or applicable laws, ordinances, or any public regulatory entity require any Work to be inspected by Engineer/Architect.

5.1.2 Regulatory Inspection by City. Should Contractor require inspection by City of West Palm Beach Building officials, in their regulatory capacity, on days the City is closed for regular business or after 3:30 pm on regular work days, Contractor shall be required to reimburse the City for staff overtime or additional costs.

5.2 Testing.

5.2.1 If the Contract Documents or applicable laws, ordinances, or any public regulatory entity require any Work to be specially tested or approved, Contractor shall make arrangements for such tests or inspections with an independent testing laboratory or entity acceptable to Owner and shall give Engineer/Architect timely notice of the date fixed for such testing. Contractor shall be responsible for all costs of testing, inspections and approvals. Tests and inspections shall be made promptly to avoid delays in the Work.

5.2.2 Unless otherwise provided in the Contract Documents, shop testing of material, equipment or Work shall be performed by Contractor at its expense and in accordance with the technical specifications. Contractor shall furnish samples as requested and shall provide reasonable assistance and cooperation necessary to permit tests to be performed on materials or work in place, including reasonable stoppage of Work during testing.

5.2.3 If any Work should be covered up prior to any required inspection or test by Owner or Engineer/Architect, it must be uncovered for inspection and properly restored at Contractor's expense. If any Work not required to be inspected or tested is covered up and Engineer/Architect specifically requests to inspect such Work, Contractor shall uncover such Work. If such Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Work shall be at Owner's expense, by appropriate Change Order. If such Work is not in accordance with the Contract Documents, the costs of uncovering and correction shall be at Contractor's expense.

5.2.4 Should tests in addition to those required by the Contract Documents be desired by Owner, Contractor will be advised in reasonable time to permit such additional testing at Owner's expense, unless additional tests are required due to Contractor's Work or materials having failed any initial test.

5.3. **Compliance.** If inspection or testing reveal failure of portions of the Work to comply with the Contract Documents or applicable laws, all costs as a result of such failure, including those of repeated testing and compensation for Engineer/Architect's services and expenses shall be at Contractor's expense.

5.4 **Certificates.** Required certificates of testing, inspection or approval shall be secured by Contractor and delivered promptly to Engineer/Architect, unless otherwise provided by the Contract Documents.

GC 6 CORRECTION OF WORK

6.1 **Defective Material, Equipment or Workmanship.** If any material, equipment or workmanship is determined by Owner or Architect/Engineer, either during performance of the Work, during final inspection or during the Warranty Period, to be defective or not in compliance with the Contract Documents, Owner shall notify Contractor in writing that such material, equipment or Work is rejected and Owner reserves the right to withhold payment on any such item. Contractor shall commence correction of the Work within five (5) calendar days of written notice by Owner. Contractor shall, at its own expense, immediately remove and replace or correct such defective material, equipment or Work by making the same strictly comply with all requirements of the Contract Documents. All costs of correcting such rejected Work, including additional testing and inspections, uncovering and replacing, and compensation for Engineer/Architect's services and expenses, material, equipment, clean up, debris removal, and safety precautions, shall be at Contractor's expense. If correction of the Work requires damaging work completed by other contractors, Contractor shall be responsible for the costs to replace such work.

6.2 **Warranty Claim.** Contractor agrees to correct any part of the Work found by Owner to be defective or not in conformance with the Contract Documents for a period of one (1) year from later of (a) the final certificate of occupancy for the complete Work (and not from any temporary certificates of occupancy for portions of the Work), (b) if no certificate of occupancy is to be issued for the complete Work, within one (1) year of substantial completion of the complete Work (and not from substantial completion of component parts of the Work) or for such longer periods of time as may be set forth with respect to specific warranties contained in the specifications (the "Warranty Period"). To initiate a Warranty claim, Owner or Engineer will provide Contractor with written notice of non-conformance of the Work or any component of the Work, defect or failure of the Work or any component of the Work to be fit for the purpose for which they intended (a "Warranty Claim Notice"). Contractor must commence correction of the Work identified in the Warranty Claim Notice within five (5) calendar days of written notice by Owner. Contractor must, at its own expense, immediately remove and replace or correct such defective material, equipment or Work by making the same strictly comply with all requirements of the Contract Documents. All costs of correcting such rejected Work, including additional testing and inspections, uncovering and replacing, and compensation for Engineer's services and expenses, overhead, insurance, material, equipment, clean up, debris removal, and safety precautions, will be at Contractor's expense. If correction of the Warranty Claim Work requires damaging work completed by other contractors, Contractor will be responsible for the costs to replace or replace such work. Contractor must give written notice to Owner and Engineer when Contractor considers the Warranty Claim Work correction is finally complete and must request an inspection by Engineer. If after inspection, Engineer finds that the Warranty Claim Work correction has been completed, Engineer will issue to Owner and Contractor a Certificate of Completion of the Warranty Claim that will establish the date of Warranty Claim correction completion. Contractor further agrees to correct any corrections to a Warranty Claim found by Owner to be defective or not in conformance with the Contract Documents for a period of one (1) year from completion of the corrections. If Contractor fails to correct or remedy a Warranty Claim within a reasonable time after receipt of a Warranty Claim Notice, Owner may correct the Work and invoice Contractor for the correction pursuant to GC 6.5. Warranty by Contractor shall not be construed as a waiver by Owner of any other remedy.

6.3 **Acceptance of Non-conforming Work.** If Owner deems it inexpedient to require Contractor to correct Work pursuant to GC 6.2, Owner may accept such defective or non-confirming work and an equitable deduction from the contract price shall be made for such work. Contractor shall warrant the accepted but non-conforming work in accordance with GC 6.2.

6.4 **Owner's Right to Correct or Complete Work.** If Contractor should neglect to prosecute the Work diligently in accordance with the Contract Documents, or fail to correct defective or nonconforming Work in accordance with GC 6.2, or fail to perform any provisions of the Contract Documents, Owner may, after ten (10) calendar days written notice to Contractor and opportunity to cure, make good these deficiencies and may deduct the cost thereof from payment due Contractor. A deductive Change Order shall be issued for Owner's reasonable costs of correcting or completing the Work, including Owner's expenses and compensation for Engineer/Architect's services and expenses. The Change Order amount shall be subject to review and approval by Engineer/Architect. If payments due to Contractor are not sufficient to cover the Change Order, Contractor shall promptly pay the difference to Owner. Owner's correction of the Work and acceptance of a deductive Change Order shall be without prejudice to any other remedies and warranties Owner may have.

GC 7 WORK BY OTHERS AT SITE

7.1 **Owner Rights.** Owner reserves the right to perform construction or operations related to the Project with Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Work Site.

7.2 **Coordination.** Where Owner is utilizing its own forces or multiple contracts for the Project, Contractor shall provide reasonable advance notice to Owner and other contractors regarding the Project Schedule and the portions for work to be performed by them. Contractor shall coordinate its construction and operations with Owners and other contractors performing work on the Project.

7.3 **Conflict Reporting.** If part of Contractor's Work depends for proper execution or results upon construction or operations by Owner or a separate contractor, Contractor shall, prior to proceeding with that portion of the Work, promptly report to Engineer/Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Contractor so to report shall constitute an acknowledgment that Owner's or separate contractors completed or partially completed construction is fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable.

7.4 **Reimbursement.** Contractor shall reimburse Owner for costs incurred by Owner payable to separate contractor because of Contractor's delays, improperly timed activities, damage to the other contractor's work or defective construction. Owner shall be responsible to Contractor for costs incurred by Contractor because of a separate contractor's delays improperly timed activities, damage to Work or defective construction.

7.5 **Disputes Among Contractors.** If a dispute arises among Contractor and other contractors on site as to the responsibility to maintain the premises, correct work, clean up or take any other action, Owner may take the necessary action and Engineer/Architect will assess the costs to those deemed responsible by Engineer/Architect.

GC 8 DELAY: TIME EXTENSIONS

8.1 **Continuous Construction.** Subject to Excusable Delay, Contractor shall engage in the continuous construction of the Work such that the work will be constructed as expeditiously as reasonably practical towards substantial completion. Contractor shall: (i) ensure that sufficient manpower and materials are deployed throughout the Work of the Project; and (ii) once construction commences, engage in the continuous construction of the Project and the work.

8.2 **Notice of Delay.** Contractor agrees that whenever it becomes apparent from the progress review meeting or CPM schedule that the contract completion date will not be met, Contractor shall notify Owner and Engineer/Architect of the delay, in writing, within five (5) calendar days of a commencement of delay or knowledge of a potential delay. The monthly construction schedule does not constitute notice of delay. A breach and default of contract shall result from Contractor's failure to provide Owner and Engineer with notice of the delay and failure to take all remedial actions available to recover the project schedule.

8.3 **Content of Notice of Delay.** Any notice of delay required by GC 8.1 shall include the following information:

1. Confirmation whether all schedule updates, submittals and other conditions of the Contract have been met;
2. Representation whether the delay is beyond the control of Contractor and subcontractors and due to no direct or indirect fault of Contractor. Contractor shall include all documentation to justify the delay.
3. Nature of the delay.
4. Dates of commencement / anticipated end of delay.
5. Evidence that the delayed Work results in a direct delay to the schedule critical path.
6. List of tasks/work affected by the delay.
7. Remedial actions taken/ to be taken to get back on schedule.
8. Recommended action to minimize delay.
9. Analysis of float time available for the work involved in the delay request.
10. Such other supporting information as requested by Owner or Engineer.

8.4 **Change Order Request.** Contractor shall submit a request for changes in the Contract Time resulting from delay in accordance with GC 4, GC 8 and GC 9. **CONTRACTOR EXPRESSLY AND SPECIFICALLY AGREES THAT ANY AND ALL CLAIMS FOR CHANGES TO THE CONTRACT TIME DUE TO DELAY ARE WAIVED BY**

CONTRACTOR IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THESE GENERAL CONDITIONS, AND CONTRACTOR WAIVES THE RIGHT TO RAISE SUCH WAIVED CLAIMS AS A DISPUTE UNDER THE DISPUTE PROCESS IN GC 20. CONTRACTOR AGREES THAT FAILURE OF CONTRACTOR TO STRICTLY COMPLY WITH THE REQUIREMENTS OF GC 4, GC 8 and GC 9 AS TO ANY PARTICULAR EVENT OF DELAY CONCLUSIVELY WAIVES, ABANDONS AND RELINQUISHES ANY AND ALL CLAIMS RESULTING FROM THAT PARTICULAR EVENT OF DELAY, AND THAT PARTICULAR EVENT OF DELAY MAY NOT BE USED TO JUSTIFY OR SUPPORT A SUBSEQUENT DELAY CLAIM.

8.5 **Extension of Time.** The construction schedule may only be changed by a fully-executed change order. Contractor acknowledges that the evaluation of time extensions will be based on the information listed in GC 8.2 and the provisions of GC 8. Owner will not consider a claim for time extension which does not comply with the requirements of these General Conditions.

8.6 **No Damages for Delay; Exclusive Remedy.**

Contractor may not assert any claim for damages or delay, other than for an extension of time. Contractor shall not assert any claim against Owner by reason of any delays except as provided in GC 8. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Owner for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Contractor waives claims for any and all damages which it may suffer by reason of such claims, including but not limited to, lost profits, loss or impairment of bonding capacity, destruction of business, increased overhead, remobilization or demobilization costs, subcontractor delay claims, supervision, extended unabsorbed home office overhead, increase insurance costs, lost profits on alternate or unperformed contracts. Contractor expressly agrees that Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay and a Change Order for an extension of the project completion date and substantial completion date constitutes its sole and exclusive remedies for time or impact-based claims. Contractor hereby affirms that an extension of time is Contractor's sole and exclusive remedy. Apart from extension of time, no payment of claim for damages will be made to Contractor as compensation for damages for any delays in the Work; provided, however, that this provision does not preclude recovery of damages by Contractor for actual delays due solely to fraud or intentional active interference on the part of Owner or Engineer intended to delay by Owner or Engineer to delay Contractor's performance of the Work. Intentional active interference on the part of Owner or Engineer means that Owner or Engineer has directly and with actual intent to interfere and prevent Contractor from performing a portion of the Work in the CPM Schedule critical path that is not otherwise authorized under the Contracts and the GC. Intentional active Interference does not include interruptions by Owner or Engineer in preparation for weather or other force majeure events, interruptions in the Work due to operations of the Owner facilities or compliance with regulatory permits or directives, interruptions in the Work caused by the activities of other contractors and vendors, interruptions in the Work caused by Contractor's failure to comply with any term of the Contract, incidental actions or activities of Owner or Engineer with respect to the existing Owner facilities and operations not directly intended by Owner or Engineer to interfere or prevent Contractor from performing the Work. Actions by the City of West Palm Beach in its regulatory capacity related to permitting delays or permit determinations do not constitute the actions of Owner. Engineer's design defects or delays in processing Work related duties that interfere with or prevent Contractor from performing a portion of the Work do not constitute fraud or intentional active interference on the part of Owner or Engineer.

8.7 **Excusable Delay.** Delay which extends the completion of the Work and which is caused solely by circumstances beyond the control of Contractor or its subcontractors, suppliers or vendors, and are not reasonably foreseeable, are excusable delay, including but not limited to, fire, flood, epidemic, terrorist acts, tropical storm, abnormal weather conditions, delays of utility owners, any act or neglect of Owner, or by any separate contractor employed by Owner or by any changes ordered in the Work. Excusable delay is limited to the duration of the circumstance causing the delay and reasonable recovery time. Abnormal weather conditions are a substantial variation from seasonal average weather conditions occurring for a significant period of time and operations were necessarily affected. Contractor shall support a claim of abnormal weather conditions with local US Weather Bureau climatological report for the period involved plus a report indicating the average weather conditions for the past ten (10) years from the nearest reporting station. Excusable Delay may be compensable or non-compensable.

8.8 **Compensable Excusable Delay.**

a. Excusable Delay is compensable when (i) the delay extends the Contract Time, (ii) is caused by circumstances beyond the control of the Contractor or its subcontractors, suppliers or vendors, and (iii) is caused solely by fraud, bad faith or active interference on the part of Owner or its agents. In no event shall Contractor be compensated for interim delays which do not extend the Contract Time. Contractor is entitled to a time extension of the Contract Time for each day the Work is delayed due to Excusable Delay.

b. Contractor shall be entitled to the following actual additional direct costs for Compensable Excusable Delay: Payroll costs for employees in the direct employ of Contractor in the performance of the work; Cost of all materials and equipment furnished and incorporated in the work, including costs of transportation and storage thereof; Payments made by Contractor to subcontractors for work performed by subcontractors; Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, and surveyors; Proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the work; Office and temporary facilities at the site; Proportional cost of tools not owned by the workers used in the performance of the work; Cost of utilities, fuel and sanitary facilities at the site; Receipted minor expenses such as telephone service at the site and petty cash items in connection with the work.

c. Owner and Contractor recognize and agree that the amount of Contractor's precise actual indirect costs for Compensable Excusable Delay is impossible to determine as of the date of execution of the Contract Documents, and that proof of the precise amount will be difficult. Therefore, indirect costs recoverable by the Contractor shall be liquidated on a daily basis for each day the Contract Time is delayed due to a Compensable Excusable Delay. These liquidated indirect costs shall be paid to compensate Contractor for all indirect costs caused by a Compensable Excusable Delay and shall include, but not be limited to, lost profits, all profit on indirect costs, home office overhead, acceleration, loss of earnings, loss of productivity, loss of bonding capacity, loss of opportunity and all other indirect costs incurred by Contractor. The amount of liquidated indirect costs recoverable shall be Five Hundred Dollars \$500.00 per day for each calendar day the Contract is delayed due to a Compensable Excusable Delay.

8.9 **Non-Compensable Excusable Delay.** When Excusable Delay is (i) caused by circumstances beyond the control of Contractor, its subcontractors, suppliers and vendors, and is also caused by circumstances beyond the control of the Owner and Engineer, or (ii) is caused jointly or concurrently by Contractor or its subcontractors, suppliers or vendors and by the Owner or Engineer, then Contractor shall be entitled only to a time extension and no further compensation for the delay.

8.10 **Non-Compensable Delay.** Contractor shall not be entitled to an adjustment in contract time or contract price for delays within the control of, or reasonably foreseeable by, Contractor. Delays attributable to and within the control of a subcontractor or supplier shall be deemed to be delays within the control of Contractor. Contract time will not be adjusted for delay in delivery where the delivery was not properly scheduled or an order was not placed at an appropriate time to allow delivery or an order was improperly placed. No time extension will be granted for delays resulting from improper scheduling of Contractor's forces or those of separate subcontractors. No time extension will be granted to delays from failure to have shop drawings or samples submitted to Engineer in ample time for a review, or from failure to schedule inspections or testing.

GC 9 CHANGES IN THE WORK; CONTRACT PRICE OR CONTRACT TIME

9.1 **Adjustments.** Owner, without invalidating the Contract Documents, may order written additions to or deductions from the Work, the contract price being adjusted accordingly. Such change orders or change directives may be issued unilaterally by Owner.

9.2 Request for Change Order.

9.2.1 **Change Order Requested by Contractor.** If Contractor believes that a variation or change justifies a modification in the contract price or contract time, Contractor may submit a request for Change Order at its expense. If a request for Change Order is made, Contractor is not authorized to vary the Work unless a written change order is executed by Owner or written change directive is issued by Engineer/Architect and executed by Owner. Contractor shall submit requests for changes to the Contract Price or the work in writing within five (5) calendar days of any occurrence which, in the opinion of Contractor, entitles it to claim an adjustment of the Contract Price or the work, absent which notice, Contractor shall have waived such claim. Engineer/Architect will provide a response to Contractor and Owner with respect to a request for change order within a reasonable amount of time.

after receipt of Contractor's notice and all necessary backup information required by Engineer/Architect to formulate a response.

9.2.2 **Change Order Requested by Owner.** If a Change Order is requested by the Owner, Contractor shall submit a Change Order with a price quote for changes to the Contract Price which conforms to all statutory and contractual requirements to Owner with a duplicate to the Engineer/Architect. Owner shall approve or deny the Change Order and provide Contractor with written notice of the decision within thirty-five (35) days after receipt of a complete and conforming Change Order. A denial notice must specify the deficiencies and the actions necessary to remedy the deficiencies in the Change Order. If Owner fails to timely provide the Contractor with the notice in compliance with this section, the Change Order shall be deemed to be approved.

9.2.3 **Contract Time.** Request for changes to the Contract Time shall comply with GC 8.

9.2.4 **Contract Price or Work.** Contractor shall submit requests for changes to the Contract Price or the work in writing within five (5) calendar days of any occurrence which, in the opinion of Contractor, entitles it to claim an adjustment of the Contract Price or the work, absent which notice, Contractor shall have waived such claim. Engineer/Architect will provide a response to Contractor and Owner with respect to a request for change order within a reasonable amount of time after receipt of Contractor's notice and all necessary backup information required by Engineer/Architect to formulate a response.

9.2.5 IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE CONTRACT TIME OR CONTRACT PRICE SHALL BE WAIVED BY CONTRACTOR IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THESE GENERAL CONDITIONS. CONTRACTOR MAY NOT RELY ON ANY REPRESENTATIONS BY OWNER, OWNER'S REPRESENTATIVES OR ENGINEER AS WAIVERS OR RELEASES FROM CONTRACTOR'S STRICT COMPLIANCE WITH THE CONTRACT, EXCEPT AS EXPRESSLY PROVIDED IN THE CONTRACT.

9.3 **Change Order.**

9.3.1 Execution of any change order by the parties shall constitute a final settlement and release by Contractor of (a) all matters relating to the claim or change in the Work which is the subject of the change order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the contract price and the contract time, and (b) all matters relating to any claim or change in the Work, contract price, or contract time which could have been raised by Contractor as a change order request at the time, but was not.

9.3.2 Change orders adjusting the contract time will be evaluated in accordance with GC 8. Change orders adjusting the contract price shall conform to GC 9.

9.3.3 Each change order adjusting the contract price must state within the body of the Change Order whether it is based upon unit price, negotiated lump sum, or "cost of the work." The value of the cost of the work shall be determined pursuant to GC 10.

9.3.4 Any change order approved due to price change in materials shall not include a premium, profit or any other additional cost.

9.3.5 A bond rider from the surety shall be submitted to Owner with each change order that increases the contract price, so that the bond reflects the total Contract price, or materially changes the scope of the Work.

9.3.6 **Proper Authorization.** No change order shall be valid unless executed by the authorized signatory of Owner. Engineer shall not be authorized to bind Owner to change in contract price or contract time.

9.3.7 The number of change orders to the Contract submitted by Contractor may be considered by Owner in considering other subsequent bids submitted by Contractor. Excessive change orders may also result in suspension from Owner's future procurements. The determination of excessiveness shall be made solely by Owner considering the scope of work, schedule of bid prices, contract price, unforeseen circumstances, and reasons for any change orders.

9.4 COMMENCING WORK WITHOUT A WRITTEN CHANGE ORDER OR CHANGE DIRECTIVE EXECUTED BY OWNER IN ADVANCE OF COMMENCEMENT OF WORK WAIVES ANY CLAIM BY CONTRACTOR TO AN ADJUSTMENT TO THE CONTRACT PRICE AND THE CONTRACT TIME RELATED TO SUCH WORK.

9.5 Minor Changes in Work. Engineer/Architect shall have the authority to order minor changes in the Work, which do not involve adjustment to the contract price or contract time and which are not inconsistent with the intent of the Contract Documents by a written Field Order. A subsequent Change Order shall be executed.

9.6 Change Directive. If a change order is not yet approved or cannot be agreed upon, Contractor is authorized, upon issuance of a written change directive (CD) prepared by Engineer/Architect and approved by Owner, to proceed with such change, or such portion of the change acceptable to Owner. Upon approval by Engineer/Architect and Owner as to any adjustments to the Contract Price and/or Contract Time for changes performed under a CD, such approval shall be recorded by the preparation of a Change Order. Contractor shall not seek payment for work performed pursuant to a CD until a Change Order for the work has been fully-executed. A CD shall not be used for changes only to Contract Time. Each CD shall have a separate change order.

9.7 Disputed Change Order. In the event satisfactory adjustment and Change Order cannot be agreed for any item requiring a change in the contract price or contract time, Engineer or Owner shall provide a notice to Contractor that the requested Change Order has been rejected. Upon delivery of a rejection of a Change Order request, Contractor may submit a Claim Notice in accordance with GC 20.

9.8 Owner's Right. Owner reserves the right, at its sole option, to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed Work. Owner reserves the right to perform the requested changes in the Work with its own forces, or to contract with others to perform the changes.

CG 10 VALUE OF CHANGES IN WORK.

10.1 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the contract price shall be determined in one of the following ways:

- a) Unit prices as stated in the Contract Documents, by application of unit prices to the quantities of items involved. Where the quantity of any item of the Work that is covered by a unit price is increased or decreased by more than twenty percent (20%) from the quantity of such Work indicated in the Contract Documents, an appropriate Change Order shall be issued to adjust the unit price, if warranted.
- b) By mutual acceptance of a lump sum which Contractor and Owner acknowledge contains a component for overhead and profit.
- c) On the basis of the "cost of work," determined as provided in GC 10.2 and 10.3, plus a Contractor's fee for overhead and profit which is determined as provided in GC 10.4.
 - Reasonable overhead and profit, not exceeding fifteen percent (15%) inclusive of bond rider, permits, insurance, overhead and profit, supervision and general conditions.

10.2 The term "cost of work" means the sum of all direct costs necessarily incurred and paid by Contractor in the proper performance of the Work described in the Change Order or claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall include only the following items, and shall not include any of the costs itemized in GC 10.3.

- 10.2.1** Payroll costs for employees in the direct employ of Contractor in the performance of the Work at the prevailing hourly basic rates plus applicable multipliers for overtime, weekend and holidays, plus applicable taxes, as evidenced by actual payroll records of Contractor. Failure to provide actual payroll records shall be deemed a waiver by Contractor of inclusion of payroll costs in the requested Change Order or claim. Mark up on labor is not permitted. Labor shall not include supervision above the project manager. Payroll costs for employees not employed full time on the

Work covered by the Change Order or claim shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay application thereto. Labor costs shall not include supervision above the project manager/ superintendents or foremen at the site. The expenses of performing the Work after regular working hours, on Sunday or legal holidays, shall be included in the labor costs.

- 10.2.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith, as evidenced by actual receipts. Failure to provide actual receipts shall be deemed a waiver by Contractor of inclusion of costs for materials and equipment in the requested Change Order or claim. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to Owner and Contractor shall make provisions so that they may be obtained. Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
- 10.2.3 Payments made by Contractor to subcontractors for Work performed by subcontractors. Failure to provide actual receipts of payments from subcontractors shall be deemed a waiver by Contractor of inclusion of such payments in the requested Change Order or claim. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Contractor and shall deliver such bids to Owner who will then determine, with the advice of Engineer, which bids will be accepted. If the subcontract provides that the subcontractor is to be paid on the basis of cost of the Work plus a fee, the subcontractor's cost of the Work shall be determined in the same manner as Contractor's cost of the Work. All subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.
- 10.2.4 Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the work described in the Change Order. Failure to provide actual invoices or receipts for such costs shall be deemed a waiver by Contractor of inclusion of such costs in the requested Change Order or claim.
- 10.2.5 Supplemental costs including the following:
 - 10.2.5.1 The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work except for local travel to and from the Work Site.
 - 10.2.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remains the property of Contractor.
 - 10.2.5.3 Sales, use, or similar taxes related to the Work, and for which Contractor is liable, imposed by any governmental authority.
 - 10.2.5.4 Deposits lost for causes other than Contractor's negligence; royalty payments and fees for permits and licenses.
 - 10.2.5.5 The cost of utilities, fuel and sanitary facilities at the site.

- 10.2.5.6 Receipted minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
 - 10.2.5.7 Cost of premiums for additional bonds and insurance required because of changes in the Work.
- 10.3 The "cost of the work" shall not include any of the following:
- 10.3.1 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the Work Site or in its principal or a branch office for general administration of the Work, all of which are to be considered administrative costs covered by Contractor's fee.
 - 10.3.2 Expenses of Contractor's principal and branch offices other than Contractor's office at the Work Site.
 - 10.3.3 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 - 10.3.4 Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same, except for additional bonds and insurance required because of changes in the Work.
 - 10.3.5 Costs due to the negligence or neglect of Contractor, any subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
 - 10.3.6 Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in GC 10.2.
 - 10.3.7 Any cost or expense not reflected in an actual receipt or actual payroll record delivered to Owner.
- 10.4 Contractor's fee allowed to Contractor for overhead and profit shall be determined as follows:
- 10.4.1 For costs incurred under GC 10.2, Contractor's fee shall not exceed fifteen percent (15%) inclusive of bond rider, permits, insurance, overhead and profit, supervision and general conditions; or

A mutually acceptable fixed fee.
- 10.5 Whenever the cost of the work is to be determined pursuant to Sections 9.2 and 9.3, Contractor will submit in a form acceptable to Engineer an itemized cost breakdown together with the supporting data.
- 10.6 The amount of credit to be allowed by Contractor to Owner for any such change which results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any, however, Contractor shall not be entitled to claim lost profits for any Work not performed.
- 10.7 Whenever a change in the Work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, Contractor shall submit an initial cost estimate acceptable to Engineer and Owner.
- 10.7.1 Breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost.

- 10.7.2 Whenever a change involves Contractor and one or more subcontractors and the change is an increase in the contract price, overhead and profit percentage for Contractor and each subcontractor shall be itemized separately.

GC 11 COMPLETION

11.1 **Requirements Prior to Substantial Completion.** When Contractor considers the Work to be substantially complete, Contractor will submit to Engineer/Architect, the following items which shall be completed as a condition precedent to Substantial Completion and prior to notice by Contractor of Substantial Completion:

1. All general construction completed and the project components shall be clean and all systems fully functional.
2. All mechanical and electrical work substantially complete, fixtures in place, connected, cleaned, fully functional and ready for use.
3. All electrical circuits shall be scheduled in panels and all panels and disconnect switches properly labeled.
4. Project site shall be cleared of Contractor's excess equipment and/or supplies and material.
5. Record drawings and specifications meeting Owner's requirements shall be delivered to Engineer.
6. All sets of operation and maintenance manuals and service agreements for all equipment shall have been submitted to Owner, as referenced in the technical specifications.
7. All training of Owner's staff on equipment and systems has been satisfactorily provided.
8. Issuance of all permits and certificates, test certificates, inspections, certificates of occupancy and other approvals and releases by governing authorities required for Owner's occupancy and use of the project.

The above are also conditions for Final Completion.

11.2 **Notice.** Contractor shall notice Owner and Engineer/Architect when Contractor considers the Work, or a portion thereof which Owner agrees to accept separately, is substantially complete and shall request an inspection. Contractor shall notice Owner and Engineer/Architect when Contractor considers the Work, or a portion thereof which Owner agrees to accept separately, is finally complete and shall request an inspection.

11.3 **Substantial Completion.**

11.3.1 If after inspection, Engineer/Architect finds that the Work is substantially complete, Engineer shall issue to Owner and Contractor a Certificate of Substantial Completion that shall establish the date of Substantial Completion.

11.3.2 If Substantial Completion is not obtained at the inspection called by Contractor, for reasons which are the fault of Contractor, any additional cost to Owner for Engineer/Architect for any subsequent inspections for the purpose of determining Substantial Completion shall be the responsibility and expense of Contractor and shall be assessed against the final payment application.

11.4 **Inspection and Punch List.** Within seven (7) calendar days of Substantial Completion as determined by Engineer/Architect and Owner, a walkthrough with Contractor shall be scheduled.

1. The purpose of this walkthrough is to develop a joint punch list of items necessary to complete the Work.
2. Engineer/Architect and Owner shall separately list each item required for Final Completion along with Engineer/Architect's estimate of the cost of completion. Said initial punch list shall be delivered to Contractor not later than seven (7) calendar days after the walkthrough.
3. Contractor shall, within seven (7) calendar days of receipt, review the initial punch list and advise the Owner and the Engineer/Architect of any dispute regarding a punch list item or estimated completion cost, or the acceptance of the punch list.

4. Any dispute over items listed shall be mediated between Owner and Contractor with Engineer/Architect acting as facilitator to develop a punch list. In the event a dispute cannot be resolved, the Owner's list of items requiring completion shall be accepted and the Contractor's estimated cost for completion of the items shall be accepted to create the punch list.
5. The punch list with estimated completion costs, signed by Owner, Contractor and Engineer/Architect, shall be established:
 - a. For contracts less than \$10 million, within thirty (30) calendar days of substantial completion;
 - b. For contracts of \$10 million or more, within forty-five (45) calendar days of substantial completion.
6. If the project is for construction of more than one building or structure, or is to be completed in phases, a joint punch list may be developed for each building/structure or phase of work.
7. Punch list items shall be corrected and a final inspection requested by Contractor within thirty (30) days from delivery to Contractor of the punch list. All punch list items shall be corrected by Contractor prior to any request for final inspection and acceptance. If the Contract provides for a multi-phased or multi-structure project, a punch list may be developed for each phase or structure.
8. Contractor acknowledges and agrees that no item contained on the punch list shall be considered a warranty item until such time as (a) the punch list is one hundred percent (100%) complete, and (b) Owner has been able to operate or utilize the affected punch list item for an additional period of fifteen (15) calendar days.
9. Contractor acknowledges and agrees that Engineer/Architect as representative of Owner may, at its option, during performance of the Work and prior to Substantial Completion, issue lists of identified non-conforming or corrective Work for Contractor to address. The intent of any such Engineer/Architect generated lists prior to Substantial Completion is to attempt to streamline the punch list process upon achieving Substantial Completion, and to allow for Contractor to address needed areas of corrective work as they may be observed by Engineer/Architect during performance of the Work.
10. Contractor acknowledges and agrees that in calculating one hundred fifty percent (150%) of the amount which may be withheld by Owner as to any punch list item for which a good faith basis exists as to it being complete, as provided for by Florida Statutes §218.735(7)(e), Owner may include within such percentage calculation its total costs for completing such item of work, including its administrative costs as well as costs to address other services needed or areas of work which may be affected in order to achieve full completion of the final punch list item. Such percentage shall in no event relate to the schedule of bid prices associated with such Work activity, but rather total costs are based upon the value (i.e. cost) of completing such Work activity based upon market conditions at the time of punch list completion.
11. The failure to include any Work or pending items not yet completed on the punch list does not alter the responsibility of Contractor to complete all the construction services and Work purchased under the Contract.

11.5 Requirements Prior to Final Inspection. The following items shall be completed as a condition precedent to a request by Contractor for final inspection of the Work:

1. All portions of the Work have reach Substantial Completion, and completion of all punch list items recorded from the Substantial Completion inspection(s).
2. Submittal of any items condition precedent to Substantial Completion that had not previously been submitted.

3. Issuance of all permits and certificates, test certificates, inspections, certificates of occupancy and other approvals and releases by governing authorities required for Owner's occupancy and use of the project.
4. All sets of operation and maintenance manuals and service agreements for all equipment shall have been submitted to Owner, as referenced in the technical specifications.
5. Manufacturers' certifications and warranties and any special guarantees or maintenance agreements shall be delivered to Owner.
6. A complete set of "RECORD" or "AS BUILT" drawings, meeting Owner's requirements, pursuant to GC 4.10. Contractor shall sign each final record drawing and note thereon that the final as-builts are complete and accurate.
7. A complete set of marked-up specifications with "RECORD" or "AS-BUILT" clearly printed on the cover. Contractor shall accurately and neatly transfer all deviations from project specifications to final as-builts.
8. A complete set of final shop drawings and samples.
9. For street, utility and other horizontal construction, two copies of the video tape of surface conditions.
10. A signed and notarized affidavit indicating that no asbestos containing materials were used or installed during the course of the Work.
11. A list of each piece of equipment incorporated into the Work having an individual value of \$500 or greater. The list shall include, at a minimum, manufacturer, make and model number, catalog number, supplier, quantity installed, and value of equipment.
12. All required spare parts, as well as any special devices and tools and extra stock of materials shall be delivered to Owner.
13. Extra stock of materials or other items paid for by Owner.
14. A deductive change order for any uncommitted contingency or allowance funds has been prepared and submitted in draft.
15. All keys and blanks shall have been provided to Owner.

11.6 Final Inspection. Contractor shall certify to Owner and Engineer/Architect in writing that all punch list items have been completed, all requirements for Substantial and Final Completion have been met, and the Work is ready for final inspection. Engineer/Architect will schedule such inspection with Owner and Contractor. When Engineer/Architect finds the Work acceptable under the Contract Documents, completed and all requirements fully performed, Engineer/Architect shall issue a Final Certification to Owner. Should Engineer/Architect consider that the Work is incomplete, non-conforming to the Contract Documents or defective, Engineer/Architect will promptly notify Contractor in writing, listing the incomplete or defective work. Contractor will take immediate steps to remedy the stated deficiencies and send a second written certification to Engineer/Architect when the Work is complete. Engineer/Architect will re-inspect the Work. Should Engineer/Architect be required to perform re-inspections due to the failure of the Work to meet Contract requirements, Owner may deduct the additional costs to Owner from Contractor's final payment. If payments due to Contractor are not sufficient to cover the costs, Contractor shall pay the difference to Owner.

11.7 Owner's Rights. In the event incomplete, incorrect or defective work is not completed to Owner's satisfaction within twenty (20) calendar days of Engineer/Architect's notice to Contractor that the Work is not acceptable, Owner may, after ten (10) calendar days written notice to Contractor and opportunity to cure, make good the deficiencies and may deduct the cost thereof from final payment due Contractor. If payments due to Contractor are not sufficient to cover the costs, Contractor shall pay the difference to Owner. Owner's correction of the Work shall be without prejudice to any other remedies Owner may have.

11.8 Final As Built Documents. Prior to final inspection, Contractor shall provide Owner with "Record" or "as-built" drawings, specifications and documents which comply and Owner's Final Record Drawing Requirements found at <https://www.wpb.org/government/engineering/engineering-forms-permits-and-applications>

11.9 Use of Completed Portions. Owner shall have the right to take possession of and use any substantially completed portions of the Work. Such use by Owner shall not be construed as constituting final acceptance of the Work, and shall neither relieve Contractor of any of its responsibilities under the Contract, nor act as a waiver by Owner of any Contract Documents provisions; provided that Contractor shall not be liable for any repair or maintenance required due to ordinary wear and tear resulting from such use. However, if, in the opinion of Engineer/Architect, such use increases the cost or delays the completion of remaining portions of Work, Contractor

shall be entitled to an equitable adjustment under the Contract. Owner may use any portion of the Work at any stage when such use is designated by separate written agreement executed by Contractor and Owner which designates the responsibilities assigned to each of them for payments, punchlists, retainage (if any), security, maintenance, utilities, record drawings, damage to the Work, bonds and insurance, the period for correction of the Work and commencement of warranties and further, provided that such use is consented to by the surety as required under GC 13. Immediately prior to such partial use, Owner, Contractor and Engineer/Architect shall jointly inspect the portion of or the Work or area of such partial use in order to determine and record the condition of the Work. Unless otherwise agreed in writing, partial use of a portion or portions of the Work shall not constitute acceptance of the Work which does not comply with the requirements of the Contract Documents.

GC 12 PAYMENT

12.1 **Schedule of Bid Prices.** Within ten (10) calendar days after the date of Owner's issuance of a Notice to Proceed, Contractor shall submit for review and approval of Owner and Engineer/Architect, a schedule of prices and values, by phases of work, to show a breakdown of the contract price for the various portions of the Work and corresponding to the payment request breakdown and progress schedule line items. The schedule of bid prices must also show dollar value for each unit of work scheduled. Any Change Orders shall be added as separate line items. This schedule, unless objected to by Engineer/Architect, shall be the basis for reviewing Contractor's applications for payment.

12.2 **Unit Prices.** The amount paid to Contractor for unit priced items of Work shall be calculated by the number of each of the units of Work completed at the unit prices stated in the schedule of bid prices. The number of units contained in the schedule is an estimate only, and final payment shall be made for the actual number of units incorporated in or made necessary by the Work.

12.3 **Taxes.** Contractor shall pay all taxes, duties and assessments imposed by law and applicable to the Contract. Contractor is not entitled to Owner's tax exempt status and shall pay all sales taxes. The Contract price shall include all taxes.

12.4 **Payment Where Public Construction Bond Required.** The Contract requires Contractor to provide a Public Construction Bond of Performance and Payment Bonds. No payment shall be made by Owner to Contractor until Contractor has provided Owner with a certified copy of the Bond(s) evidencing that said bond(s) have been recorded with the Clerk of the Courts in the Public Records of Palm Beach County, in accordance with Sec. 255.05, Fla. Stat.

12.5 **Payment Requests.** Payment requests shall be submitted on AIA Application for Payment forms and shall be signed and notarized by Contractor. Each payment request shall include the following information:

1. Bid Number
2. Contract Number
3. Project Number
4. Project Name
5. Engineer and Owner's Representative
6. Detailed estimate and payment request on a standard AIA form, covering the percentage of the total amount of the work which has been completed from the start of the job up to and including the last day of the preceding month, together with quantity and unit prices of materials and equipment utilized.
7. The unit cost of such materials and equipment required in the permanent work as has been delivered to the site and suitably protected but not as yet incorporated in the work.
8. Project schedule, updated and current.
9. Consent of Surety
10. Verification that certified copy(s) of recorded performance/payment bonds provided to Owner:

i) Partial Release of Lien from Contractor

ii) Partial Releases of Lien from each sub-contractor on the payment request

11. Subcontractor Utilization Report.
12. Release from private property owner if Contractor utilized private property for storage or staging.
13. Copies of marked "as-built" Construction Drawings.
14. Living Wage payroll verification.
15. Such other supporting evidence as may be required by Owner and/or Engineer to support Contractor's payment application;

Owner has the right to reject any incomplete payment request(s), and will only consider complete payment request(s).

12.6 **Initial Payment.** Prior to submittal of its initial payment request, Contractor shall have submitted the following items to Engineer and Owner:

1. Certified copies of Public Construction bond (or performance/payment bonds) recorded in the public records.
2. List of subcontractors and suppliers
3. Construction schedule
4. Schedule of prices
5. All current certificates of insurance
6. Designation of Contractor's Project Manager
7. ACH Payment form.
8. Contractor's W-9

The initial payment request will not be accepted unless all of the above items have been received by Engineer/Architect and Owner. No payment shall be made by Owner to Contractor until Contractor has provided Owner with a certified copy of the Bond(s) evidencing that said bond(s) have been recorded with the Clerk of the Courts in the Public Records of Palm Beach County, in accordance with Sec. 255.05, Fla. Stat.

12.7 **Progress Payments.** All payment requests are required to be submitted in draft form, at least ten (10) calendar days in advance and not more than once each month, via email to Owner, Engineer/Architect or by other written notice.

Partial consent of surety for payment shall accompany the payment request. Original partial releases of lien from Contractor and all subcontractors included in payment request shall accompany the payment request. (Not required for initial payment).

After review and approval of the draft, Contractor shall prepare and submit an original payment request, in triplicate:

- o one set to Engineer/Architect,
- o one set to City's project manager (if different than Engineer/Architect) and
- o one set to: **City of West Palm Beach – Accounts Payable**
PO Box 3366
West Palm Beach, FL 33402-3366.

The payment request for Accounts Payable may be emailed to: wpbap@wpb.org

Owner will not be responsible for any delay in payment by the City if Contractor submits his estimate and invoice to any other address. Payment will be made in accordance with the Local Government Prompt Payment Act. (Sec. 218.70, Fla. Stat.). Owner must submit a complete payment request to the Finance Department for payment no later than fourteen (14) days after receipt of the payment request.

If a payment request or invoice does not meet the contract requirements, the Owner must reject the payment request within twenty (20) business days after the date on which the payment request is stamped as received. The rejection must be written and must specify the deficiency and the action necessary to make the payment request or invoice proper. If the Contractor submits a payment request or invoice that corrects the deficiency, the corrected payment

request or invoice must be paid or rejected within ten (10) business days after the date the corrected payment request is stamped as received.

If any portion of a payment requires is disputed, the undisputed portion must be paid by twenty (20) business days after receipt of the payment request.

Electronic Deposit. The City will make payment by electronic deposit (ACH) based on the directions provided to the City from Consultant.

12.8 **Retainage.** In accordance with the Local Government Prompt Payment Act, and except as provided in these General Conditions, Owner shall withhold retainage of five percent (5%) from each progress payment paid to Contractor based on Contractor's estimate and invoice as approved by Engineer/Architect.

12.9 **Payment to Subcontractors.** Contractor shall pay its subcontractors within ten (10) calendar days of receipt of payment from Owner and shall not withhold payments to sub-contractors. Should this occur for any reason, Contractor shall immediately return such monies to Owner, adjusting pay requests and project bookkeeping as required.

12.10 **Substantial Completion Payment.**

- a) Within twenty (20) business days after creation of the punch list, the Owner shall pay the Contractor the remaining contract balance, including any retainage, less one hundred fifty percent (150%) of the amount listed in the punch list as the cost to complete the punch list items.
- b) If the Owner fails to comply with its obligations to timely develop a punch list, the Contractor may submit a payment request, including all documentation required by GC 12.13, for the balance of the contract price plus all retainage, and the Owner must pay the Contractor within twenty (20) business days after receipt of a complete payment request.

12.11 **Final Payment.** Upon completion of all requirements for substantial completion, completion of all punch list items, and issuance of a Final Completion certification by Engineer/Architect, compliance with all project closeout requirements and submittal of all of the following items, Contractor may submit its final payment request. The final payment request shall include the following items:

1. Final Certification by Engineer/Architect
2. Certified copy of punch list stating each item has been completed or otherwise resolved and accepted.
3. Final Statement of Accounting reflecting:
 - a. original contract price
 - b. each approved Change Order (with quantity and unit prices where applicable)
 - c. allowances, if applicable
 - d. deductions for uncorrected work
 - e. deductions for liquidated damages
 - f. deductions for re-inspection costs
 - g. deductions for re-testing costs due to failed tests
 - h. other adjustments
 - i. adjusted contract price
 - j. payments made
 - k. any pending payment requests
 - l. sum remaining due to Contractor

4. Final Change Order, if applicable, reflecting approved adjustments to the Contract price not previously made by Change Order.
5. Consent of surety for final payment.
6. Any documents necessary to provide compliance with Living Wage Program.
7. Affidavit from Contractor that all payrolls, bills for material and equipment and other indebtedness connected with the Work have been paid or satisfied;
8. If no payment bond is recorded, Original releases of lien from Contractor and all subcontractors
9. Certificate of Insurance evidencing continuation of any liability coverage on claims made basis, which shall remain effective for five (5) years after final payment.
10. Written release of claims from any private property owner for use of private property for storage or staging.
11. Final "as-built" construction drawings
12. All pre-requisites for Substantial Completion and Final Completion have been met.

The making and acceptance of the final payment shall constitute a waiver and release of all claims by Contractor, except those previously made in writing and still unsettled.

If a good faith dispute, as determined by Owner, exists as to whether one or more items identified on the punch list have been completed pursuant to the Contract, Owner may continue to withhold up to one hundred fifty percent (150%) of the total costs to complete such items(s), as determined by Owner.

If Contractor fails to submit all documents required for final payment within one (1) year after Final Certification any amounts owed as final payment shall be forfeited. Owner shall provide written notice to Contractor at least sixty (60) days prior to forfeiture. Forfeiture will not apply to documents that are the subject of existing claims or pending legal proceedings.

12.12 Final Payment to Subcontractors. Final payment may be made to certain select sub-contractors whose work is satisfactorily completed prior to the total completion of the Project but only upon receipt of advance written consent of Surety, or applicable releases if no performance/payment bonds.

12.13 Decision to Withhold Certification of Payment Requests.

12.13.1 Engineer/Architect may withhold payment requests, in whole or in part, to the extent reasonably necessary to protect Owner. If Engineer/Architect is unable to certify payment in the amount of the application, Engineer/Architect or Owner shall within twenty (20) calendar days advise Contractor of the reasons for withholding certification, in whole or in part, and the actions necessary to make the payment request proper. Engineer/Architect will promptly certify payment of the amount which Engineer/Architect can certify.

12.13.2 If Contractor takes action to make the rejected payment request proper and re-submits for approval of the whole or portion previously rejected, Engineer/Architect and Owner shall reject or accept the payment within ten (10) calendar days.

12.13.3 Engineer/Architect may nullify, in whole or in part, any payment application previously certified to such extent as may be necessary, in Engineer/Architect's opinion, to protect Owner for loss for which Contractor is responsible, including:

- Defective work not remedied;
- Failure to comply with Living Wage Program
- Failure of Contractor to make payments to subcontractors;
- Reasonable evidence that the Work cannot be completed for the unpaid balance of the contract price;
- Damage to Owner or a another contractor;
- Reasonable evidence that Owner will have a claim for liquidated damages;
- Repeated failures to carry out the Work in accordance with the Contract Documents.

When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

12.14 Withheld Payments. If the Owner has provided written notice to the Contractor specifying the failure of the Contractor to meet contract requirements, or specifying a good faith dispute regarding amounts due, or if the requested payments are subject to a claim made under the public construction or performance bond, the Owner may withhold payments. If the notice to the Contractor specified defective work or materials, Owner may withhold one hundred fifty percent (150%) of the estimated total costs to remedy or complete the defective work or replace the defective materials. Failure to meet contractual requirements may include one or more of the following:

- a) Failure to comply with Living Wage Program.
- b) Reasonable evidence that the Work cannot be completed for the unpaid balance of the contract price.
- c) Reasonable evidence that the Work cannot be completed within schedule.
- d) Damage to Owner or another contractor that remains unresolved
- e) Owner has a right to claim liquidated damages.
- f) Repeated failures to carry out the Work in accordance with the Contract Documents.
- g) Contractor fails to submit information required by the Contract.
- h) Contractor's insurance coverage lapsed.
- i) Claims filed or reasonable evidence indicating public filing of claims by Owner or third parties against Contractor.

When the above grounds are removed or Contractor provides a Surety or Performance Bond satisfactory to Owner, which will protect Owner in the amount withheld, payment shall be made for amounts withheld because of them.

12.15 Allowances. Contractor shall include in the contract price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as Owner may direct.

12.16 Contingency Funds. ALL CONTINGENCY SUMS ARE OWNER'S CONTINGENCY AND REMAIN THE PROPERTY OF OWNER UNTIL EXPENSE IS APPROVED. The contract price shall not include any contingency amounts. If the Contract or schedule of bid prices includes an agreed sum as a contingency, such amount is identified solely for budget purposes and remains Owners' funds. Owner may approve use of contingency funds only for the purpose of defraying the expenses due to unforeseen conditions, extra work, and circumstances relating to construction, unless otherwise agreed. Such contingency funds are not for use by Contractor to cover short falls in Contractor's bid amount, and not for use by Owner to increase the scope of work. Contractor shall obtain prior written approval from Owner prior to the expenditure of contingency funds and Contractor will be required to furnish documentation evidencing expenditures charged to contingency and/or allowances prior to the release of such funds by Owner. All uncommitted contingency funds remain the funds of Owner.

12.17 Local Government Prompt Payment Act. The provisions of the Local Government Prompt Payment Act, F.S. 218.70 et seq., are incorporated by reference herein. The Act provides payment due dates, interest and payment dispute resolution.

GC 13 BONDS

13.1 Public Construction Bond/ Performance & Payment Bonds (if required)

13.1.1 Performance Bond. In accordance with the provisions of F.S. 255.05, and as required by the Contract Documents, Contractor shall provide, on forms furnished by Owner, public construction bond in an amount not less than the total contract price by a surety company acceptable to Owner. The bond shall guaranty contractor's performance and payments to all claimants, as defined in Section 255.05(1), Fla. Stat., supplying Contractor with labor, materials, or supplies, used directly or indirectly in the Work provided for in the Contract. The bond shall incorporate by reference the terms of the Contract Documents in its entirety.

Moreover, Contractor agrees that the following language shall be expressly included within the language of its bond:

"The Surety expressly agrees to be bound by all terms and conditions related to liquidated, delay and time or impact-related damages. Surety shall be bound by the warranty or warranties contained in the contract documents and shall be responsible for any and all warranty obligations or damages as a result of latent defects or deficiencies in the work performed under the contract. The Surety waives all rights against Owner and its agents and employees for damages or other causes of loss by the Surety's performance of its obligations under this Bond, including claims by Surety against Owner for costs it asserts were not warranted by the contract documents, excluding only such rights as the Surety shall have to proceeds of such insurance held by Owner as fiduciary."

13.1.3 Performance Bond and Payment Bond. Alternatively, Owner may accept a performance bond and a payment bond, each in the an amount not less than he total contract price, by a surety acceptable to Owner, on a form furnished by, or acceptable to, the Owner, in lieu of the public construction bond.

13.1.4 Recording of Bond. Within ten days of receipt of the fully executed contract, Contractor shall record its bond(s) in the public records of Palm Beach County and provide a certified copy of the recorded bond to Owner in accordance with Sec. 255.05, Fla. Stat.

13.2 Surety. To be acceptable to Owner, a Surety Company shall comply with the following provisions:

- (1) The surety company shall have a currently valid Certificate of Authority, issued by the State of Florida Department of Insurance, authorizing it to write surety bonds in the State of Florida.
- (2) The surety company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
- (3) The surety company shall be in full compliance with the provisions of the Florida Insurance Code.
- (4) The surety company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid/request for proposals is issued.
- (5) The surety company shall have at least the ratings of A-/Class V.
- (6) The surety company shall not expose itself to any loss on any one risk in an amount exceeding ten percent (10%) of its surplus to policyholders.

GC 14 LIENS AND RELEASES OF LIENS. (if no recorded payment bond)

14.1. Where bonds have not been recorded by the Contractor, neither the final payment nor any part of the retainage shall become due until Contractor shall deliver to Owner complete releases of all claims or liens arising out of the Contract Documents, or receipts in full in lieu thereof and, in either case, an affidavit that so far as he has knowledge or information the release and receipts include all the labor and materials for which a lien or claim could be filed. Contractor shall use Owner's forms for all releases of liens. All releases are required to have original signatures. All values on lien releases shall be consistent with the subcontracts.

14.2. Contractor may, if any sub-contractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to Owner, to indemnify Owner against any claim or lien (in cases where such payment is not already guaranteed by Surety or Performance Bond), along with a consent of surety to such payment.

14.3 In case of disputed indebtedness or liens, Contractor may submit in lieu of evidence of payment, a surety or public construction bond satisfactory to Owner guaranteeing payment of all such disputed amounts when adjudicated in cases where such payment has not already been guaranteed by a surety or bond.

14.4. If any claim or lien remains unsatisfied after all payments are made, Contractor shall refund to Owner all moneys that Owner may be compelled to pay in discharging such a lien, including all costs and reasonable attorneys' fee.

GC 15 INSURANCE; INDEMNIFICATION

15.1 Insurance.

15.1.1 All Insurance Policies shall be issued by companies that (a) are authorized to transact business in the State of Florida, (b) have agents upon whom service of process may be made in Palm Beach County, Florida, *and (c) have a Best's rating of A- VI or better.*

15.1.2 All Insurance Policies shall be endorsed to provide that:

- i. Contractor's Insurance is primary to any other Insurance available to the additional insured(s) with respect to claims covered under the policy and:
- ii. Contractor's insurance applies separately to each insured against whom claims are made or suit is brought and that the inclusion of more than one insured shall not operate to increase the insurer's limit of liability. Self- insurance shall not be acceptable.

15.1.3 Additional Insured. All required insurance (except Worker's Compensation and Professional Liability) shall include an Additional Insured endorsement identifying the City of West Palm Beach, its commission, officers, employees and agents as additional insureds. Additional insureds are defended and indemnified for claims to the extent caused by the acts, actions, omissions or negligence of Contractor, its employees, agents, subcontractors, and representatives; but is not defended or indemnified for the additional insured's own acts, actions, omissions, negligence. No costs shall be paid by Owner for an additional insured endorsement.

15.1.4 Required Coverage: Contractor shall maintain following liability coverage, in the limits specified:

COMMERCIAL GENERAL LIABILITY. Contractor shall carry Commercial General Liability Insurance for all operations including but not limited to Contractual, Products and Completed Operations and Personal Injury with limits of not less than Three Million Dollars (\$3,000,000) (aggregate) and Two Million Dollars (\$2,000,000) per occurrence combined single limit for bodily injury and property damage. The insurance policy must include coverage that is no more restrictive than the latest edition of the commercial general liability policy, without restrictive endorsements and the policy must include coverage for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the employee and contractual exclusions removed.

BUSINESS AUTOMOBILE LIABILITY INSURANCE: Contractor shall carry business automobile liability insurance with minimum limits of Two Million Dollars (\$2,000,000) per occurrence, combined single limits bodily injury liability and property damage. The policy must be no more restrictive than the latest edition of the business automobile liability policy without restrictive endorsements and must include owned vehicles and hired and non-owned vehicles.

WORKERS' COMPENSATION: Workers' Compensation and Employer's Liability Insurance with limits of Employer's Liability Insurance not less than Five Hundred Thousand Dollars (\$500,000) "each accident," Five Hundred Thousand Dollars (\$500,000) "disease policy limit," and Five Hundred Thousand Dollars (\$500,000) "disease each employee."

UMBRELLA OR EXCESS LIABILITY INSURANCE: Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability; however the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for any of the policies noted above. Contractor agrees to name and endorse the City, City Commission and its officers, employees and agents as additional insureds. Additional insured is defended and indemnified for claims to the extent caused by the acts, actions, omissions or negligence of Contractor, its employees, agents, subcontractors, and representatives; but is not defended or indemnified for the additional insured's own acts, actions, omissions, negligence.

BUILDERS RISK: Not less than the value of the Work under construction and facilities under the “custody and control” of Contractor.

POLLUTION: Not less than Three Million Dollars (\$3,000,000) IF hazardous materials, including lead, asbestos, PCBs or other pollutants may be present.(If required)

Any other or special insurance requirements will be addressed in the Contract Documents.

15.1.5 Certificate of Insurance. Contractor shall provide the City Risk Manager or the City Project Manager with a copy of the Certificate of Insurance and endorsements evidencing the types of Insurance and coverage required by this article within three (3) calendar days of Contractor’s receipt of Notice of Intent to Award the Contract and, at any time thereafter, upon request by the City. It is Contractor’s responsibility to ensure that the Risk Manager and the Contract Manager both have a current Insurance Certificate and endorsements at all times.

15.1.6 Notice. Contractor’s insurance policies shall be endorsed to provide the City with at least thirty (30) calendar days prior written notice of cancellation, non-renewal, restrictions, or reduction in coverage or limits. Notice shall be sent to:

City of West Palm Beach
Attn: Risk Management Division
401 Clematis Street
West Palm Beach, Florida 33401

15.1.7 Coverage Period.

- a. If Contractor’s Insurance policy is a claims made policy, then Contractor shall maintain such Insurance Coverage for a period of five (5) years after the expiration or termination of the Contract or any extensions or renewals of the Contract. Applicable coverage may be met by keeping the policies in force, or by obtaining an extension of coverage commonly known as a reporting endorsement of tail coverage.
- b. In any of Contractor’s Insurance policies includes a general aggregate limit and provides that claims investigation or legal defense costs are included in the general aggregate limit, the general aggregate limit that is required shall be no more than five (5) times the occurrence limits specified above in this article.

15.1.8 Renewal of Insurance: Contractor shall be responsible for assuring that the insurance certificate/endorsements required in conjunction with this section remains in force for the duration of the contractual period. If the insurance certificate/endorsements are scheduled to expire during this period, Contractor shall be responsible for submitting a new or renewed insurance certificate/endorsements to the City at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificate/endorsements are not replaced with a new or renewed certificate which covers the contractual period, Owner may suspend this Agreement until such time as the new or renewed certificate/endorsements are received by City.

15.1.9 Minimum Coverage: Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Contractor of liability in excess of such coverage, nor shall it preclude City from taking such other actions as is available to him under any other provisions of this Agreement or otherwise in law or equity.

15.1.10 Subcontractors. Contractor shall be entirely responsible for securing Certificates of Insurance coverage as set forth above from all subcontractors who are engaged in the Work.

15.1.11 Waiver of Subrogation. The City and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to the Contract or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the City as trustee. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

15.1.12 Survival. The provisions of this General Condition shall survive the expiration or termination of the Contract.

15.2 Indemnification.

Contractor shall indemnify and hold harmless the City, its commissioners, officers, employees and agents ("Indemnified Parties"), from and against any and all liabilities, damages, losses and costs, including reasonable attorneys' fees and costs, to the extent the same are caused by: (i) an act, negligence, recklessness or intentional wrongful misconduct of Contractor or its subcontractors, or the officers, employees or agents of either, while engaged in or about the performance of the Work; or while in or about the project site or premises; or (ii) arising from accident or any injury to Contractor or its subcontractors while engaged in or about the performance of the Work, or while in or about the project site or premises, not caused by act of the Indemnified Parties or other contractors of City; or (iii) arising out of the violation of federal, state, county or municipal laws, ordinances or regulations by Contractor or its subcontractor; or (iv) arising from liens or claims for services rendered for labor or materials furnished in or for the performance of the Work. This paragraph shall not be construed to require Contractor to indemnify the Indemnified Parties for such Indemnified Parties' own negligence, or intentional acts. Nothing in this paragraph shall be construed as a contractual waiver by the City of the protections and limits of sovereign immunity under Sec 768.28, Florida Statutes, nor a waiver of any defense the City may have and shall not be construed as consent to be sued by third parties based on any claims arising under this Contract. Contractor and City agree that any liability of City under the contract shall be limited to the amounts set forth in Sec. 768.28, Florida Statutes. This paragraph shall survive the expiration or termination of the Contract. (725.06 F.S. and 768.28 F.S.).

GC 16 SUBCONTRACTORS AND SUPPLIERS

16.1 List of Subcontractors and Suppliers. Unless otherwise required to be specified in Contractor's Bid, within ten (10) days after the date of Owner's issuance of a Notice to Proceed, Contractor shall furnish to Owner in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) whom Contractor will engage as sub-contractors or suppliers for the project. Contractor shall not change such sub-contractors or suppliers without written notice to Owner, and shall not contract with a proposed person or entity to whom Owner has made reasonable and timely objection in writing, after such notice. Contractor understands and agrees that Contractor alone is responsible to Owner for all of the Work under the Contract and that any review of subcontractors, sub-subcontractors or suppliers by Owner or Engineer/Architect will not in any way make Owner responsible to any subcontractor or sub-subcontractor or suppliers.

16.2 Written Subcontracts. By appropriate written agreement, Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to Contractor by terms of the Contract and Contract Documents, including but not limited to the insurance requirements for workers' compensation and general liability coverage. Owner shall be named as an intended Third Party Beneficiary in all subcontractor agreements provided such naming shall not create privity of contract between Owner and subcontractor. Each subcontract agreement shall preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by the subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Contractor that Contractor, by the Contract Documents, has against Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors. Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the subcontractor will be bound, and, upon written request of the subcontractor, identify to the subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors. Contractor shall include in all subcontracts a provision requiring the subcontractor to consent to an assignment of the subcontract to Owner. Contractor shall, upon request, provide copies of all subcontracts to Owner.

16.3 Required Waiver. All subcontracts shall provide the following exact language:

"Sub-contractor "expressly waives any claims for damages which it may suffer by reason of delay caused by events beyond its' control, including delays claimed to be caused by Owner or its Engineer/Architect and agrees that its exclusive remedy shall be an extension of its contract time."

16.4 **Contingent Assignment of Subcontracts.** Each subcontract agreement is assigned by Contractor to Owner, provided that the assignment is effective only after termination of the Contract by Owner for cause and only for those subcontract agreements that Owner accepts by giving notice to the subcontractor and Contractor in writing; and subject to the prior right of the surety, if any.

16.5 **Disputes.** Any disputes which may arise between Contractor and any subcontractor must be resolved between the parties concerned. Owner will not undertake nor be in any way responsible for the resolution of such disputes between Contractor and its subcontractors.

GC 17 ENGINEER / ARCHITECT'S STATUS.

17.1 Owner has authorized Engineer/Architect will to provide observation of Contractor's activities and progress of the Work. Owner intends Engineer/Architect to make inspections of all construction, draft change orders, and verify and certify partial and/or final payments due to Contractor, as provided in the Contract Documents. Owner authorizes Engineer/Architect, during the life of the Contract to issue Contractor additional instructions, by means of drawings, minor change orders or otherwise, necessary to illustrate changes in the Work.

17.2 Owner has authorized Engineer/Architect to review and take appropriate action regarding Contractor's submittals such as shop drawings and samples, but only for the limited purpose of checking for conformance with the Contract Documents. Review of such submittal is not conducted for the purpose of determining the accuracy and completeness of other details, such a dimensions and quantities of for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Contractor pursuant to the Contract Documents. Engineer/Architect's review does not relieve Contractor of its obligations under the Contract Documents. Engineer/Architect's review does not constitute approval of, and Engineer/Architect shall not give directions regarding, any construction means, methods, techniques, sequences, procedures, assembly or safety precautions.

17.3 Owner has authorized Engineer/Architect to stop the Work whenever such stoppage may be necessary to ensure the proper execution of the Contract or to protect the public and/or property. Engineer/Architect shall also have authority to reject all work, materials and equipment which do not conform to the Contract Documents and to decide questions raised by Contractor which arise in the execution of the Work.

17.4 Owner retains the sole authority to modify or extend the authority of Engineer/Architect.

17.5 Owner has authorized Engineer/Architect to make decisions in writing on all claims of Contractor, and on all other matters relating to the execution and progress of the Work or the interpretation of the Contract Documents. All such decisions of Engineer/Architect shall be final.

GC 18 TERMINATION OR SUSPENSION

18.1 Owner's Right to Terminate for Cause.

18.1.1 Owner may terminate the Contract for cause if Contractor:

1. Fails to supply enough properly skilled workers or proper materials;
2. Fails to cure deficiencies after notice as provided in the Contract Documents;
3. Fails, except in cases for which extension of time is provided, to maintain an established schedule thirty (30) calendar days behind a critical path activity),
4. Fails to make prompt payments to subcontractors or for material, equipment or labor;
5. Repeatedly disregards applicable laws, codes, ordinances, regulations or permit requirements;
6. Fails to perform the Work consistent with the requirements of the Contract Documents;
7. Materially fails to comply with substantial and final completion dates as required in the Contract Documents;
8. Abandons or refuses to perform any portion of the Work;
9. Is otherwise in substantial breach of the Contract Documents;
10. Files a bankruptcy petition or has a bankruptcy action commenced against it that is not discharged within thirty (30) calendar days, or make an assignment for the benefit of its

creditors, or has a receiver appointed to manage Contractor's assets, or is otherwise becoming insolvent.

18.1.2 When any of the above reasons exist, Owner may, without prejudice to any other right or remedy, and after giving Contractor and its Surety ten (10) calendar days written notice, terminate the employment of Contractor and, subject to any prior right of the surety:

- (1) Exclude Contractor from the site and take possession of the premises and of all materials, equipment, tools and appliances thereon owned by Contractor;
- (2) Accept assignment of subcontract pursuant to GC 16.4 and
- (3i) Finish the Work by whatever reasonable means Owner deems expedient.

18.1.3 When Owner terminates for cause, Contractor shall not be relieved from any of its obligations under the Contract Documents, and shall not be entitled to receive any further payment until Owner's costs to complete the Work is determined. In no event shall Contractor receive any payment for Work finished by Owner.

18.1.4 Owner shall determine its costs incurred in completing the Work, including fees and charges to contractors, fees of Engineer/Architect, attorney and other professional fees, court costs and other damages incurred by Owner. Owner shall not be required to obtain the lowest price for the work to be performed, but the costs paid by Owner must be reasonable. If the unpaid balance of the contract price shall exceed Owner's costs to finish the Work, the excess shall be paid to Contractor. If Owner's costs exceed the unpaid balance, Contractor shall pay the difference to Owner. This obligation for payment shall survive termination of the Contract and final payment.

18.1.5 Those Contract provisions which by their nature survive final acceptance shall remain in full force and effect

18.1.6 If Contractor's surety is directed or agrees to complete the Work, then all payments due after termination shall be made to the surety until the Work is complete and/or the Contract price has been expended. The surety shall then be responsible for all of the obligations and duties of Contractor under the Contract Documents and shall be bound by the conditions of the Contract Documents, this Contract and the Bond to fulfill all obligations of the Contract Documents for the contract price in effect as of termination. The surety may not assign those obligations without the written consent of Owner. The surety shall be responsible for the payment of all costs relating to the termination of the employment of Contractor. Contractor and its surety shall be jointly and severally liable for all costs in excess of the contract price for completion of the Work and for liquidated damages.

18.1.7 If, upon termination for cause it is determined that Contractor was not in default, the rights and obligations of the parties shall be as if the notice of termination has been issued for Owner's convenience.

18.2 Suspension or Termination by Owner for Convenience.

18.2.1 Suspension for Owner's Convenience. Owner may, at any time, without cause, order Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as Owner may determine, for Owner's convenience. If Owner orders a suspension for convenience, the contract price and contract time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption. No adjustment shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or that an equitable adjustment is made or denied under another provision of the Contract.

18.2.2 Suspension for Cause. Owner may, at any time order Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as Owner may determine, if Owner or Engineer/Architect has determined such suspension is necessary to ensure the proper execution of the Contract or to protect the public and/or property or to comply with law or other cause under the Contract. If Owner orders a suspension for cause, no claim for damages or any claim, other than for an extension of time, shall be made or asserted against Owner by reason of any delays. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Owner for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of such suspension of the Work.

18.2.3 **Termination by Owner for Convenience.** Owner may, at any time, without cause, order terminate all or a portion of the Contract for Owner's convenience when the City determines that continuation of the Contract would not produce beneficial results commensurate with the expenditure of public funds. Upon such termination, the contract price earned to the date of termination shall be paid to Contractor, but Contractor waives any claim for damages, including loss of profits arising out of or related to the early termination. Contractor may not recover overhead or profit for work not performed. Those Contract provisions which by their nature survive final payment shall remain in full force and effect.

18.3 **Contractor Obligations Upon Termination.** Upon receipt of written notice from Owner of termination, Contractor shall: (i) cease operations as directed by Owner in the notice; (ii) take actions necessary, or that Owner may direct for the protection and preservation of the Work; (iii) except for Work directed to be performed prior to the effective date of termination stated in the notice, and if directed by Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders; and (iv) turn over all marked up Construction Drawings and record set documents showing progress to date. Owner may assume and become liable at its sole discretion for obligations, commitments and unsettled contractual claims that Contractor has previously undertaken or incurred in good faith in connection with said project. Owner shall reimburse Contractor for any unpaid and earned cost of the project as of the date of termination, less damages or setoffs applicable under the Contract Documents. Contractor shall, as a condition of receiving the payments referred to herein, execute and deliver all such papers and take all such steps including the legal assignment of his contractual rights, as Owner may require for the purpose of fully vesting in him the rights and benefits of Contractor under such obligations or commitments.

18.4 **Termination by Contractor.** Contractor may terminate this Contract if the Work is stopped for a period exceeding thirty (30) consecutive days, through no fault of act of Contractor or subcontractor or their suppliers or other person or entities performing Work under direct or indirect contract with Contractor, if order of a court or other public authority having jurisdiction requires all Work to be stopped; or an act of government, such as declaration of emergency, requires all Work to be stopped.

CG 19 LIQUIDATED DAMAGES

19.1 **Liquidated Damages.** If the actual completion date for substantial completion or final completion occurs later than the time indicated in the Contract Documents or later than the scheduled completion date if a duly authorized change order for time is issued, liquidated damages in the amount(s) set forth in the Contract Documents shall be paid by Contractor for unexcused delay in performance of the Work. The reasonableness of the amount is agreed. No liquidated damages shall be charged for periods of authorized delay or suspension. Contractor agrees that Owner's actual delay damages in the event of unexcused delay are difficult to ascertain and therefore the parties agree that the sums established in the Contract Documents are reasonably related to what damages Owner may suffer by the delay and are enforceable liquidated damages and not penalties. Contractor further acknowledges that Owner is entitled to deduct any liquidated damages to which Owner is entitled from the final payment to Contractor. If the amount of liquidated damages due to Owner exceeds the final payment amount, Contractor shall pay the difference to Owner. This obligation for payment shall survive termination of the Contract and final payment. Owner does not waive any rights or other remedies under the Contract by the collection of liquidated damages. Liquidated damages will continue to be charged to the contract in the event of Contractor's default and continuation of the Work by Owner or surety.

GC 20 CLAIMS AND DISPUTES

20.1 **Contract Interpretation.** The Contract Documents, including the contract, the Bid Package, and the ITB, which are incorporated into the contract in their entirety, embody the entire agreement and understanding of the parties with respect to the Project and the Work and supersede all prior and contemporaneous agreements and understandings, oral or written, relating to said subject matter. The Contract Documents are complementary, and wherever possible the provisions of the documents shall be construed in such manner as to avoid conflicts between provisions of the various documents. In the event of a conflict between or among any of the terms of the Contract Documents, the order of precedence for deciding which document shall control shall be as follows:

First Priority:	Approved Change Orders, addenda or amendments
Second Priority:	Specifications (quality)
Third Priority:	Drawings (location)

Fourth Priority:	Special Terms / Supplemental Conditions
Fifth Priority:	General Conditions
Sixth Priority:	Contract
Seventh Priority	Invitation to Bid
Eighth Priority	Contractor's Bid

In any event of inconsistency, however, the latest, and more stringent, or technical, or the greater quantity requirements shall control the work to be performed by Contractor.

20.2 Notice of Claims or Dispute. Notwithstanding any other notice provisions in the Contract Documents, all claims, difficulties and disputes which may arise relative to the technical interpretation of the Contract Documents and fulfillment of the contract as to the character, quality, amount and value of any Work done and materials furnished, or proposed to be done or furnished; or claims or disputes regarding a request for a change order which has been denied; or any claims or disputes of whatever nature between Owner and Contractor shall be initiated by written notice from Contractor to Owner with a copy sent to Engineer/Architect ("Claim Notice"). Unless otherwise specifically provided by law, claims must be initiated within twenty-one (21) calendar days after occurrence of the event giving rise to such claim or within twenty-one (21) calendar days after Contractor first recognizes the condition giving rise to the claim, whichever is later. The Claim Notice shall include Contractor's written notarized certification that the adjustment claimed is the entire adjustment to which the Contractor has reason to believe it is entitled for the specific event or claim. **THIS GC 20.2 PROCEDURE DOES NOT APPLY TO CONTRACTOR CLAIMS FOR CHANGES TO THE CONTRACT TIME DUE TO DELAY THAT HAVE BEEN WAIVED BY CONTRACTOR PURSUANT TO GC 8. THE PROCEDURE IN GC 20.2 MAY NOT BE USED TO REVIVE A REQUEST FOR CHANGES IN THE CONTRACT TIME THAT HAS BEEN WAIVED BY CONTRACTOR FOR FAILURE TO STRICTLY COMPLY WITH THE REQUIREMENTS OF THE CONTRACT FOR SUBMITTING A REQUEST FOR CHANGE IN THE CONTRACT TIME OR TO STRICTLY COMPLY WITH THE REQUIREMENTS OF THE CONTRACT FOR SUBMITTING A NOTICE OF CLAIM OR DISPUTE UNDER THIS GC 20.2.**

20.3 Continuing Performance. In the event of any claim or dispute, Contractor shall continue to diligently make progress on all Work, unless otherwise directed by Owner, and Owner shall continue to make payments in accordance with the Contract Documents. The Parties shall continue to perform under the Contract Documents pending resolution of any disputes. If the dispute regards payment or money, Contractor shall be obligated to proceed with all Work without waiving its claims under dispute. In the event of a claim or dispute, Owner may issue unilateral change orders to pay Contractor what Owner/Engineer considers equitable for the claim and Contractor shall be allowed to submit a claim for the balance of Contractor's request. During the pendency of any dispute and after a determination thereof, Contractor, Owner and Engineer/Architect shall act in good faith to mitigate any potential damages including utilization of construction schedule changes.

20.4 Decisions on Aesthetics. Engineer/Architect's decision on matters relating to aesthetic effect will be final if consistent with the intent of the Contract Documents.

20.5 Payment Disputes. With respect to disputes regarding payment requests:

- a) The Owner must commence proceeding to resolve the dispute with thirty (30) days after the complete payment request was received by Owner.
- b) The Owner must provide its final decision regarding the payment dispute within forty-five (45) days after the complete payment request was received by Owner.
- c) If the dispute is resolved in favor of the Owner, interest charges begin to accrue 15 days after the date of the owner's final decision. If the dispute is resolved in favor of the Contractor, interest charges begin to accrue as of the original date the payment became due.
- d) The undisputed portion of the payment request must be paid twenty (20) business days after receipt of the request.

Payment disputes may not include disputes that were waived by Contractor for failure to strictly comply with the requirements of GC 8 or GC 20.

20.6 Subcontractor Disputes. Any disputes which may arise between Contractor and any subcontractor must be resolved between the parties concerned. Owner will not undertake nor be in any way responsible for the resolution of such disputes between Contractor and its subcontractors.

20.7 **Dispute Process.**

20.7.1 **Minor disputes.** Following is the process for disputes involving Thirty Percent (30%) or less of the Contract Price, provided the sum is less than \$1 Million, or Sixty (60) days or less in contract time.

- a) Within ten (10) business days after receipt of Contractor's claim or inquiry, or such longer time as the Parties may agree, Engineer/Architect shall respond in writing to Contractor's request. Such response may include a request for additional information from Contractor or with a decision regarding the claim or inquiry. If the response requests additional information, within ten (10) business days after receipt of Engineer's request for additional information, Contractor shall either provide such additional information or notify Engineer in writing that Contractor will not provide such additional information. Upon receipt of the response from Contractor, or if no response is received by the end of the ten (10) business day period, Engineer shall, within ten (10) business days, respond in writing to Contractor with a final decision on the claim or inquiry.
- b) If Contractor protests the Engineer/Architect's decision, Contractor may file a written protest with Engineer/Architect and Owner within ten (10) business days of the date of Engineer/Architect's response. Contractor shall state clearly and in detail the basis for the protest. Failure to file the written protest within the required time will act as a waiver of the protest by Contractor, and bar Contractor from bringing a claim or initiating a dispute resolution proceeding against Owner relating to Contractor's claim or inquiry.
- c) Said protest shall be reviewed and a written decision issued by Owner within thirty (30) calendar days. The decision of the Owner shall be final.
- d) If a decision of the Owner's Representative involves a change to the contract time or contract price, such decision shall be subject to preparation and submittal of a change order request to Owner pursuant to GC 8, 9 and 10, as applicable.
- e) Contractor may not file a court action to protest a final decision by Owner's Representative, or subsequent Change Order approved by Owner, until after the date of final completion of the Work.

20.7.2 **Other disputes.** Following is the process for disputes of a single claim involving more than thirty percent in contract price or more than \$1 Million, or more than sixty (60) days in contract time. Multiple claims cannot be added together to fall within this provision.

- a) Within ten (10) business days after receipt of Contractor's claim or inquiry, or such longer time as the Parties may agree, Engineer shall respond in writing to Contractor's request. Such response may include a request for additional information from Contractor or with a decision regarding the claim or inquiry. If the response requests additional information, within ten (10) business days after receipt of Engineer's request for additional information, Contractor shall either provide such additional information or notify Engineer in writing that Contractor will not provide such additional information. Upon receipt of the response from Contractor, or if no response is received by the end of the ten (10) business day period, Engineer shall, within ten (10) business days, respond in writing to Contractor with a final decision on the claim or inquiry.
- b) If Contractor protests the Engineer's decision, Contractor may file a written protest with Engineer and Owner's Representative within ten (10) business days of the date of Engineer's response. Contractor shall state clearly and in detail the basis for the protest. Failure to file the written protest within the required time will act as a waiver of the protest by Contractor, and bar Contractor from bringing a claim or initiating a dispute against Owner relating to Contractor's claim or inquiry.
- c) Said protest shall be reviewed and a written decision issued by Owner's Representative within twenty (20) calendar days.
- d) Within ten (10) business days after receipt of Owner's Representative's written decision, either Contractor or Owner may, with written notice to the other party, refer the matter to Contract Arbitration in accordance with GC 20.7.3.

20.7.3 **Contract Arbitration.**

a. To prevent disputes and litigation, the parties have agreed to have a Contract Arbitrator render non-binding decisions on referred disputes pursuant to GC 20.7.2(4). The Contract Arbitrator will have exclusive jurisdiction over the matter referred to the Contract Arbitrator. Within ten (10) business days of notice of referral, the referring party must provide a written statement to the Contract Arbitrator detailing the contested matter, such party's basis for its position, together with such proffered written testimony and documentation as such party wants considered by the Arbitrator, and a recommended order resolving the dispute. The referring party's written statement must also contain a statement that any contract time or contract price adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination, and the referring party will be deemed to have waived any other time or price adjustments that could have been claimed by the party at the time of submittal. Contractor may not assert any claim that has been waived by Contractor under the provisions of the Contract. Within fifteen (15) business days of receipt of the referring party's written submittals to the Contract Arbitrator, the other party must provide a written response statement to the Contract Arbitrator detailing the contested matter, such party's basis for its position, together with such proffered written testimony and documentation as such party wants considered by the Arbitrator, and a recommended order resolving the dispute. The Contract Arbitrator must follow the provisions of the Contract and cannot vary the terms of the Contract or revive any previously waived Contractor claims. The Contract Arbitrator may not consider any claims by Contractor based on alleged oral modification of either the written Contract or written directive. Any statutory or contractual limitation period applying to the dispute will be tolled ***only from the date the dispute is referred to arbitration to the date the Contract Arbitrator serves a decision on the Parties following declaration of a mediation impasse as set forth below, and such tolling does not revive any disputes waived prior to the referral to arbitration.***

b. Absent agreement between the Parties, no pre-arbitration discovery may be conducted, and no Party may request documents or sworn testimony from the other Party, or any engineer, consultant, expert, insurer, surety, subcontractor or other person affiliated with a Party relating to the matters to be arbitrated. The Contract Arbitrator must schedule a meeting of the parties within fifteen (15) business days after receipt of the written statements from the parties, or as soon thereafter as possible, to resolve the contested matter. After the non-binding arbitration has concluded, the Contract Arbitrator must prepare and sign a written non-binding arbitration decision but may not present or disclose the decision to the parties. Prior to releasing the written decision to the parties, the Contract Arbitrator may inquire if either of the parties' desire to participate in a mediation of the dispute. If either party notifies the Contract Arbitrator within ten (10) business days after the request that the party desire to participate in a mediation of the dispute, the Contract Arbitrator will schedule a mediation with the parties and will act as the mediator. If no mediation is requested, or if a mediation is held then in the event of an impasse is declared in the mediation, the Contract Mediator will release the written decision of the arbitration to the parties. The Contract Arbitrator's decision will be non-binding on the parties, but if the parties did not settle the dispute in mediation, and either Party does not agree with the decision, that Party must file a court action to resolve the dispute within five (5) business days after the next regularly scheduled City Commission meeting after receipt of the notice of the Contract Arbitrator's decision or the Party will be deemed to have accepted the Contract Arbitrator's decision which Contractor Arbitrator's decision will then be binding on the Parties and non-appealable. Neither party may commence litigation prior to issuance of a decision by the Contract Arbitrator.

c. The Contract Arbitrator's decision will become binding and final only if no Party files a Complaint in the 15th Judicial Circuit of Palm Beach County, Florida, within twenty (20) days of service of the Non-Binding Arbitration Decision. If no complaint is filed within the time provided, either Party may file an action to enforce the decision and the decision may be referred to the presiding judge in the case who must enter such orders and judgments as are required to carry out the terms of the decision, which orders will be enforceable by the contempt powers of the court, and for which judgments execution will issue on request of a party. If a complaint is filed within the time provided, no Party may seek to admit the decision as evidence in the Court proceedings, and no Party may make any reference to the non-binding Contract Arbitration or mediation or any statements or arguments or proffer of evidence or evidence presented or any comment or action of the Arbitrator in the non-binding Contract Arbitration or mediation. This provision is not intended to prevent any Party from obtaining through discovery or seeking to admit documents or testimony obtained outside the Arbitration and mediation proceedings. If, however, a Party has made an offer of judgment or demand for judgment in any litigation, then in compliance with Fla. Stat. Sec. 768.79, the decision may be offered to the Court only in proceedings to enforce an accepted offer or to determine the imposition of sanctions under Fla. Stat. Sec. 768.79, and then solely as a factor for the Court to consider pursuant to Fla. Stat. Sec. 768.79 (7)(a) or (b).

20.7.4 Contract Arbitrator. Within sixty (60) days following execution of the Contract, the parties will meet to select and agree, in writing, on a Contract Arbitrator. The Parties may agree, at any time, to the appointment of an alternate Contract Arbitrator in the event no Contract Arbitrator has been selected, or the primary Contract Arbitrator is unable or unwilling to resolve a given dispute or cannot meet and review the claim within a reasonable time. The Parties will enter into a mutually agreeable Contract Arbitration Agreement(s) with the Contract Arbitrator to implement GC 20.7.3, which agreement(s) will provide that the Contract Arbitrator's costs and expenses will be borne equally by the Parties.

20.7.5 **A PARTY SPECIFICALLY WAIVES ALL OF ITS RIGHTS, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR CONTRACT TIME AND CONTRACT PRICE ADJUSTMENTS PROVIDED IN THE CONTRACT DOCUMENTS, INCLUDING ITS RIGHTS AND REMEDIES UNDER STATE LAW, IF SAID PARTY FAILS TO COMPLY IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS ARTICLE.**

20.8 Waiver of Chapter 558, Florida Statutes. Pursuant to Section 558.005(1), Contractor and Owner agree to opt out of the requirements of Chapter 558, Florida Statutes.

20.9 Waiver of Arbitration. EXCEPT AS PROVIDED IN GC 20, OWNER AND CONTRACTOR AGREE AND EXPRESSLY WAIVE ANY AND ALL PROVISIONS REGARDING ARBITRATION, INCLUDING ANY AND ALL PROVISIONS REGARDING ARBITRATION AS A CONDITION PRECEDENT TO LITIGATION CONTAINED ELSEWHERE IN ANY CONTRACT DOCUMENTS.

GC 21 PROJECT RECORDS AND RIGHT TO AUDIT

21.1 Contractor shall preserve all Records (as defined herein) pertinent to this Contract for the required retention period specified by Florida law or for a minimum period of ten (10) years after Final Completion, or whichever is longer. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or litigation related to the contract has been initiated and all appeal periods have not yet expired, the records shall be retained until resolution of the audit findings or conclusion of all litigation and appeals.

21.2 Records for all contracts, specifically including, but not limited to, lump sum contracts (i.e., fixed-price or stipulated sum contracts), unit price, cost-plus, or time and materials contracts, with or without guaranteed maximum (or not-to-exceed) amounts shall, upon reasonable notice, be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Such audits may be performed by any City representative or any outside representative engaged by City for the purpose of examining such records. City, or its designee, may conduct such audits or inspections throughout the term of this contract and for a period of three years after Final Completion, or longer if required by law. City's representatives may (without limitation) conduct verifications such as counting employees at the Construction Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Contractor employees, field and agency labor, subcontractors, and vendors.

21.3 Contractor's "records" as referred to herein shall include any and all information, materials and data of every kind and character (hard copy, as well as computer readable data if it can be made available), including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the County in connection with the Contractor's dealings with the City to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- a) Compliance with Contract Documents
- b) Compliance with County's codes of ethics

- c) Compliance with Contract provisions regarding the pricing of change orders
- d) Accuracy of Contractor representations regarding the pricing of invoices
- e) Accuracy of Contractor representations related to claims submitted by the Contractor including subcontractors, or any of its other payees.

21.4 In accordance with Sec. 119.0701, Fla. Stat., Contractor must keep and maintain this Contract and any other records associated therewith and that are associated with the performance of the Work. Contractor shall ensure that any exempt or confidential records associated with this Contract, including all plans and specifications for public buildings, facilities and security systems are not disclosed except as authorized by law. Finally, Contractor shall retain the records described in this paragraph throughout the performance of the Work and, at the conclusion of the Project, transfer all such records to the City, at no cost to the City, and destroy any duplicates thereof. Records that are stored electronically must be transferred to the City in a format that is compatible with the City's information technology systems. Contractor shall direct any requests for public records regarding this Contract to the City Clerk.

21.5 City's authorized representative(s) shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement. City, or its designees, shall have the right to audit, review, examine, inspect, analyze, and make copies of all written, electronic or other form of records, as described herein, in its original or written form, at a location within Palm Beach County during the term of the Contract or its required retention period. Contractor agrees to allow the City, or its designees, access to all of its records, facilities and current or former employees deemed necessary by City. City reserves the right to conduct such audit or review at Contractor's place of business, if necessary, with 72 hours advance notice. Contractor agrees to provide adequate and appropriate work space.

21.6 In addition to the normal documentation Contractor typically furnishes to the City, in order to facilitate efficient use of City resources when reviewing and/or auditing Contractor's billings and related reimbursable cost records, Contractor agrees to furnish (upon request) the following types of information in the specified computer readable file format(s):

Type of Record	File format
Monthly Job Cost Detail	.pdf and Excel
Detailed Job Cost History To Date	.pdf and Excel
Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)	.pdf and Excel
Total Job to date Labor Distribution detail (if not already included in the detailed Job Cost History to date)	.pdf and Excel
Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project	.pdf
Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project	.pdf
Daily Superintendent Reports	.pdf
Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to Subcontractors, etc.	.pdf and Excel
Copies of Executed Subcontracts with all Subcontractors	.pdf
Copies of all executed Change Orders issued to Subcontractors	.pdf
Copies of all documentation supporting all reimbursable job costs (Subcontractor payment applications, vendor invoices, internal cost charges, etc.)	.pdf

21.7 Contractor shall require all payees (examples of payees include subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this Article by including the requirements hereof in a written agreement between Contractor and payee. Contractor will ensure that all payees (including those entering into lump sum contracts) have the same right to audit provisions contained in this Agreement.

21.8 Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment reliant upon such entry.

21.9 If an audit inspection in accordance with this condition discloses overpricing or overcharges (of any nature) by Contractor to Owner in excess of one-half of one percent (.5%) of the total contract billings, (1) the reasonable costs of the City's Internal Audit department shall be reimbursed to the City by the Contractor and (2) a 15% penalty of the overpricing or overcharges shall be assessed. Any adjustments and/or payments which must be made as a result of the audit inspection, including any interest, audit costs and penalties shall be made by the Contractor within 45 days from presentation of Owner's findings to Contractor. Failure by Contractor to permit such audit shall be cause for termination of this Contract by Owner. In addition to the foregoing, Contractor consents to Owner requesting from the insurance carriers confirmation of all fees paid to Contractor arising out or related to Owner's insurance coverages during the term of the Contract.

GC 22 WARRANTY INSPECTION. Between forty-five (45) days and thirty (30) days prior to expiration of the warranty period(s), Contractor shall conduct, at its expense, with Owner and Engineer/Architect, a warranty inspection of the Work. Additionally, upon receipt of notice from Owner of failure of any part of the warranted Work, equipment or materials during the warranty period, the defective Work, equipment parts or materials shall be replaced promptly with new equipment parts (or new equipment) and materials by Contractor, at no expense to Owner. This provision shall survive expiration or termination of the Contract. The failure of Contractor to conduct the Warranty inspection(s) shall extend the Warranty period until thirty (30) days after the Warranty inspection(s) are undertaken.

GC 23 ROYALTIES AND PATENTS. Contractor shall pay for all royalties and license fees. Contractor indemnifies and shall defend and hold harmless from and against all claims, obligations, losses, costs, damages and expenses, including attorney fees in connection with any claims or actions based upon infringement of any patent arising out of the use of any materials or equipment or processes furnished or employed by Contractor under the Contract, unless a particular design, process or product of a particular manufacturer is required by the Contract Documents or where copyright violations are contained in the Construction Drawings or specifications prepared by Engineer/Architect or Owner. If Contractor has reason to believe any required design, process or product is an infringement of a copyright or patent, Contractor shall immediately provide notice to Engineer/Architect.

CITY OF WEST PALM BEACH

(B1)

BID PACKAGE COVER SHEET

ITB 25.26.117 SS

Project Title: Pilgrim Road and Plymouth Road Utilities Improvements

Bidder Company Name:

The following documents must be included in the Bid package:

- _____ 1. Bid Package Cover Sheet. (B1)
- _____ 2. Bid (B2) **Must be signed**
- _____ 3. Schedule of Bid Items (B3) **Must be signed**
- _____ 4. Substitution Sheet (B4). If none, mark "None".
- _____ 5. Contractor's Material Suppliers (B5)
- _____ 6. Schedule of Subcontractors (B6). If none, mark "None".
- _____ 7. Proposed Project Schedule (B7)
- _____ 8. Drug Free Certification (B8)
- _____ 9. Trench Safety Compliance Form (B9)
- _____ 10. Public Utility Policy (B10)
- _____ 11. Statement of Small Business Participation (SB01) Attach Small Business certification.
- _____ 12. Small Business - Letter of Intent Participation (SB03)
- _____ 13. Contractor Verification (C). Attach copies of current licenses.
- _____ 14. Contractor's Prior Experience. (F1)
- _____ 15. References Prime Contractor (F2)
- _____ 16. Subcontractors' Prior Experience (G) (if applicable)
- _____ 17. Key Staff (H). Submit name, qualifications, experience and resume of Project Manager and key staff Bidder will commit to the Project.
- _____ 18. Contractor's Existing and Proposed Workload (I)
- _____ 19. Contractor's Daily Field Log (K)
- _____ 20. Preliminary Safety Plan (L)
- _____ 21. Litigation / Legal Proceedings (M)
- _____ 22. Affidavit re Foreign Countries of Concern (N)
- _____ 23. Affidavit re Coerced Labor (O)
- _____ 24. Bid bond or deposit
- _____ 25. Issued addenda signed by Bidder
- _____ 26. Attachment A-W-9 Request for Taxpayer Identification Number and Certification
- _____ 27. Vendor Application

Clearly mark the outside lower left corner of the Envelope with the firm name, Invitation to Bid number and title, and the deadline date and time for bid submittal.

Submit one (1) original, one (1) electronic version on a flash drive and one (1) photocopy of Bid package.

AVOID BID REJECTION: All bids must be submitted on the provided Bid forms. Forms B2 and B3 must be signed by an officer authorized to bind the Contractor. All forms must be fully completed.

CONTRACTOR'S BID

ITB No. ITB 25.26.117 SS

Title: Pilgrim Road and Plymouth Road Utilities Improvements

Bid of: _____
(Bidder Company Name)

Base Bid Amount: \$ _____

Base Bid Amount: _____
(Write Dollar Figure Here In Words)

Base Bid Amount Plus Alternate Bid: \$ _____

Base Bid Amount Plus Alternate Bid: _____
(Write Dollar Figure Here In Words)

The Bidder agrees to furnish the construction services required or necessary for the complete and proper construction of the Project, if not expressly indicated or called for in the Contract Documents, and includes all labor, equipment, tools, materials, manufactured articles, supplies, documents, permits, transportation and services, including fuel, power, water and essential communications, to be provided by Contractor to fulfill Contractor's obligations under the contract and shall execute and complete, to the satisfaction of Owner and in accordance with the terms and conditions of the Contract Documents, all Project work for the amount indicated above.

The undersigned Bidder hereby declares that:

1. No Lobbying. Bidder acknowledges that contact by Bidder, or anyone representing a Proposer, regarding this ITB with the Mayor, any City Commissioner, officer, City employee, other than an employee of the West Palm Beach Procurement Division, is grounds for disqualification.
2. This Bid is made in good faith, without collusion or fraud and is fair and competitive in all respects.
3. The Bidder has carefully and to his full satisfaction examined the attached Scope of Work, Special Terms, General Conditions, technical specifications, and form of bonds, if applicable, together with the accompanying plans, and Bidder has read all issued addenda issued.
4. Bidder has made a full examination of the site and is familiar with the site conditions that may impact its performance.
5. There is enclosed a bid guarantee consisting of five percent (5%) of bid price in the amount of \$ _____.
6. Upon receipt of a Notice of Intent to Award the contract the Bidder shall: 1) commence obtaining a Performance Bond, Labor and Material Bond, and Certificate(s) of Insurance immediately after receiving a Notice of Intent to Award, and 2) immediately obtain a Certificate of Registration for engaging in business from the City, as such documents will be required prior to execution of a Contract.
7. Bidder furthermore agrees that, in case of failure on his part to execute a Contract and provide all required documents within ten (10) calendar days of receipt of the Contract for execution, the City may withdraw the offer and contract with another bidder and the check, bond, or other security accompanying his bid and the money payable thereon, shall become the property of the City, by forfeit as agreed and liquidated damages.
8. Bidder understands that the contract time starts on the date of Notice to Proceed.

9. The Bidder states that this bid is the only bid for this project in which Bidder is interested; and Bidder shall not be a subcontractor or subcontractor on this Project.

10. Substantial completion shall be within ONE HUNDRED EIGHTY (180) calendar days. Final completion shall be in TWO HUNDRED TWENTY FIVE (225) calendar days.

11. Liquidated damages for delay are agreed to be TWO THOUSAND SIX HUNDRED SIXTY SEVEN DOLLARS (\$2,667) per calendar day for failure to timely obtain Substantial Completion by the scheduled date; TWO THOUSAND SIX HUNDRED SIXTY SEVEN DOLLARS (\$2,667) per calendar day beyond the scheduled Final Completion date.

12. Small Business participation for this project is _____ percent (_____%)

13. Bidder shall be responsible for all permitting fees and utility service connection fees. For construction of a building, the City shall be responsible for plan and permit review fees through its Construction Services Division.

14. All debris is to be legally disposed of at a licensed disposal site in accordance with city, state, and federal standards.

15. The City reserves the right to select and include one or more alternates in the Project and work.

16. The following officer, director or agent of the Bidder is also an employee of the City of West Palm Beach:

<i>Name</i>	<i>Address</i>

17. The following employee(s) of the City of West Palm Beach hold, either directly or indirectly, an interest of ten percent (10%) or more of Bidder or its affiliates or subsidiaries:

<i>Name</i>	<i>Address</i>

18. Bidder certifies that it has not been placed on the Convicted Vendor List maintained by the State of Florida for a period of thirty-six (36) months from the date of this Bid.

19. Bidder certifies that it has not been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services.

20. Bidder certifies that Bidder's company, principals, or owners are not listed on the Scrutinized Companies that Boycott Israel List and is not engaged in a boycott of Israel. If this Bid is equal to or greater than One Million Dollars (\$1,000,000), Bidder further certifies that Bidder's company, principals, or owners are not listed on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engages in business activities in Sudan or Cuba.

21. Bidder certifies that it has not been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 years.

24. Bidder certifies that during the lifetime of the organization, as presently named, the Bidder has not defaulted to a bonding company/ surety for the completion of any projects.

25. Bidder acknowledges that ADDENDA NO(S). _____ have been RECEIVED and are ATTACHED HERETO and are signed by a duly authorized officer of Bidder.

26. By signing and submitting this Bid, Bidder represents that all Bid Forms are fully complete and accurate.

27. Bidder acknowledges that the Bid may be rejected if all Bid Forms are not fully complete, not accurate or if forms are not signed by properly authorized signatures where required.

Bidder Company Name: _____

Business Address: (Street, City, State, Zip Code) _____

State of Incorporated: _____ Telephone: _____ Fax: _____

Email: _____

FEIN# _____

BIDDER:

Signature of Official authorized to bind Bidder.

Print Name: _____

Title: _____ Date: _____

Failure to fully complete and sign this Bid Form may result in rejection of the Bid.

STATE OF _____ }

COUNTY OF _____ }

The Bid and its certifications was sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 20____, by _____, as an act of _____ (firm), who is personally known to me or produced the following identification: _____.

Notary Signature: _____

Print Notary Name: _____

Commission No. _____

SCHEDULE OF BID ITEMS

INSERT A SIGNED COPY OF THE EXCEL WORKSHEET

SUBSTITUTION SHEET

This form must be completed if Bidder proposes to deviate from any contract requirements including, but not limited to, proposed material specifications, proposed method, construction schedule, or phasing plan. Associated "Add" or "Deduct" must be provided.

DESCRIPTION OR BID ITEM NO.	MAKE SPECIFIED	PROPOSED SUBSTITUTION	ADD	DEDUCT
			\$ _____	\$ _____
			\$ _____	\$ _____
			\$ _____	\$ _____
			\$ _____	\$ _____
			\$ _____	\$ _____
			\$ _____	\$ _____
			\$ _____	\$ _____

(B5)

CONTRACTOR'S MATERIAL SUPPLIERS

List all material suppliers that Bidder intends to use on this project. Include additional pages as required.
Failure to fully and accurately complete this form may result in the disqualification of the Bid.

Name of Suppliers	Types of Material to be Provided	Total Contract Amount including Sales Tax	Total Sales Tax

ITB 25.26.117 SS

SCHEDULE OF SUBCONTRACTORS

Failure to fully complete form may result in bid rejection.

The following is a complete list of all subcontractors utilized for this project:

			Dollar amount of subcontract work
1.	_____	_____	\$ _____
	(company name)	(type of work)	
	_____	_____	
	(address)	(tel. #)	
	_____	_____	
	(email address)	(federal I.D. #)	
	_____	_____	
2.	_____	_____	\$ _____
	(company name)	(type of work)	
	_____	_____	
	(address)	(tel. #)	
	_____	_____	
	(email address)	(federal I.D. #)	
	_____	_____	
3.	_____	_____	\$ _____
	(company name)	(type of work)	
	_____	_____	
	(address)	(tel. #)	
	_____	_____	
	(email address)	(federal I.D. #)	
	_____	_____	
4.	_____	_____	\$ _____
	(company name)	(type of work)	
	_____	_____	
	(address)	(tel. #)	
	_____	_____	
	(email address)	(federal I.D. #)	
	_____	_____	
5.	_____	_____	\$ _____
	(company name)	(type of work)	
	_____	_____	
	(address)	(tel. #)	
	_____	_____	
	(email address)	(federal I.D. #)	
	_____	_____	

Total dollar amount to be awarded to subcontractors (this page)

\$ _____

SCHEDULE OF SUBCONTRACTORS (continued if necessary)

6.	_____ (company name)	_____ (type of work)	\$ _____
	_____ (address)	_____ (tel. #)	
	_____ (email address)	_____ (federal I.D. #)	
	_____	_____	_____
7.	_____ (company name)	_____ (type of work)	\$ _____
	_____ (address)	_____ (tel. #)	
	_____ (email address)	_____ (federal I.D. #)	
	_____	_____	_____
8.	_____ (company name)	_____ (type of work)	\$ _____
	_____ (address)	_____ (tel. #)	
	_____ (email address)	_____ (federal I.D. #)	
	_____	_____	_____
9.	_____ (company name)	_____ (type of work)	\$ _____
	_____ (address)	_____ (tel. #)	
	_____ (email address)	_____ (federal I.D. #)	
	_____	_____	_____
Total dollar amount to be awarded to Subcontractors			\$ _____

Authorized Signature: _____

Note: The above schedule of subcontractors will become a part of the Contract documents. Changes made to the above schedule of subcontractors after the contract has been executed must be submitted in writing to the City's project manager for approval prior to that subcontractor performing any work.

Proposed Project Construction Schedule

Insert a copy of the Proposed Project Construction Schedule as **Form B7**

Failure to fully and accurately provide the information required in Form B7 may result in disqualification of the Bid. All decisions of the City are final.

DRUG FREE WORKPLACE CERTIFICATION

The undersigned Bidder, in accordance with Florida Statute 287.087 hereby certifies that

_____ does:
(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violation of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business' 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 this bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities, or contractual services that are under bid, the employee will abide by the terms of the statement, and will notify the employer of any conviction of, or plea of guilty, or *nolo contendere* to any violation of Chapter 1893, or of any controlled substance law of the United States, or any State, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. 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 this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Authorized Signature

Print Name

Date

FLORIDA TRENCH SAFETY COMPLIANCE

This form is required where Contractor will perform trench excavation which exceeds a depth of 5 feet.

☐ ***If Not Applicable – Check this Box and sign below.***

In accordance with the Florida Trench Safety Act, F.S. 553.63, Bidder acknowledges:

1. The trench safety standards applicable to this bid and contract are either:

☐ Included in the specifications for this bid or

☐ Are identified as: _____

2. Bidder will comply with all applicable trench safety standards and any special shoring requirements applicable to the Project.

3. Included in the various items of the Bid and in the Total Bid Price are costs for complying with the Florida Trench Safety Act, which costs are summarized below.

Note: Included in the various bid items on Form B3 are costs for compliance with trench safety standards, including sheeting and shoring. Costs on this Form B10 shall be consistent with Form B3. The bid items for trench safety compliance on Form B3 must equal the total amount for trench safety compliance indicated below.

	Trench Safety Measure (Description)	Cost per Linear Foot	Linear Feet	Extended Cost
A.	_____	_____	_____	_____
B.	_____	_____	_____	_____
C.	_____	_____	_____	_____
	Shoring Safety Measure (Description)	Cost per Square Foot	Square Feet	Extended Cost
D.	_____	_____	_____	_____
E.	_____	_____	_____	_____
F.	_____	_____	_____	_____

FAILURE TO COMPLETE THE ABOVE MAY RESULT IN THE BID BEING REJECTED.

Bidder Firm: _____

Authorized Signature: _____

Date: _____

PUBLIC UTILITIES DEPARTMENT
ISO 14001 ENVIRONMENTAL POLICY

This form must be included with any Bid for work involving the City's water, waste water or storm water systems.

The Public Utilities Department (Utility), as a public service provider for source water conveyance, processing and distribution of water, the conveyance and treatment of sanitary waste, operation of the storm water system and flood protection, and customer billing and service, has a responsibility to take a leadership role in conducting all operational activities in a manner that protects the environment, as we provide for the health and safety of our employees, customers, and the general public. We have a duty to balance social, environmental and economic factors to ensure the continued success and sustainable management of the Utility.

In keeping with this vision and our responsibility to protect and conserve the environment, we are committed to exceed environmental compliance and:

To **exceed environmental compliance**, we will:

Work together for **continual improvement**

Avoid negative **environmental impacts**

Transform our Utility into an **environmental and safety leader**

Enhance **communication** of our vision

Re-evaluate and adjust our everyday tasks to **prevent pollution**

All contractors/ consultants who do work on behalf of the City or on City property will be made aware of the Environmental Policy and should understand how their work contributes to the achievement of these commitments, including prevention of pollution and regulatory compliance.

CONTRACTOR / CONSULTANT COMMUNICATION:

I, _____ (Print first and last name) from
 _____ (Print name of company), **acknowledge that the City of West Palm Beach Public Utilities Department has communicated their ISO 14001 Environmental Policy with me on _____ (date), and I have received a copy of their ISO 14001 Environmental Management System Contractor Brochure.**

Contact City Project Manager: Aneese Williams, Environmental Management Systems Coordinator, Public Utilities Dept. Phone: (561) 494.1075 Email: awilliams@wpb.org for details.

X _____
 (Signature of contractor representative) Title

Phone number: _____ **Email address::** _____

Project Manager Use:

Project Name: Pilgrim Road and Plymouth Road Utilities Improvements, Project Nos. 51999941/32399875

ITB No. 25.26.117 SS

Contract No. _____



401 Clematis Street, 2nd Floor
West Palm Beach, FL 33401-4702
Tel. (561) 822-1273
Fax (561) 822-1564

Website: <https://www.wpb.org/our-city/mayor-s-office/office-equal-opportunity>

Form SB01

Statement of Small Business Participation

Instructions: List all Small Businesses that will participate on this project/contract. Only City certified small businesses, Palm Beach County Office of Small Business Assistance (PBC-OSBA) or the School Board of Palm Beach County certified Small Businesses can be used to meet the goal established for this project/contract. **Submit this form with your bid/proposal.**

SECTION I. General Information

Bidder or Proposer's Name: _____

Preparer's Name: _____ Title: _____

ITB/RFQ/RFP Title: Pilgrim Road and Plymouth Road Utilities Improvements Project Number: _____

ITB/RFQ/RFP Number: 25.26.117 SS SB Goal (if established): thirteen percent (13%)

Total Base Project/Contract Amount: \$ _____

SECTION II. Small Business Participation

The firm(s) listed below have agreed to participate in this project or contract.

Subcontractor Name	Item Description or Work/Service to be performed	Dollar Value	Percent of Dollar Value/Base Bid	Percent of Dollar Value Total Bid
1. _____	_____	\$ _____	_____ %	_____ %
2. _____	_____	\$ _____	_____ %	_____ %
3. _____	_____	\$ _____	_____ %	_____ %
4. _____	_____	\$ _____	_____ %	_____ %
5. _____	_____	\$ _____	_____ %	_____ %
6. _____	_____	\$ _____	_____ %	_____ %
TOTAL		\$ _____	_____ %	_____ %

Preparer's Signature: _____ Date: _____

Form SB03

Letter of Intent

Instructions: The Bidder/Proposer will complete Section I. The Small Business subcontractor will complete Sections II and III. It is the responsibility of the Bidder/Proposer to verify that the undersigned is a City Certified Small Business. **Only City of West Palm Beach Palm Beach County Office of Small Business Assistance (PBC-OSBA) or the School Board of Palm Beach County** certified Small Businesses can be used **to meet the goal** established for this project/contract. This completed form will be required before contract award. **Please note: This form is required for each certified Small Business selected.**

SECTION I. General Information

Bidder's/Proposer's Name: _____

ITB/RFQ/RFP Title: Pilgrim Road and Plymouth Road Utilities Improvements

ITB/RFQ/RFP Number: 25.26.117 SS

SECTION II. Small Business Participation

The undersigned intends to perform the following work pertaining to the above project:

Item No.	Item Description or Work to be Performed	Contract Amount
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

SECTION III. Information on the Small Business

Small Business Name: _____

Preparer's Name: _____ Title: _____

Signature: _____ Date: _____

CONTRACTOR VERIFICATION FORM

PRIME CONTRACTOR:

Name of Firm: _____

Address: _____

FEIN# _____

Contact Name: _____

Telephone: () _____ Fax: () _____

Email: _____

GENERAL CONTRACTOR OF RECORD:

Name: _____

Address: _____

Email: _____

Bidder State of Florida Underground Utility and Excavation Contractor License # _____
(ATTACH COPY)

Subcontractor State of Florida Underground Utility and Excavation Contractor License # _____
(ATTACH COPY)

State License # _____ (ATTACH COPY)

County License # _____ (ATTACH COPY)

Type of License: _____

Unlimited _____ (yes/no)

If "NO", Limited to what trade? _____

Is the General Contractor a full-time employee of Prime Bidder? ____ Yes ____ No

Will the General Contractor be in responsible charge of the work performed and installed under this contract?

____ Yes ____ No

City License: **(COPY OF CITY REGISTRATION OR BUSINESS TAX RECEIPT –MUST BE OBTAINED PRIOR TO CONTRACT EXECUTION – Maybe obtained from City Construction Services)**

Failure to fully or accurately complete this form may be cause for rejection of the bid.

Prime Contractor Prior Experience

Bidder Company Name: _____

Bidder shall provide a detailed summary of Bidder's prior experience evidencing successful completion of at least three (3) projects similar in size and scope comprising of utility work within public Rights-of-Way which included installation of water main ranging from 6" to 12" diameter, storm water pipe ranging from 12" to 15" diameter at depths of six to ten (6 -10) feet and associated structures, handling and proper disposal of transite pipe, installation of 8-inch gravity sewer main installation including sewer laterals, rear to front sewer conversions including work on private property, and road restoration within a residential neighborhood.

Include information on construction methodology, project budget versus completed cost, project change orders with associated justification, project schedule versus actual completion time, and project litigation if encountered. Current names and telephone numbers of agency references for each project must be provided.

PROJECT 1

PROJECT NAME: _____

Project Location: _____

Project Description: _____

Bidder was: ☐ Prime Contractor or ☐ Subcontractor

Bidder performed underground pipe installation: ☐ Yes or ☐ No

Stormwater Pipe Size: _____ Total Length of Pipe Installed : _____

Indicate Project elements completed by Bidder and briefly describe utility work within public Rights-of-Way which included installation of water main ranging from 6" to 12" diameter, storm water pipe ranging from 12" to 15" diameter at depths of six to ten (6 -10) feet and associated structures, handling and proper disposal of transite pipe, installation of 8-inch gravity sewer main installation including sewer laterals, rear to front sewer conversions including work on private property, and road restoration within a residential neighborhood:

Construction Methodology: _____

List project scope similarities: _____

Project Cost:	Initial Contract Value	\$ _____
	Change Orders	\$ _____
	Final Contract Value	\$ _____

Explain Reason(s) for Change Orders: _____

Project Timeline: Start Date _____

Contract Time Extension _____ calendar days

Completion Date _____

Explain Reason(s) for Time Extension: _____

Project Challenges Encountered and Actions Taken: _____

Litigation (if encountered): _____

Owner/Contact: _____
Name Title

Telephone: () _____ E-Mail: _____

NOTE: Include additional pages with the same format. Include a minimum of three (3) similar projects.

Failure to fully and accurately provide the information required in this Form may result in disqualification of the Bid. All decisions of the City are final.

PROJECT 2

PROJECT NAME: _____

Project Location: _____

Project Description: _____

Bidder was: ☐ Prime Contractor or ☐ Subcontractor

Bidder performed underground pipe installation: ☐ Yes or ☐ No

Stormwater Pipe Size: _____ Total Length of Pipe Installed: : _____

Indicate Project elements completed by Bidder and briefly describe utility work within public Rights-of-Way which included installation of water main ranging from 6" to 12" diameter, storm water pipe ranging from 12" to 15" diameter at depths of six to ten (6 -10) feet and associated structures, handling and proper disposal of transite pipe, installation of 8-inch gravity sewer main installation including sewer laterals, rear to front sewer conversions including work on private property, and road restoration within a residential neighborhood:

Construction Methodology: _____

List project scope similarities: _____

Project Cost: Initial Contract Value \$ _____

Change Orders \$ _____

Final Contract Value \$ _____

Explain Reason(s) for Change Orders: _____

Project Timeline: Start Date _____

Contract Time Extension _____ calendar days

Completion Date _____

Explain Reason(s) for Time Extension: _____

Project Challenges Encountered and Actions Taken: _____

Litigation (if encountered): _____

Owner/Contact: _____

Telephone: () _____ Name _____ Title _____ E-Mail: _____

NOTE: Include additional pages with the same format. Include a minimum of three (3) similar projects.

Failure to fully and accurately provide the information required in this Form may result in disqualification of the Bid. All decisions of the City are final.

PROJECT 3

PROJECT NAME: _____

Project Location: _____

Project Description: _____

Bidder was: ☐ Prime Contractor or ☐ Subcontractor

Bidder performed underground pipe installation: ☐ Yes or ☐ No

Stormwater Pipe Size: _____ Total Length of Pipe Installed: : _____

Indicate Project elements completed by Bidder and briefly describe utility work within public Rights-of-Way which included installation of water main ranging from 6" to 12" diameter, storm water pipe ranging from 12" to 15" diameter at depths of six to ten (6 -10) feet and associated structures, handling and proper disposal of transite pipe, installation of 8-inch gravity sewer main installation including sewer laterals, rear to front sewer conversions including work on private property, and road restoration within a residential neighborhood:

Construction Methodology: _____

List project scope similarities: _____

Project Cost: Initial Contract Value \$ _____
 Change Orders \$ _____
 Final Contract Value \$ _____

Explain Reason(s) for Change Orders: _____

Project Timeline: Start Date _____
 Contract Time Extension _____ calendar days
 Completion Date _____

Explain Reason(s) for Time Extension: _____

Project Challenges Encountered and Actions Taken: _____

Litigation (if encountered): _____

Owner/Contact: _____
Name Title
Telephone: () _____ E-Mail: _____

NOTE: Include additional pages with the same format. Include a minimum of three (3) similar projects.

Failure to fully and accurately provide the information required in this Form may result in disqualification of the Bid. All decisions of the City are final.

REFERENCE QUESTIONS PRIME CONTRACTOR

Via Email:

To:

From:

Date:

Subject: Reference Questions ITB 25.26.117 SS Pilgrim Road and Plymouth Road Utilities Improvements

Project Name: (insert Bidder's reference project name)

Contractor's Name: (insert Bidder's name)

The City of West Palm Beach issued the above referenced ITB for the Pilgrim Road and Plymouth Road Utilities Improvements project. Please provide answers to the following questions as it relates to the contractor's performance. Please return the completed reference Form F2 to the contractor who will include the reference response with their Bid submittal in response to the above subject ITB. Thank you for your cooperation and assistance.

Reference Questions: Below are a series of questions regarding the contractor's performance on the project:

1. Which of the below elements did the contractor self-perform on the project (please check all that apply):

- ☐ Project within Public Right-Of-Way in Residential Neighborhood
- ☐ Handling and Proper Disposal of Transite Pipe
- ☐ Performing Rear to Front Sanitary Sewer and/or Water Service Conversions
- ☐ Water Main Replacement _____ Size
- ☐ Gravity Sanitary Sewer Main Replacement _____ Size
- ☐ Storm Water Pipe Installation _____ Size
- ☐ Drainage Installation
- ☐ Roadway Restoration
- ☐ Curb, Gutter and Sidewalk Restoration
- ☐ Maintenance of Traffic

2. Did the contractor complete the project on time? Answer: Please check one.

_____ Yes _____ No

If no, how many calendar days did the contractor request for a contract time extension to complete the project?

Answer: Number of days: _____

3. Did the contractor submit any change orders?

Answer: Please check one. _____ Yes _____ No

If yes, how many? _____

4. After the project was completed, were there any follow-up repairs?

Answer: Please check one. ☐ Yes ☐ No

If yes, how many? _____

5. Were there any accidents that caused property damage or personal injury?

Answer: Please check one. ☐ Yes ☐ No

If yes, how many? _____

6. Regarding the job site condition during construction, were there any issues maintaining access to businesses or residents?

Answer: Please check one. ☐ Yes ☐ No

7. Did you receive any complaints or feedback from the public on the contractor's performance or quality of the work?

Answer: Please check one. ☐ Yes ☐ No

8. Overall, how would you rate the contractor's performance? (1 – Unacceptable, 2 – Poor, 3 – Fair, 4 – Good, 5 – Excellent)

9. Would you use this contractor again in the future?

Answer: Please check one. ☐ Yes ☐ No

*The person providing the reference is to sign and date this form below.

Reference Company Name Printed: _____

Name & Title Printed Person Completing Reference Form: _____

Signature Person Completing Reference Form: _____

Date: _____

(G)

Prior Experience (Subcontractor)

(If no subcontractor, skip this Form)

Bidder Company Name: _____

Subcontractor Name: _____

Provide a detailed summary of subcontractor's prior experience evidencing subcontractor's successful completion of at least three (3) projects similar in size and scope comprising of utility work within public Rights-of-Way which included installation of water main ranging from 6" to 12" diameter, storm water pipe ranging from 12" to 15" diameter at depths of six to ten (6 -10) feet and associated structures, handling and proper disposal of transite pipe, installation of 8-inch gravity sewer main installation including sewer laterals, rear to front sewer conversions including work on private property, and road restoration within a residential neighborhood.

PROJECT 1

PROJECT NAME: _____

Project Location: _____

Project Description: _____

Subcontractor was underground utility contractor : ☐ Yes or ☐ No

Indicate Project elements completed by subcontractor and briefly describe utility work within public Rights-of-Way which included installation of water main ranging from 6" to 12" diameter, storm water pipe ranging from 12" to 15" diameter at depths of six to ten (6 -10) feet and associated structures, handling and proper disposal of transite pipe, installation of 8-inch gravity sewer main installation including sewer laterals, rear to front sewer conversions including work on private property, and road restoration within a residential neighborhood:

Construction Methodology: _____

List project scope similarities: _____

Project Cost: Initial Contract Value \$ _____

 Change Orders \$ _____

 Final Contract Value \$ _____

Explain Reason(s) for Change Orders: _____

Project Timeline: Start Date _____

 Contract Time Extension _____ calendar days

 Completion Date _____

Explain Reason(s) for Time Extension: _____

Project Challenges Encountered and Actions Taken: _____

Litigation (if encountered): _____

Owner/Contact: _____

Telephone: () _____ E-Mail: _____

Name Title

Failure to fully and accurately provide the information required in this Form may result in disqualification of the Bid. All decisions of the City are final.

PROJECT 2

PROJECT NAME: _____

Project Location: _____

Project Description: _____

Subcontractor was underground utility contractor : ☐ Yes or ☐ No

Indicate Project elements completed by subcontractor and briefly describe utility work within public Rights-of-Way which included installation of water main ranging from 6" to 12" diameter, storm water pipe ranging from 12" to 15" diameter at depths of six to ten (6 -10) feet and associated structures, handling and proper disposal of transite pipe, installation of 8-inch gravity sewer main installation including sewer laterals, rear to front sewer conversions including work on private property, and road restoration within a residential neighborhood:

Construction Methodology: _____

List project scope similarities: _____

Project Cost:

Initial Contract Value	\$ _____
Change Orders	\$ _____
Final Contract Value	\$ _____

Explain Reason(s) for Change Orders: _____

Project Timeline: Start Date _____

Contract Time Extension _____ calendar days

Completion Date _____

Explain Reason(s) for Time Extension: _____

Project Challenges Encountered and Actions Taken: _____

Litigation (if encountered): _____

Owner/Contact: _____

Telephone: () _____ Name _____ Title _____ E-Mail: _____

NOTE: Include additional pages with the same format. Include a minimum of three (3) similar projects.
Failure to fully and accurately provide the information required in this Form may result in disqualification of the Bid. All decisions of the City are final.

PROJECT 3

PROJECT NAME: _____

Project Location: _____

Project Description: _____

Subcontractor was underground utility contractor : ☐ Yes or ☐ No

Indicate Project elements completed by subcontractor and briefly describe utility work within public Rights-of-Way which included installation of water main ranging from 6" to 12" diameter, storm water pipe ranging from 12" to 15" diameter at depths of six to ten (6 -10) feet and associated structures, handling and proper disposal of transite pipe, installation of 8-inch gravity sewer main installation including sewer laterals, rear to front sewer conversions including work on private property, and road restoration within a residential neighborhood:

Construction Methodology: _____

List project scope similarities: _____

Project Cost:	Initial Contract Value	\$ _____
	Change Orders	\$ _____
	Final Contract Value	\$ _____

Explain Reason(s) for Change Orders: _____

Project Timeline: Start Date _____

Contract Time Extension _____ calendar days

Completion Date _____

Explain Reason(s) for Time Extension: _____

Project Challenges Encountered and Actions Taken: _____

Litigation (if encountered): _____

Owner/Contact: _____

Telephone: () _____ Name _____ Title _____ E-Mail: _____

NOTE: Include additional pages with the same format. Include a minimum of three (3) similar projects.

Failure to fully and accurately provide the information required in this Form may result in disqualification of the Bid. All decisions of the City are final.

(H)

Staff Experience

Bidder shall provide the name, qualifications, experience and resume of the project manager and key staff the Bidder will commit to the Project. Include a copy of applicable licenses and/or certifications. Identify any participation of key personnel in the projects that are listed as the Bidder's similar project experience in Forms F and G.

KEY PERSONNEL PARTICIPATION IN EXAMPLE PROJECTS

NAMES OF KEY PERSONNEL	ROLE ON THIS PROJECT	SIMILAR PROJECTS LISTED*									
		1	2	3	4	5	6	7	8	9	10

* Fill in the "Similar Projects Key" below before completing this table. Place an "X" under the project key number for participation in same or similar role

SIMILAR PROJECTS KEY

NO.	TITLE OF SIMILAR PROJECT	NO.	TITLE OF SIMILAR PROJECT
1		6	
2		7	
3		8	
4		9	
5		10	

Failure to fully and accurately provide the information required in this Form may result in disqualification of the Bid. All decisions of the City are final.

(I)

Contractor's Existing and Projected Workload Form

List all major construction projects Bidder has in progress, giving the name of project, owner, engineer, contract amount, percent complete, and scheduled completion date. Include additional pages as required.

Failure to fully and accurate complete this form may result in disqualification of the Bid.

Project Name	Owner	Engineer	Contract Amount	Percent Complete	Scheduled Completion Date

Contractor's Daily Field Log

Insert a sample of the Daily Field Log as **Form K**.

Contractor's Safety Plan

Insert a sample of the Daily Field Log as **Form L**.

(M)

CONTRACT LITIGATION / LEGAL PROCEEDINGS

Identify any pending indictments, lawsuits, past litigation relevant to subject matter of this solicitation, providing a statement of any litigation or pending lawsuits that have been filed against the firm in the last five years.

If the action has been filed, state and describe the litigation or lawsuit filed, and identify the court or agency before which the action was instituted, the applicable case or file number, and the status or disposition for such reported action.

If no litigation or lawsuit has been filed against the firm, provide a statement to that effect.

AFFIDAVIT RE FOREIGN COUNTRY OF CONCERN

(N)

STATE OF _____ }
COUNTY OF _____ } SS:

For purposes of this Affidavit, "foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern.

The undersigned officer of the firm/company named below, being duly sworn, swears or affirms, under penalty of perjury, that the statements made in this Affidavit are true:

1. I am an officer or representative of _____ (herein after "Company"), and I am authorized to provide this Affidavit on the Company's behalf.
2. I have personal knowledge of the facts contained in this Affidavit.
3. The Company is not owned by the government of a foreign country of concern.
4. No government of a foreign country of concern has a controlling interest in the Company.
5. The Company is not organized under the laws of a foreign country of concern.
6. The Company does not have its principal place of business in a foreign country of concern.
7. If, at any time, any of the above-statements are no longer true, the Company will immediately notify the City of West Palm Beach. Company acknowledges that thereafter, no contracts may be executed, renewed, or extended, with the City.
8. I make this affidavit for the purpose of complying with Florida Statutes, Section 287.138.
9. I understand that the Attorney General of the State of Florida may bring a civil action against any company that violates the statute which may result in fines, the inability to enter, renew or extend any agreement with a government entity, or the inability to receive or renew any governmental license, certification or credential.

I have read the foregoing statements and confirm that the facts stated are true, and are made for the benefit of, and reliance by, the City.

Company: _____

Authorized Signature: _____

Print Name: _____

Title: _____

On this _____ day of _____, 20____, the foregoing Affidavit was sworn to (or affirmed) and subscribed before me by means of ☐ physical presence, or ☐ on-line notarization by _____ as the _____ of _____ and who ☐ is personally known to me or ☐ produced the following identification: _____.

[Seal]

Notary Public

Print Notary Name: _____

AFFIDAVIT RE COERCED LABOR

STATE OF _____ }
COUNTY OF _____ } SS:

The undersigned officer of the firm/company named below, being duly sworn, swears or affirms, under penalty of perjury, that the statements made in this Affidavit are true:

1. I am an officer or representative of _____ (herein after "Company"), and I am authorized to provide this Affidavit on the Company's behalf.
2. I have personal knowledge of the facts contained in this Affidavit.
3. The Company affirms that the Company does not use coercion for labor or services, and understands that the term "coercion" means:
 - Using or threatening to use physical force against any person;
 - Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
 - Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
 - Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
 - Causing or threatening to cause financial harm to any person;
 - Enticing or luring any person by fraud or deceit; or
 - Providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03 to any person for the purpose of exploitation of that person.
4. The Company understands and affirms that Section 787.06(13), Florida Statutes, prohibits the City of West Palm Beach from executing, renewing, or extending a contract to companies that use coercion for labor or services.
5. If, at any time, any of the above-statements are no longer true, the Company will immediately notify the City of West Palm Beach. Company acknowledges that thereafter, no contracts may be executed, renewed, or extended, with the City.
6. I make this affidavit for the purpose of complying with Florida Statutes, Section 787.06(13).

I have read the foregoing statements and confirm that the facts stated are true, and are made for the benefit of, and reliance by, the City.

Company: _____

Authorized Signature: _____

Print Name: _____

Title: _____

On this _____ day of _____, 20_____, the foregoing Affidavit Re Coerced Labor was sworn to (or affirmed) and subscribed before me by means of ☐ physical presence, or ☐ on-line notarization by _____ as the _____ of _____ and who ☐ is personally known to me or ☐ produced the following identification: _____.

[Seal]

Notary Public

Print Notary Name: _____

Notary Commission Number: _____



BIDDER'S BOND

ITB No. 25.26.117 SS

KNOW ALL MEN BY THESE PRESENTS, that we:

_____ (the "Principal"),

and _____ (the "Surety"), a corporation authorized to do business as a surety in the State of Florida, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally and firmly by these presents in the full and just sum of _____

Dollars (\$ _____) good and lawful money of the United States of America, to be paid upon demand of the **City of West Palm Beach, Florida**.

WHEREAS, the Principal is about to submit, or has submitted to the City of West Palm Beach, Florida, a bid in response to an Invitation to Bid issued by the City; and

WHEREAS, the Principal desires to file this Bond in accordance with law, in lieu of a certified bidder's check otherwise required to accompany its Bid.

NOW THEREFORE, the conditions of this obligation are such that if the Bid is accepted by the City, the Principal shall within ten (10) calendar days after receipt of a contract, execute said contract and upon the terms, conditions and price set forth in the Invitation to Bid and Bid, in the form and manner required by the City of West Palm Beach, Florida, and execute a sufficient and satisfactory Public Construction Bond payable to the City of West Palm Beach, Florida, in an amount of one hundred percent (100%) of the total contract price, as indicated in the Bid, in form and with security satisfactory to the said City, then this obligation is to be void, otherwise to be and remain in full force and virtue in law; and the Surety shall, upon failure of the Principal to comply with any or all of the foregoing requirements within the time specified above, immediately pay to the City upon demand the amount hereof, not as a penalty but as liquidated damages.

IN TESTIMONY THEREOF, the Principal and Surety have caused these present to be duly signed and sealed this _____ day of _____, 20____.

Bidder as PRINCIPAL:

SURETY:

Company: _____

Company: _____

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Address: _____

Record & Return to:

CITY OF WEST PALM BEACH
Procurement Division
401 Clematis Street
West Palm Beach, FL 33401



CITY OF WEST PALM BEACH

PUBLIC CONSTRUCTION BOND FRONT PAGE

This is the *front page* of the Public Construction Bond in compliance with Florida Statute Sec. 255.05

Bond Number: _____

Owner Name: City of West Palm Beach, Florida
P.O. Box 3366
West Palm Beach, FL 33402-3366

Phone No. _____

Project Title: Pilgrim Road and Plymouth Road Utilities Improvements

Project Location:

ITB No. 25.26.117 SS

Contract No. _____

Contractor Name: _____

Contractor's Principal Business Address: _____

Contractor's Telephone Number: _____

Surety Name: _____

Phone No. _____

This is the *front page* of the Bond.
All other pages are subsequent regardless of the pre-printed numbers.



PUBLIC CONSTRUCTION BOND

(Second Page)

Bond No. _____

BY THIS BOND, we _____ as Principal, and _____, a corporation, as Surety, are bound to the **City of West Palm Beach, Florida**, herein called Owner, in the sum of \$ _____ for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated _____ between Principal and Owner, the contract and all contract documents being made a part of this Bond by reference at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this Bond is void, otherwise it remains in full force.

Whenever the Principal is declared by Owner to be in default under the contract, or whenever the contract has been terminated by default of the Principal, the Surety shall:

- a. Complete the contract in accordance with its terms and conditions, or
- b. Obtain a bid or bids for submission to the Owner for completing the contract in accordance with its terms and conditions, and upon determination by the Owner and Surety of the best value bidder, arrange for a contract between such bidder and the Owner and make available sufficient funds to pay the costs of completion less the balance of the contract price and other costs and damages for which the Surety may be liable hereunder; but not exceeding the amount set forth above. The term "balance of the contract price" shall mean the total amount payable by the Owner to the Principal under the contract and any amendments or change orders thereto, less the amount properly paid by Owner to Principal.

The Surety expressly agrees to be bound by all terms and conditions related to liquidated, delay and time or impact-related damages. Surety shall be bound by the warranty or warranties contained in the contract documents and shall be responsible for any and all warranty obligations or damages as a result of latent defects or deficiencies in the work performed under the contract.

The Surety shall and hereby agrees to indemnify the Owner and hold it harmless of, from and against any and all liability, loss, cost, damage or expense including reasonable attorneys' fees, engineering and architectural fees or other professional service which the Owner may incur or which may accrue or be imposed upon Owner by reason of any negligence, default, act and/or omission of the Principal or any of its subcontractors, agents, servants and/or employees, in, about or on account of the work and performance of the contract by the Principal.

The Surety waives all rights against the Owner and its agents and employees for damages or other causes of loss by the Surety's performance of its obligations under this Bond, including claims by Surety against Owner for costs it asserts were not warranted by the contract documents, excluding only such rights as the Surety shall have to proceeds of such insurance held by the Owner as fiduciary.

Any action for payment instituted by a claimant under this Bond must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or any changes do not affect Surety's obligation under this Bond.

This Bond shall remain in full force and effect through the warranty period provided in the contract documents.

Dated on: _____

*(If sole Ownership or Partnership, two (2) Witnesses required).
(If Corporation, Secretary only will attest and affix seal).*

WITNESS:

PRINCIPAL:

Corporate Secretary or Witness

Firm/Corporate Name

Signature of Authorized Officer

Title:

(affix corporate seal)

Business Address

City State Zip

SURETY:

Corporate Surety

By: _____
Attorney-in-Fact

Business Address

City State Zip

(affix corporate seal)

*(Power of Attorney must be attached)**