

INVITATION TO BID



City of West Palm Beach
Procurement Division
401 Clematis Street, 5th Floor
West Palm Beach, FL 33401
Tel: 561-822-2100

ITB Number: **11-12-107**
Title: **CITY-WIDE ROADWAY RESURFACING AND CONCRETE WORK**

Bid Submittal Deadline

Due Date: Tuesday, January 17, 2012
Time: 3:00 P.M.
Location: Procurement Division
401 Clematis Street, 5th Floor
West Palm Beach, FL 33401

Althea Pemsel

Althea Pemsel, MA, C.P.M.
Procurement Official

Date: December 19, 2011



"The Capital City of the Palm Beaches"

PROCUREMENT DIVISION

401 Clematis Street, 5th Floor

West Palm Beach, FL 33401

TEL: (561) 822-2100

FAX: (561) 822-1564

Invitation to Bid

ITB 11-12-107

CITY-WIDE ROADWAY RESURFACING AND CONCRETE WORK

The City of West Palm Beach is accepting bids from qualified and responsible contractors to provide all labor, material and equipment necessary to resurface and construct curbs and sidewalks City-wide based on work orders to be provided by the City. The scope of work may include milling & resurfacing, microsurfacing, concrete curb and sidewalk installation, adjusting existing manhole and valve box covers to proposed finished grade, and install appropriate signing and marking.

Bid documents may be acquired electronically and free of charge by logging onto the City's website at:

http://www.wpb.org/procurement/procurement_opportunities.php

Hard copies of bid documents may also be acquired from the Procurement Division located at 401 Clematis Street, 5th Floor, West Palm Beach, Florida 33401, Ph: 561-822-2100. There will be a non-refundable fee of **\$150.00** for each set. It is suggested that all interested parties call to inquire as to the current availability of plans and/or specifications.

All bids are due at 3:00 p.m. on Tuesday, January 17, 2012. Any bid received after the due date and time specified will be returned unopened. The time of receipt shall be determined by the time clock located in the Procurement Office. Bids shall be placed in a sealed envelope, marked in the lower left-hand corner with the bid number, title, date, and time bids are due.

All bids must be submitted to:

City of West Palm Beach, Procurement Division
Althea Pemsel, MA, C.P.M., Procurement Official
401 Clematis Street, 5th Floor
West Palm Beach, FL 33401

A 5% Bid Bond per project will be required with all Work Orders issued.

A Pre-bid Meeting is scheduled for Thursday, January 5, 2012 at 10:00 a.m. at 401 Clematis Street, Room 519, West Palm Beach, FL 33401. Attendance is strongly encouraged.

Althea Pemsel
Althea Pemsel, MA, C.P.M.
Procurement Official

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SECTION 1 – SCOPE OF WORK

The Contractor shall provide all labor, material and equipment necessary to resurface and construct curbs and sidewalks City-wide, per work order to be issued by the City of West Palm Beach. The scope of work may include adjusting existing manhole and valve box covers to proposed finished grade, replace existing curb in locations of cracked and/or broken curb or curb that does not provide a structural barrier, microsurfacing, milling and resurfacing and installing appropriate signing and marking (both temporary and permanent, as necessary).

City utilities (water, sanitary and drainage) are types of the project that work orders may be requested. Contractor must verify the location of these utilities, as well as the location of all non-City utilities and coordinate with impacted utility owners on the conditions and nature of each location. Contractor must provide a Maintenance of Traffic (MOT) plan and notification plan to the City of West Palm Beach as part of the Right of Way Permit Application process. When resurfacing, construct a resurfaced pavement section that conforms to City of West Palm Beach standards.

This project is funded through a Housing & Urban Development (HUD) grant and is time sensitive. In addition to the bid costs submitted to the City of West Palm Beach, the City will also evaluate the Contractor's availability and ability to perform the work under an expedited schedule.



SECTION 2 – SPECIAL TERMS

1. Pre-Bid Conference

A pre-bid conference is scheduled to 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.

Date: Thursday, January 5, 2012
Time: 10:00 AM
Place: 401 Clematis Street, Room 519, West Palm Beach, FL 33401

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 Division at 561-822-2100, at least five (5) days prior to the event to advise of his/her special requirements.

2. Time of Completion and Liquidated Damages. The work to be performed under this project shall commence based on the Notice to Proceed for each work order issued. Liquidated damages will be One-thousand dollars (\$1000) per day that the work is not deemed complete.

3. 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 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	See City website (www.cityofwpb.org)

4. Licenses. The Bidder will be required to have at the time of bid submittal, the following current license(s):

- State of Florida General Contractor's License or Paving Contractor's License

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.

5. **Small Business Participation.** In accordance with the Small Business Ordinance, the goal for Small Business participation under the contract resulting from this Invitation to Bid is **15%** of the total contract value.

6. **Construction Bond.** If required, please refer to General Condition 51.

Will be required with all Work Order issued.

7. **Insurance.** Please refer to General Condition 52 for insurance requirements, unless a modification to such requirements is listed below:

The successful Contractor shall be obligated to comply with the following federal laws, regulations and requirements. The terms "Contractor" in these requirements shall refer to the Contractor in direct contract with the City:

Funds for this project are derived from federal grants and therefore the successful contractor must comply with federal guidelines. The federal funds are appropriated by the Department of Housing and Urban Development (HUD) Community Development Block Grant Program (CDBG).

In the event of a conflict between the Federal Requirements listed in this section and other provisions of the Request for Proposals, the Federal Requirements will govern and prevail.

1. GENERAL.

(1) These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

(2) Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

(3) A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

2. **CONTRACTOR REGISTRATION.** No later than 10 days after end of first calendar quarter after selection of contractor, the contractor must have a DUNS number and be registered in the federal Central Contractor Registration.

3. SECTION 3 CLAUSE.

(1) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U. S.C. 170 1u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(2) The parties to this contract agree to comply with HUD's requirements in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(3) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractor's commitment under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site

where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (4) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (5) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (6) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

4. NON-DISCRIMINATION.

(1) **Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity.**
(Executive Order 11246)

- (a) The Contractor's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specification" set forth herein.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR-60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- (c) The Contractor shall provide written notifications to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construct subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract is to be performed.

(2) **Excerpt from Federal Regulations at 24 CFR 85.36(e):**

- (e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
- (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(3) **Contractor Representations.** During the performance of the contract, the contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other form of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.
- (b) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor of purposed of investigation to ascertain compliance with such rules, regulations and orders.
- (f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be

cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

- (g) The contractor will include the provisions of sub-paragraphs (a) through (f) in every subcontract of purchase order unless exempted by rules, regulations or orders of the Secretary of labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may require the United States to enter into such litigation to protect the interests of the United States.
- (h) The contractor shall keep such records as are necessary to determine compliance with the equal employment opportunity obligations. All such records must be maintained for a period of three (3) years following completion of the contract work and be available at reasonable times and places for inspection by representatives of the City, FDOT and HUD.

(4) **Equal Employment Opportunity:** Standard Construction Contract Specifications. (Executive Order 11246)

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941.
- d. "Minority includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origins);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Island (all persons having origins in any or the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in the approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7(a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract and Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- b. Establish and maintain a current list of minority and female recruitment sources provide written notification to minority and female organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with what ever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-site-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7a above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper; annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment

needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontractors from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p or these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority.

Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in

violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out; to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

5. **CIVIL RIGHTS**. The following requirements will apply to the awarded contract and any sub-contracts:

- (1) **Civil Rights**. Title VI of the Civil Rights Act of 1964 (P. L. 88-352), and the regulations issued pursuant thereto (24 CFR Part 1), which provides that no person in the United States shall on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance/ If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits.

- (2) **Section 109 Housing and Community Development Act of 1974.** The contractor certifies that the following Section 109 statement forms part of the contract and is in compliance with Section 570.601 of the Community Development Block Grant Regulations:

“No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under this title.”

- (3) **Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. Further, to the extent required by law, the Contractor shall comply with the requirements of the Age Discrimination Act of 1975 (P.L. 94-135), as amended, which provides that no person in the United States shall, on the basis of age, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- (4) **Disabilities.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with Section 503 of the Rehabilitation Act of 1973 as follows:
- (a) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - (b) The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
 - (c) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
 - (d) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
 - (e) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or their contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- (5) **Subcontracts.** The Contractor agrees to include these requirements in each subcontract or purchase order under this Contract so that such provisions will be binding upon each subcontractor or vendor.

6. NONSEGREGATED FACILITIES. (Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

- a. By submission of this bid, the execution of the contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the Contractor, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
- c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

7. PAYMENT OF WAGES.

- (1) **Davis Bacon Act/ Predetermine Minimum Wage.** The Federal Labor Standards Provisions are included below in these requirements and are applicable to this Contract. Contractor will be required to comply with the Davis-Bacon Act and the following Wage Decisions:

Wage Decision(s) No.:	FL 330
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- (2) **Copeland Regulations.** The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference (29 CFR 3).

8. SAFETY: ACCIDENT PREVENTION.

- (1) In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the City, County or HUD may determine to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
- (2) It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
- (3) Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

9. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT
(Applicable to all federally funded contracts and any subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the Contractor, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

- (1) That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
- (2) That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
- (3) That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
- (4) That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

10. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

- (1) **Bid Package Certification.** The Contractor shall complete and submit with its bid proposal the certification regarding debarment form included in this package, or an explanation as provided herein. The inability to provide the certification will not necessarily result in denial of participation in the project. The Contractor shall submit an explanation of why it cannot provide the requested certification, which will be considered in evaluation of the Contractor's bid package. However, failure by a Contractor to furnish a certification or an explanation shall disqualify such Contractor from this project.

The Contractor agrees by submitting its bid that should it be awarded the contract, it will not knowingly enter into any sub-contracts for this project with a person who is debarred, suspended, declared ineligible or excluded from participation in this transaction. The Contractor further agrees that it will require the same certification in all solicitations for and from all sub-contractors on the project.

The certification is a material representation of fact upon which the City will rely. If it is later determined that the Contractor rendered an erroneous certification, or knowingly entered into a sub-contract with a subcontractor who is debarred, suspended or ineligible, the City may terminate the contract for cause of default.

- (2) **Instructions for Certification – Prime Contractor:** (Applicable to all Federal-aid contracts - 49 CFR 29)
 - a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
 - b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below.

The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary
Exclusion--Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
 - d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
 2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
- (3) **Instructions for Certification - Subcontracts:** (Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)
- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
 - b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
 - c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
 - d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
 - e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered

transaction, unless authorized by the department or agency with which this transaction originated.

- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

-- Subcontracts and Purchase Orders:

- 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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11. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING (Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

- (1) The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (2) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - (3) The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

12. NON-COLLUSION

Contractor shall submit the included Non-Collusion Certification with its bid proposal, certifying that the Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with its bid.

Failure to submit the certification with the bid will make the bid non-responsive and not eligible for award consideration.

13. DRUG-FREE WORKPLACE CERTIFICATION

In accordance with Florida Statute 287.087, the Contractor shall certify that it has and will maintain a drug-free workplace. The Contractor shall complete and submit with its bid proposal the attached certification. Failure to include an executed certification may cause the bid proposal to be considered non-responsive.

14. SUBCONTRACTING

- (1) **Prime Contractor Requirement.** The prime contractor shall perform at least 30 percent of contract work with its own organization. This percentage shall be of the original contract price, exclusive of specialty items, but include the cost of materials and manufactured products purchased or produced by the prime contractor.
- (2) **Subcontract Approval.** No portion of the work may be sublet, assigned, or otherwise subcontracted without the written consent of the City. Subcontract approval shall be based on satisfactory evidence that each subcontract is in writing and contains all the pertinent provisions. The approval of a subcontract does not relieve the contractor of responsibility for fulfillment of the contract.

15. LEAD-BASED PAINT POISONING PREVENTION ACT

Reference: Department of Housing and Urban Development, Title 24, Part 35; FR Vol. 64, No. 178, September 15, 1999
Lead-Based Paint Poisoning Prevention Act, as amended
Residential Lead-Based Paint Hazard Reduction Act of 1992
40 CFR Part 745

The aforementioned Acts and the referenced regulations prohibit the use of lead-based paint in housing receiving Federal assistance, and in child occupied facilities. In addition, these regulations require

elimination of lead-based paint hazards in housing constructed prior to 1978 which received Federal assistance.

16. ARCHITECTURAL BARRIERS ACT and AMERICAN WITH DISABILITIES ACT.

The Architectural Barriers Act of 1968 (42 USC 4151 and 24 CFR 40) subjects residential structures to the requirements of these acts and compliance with the Uniform Federal Accessibility Standards for residential structures.

17. ENERGENCY EFFICIENCY.

The Contractor shall comply with any mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

18. ACCESS TO RECORDS.

(1) The Contractor agrees to provide the City, HUD, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the contract for the purposes of making audits, examinations, excerpts and transcriptions.

(2) The Contractor agrees to maintain all books, records, accounts and reports required under the contract for a period of not less than five (5) years after the date of termination or expiration of the contract, except in the event of litigation or settlement of claims arising from the performance of the contract, in which case Contractor agrees to maintain same until the City, HUD, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

19. PUBLIC ENTITY CRIMES. As provided in F.S. 287.133 by entering into this contract or performing any work in furtherance hereof, the contractor certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, 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 hereof. This notice is required by F.S. 287.133 (3)(a)."

20. CONFLICT OF INTEREST OF PUBLIC OFFICIALS. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this contract, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

21. SUSPENSION OF PAYMENT. The City or HUD shall have the right under the contract to suspend or terminate payment if contractor, after 15 days written notice, has not complied with any additional conditions that may be imposed at any time by the City or HUD.

22. INSURANCE. Contractor shall name the "City of West Palm Beach" as an additional insured on the general liability insurance coverage required under the General Conditions.

23. BONDS. During the bidding and construction periods the surety company shall hold a current certificate of authority as an acceptable surety on Federal Bonds, in accordance with U. S. Department of Treasury Circular 570, Current Revision.

24. TERMINATION FOR CAUSE AND/OR CONVENIENCE

- (1). This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given:
 - (a) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate; and
 - (b) an opportunity for consultation with the terminating party prior to termination.
- (2). This contract may be terminated in whole or in part in writing by the local government for its convenience, provided that the other party is afforded the same notice and consultation opportunity specified in (1) above.
- (3). If termination for default is effected by the local government, an equitable adjustment in the price for this contract shall be made, but:
 - (a) no amount shall be allowed for anticipated profit on unperformed services or other work, and
 - (b) any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the local government because of the contractor's default.

If termination for convenience is effected by the local government, the equitable adjustment shall include a reasonable profit for services or other work performed for which profit has not already been included in an invoice. For any termination, the equitable adjustment shall provide for payment to the contractor for services rendered and expenses incurred prior to receipt of the notice of intent to terminate, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments (e.g., suppliers, subcontractors) which had become firm prior to receipt of the notice of intent to terminate.

- (3). Upon receipt of a termination action under paragraphs (1) or (2) above, the contractor shall:
 - (1) promptly discontinue all affected work (unless the notice directs otherwise) and
 - (2) deliver or otherwise make available to the local government all data, drawings, reports specifications, summaries and other such information, as may have been accumulated by the contractor in performing this contract, whether completed or in process.

Upon termination, the local government may take over the work and may award another party a contract to complete the work described in this contract.

If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the local government. In such event, adjustment of the contract price shall be made as provided in paragraph (3) above.

- 25. FRAUD:** Any credible evidence of a false claim for grant funds or fraud, conflict of interest or similar claims regarding the grant funds must be promptly reported to the Office of the Inspector General.

26. WHISTLEBLOWERS. Pursuant to the receipt of Recovery Act funds, the City may not discharge, demote or otherwise discriminate against, as a reprisal for disclosing to an appropriate person, information that the employee believes is evidence of:

- gross management of an agency contract or grant funds
- gross waste of grant funds
- substantial and specific danger to public health or safety related to the use of grant funds
- abuse of authority related to the use of grant funds
- violation of law, rule or regulation related to a City contract or grant, awarded or issued, relating to grant funds

27. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

(1) Policy. The Contractor/Developer shall ensure that Disadvantaged Business Enterprises, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of this project. In this regard, the Developer shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts or subcontracts with respect to this Project.

(2) Minority and Female Participation

Excerpt from Federal Regulations at 24 CFR 85.36(e):

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

(1) The Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

Contractor shall make a positive effort to utilize small business and minority/women-owned business enterprises in the procurement of supplies, equipment, construction or services.

28. NO OBLIGATION BY THE FEDERAL GOVERNMENT.

- (1) Absent the express written consent by the Federal Government, the Federal Government or the Department of Housing and Urban Development is not a party to the contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by HUD. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

29. AGREEMENT DOCUMENTS. The following documents are herein incorporated by reference and made a part of the RFP and Contract, as if fully set forth herein:

- a. Office of Management and Budget Circulars A-87, A-102, A-133 and 24 CFR Part 85.
- b. Federal Communities Block Grant Regulations (24 CFR Part 570) as amended.
- c. Housing and Economic Recovery Act of 2008 (Publ. L. 110-289).
- d. Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990.
- e. Executive Orders 11246, 11478, 11625, 12432, 11738
- f. Davis Bacon Act and Copeland Anti-Kickback Act
- g. Contract Work Hours and Safety Standards Act and regulations.
- h. Section 3 of the Housing and Community Development Act of 1968.
- i. Section 306 of the Clean Air Act
- j. Section 508 of the Clean Water Act
- k. EPA regulations (40 CFR Part 15)
- l. Energy Policy and Conservation Act.
- m. National Historic Preservation Act of 1966.
- n. HUD Environmental standards.

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

- A.1: (I) **Minimum Wages.** All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

- (II) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U. S. Department of Labor, Washington, D. C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

- (c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate). HUD or its designee shall refer the questions, including the view of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30 day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)
 - (d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (III) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (IV) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided. That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)
- A.2: (I) **Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employee to whom, they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.
- A.3: (I) **Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanic working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated In writing to the laborer of mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the

registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage raises prescribed in the applicable programs. (Approved by the Office of Management of Budget under OMB Control Number 1215-0140 and 1215-0017.)

- (II) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington D. C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)
 - (b) Each payroll submitted shall be accompanied by a "Statement of Compliance." signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5(a)(3)(i) and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
 - (c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3(ii)(b) of this section.
 - (d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- (III) The contractor or subcontractor shall make the records required under paragraph A.3(i) or this section available for inspection, copying or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

- A.4: (I) **Apprentices and Trainees.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90

days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the lot in any craft classification shall not be greater than the ratio permitted to contractor as to the entire work force under the registered program and worker listed on a payroll at an apprentice wage rate, who is not register or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice, performing work on the job site in excess of the ratio permitted under the register program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentice at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (II) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program.

If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work perform until an acceptable program is approved.

- (III) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

A.5: (I) **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

A.6: (I) **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in Subparagraphs 1 through 11 of this Paragraph A, and such other clauses as HUD or its designee may by appropriate instructions require and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier

subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this Paragraph.

- A.7: (I) **Contracts termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- A.8: (I) **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon Acts contained in 29 CFR Part 1, 3, and 5 are herein incorporated by reference in this contract.
- A.9: (I) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5,6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the...U.S. Department of Labor, or the employees or their representatives.
- A.10: (I) **Certification of Eligibility.** By entering into this contract the contractor certifies it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.
- (II) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.
- (III) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S.C., Section 1010, Title 18. U.S.C., "Federal Housing Administration transactions, provides in part "Whoever, for the purpose of, influencing in any way the action of such Administration...makes, utters or publishes any statement, knowing the same to be false...shall be fined not more than \$5,000 or imprisoned not more than two years or both."
- A.11: (I) **Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.
- B. **Contract Work Hours and Safety Standards Act.** The provisions of this Paragraph B are applicable only where the amount of prime contract exceeds \$100,000. As used in this paragraph, the term "laborers" and "mechanics" include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontracting contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require of permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the

sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

- (3) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contractor or any other Federal contract with the same prime contract, or any other Federal-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.
- (4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. **Health and Safety.** The provisions of this Paragraph C are applicable only where the amount of the prime contract exceeds \$100,000.

- (1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
- (2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act 40 USC 3701 et seq.
- (3) The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

Form HUD-4010 (07/2003)
ref. Handbook 1344.1

GUIDANCE TO CONTRACTOR FOR COMPLIANCE WITH LABOR STANDARDS PROVISIONS

A. **Contracts with Two Wage Decisions.** If the contract includes two wage decisions, the contractor, and each subcontractor who works on the site, must submit either two separate payrolls (one for each wage decision) or one payroll which identifies each worker twice and the hours worked under each wage decision. One single payroll, reflecting each worker once, may be submitted provided the Contractor uses the higher rate in the wage decisions for each identical job classification. However, where a job classification is not listed in a wage decision and is needed for that portion of the work, the classification must be added to the wage decision. A worker may not be paid at the rate for a classification using the hourly rate for that same classification in another wage decision. After the additional classification is approved, the contractor may pay the higher of the two rates and submit one payroll, if desired.

B. **Complying with Minimum Hourly Amounts**

- (1) The minimum hourly amount due to a worker in each classification is the total of the amounts in the "Rates" and "Fringe Benefits" (if any) columns of the applicable wage decision.

- (2) The contractor may satisfy this minimum hourly amount by any combination of cash and bona fide fringe benefits, regardless of the individual amounts reflected in the "Rates" and "Fringe Benefits" columns.
 - (3) A contractor payment for a worker which is required by law is not a fringe benefit in meeting the minimum hourly amount due under the applicable wage decision. For example, contractor payments for FICA or unemployment insurance are not a fringe benefit; however, contractor payments for health insurance or retirement are a fringe benefit. Generally, a fringe benefit is bona fide if (a) it is available to most workers and (b) involves payments to a third party.
 - (4) The hourly value of the fringe benefit is calculated by dividing the contractor's annual cost (excluding any amount contributed by the worker) for the fringe benefit by 2080. Therefore, for workers with overtime, an additional payment may be required to meet the minimum hourly wages since generally fringe benefits have no value for any time worked over 40 hours weekly. (If a worker is paid more than the minimum rates required by the wage decision, this should not be a problem. As long as the total wages received by a worker for straight time equals the hours worked times the minimum hourly rate in the wage decision, the requirement of the Davis-Bacon and Related Acts has been satisfied.)
- C. **Overtime.** For any project work over 40 hours weekly, a worker generally must be paid 150% of the actual hourly cash rate received, not the minimum required by the wage decision. (The Davis-Bacon and Related Acts only establishes minimum rates and does not address overtime; the Contract Work Hours Act contains the overtime requirement and uses "basic rate of pay" as the base for calculation, not the minimum rates established by the Davis-Bacon and Related Acts.)
- D. **Deductions.** Workers who have deductions, not required by law, from their pay must authorize these deductions in writing. The authorization must identify the purpose of each deduction and the amount, which may be a specific dollar amount or a percentage. A copy of the authorization must be submitted with the first payroll containing the deduction. If deducted amounts increase, another authorization must be submitted. If deducted amounts decrease, no revision to the original authorization is needed. Court-ordered deductions, such as child support, may be identified by the responsible payroll person in a separate document. This document should identify the worker, the amount deducted and the purpose. A copy of the court order should be submitted.
- E. **Classifications Not Included in the Wage Decision.** If a classification not in the wage decision is required, please advise the owner's representative in writing and identify the job classification(s) required. In some instances, the State agency may allow the use of a similar classification in the wage decision.

Otherwise, the contractor and affected workers must agree on a minimum rate, which cannot be lower than the lowest rate for any trade in the wage decision. Laborers (including any subcategory of the laborer classification) and truck drivers are not considered a trade for this purpose. If the classification involves a power equipment operator, the minimum cannot be lower than the lowest rate for any power equipment operator in the wage decision. The owner will provide forms to document agreement on the minimum rate by the affected workers and contractor.

The U.S. Department of Labor (USDOL) must approve the proposed classification and rate. The contractor may pay the proposed rate until the USDOL makes a determination. Should the USDOL require a higher rate, the contractor must make wage restitution to the affected worker(s) for all hours worked under the proposed rate.

- F. **Supervisory Personnel.** Foremen and other supervisory personnel who spend at least 80% of their time supervising workers are not covered by the Davis-Bacon and Related Acts. Therefore, a wage decision will not include such supervisory classifications and their wages are not subject to any minimums under the Davis-Bacon and Related Act or overtime payments under the Contract Work Hours and Safety Standards Act. However, foremen and other supervisory personnel who spend less than 80% of their time engaged in supervisory activities are considered workers/mechanics for the time spent engaged in manual labor and must be paid at least the minimum in the wage decision for the appropriate classification(s) based on the work performed.
- G. **Sole Proprietorships / Independent Contractors / Leased Workers.** The nature of the relationship between a prime contractor and a worker does not affect the requirement to comply with the labor

standards provisions of this contract. The applicability of the labor standards provisions is based on the nature of the work performed.

If the work performed is primarily manual in nature, the worker is subject to the labor standards provisions in this contract. For example, if John Smith is the owner of ABC Plumbing and performs all plumbing work himself, then Mr. Smith is subject to the labor standards provisions, including minimum wages and overtime. His status as "owner" is irrelevant for labor standards purposes.

If a worker meets the IRS standards for being an independent contractor, and is employed as such, this means that the worker must submit a separate payroll as a subcontractor rather than be included on some other payroll. The worker is still subject to the labor standards provisions in this contract, including minimum wages and overtime.

If a contractor or subcontractor leases its workers, they are subject to the labor standards provisions in this contract, including minimum wages and overtime. The leasing firm must submit payrolls and these payrolls must reflect information required to determine compliance with the labor standards provisions of this contract, including a classification for each worker based on the nature of the work performed, number of regular hours worked, and number of overtime hours worked.

- H. **Apprentices / Helpers.** A worker may be classified as an apprentice only if participating in a federal or state program. Documentation of participation must be submitted. Generally, the apprentice program specifies that the apprentice will be compensated at a percentage of journeyman rate. For Davis-Bacon Act purposes, the hourly rate cannot be lower than the percentage of the hourly rate for the classification in the applicable wage decision.

If the worker does not participate in a federal or state apprentice program, then the worker must be classified according to duties performed. This procedure may require classification in the "trade" depending on tools used, or as a laborer if specialized tools of the trade are not used. The contractor may want to consult with the Wage and Hour Division of the U.S. Department of Labor located in most large cities regarding the appropriate classification.

Presently, no worker may be classified as a "helper". As with apprentices not participating in a formal apprentice program, the worker must be classified according to duties performed and tools used.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

- (1) **Policy.** The contractor shall ensure that Disadvantaged Business Enterprises, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of this project. In this regard, the contractor shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts or subcontracts with respect to this Project.

- (2) **Minority and Female Participation**

Excerpt from Federal Regulations at 24 CFR 85.36(e):

- (e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.
- (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
- (2) Affirmative steps shall include:
- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
- (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

Contractor shall make a positive effort to utilize small business and minority/women-owned business enterprises in the procurement of supplies, equipment, construction or services.

General Decision Number: FL100330 01/21/2011 FL330

Superseded General Decision Number: FL20080330

State: Florida

Construction Type: Highway

County: Palm Beach County in Florida.

HIGHWAY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	03/12/2010
1	01/21/2011

* ELEC0728-007 09/01/2010

	Rates	Fringes
ELECTRICIAN.....	...\$ 28.46	8.60

 ENGI0487-019 01/01/2010

	Rates	Fringes
OPERATOR: Oiler.....	....\$ 22.24	8.78

 IRON0402-005 04/01/2009

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	.. ...\$ 22.22	7.65

 * SUFL2009-227 08/05/2009

	Rates	Fringes
CARPENTER, Excludes Form Work...	.\$ 13.08	0.00
CEMENT MASON/CONCRETE FINISHER..	.\$ 13.22	0.90
FORM WORKER.....	\$ 12.22	3.37
HIGHWAY/PARKING LOT STRIPING: Operator (Striping Machine)....	.\$ 11.97	2.23
HIGHWAY/PARKING LOT STRIPING: Painter.....	.....\$ 14.38	1.73
IRONWORKER, REINFORCING....	...\$ 15.00	2.45
LABORER: Asphalt Raker.....	..\$ 11.16	0.00
LABORER: Asphalt Shoveler.....	..\$ 10.70	0.00
LABORER: Common or General....	..\$ 9.14	0.93
LABORER: Flagger.....	.....\$ 11.00	3.79
LABORER: Grade Checker....	...\$ 10.50	0.54
LABORER: Landscape and Irrigation.....	..\$ 9.98	0.00
LABORER: Luteman.....	.....\$ 10.32	0.00
LABORER: Mason Tender - Cement/Concrete.....	.....\$ 12.00	1.80
LABORER: Pipelayer.....	....\$ 13.50	1.20
LABORER: Power Tool Operator (Hand Held Drills/Saws, Jackhammer and Power Saws..	.....\$ 11.27	2.33
OPERATOR: Asphalt Paver.....	..\$ 12.94	0.00
OPERATOR: Asphalt Plant...	....\$ 12.20	0.00
OPERATOR: Asphalt Spreader..	....\$ 10.76	0.00
OPERATOR: Auger.....	.....\$ 19.40	0.44
OPERATOR: Backhoe Loader Combo.....	.....\$ 18.00	1.39
OPERATOR: Backhoe/Excavator...	..\$ 12.74	0.00
OPERATOR: Boom.....	...\$ 16.61	0.00
OPERATOR: Bulldozer.....	....\$ 15.08	2.48
OPERATOR: Crane.....	.....\$ 18.13	0.00

OPERATOR: Distributor.....	...\$ 12.33	0.00
OPERATOR: Drill.....	.....\$ 13.00	1.59
OPERATOR: Grader/Blade.....	...\$ 17.00	1.63
OPERATOR: Loader.....	.....\$ 11.81	0.75
OPERATOR: Mechanic....	.....\$ 16.20	3.25
OPERATOR: Milling Machine...	\$ 11.50	3.58
OPERATOR: Paver.....	.....\$ 18.00	1.39
OPERATOR: Piledriver.....	....\$ 14.15	2.26
OPERATOR: Roller.....	.....\$ 11.20	0.00
OPERATOR: Scraper.....	....\$ 12.31	1.83
OPERATOR: Screed.....	.....\$ 13.23	0.00
OPERATOR: Tractor.....	.....\$ 13.00	1.00
OPERATOR: Trencher.....	.....\$ 12.05	0.40
PAINTER: Spray and Steel....	....\$ 16.62	0.00
TRAFFIC SIGNALIZATION: Traffic Signal Installation....	..\$ 14.58	0.65
TRUCK DRIVER: 10 Yard Haul Away Truck.....	.....\$ 12.50	0.00
TRUCK DRIVER: 3 Axle Truck...	. ..\$ 9.81	0.00
TRUCK DRIVER: 4 Axle Truck.	...\$ 12.01	1.52
TRUCK DRIVER: Distributor....	...\$ 13.22	2.01
TRUCK DRIVER: Dump Truck..	.....\$ 10.84	1.43
TRUCK DRIVER: Lowboy Truck...	...\$ 12.00	0.00
TRUCK DRIVER: Material Truck..	..\$ 13.15	9.80
TRUCK DRIVER: Tractor Haul Truck.....	....\$ 10.64	0.00
TRUCK DRIVER: Water Truck....	...\$ 10.50	0.00
TRUCK DRIVER.....	. ...\$ 10.29	0.67

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations.

Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).

Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board).

Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION



CITY-WIDE ROADWAY RESURFACING AND CONCRETE WORK

ITB 11-12-107

CONTRACTOR INFORMATION PAGE

(This page must be completed and returned with your bid)

Company Name: _____

Authorized Signature: _____
Signature Print Name

Title: _____
Street

Business Address: _____

City: _____ State: _____ Zip: _____

Telephone: () _____ Fax: () _____

E-Mail Address: _____

Web Site: _____

Federal Identification Number (This is a requirement for every Vendor/Contractor): _____

Please supply contact person for questions or concerns

Name: _____

Title: _____

Telephone: () _____ Cell Phone: () _____

E-Mail Address: _____

CITY-WIDE ROADWAY RESURFACING AND CONCRETE WORK

ITB 11-12-107

QUALIFICATIONS

1. **LICENSE** Copy of current Florida General Contractor or Paving Contractor’s License is submitted with this Form.

2. **MINIMUM EXPERIENCE REQUIREMENT:** The Bidder must have completed, as prime contractor, at least one roadway project including paving and minor concrete work (work can be completed by subcontractor’s under bidder)

• **PROJECT # 1**

Name of Project: _____

Project Location: _____

Description of Project: _____

Contractor’s Scope of Work: _____

Budget and Timeline of Project:	_____	_____	_____
	Budget	Start Date	End Date

Owner/Contact:	_____	_____	_____
	Name	Title	Phone Number
	Fax		e-mail

NOTE: Use additional sheet(s) with the same format if necessary to list other project(s) as proof of prior experience.

3. **PUBLIC CONSTRUCTION BOND**

In accordance with the provisions of F.S. 255.05, Contractor shall provide to Owner, on forms furnished by Owner, a 100% Public Construction Bond (“Bond”) in an amount not less than the total Contract Price by a Surety Company acceptable to Owner.

4. **SECTION 3** Contractor acknowledges the federal Section 3 requirements applicable to this project and agrees to hire at least 30% of its new hires from Section 3 residents.

Contractor Firm: _____

Officer’s Name: _____ Title: _____

Signature: _____



CITY-WIDE ROADWAY RESURFACING AND CONCRETE WORK

ITB 11-12-107

LISTING OF ALL EXISTING AND PROJECTED WORKLOADS/PROJECTS

Contractor must provide a list of all existing and projected workload/projects. Contractor shall indicate those projects where the same staff, contractors, subcontractors, equipment and/or resources will be utilized for the City project.

NOTE: Use additional sheet(s) with the same format if required for other project(s) as proof of prior experience.

CURRENT PROJECT

Project Name: _____

Project Location: _____

Description of Project: _____

Start and End Dates: _____

Percentage Completed: _____%

Same staff/equipment/resources on City project? _____ Yes _____ No (explain): _____

Owner/Contact: _____
Name Title Phone

CURRENT PROJECT

Project Name: _____

Project Location: _____

Description of Project: _____

Start and End Dates: _____

Percentage Completed: _____%

Same staff/equipment/resources on City project? _____ Yes _____ No (explain): _____

Owner/Contact: _____
Name Title Phone

CURRENT PROJECT

Project Name: _____

Project Location: _____

Description of Project: _____

Start and End Dates: _____

Percentage Completed: _____%

Same staff/equipment/resources on City project? _____ Yes _____ No (explain): _____

Owner/Contact: _____
Name Title Phone

PROJECTED / FUTURE PROJECT

Project Name: _____

Project Location: _____

Description of Project: _____

Start and End Dates: _____

Same staff/equipment/resources on City project? _____ Yes _____ No (explain): _____

Owner/Contact: _____
Name Title Phone

PROJECTED / FUTURE PROJECT

Project Name: _____

Project Location: _____

Description of Project: _____

Start and End Dates: _____

Percentage Completed: _____%

Same staff/equipment/resources on City project? _____ Yes _____ No (explain): _____

Owner/Contact: _____
Name Title Phone



CITY-WIDE ROADWAY RESURFACING AND CONCRETE WORK

ITB 11-12-107

REPRESENTATIONS AND DISCLOSURES

STATE OF _____ }
COUNTY OF _____ } SS:

I am an officer of the Contractor’s firm, named below, by submitting its qualifications is authorized to make the following Representations and Disclosures on behalf of the Contractor. I certify or affirm that to the best of my knowledge and belief, the following statements are true:

1. Contractor agrees that its bid may become part of any contract entered into between the City and the Contractor.
2. There are no actual, apparent or potential conflicts of interest with Contractor or any sub-Contractors that are present or could develop with respect to the scope of services for the project/study and any parties to this solicitation or any third parties.
3. Submittal of Contractor’s Bid is made without connection with any persons, company or party making another submittal, and that it is in all respects fair and in good faith without collusion or fraud.
4. Contractor will execute a Development Agreement covering lots in any of the Neighborhoods or development areas awarded to Contractor. Contractor will not attempt to selectively participate in development areas.
5. Contractor has not filed for bankruptcy in the past five (5) years.
6. Neither Contractor nor any of Contractor’s principals have been convicted of or indicted for a felony or fraud.
7. Contractor and any parent corporations, affiliates, subsidiaries, members, shareholders, partners, officers, directors or executives thereof are not presently debarred, proposed for debarment or declared ineligible to bid or participate in any federal, state or local government agency projects and are not listed on the Florida convicted vendor list.
8. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure an award under this ITB and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from an award.
9. Contractor certifies the compensation and hourly rates and other expenses or costs to be compensated as proposed are accurate, complete and current and the time of contracting and no higher than those charged to the Contractor’s other customers for the same or substantially similar service in the Southeast Region of the United States during the preceding twelve (12) month period.
10. Contractor certifies to the best of its knowledge and belief that no funds or other resources received in connection with an award of a contract from this ITB will be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

I certify or affirm that to the best of my knowledge and belief, the above nine (9) statements are true.

Contractor Firm: _____

Officer's Name: _____ Title: _____

Signature: _____

AFFIRMED AND SIGNED before me this _____ day of _____, 200__

by _____ (name) as _____
(title) of

_____ (Contractor firm), and who is personally known to me
or produced _____ as identification.

Notary Public

Notary Stamp:

In the event Contractor cannot execute this form as drafted, Contractor may substitute a similar Representations and Disclosure certifying to the facts applicable to the Contractor.



CITY-WIDE ROADWAY RESURFACING AND CONCRETE WORK

ITB 11-12-107

CERTIFICATION REGARDING LOBBYING

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions [as amended by “Government wide Guidance for New Restrictions on Lobbying”, 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- (3) The undersigned shall require that the language of this certification be included in the awards documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. 1352 (1)-(2)(A), any person who makes a prohibited expenditure of fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure]

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Company Name: _____

Authorized Signature: _____
Signature Print Name

Title: _____ Date: _____



CITY-WIDE ROADWAY RESURFACING AND CONCRETE WORK

ITB 11-12-107

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION – PRIMARY COVERED TRANSACTIONS

The Contractor certifies that, the firm or any person associated therewith in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, and/or position involving the administration of federal funds:

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as defined in 49 CFR s29.110(a), by any federal department or agency;
- (b) have not within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) are not presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) have not within a three-year period preceding this certification had one or more federal, state, or local government public transactions terminated for cause or default.

The Contractor certifies that it shall not knowingly enter into any transaction with any contractor, sub-contractor, consultant, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this project by any federal agency.

Company Name: _____

Authorized Signature: _____

Title: _____

Date: _____



CITY-WIDE ROADWAY RESURFACING AND CONCRETE WORK

ITB 11-12-107

DRUG FREE WORKPLACE CERTIFICATION

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

_____ does:
(Company Name)

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: _____



CITY-WIDE ROADWAY RESURFACING AND CONCRETE WORK

ITB 11-12-107

AFFIDAVIT OF NON-COLLUSION AND PUBLIC ENTITY CRIME

STATE OF _____ }
COUNTY OF _____ } SS:

_____, being first duly sworn, disposes and says that:
(Name)

- 1. I am the _____ of _____, the Contractor firm that has submitted a bid in response to the above-referenced ITB;
2. Such bid is genuine and is not collusive or sham;
3. Neither the Contractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Contractor, firm or person to submit a collusive or sham bid in connection with the contract for which the referenced RFP has been submitted or to refrain from proposing in connection with such Contract or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Contractor, firm or person to fix the price or prices in the our proposal or of any other proposal, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of West Palm Beach or any person interested in the proposed contract; and
4. The following Officer, director or agent of Contractor is also an employee of the City of West Palm Beach: _____ (if none, write "None").
5. The following employees of the City of West Palm Beach own, directly or indirectly, an interest of 10% or more in Contractor firm or any of its affiliates or subsidiaries: _____ (if none, write "None").
6. Neither the Contractor nor any officer, director, partner, shareholder, employee, member or agent, who is active in the management of Contractor firm, or any affiliate or subsidiary of the firm has been convicted of a public entity crime or action regarding antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation with respect to any bid or contract for goods or services to be provided to any public entity, or has been listed on the state Convicted Vendor List, within thirty-six months prior to the date of Contractor's bid.

Authorized Signature: _____

Print Name: _____

Date: _____

The foregoing Affidavit of Non-Collusion and Public Entity Crime was acknowledged before me this _____ day of _____, 200__ by _____,

who is personally known to me or produced _____ as identification, and

who did / did not take an oath.

Notary Public: _____
Signature

Print Name

Commission No: _____

Notary Stamp:



CITY-WIDE ROADWAY RESURFACING AND CONCRETE WORK
ITB 11-12-107
CERTIFICATION OF ELIGIBILITY OF GENERAL CONTRACTOR

STATE OF _____ }
COUNTY OF _____ } SS:

_____, being first duly sworn, disposes and says that:
(Name)

1. I am the _____ of _____,
Title Company Name

hereinafter referred to as the "Contractor"; who submitted a proposal to perform work for the following project:

ITB # _____ Project Name: _____

- 2. He/she is fully informed that the bid submitted for work to be performed under the above mentioned contract, is being funded, in whole or in part, by a Federally-assisted or insured contract; and
3. The Contractor nor any of its officers, partners, owners or parties of interest is not named on the current General Services Administration List of Parties Excluded from Federal Procurement or Non-procurement Programs prior to award of the contract; and
4. The Contractor acknowledges that should the Contractor be subsequently found ineligible after award of the contract, its Construction Contract shall be terminated and the matter referred to the Department of Labor, the Department of Housing and Urban Development, or the General Services Administration for its action; and
5. The Contractor acknowledges the responsibility of informing all of its subcontractors that this contract is being funded, in whole or in part, by a Federally-assisted or insured contract; and
6. The Contractor acknowledged the responsibility that all of its subcontractors are to sign a "Certification Regarding Debarment Suspension, Ineligibility and Voluntary Exclusion-Lower-Tier Participant" as a part of its contract with such subcontractors, and that the "General Contractor" will retain such certifications in its files. Furthermore, should the subcontractor be subsequently found ineligible after award of the Construction Contract, its contract with the "General Contractor" shall be terminated and the matter referred to the Department of Labor, the Department of Housing and Urban Development, or the General Services Administration, for its action.

The Contractor, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any.

Authorized Signature: _____
Signature Print Name

Date: _____

The foregoing Certification of Eligibility of General Contractor was acknowledged before me this _____ day of _____, 201__ by _____,

who is personally known to me or produced _____ as identification, and

who did / did not take an oath.

Notary Public: _____
Signature

Print Name

Commission No: _____

Notary Stamp:



CITY-WIDE ROADWAY RESURFACING AND CONCRETE WORK

ITB 11-12-107

CERTIFICATION OF NONSEGREGATED FACILITIES

The Contractor certifies that he/she does not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees to perform their services at any location, under his/her control where segregated facilities are maintained. The Contractor certifies further that he/she will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she will not permit his/her employees to perform their services at any location under his/her control where segregated facilities are maintained. The Contractor agrees that a breach of this certification will be a violation of the Equal Opportunity clause in any contract resulting from acceptance of this bid. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Contractor agrees that (except where he/she has obtained identical certification from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he/she will retain such certifications in his/her files.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Company Name: _____

Authorized Signature: _____
Signature Print Name

Title: _____ Date: _____



CITY-WIDE ROADWAY RESURFACING AND CONCRETE WORK

ITB 11-12-107

ANTI-KICKBACK AFFIDAVIT

STATE OF _____ }
COUNTY OF _____ } SS:

BEFORE ME, the undersigned authority, personally appeared _____, who, after being by me first duly sworn, deposes and says:

1. I am the _____ of _____, Title Company Name

hereinafter referred to as the "Contractor"; who submitted a bid to perform work for the following project:

ITB # _____ Project Name: _____

2. I, the undersigned, hereby depose and say that no portion of the sum bid in connection with the work to be performed at the property identified above will be paid to any employee of the City of West Palm Beach as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

Signature

The foregoing Anti-kickback Affidavit was acknowledged before me this _____ day of _____, 201__ by _____,

who is personally known to me or produced _____ as identification, and

who did / did not take an oath.

Notary Public: _____
Signature

Print Name

Commission No: _____

Notary Stamp:



CITY-WIDE ROADWAY RESURFACING AND CONCRETE WORK

SECTION 3 - UTILIZATION PLAN

ITB 11-12-107

Economic Opportunities for Low- and Very Low-Income Persons

Contractor's/Developer's Name:	Project Contact Person:	Designated Compliance Person:
Address:	Phone Number: Fax Number:	Email:

PART I: SUB-CONTRACTS AWARDED

1. Construction Sub-Contracts:

A. Estimated Total dollar amount of all subcontracts to be awarded	\$
B. Estimated Total dollar amount of subcontracts to be awarded to Section 3 businesses	\$
C. Percentage of the total dollar amount estimated to be awarded to Section 3 businesses	%

PART II: HIRING / RECRUITMENT EFFORTS

Indicate the efforts anticipated to be made to recruit trainees and new hires from low- and very low-income persons who live in the affected neighborhood and homeless persons; particularly those who are recipients of government assistance for housing. Please check all that apply and provide explanations. In the event that the space provided is insufficient, additional pages should be added.

_____ Recruitment of Section 3 Residents and Businesses (i.e. through formal contact with trade association publications, the local advertising media such as community television networks, newspapers of general circulation, radio and internet advertising and referrals from union and non-union associations, Workforce Alliance and Florida Training Services and other trade associations.)

_____ Signage (i.e. prominently display signs at the project sites, in the service area or neighborhood in which the Section 3 covered project is located that provide general information about the work to be contracted, where to obtain information about the work to be contracted and any other additional information.)

_____ Community Organizations and Public or Private Agencies (i.e. Contract with agencies operating within the Section 3 covered program or project area for assistance in identifying Section 3 trainees, employees and business concerns.)

_____ Eligible Section 3 Businesses (i.e. maintain a contact list of businesses to provide written notice in a timely manner of the availability of upcoming contract opportunities.)

_____ Eligible Section 3 Residents (i.e. maintain a list of residents who have made application for employment of any vacancies or first available vacancy.)

_____ Other:

PART III: ESTIMATED PROJECT WORK FORCE BREAKDOWN				
COLUMN 1 JOB CATEGORY	COLUMN 2 TOTAL ESTIMATED POSITIONS	COLUMN 3 NO. POSITIONS CURRENTLY OCCUPIED BY PERMANENT EMPLOYEES	COLUMN 4 NO. POSITIONS NOT CURRENTLY OCCUPIED	COLUMN 5 NO. POSITIONS TO BE FILLED WITH LIPAR* SECTION 3
Officers/Supervisors				
Professionals				
Technicians				
Office/Clerical				
Service Workers				
Others				
Trade:				
Journeyman				
Helpers				
Apprentices				
Minimum No. Trainees				
Others				
Trade:				
Journeyman				
Helpers				
Apprentices				
Minimum No. Trainees				
Others				
Trade:				
Journeyman				
Helpers				
Apprentices				
Minimum No. Trainees				
Others				
Trade:				
Journeyman				
Helpers				
Apprentices				
Minimum No. Trainees				
Others				
TOTAL				

**Lower Income Project Area Residents. Individual residing within the Section 3 determined project area boundaries whose family income does not exceed 80% of the median income in the Standard Metropolitan Statistical Area (or the County, if not within the EMSA) in which Section 3 covered project is located.*

~~BUY AMERICA CERTIFICATE OF COMPLIANCE~~

Not required.



SECTION 3 - INSTRUCTIONS TO BIDDERS

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

1. HOW TO SUBMIT A BID:

a. **The original and three (3) copies** of your bid must be submitted in a sealed envelope, marked on the outside lower left-hand corner of the envelope with the bid number, title, due date and time. Bids shall be submitted to:

**City of West Palm Beach - Procurement Division
401 Clematis Street, 5th Fl.
West Palm Beach, FL 33401.**

b. Any bid received after the due date and time specified in the Invitation to Bid, whether by mail or otherwise, will be returned unopened and will not be considered. The time of receipt shall be determined by the time clock located in the Procurement Office. The City shall in no way be responsible for delays caused by any occurrence.

c. Bids submitted by telephone or facsimile shall not be accepted.

d. Submission of a Bid implies a full understanding of the Invitation to Bid, the Special Terms, the General Conditions and the drawings and specifications, the Project and the Work. Any misunderstanding as to such terms by the Bidder will not relieve the Bidder from performance.

e. 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.

2. THE BID PACKAGE. The Bid Submission Package Documents are listed on Form B1, page 61.

All required documents must be returned in order for the bid to be considered.

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 (B1 – B16).

Forms B-2 and B-3 must be signed in ink by an officer authorized to bind the Bidder.

All Forms must be fully completed.

Failure to complete any form or provide the required signature may be grounds for rejection of the bid.

3. COMPLETION OF BID SUBMISSION PACKAGE.

a. It is the responsibility of the bidder to insure that all pages are included. All bidders are advised to closely examine this package.

b. **All bids must be submitted on the provided Bid forms (B1 – B16).** Bids submitted on Contractor Letterhead or quotation forms will not be accepted.

c. All bids (Form B-2 and B-3) 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.**

4. ERRORS/ERASURES/CORRECTIONS

a. **Bids having erasures or 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. Any illegible entries, pencil bids or corrections not initialed may not be accepted.

b. 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.

c. Bidders shall not be allowed to modify their bids after the bid opening time and date. Bid files may be examined during normal working hours, after bid opening, by appointment only.

d. Bidder represents that it has taken all necessary steps to ascertain the nature and location of the work and that it has investigated and satisfied itself as to the general and local conditions which can affect the performance of the work, 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. 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 Owner.

5. BID PRICES

All prices shall remain valid for ninety (90) days after the date of bid closing or other time stated in the Special Terms.

Prices must be stated in the units specified on the Schedule of Bid Items (Form B3). Bidders may offer a cash discount for prompt payment; however, such discounts should not be considered in the unit price bid unless otherwise specified in special conditions.

6. 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 (Form B4) in the Bid Submittal Package. 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 items; not the proposed substitution. The best value bid will be established considering the base Bid, not any proposed substitution.

7. SUBCONTRACTING

If a bidder intends to subcontract any portion of the work, the Schedule of Contractors (Form B5) 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 sub-contractors, including any small business contracts that will also be listed on Form B12- Statement of Small Business Participation. All Small Business subcontractors must also be listed on both Form B5 – Schedule of Sub-Contractors and Form B12-Statement of Small Business Participation. Owner reserves the right to reject any bid if the bid names a subcontractor who has previously failed in the proper performance of an award, or failed to deliver on time contracts of a similar nature, or who is not in a position to perform under this award. Owner reserves the right to inspect all facilities of any subcontractor in order to make a determination as to the foregoing.

The Contractor shall submit for the City of West Palm Beach review and approval, as part of his bid submission, a sample copy of his company's daily reporting format for reporting the progress of construction. 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.

8. BID BONDS OR DEPOSITS

Each bid must be accompanied by a bid bond or a deposit in a sum of non less than five percent (5%) of the total bid. 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. Cashier Check or bank draft of any national or state bank.
3. Certified check drawn on a financial institution acceptable to the City of West Palm Beach
4. U.S. Postal Money Order

All checks and orders must be 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 with the City, the City may be entitled to retain the deposit or enforce the bond. Bid deposits of unsuccessful bidders will be returned after execution of a contract.

9. CERTIFICATION AND LICENSES

Bidder must include with his bid package a copy of all applicable Certificates of Competency issued by the State of Florida or the County Construction Industry Licensing Board and a current Occupational License in the name of the Bidder submitting the Bid from the County in which the Bidder's principal place of business is located. If awarded the contract, any Bidder who is not required to have an occupational license from the City will be required to obtain a Certificate of Registration from the City of West Palm Beach prior to contract execution.

10. NO LOBBYING

Bidder and its representatives are prohibited from contacting or lobbying the Mayor, any City Commissioner, City staff, evaluation committee, or any other person authorized on behalf of the City related or involved with this Invitation to Bid. Bidder's representatives shall include, but not be limited to, the Bidder's employee, partner, officer, director, consultant, lobbyist, attorney or any actual or potential subcontractor or consultant of the Bidder. All oral or written inquiries are to be directed to the Procurement Official. Any violation of this condition may result in rejection and/or disqualification of the Bidder.

The "No Lobbying" condition is in effect from the date of publication of the ITB and shall terminate at the time the City approves execution or executes the contract, rejects all bids or otherwise takes action which ends the solicitation process.

11. CONFLICT OF INTEREST

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

12. ETHICS REQUIREMENTS. 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, or member or their immediate family or close personal relation to receive a substantial 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, or any business entity in which they have a controlling financial interest. Any affected city employee may seek a conflict of interest opinion from the city ethics officer prior to the submittal of a bid. Additionally, any employee may seek a legal opinion from the State of Florida Ethics Commission regarding state law conflict of interest provisions.

13. SMALL BUSINESS PROGRAM. The goal for Small Business participation under the contract resulting from this Invitation to Bid is **15%** of the total contract value. Only small businesses certified by the City of West Palm Beach Small Business Program or from another agency whose certification is accepted by the Small Business Program will be accepted toward the small business goal. For your convenience, all Palm Beach County certified small businesses can streamline the City's certification process by submitting the appropriate documentation. The City may require additional information to ensure compliance with the City's small business criteria; therefore please contact the City's Small Business Office at (561) 822-2100 for further instruction for small business certification.

Bidders/contractors are encouraged to reference the Small Business Program's website at <http://www.wpb.org/procurement/index.php> for a directory of all currently certified small businesses. The directory is intended to assist bidders/contractors with meeting small business participation goals on City projects by connecting them with potential subcontractors for quotes, bids and RFP's.

In accordance with the SB Ordinance, the SB Program has adopted procedures requiring the completion of forms to insure compliance with the Small Business Ordinance. These forms are required to be submitted, as appropriate, with each proposal and/or during the course of the contract.

The following Small Business forms should be submitted with the Bid:

■ STATEMENT OF SMALL BUSINESS PARTICIPATION

List **all** your certified subcontractors -- indicate dollar amounts and percentages in the appropriate columns. This form is due with your proposal. **Only City of West Palm Beach and Palm Beach County Certified** SBs can be used to meet the established goal.

■ SUBCONTRACTOR'S LIST

List the names and telephone numbers of all SBs that submitted a quote to you, whether you will use them on this project or not. Also, include here, SBs listed in the *Statement of Small Business Participation*. Submit this form with your proposal.

■ LETTER OF INTENT

One form per SB subcontractor must be executed and delivered to the City's SB Program **prior** to contract award and will be made a part of the contract.

■ GOOD FAITH EFFORT

This form is only to be completed when the goal cannot be met.

14. PUBLIC ENTITY CRIMES. Pursuant to F.S. 287.133, a person or affiliate who has been placed on the convicted vendor list maintained by the State of Florida may not submit a bid to the City of West Palm Beach for 36 months following the date of being placed on the convicted vendor list.

15. INQUIRIES

Except as provided in this section, Bidders or others representing a Bidder are prohibited from contacting or lobbying the Mayor, any City Commissioner, City staff, Evaluation Committee, or any other person authorized on behalf of the City related or involved with this ITB.

Addendum(s):

Any interpretation or changes to the scope or meaning of this Invitation to Bid will be by written addendum. Any addendum issued for this Bid will be posted on the City's Purchasing website:

http://www.wpb.org/procurement/procurement_opportunities.php

It is the responsibility of each Bidder to ensure that all addendum(s) are received. The City will not be responsible for any addendum(s) issued that the company did not receive. Companies listed on the Plan-holder's List will receive an automatic notification when an addendum has been issued.

Questions

All questions regarding this Invitation to Bid should be submitted in writing and must be received not later than ten (10) business days prior to the closing date. Questions shall be submitted to:

City of West Palm Beach, Procurement Division
401 Clematis Street, 5th Floor
West Palm Beach, FL 33401
E-Mail: mhansraj@wpb.org
Fax: 561-822-1564

16. ACCEPTANCE; REJECTION; CANCELLATION

In accordance with the City's procurement code, 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, when determined to be in the best interests of the City. The City of West Palm Beach also 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. The City reserves the right to inspect all facilities of bidders. Any bid received without an authorized signature or past the submittal deadline will be rejected.

Any withdrawal or cancellation of this Invitation to Bid, 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, selection or failure to select a successful bidder to this Invitation to Bid shall be without any liability or obligation of the part of the City or its employees.

The City reserves the right to waive any non-material irregularities and technicalities, except timeliness and signature requirements. Additionally, 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 the City, unbalanced either in excess or below the reasonable cost analysis values; 7) bids is in excess of the approved budget for the project.

17. SELECTION OF BIDDER WITH WHOM TO CONTRACT

Pursuant to the City's Procurement Code, the selection of a bidder with whom to contract shall be based on the "best value" to the City" using the following criteria:

1. Skill and experience,
2. Capacity to perform in terms of facilities, personnel and financial viability,
3. Past performance,
4. Amount of the bid in relation to the needed goods, services, or construction,
5. Adherence to the specifications and requirements
6. Content of the bid.

18. POSTING OF AWARD TABULATIONS

The selected bidder will be notified in writing of the City's intent to award a contract. Recommended awards will be available for review by interested parties at the Office of the Procurement Official.

19. CONTRACT.

City and Bidder will be contractually bound only if and when a written contract between the parties is executed. In the event a contract is not executed with the selected bidder, the City reserves the right to select the next "best value" Bidder based on the bid tabulation and to contract with said bidder.

20. COSTS.

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

21. 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. The protest is considered filed when it is received by the Procurement Official. Failure to file protest in accordance with the Procurement Ordinance shall constitute a waiver of said protest.

22. CITY IS DOCUMENT GATEKEEPER

This ITB is issued directly by the City and the 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. The City is not responsible for any solicitations advertised by subscriptions, publications, websites (other than the City's) or other sources not connected with the City and the Bidder should not rely on such sources for information regarding any solicitation made by the City of West Palm Beach.



BID SUBMISSION PACKAGE DOCUMENTS

ITB 11-12-107 City-wide Roadway Resurfacing & Concrete Work

Company Name:

Enclose the following documents:

- 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. Schedule of Sub-contractors (B5). If none, mark "none".
6. Contractor Verification (B6). Check the license and insurance requirements to ensure that you will comply and attach copies of current licenses.
7. Reference List (B7)
N/A 8. Affidavit Of Prime Bidder re Noncollusion (B8). Be sure to sign and notarize the signature.
9. Drug Free Certification (B9)
10. Trench Safety Compliance Form (B10)
11. Small Business - Subcontractors Listing (B11)
12. Statement of Small Business Participation (B12) Attach small business certifications.
13. Small Business - Letter of Intent (B13)
14. Small Business - Good Faith Effort (B14) (only if required)
15. Contractor's Material Suppliers (B15)
16. Contractor's Existing and Proposed Workload (B16)
17. Bid bond or deposit (if required)
18. Copies of licenses, certifications and registrations
19. Sample of Daily Report
20. Forms F7-F15 and P1-P4

The Bid Envelope must be clearly marked, on the lower left corner, with the Bid Number, Title and Due Date.

THIS PAGE MUST BE RETURNED WITH YOUR BID.

Submit ONE (1) ORIGINAL and THREE (3) PHOTOCOPIES of your Bid package.

AVOID BID REJECTION:

All bids must be submitted on the provided Bid forms (B1 - B16).
Forms B-2 and B-3 must be signed in ink by an officer authorized to bind the Bidder.
All Forms must be fully completed.



BID

ITB 11-12-107

Company Name: _____

Bid Amount: \$ _____

(Write Dollar Figure Here)

Bidder agrees to furnish, unless otherwise provided, all implements, machinery, equipment, transportation, tools, materials, supplies, labor and other things necessary for the performance and completion of the work for the amount indicated above.

The undersigned Bidder hereby declares that:

1. This bid is made in good faith, without collusion or fraud and is fair and competitive in all respects.
2. 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.
3. Bidder has made a full examination of the site and is familiar with the site conditions that may impact its performance.
4. There is enclosed a bid guarantee consisting of five percent (5%) of bid price in the amount of \$ _____ (to be enclosed only with Work Order).
5. 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.
6. Bidder understands that the contract time starts on the date of Notice to Proceed.
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. The Bidder states that this bid is the only bid for this project in which Bidder is interested; and Bidder shall not be a sub-contractor or sub-subcontractor on this project.
9. Substantial Completion shall be in based on individual work orders issued by the City.
10. Liquidated damages for delay are agreed to be \$1,000.00/Final per calendar day.
11. Small Business participation for this project is 15%.
12. 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 Department.
13. All debris is to be legally disposed of at a licensed disposal site in accordance with city, state, and federal standards.
14. The City reserves the right to select and include one or more alternates in the Project and work.

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

Name Address

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

Name Address

17. Bidder and all affiliates, suppliers, subcontractor or consultants who will perform the Work have not been placed on the Public Entity Crimes convicted vendor list maintained by the State of Florida within the 36 months immediately preceding the date of this Bid.

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

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

20. 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.

Company Name: _____

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

State of Incorporated: _____ Telephone: _____ Fax: _____

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.



Schedule of Bid Items

(See Excel Attachment)



ITB 11-12-107

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
			\$ _____	\$ _____
			\$ _____	\$ _____
			\$ _____	\$ _____
			\$ _____	\$ _____
			\$ _____	\$ _____
			\$ _____	\$ _____
			\$ _____	\$ _____



SCHEDULE OF SUBCONTRACTORS

Failure to fully complete form may result in bid rejection.

The following is a complete list of all sub-contractors utilized for this project:

		Dollar amount of subcontract work
1.	_____ (company name)	_____ (type of work)
	_____	\$ _____

2.	_____ (company name)	_____ (type of work)
	_____	\$ _____

3.	_____ (company name)	_____ (type of work)
	_____	\$ _____

4.	_____ (company name)	_____ (type of work)
	_____	\$ _____

Total dollar amount to be awarded to sub-contractors (this page)		\$ _____

ITB 11-12-107
SCHEDULE OF SUBCONTRACTORS (continued if necessary)

5.	(company name)	(type of work)	\$	
	(address)	(tel. #)		
	(zip code)	(federal I.D. #)		
6.	(company name)	(type of work)	\$	
	(address)	(tel. #)		
	(zip code)	(federal I.D. #)		
7.	(company name)	(type of work)	\$	
	(address)	(tel. #)		
	(zip code)	(federal I.D. #)		
8.	(company name)	(type of work)	\$	
	(address)	(tel. #)		
	(zip code)	(federal I.D. #)		
	Total dollar amount to be awarded to Sub-contractors		\$	

Authorized Signature: _____

Note:

The above schedule of sub-contractors 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 Engineering Services Department for approval prior to that sub-contractor performing any work.



ITB 11-12-107

CONTRACTOR VERIFICATION FORM

PRIME BIDDER:

Name of Firm: _____

Address: _____

Telephone: () _____

Fax: () _____

GENERAL CONTRACTOR OF RECORD:

Name: _____

Address: _____

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: (ATTACH COPY OF CITY REGISTRATION OR BUSINESS TAX RECEIPT –*Maybe obtained from City Construction Services*)

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



City of West Palm Beach

(B9)

DRUG FREE WORKPLACE CERTIFICATION

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

_____ does:
(Company Name)

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 B-3 are costs for compliance with trench safety standards, including sheeting and shoring. Costs on this Form B-10 shall be consistent with Form B-3. The bid items for trench safety compliance on Form B-3 must equal the total amount for trench safety compliance indicated below.

Table with 4 columns: Trench Safety Measure (Description), Cost per Linear Foot, Linear Feet, Extended Cost. Rows A, B, C for trench safety and D, E, F for shoring safety.

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

Bidder Firm: _____

Authorized Signature: _____

Date: _____



Procurement Division/Small Business Program
 401 Clematis Street, 5th Floor
 West Palm Beach, Florida 33401-4702
 Tel: 561-822-2100
 Fax: 561-822-1564
 Website: www.wpb.org/purchasing/sbiz

(B-11)

Subcontractor's Listing

Company Name: _____ Phone No. _____

ITB Title: _____ ITB No: _____

NOTE: List **all subcontractors** you invited to bid on this project, whether they were selected or not, including those identified on the Schedule of Subcontractors. **Submit this form with your bid.** Use additional sheets if necessary.

Company Name	Work To Be Performed	Contact Person	Telephone Number
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____
7. _____	_____	_____	_____
8. _____	_____	_____	_____

Print Preparer's Name: _____ Title: _____

Signature: _____ Date: _____



Procurement Division/Small Business Program
 401 Clematis Street, 5th Floor
 West Palm Beach, FL 33401-4702
 Tel. (561) 822-2100
 Fax (561) 822-1564
 Website: www.wpb.org/purchasing/sbiz

(B12)

Statement of Small Business Participation

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

SECTION I. General Information

Company Name: _____

Preparer's Name: _____ Title _____

Bid Title: CITY-WIDE ROADWAY RESURFACING AND CONCRETE WORK Project Number: _____

ITB #: 11-12-107 SB Goal (if established): 15%

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
_____	_____	\$ _____	_____ %	_____ %
_____	_____	\$ _____	_____ %	_____ %
_____	_____	\$ _____	_____ %	_____ %
_____	_____	\$ _____	_____ %	_____ %
TOTAL		\$ _____	_____ %	_____ %

Preparer's Signature: _____ Date: _____



Procurement Division/Small Business Program
 401 Clematis Street, 5th Floor
 West Palm Beach, FL 33401-4702
 Tel. (561) 822-2100
 Fax (561) 822-1564
 Website: www.wpb.org/purchasing/sbiz

(B-13)

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 or Palm Beach County Office of Small Business Assistance (PBC-OSBA) 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

Company Name: _____

ITB Title: CITY-WIDE ROADWAY RESURFACING AND CONCRETE WORK

ITB Number: 11-12-107

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: _____



City of West Palm Beach

B-14

GOOD FAITH EFFORT REPORT

Instructions: Please complete this form if your firm is unable to meet the Small Business Requirement. Enclose original copy along with the required documentation with your Bid/Proposal.

Company Name: _____

Contact Name: _____ Phone No: _____

Bid Title: _____

Bid Number: _____

In accordance with the Small Business Ordinance, contractors submitting bids or proposals to provide goods, services and construction to the City of West Palm Beach shall attempt to comply with the small business participation goal. In the event the goal is not achieved, the contractor must include with their bid/proposal evidence of good faith effort to achieve the goal. The City of West Palm Beach shall consider the following in determining good faith effort:

- 1. Attendance at the pre-bid conference, if held: Yes No
- 2. Was a list of Certified Small Businesses obtained from the City and/or Palm Beach County Office of Small Business (PBC-OSBA) website? Yes No
If not, please provide the reason.

- 3. How did you contact the Certified Small Businesses? (Attach the documentation)

Telephone Email Fax Other: _____

- 4. How much time did you give Small Business to respond to your request for quotes?

- 5. List the types of work you attempted to subcontract:

- 6. Did you provide assistance or information to the Certified Small Businesses on how to access/review project plans, specifications, the ITP or RFP? Yes No If yes, please explain what assistance or information was provided.

- 7. List any Certified Small Businesses that submitted a quote for any type of work related to this project. If applicable, please explain why they will not be used on this project. (Use additional sheets if necessary)

Name of Company	Type of Work	Reason for Rejection
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

8. Please explain if bonding or insurance was an issue in rejecting a quote from a Certified Small Business.

9. Have you as a contractor utilized Certified Small Business subcontractors on other (Public and Private Sector) contracts within the last six months? Yes No
Please provide any documentation that can support your answer.

For Informational Use Only:

Did you use the services of small business associations (community organizations, contractor’s business groups), local, state and federal small business assistance offices; or other organizations that provide assistance in the recruitment and placement of small businesses? Yes No

If yes, please explain which organizations and provide written documentation.

The undersigned person hereby declares that the statements contained in this **Good Faith Effort Report** and all attachments which have been provided are true, accurate and complete, and include all material information necessary to support a finding of a good faith effort to achieve the Small Business Goal. The undersigned gives permission to any person and/or organization contacted by the City for the purpose of verifying the information contained in this **Good Faith Effort Report** to provide such information either orally or in writing.

Firm Name:

Signature:

Print Name:

Title:

Date:



City of West Palm Beach

(B15)

ITB 11-12-107

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 11-12-107

Contractor's Existing and Projected Workload Form

List all major construction projects your firm has in process, 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



City of West Palm Beach

BIDDER'S BOND

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 _____, 200__.

Bidder as PRINCIPAL:

SURETY:

Company: _____

Company: _____

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Address: _____



SECTION 4 – GENERAL CONDITIONS AND TERMS

<u>Section</u>	<u>Caption</u>
GC 1	Definitions
GC 2	Execution, Correlation and Intent
GC 3	Contractor Responsibilities
GC 4	Engineer's Status
GC 5	Design, Drawings and Specifications
GC 6	Materials, Labor, Equipment
GC 7	Quality Assurance
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GC 1 DEFINITIONS

(a) The "Owner", the "Contractor", and the "Engineer" are treated throughout the Contract as if each were of the singular number and masculine gender.

(b) "Engineer" shall be used and shall be understood to mean the professional engineer or architect consultant retained by the City or the designed staff engineer of the Engineering Services Department of the City of West Palm Beach.

(c) "Subcontractor" shall be understood to mean only those having a direct contract with the Contractor, and it includes one who furnishes material worked to a special design according to the plans and specifications of this work but does not include one who merely furnishes material not so worked.

(d) The term "work" means the construction services required by the Contract Documents, this Agreement and requires all labor, materials and services to be provided by the Contractor to fulfill the Contractor's obligations under this Agreement.

GC 2 EXECUTION, CORRELATION AND INTENT OF DOCUMENTS:

The Contract Documents shall be executed in two original sets by Owner and Contractor. 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 any conflict among the Contract Documents, the Contract Documents shall be construed according to the following priorities:

First Priority:	Specifications (quality)
Second Priority:	Drawings (location)
Third Priority:	Special Terms
Fourth Priority:	General Terms and Conditions
Fifth Priority:	Contract
Sixth Priority	Invitation to Bid
Seventh 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.

GC 3 CONTRACTOR RESPONSIBILITIES.

a) The Contractor shall be held liable to Owner for the performance of all work provided for under the Contract Documents. The Contract Documents make no attempt to fix the scope of work of any subcontractor nor the responsibilities of the subcontractors.

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

c) 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 and management of any subcontractors used to perform any portion of the work.

d) 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 the Owner approved the installation or erection of any item of material or equipment and the Contractor feels the same is not fabricated in good workmanlike manner, he shall forthwith advise the Engineer and the Owner of such situation in writing.

e) Contractor shall provide for each of the following activities:

(1) Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.

(2) Maintain a roster of subcontractors with name and contact telephone numbers for key personnel.

(3) Provide a safety program for the project and conduct a safety meeting prior to commencing work.

f) Any disputes which may arise between the Contractor and any subcontractor must be resolved between the parties concerned. The Owner will not undertake nor be in any way responsible for the resolution of such disputes.

GC 4 ENGINEER'S STATUS.

a) The Engineer will provide observation of the Contractor's activities and progress of the work. The Engineer will make inspections of all construction, draft change orders, and verify and certify partial and/or final payments due to the Contractor. The Engineer may, during the life of the Contract issue additional instructions, by means of drawings, minor change orders or otherwise, necessary to illustrate changes in the work.

b) The Engineer shall have authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the Contract or to protect the public and/or property. He shall also have authority to reject all work, materials and equipment which do not conform to the Contract and to decide questions raised by Contractor which arise in the execution of the work.

c) The Engineer will make decisions in writing on all claims of the 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 the Engineer shall be final.

d) Notwithstanding the above, the Engineer is no an arbitrator of disputes between Owner and Contractor. Any such disputes shall be resolved by Owner and Contractor under dispute resolution provisions of the contract or by such rights and remedies as are available to them.

GC 5 DESIGN, DRAWINGS AND SPECIFICATIONS.

a) The Owner through the Engineer, or the Engineer as the Owner's representative, shall furnish drawings and specifications which represent the requirements of the work as far as practical to be performed under the Contract Documents. The Owner or Engineer will provide the Contractor with copies of all drawings and specifications, not to exceed four (4) complete sets, for the execution of the work.

b) The specifications and the drawings accompanying them are intended to describe and provide for a finished piece of work; they are intended to be complementary and what is called for by either shall be as binding as if called for by both. The Contractor understands that the work shall be fully complete and functioning, notwithstanding every item or detail necessarily involved in the work is not particularly mentioned in the specifications and drawings.

c) The Contractor shall, immediately upon receipt of the specifications and drawings, check all specifications and drawings furnished and shall promptly notify Owner of any illegibility, errors, omission, defect or discrepancies discovered in such specifications and drawings and shall comment as appropriate upon construction feasibility and practicality. Contractor shall be responsible for obtaining building permits for the work based on the specifications and drawings. The Contractor shall perform work only in accordance with the specifications and permitted drawings and any subsequent revisions thereto.

d) If the permit approval process requires change the scope of the work, the Contractor shall notify the owner and Engineer within seven (7) days of receipt of the permitted 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 days shall be a complete waiver by the Contractor of all additional cost and time and Contractor shall perform the work at his expense and complete the work according to schedule and in no event shall Contractor recover delay or consequential damages.

e) The Contractor shall keep at the work site one (1) copy of all permitted drawings and specifications kept current with all changes and modifications and shall at all times give the Owner, the Engineer and all trades performing at the project, access thereto.

GC 6 MATERIALS, LABOR, EQUIPMENT.

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, tools, equipment, services, transportation and other facilities necessary for the execution and completion of the work. Unless otherwise specified, all materials incorporated in the final work shall be new and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind, quality and manufacturer of materials.

GC 7 QUALITY ASSURANCE

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.

GC 8 PERMITS AND FEES.

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 the Contractor, unless otherwise provided in the Special Terms. Contractor shall be responsible for all governmental fees, including but not limited to utility fees and connection fees. Owner shall be responsible for obtaining any necessary easements. For construction of a building, Owner shall be responsible for all City of West Palm Beach Construction Services plan and permit review fees

GC 9 PROJECT MANAGER.

To ensure that the work will be performed to the requirements of the Contract Documents, Contractor shall keep during the term of this Agreement a competent Project Manager and any necessary assistants, all satisfactory to the Engineer and Owner. The Contractor shall advise the Engineer, in writing, within ten (10) days after the date of Owner's issuance of a Notice to Proceed, the name and local address of the Project Manager who will be in charge of the project, together with the extent of his authority to represent and act of behalf of the Contractor, along with the Project Manager's cell phone number. The Contractor will ensure that Owner and Engineer shall be able to reach the Project Manager at his cell phone number at all working hours and during emergencies. The Project Manager shall represent the Contractor in his absence and all notices and directions given to him shall be binding as if given to the Contractor. Important directions shall be confirmed on written request in each case. The Contractor shall give sufficient superintendence to the work using a best skill and attention standard. If the Contractor, in the course of the work finds any discrepancy between the permitted drawings and the physical conditions of the locality, or any errors or omissions in the specifications or permitted drawings or in the layout as given by survey points and instructions, he shall immediately inform the Engineer and the Owner, in writing, and the Engineer will review the same and provide corrective instructions, if any are necessary. Any work done after such discovery, until authorized, will be done at the Contractor's risk. Neither party shall employ or hire any employee of the other party without the other party's consent. At any time Owner may request and Contractor shall replace the individual performing as Project Manager with an individual acceptable to Owner.

GC 10 SUBCONTRACTORS AND SUPPLIERS.

a) Unless otherwise required to be specified in Contractor's Bid, within ten (10) days after the date of the Owner's issuance of a Notice to Proceed, the Contractor shall furnish to the 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 the Contractor will engage as sub-contractors or suppliers for the Project. The 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 the Owner has made reasonable and timely objection in writing, after such notice. The Contractor understands and agrees that the Contractor alone is responsible to the Owner for all of the work under the Contract and that any review of subcontractors, sub-subcontractors or suppliers by the Owner or Engineer will not in any way make the Owner responsible to any subcontractor or sub-subcontractor or suppliers.

b) By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the Contractor by terms of the Contract and Contract Documents, including but not limited to the insurance requirements for workers' compensation and general liability coverage. The 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 the 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 the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors. The 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 subcontractor to the Owner.

- c) 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 the City or its Engineer and agrees that its exclusive remedy shall be an extension of its contract time.”

d) The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under contract conditions identical or substantially similar to these. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided in these General Conditions and Terms. The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

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

GC 11 CONTRACTOR MEETINGS

The Contractor shall, at its expense, attend any and all meetings called by the Owner to discuss the work under the Contract. The Owner, or its Engineer, will distribute typed minutes of each meeting to all attendees. Failure of Contractor to promptly object to the typed minutes shall constitute Contractor's agreement with the content of the typed minutes.

GC 12 SCHEDULING

a) Within ten (10) days after the date of the Owner's issuance of a Notice to Proceed, the Contractor shall prepare and submit to the Owner and to Engineer, 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 project, showing the sequence in which the Contractor proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The construction schedule shall be complete in all respects, covering approvals, mobilization and demobilization, construction and Owner occupancy, in addition to activities and interfaces with other Contractors at the work site, offsite activities such as design, fabrication, an allowance for weather delays, submittals, procurement and jobsite delivery of Contractor furnished material and equipment. Contractor agrees to complete the work and Project in accordance with the agreed construction schedule as amended by approved and duly executed change orders.

b) At the end of each calendar month, Contractor shall prepare a separate 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 will affect the progress of the performance of the work yet to be performed, in contrast with the CPM schedule and planned progress of performance of such work. Each such schedule shall be submitted to the Owner and Engineer. Failure of the Contractor to prepare and submit the monthly construction schedule(s) as aforesaid shall be sufficient grounds for

the Owner to find the Contractor in material default and shall be sufficient cause to terminate the Contract or to withhold payment to the Contractor until a current monthly schedule is submitted.

c) The Contractor agrees that whenever it becomes apparent from the progress review meeting or CPM schedule that the contract completion date will not be met, the Contractor shall notify the Owner and Engineer of the potential schedule change within three (3) days of a commencement of delay or knowledge of a potential delay. Prior to requesting a time extension, Contractor shall execute some or all of the following remedial actions at Contractor's sole cost and expense:

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 eliminate the backlog.
3. Reschedule the work in conformance with specification requirements.

d) Neither the Owner nor the Contractor shall be considered to own the schedule float time.

GC 13 LIQUIDATED DAMAGES.

If the actual completion date for substantial completion or final completion occurs later than the time indicated in the Special Terms 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 Special Terms shall be paid by Contractor for unexcused delay in performance of the work. Contractor agrees that Owner's actual damages in the event of unexcused delay are difficult to ascertain and therefore the parties agree that the sums established in the Special Terms are reasonably related to what damages Owner may suffer and are enforceable liquidated damages and not penalties. Notwithstanding the above, Contractor agrees that liquidated damages do not include additional costs invoiced by consulting Engineer to Owner for extended engineering services arising out of an unexcused delay, and Contractor agrees to reimburse Owner for such actual engineering costs incurred in addition to payment by Contractor of any liquidated damages.

GC 14 SCHEDULE OF VALUES.

Within ten (10) days after the date of the Owner's issuance of a Notice to Proceed, Contractor shall submit for review and approval of Owner and Engineer, a schedule of values, by phases of work, to show a breakdown of the Contract Price corresponding to the payment request breakdown and progress schedule line items. The schedule of values must also show dollar value for each unit of work scheduled. Change Orders are to be added as separate line items.

GC 15 LAND FOR WORK.

Contractor's access to the site and storage areas shall be as shown on the permitted drawings and as designated by the 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 the Owner. All contractor traffic authorized to enter the site shall be experienced in the route or guided by contractor personnel. The Contractor is responsible for immediate cleanup of any debris deposited along the access route as a result of its construction traffic. In the event the 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 the Owner shall be deemed proper cause for an equitable adjustment in both Contract price and time of completion.

Owner, and its duly authorized employees and representatives, 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, its representatives and employees, 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.

GC 16 SURVEY, LINES AND GRADE

Unless otherwise specified, the Engineer shall furnish all land survey control points, base lines and benchmarks for the location of the work. The Contractor shall be 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 base lines, points and elevations. From the information provided by the Engineer, the Contractor shall develop and make all detail surveys and establish lines and grades as required. The Contractor shall keep the Engineer informed as to its needs for base lines or bench

marks in order that the same may be furnished and all necessary measurements made for the record with a minimum of inconvenience to the Engineer or delay to the Contractor.

GC 17 SITE CONDITIONS.

Contractor shall have the sole responsibility of satisfying itself concerning the nature and location of the work and the general and local site conditions, and particularly, but without limitation, with respect to the following: conditions affecting the transportation, access, disposal, handling and storage of materials, equipment and construction machinery; 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 nature and quantity of surface and subsurface materials to be encountered; and all other matters which can in any way affect the performance of the Contract or the cost associated therewith. 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.

GC 18 SUBSOIL CONDITIONS.

Unless otherwise stipulated in the specifications and drawings, no subsoil investigations have been made. The Contractor shall satisfy itself as to all subsoil conditions.

GC 19 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, with copies submitted to Owner. 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.

GC 20 CONTRACTOR WORK AREA

Contractor's work area on the job site will be assigned by Owner. Contractor shall confine its office, storage, assembly, equipment and parking to the areas so assigned. Should Contractor find it necessary to use any additional land outside the work site for any purpose, Contractor shall, at its expense, provide for the use of any such additional land.

GC 21 CONTRACTOR-FURNISHED MATERIALS, EQUIPMENT AND WORKMANSHIP

Contractor shall provide and use on the work only such construction plant, machinery and equipment as are capable of producing the quality and quantity of work and materials required by the drawings and specifications within the established schedule. Only new, unused materials, equipment and items of recent manufacture, of designated quality, free from defects, will be accepted. Contractor shall, if requested, furnish evidence satisfactory to the Owner as to the kind, quality and manufacturer of materials. Upon written order of the Owner, Contractor shall discontinue operation of unsatisfactory plant, machinery, equipment and/or facilities. Owner will be the final authority for determining conformance of workmanship, materials, equipment and systems with the requirements of the Contract Documents.

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 property installation. Such drawings shall be submitted by and at the expense of Contractor. At least 21 days shall be allowed for review by Owner. If drawings show variations from the contract requirements, the 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 develop or selected by the Contractor and does not relieve Contractor from full compliance with the Contract Documents.

Where samples are required, samples shall be submitted 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 21 days shall be allowed for Owner's review.

The Owner or Engineer shall notify the Contractor of defective or unacceptable work if the Owner or Engineer discovers such. No work defective in construction or quality, or deficient in meeting any requirement of the Contract, drawings or specifications, will be acceptable regardless of Owner's failure to discover such defects during construction; nor will inspection by the Engineer relieve Contractor from ensuring the quality 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.

GC 22 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))

GC 23 PROTECTION OF THE WORK AND PROPERTY

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

Contractor shall preserve and protect all cultivated and planted areas and vegetation such as trees, plants, shrubs and grass on or adjacent to the premises, 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. All costs in connection with any repairs or restoration necessary or required as a result of damage shall be borne by Contractor.

Where practical, Contractor shall erect a temporary fence around the work site. Contractor shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall furnish these reports to Owner within three (3) days of each incident.

Until final acceptance of the work by the Owner, the 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 the Owner or third parties, except such as may be directly due to errors in the Contract Documents which the Contractor could not have discovered through due diligence, or caused by agents or employees of the Owner, unless such loss or damage would be covered by any policy of insurance maintained by the Contractor.

GC 24 UTILITIES

The Contractor shall, at its expense, arrange for, develop and maintain all utilities in work areas, including, but not limited to: construction power, water 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. Contractor shall conduct its operations so as not to damage, close or obstruct any utility installation, highway, road or other property until permits therefore have been obtained.

GC 25 DELIVERY UNLOADING AND STORAGE

Contractor shall, at its expense, receive, unload, store in a secure place, and deliver from storage to the construction site, all materials, plant and equipment required for the performance of the Contract. Material and equipment subject to degradation by outside exposure shall be stored in a weather-tight enclosure provided by Contractor at its expense.

GC 26 FIRE PROTECTION

All necessary precautions to avoid and eliminate fire hazards shall be the responsibility of the 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.

GC 27 ILLUMINATION

When any work is performed when daylight is obscured or at night, Contractor shall, at its expense, provide artificial light sufficient to permit work to be carried on satisfactorily and safely.

GC 28 DUST CONTROL

For the duration of the contract, the Contractor shall, at its expense, maintain all excavations, roads, plant sites, borrow areas and all other work areas free from dust. Code-required or industry-accepted methods of dust control suitable for the area involved and approved by Owner will be permitted.

GC 29 POLLUTION CONTROL

Contractor shall, at its expense, perform its work so as not to discharge into the atmosphere, any body of water, the ground or groundwater, from any source, smoke, dust or other contaminants in violation of the laws, rules, regulations and orders of all federal, state and local air, ground and water pollution requirements (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 site, 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, including but not limited to the payment of fines, penalties and damages. Contractor shall indemnify and hold harmless Owner from any expense, fine, penalty, obligation, action or liability resulting from such discharge and remedial actions.

GC 30 DEBRIS DISPOSAL

All debris shall be legally disposed of at licensed disposal site(s).

GC 31 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 with in the site. The Contractor will notify the 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 the Contractor or its sub-contractors, which results in contamination of the site, Contractor shall immediately notify the 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 the Contractor's sole cost and expense. Contractor shall indemnify and hold harmless the Owner from any expense, fine, penalty or obligation, action or liability resulting from such contamination and remedial actions.

GC 32 RIGHT-OF-WAY PERMIT; TRAFFIC PLANS. Contractor shall obtain a City of West Palm Beach right-of-way permit for each required road closure. As part of the requirements of the permit, Contractor shall submit for Owner's review and approval, signed and sealed detailed Maintenance of Traffic (MOT) plans 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. All MOT plans shall be reviewed and approved by Owner prior to implementation of work by Contractor.

GC 33 LABOR

Contractor shall employ only competent and skilled personnel to perform the work. Contractor shall, if requested by Owner, remove from the jobsite any personnel of Contractor who is determined by Owner to be unfit 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. All work performed after regular working hours, on Sundays or legal holidays, shall be performed without additional expense to Owner.

GC 34 SAFETY

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 job site the proper safety equipment for the duties being performed by the worker and will not permit any worker on the job site who fails or refuses to use the safety equipment. Contractor shall provide and maintain all necessary watchmen, barricades, warning lights, and signs and take all necessary precautions for the protection of all persons involved in the work, the public, and all employees or representatives of Owner. All work and all equipment, machinery, materials and tools shall be in compliance with and conform to all applicable laws, ordinance, rules and regulations.

GC 35 PROGRESS

During construction, Contractor shall keep a marked-up and up-to-date set of drawings showing as-built conditions on the site as an accurate record of all deviations between work as shown and work as installed. These drawings shall be available to Owner and Engineer for inspection at any time.

During construction, Contractor shall keep a marked-up and up-to date set of specifications showing as-is conditions on the site annotated to clearly indicate all substitutions or product selections that are incorporate into the work. These specifications shall be available to Owner and Engineer for inspection at any time.

Contractor shall be required to submit to Owner, on a monthly basis, two (2) copies of 8 1/2"x 11" color photos indicating the progress of the work identifying the dates that the work was performed. Contractor shall maintain current as-built surveys that indicate the completion of the work by Contractor and its subcontractors available for inspection at the project site.

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 the Contractor, Owner may so notify Contractor who shall thereupon, at its expense, take such steps as may be necessary to improve its progress to meet the approved schedule. If within a reasonable period as determined by Owner, Owner determines that Contractor is not prosecuting its work 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 this Contract.

GC 36 INSPECTION.

Owner, Engineer and their representatives shall at all times have access to the work whenever it is in preparation or progress, and Contractor shall provide proper facilities and personnel to facilitate such access and inspection. If the specifications, the Engineer's instructions, applicable laws, ordinances, or any public regulatory entity require any work to be specially tested or approved, Contractor shall give the Engineer timely notice of its readiness for observation and, if the observation is by another entity other than the Engineer, of the date fixed for such observation. If any work should be covered up prior to any inspection or test by Owner or Engineer, it must, if required by the Engineer, be uncovered for inspection and properly restored at Contractor's expense.

GC 37 TESTING

Unless otherwise provided in the Contract, drawings or specifications, shop testing of material, equipment or work shall be performed by Contractor at its expense and in accordance with the technical specifications. Should tests in addition to those required by the specifications 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. 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.

GC 38 SUBSTITUTION.

The naming of a specified product of specific manufacturers for equipment or materials under the various items of specifications or as shown on the plans 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 in writing, absent which, Contractor shall be deemed to accept the suitability of such equipment or materials for the work. Upon receipt of a timely objection notice, Engineer shall review the objection and render a determination to Contractor of whether a substitute will be permitted.

Prior to proposing any substitute item, Contractor shall satisfy itself that the item proposed is equal or better to that specified, that such item will fit into the space allocated, that such item affords comparable ease of operation, maintenance and service, that the appearance, longevity and suitability for the climate are comparable, that by reason of costs savings, reduced construction time or similar demonstrable benefit, the substitution of such item will be in Owner's interest and will in no way detrimentally impact the project schedule. The burden of proof that such an item offered is equal in all respects to that specified shall be Contractor's. Contractor shall submit drawings, samples, data and additional information as may be required by Owner. All requests for substitutions, with supporting information, shall be submitted by and at the expense of Contractor. At least 35 days shall be allowed for Owner's review.

Owner or its Engineer 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 Contractor. 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.

Contractor may make only two requests for substitution in the same category and Contractor shall be invoiced the expenses incurred by Owner for its design professionals in reviewing additional substitution requests, unless otherwise approved by Owner.

GC 39 CORRECTION OF DEFECTIVE MATERIALS, EQUIPMENT OR WORKMANSHIP

If any material, equipment or workmanship is determined by Owner, either during performance of the work, during final quality inspection or during the warranty period, to be defective or non in compliance with the specifications and the Contract, 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, 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 drawings, specifications and contract. If Owner or Engineer deems it inexpedient to correct work that has been damaged or that was not performed in accordance with the drawings, specifications and contract, an equitable deduction from the contract price shall be made for such work.

GC 40 CORRECTION OF WORK.

Contractor shall promptly remove from the premises all materials and equipment condemned by the Engineer as failing to meet contract requirements whether incorporated in the work or not, and Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to Owner and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement. Contractor further agrees to correct all work found by Owner to be defective or not in conformance with the drawings and specifications for a period of one year from the final certificate of occupancy for the project (or equivalent) or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the specifications Contractor shall commence final completion of nonconforming work and correction of the work within seven (7) days of written notice by Owner and shall diligently perform all such work in compliance with the objective standards commonly found in the construction industry of Palm Beach County, Florida. If the Engineer or Owner deems it inexpedient to correct work that is defective or that was not done in accordance with the Contract, an equitable deduction from the Contract price shall be made therefore.

GC 41 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 or fail to perform any provisions of the Contract Documents, Owner may, after three (3) calendar days written notice and opportunity to cure to Contractor, without prejudice to any other remedy Owner may have, make good these deficiencies and may deduct the cost thereof from the payment then or thereafter due Contractor.

GC 42 CHANGES IN WORK.

Owner, without invalidating the Contract Documents may order written additions to or deductions from the work, the Contract price being adjusted accordingly. The Engineer, with the consent of the City, will have authority to make minor changes in the work not involving extra cost, and not inconsistent with the purpose of the work. If Contractor believes that a variation or change justifies a modification in the Contract price, 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 or written Construction Change Directive is issued by the Engineer and executed by Owner. No change order shall be valid unless executed by the authorized signatory of Owner. The Engineer is not authorized to bind Owner to change in contract price or time. Contractor shall notify the Engineer in writing within seven (7) days of any occurrence which, in the opinion of Contractor, entitles it to claim an adjustment of the Contract price or a time extension, absent which notice, Contractor shall have waived such claim. The Engineer 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 to formulate a response. For the purposes of this paragraph, a day shall be defined as any business day, Monday through Friday, excluding holidays. The Engineer and Owner may issue an executed change order authorizing any changes in the work, adjustments in the Contract price and extensions of time. Execution of any Change Order by the parties shall constitute a final settlement and release by Contractor

of 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.

If a change order is not yet approved or cannot be agreed upon, Contractor is authorized, upon issuance of a written Construction Change Directive (CDD) prepared by the Engineer and approved by Owner, to proceed with such change on a time and material basis plus ten percent (10%). Contractor expressly acknowledges that commencing work without a written Change Order or Construction 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.

Upon approval by Engineer and Owner as to any adjustments to the Contract Price and/or Contract Time for changes performed under a CDD, such approval shall be recorded by the preparation of a change order. Contractor shall not seek payment for work performed pursuant to a CDD until it has been converted to a change order.

The Engineer shall have the authority to order minor changes in the work which do not involve adjustment to the Contract Price or Time and which are not inconsistent with the intent of the contract documents.

A bond rider from the Surety shall be submitted to the Owner with each change order that increases the Contract Price.

GC 43 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, 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, 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.

GC 44 CLEANING UP.

Upon completion of any portion of the work, Contractor shall remove at his 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 his operations. Contractor shall make its own arrangements, at its own cost, for disposal of rubbish and waste materials. Owner reserves the right to retain any surplus or salvage materials.

GC 45 BASIC REQUIREMENTS PRIOR TO SUBSTANTIAL COMPLETION

The following items shall be completed as a condition precedent to substantial completion and prior to a request by Contractor for inspection for substantial completion. In the event the Contract Documents do not define substantial completion, the following are also conditions for final completion and acceptance:

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. Issuance of all permits and certificates, inspections, and other approvals and releases by governing authorities required for Owner's occupancy and use of the project.
5. Project site shall be cleared of Contractor's excess equipment and/or supplies and material.
6. All sets of operation and maintenance manuals for all equipment shall have been submitted, as referenced in the technical specifications.
7. Manufacturers' certifications and warranties shall be delivered to Owner.
8. All operations and maintenance manuals for all equipment shall be delivered to Owner.
9. All required spare parts, as well as any special devices and tools shall be delivered to Owner.
10. A deductive change order for any uncommitted contingency or allowance funds has been prepared and submitted.
11. All keys and blanks shall have been provided.

12. Punch list of items required to render the construction services complete, satisfactory and acceptable to Owner. If the Contract provides for a multi-phased or multi-structure project, a punch list must be developed for each phase or structure.

Contractor shall arrange a joint site and project inspection(s) with Engineer and Owner for inspection for substantial completion and development of a punch list for the completion of construction services. Said punch list shall be prepared, signed by Contractor and submitted to Owner and Engineer not later than thirty (30) days after the inspection for substantial completion. Owner shall review submitted punch list within fifteen (15) days of receipt and if complete, shall sign punch list and distribute approved copies to Engineer and Contractor. If not complete, Owner shall return punch list to Contractor with a written detail of missing or disputed items. Any dispute over punch list items shall be mediated between Owner and Contractor with Engineer acting as mediator to develop an agreed punch list signed by Owner, Contractor and Engineer. Agreed punch list items shall be corrected by Contractor prior to any request for final inspection and acceptance. (F.S. 218.735).

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 the Engineer or design professional 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.

GC 46 FINAL INSPECTION AND ACCEPTANCE

The following items shall be completed as a condition precedent to a request by Contractor for final inspection:

1. Completion of all punch list items recorded from the substantial completion inspection.
2. A complete set of mylar or paper marked-up as-builts with "RECORD" or "AS BUILT" clearly printed on each sheet along with one copy on AutoCAD CD Release 14 or better on State Plane Coordinates. Contractor shall accurately and neatly transfer all deviations from progress as-builts to final as-builts. As-built records shall include drawings signed and sealed by a registered land surveyor certifying the elevation and location of improvements. Certified drawings are to show locations, lines and grade of buried pipe line 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. Certified drawings are to show building corners, sidewalks, paved areas and the location of all above ground structures within the project site. Contractor shall sign each final record drawing and note thereon that the final as-builts are complete and accurate.
3. 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 progress specifications to final as-builts.
4. A signed and notarized affidavit indicating that no asbestos containing materials were used or installed during the course of the work.
5. A list of each piece of equipment having an individual value of \$500 or greater. The list shall include, at a minimum, the name, make and model number, quantity installed, value of equipment.

Contractor shall inform Owner and Engineer in writing that work is ready for final inspection. The Engineer will, within five (5) business days, schedule such inspection with Owner and Contractor. When Engineer finds the work acceptable under the Contract Documents and all contract terms and conditions fully performed, Engineer shall issue a Final Certification to Owner.

GC 47 EXTENSION OF TIME

The time limit for the completion of the work as described in the Contract Documents is of the essence of this Contract. In the event of a claim of delay in the work, Contractor must request an extension of the contract completion date in writing and must provide the following information to Engineer and Owner within seven (7) days of commencement of the delay:

1. Confirmation whether all schedule updates, submittals and other conditions of the Contract have been met;
2. Affirmative representation that the delay is beyond the control of Contractor and subcontractors and due to no direct or indirect fault of Contractor.
3. Nature of the delay.
4. Dates of commencement / and 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. Anticipated extent of delay.

8. Recommended action to minimize delay.
9. Confirmation that Contractor has used all the float time available for the work involved in the delay request.
10. Such other supporting information as requested by Engineer.

Contractor acknowledges that the evaluation of time extensions will be based on the above information.

Time extensions for weather delays will only be considered if all float time is exhausted prior to the weather occurrence.

Owner will not consider a claim for time extension which does not comply with the preceding requirements. Contractor agrees that failure to timely request a time extension constitutes a waiver by Contractor of such claim for time extension.

If Contractor is delayed at any time in the progress of the work by any act or neglect of Owner, or by any employee of Owner or by any separate Contractor employed by Owner or by any changes ordered in the work, by fire, by unusual delay in transportation, by unavoidable casualties or by any causes beyond Contractor's control or by delay authorized by Owner pending resolution of disputes, and Owner has approved a Change Order extending the Contract Time for same, such extension of Contract Time shall extend the Project completion date and Substantial Completion date for such reasonable time as Owner shall determine in the Change Order.

GC 48 NO DAMAGES FOR DELAY; EXCLUSIVE REMEDY.

Contractor expressly agrees that a Change Order for an extension of the Project Completion date and Substantial Completion date constitutes its sole and exclusive remedies for efficiency or other related time or impact-based claims (hereinafter collectively "delay") or for delay attributable to any foreseen or unforeseen condition, or for delays claimed to be the result of active, intentional, knowing or passive interference by Owner, Engineer, or agents of either, and 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, 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 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 shall be made to Contractor as compensation for damages for any delays in the work, whether such delay be avoidable or unavoidable.

GC 49 PAYMENT PROCEDURE.

GC 49.1 Contractor's invoices shall reference the bid number. Estimates and payment requests must be directed to: **City of West Palm Beach – Accounts Payable, PO Box 3366, West Palm Beach, FL 33402-3366.** The Owner will not be responsible for any delay in payment at 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. (F.S. 218.70).

GC 49.2 Required Information. Each payment request shall reference the following information:

1. Bid Number
2. Contract Number
3. Project Number
4. Project Name
5. Owner's representative/ project manager

GC 49.3 Initial Payment. Prior to submittal of its initial payment request, Contractor shall have submitted the following items to the Engineer:

1. List of subcontractors and suppliers
2. Project schedule
3. Schedule of values
4. All current certificates of insurance
5. Designation of Contractor's Project Manager

GC 49.4 Progress Payments. Not more than once each month, Contractor shall prepare and submit a 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 and such supporting evidence as may be required by Owner and/or the Engineer. This estimate shall also include 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. Partial Release(s) of Lien and subcontractor Utilization Report shall be submitted with each payment requisition to verify payment(s) to subcontractors and material suppliers.

GC 49.5 In accordance with the Local Government Prompt Payment Act, until the Project is determined to be 50% complete, Owner shall withhold retainage of ten percent (10%) from each progress payment pay to Contractor based on Contractor's estimate and invoice as approved by the Engineer. It is agreed that the Engineer shall have the right to finally determine the amount currently due to Contractor. (F.S. 255.078).

GC 49.6 After the Project is determined to be 50% complete, Owner shall withhold retainage of five percent (5%) from each progress payment pay to Contractor based on Contractor's estimate and invoice as approved by the Engineer. It is agreed that the Engineer shall have the right to finally determine the amount currently due to Contractor. Contractor may present to Owner a payment request for up to one-half of the retainage held by Owner. If Owner has grounds under Florida law to continue to retain all or a portion of the requested retainage, Owner may continue to hold such retainage.

GC 49.7 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 advance written approval of Owner and Surety.

GC 49.8 If there remain items to be completed, Contractor and Owner shall list those items required for completion and Contractor shall require the retainage of a sum equal to 200% of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items likewise listed separately.

GC 49.9 Contractor shall timely pay and not withhold payments to sub-Contractors if such payments have been made to Contractor. Should this occur for any reason, Contractor shall immediately return such monies to Owner, adjusting pay requests and project bookkeeping as required.

GC 49.10 Substantial Completion. Following determination by the Engineer of substantial completion, Contractor shall separately list each item of the punchlist required for final completion and the estimated cost of completing each item. Provided all pre-requisites for substantial completion have been met, Contractor may submit a special payment request along with the cost list for unfinished work. The Owner may retain a sum equal to 150% of the estimated cost of completing the unfinished items.

GC 49.11 Final Payment. 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.

Upon issuance of a Final Certification by Engineer, and completion of all of the following items, Contractor may submit its final invoice.

1. Notarized and corporate sealed Final Release of Liens from all sub-contractors and suppliers.
2. Notarized and corporate sealed Final Release of Liens from Contractor.
3. Consent of surety for final payment.
4. 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. (F.S. 255.077).

GC 49.12 Contingency/ Allowances. If contract or schedule of bid items includes an agreed sum as the construction contingency and/or allowance, such amount is included for the purpose of defraying the expenses due to unforeseen conditions, extra work and circumstances relating to construction, unless otherwise agreed. Contractor shall obtain prior written approval from Owner prior to the expenditure of such 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. Such contingency and allowance accounts are not for use the by Contractor to cover short falls in Contractor's bid amount. All uncommitted contingency or allowance funds will be returned to Owner at substantial completion via a deductive change order.

GC 49.13 Withheld Payments. Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any certificate of payment to such extent as may be necessary to protect Owner if:

- a. Defective work or material is not remedied.
- b. Claims filed or reasonable evidence indicating public filing of claims by Owner or third parties against Contractor.
- c. Failure of Contractor to make payments to sub-contractors or for material or labor.
- d. Damage to another Contractor.
- e. Contractor is in default of any contract condition.
- f. Contractor fails to submit information required by this Contract.
- g. Contractor consistently fails to perform work in accordance with the Contract Documents.
- h. Owner has reasonable doubt that Contract work can be completed within the schedule or for the balance of the Contract price which remains unpaid.
- i. Contractors insurance coverage lapsed.
- j. Owner has a right to claim liquidated damages.

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.

GC 49.14 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 50 LIENS & RELEASES OF LIENS.

Neither the final payment nor any part of the retained percentage 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, if required 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; but 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).

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.

Final releases of liens for subcontractors can be provided in exchange for a check if the Contractor notifies the City at least 5 days in advance. Final release for the Contractor shall meet all requirements in GC 49. Upon completion/receipt of all requirements for final payment by the Contractor, Contractor may exchange the final release for a check upon ten (10) days advance notice to the City.

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

GC 51 PUBLIC CONSTRUCTION BOND. (if required)

- (a) In accordance with the provisions of F.S. 255.05, Contractor shall provide to Owner, on forms furnished by Owner, a 100% Public Construction Bond ("Bond") in an amount not less than the total Contract Price by a Surety Company acceptable to Owner. 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 Public Construction 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."

- (b) 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 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 Proposal is issued.
 - (5) The Surety Company shall have at least the ratings of A-/Class V in the latest issue of Best's Key Rating Guide.
 - (6) The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
 - (a) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to do business in this state have been met.
 - (b) In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

GC 52 INSURANCE.

1. Contractor shall during the Contract Term maintain and pay for insurance issued in a company or companies lawfully authorized to do business in Florida with a current AM Best Company rating of A-as to management and VII as to financial size, naming Owner as an Additional Insured, as will protect Owner from contingent liability under this Contract.

2. Coverages.

(a) workers' Compensation Insurance, including Employers Liability, as required by Florida Law, covering all employees. Contractor shall ensure that all sub-contractors comply with this requirement.

(b) Project Specific General Liability Insurance with limits of:

General Liability: \$1,000,000 per occurrence/ \$2,000,000 annual aggregate.

Projects and Completed Operations: \$1,000,000 aggregate

Automobile Liability: with combined single limit of \$300,000 per occurrence.

(c) When applicable to the work, property damage coverage shall be inclusive of protection against damage due to excavation, shoring and underpinning and/or coverage for the hazards of explosion, collapse and/or underground property damage.

(d) Including Contractor's Protective coverage for any sub-contractor's operations.

3. The Certificate of Insurance and policy endorsements or riders shall name the Owner as "ADDITIONAL INSURED" with respect to all Liability coverages. Contractor shall provide evidence of continued coverage in the event of renewal or policy termination. Owner may withhold payment to Contractor until evidence of insurance coverage is received.

4. These insurance requirements shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the Contract.

5. Any other or special insurance requirements will be addressed in the Special Conditions.

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

GC 53 INDEMNITY.

Contractor shall indemnify and hold harmless the Owner, its agents, employees and elected officers, 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 an act, negligence, recklessness or intentional wrongful misconduct of Contractor or its subcontractors, or the officers, agents or employees of either, while engaged in or about the performance of the work or while in or about the Project site or premises, or arising from accident or any injury not caused by act of Owner, Owner's agents or servants, or any anyone employed by Owner, other than the Contractor, to any contractor or any officer, agent or employee of a subcontractor while engaged in or about the performance of the work, or while in or about the Project site or premises, or arising from liens or claims for services rendered for labor or materials furnished in or for the performance of this Contract. See 725.06 F.S.

GC 54 DISPUTE RESOLUTION.

In the event of any dispute, Contractor shall continue to diligently make progress on all work not directly subject to the dispute. If the dispute regards payment or money, Contractor shall be obligated to proceed with all work without waiving its claims under dispute.

Final Completion. Notwithstanding any other provision, the parties agree that any unresolved dispute regarding the punch list or any other requirement for Final Completion shall be mediated and the Engineer may

serve as the mediator.

Waiver of Arbitration. 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 55 OWNER'S RIGHT TO TERMINATE CONTRACT FOR CAUSE.

If Contractor should be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to maintain an established schedule (30 days behind a critical path activity), to supply enough properly skilled workmen or proper materials; or if he should fail to make prompt payments to subcontractors or for material, equipment or labor or persistently disregard laws, ordinances or the instructions of the Engineer, or otherwise fails to conform to the Contract requirements or abandons or refuses to perform any work, Owner may without prejudice to any other right or remedy, and after giving Contractor and its Surety seven (7) calendar days written notice, terminate the employment of Contractor and take possession of the premises and of all materials, equipment, tools and appliances thereon, and finish the work by whatever method Owner may deem expedient. In such case, 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 Contractor cooperates with Owner and complies with all reasonable requests regarding the terminated work, and the work is finished. In no event shall Contractor receive any payment for work finished by Owner. If the unpaid balance of the Contract Price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, this excess shall be paid to Contractor. Reasonable termination expenses incurred by Owner may be deducted from any payments left owing Contractor (excluding monies owed Contractor for subcontract work). 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 finished and 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. 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.

GC 56 SUSPENSION OR TERMINATION BY OWNER FOR 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, or to terminate all or a portion of the Contract for Owner's convenience. 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. Those Contract provisions which by their nature survive final acceptance shall remain in full force and effect. If Owner orders a suspension, 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 this Contract.

GC 57 CONTRACTOR OBLIGATIONS UPON TERMINATION.

Upon receipt of written notice from Owner of termination, Contractor shall cease operations as directed by Owner in the notice; take actions necessary, or that Owner may direct, for the protection and preservation of the work; and except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders; and turn over all marked up drawings and specifications 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.

GC 58 REMOVAL OF EQUIPMENT AND MATERIALS.

In the case of termination of this Contract before completion, from any cause whatsoever, Contractor, if notified to do so by Owner, shall promptly remove any part or all of its equipment, materials and supplies from the property of Owner, failing which Owner shall have the right to remove such equipment, materials and supplies at the expense of Contractor.

GC 59 WARRANTY.

Contractor shall warrant that all materials and equipment included in the work will be new except where indicated otherwise in Contract Documents, and that such work will be of good quality, free from improper workmanship and defective materials and in conformance with the Contract Documents. Contractor warrants all equipment, materials and labor furnished against defect in design, materials and workmanship for a period of twelve (12) months from Final Payment, unless longer warranties are provided in the Contract Documents in which case the longer period prevails. Contractor shall collect, assign and deliver to Owner any specific written warranties given by others as required by the Contract Documents. Notwithstanding any provisions in the Contract Documents to the contrary, this express warranty shall commence on the date Owner obtains the final certificate of occupancy for the Project (or equivalent). Contractor shall conduct, at its expense, with Owner and Engineer, a warranty inspection prior to expiration of the warranty period(s). Upon receipt of Notice from Owner of failure of any part of the guaranteed equipment or materials during the guarantee period, the defective equipment parts or materials shall be replaced promptly with new equipment parts (or new equipment) and materials by Contractor, at no expense to Owner.

GC 60 ROYALTIES AND PATENTS.

Contractor shall pay for all royalties and license fees. Contractor indemnifies and shall defend and hold Owner and its representatives 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.

GC 61 VERBAL AGREEMENTS.

No verbal agreement or conversation with any officer, agent or employee of Owner 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 written and executed by both Owner and Contractor.

GC 62 MISCELLANEOUS TERMS.

GC 62.1 Headings. The headings contained in these General Terms and Conditions are provided for convenience only.

GC 62.2 Integration. This Contract constitutes the entire agreement between Contractor and Owner and supersedes all prior verbal and written agreements, understandings, negotiations and discussions between the parties hereto. The Invitation to Bid and its terms and conditions are incorporated herein and made a part of this Contract. No verbal agreement or conversation with any officer, agent or employee of Owner 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.

GC 62.3 Severability. The invalidity, illegality or unenforceability of any provision of the Contract shall not affect the validity, legality or enforceability or any other provision of the Contract and the Contract shall be construed and enforced in all respects as if the invalid, illegal or unenforceable provision is not contained herein.

GC 62.4 Assignment. Contractor shall not assign the Contract as a whole or in part without the written consent of Owner, nor shall Contractor assign any monies due or to become due to him hereunder without the previous written consent of Owner and its surety. Assigning the Contract shall not relieve Contractor or his surety from any contract obligations.

GC 62.5 Specific Waiver. Any waiver issued by Owner of any provision of the Contract Documents shall only be effective if issued in writing by Owner 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.

GC 62.6 Public Entity Crimes. By executing a Contract with Owner, Contractor certifies, in accordance with F.S. 287.133, that Contractor, its affiliates, suppliers, subcontractors and consultants who will perform under this Agreement 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 Invitation to Bid.

GC 62.7 Compliance with Laws. Contractor shall comply with all applicable City, State and Federal laws relating to the provision of services under this Contract, now or hereafter in effect. Contractor shall comply with all applicable City, State and Federal laws relating to wages, hours, and all other applicable laws relating to the employment or protection of employees, 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.

GC 62.8 Small Business Requirements. Contractor shall comply with the City of West Palm Beach's Small Business Ordinance set forth in Chapter 66 of the City Code, which is incorporated herein by reference. Contractor shall comply with the small business commitment contained in Contractor's Bid. Contractor shall maintain all relevant records and information necessary to document compliance with the Small Business Ordinance and shall allow the Owner to inspect and audit such records.

GC 62.9 No Solicitation. Contractor has not employed or retained any person employed by Owner to solicit or secure the Contract and it has not offered to pay, paid, or agreed to pay any person employed by Owner any fee, commission percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this Agreement.

GC 62.10 Non-Collusion. Contractor certifies that it has entered into no 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. (F.S. 838.22).

GC 62.11 Equal Employment Opportunity; Non-Discrimination. Contractor will not discriminate against any employee or an applicant for employment because of race, color, religion, sex, natural origin, age, familial status, marital status or handicap.

GC 62.12 Apprentices. If Contractor employs apprentices on the project, the behavior of Contractor and Owner 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.

GC 62.13 Unauthorized Aliens/Patriot's Act. The knowing employment by Contractor or its subcontractors 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 the Contract. In the event that the Contractor is notified or becomes aware of such default, the Contractor shall take steps as are necessary to terminate said employment with 24 hours of notification or actual knowledge that an alien is being employed. Contractor's failure to take such steps as are necessary to terminate the employment of any said alien within 24 hours of notification or actual knowledge that an alien is being employed shall be grounds for immediate termination of the Contract. Contractor shall take all commercially reasonable precautions to ensure that it and its sub-contactors do not employ persons who are not authorized to work by the immigration laws or the Attorney General of the United States. Contractor further represents that it is not in violation of any laws relating to terrorism or money laundering, including the Executive Order and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56., the "Patriot Act"). Contractor represents it is not a Prohibited

Person. Contractor does not: (i) to the knowledge of Contractor, conduct any business, engage in any transaction, or otherwise deal with any Prohibited Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) deal in or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order or the Patriot Act. "Prohibited Person" means: (i) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "Executive Order"); (ii) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) a person or entity with whom any party, as the case may be, is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering Law, including the Executive Order and the Patriot Act; (iv) a person or entity who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; (v) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/tlstdn.pdf> or at any replacement website or other replacement official publication of such list; or (vi) a person or entity who is affiliated with a person or entity listed above

GC 62.14 Right to Audit. Contractor shall 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 24 hours prior notice to Contractor, shall 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 hereunder to ensure that all aspects of the Contract are being met. Failure by Contractor to permit such audit shall be cause for termination of this Agreement by Owner.

GC 62.15 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 Owner and is not an employee of Owner and shall maintain control over its employees, subcontractors and work methods. Contractor more specifically acknowledges that it: will not be eligible to participate in any employee benefit maintained by Owner; will not be covered by Owner'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 in respect of all compensation and/or other consideration paid by Owner to Contractor hereunder.

GC 62.16 Availability of Funds. The obligations of the Owner under this Contract are subject to the availability of funds lawfully appropriated for its purpose.

GC 62.17 Litigation. 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. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS CONTRACT.

GC 62.18 Governing Law; Venue. This Agreement shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law. Owner and Contractor 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 be Palm Beach County, Florida, or the Federal Southern District of Florida seated in Palm Beach County. Contractor agrees to waive all defenses to any suit filed in Florida based upon improper venue or *forum nonconveniens*.

GC 62.19 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 Owner: City of West Palm Beach
Attn.: Engineering Services Director
401 Clematis Street 4th Floor
West Palm Beach, FL 33401

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

GC 62.20 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.

GC 62.21 Public Records. Contractor shall comply with Chapter 119, Florida Statutes, regarding access to public records. Failure of compliance may be cause for termination by Owner.

* * *



City of West Palm Beach

S A M P L E

PUBLIC CONSTRUCTION BOND FRONT PAGE

**This is the *front page* of the Public Construction Bond issued
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

Project Title:

Bid No.

Contractor Name: _____

Contractor's Principal Business Address: _____

Contractor's Telephone Number: _____

Surety Name: _____

**This is the *front page* of the Bond.
All other pages are subsequent regardless of the pre-printed numbers.**



City of West Palm Beach, Florida

S A M P L E

PUBLIC CONSTRUCTION BOND

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 sub-contractors, 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

(affix corporate seal)

Title: _____

Business Address

City State Zip

SURETY:

Corporate Surety

By: _____
Attorney-in-Fact

Business Address

City State

(affix corporate seal)

(Power of Attorney must be attached)



THE CITY OF WEST PALM BEACH
PARTIAL RELEASE OF LIEN-Contractor

The undersigned lienor, in consideration of the partial payment in the amount of \$ _____ hereby waives and releases its lien and right to claim a lien of labor, services or materials furnished from _____, 20 ____ through _____, 20____:
(Insert date) (Insert date)

On the job of THE CITY OF WEST PALM BEACH for the construction of:

Sealed Bid/Project No. _____

Project Name _____

This release does not cover any retention of labor, services, or materials furnished after the date specified.

Dated on _____, 20____

Lienor's Name: _____ (SEAL)
(company name)

Signed By: _____

Printed Name: _____

Title: _____

STATE OF FLORIDA }
COUNTY OF PALM BEACH } SS:

Sworn to and subscribed before me this ____ day of _____, 20____, a Notary Public appeared _____ of _____ who acknowledged that he/she executed the above PARTIAL RELEASE OF LIEN on behalf of the Corporation and its free act deed.

Signature of Notary Public

Print, Type, or Stamp Name of Notary

Personally Known _____

Produced Identification _____

Type of Identification Produced _____



THE CITY OF WEST PALM BEACH

PARTIAL RELEASE OF LIEN-Subcontractor

The undersigned lienor, in consideration of the partial payment in the amount of \$_____ hereby waives and releases its lien and right to claim a lien of labor, services or materials furnished from _____, 20____ through _____, 20____ to:
(Insert date) (Insert date)

Contractor Company Name

On the job of THE CITY OF WEST PALM BEACH for the construction of:

Sealed Bid/Project No. _____

Project Name _____

This release does not cover any retention of labor, services, or materials furnished after the date specified.

Dated on _____, 20____

Lienor's Name: _____ (SEAL)
(company name)

Signed By: _____

Printed Name: _____

Title: _____

STATE OF FLORIDA }
COUNTY OF PALM BEACH } SS:

Sworn to and subscribed before me this ____ day of _____, 20____, a Notary Public appeared _____ of _____ who acknowledged that he/she executed the above PARTIAL RELEASE OF LIEN on behalf of the Corporation and its free act deed.

Signature of Notary Public

Print, Type, or Stamp Name of Notary

Personally Known _____

Produced Identification _____

Type of Identification Produced _____



THE CITY OF WEST PALM BEACH

FINAL RELEASE OF LIEN - Subcontractor

KNOW ALL MEN BY THESE PRESENTS, that

_____ (Company Name)

for and in consideration of _____ Dollars (\$ _____)

(Total Amount of Contract)

paid to me/us by _____, the contractor for the City of West Palm Beach, Florida, on the project listed below, receipt of which is hereby acknowledged, do hereby release and waive all liens, lien rights, claims or demands for labor, services or materials of any kind whatsoever which I/we now have or might have against the property, building, and/or for any incidental expense for the construction of

_____ (Project Number) _____ (Project Name)

_____ (Property Address)

thereon or in otherwise improving said property.

The undersigned acknowledges that, under Florida law, the contractor, owner and other parties have a right to rely upon this waiver and release and that making any false statements shall constitute perjury and punishment can be made in accordance with the provisions of the law.

IN WITNESS WHEREOF I have hereunto set my hand and seal this _____ day

of _____, 20____.

_____ (Company Name)

WITNESS:

By _____

Print Name: _____

_____ Title _____

STATE OF FLORIDA }
COUNTY OF PALM BEACH } SS:

The foregoing Release was acknowledged before me this _____ day of _____, 20____ by _____, who is ↑ personally known to me or ↑ produced _____ as identification and who did not take an oath.

(Seal)

_____ Notary Public

Commission Number _____



THE CITY OF WEST PALM BEACH

FINAL RELEASE OF LIEN

KNOW ALL MEN BY THESE PRESENTS, that

_____ (Company Name)

for and in consideration of

_____ Dollars (\$ _____)
(Total Amount of Contract)

paid to me/us by the City of West Palm Beach, Florida, receipt of which is hereby acknowledged, do hereby release and quit claim to the City of West Palm Beach, Florida, the Owner, its successors or assigns, all liens, lien rights, claims or demands of any kind whatsoever which I/we now have or might have against the property, building, and/or for any incidental expense for the construction of

_____ (Project Number) _____ (Project Name)

_____ (Property Address)

thereon or in otherwise improving said property.

IN WITNESS WHEREOF I have hereunto set my hand and seal this _____ day

of _____, 20____.

_____ (SEAL)
(Company Name)

By _____
(name)

WITNESS:

_____ Title _____

STATE OF FLORIDA }
COUNTY OF PALM BEACH } SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

Notary (print & sign name)

Commission Number _____



S A M P L E
City of West Palm Beach
CONSTRUCTION CONTRACT

Bid No. _____
Project: _____
Contract No. _____
Requisition No. _____

THIS CONTRACT is made and entered into by and between 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 "Owner") and _____, a corporation of the State of _____, whose principal address is _____ (the "Contractor").

WHEREAS, the Owner caused to be prepared specification, drawings and other contract documents for certain work and issued an Invitation to Bid for the above-described project; and

WHEREAS, the Contractor submitted its Bid in response; and

WHEREAS, the Owner determined that the Contractor's Bid represents the best value to Owner 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 Owner and Contractor understand and agree as follows:

1. **SCOPE OF WORK.** The Contractor shall furnish all necessary labor, materials, equipment and supplies, and shall execute and complete in a good and workmanlike manner, all work shown on the technical specifications and drawings for the Project prepared by _____, dated _____, project number _____ (the "Contract Drawings"), for the _____ (the "Project"), which work is described in more detail in the Scope of Work detailed in the Invitation to Bid (the "work"). The work shall include the items described in the Base Bid (plus Alternates _____).
2. **CONTRACT PRICE.** The Owner agrees to pay the Contractor for the completion of all Work in accordance with the Contract Documents and Contractor's Schedule of Bid items and Bid. Owner and Contractor agree that the Contract Price shall include a contingency sum in the amount of _____ which shall be utilized in accordance with the General Conditions. Contractor will accept, as full compensation for completion of the Work, an amount not to exceed: _____ (the "Contract Price"), subject only to adjustment as provided in the General Conditions. Payments shall be made in accordance with the General Conditions.
3. **CONTRACT TIME.** Time of completion 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 of the Notice to Proceed issued by Owner, which Notice to Proceed shall become a part of and be incorporated into this Contract by this reference. Work shall be substantially completed within _____

S A M P L E

_____ (____) calendar days and fully completed within _____ (____) calendar days of the Notice to Proceed (the "Contract Time") with such extensions of time as are provided in the General Conditions.

4. LIQUIDATED DAMAGES. As of the date of this Contract, the actual damages Owner 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 Owner as liquidated damages, and not as a penalty, the sum of _____ (\$_____) per calendar day for each and every day or part of a day thereafter that said work remains incomplete.

5. SPECIAL TERMS.

6. SMALL BUSINESS PROGRAM.

6.1 Compliance. Article IX of Chapter 66 of the City of West Palm Beach Code of Ordinances relating to the Small Business Program is incorporated in this Contract by this reference. The Contractor agrees to comply in all respects with its commitment to use the certified small businesses identified in Contractor's Bid in the manner and proportions set forth in the Bid. In the event that it is impossible or impracticable to engage or procure materials from one or more of the identified certified small businesses, the Contractor shall so notify the City's Small Business Division promptly in writing and shall thereafter ensure that that firm or firms are duly replaced by other certified small businesses unless written approval to the contrary is granted by the City.

6.2 Records. The Contractor agrees to maintain in an orderly fashion all relevant records and information that document its compliance with the Small Business Program and the utilization of and payment to certified small businesses under this Contract; and shall make said records available to the City for inspection during reasonable business hours. Copies of all contracts between the Contractor and firms engaged by it in connection herewith shall be submitted to the City upon the City's request.

7. CONTRACTOR'S UNDERSTANDING. It is understood and agreed that the Contractor has, by careful examination, satisfied himself 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 Owner, 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 Owner 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 Owner.

8. ETHICS. Contractor acknowledges, agrees and commits that it shall comply with all applicable state and city rules and regulations.

S A M P L E

9. CONTRACT DOCUMENTS. Contractor agrees to complete all work in accordance with the Contract Documents. The term "Contract" and or "Contract Documents" shall include all the terms and conditions and Project requirements contained in this Contract and the following documents, all of which taken together are incorporated herein and form the Contract Documents. For convenience sake, some of the documents may not be attached to this Contract, but the listed documents make up the Contract Documents, whether or not they are attached.

- a. Scope of Work
- b. Special Terms
- c. Contractor's Bid
- d. Schedule of Bid Items
- e. Substitution Sheet
- f. Schedule of Subcontractors
- g. Contractor License Verification Form
- h. List of References
- i. Affidavit of Prime Bidder
- j. Drug Free Certification
- k. Trench Safety Compliance Form,
- l. Small Business – Subcontractors Listing
- m. Small Business – Statement of Small Business Participation
- n. Small Business – Letter of Intent
- o. Bidder's Bond and Relating Power of Attorney and Surety Certificate
- p. Public Construction Bond and Related Power of Attorney and Surety Certificate
- q. Insurance Certificates and Risk Management Compliance Certificate
- r. General Conditions and Terms
- s. Lienors Paid in Full (Form) Affidavit
- t. Release of Lien (Form)
- u. Technical Specifications and Drawings

This Contract shall be executed in two (2) original sets by Owner and Contractor. 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 WITNESS WHEREOF, the parties execute this Contract through their duly authorized representatives.

ATTEST:

CITY OF WEST PALM BEACH

By: _____
City Clerk

By: _____ S A M P L E _____
Mayor

Date: _____, 200__

CITY ATTORNEY'S OFFICE
Approved as to form
and legal sufficiency

By: _____
Date: _____

ATTEST:

Contractor:

By: _____
Corporate Secretary
Print Name: _____

By: _____ S A M P L E _____

Print Name: _____

Title: _____