



**PROCUREMENT DIVISION**  
401 Clematis Street, 3rd Floor  
West Palm Beach, FL 33401  
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**Request for Qualifications**  
**RFQ 17-18-407**  
**May 11, 2018**

**Construction Manager-at-Risk for  
Belmonte Road and Pershing Way Water and Sewer Improvements  
(S Olive Avenue to S Flagler Drive)**

The City of West Palm Beach is accepting proposals for Construction Manager-at-Risk (CMAR) services to be responsible for construction project scheduling and coordination in both preconstruction and construction phases and generally responsible for the successful, timely, and economical completion of the roadway and utility improvements in the El Cid Historic District of the City of West Palm Beach. This is one of the utility capital improvements projects identified in the Utility System Revenue Bond Program, Series 2017A. The work will include construction of water main and sanitary sewer mains, replacement of a force main, rehabilitation of a lift station, rehabilitation of stormwater system, rerouting of water services and sanitary sewer laterals, and reconstruction of roadway (including curb, driveway, and sidewalk). The City will seek a Guaranteed Maximum Price for the work.

Time is of the essence and any proposals received after **3:00 p.m., June 12, 2018**, whether by mail or otherwise, will be returned unopened. The time of receipt shall be determined by the time clock located in the office of the Procurement Division. Proposals shall be placed in sealed envelopes, marked in the lower left-hand corner with the firm name, RFQ number, title, and date and hour proposals are scheduled to be received. Proposers are responsible for insuring that their proposal is stamped by Procurement Division personnel by the deadline indicated.

**RESPONSES MUST BE IDENTIFIED AS: RFQ 17-18-407, Construction Manager-at-Risk for Belmonte Road & Pershing Way Water & Sewer Improvements (S Olive Avenue to S Flagler Drive).**

**PLEASE NOTE: THERE IS A PRE-PROPOSAL CONFERENCE SCHEDULED FOR MAY 23, 2018, AT 10:00 AM, CITY HALL – CONFERENCE ROOM 519, 401 CLEMATIS ST, WEST PALM BEACH, FLORIDA 33401. ATTENDANCE IS STRONGLY RECOMMENDED.**

Firms shall submit one (1) original, one (1) electronic version, and four (4) copies of the response to the Procurement Division at the time and date specified. Quotation documents can be acquired from DemandStar or electronically and free of charge by logging onto the City's website at:

<http://wpb.org/Departments/Procurement/Solicitations/Bids-List>

Interested parties may obtain a copy of this solicitation by contacting the Procurement Division at (561) 822 - 2100. All responses must be delivered or mailed to:

Patricia Armstrong, Senior Purchasing Agent  
City of West Palm Beach, Procurement Division  
401 Clematis Street, 3rd Floor  
West Palm Beach, FL 33401

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

  
By: Frank Hayden  
Director of Procurement

**Publish Date: May 11, 2018**

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## Exhibits

Exhibit A – Belmonte and Pershing Project Area and Existing Utilities

Exhibit B – Belmonte and Pershing Public Information Meeting Handout

**Construction Manager-at-Risk for  
Belmonte Road and Pershing Way Water and Sewer Improvements  
(S Olive Avenue to S Flagler Drive)**

**RFQ SCHEDULE**

Listed below are the dates, times and deadlines for various steps of this RFQ procurement process.

The Procurement Division may change any of these dates or times, as it deems necessary.

<b><u>ACTION</u></b>	<b><u>DATE</u></b>
RFQ Issue Date	May 11, 2018
Pre-Proposal Conference	May 23, 2018
Final Questions Due	June 2, 2018 at 5:00 PM
<b>Responses Due</b>	<b>June 12, 2018 at 3:00 PM</b> <b><i>Responses not timely received will be refused.</i></b>

## Construction Manager-at-Risk for Belmonte Road and Pershing Way Water and Sewer Improvements (S Olive Avenue to S Flagler Drive)

### PROJECT INFORMATION

#### 1. INTRODUCTION

The City of West Palm Beach is seeking proposals for Construction Manager at Risk (CM) services to be responsible for construction project scheduling and coordination in both preconstruction and construction phases and generally responsible for the successful, timely, and economical completion of the construction of the roadway and utility improvements on Belmonte Road and Pershing Way. The services are to be provided under a Guaranteed Maximum Price (GMP).

The Project is located in the El Cid Historic District of the City of West Palm Beach. The east and west project limits are from Olive Avenue to Flagler Drive. The north and south project limits extend from the easement south of Belmonte Road to the easement of north of Pershing Way.

The existing water distribution system within the project area is located in the rear easements. The existing water mains, installed in 1930's-1940's, have exceeded their useful service life. It is not a looped system. The existing sanitary sewer system is consisted of vitrified clay pipes.

The City's Lift Station No. 9 was built in 1950's. It is located in the parkway area at the NW corner of Pershing Way and Flagler Drive. The wetwell is under the pavement.

Both existing water and sewer systems in the rear easements have recurring O&M needs. There have been multiple service disruptions to area residents over the years. Within the corridor of the existing systems, there are overgrown vegetation, trees, fences, walls, and other overhead and underground utilities.

The intent of the project is to install new water main and sanitary sewer system in the road right-of-way of Belmonte Road and Pershing Way; transfer existing services from the rear easement to new connections in the street front; and place the existing water and sanitary sewer mains in the rear easement out of service.

The scope of the Project will include, but is not limited, to the following:

- Public outreach;
- Water main installation in the road right-of-way (water main, water services, and fire hydrants);
- Sanitary sewer installation in the road right-of-way (sewer main and sewer laterals);
- Rerouting water services and sanitary sewer laterals on private properties from rear easement to street front; Site restoration;
- Rehabilitation of an existing lift station, replacement of a force main;
- Stormwater system rehabilitation (repairs and/or lining as required). Rehabilitation of an existing outfall; and
- Full width roadway restoration (curb, sidewalk, and driveways)
- Narrowing of roadway including traffic calming is being considered

A schematic of the project area and existing utilities and flyer from the public information meeting held on March 14, 2018 are attached to this RFQ as **Exhibit A** and **Exhibit B**.

The water service transfer from the rear easement north of Pershing Way to Sunset Road is being accomplished under a separate City project.

## **2. SCOPE OF WORK**

**.Preconstruction Services:** The Construction Manager (CM) shall function as an agent of the City, shall be paid a fixed fee for services performed and shall be an integral part of the design team. Preconstruction services include:

- Serve as a Lead Member of the project team and coordinate and attend project meetings;
- Constructability review of design drawings and specifications to identify defects, omissions, and recommendations for alternatives;
- Written constructability analyses of the Project, including items to be addressed with the design consultant such as accessibility, construction methods, assembly, installation, material handling, expandability, phasing and other construction phase activities;
- Value engineering for all phases of the Project;
- Development of a schedule that identifies the detailed activities and efforts, including long lead-time procurements, required to achieve timely Project completion;
- Provide public outreach when determined by the City to be necessary;
- Competitively bid the project to qualified sub-contractors and develop a Guaranteed Maximum Price (GMP). The selected CM may perform up to 10% of the of the GMP value. All construction work planned to be self-performed by the selected CM is to be pre-approved by the City.
- Development of a Guaranteed Maximum Price (GMP) for the construction of this Project.

It is understood that development of the GMP will not occur until the constructability review and value engineering of the work has been completed.

**Construction Services:** The CM shall cease to be an agent of the City and shall become the single point of responsibility for performance of the construction of the Project. The CM shall function in the role as the general contractor providing all necessary services including but not limited to the following:

- a. Furnish and pay for all materials, labor, supervision, equipment, supplies, fees, expertise, incidentals and services necessary to fully complete the Project in accordance with all requirements of the Contract Documents and all applicable codes and governing regulations. Construction Manager shall ensure all Work is executed in a good, substantial and workmanlike manner.
- b. Manage the construction site and provide for the administration and supervision of the Project; Ensure conformance with design documents; Provide the means and methods of construction;
- c. Maintain competent staff at the Project site and/or its West Palm Beach office to coordinate and direct the Work and sub-contractors; provided, however, that one or more of Construction Manager's project team shall be at the jobsite at all times when work is being performed. Construction Manager shall not change its Project Manager, unless agreed to by Owner in writing. Owner shall have the right to direct Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event, Construction manager shall promptly replace such personnel without entitlement to additional personal or additional time for the replacement.
- d. Competitively bid subcontract work and share the results with the City and its consultants, enter into subcontracts and administer such subcontracts with the understanding that the City has the right to review and reject any subcontractor;
- e. Establish, implement and maintain procedures for coordination among the Construction Team;
- f. Establish and maintain the Project schedule and construction schedule including identifying variances, delays or early completion of tasks, and the maintenance of the schedule;

- g. Prepare an overall Construction Management Plan for the Project, including a procurement plan with a recommended procurement schedule to coordinate and expedite procurement of materials and equipment;
- h. Prepare shop drawings, RFI's and other documents necessary to accomplish the work;
- i. Develop and implement a system for cost control;
- j. Provide jobsite safety in accordance with OSHA requirements and jobsite security; Conduct a safety meeting with Construction Manager staff, sub-contractors and designer prior to starting work on site;
- k. Establish and enforce job rules governing parking, use of facilities, clean-up and worker discipline;
- l. Provide continuous monitoring and inspection of work to determine progress and conformance with design documents documenting same;
- m. Maintain written project progress records and provide written reports of project progress and status at least once a month relating to budget, progress payments, change orders, performance and schedule adherence, including progress photos, job meeting notes, and status of applications for payment;
- n. Manage the payment application process, including coordination with the Project team;
- o. Manage the change order process, including coordination with the Project team;
- p. Maintain a daily log containing a record of weather, sub-contractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Designer.
- q. Maintain written project progress records and provide written reports of project progress and status at least once a month relating to budget, progress payments, change orders, performance and schedule adherence;
- r. Schedule and coordinate all required inspections with appropriate disciplines and governing authorities including the City, FDOT, SFRC, and FEC;
- s. Develop plan, coordinate, and assist in the start-up testing and certification of any systems and equipment, replaced and/or affected by the construction;
- t. Conduct weekly progress meetings with the Construction Team. Take and keep written minutes of all meetings, decisions and discussions pertaining to this project and submit copies of same to the City and/or City designees for archiving.
- u. Participate in public outreach meetings, if directed by City's project manager;
- v. Perform or cause to be performed, all required remedial work identified through the inspection process and at direction of the City's appointed project manager;
- w. Monitor small business participation to ensure compliance with the established goal.
- x. Provide project close out coordination;
- y. Provide Certificate of Completion and all documents of record to City staff and/or consultants for archiving;
- z. Ensure compliance with all applicable federal and state laws and county and city ordinances, including but not limited to the Americans With Disabilities Act, and OSHA.
- aa. Provide all other services generally provided by Construction Manager on a project of like magnitude, scope, use, and complexity and required to timely complete the roadway and utility improvements construction work;;

### **3. DESIGN DOCUMENTS**

The design documents will be prepared by the firm Kimley-Horn & Associates will be provided when available during the pre-construction phase. Final plans will be developed based on CM input and comments during the pre-construction phase.

**4. TIME OF COMPLETION**

**Final completion must be accomplished on or before December 31, 2019.**

The Construction Manager shall work around City observed holidays and special events that may impact the project area. Holidays and Special Event schedules will be provided during the pre-construction phase of the project. Schedules shall be provided indicating the start/completion dates of the overall construction project.

**5. SUPPLEMENTAL GENERAL CONDITIONS**

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

**5.2 Performance Bond** In accordance with the provisions of F.S. 255.05, CM shall provide, on forms furnished by City, a 100% public construction bond covering payments to all claimants, as defined in Section 255.05(1), Fla. Stat., supplying CM with labor, materials, or supplies, used directly or indirectly in the work provided for in the contract, in an amount not less than the total contract price by a surety company acceptable to City. The Bond shall incorporate by reference the terms of the Contract Documents in its entirety. Within ten days of receipt of the fully executed contract, CM shall record its bond(s) in the public records of Palm Beach County and provide a certified copy of the recorded bond to City. CM should refer to General Condition 13.

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

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

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

**5.4. Small Business Participation.** In accordance with the Small Business Ordinance, the goal for Small Business participation under the contract resulting from this Request for Qualifications is:

15 % of the total contract value.

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

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

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

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

**5.6 Living Wage.** Any construction contract with a total contract value exceeding Two Hundred Thousand Dollars (\$200,000) and which is not subject to the Davis-Bacon Act or the payment of Davis-Bacon wage rates and is not a contract for a “public works project” as defined in Fla. Stat. Sec. 255.0992, is subject to the payment of a living wage in accordance with the City’s Living Wage Program, set forth in Article X of the Procurement Code, Sec 66-250, et seq. of the City’s Code of Ordinances.

If applicable, Contractor shall pay its employees a living wage of no less than \$14.00 per hour, which shall be increased to \$15.00 per hour as of October 1, 2019.

*Reporting payroll.* With every request for payment under the construction contract, the Contractor shall certify that the Contractor is in compliance with the living wage program and shall submit supporting payroll information showing the payroll records for each covered employee working under the construction contract for the period covered in the request for payment. Upon request from the City, the Contractor shall produce its payroll records for any or all of its covered employees for any period covered by the contract. The City may examine, inspect, and/or copy such payroll records as needed to ensure compliance with the requirement of the Living Wage Program.

*Maintenance of payroll records.* Contractor shall maintain payrolls for all covered employees and basic records relating thereto, and shall preserve them for a period of three years after the term of the construction contract, or during the pendency of any complaint, administrative hearing, appeal or litigation, until a final determination is made or all such proceedings have concluded. The records shall contain:

1. The name and address of each covered employee;
2. The job title and classification;
3. The number of hours worked each day;
4. The gross wages earned and deductions made;
5. Annual wages paid;
6. A copy of the social security returns and evidence of payment thereof;
7. Any other data or information this section should require from time to time.

*Posting.* A copy of the most current living wage rate shall be kept posted by the Contractor at the site of the work in a prominent place where it can easily be seen and read by the covered employees, and shall also be supplied to an employee within a reasonable time after a request to do so. Posting requirements will not be required where the Contractor prints the following statements on the front of the covered employee's first paycheck and every six months thereafter: "You are required by City of West Palm Beach law to be paid at least \_\_\_\_\_ dollars [NOTE: Covered employer to insert applicable living wage rate] per hour. If you are not paid this hourly rate, contact your employer, an attorney, or the City of West Palm Beach." All notices shall be printed in English, Spanish, and Creole.

By submittal of a Bid under this Invitation to Bid, each Contractor and its subcontractors agree to produce to the City all documents and records relating to payroll and compliance with the Living Wage Program

Any and all construction contracts subject to the Living Wage Program may be voidable, and no funds may be released, if a Contractor is found to be in violation of the Living Wage Program.

## **5.7 Insurance Requirements**

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

**COMMERCIAL GENERAL LIABILITY:** Contractor shall carry Commercial General Liability Insurance for all operations including but not limited to Contractual, Products and Completed Operations and Personal Injury with limits of not less than **Four Million Dollars (\$4,000,000) (aggregate)** and **Two Million Dollars (\$2,000,000)** per occurrence combined single limit for bodily injury and property damage. The insurance policy must include coverage that is no more restrictive than the latest edition of the commercial general liability policy, without restrictive endorsements and the policy must include coverage for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the employee and contractual exclusions removed.

**BUSINESS AUTOMOBILE LIABILITY INSURANCE:** Contractor shall carry business automobile liability insurance with minimum limits of **One Million Dollars (\$1,000,000)** per occurrence, combined single limits bodily injury liability and property damage. The policy must be no more restrictive than the latest edition of the business automobile liability policy without restrictive endorsements and must include owned vehicles and hired and non-owned vehicles.



Additional Insured: All required insurance (except Worker’s Compensation and Professional Liability) shall include an Additional Insured endorsement identifying the City of West Palm Beach, its commissioners, officers, employees and agents, as Additional Insured. No costs shall be paid by the City for an additional insured endorsement.

Certificate of Insurance: Evidence of insurance, being a current ACORD certificate of insurance or its equivalent, executed by the insurer, or its agent or broker, evidencing that a policy of insurance and any required endorsements have been issued by the agent/broker shall be delivered to City prior to execution of any contract awarded. The Certificate of Insurance shall be dated and show the name of the insured, the specific contract by name and contract number, the name of the insurer, the number of the policy, its effective date, and its termination date.

Sub-Contractors: Proposer(s) shall ensure that any sub-contractors will maintain during the term of their contract, the above types of insurance, in coverage amounts acceptable to the City.

**No Guaranty. The City reserves the right to not proceed with the construction phase of the project. City reserves the right to terminate either the contract at any stage of the project for its convenience.**

## **6. SPECIAL PROCUREMENT TERMS**

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

<i>Permit</i>	<i>Fee/Amount or calculation</i>
Building Permit	*
Right of Way Permit	*

\* Refer to City Website ([wpb.org](http://wpb.org)) for current permit fees.

6.2 **Licenses / Receipts.** The CM will be required to have at the time of submittal, the following current license(s):

- State of Florida - General Contractor’s License

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

6.4 **Equal Benefits Ordinance.** Section 66-9 of the City’s Code of Ordinances provides that, with limited exceptions, when contracting for goods, services or construction in an amount of \$50,000 or more, with persons or businesses with five or more employees that also provide benefits to employees’ spouses and dependents, the City shall contract only with those persons or businesses that provide equal benefits to employees’ domestic partners.

# Construction Manager-at-Risk for Belmonte Road and Pershing Way Water and Sewer Improvements (S Olive Avenue to S Flagler Drive)

RFQ 17-18-407

## MINIMUM REQUIREMENTS AND EVALUATION CRITERIA

### 1. MINIMUM REQUIREMENTS

To be evaluated for award, proposers must meet the following minimum qualifications:

1. License. Proposer shall have a General Contractor's license from the State of Florida.
2. Experience. Demonstrate construction experience of at least three (3) projects similar in magnitude and scope, in which the firm served as either CMAR or Construction Manager during design and construction phases (without providing construction services), or General Contractor for a municipal agency. Projects shall exhibit the Contractor's ability to construct underground utility and infrastructure projects within budget and schedule. Projects must have been completed within the last five (5) years.
3. Financial capacity. Demonstrate the ability to provide a performance and payment bond in the amount of the construction contract price; demonstrate ability to provide required insurance; demonstrate the ability to provide 1-year warranty on completed projects.
4. Past Performance. Proposer must have good references for prior projects as determined by reference checks.
5. Surety. During the lifetime of the organization, as presently named, the CM shall not have defaulted to a bonding company/ surety for the completion of any projects.
6. Convicted Vendor List. CM has not been placed on the Convicted Vendor List kept by the Florida Department of Management Services, within 36 months of bid submittal.
7. Discriminatory Vendor List. CM has not been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services.
8. Scrutinized Company. CM is not on the Scrutinized Companies that Boycott Israel List or is not engaged in a boycott of Israel. If the estimated GMP will be over \$1 million, CM is not on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business activities in Syria or Cuba.
9. Authorized Officer. Proposal is signed by an officer authorized to bind the firm –
10. Timely receipt. Proposal received in the Procurement Division on or before the due date and time.

### 2. EVALUATION CRITERIA

Qualifications will be evaluated based on the following evaluation factors, in addition to those factors established in the City's Procurement Code, in determining the best value to the City.

1. CM firm experience and reference responses. Skill, workmanship, and experience demonstrated by the Bidder, and its subcontractor(s), in performing the same type of work or services as those sought by the City.
2. Firm capacity in terms of personnel, equipment and workload.
3. Contractor personnel / subcontractor experience.
4. Firm capacity in terms of financial viability and ability to provide required bond and insurance.

5. Past performance of firm and its subcontractor(s) on City Projects or work.
6. Ability to meet the requirements of the Project.
7. Project understanding and approach.
8. Ability and commitment to self-perform a minimum of 25% of the work on the Project.
9. Ability and commitment to comply with local workforce requirements, if applicable.
10. Ability and commitment to comply with living wage requirements, if applicable.
11. Contractor safety information.
12. Evidence of ability to work efficiently and cooperatively with City staff;
13. Small business participation.
14. Compliance with the equal opportunity provisions of the procurement code.
15. Compliance with the equal benefits provisions of the procurement code.
16. Impact to local economy in comparison to other bidders.
17. Any suspension or debarment by any government entity; Any prior conviction for bribery, theft, forgery, embezzlement, honest services fraud, falsification or destruction of records, or other offense indicating a lack of business integrity or honesty; any prior violation of State, City or County ethical standards. Suspension or debarment by the City or another government entity.
18. Consideration of any other factors or requirements specific to the RFQ.
19. Such other information as may be obtained by the City.

# Construction Manager-at-Risk for Belmonte Road and Pershing Way Water and Sewer Improvements (S Olive Avenue to S Flagler Drive)

RFQ 17-18-407

## INSTRUCTIONS FOR SUBMITTALS

### 1. Preparing Proposal for Submission

Each Proposer is required, before submitting its Qualifications ("Proposal"), to carefully examine the requirements and to completely familiarize themselves with all of the terms and conditions that are contained within this RFQ. Ignorance on the part of the Proposer will in no way relieve the Proposer of any of the obligations and responsibilities which are a part of this RFQ. This RFQ constitutes the complete set of specification requirements and forms. It is the responsibility of the Proposer to insure that all pages are included. Therefore, all Proposers are advised to closely examine this package and their Proposal prior to submittal.

All Proposals must be typed or written in ink, and must be signed in ink by an officer or employee having authority to bind the company. Signatures are required where indicated; failure to properly sign the Proposal shall be cause for rejection of proposal.

Proposals shall be presented in a clear and concise format, on 8 1/2" x 11" papers, in English. Each tabbed set shall contain all the information required by this RFQ. Omission of required data may be cause for disqualification. Any other information thought to be relevant, but not applicable to the enumerated sections, should be provided as an appendix to the Proposal. The Proposer is asked to limit marketing materials and excess verbiage yet, sufficiently describe their qualifications, cost, and other information pertinent for evaluation. Only one proposal may be submitted by each Proposer.

No modifications to those proposals already submitted will be permitted prior to award, except in those cases where the City requests more information for clarification and/or enhancement purposes from all of the Proposers.

By submitting its Proposal, Proposer acknowledges that its Proposal may become part of any contract entered into between the City and Proposer.

Proposals shall be placed in a sealed envelope, marked in the lower left-hand corner with the Proposer firm's name, RFQ number, RFQ title, deadline date and hour for receipt of Proposals.

### 2. Proposal Format

The Proposal must be divided into separate sections by tabs as follows. Where indicated, the City forms must be completed and submitted:

1. Proposal Cover Letter
2. Administrative Section, Resumes, Firm Information, **Attachment A**
3. Experience and Past Performance
4. Experience of key personnel to be assigned to this project.
5. Financial Capacity
6. Approach to Project
7. Representations and Disclosures, **Attachment B**
8. Small Business Forms, **Attachment C**
9. Equal Benefits Certification, **Attachment D**.
10. Local Workforce Certification, **Attachment E**
11. Living Wage Certification, **Attachment F**
12. Scrutinized Companies Certification, **Attachment G**

This checklist is not to be construed as identifying all required submittals for this RFQ. Each proposer is responsible for reading the entire document to ensure compliance.

Use of City Name; Logos or Seal. Proposers shall not use the logo or seal of the City of West Palm Beach in its Proposals.

Detailed information regarding each proposal section is set forth below.

**1. Proposal Cover Letter**

A proposal cover letter is required containing the corporate name, principal address, telephone number, fax number, website and email address of Proposer and principal contact person. The cover letter shall be no more than one page. Indicate the primary person responsible for this project. Cover letter shall be signed by an individual authorized to bind the firm.

**2. Administrative Section / Resumes / Firm Information**

- a. Include **Proposer's Information Page** (See **Attachment A**). Indicate the State in which Proposer's firm is incorporated or organized. If other than Florida, include evidence of authorization to do business in Florida.
- b. Provide evidence of General Contractor's license from the State of Florida.
- c. Describe Proposer's firm, including the size, total number of persons employed by the company, and range of activities and services. Identify the location of the corporate headquarters, regional and local offices. Identify the office which will provide the services under the contract and the total number of persons presently employed at that location.
- c. Provide an organization chart and resumes of key staff to be assigned, length of employment with company, position, title, experience and training. Resumes should include relevant background, qualifications and experience conducting similar services. Identify the staff member to be the key point of contact with City staff.
- d. Describe the firm's current and anticipated work load. Include a summary of current projects and anticipated completion timeframes. Describe how priority will be assigned to City tasks within your organization, realizing that the City may be one of many clients with competing priorities.
- e. Provide information on any litigation, arbitration, mediation or other legal proceeding (including licensure, disciplinary and debarment proceedings – settled or pending) the firm (or any predecessor firm) has been involved in as a party within the last five (5) years. Give the case name and current status of each matter.

**3. Experience and Past Performance**

Discuss your team's experience with similar projects for Construction Management at Risk projects that were successfully completed on schedule and within budget. Identify construction experience of at least three (3) projects similar in magnitude and scope in which the firm served as either CMAR or construction manager (without providing construction services) or General Contractor for a governmental agency. Provide project specific information including project description, size and scope, location, initial cost and actual cost after completion, date of completion. Discuss in detail for each project challenges encountered and value engineering, if any, performed. Projects shall demonstrate Contractor's ability to construct underground utility and infrastructure projects within budget and schedule. Projects must have been completed within the last five (5) years.

Provide a minimum of five (5) references within the past five (5) years with scope and nature similar to this project. References must include the name of the contact person and agency, address, telephone and email address. A reference person must be someone who has direct knowledge of the proposer's work and performance.

**4. Experience of key personnel to be assigned to this project.**

Identify all key personnel for the proposed project team. For each key person identified, list their length of time with the firm and at least two comparable projects in which they have played a primary role. If a project selected for a key person is the same as one selected for the firm in answering item 3 above, provide just the project name and the role of the key person. For other projects provide the following:

- a. Description of project
- b. Role of the person

- c. Project's original contracted construction cost and final construction cost
- d. Construction dates
- e. Project owner
- f. Reference information (two current names from owner with telephone numbers per project)
- g. If the project identified was either a CMAR or Design/Build Project, provide the following additional information: The name of the lead design firm with contact name and phone number.
- h. Phase of design at the time the individual started to play an active role (i.e. 30%, 60%, 90%, etc.).

## 5. Financial Capacity.

- a. Demonstrate the ability to provide a performance and payment bond in the amount of the construction contract price;
- b. Demonstrate ability to provide required insurance;
- c. Demonstrate the ability to provide 1-year warranty on completed projects
- d. Certify that during the lifetime of the organization, as presently named, the Proposer has not defaulted to a bonding company/ surety for the completion of any projects.
- e. Certify that Proposer has not filed for bankruptcy in the past five (5) years.

## 6. Approach to the Project

The proposal shall include a description of the proposed service, with any exhibits or documentation deemed essential, addressing the following phases of the proposed service:

- a. Overall approach, understanding the City's needs and intent of the project, and method to achieve timely project completion
- b. Describe your firm's project management approach and interaction with the design team that will result in constructing the project within budget.
- c. A timeline schedule indicating major work tasks for the project and duration (number of days) for timely completion
- d. Public outreach during design and construction
- e. Describe project challenges
- f. Describe your firm's project management approach that will be used during the design and construction phase of this CMAR project.
- g. Describe your firm's quality control process.
- h. Describe involvement of City staff and meeting the City's operational requirements
- i. Describe the firm's current work load
- j. Methodology intended to implement and accomplish the project
- k. Identify proposed subcontractors and their roles on the project.

## 7. Representations and Disclosures

By submitting its Proposal, Proposer shall make the following representations and disclosures, and shall submit **Attachment B**.

1. Conflict of Interest. Proposer has disclosed any actual, apparent or potential conflicts of interest that are present or could develop with respect to providing services under this solicitation any parties to this solicitation or any third parties. Proposer has identified the name of any officer, director, employee or agent who is also an employee or official of the City of West Palm Beach or the West Palm Beach Agencies. Further, Proposer has disclosed the name of any City official or employee or Official who owns, directly or indirectly, interest of ten percent (10%) or more in the Proposer's firm or any of its affiliates or team members.

Proposer shall have no other interest, direct or indirect, in the Project (other than an agreement awarded under this RFQ).

The existence of any such conflicts of interest will not automatically disqualify any Proposer from consideration. The City will evaluate such disclosures and determine whether they are disqualifying or subject to possible mitigation measures.

2. Good Faith. Proposer represents that the Proposal is made without connection with any persons, company or party submitting another proposal, and that it is in all respects fair and in good faith without collusion or fraud.
3. Financial. Proposer certifies that Proposer has not filed for bankruptcy in the past five (5) years.
4. Criminal. Proposer certifies that neither Proposer nor any of Proposer's principals have been convicted of a felony or fraud. Indicate if any principals have been indicted for a felony or fraud.
5. Representations. Proposer certifies that Proposer and any parent corporations, affiliates, subsidiaries, members, shareholders, partners, officers, directors or executives thereof are not listed on the:
  - a. Convicted Vendor List kept by the Florida Department of Management Services within 36 months of submittal of the Proposal;
  - b. Discriminatory Vendor List maintained by the Florida Department of Management Services;
  - c. Scrutinized Companies that Boycott Israel List and is not engaged in the boycott of Israel (**Attachment G**)
  - d. (If the estimated GMP is over One Millions Dollars) Scrutinized Companies with Activities in Sudan List;
  - e. (If the estimated GMP is over One Millions Dollars) Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List;
  - f. And not engaged in business activities in Syria or Cuba.
6. No Solicitation or Contingent Fee. Proposer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Proposer, to solicit or secure an award under this RFQ 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 Proposer, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from an award under this solicitation.
7. Use of Funds. Proposer 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 RFQ will be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.
8. No Liability. Proposer recognizes and agrees that the City will not be responsible or liable in any way for any losses that the Proposer may suffer from the disclosure of Proposal information to third parties.

**8. Small Business Program**

In an effort to encourage small business participation, the City has established a Small Business ("SB") Program. The SB Program is set forth in Chapter 66 of the City's Code of Ordinances and is incorporated in this RFQ by reference. However, Proposers are encouraged to read it in its entirety. Please note that, regardless of whether a goal is established or not, the City encourages small business participation in all of its procurements.

In accordance with the SB Program Ordinance, a goal for SB participation for this RFQ has been set **in the minimum amount of fifteen percent (15%)** of the total contract value.

Proposers are encouraged to reference the Small Business vendor list included with the RFQ documents.

The following Small Business forms must be submitted:

- a. Subcontractors List  
All SB subcontractors must be reported on the Subcontractors List -- indicate dollar amounts in the appropriate columns. This form is due **with your Proposal.**

b. Letter of Intent Form

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

Compliance with the Small Business goals shall be considered as a material criterion for selection.

**9. Equal Benefits Ordinance**

Section 66-9 of the City's Code of Ordinances provides that, with limited exceptions, when contracting for goods, services or construction in an amount of \$50,000 or more, with persons or businesses with five or more employees that also provide benefits to employees' spouses and dependents, the City shall contract only with those persons or businesses that provide equal benefits to employees' domestic partners. Each proposer shall submit an Equal Benefits certification with its proposal (**Attachment D**).

**10. Local Workforce.**

If applicable, each proposer shall submit a certification agreeing to comply with the requirements of the City's Local Workforce ordinance described in Section 1 – **Attachment E**.

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

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

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

**11. Living Wage. .**

If applicable, each proposer shall submit a certification agreeing to comply with the requirements of the City's Living Wage ordinance described in Section 1 – **Attachment F**.

Any construction contract with a total contract value exceeding Two Hundred Thousand Dollars (\$200,000) and which is not subject to the Davis-Bacon Act or the payment of Davis-Bacon wage rates and is not a contract for a "public works project" as defined in Fla. Stat. Sec. 255.0992, is subject to the payment of a living wage in accordance with the City's Living Wage Program, set forth in Article X of the Procurement Code, Sec 66-250, et seq. of the City's Code of Ordinances.

If applicable, Contractor shall pay its employees a living wage of no less than \$14.00 per hour, which shall be increased to \$15.00 per hour as of October 1, 2019.

*Reporting payroll.* With every request for payment under the construction contract, the Contractor shall certify that the Contractor is in compliance with the living wage program and shall submit supporting payroll information showing the payroll records for each covered employee working under the construction contract for the period covered in the request for payment. Upon request from the City, the Contractor shall produce its payroll records for any or all of its covered employees for any period covered by the contract. The City may examine, inspect, and/or copy such payroll records as needed to ensure compliance with the requirement of the Living Wage Program.

*Maintenance of payroll records.* Contractor shall maintain payrolls for all covered employees and basic records relating thereto, and shall preserve them for a period of three years after the term of the construction contract, or during the pendency of any complaint, administrative hearing, appeal or litigation, until a final determination is made or all such proceedings have concluded. The records shall contain:



1. The name and address of each covered employee;
2. The job title and classification;
3. The number of hours worked each day;
4. The gross wages earned and deductions made;
5. Annual wages paid;
6. A copy of the social security returns and evidence of payment thereof;
7. Any other data or information this section should require from time to time.

*Posting.* A copy of the most current living wage rate shall be kept posted by the Contractor at the site of the work in a prominent place where it can easily be seen and read by the covered employees, and shall also be supplied to an employee within a reasonable time after a request to do so. Posting requirements will not be required where the Contractor prints the following statements on the front of the covered employee's first paycheck and every six months thereafter: "You are required by City of West Palm Beach law to be paid at least \_\_\_\_\_ dollars [NOTE: Covered employer to insert applicable living wage rate] per hour. If you are not paid this hourly rate, contact your employer, an attorney, or the City of West Palm Beach." All notices shall be printed in English, Spanish, and Creole.

By submittal of a Bid under this Invitation to Bid, each Contractor and its subcontractors agree to produce to the City all documents and records relating to payroll and compliance with the Living Wage Program

Any and all construction contracts subject to the Living Wage Program may be voidable, and no funds may be released, if a Contractor is found to be in violation of the Living Wage Program.

# Construction Manager-at-Risk for Belmonte Road and Pershing Way Water and Sewer Improvements (S Olive Avenue to S Flagler Drive)

RFQ 17-18-407

## PROCUREMENT PROCESS

### 1. NO LOBBYING:

CONTACT BY A PROPOSER (OR ANYONE REPRESENTING A PROPOSER) WITH THE MAYOR, ANY CITY COMMISSIONER, OFFICER, OR CITY EMPLOYEE (OTHER THAN AN EMPLOYEE OF THE WEST PALM BEACH PROCUREMENT DIVISION), REGARDING THIS RFP, IS GROUNDS FOR DISQUALIFICATION. Contact with the Procurement Division shall be for clarification purposes only

### 2. Questions/Addenda to the RFQ:

No interpretation or changes in the scope or meaning of this Request for Qualifications will be made to any Proposer, orally or otherwise, except by written addendum. All responses to questions submitted in writing via e-mail, fax, or US Mail will be issued via written addendum to the RFQ. Proposers may only rely on clarifications or modifications made by written addendum, and not by oral or other email communications. The City may issue written addenda regarding this RFQ to all registered Proposers to clarify, comment, correct, supplement, amend or otherwise modify this RFQ prior to the submittal deadline for Proposals. Contact with the Procurement Division is for clarification purposes only.

*All questions regarding this RFQ should be submitted in writing and must be received no later than **ten (10) calendar days** prior to the RFQ closing date addressed to:*

Patricia Armstrong, Sr. Purchasing Agent  
City of West Palm Beach Procurement Division  
401 Clematis Street, 3rd Floor  
West Palm Beach, FL 33401  
(561) 822-2100  
Fax: (561) 822-1564  
[E-Mail: parmstrong@wpb.org](mailto:parmstrong@wpb.org)

### 3. Submittal

*Time is of the essence* and any Proposals received after **3:00 p.m., on June 12, 2018**, will be returned unopened. In accordance with Sec. 66-63 of the City Code of Ordinances, **PROPOSALS NOT RECEIVED BY THE SUBMITTAL DEADLINE WILL BE REFUSED**. The time of receipt shall be determined by the time clock located in the office of the Procurement Division. Proposers are responsible for ensuring that their proposal is stamped as received by the deadline indicated. Proposals shall be in envelopes and marked as described in this RFQ. Proposals shall comply with the requirements of this RFQ.

### 4. Evaluation

The Procurement Division may evaluate Proposals or the City may appoint a selection committee for this RFQ. The City may conduct interviews with, and may require presentations from, Proposers regarding their qualifications, experience, and ability to provide the required services. The City reserves the right to request presentations from Proposers and conduct interviews with any, all or none of the Proposers. It shall be the City's sole decision on whether any presentations are made or interviews are held and with which Proposers interviews are conducted. The City may select a Proposer that was not interviewed or did not make a presentation.

Each Proposal will be evaluated individually and in the context of all other proposals. Submittals must be fully responsive to the requirements described in this RFQ and to any subsequent requests for clarification or additional information made by the City through written addenda to this RFQ. Proposals failing to comply with the submission requirements, or those unresponsive to any part of this RFQ, may be disqualified.

The City reserves the sole right to determine the Proposer's performance history based on known past performance with the City and/or based on references or its own investigation. The City may require additional information from one or more Proposers to supplement or clarify the Proposals submitted. The City may conduct investigations with respect to the qualifications and experience of each Proposer and any team members. The Procurement Official reserve the right to waive any irregularity or technicality in the Proposals received. The City reserves the right to reject any and all Proposals received either in whole or in part, with or without cause, or to waive any qualification requirement, formalities or deficiencies in any Proposal, if such action is deemed by the City to be in the best interest of the City to obtain the required services.

The City shall select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services.

The selection of a Contractor(s) with whom to negotiate shall be based on the best value to the City. Best value means the overall value to the City, in the City's sole discretion, as determined by considering the factors set forth in the City's procurement code, along with those factors set forth in this RFQ as Minimum Requirements and Evaluation Criteria.

The City shall negotiate a contract with the firm ranked most qualified. Should the City be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be formally terminated. The City shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the City will terminate negotiations and shall then undertake negotiations with the third most qualified firm. Should the City be unable to negotiate a satisfactory contract with any of the selected firms, the City may select additional firms in the order of their competence and qualification and continue negotiations in accordance with their ranking until an agreement is reached.

Nothing in this RFQ is intended to restrict the City in any way in the selection of the Proposal that best meets the needs of the City. The City reserves the right to reject any or all offers and to negotiate changes in proposals or best and final offers. The City may contract with another firm or use in-house staff to perform any of the above described services, in whole or in part.

## **5. Contract**

The City's standard contract forms and General Conditions shall be required to be used, regardless of whether it is included in this RFQ, and will generally not be negotiated.

Within 7 days of receipt of the City's contract, the selected Proposer must execute the contract and provide the City with its certificate(s) of insurance for the contract. Inability to meet this requirement may result in delays that will deem the Proposer or proposal to not be in the best interest of the City and the City may proceed to negotiate with the next ranked Proposer.

Proposer(s) shall not assign or transfer any or all of its rights, duties or obligations under the contract without the prior, written consent of the City.

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

To encourage prompt and equitable resolution of any litigation, each party shall waive its rights to a trial by jury in any litigation related to the contract.

## **6. Protest Procedures**

Protest procedures are provided in Section 66-151 of the Code of Ordinances of the City of West Palm Beach. 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 party 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 a protest in accordance with the Procurement Ordinance shall constitute a waiver of said protest. The Procurement Official's final determination of the Proposal that offers the best value or is in the best interest of and/or is most advantageous to the City is a final determination that may not be appealed.

## **7. No Guaranty; Termination for Convenience.**

The City makes no representation or guarantee that it will proceed with the construction phase of this project or that a construction contract will be executed. The City reserves the right to terminate any contract for its convenience at any stage of the project.

## **TERMS AND CONDITIONS OF RFQ**

### **1. Proposer's Responsibility**

This RFQ is for guiding preparation of a Proposal; it is not to be construed as an offer by the City. The contents of this RFQ are neither warranted nor guaranteed by the City or its advisors and contractors. Proposers interested in pursuing this opportunity are urged to make such evaluations as they deem advisable and to reach independent conclusions concerning statements in this RFQ and any supplemental materials based on their own investigation.

### **2. Lobbying Prohibited**

As to any matter relating to this RFQ, contact by a Proposer, or anyone representing a Proposer, with the Mayor, any City Commissioner, officer, City employee, or any City representative or contractor, or any other person working on behalf of the City on any matter related to or involved with this RFQ, other than an employee of the West Palm Beach Procurement Division, is grounds for disqualification. For purposes of clarification, a team's representatives shall include, but not be limited to, the Proposer's employees, partners, attorneys, officers, directors, contractors, lobbyists, or any actual or potential contractor or subcontractor of the Proposer or the Proposer's team. All oral or written inquiries are to be directed to the Procurement Division staff. Any violation of this condition may result in rejection and/or disqualification of the Proposer.

**The "No-Lobbying" condition is in effect from the date of publication of this RFQ and shall remain in effect until the City executes a contract, or otherwise takes action which ends the solicitation process for the services under this RFQ.**

### **3. Proposal Costs**

All costs and expenses incurred by any Proposer or party in responding to this RFQ, preparing a Proposal and any re-submittals, are the sole responsibility of the Proposer.

### **4. No Return of Proposals**

All Proposals shall become the property of the City and shall not be returned.

### **5. Ethics Requirements**

All Proposers are responsible for educating themselves on the various ethics and conflict of interest provisions of Florida law, Palm Beach County Ordinance and City Code. No Proposer 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 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 party may seek a conflict of interest opinion from the State of Florida Ethics Commission and/or Palm Beach County Ethics commission regarding conflict of interest provisions.

### **6. City as Gatekeeper of RFQ Documents**

This document is issued directly by the City of West Palm Beach and the City shall be the sole distributor of all addenda and/or changes to these documents. It is the responsibility of the Proposer to confirm the legitimacy of procurement opportunities or notices directly with the Procurement Division. The City is not responsible for any solicitations advertised by subscriber publications, or other sources not connected with the City and the Proposer should not rely on such sources for information regarding any solicitation made by the City of West Palm Beach.

## **7. Public Records; Confidential & Proprietary Information**

The City and its representatives are governed by the Sunshine law and the Public Records law of the State of Florida and all Proposals and supporting data shall be subject to disclosure as required by such laws. All Proposals shall be submitted in sealed form and shall remain confidential for the period permitted by the Public Records laws. Thereafter, any material submitted in response to this RFQ will become a public record and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes. Proposers must claim the applicable exemptions to disclosure provided by law in their response to the RFQ by identifying materials to be protected, and must state the reasons why such exclusion from public disclosure is necessary and legal. The City reserves the right to make any final determination of the applicability of the Public Records Law. No claim of confidentiality or proprietary information in all or any portion of a Proposal will be honored unless a specific exemption from the public records law exists and it is cited in the response to the RFQ. If a Proposer believes any of the information contained in its Proposal is exempt from the public records law, Proposer must specifically identify the material which is deemed to be exempt and cite the legal authority for the exemption; otherwise, the City will treat all material received as public records.

## **8. Ownership of Documents**

The City shall have full ownership and the rights to use, reproduce, or modify, all drawings, surveys, plans, specifications, reports and documents resulting from this solicitation and resulting contract, and regardless of whether in paper or electronic format, without payment of any royalties or fees to Proposer. Proposer acknowledges that the City's contract will require a full waiver of all intellectual property rights and copyrights in all such documents.

## **9. Records**

Proposer(s) awarded contract(s) under this RFQ shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least five (5) years after completion of the contract resulting from this RFP. The City shall have access to all records, documents, and information collected and/or maintained by others in the course of the administration of the contract. This information shall be made accessible at Proposer's local place of business for purposes of inspection, reproduction, and audit without restriction. If records are unavailable locally, it shall be Proposer's responsibility to insure that all required records are provided to the City at Proposer's expense.

## **10. Right to Contract for similar/additional services**

The City reserves the right to provide for similar and/or additional services from other companies if the City so deems necessary. If the City elects to exercise this right the contract awarded under this RFQ shall remain in effect as to all terms, agreements, and conditions without penalty. No City contract is an exclusive contract, unless explicitly stated in such contract.

## **11. Indemnification.**

CM 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: (i) an act, negligence, recklessness or intentional wrongful misconduct of CM 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 (ii) arising from accident or any injury to Contractor or its subcontractors while engaged in or about the performance of the Work, or while in or about the project site or premises, not caused by act of Owner, Owner's agents, servants, or other contractors of Owner; or (iii) arising out of the violation of federal, state, county or municipal laws, ordinances or regulations by CM or its subcontractor; or (iv) arising from liens or claims for services rendered for labor or materials furnished in or for the performance of the Work. The extent of CM's indemnification shall be limited to one and one-half times the contract price or \$1 million per occurrence, whichever is greater. This paragraph shall not be construed to require CM to indemnify Owner for Owner's own negligence, or intentional acts of the Owner, its agents or employees. Nothing in this paragraph shall be construed as a contractual waiver by Owner of the sovereign immunity or the limits under Sec 768.28, Florida Statutes. This paragraph shall survive the expiration or termination of the Contract. (725.06 F.S. and 768.28 F.S.)

## **12. Non-discrimination**

Proposer shall not discriminate against any person or business on the grounds of race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status or sexual orientation.

### **13. Unauthorized Aliens**

The knowing employment by Proposer or its sub-contractors of any alien not authorized to work by the immigration laws or the Attorney General of the United States is prohibited and shall be a default of the contract awarded under this RFQ.

### **14. Rights and Privileges; No Assignment**

The selected Proposer will be precluded from assigning, transferring, conveying, subletting or otherwise disposing of the award rights and ensuing contracts, if any, or of any or all of the rights, titles or interest therein, if any, without prior written consent of the City.

### **15. News Releases / Publicity**

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

### **16. Safety and Environmental Laws**

In performing services for the City, Proposers shall comply with all Occupational Safety and Health Administration (OSHA), State and County Safety and Occupational Health Standards, applicable environmental laws and any other applicable rules, regulations and permits.

### **17. Joint Ventures and Partnerships**

Joint Ventures and partnerships shall not be accepted by the City as either prime Proposers or sub-contractors or sub-contractors for purposes of contract award under this RFQ.

### **18. Discriminatory Vendor List.**

In accordance with Fla. Stat. Sec. 287.134, Contractor represents that it has never been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services.

### **19. Public Entity Crimes.**

Contractor certifies that Contractor, its affiliates, suppliers, subcontractors and consultants who will perform under the Contract 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 and that execution of the Contract will not violate the Public Entities Crimes Act (Sec. 287.133, Florida Statutes). Violation of this section may result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

### **20. Convicted Vendor List.**

Pursuant to Fla. Stat. Sec. 287.133, Contractor represents that it has not been named on the Convicted Vendor List maintained by the State of Florida within 36 months from the date of submittal of its bid related to this Contract.

### **21. Scrutinized Companies Lists.**

Contractor represents that Contractor is not on the Scrutinized Companies that Boycott Israel List, maintained by the State of Florida, and is not engaged in a boycott of Israel. Additionally, if the Contract Price is One Million Dollars (\$1,000,000) or more, in accordance with Sec. 215.473 Fla. Stat., Contractor represents that neither the Contractor firm nor its principals or owners are listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engages in business activities in Sudan or Cuba. Violation of this section may result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

### **22. Federal Labor / Employment Laws.**

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

### **23. Applicable Laws; Procurement Code**

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

## **24. Inspector General**

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

## **25. Disclosures and Disclaimers**

Any action taken by the City in response to Proposals made pursuant to this RFQ or in making any award or failure or refusal to make any award pursuant to such Proposals, or in any cancellation of award, or in any withdrawal or cancellation of this RFQ, either before or after issuance of an award, shall be without any liability or obligation on the part of the City or its advisors.

In its sole discretion, the City may withdraw this RFQ either before or after receiving Proposals, may accept or reject Proposals, and may accept Proposals which deviate from the RFQ. All or any responses to this RFQ may be accepted or rejected by the City for any reason, or for no reason, without any resultant liability to the City. In its sole discretion, the City may determine the qualifications and acceptability of any party or parties submitting proposals in response to this RFQ (each such party being herein known as "Proposer"). The City reserves the right to waive any irregularities and technicalities and may at its discretion request re-submittal of Proposals.

The information contained in this RFQ is provided solely for the convenience of Proposers. It is the responsibility of a Proposer to assure itself that information contained herein is accurate and complete. Neither the City nor its advisors provide any assurances as to the accuracy of any information in this RFQ. Any reliance on the contents of this RFQ, or on any other prior communications with City representatives or advisors, shall be at each Proposer's own risk. Proposers should rely exclusively on their own investigations, interpretations and analyses in connection with this matter. The RFQ is being provided by the City without any warranty or representation, express or implied, as to its content; accuracy or completeness and no Proposer or other party shall have recourse to the City if any information herein contained shall be inaccurate or incomplete. No warranty or representation is made by the City that any proposal conforming to these requirements will be selected for consideration, negotiation or approval. This RFQ is made subject to correction of errors, omissions, or withdrawal without notice.

The City, and their representatives shall have no obligation or liability with respect to this RFQ, or the selection and award process contemplated hereunder. Neither the City nor its representatives warrant or represent that any award or recommendation will be made as a result of the issuance of this RFQ. Any recipient of this RFQ or Proposer who responds hereto fully acknowledges all the provisions of this Discloser and Disclaimer and agrees to be bound by the terms hereof. Any Proposal submitted pursuant to this RFQ is at the sole risk and responsibility of Proposer or party submitting such Proposal.

Following submission of a Proposal, the Proposer agrees to promptly deliver any further details, information and assurances, including, but not limited to, financial and disclosure data, relating to the Proposal and/or Proposer, including Proposer's affiliates, officers, directors, shareholders, partners and employees, as requested by the City.

The City and Proposer will be bound only if and when a Proposal, as it may be modified, is approved and accepted by the City and the applicable contract(s) pertaining thereto, are approved, executed and delivered by the Proposer and the City, and then only pursuant to the terms of a contract executed by the Proposer and the City.

## City of West Palm Beach

### CONSTRUCTION GENERAL CONDITIONS

<u>SECTION</u>	<u>CAPTION</u>
<b>GC 1</b>	<b>Definitions</b>
<b>GC 2</b>	<b>Contract Documents</b>
GC 2.1	Execution, Correlation and Intent of Documents.
GC 2.2	Construction Drawings and Specifications.
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**GC 1 DEFINITIONS** The following definitions will apply regardless of whether the word(s) is capitalized, if the context is appropriate.

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

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

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

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

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

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

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

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

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

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

“Daily Log” is defined in GC 4.3.5.

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

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

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

“Fifty percent (50%) completion” of the Work is defined as that point in time where fifty percent (50%) of the overall value of Work items incorporated and which will remain in place subsequent to Final Completion of the Work have been completed, based upon the schedule of bid prices contained in the Contract. As such, and by way of example, the value of Contractor’s mobilization, general conditions, supervision or like items which do not involve permanent incorporation of Work do not apply to the

determination of "Fifty Percent (50%) Completion" of the Work for purposes of establishing entitlement to a reduction of retainage.

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

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

"GC" means General Condition.

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

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

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

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

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

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

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

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

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

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

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

## **GC 2 CONTRACT DOCUMENTS**

### **2.1 Execution, Correlation and Intent of Documents.**

2.1.1 The Contract Documents shall be executed in at least two original sets by Owner and Contractor, with one original set for each of Owner and Contractor.

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

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

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

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

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

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

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

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

2.1.9 The following Contract Documents may be found at:  
<http://wpb.org/Departments/Engineering-Public-Works/Forms,-Permits-Applications>

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

## 2.2 **Construction Drawings and Specifications.**

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

2.2.2 Contractor shall, immediately upon receipt of the specifications and Construction Drawings, check all specifications and Construction Drawings furnished and shall promptly notify Owner, in writing, of any illegibility, error, omission, defect or discrepancy discovered in such specifications and drawings and shall comment as appropriate upon construction feasibility and practicality. Contractor shall obtain written interpretation or clarification from Engineer/Architect prior to proceeding with any Work affected by such illegibility, error, omission, defect or discrepancy. Contractor shall not receive any additional time or compensation required to correct any condition caused by any illegibility, error, omission, defect, conflict, ambiguity, or discrepancy which contractor could have discovered with a reasonably careful review of the specifications and drawings. Contractor shall be responsible for obtaining building permits for the Work based on the specifications and Construction Drawings. Contractor shall perform work only in accordance with the specifications and permitted Construction Drawings and any subsequent revisions thereto.

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

## 2.3 **Ownership and Use of Drawings and Specifications**

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

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

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

## **GC 3 OWNER**

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

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

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

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

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

**3.6 Owner's Right to Stop Work.**

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

**3.7 Owner's Right to Perform Work.**

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

**GC 4 CONTRACTOR**

**4.1 Contractor Responsibilities.**

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

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

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

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

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

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

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

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

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

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

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

## 4.2 **Contractor Review.**

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

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

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

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

### 4.2.5 Underground Utilities and Facilities.

a. Where applicable, Contractor shall be responsible for locating all underground utilities and facilities. Owner does not guarantee that all lines are shown, or that the ones indicated are in their true location. It shall be the Contractor's responsibility to identify and locate all underground and overhead utility lines or equipment affecting or affected by the Project. Owner shall not be responsible for the accuracy or completeness of any information or data provided regarding underground utilities or facilities. No additional payment will be made to the Contractor because of discrepancies in actual and plan location of utilities, and additional costs suffered as a result thereof. All charges by electrical/gas utility companies for temporary



support of its utilities shall be paid for by the Contractor. All costs of permanent electrical/gas utility relocation to avoid conflict shall be the responsibility of the utility company involved. No additional payment will be made to the Contractor for utility relocations, whether or not said relocation is necessary to avoid conflict with other lines.

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

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

#### 4.3 **Supervision & Labor**

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

##### 4.3.2 Contractor's Project Manager.

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

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

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

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

4.3.5 Daily Log. On a daily basis, the Contractor shall record, at a minimum, the following information in a log ("Daily Log"): the day, date, weather conditions, any impact of the weather on the work,

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

#### 4.4 **Contractor Obligations; Materials & Equipment.**

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

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

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

4.4.4 Approved Materials. Refer to the specific technical specifications for the Project and <http://wpb.org/Departments/Engineering-Public-Works/Forms,-Permits-Applications>

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

#### 4.5 **Substitution.**

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

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

- Contractor has investigated the proposed substitute item, material and/or process and determined that it is equal or superior in all respects to that specified;
- That such item will fit into the space allocated;
- That such item affords comparable ease of operation, maintenance and service;
- That the appearance, longevity and suitability for the climate are comparable;
- That by reason of costs savings, reduced construction time or similar demonstrable

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

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

4.5.3 All requests for substitutions shall be in writing, with supporting information, shall be submitted by and at the expense of Contractor. Contractor shall submit drawings, samples, data and additional information as may be required by Owner or Engineer/Architect. At least thirty (30) calendar days shall be allowed for Owner's review.

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

#### 4.6 **Quality Assurance**

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

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

#### 4.7 **Permits & Fees.**

4.7.1 All permits or licenses necessary for the performance of the Work or required by law or ordinance, including building permits, shall be secured, maintained, and paid for by Contractor, unless otherwise provided in the Contract Documents. Contractor shall be responsible for all governmental fees, including but not limited to utility fees and connection fees.

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

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

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

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

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

#### 4.8 **Notice to Proceed; Schedule**

4.8.1 Notice to Proceed. Contract times will commence to run on the date indicated in the Notice to Proceed issued by Owner, unless otherwise provided in the Contract Documents.

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

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

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

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

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

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

be sufficient cause to terminate the Contract or to withhold payment to Contractor until a current construction schedule is submitted.

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

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

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

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

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

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

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

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

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

#### 4.10 **Record Documents**

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

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

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

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

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

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

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

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

#### 4.11 Work Site

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **4.12 Protection of the Work and Property**

4.12.1 Contractor shall be solely responsible for initiating and continuously maintaining adequate protection of all Work and stored materials, equipment and supplies from damage, loss, theft or damage from whatever cause, and shall take all reasonable precautions to protect the property of Owner and third parties from damage, theft, injury or loss arising in connection with this Contract. Contractor shall comply with the requirements of Owner and its insurance carriers and all applicable laws, codes and regulations with respect to prevention of damage.

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

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

4.12.4 For street, utility and other horizontal construction, existing utilities and facilities shall be located prior to commencement of Work. Contractor shall video tape the existing surface conditions of the Work site and adjacent areas before commencing Work, after each discrete portion of the Work and when



project is complete. Contractor shall submit two (2) copies of the video tape to Engineer/Architect prior to submittal for final payment.

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

#### 4.13 Concealed or Unknown Conditions.

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

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

4.13.3 If, in the course of the Work, Contractor encounters human remains or recognizes the existence of burial markers or archaeological sites not indicated in the Contract Documents, Contractor shall immediately suspend any Work that would affect the remains or sites and shall notify Owner and Engineer/Architect. Owner shall take any action necessary to obtain the authorization required to resume Work. Contractor shall continue to suspend such operations until otherwise instructed by Owner, but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Price or Contract Time arising from the existence of such remains or features may be made as provided in GC 8 and GC 9.

#### 4.14 Safety

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

4.14.2 For Work impacting streets and public rights-of-way, Contractor shall provide and maintain

flagmen, traffic control devices, barricades, signs and variable message boards on a full time basis, where and when needed, to facilitate the movement of traffic along and around the project Work. All MOT plans shall be reviewed and approved by Owner.

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

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

4.14.4 Hurricane Plan. If any Work is to be performed during hurricane season, Contractor shall provide Owner with Contractor's hurricane plan prior to the commencement of any Work. The hurricane plan shall describe the actions to be taken to secure the Work Site(s) in the event a named tropical storm or hurricane is predicted to affect the Work Site. Contractor shall abide by Owner's requirements, Required Storm Preparation Process, found at <http://wpb.org/Departments/Engineering-Public-Works/Forms,-Permits-Applications>

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

#### 4.15 **Progress; Reporting**

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

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

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

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

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

#### 4.16 **Shop Drawings; Samples and Submittals**

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

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

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

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

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

4.16.6 No approval will be given to partial submittals of Shop Drawings for items which interconnect and/or are interdependent where necessary to properly evaluate the design. It is Contractor's responsibility to assemble the Shop Drawings for all such interconnecting and/or interdependent items, check them and then make one submittal to Engineer/Architect along with its comments as to compliance, noncompliance, or features requiring special attention.

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

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

4.16.9 If the Owner or Engineer has provided an electronic document management system for the Project, all submittals referenced in GC 4.16 above must be uploaded to the system contemporaneously with the required timing for delivery of such submittals. Failure to timely upload documents to the system will constitute a failure to comply with the requirements referenced in GC 4.16.

## **GC 5 INSPECTION & TESTING**

### **5.1 Inspection.**

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

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

### **5.2 Testing.**

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

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

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

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

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

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

## **GC 6 CORRECTION OF WORK**

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

## 6.2 **Warranty.**

6.2.1 **Warranty.** Contractor warrants to Owner that the Work will conform to the requirements of the Contract Documents and will be free from defects and fit for the purpose for which they were intended. Work, materials or equipment not conforming to these requirements may be considered defective. Contractor agrees to correct any part of the Work found by Owner to be defective or not in conformance with the Contract Documents for a period of one (1) year from later of (a) the final certificate of occupancy for the complete Work (and not from any temporary certificates of occupancy for portions of the Work), (b) if no certificate of occupancy is to be issued for the complete Work, within one (1) year of substantial completion of the complete Work (and not from substantial completion of component parts of the Work) or for such longer periods of time as may be set forth with respect to specific warranties contained in the specifications (the "Warranty Period"). Owner or Engineer/Architect shall provide Contractor with written notice of non-conformance. If Contractor fails to correct non-conforming Work within a reasonable time after receipt of notice, Owner may correct the Work pursuant to GC 6.5. Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by or under Contractor, improper or insufficient maintenance by Owner, improper operation by Owner or normal wear and tear and normal usage. Warranty by Contractor shall not be construed as a waiver by Owner of any other remedy. Contractor further agrees to correct any corrections to non-conforming Work found by Owner to be defective or not in conformance with the Contract Documents for a period of one (1) year from completion of the corrections.

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

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

## GC 7 **WORK BY OTHERS AT SITE**

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

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

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

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

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

## **GC 8 DELAY; TIME EXTENSIONS**

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

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

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

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

8.4 **Change Order Request.** Contractor shall submit a request for changes in the Contract Time resulting from delay in accordance with GC 4, GC 8 and GC 9. **IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE CONTRACT TIME DUE TO DELAY SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THESE GENERAL CONDITIONS.** Failure of Contractor to comply with these provisions as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

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

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

No claim for damages or any claim, other than for an extension of time, shall be made or asserted against Owner by reason of any delays except as provided herein. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Owner for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Contractor waives claims for any and all damages which it may suffer by reason of such claims, including but not limited to, lost profits, loss or impairment of bonding capacity, destruction of business, increased overhead, remobilization or demobilization costs, subcontractor delay claims, supervision, extended unabsorbed home office overhead, increase insurance costs, lost profits on

alternate or unperformed contracts. Contractor expressly agrees that Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay and a Change Order for an extension of the project completion date and substantial completion date constitutes its sole and exclusive remedies for time or impact-based claims. Contractor hereby affirms that an extension of time is Contractor's sole and exclusive remedy. Apart from extension of time, no payment of claim for damages shall be made to Contractor as compensation for damages for any delays in the Work; provided, however, that this provision shall not preclude recovery of damages by Contractor for actual delays due solely to fraud, bad faith or active interference on the part of Owner or Engineer.

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

8.8 **Compensable Excusable Delay.**

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

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

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

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

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

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

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

### **9.2 Request for Change Order.**

9.2.1 If Contractor believes that a variation or change justifies a modification in the contract price or contract time, Contractor may submit a request for Change Order at its expense. If a request for Change Order is made, Contractor is not authorized to vary the Work unless a written change order is executed by Owner or written change directive is issued by Engineer/Architect and executed by Owner.

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

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

9.2.4 **IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE CONTRACT TIME OR CONTRACT PRICE SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THESE GENERAL CONDITIONS.**

### **9.3 Change Order.**

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

9.3.2 Change orders adjusting the contract time will be evaluated in accordance with GC 8.

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

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

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

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



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

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

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

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

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

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

**CG 10 VALUE OF CHANGES IN WORK.**

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

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

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

- 10.2.1 Payroll costs for employees in the direct employ of Contractor in the performance of the Work at the prevailing hourly basic rates plus applicable multipliers for overtime, weekend and holidays, plus applicable taxes, as evidenced by actual payroll records of Contractor. Failure to provide actual payroll records shall be deemed a waiver by Contractor of inclusion of payroll costs in the requested Change Order or claim. Mark up on labor is not permitted. Labor shall not include supervision above the project manager. Payroll costs for employees not employed full time on the Work covered by the Change Order or claim shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay application thereto. Labor costs shall not include supervision above the project manager/ superintendents or foremen at the site. The expenses of performing the Work after regular working hours, on Sunday or legal holidays, shall be included in the labor costs.
- 10.2.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith, as evidenced by actual receipts. Failure to provide actual receipts shall be deemed a waiver by Contractor of inclusion of costs for materials and equipment in the requested Change Order or claim. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to Owner and Contractor shall make provisions so that they may be obtained. Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
- 10.2.3 Payments made by Contractor to subcontractors for Work performed by subcontractors. Failure to provide actual receipts of payments from subcontractors shall be deemed a waiver by Contractor of inclusion of such payments in the requested Change Order or claim. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Contractor and shall deliver such bids to Owner who will then determine, with the advice of Engineer, which bids will be accepted. If the subcontract provides that the subcontractor is to be paid on the basis of cost of the Work plus a fee, the subcontractor's cost of the Work shall be determined in the same manner as Contractor's cost of the Work. All subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.
- 10.2.4 Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the work described in the Change Order. Failure to provide actual invoices or receipts for such costs shall be deemed a waiver by Contractor of inclusion of such costs in the requested Change Order or claim.
- 10.2.5 Supplemental costs including the following:
- 10.2.5.1 The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work except for local travel to and from the Work Site.
  - 10.2.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remains the property of Contractor.

- 10.2.5.3 Sales, use, or similar taxes related to the Work, and for which Contractor is liable, imposed by any governmental authority.
- 10.2.5.4 Deposits lost for causes other than Contractor's negligence; royalty payments and fees for permits and licenses.
- 10.2.5.5 The cost of utilities, fuel and sanitary facilities at the site.
- 10.2.5.6 Receipted minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
- 10.2.5.7 Cost of premiums for additional bonds and insurance required because of changes in the Work.

10.3 The "cost of the work" shall not include any of the following:

- 10.3.1 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the Work Site or in its principal or a branch office for general administration of the Work, all of which are to be considered administrative costs covered by Contractor's fee.
- 10.3.2 Expenses of Contractor's principal and branch offices other than Contractor's office at the Work Site.
- 10.3.3 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 10.3.4 Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same, except for additional bonds and insurance required because of changes in the Work.
- 10.3.5 Costs due to the negligence or neglect of Contractor, any subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- 10.3.6 Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in GC 10.2.
- 10.3.7 Any cost or expense not reflected in an actual receipt or actual payroll record delivered to Owner.

10.4 Contractor's fee allowed to Contractor for overhead and profit shall be determined as follows:

- 10.4.1 For costs incurred under GC 10.2, Contractor's fee shall not exceed fifteen percent (15%) inclusive of bond rider, permits, insurance, overhead and profit, supervision and general conditions; or

A mutually acceptable fixed fee.

10.5 Whenever the cost of the work is to be determined pursuant to Sections 9.2 and 9.3, Contractor will submit in a form acceptable to Engineer an itemized cost breakdown together with the supporting data.

10.6 The amount of credit to be allowed by Contractor to Owner for any such change which results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any, however, Contractor shall not be entitled to claim lost profits for any Work not performed.

10.7 Whenever a change in the Work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, Contractor shall submit an initial cost estimate acceptable to Engineer and Owner.

10.7.1 Breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost.

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

## **GC 11 COMPLETION**

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

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

The above are also conditions for Final Completion.

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

### **11.3 Substantial Completion.**

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

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

11.4 **Inspection and Punch List.** Within three (3) calendar days of Substantial Completion as determined by Engineer/Architect and Owner, a walkthrough with Contractor shall be scheduled.

- i. The purpose of this walkthrough is to develop a joint final punch list of items necessary to complete the Work.
- ii. Said punch list shall be prepared, signed by Engineer/Architect and Owner and delivered to Contractor not later than three (3) calendar days after the walkthrough. Engineer/Architect and Owner shall separately list each item of the punch list required for Final Completion.

- iii. Any dispute over punch list items shall be mediated between Owner and Contractor with Engineer/Architect acting as mediator to develop an agreed punch list signed by Owner, Contractor and Engineer/Architect no later than nine (9) days from the date of the walkthrough.
- iv. Agreed punch list items shall be corrected and a final inspection requested by Contractor within thirty (30) days from delivery of the agreed punch list, unless a greater time is provided in the contract. All agreed punch list items shall be corrected by Contractor prior to any request for final inspection and acceptance. If the Contract provides for a multi-phased or multi-structure project, a punch list may be developed for each phase or structure.
- v. In no event may Contractor request payment of final retainage under Florida Statutes §218.735(7)(e) until Contractor considers the final punch list to be one hundred percent (100%) complete.
- vi. Contractor acknowledges and agrees that no item contained on the final punch list shall be considered a warranty item until such time as (a) the final punch list is one hundred percent (100%) complete, and (b) Owner has been able to operate or utilize the affected punch list item for an additional period of fifteen (15) calendar days.
- vii. Contractor acknowledges and agrees that Engineer/Architect as representative of Owner may, at its option, during performance of the Work and prior to Substantial Completion, issue lists of identified non-conforming or corrective Work for Contractor to address. The intent of any such Engineer/Architect generated lists prior to Substantial Completion is to attempt to streamline the punch list process upon achieving Substantial Completion, and to allow for Contractor to address needed areas of corrective work as they may be observed by Engineer/Architect during performance of the Work.
- viii. Contractor acknowledges and agrees that in calculating one hundred fifty percent (150%) of the amount which may be withheld by Owner as to any final punch list item for which a good faith basis exists as to it being complete, as provided for by Florida Statutes §218.735(7)(e), Owner may include within such percentage calculation its total costs for completing such item of work, including its administrative costs as well as costs to address other services needed or areas of work which may be affected in order to achieve full completion of the final punch list item. Such percentage shall in no event relate to the schedule of bid prices associated with such Work activity, but rather total costs are based upon the value (i.e. cost) of completing such Work activity based upon market conditions at the time of final punch list completion.
- ix. The failure to include any Work or pending items not yet completed on the punch list does not alter the responsibility of Contractor to complete all the construction services and Work purchased under the Contract.

11.5. **Punch List Retainage.** Following delivery of the punch list, Contractor shall list the estimated cost of completing each item each item of the punch list required for final completion, and submit the list of estimated costs to Owner for Owner's review and determination. Owner may retain a sum equal to one hundred fifty percent (150%) of the estimated cost of correcting and completing the unfinished punch list items, as determined by Owner. Upon completion of all items on the punch list, Contractor may submit a payment request for all remaining retainage. If a good faith dispute, as determined by Owner, exists as to whether one or more items identified on the punch list have been completed pursuant to the Contract, Owner may continue to withhold up to one hundred fifty percent (150%) of the total costs to complete such items(s), as determined by Owner.

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

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

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

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

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

11.9 **Final As Built Documents.** Prior to final inspection, Contractor shall provide Owner with "Record" or "as-built" drawings, specifications and documents which comply and Owner's Final Record Drawing Requirements found at <http://wpb.org/Departments/Engineering-Public-Works/Forms,-Permits-Applications>

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

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

## **GC 12 PAYMENT**

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

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

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

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

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

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

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

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

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

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

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

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

Original partial releases of lien from Contractor and all subcontractors included in payment request shall accompany the payment request. Partial consent of surety for payment shall accompany the payment request.

After review and approval of the draft, Contractor shall prepare and submit an original payment request, in duplicate: one set to Engineer/Architect, one set to City's project manager (if different than Engineer/Architect) and one set to:

**City of West Palm Beach – Accounts Payable  
PO Box 3366  
West Palm Beach, FL 33402-3366.**

Owner will not be responsible for any delay in payment by the City if Contractor submits his estimate and invoice to any other address. Payment will be made in accordance with the Local Government Prompt Payment Act. (Sec. 218.70, Fla. Stat.).

12.8 **Decision to Withhold Certification of Payment Requests.**

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



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

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

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

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

12.9 **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. Failure to comply with Living Wage Program.
- c. Failure of Contractor to make payments to sub-contractors or for material or labor.
- d. Reasonable evidence that the Work cannot be completed for the unpaid balance of the contract price.
- e. Failure of Contractor to provide updated and current project schedule or reasonable evidence that the work cannot be completed within schedule.
- f. Damage to Owner or another contractor.
- g. Owner has a right to claim liquidated damages.
- h. Repeated failures to carry out the Work in accordance with the Contract Documents.
- i. Contractor is in default of any Contract condition, including schedule.
- j. Contractor fails to submit information required by the Contract.
- k. Contractors insurance coverage lapsed.
- l. Claims filed or reasonable evidence indicating public filing of claims by Owner or third parties against Contractor.

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

#### 12.10 **Retainage.**

12.10.1 In accordance with the Local Government Prompt Payment Act, until the Work is determined to have reached fifty percent (50%) completion, Owner shall withhold retainage of ten percent (10%) from each progress payment paid to Contractor based on Contractor's estimate and invoice as approved by Engineer/Architect.

12.10.2 Upon fifty percent (50%) completion of the Work the retainage withheld from each subsequent progress payment will be reduced to five (5%) as provided for by Florida Statute §218.735(8)(b). "Fifty percent (50%) completion" of the Work is defined as that point in time where fifty percent (50%) of the overall value of Work items incorporated and which will remain in place subsequent to final completion of the Work have been completed, based upon the schedule of bid prices contained in the Contract. As such, and by way of example, the value of Contractors mobilization, general conditions, supervision or like items which do not involve permanent incorporation of Work do not apply to the determination of fifty percent (50%) completion of the Work for purposes of establishing entitlement to a reduction of retainage. It is agreed that Engineer/Architect shall have the right to finally determine when fifty percent (50%) completion has been achieved. (F.S. 255.078).

12.10.3 After the Work is determined to have reached fifty percent (50%) completion, and unless otherwise prohibited by the terms of any federal grant funding the project in whole or in part: i) Owner shall withhold retainage of five percent (5%) from each progress payment paid to Contractor based on Contractor's estimate and invoice as approved by Engineer/Architect; and ii) Contractor may present to Owner a payment request for up to fifty percent (50%) of the retainage previously held by Owner (fifty percent (50%) of the fifty percent (50%) retainage already withheld – Not fifty percent (50%) of total retainage). If Owner has grounds under Florida law to continue to retain all or a portion of the requested retainage, Owner may continue to hold all retainage. If the Work is not on schedule when request for payment of retainage is submitted, Owner may continue to hold all retainage.

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

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

1. Final Certification by Engineer/Architect
2. Certified copy of punch list stating each item has been completed or otherwise resolved and accepted.
3. Final Statement of Accounting reflecting:
  - a. original contract price
  - b. each approved Change Order (with quantity and unit prices where applicable)
  - c. allowances, if applicable
  - d. deductions for uncorrected work
  - e. deductions for liquidated damages
  - f. deductions for re-inspection costs
  - g. deductions for re-testing costs due to failed tests
  - h. other adjustments
  - i. adjusted contract price
  - j. payments made
  - k. any pending payment requests
  - l. sum remaining due to Contractor
4. Final Change Order, if applicable, reflecting approved adjustments to the Contract price not previously made by Change Order.
5. Consent of surety for final payment.
6. Any documents necessary to provide compliance with Living Wage Program.
7. Affidavit from Contractor that all payrolls, bills for material and equipment and other indebtedness connected with the Work have been paid or satisfied;
8. If no payment bond is recorded, Original releases of lien from Contractor and all subcontractors
9. Certificate of Insurance evidencing continuation of any liability coverage on claims made basis, which shall remain effective for five (5) years after final payment.
10. Written release of claims from any private property owner for use of private property for storage or staging.

11. Final "as-built" construction drawings
12. All pre-requisites for Substantial Completion and Final Completion have been met.

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

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

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

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

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

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

### **GC 13 BONDS**

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

**13.1.1 Performance Bond.** In accordance with the provisions of F.S. 255.05, and as required by the Contract Documents, Contractor shall provide, on forms furnished by Owner, a one hundred percent (100%) performance 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 bond:

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

**13.1.2 Payment Bond.** Contractor shall provide, on forms furnished by Owner, a one hundred percent (100%) Payment Bond in an amount not less than the total contract price covering payments to all claimants, as defined in Section 255.05(1), Fla. Stat., supplying Contractor with labor, materials, or supplies, used directly or indirectly in the Work provided for in the Contract, by a Surety Company acceptable to Owner

13.1.3 Public Construction Bond. Owner will accept a public construction bond, on a form furnished by the Owner, in lieu of the payment bond and performance bond.

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

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

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

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

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

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

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

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

#### **GC 15 INSURANCE; INDEMNIFICATION**

##### **15.1 Insurance.**

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

15.1.2 All Insurance Policies shall be endorsed to provide that:

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

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

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

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

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

WORKERS' COMPENSATION: Workers' Compensation and Employer's Liability Insurance with limits of Employer's Liability Insurance not less than One Million Dollars (\$1,000,000) "each accident," One Million Dollars (\$1,000,000) "disease policy limit," and One Million Dollars (\$1,000,000) "disease each employee."

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

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

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

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

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

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

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

15.1.7 Coverage Period.

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

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

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

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

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

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

## 15.2 **Indemnification.**

Contractor shall indemnify and hold harmless the City, its commissioners, officers, employees and agents ("Indemnified Parties"), from and against any and all claims, obligations, liability, expenses, losses and causes of action, including attorneys' fees and costs, to the extent the same are caused by: (i) an act, negligence, recklessness or intentional wrongful misconduct of Contractor or its subcontractors, or the officers, employees or agents of either, while engaged in or about the performance of the Work; or while in or about the project site or premises; or (ii) arising from accident or any injury to Contractor or its subcontractors while engaged in or about the performance of the Work, or while in or about the project site or premises, not caused by act of the Indemnified Parties or other contractors of City; or (iii) arising out of the violation of federal, state, county or municipal laws, ordinances or regulations by Contractor or its subcontractor; or (iv) arising from liens or claims for services rendered for labor or materials furnished in or for the performance of the Work. The extent of Contractor's indemnification shall be limited to one and one-half (1 1/2) times the contract price or One Million Dollars (\$1,000,000) per occurrence, whichever is greater, or as provided by Law. This paragraph shall not be construed to require Contractor to indemnify the Indemnified Parties for such Indemnified Parties' own negligence, or intentional acts. Nothing in this paragraph shall be construed as a contractual waiver by the City of the protections and limits of sovereign immunity under Sec 768.28, Florida Statutes, nor a waiver of any defense the City may have and shall not be construed as consent to be sued by third parties based on any claims arising under this Contract. This paragraph shall survive the expiration or termination of the Contract. (725.06 F.S. and 768.28 F.S.).

## **GC 16 SUBCONTRACTORS AND SUPPLIERS**

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

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

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

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

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

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

## **GC 17 ENGINEER / ARCHIECT'S STATUS.**

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

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

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

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

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

## **GC 18 TERMINATION OR SUSPENSION**

### **18.1 Owner's Right to Terminate for Cause.**

18.1.1 Owner may terminate the Contract for cause if Contractor:

- A. Fails to supply enough properly skilled workers or proper materials;
- B. Fails to cure deficiencies after notice as provided in the Contract Documents;
- C. Fails, except in cases for which extension of time is provided, to maintain an established schedule thirty (30) calendar days behind a critical path activity),
- D. Fails to make prompt payments to subcontractors or for material, equipment or labor;
- E. Repeatedly disregards applicable laws, codes, ordinances, regulations or permit requirements;
- F. Fails to perform the Work consistent with the requirements of the Contract Documents;
- G. Materially fails to comply with substantial and final completion dates as required in the Contract Documents;
- H. Abandons or refuses to perform any portion of the Work;
- I. Is otherwise in substantial breach of the Contract Documents;



J. Files a bankruptcy petition or has a bankruptcy action commenced against it that is not discharged within thirty (30) calendar days, or make an assignment for the benefit of its creditors, or has a receiver appointed to manage Contractor's assets, or is otherwise becoming insolvent.

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

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

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

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

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

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

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

## 18.2 **Suspension or Termination by Owner for Convenience.**

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

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

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

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

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

## **CG 19 LIQUIDATED DAMAGES**

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

## **GC 20 CLAIMS AND DISPUTES**

20.1 Notice of Claims or Dispute. Notwithstanding any other notice provisions in the Contract Documents, all claims, difficulties and disputes which may arise relative to the technical interpretation of the Contract Documents and fulfillment of the contract as to the character, quality, amount and value of any Work done and materials furnished, or proposed to be done or furnished; or claims or disputes regarding a request for a change order which has been denied; or any claims or disputes of whatever nature between Owner and Contractor shall be initiated by written notice from Contractor to Owner with a copy sent to Engineer/Architect ("Claim Notice"). Unless otherwise specifically provided by law, claims must be initiated within twenty-one (21) calendar days after occurrence of the event giving rise to such claim or within twenty-one (21) calendar days after Contractor first recognizes the condition giving rise to the claim, whichever is later. The Claim Notice shall include Contractor's written notarized certification that the adjustment claimed is the entire adjustment to which the Contractor has reason to believe it is entitled for the specific event or claim.

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

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

20.4 **Payment Disputes**. With respect to disputes regarding payment requests, Owner shall review the payment application with Engineer/Architect and provide an opportunity for Contractor to state its claim within forty-five (45) calendar days after the date the rejected payment request was last received by Engineer/Architect. The final decision of Owner shall be made within sixty (60) calendar days after the date the rejected payment request was last received by Engineer/Architect.

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

## 20.6 **Dispute Process**.

20.6.1 **Minor disputes**. Following is the process for disputes involving Thirty Percent (30%) or less of the contract price or Sixty (60) days or less in contract time.

- a. Within ten (10) business days after receipt of Contractor's claim or inquiry, or such longer time as the Parties may agree, Engineer/Architect shall respond in writing to Contractor's request.
- b. If Contractor protests the Engineer/Architect's decision, Contractor may file a written protest with Engineer/Architect and Owner within ten (10) business days of the date of Engineer/Architect's response. Contractor shall state clearly and in detail the basis for the protest.
- c. Said protest shall be reviewed and a written decision issued by Owner within thirty (30) calendar days. The decision of the Owner shall be final.

20.6.2 **Other disputes**. Following is the process for disputes involving more than thirty percent in contract price or more than sixty (60) days in contract time.

- a. Within ten (10) business days after receipt of Contractor's claim or inquiry, or such longer time as the Parties may agree, Engineer/Architect shall respond in writing to Contractor's request.
- b. If Contractor protests the Engineer/Architect's decision, Contractor may file a written protest with Engineer and Owner within ten (10) business days of the date of Engineer/Architect's response. Contractor shall state clearly and in detail the basis for the protest.
- c. Said protest shall be reviewed and a written decision issued by Owner within thirty (30) calendar days.
- d. Either party, Contractor or Owner may, with written notice to the other party, refer the matter to Contract Arbitration in accordance with GC 20.7.3.

20.6.3 **Contract Arbitration**. To prevent disputes and litigation, the parties have agreed to have a Contract Arbitrator render decisions on referred disputes. The Contract Arbitrator shall have exclusive jurisdiction over the matter referred to the Contract Arbitrator. Within ten (10) business days of notice of referral, each party shall provide a written statement to the Contract Arbitrator detailing the contested matter and such party's basis for its position and recommended order resolving the dispute. The written statement must also contain a statement that any contract time or contract price adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. The Contract Arbitrator shall schedule a meeting of the parties within fifteen (15) business days after receipt of the written statements from the parties, or as soon thereafter as possible to resolve the contested matter.

The Contract Arbitrator shall decide the contested matter and render a written decision to the parties. The Contract Arbitrator's decision shall be non-binding on the parties, but if any Party does not agree with the decision, that Party must file a court action to resolve the dispute within five (5) business days after notice of the Contract Arbitrator's decision or the Party shall be deemed to have accepted the Contract Arbitrator's decision which Contractor Arbitrator's decision will then be binding on the Parties and non-appealable. Neither party shall commence litigation prior to issuance of a decision by the Contract Arbitrator. The Contract Arbitrator's decision may be entered into evidence by either party in any litigation.

20.6.4 Contract Arbitrator. Within fifteen (15) business days after receipt of notice of referral of a dispute to a contract arbitrator, the parties shall select and agree, in writing, on a Contract Arbitrator. The Parties may agree, at any time, to the appointment of an alternate Contract Arbitrator in the event the primary Contract Arbitrator is unable or unwilling to resolve a given dispute, or cannot meet and review the claim within a reasonable time. The Parties will enter into a mutually agreeable Contract Arbitration Agreement(s) with the Contract Arbitrator to implement GC 20.7.3, which agreement(s) will provide that the Contract Arbitrator's costs and expenses shall be borne equally by the Parties.

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

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

## **GC 21 PROJECT RECORDS AND RIGHT TO AUDIT**

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

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

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

which may have a bearing on matters of interest to the County in connection with the Contractor's dealings with the City to the extent necessary to adequately permit evaluation and verification of any or all of the following:

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

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

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

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

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

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

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

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

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

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

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**CITY OF WEST PALM BEACH**  
**CONSTRUCTION CONTRACT**

**S A M P L E**

Project No.:

ITB No.

Contract No.

THIS CONTRACT is made and entered into by and between:

**CITY OF WEST PALM BEACH**, a municipal corporation of the State of Florida whose address is 401 Clematis Street, West Palm Beach, Florida 33401 (the “City” or “Owner”) and

**XXX** (the “Construction Manager” or “CM”),

Primary Contact:

Cellular No.:

Telephone No.:

E-Mail:

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CONSTRUCTION GENERAL CONDITIONS

## RECITALS

- A. Owner issued its Request for Qualifications No. XXX, for Construction Manager At Risk services for XXX; and
- B. Construction Manager submitted its qualifications in response and has represented that it is licensed to do business in Palm Beach County, Florida, licensed as general Construction Manager in the State of Florida, and has represented to Owner that Construction Manager has extensive experience and expertise in streetscape construction and construction management; and
- C. In reliance upon Construction Manager's representations and expertise, Owner determined that the Construction Manager's proposal represents one of the best value to Owner and wishes to contract with Construction Manager for the Clematis Streetscape;

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 Construction Manager understand and agree as follows:

### **ARTICLE 1 – GENERAL PROVISIONS.**

- 1.1 **Recitals.** The foregoing recitals are incorporated into this Contract by this reference.
- 1.2 **Contract Documents.** The Contract Documents consist of the following, regardless of whether they are attached to this document:
  - a. Approved Change Orders and Amendments, if any
  - b. Construction Drawings and Technical Specifications (when developed)
  - c. Guaranteed Maximum Price Amendment (when agreed and executed)
  - d. This Contract
  - e. General Conditions
  - f. Request for Proposals
  - g. Bond(s)

Notwithstanding any provision in the General Conditions, the documents shall be interpreted in the priority listed above. Where the Contract is expressly in conflict with the General Conditions of the Contract, the Contract shall prevail. Otherwise, the Contract Documents are complementary and shall be construed in a manner to avoid conflicts.

- 1.3 **Construction Team.** The Construction Manager, the City, and the Designer, collectively called the "**Construction Team**", shall work jointly during design and through final construction completion. The Designer will provide leadership during completion of the design with support from the Construction Manager and the Construction Manager shall provide leadership to the Construction Team on all matters relating to construction.

- 1.5 **Representation.** Execution of this Agreement by the Construction Manager is a representation that the Construction Manager has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Construction Manager deems both his inspection of the site and review of the design criteria furnished by Owner to be an adequate investigation. Construction Manager has observed no defects, no discrepancies and Construction Manager affirmatively covenants that if during construction any discrepancies, defects, etc., are discovered by or made known to Construction Manager, Construction Manager shall timely communicate same to Owner.

- 1.6 **Approval by City.** Specific directions and approval made by the City shall be in writing authorized at its regular or special Commission Meetings, or as otherwise consistent with authorities granted to the Project Manager. Only the Mayor is authorized to sign change orders or amendments to the Contract Documents. Contractor acknowledges that any change orders/amendment that will increase the GMP will require approval by the City Commission and Contractor will provide not less than thirty (30) days for approval by the City for such change orders/amendments.



1.7 **City's Ownership of Documents.** All plans, drawings, specifications, maps, computer files, reports and/or other documents, including those in electronic format, prepared or obtained under this Contract will be considered works made for hire and will become the property of the City upon completion or termination of this Contract without restriction or limitation on their use and will be made available, upon request, to the City at any time during the performance of such services and/or upon completion or termination of this Contract. Upon delivery to the City of said document(s), the City will become the custodian thereof in accordance with Chapter 119, Florida Statutes. The City will have the right to visit the site for inspection of the work and the products of the Construction Manager at any time.

1.8 **Terms.** Terms used in the Contract shall have the following meaning:

"Contractor" or "CM" means Construction Manager" and the terms may be used interchangeably;

"Contract Price" includes the Pre-Construction Fee and the Guaranteed Maximum Price ("GMP");

"Contract Price Elements" are defined in Section 8.1;

"Direct Construction Costs" or "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner.

"Designer" shall mean XXX and may be referenced as the "Engineer";

"GMP" shall mean Guaranteed Maximum Price;

"Owner" or "City" shall mean the City of West Palm Beach, and the terms may be used interchangeably;

"Project" is defined in Article 2;

"Sub-contractor" means a person or organization who has a direct contract with the Construction Manager to perform any of the work at the site. Nothing contained in this Contract or the Construction Documents shall create any contractual relation between the Owner or Designer and any sub-contractor. The Construction Manager is not an agent or representative of the Owner with regard to any sub-contractors.

"substantial completion" shall be deemed to have occurred when the Work has progressed to the point where, in the opinion of the Designer, the Work is sufficiently complete, in accordance with the Contract Documents, so that the Work and the entire Project can be utilized for its intended purposes, including but not limited to the completion of all specified systems and items relating to life safety and regulatory use, with the exception of incidental or incomplete items except where a lack of completion of such incidental or incomplete items of Work will adversely affect the complete operation of other areas of the Work. Additional conditions (if any) needed to achieve Substantial Completion of the Work and which are project specific are set forth in the Special Terms or Supplemental Conditions.

"Work" means the totality of the obligations, including construction and other services, imposed on the Construction Manager by the Contract Documents, and including all labor, materials, equipment, services, fees, expertise and incidentals necessary to fulfill the Construction Managers obligations under this Contract.

## **ARTICLE 2 – PROJECT; SCOPE OF WORK**

2.1 **Project.** The Project is XXX

2.2 **Scope of Work.** The Scope of Work includes pre-construction services, project scheduling and coordination, development of a Guaranteed Maximum Price and construction services for the successful, timely and economical completion of the Project, as more specifically described in this Contract.

2.4 **Pre-construction services.** The Construction Manager shall function as an agent of the City and shall be an integral part of the design team. Construction Manager shall perform the following pre-construction tasks:

XXXx

2.5 **Construction Services.** Upon the development of a GMP and execution of the GMP amendment to this Contract, Construction Manager shall administer the construction of the Project and provide the following construction services:

XXXX

2.6 **Additional Services.** Owner reserves the right to request the Construction Manager to provide additional services related to the Project. Upon mutual agreement of the scope of such additional services, fees and costs, task/deliverable schedule and payment schedule, a written amendment to this Contract and the GMP shall be executed by Construction Manager and Owner. Owner shall not be liable to pay for any additional services provided without a properly executed Contract amendment.

### **ARTICLE 3 – CONSTRUCTION MANAGER RESPONSIBILITIES**

3.1 Construction Manager shall be the single point of responsibility for performance of all work to complete the Project within the scheduled time, under a GMP.

3.2 **Community Outreach.** Construction Manager shall perform the Work in a manner and using such methods as to not unduly impact or interfere with the operation of the businesses and minimize the construction impacts to residents, vehicular traffic and pedestrians, the public and surrounding projects, as agreed in the Community Plan developed by Construction Manager and approved by City. Construction Manager shall be responsible for providing sufficient notices to the affected business and residents in advance of any Project impacts.

3.3 **Construction Services.** The services which the Construction Manager shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. The Construction Manager shall, without limitation:

- a. Furnish and pay for all materials, labor, supervision, equipment, supplies, fees, expertise, incidentals and services necessary to fully complete the Project in accordance with all requirements of the Contract Documents and all applicable codes and governing regulations. Construction Manager shall ensure all Work is executed in a good, substantial and workmanlike manner.
- b. Manage the construction site and provide for the administration and supervision of the Project;
- c. Maintain competent staff at the Project site and/or its West Palm Beach office to coordinate and direct the Work and sub-contractors; provided, however, that one or more of Construction Manager's project team shall be at the jobsite at all times when work is being performed. Construction Manager shall not change its Project Manager, unless agreed to by Owner in writing. Owner shall have the right to direct Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event, Construction manager shall promptly replace such personnel without entitlement to additional personal or additional time for the replacement.
- d. Competitively bid subcontract work and share the results with the City and its consultants, enter into subcontracts and administer such subcontracts with the understanding that the City has the right to review and reject any subcontractor;
- e. Establish, implement and maintain procedures for coordination among the Construction Team;
- f. Establish and maintain the Project schedule and construction schedule including identifying variances, delays or early completion of tasks, and the maintenance of the schedule, in accordance with Article 4 of this Contract;
- g. Provide jobsite safety in accordance with OSHA requirements and jobsite security; Conduct a safety meeting with Construction Manager staff, sub-contractors and Designer prior to starting work on site;

- h. Establish and enforce job rules governing parking, use of facilities, clean-up and worker discipline;
- i. Provide continuous monitoring and inspection of work to determine progress and conformance with design documents documenting same;
- j. Maintain written project progress records and provide written reports of project progress and status at least once a month relating to budget, progress payments, change orders, performance and schedule adherence, including progress photos, job meeting notes, and status of applications for payment;
- k. Manage the payment application process, including coordination with the Construction Team;
- l. Manage the change order process, including coordination with the Construction Team;
- m. Maintain a daily log containing a record of weather, sub-contractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Designer.
- n. Conduct weekly progress meetings with the Construction Team. Take and keep written minutes of all meetings, decisions and discussions pertaining to this project and submit copies of same to the City and/or City designees for archiving.
- o. Monitor small business participation to ensure compliance with the established goal.
- p. Ensure compliance with all applicable federal and state laws and county and city ordinances, including but not limited to the Americans With Disabilities Act, and OSHA.
- q. Provide all other services generally provided by Construction Manager on a project of like magnitude, scope, use, and complexity;

3.4 **Authority.** Construction Manager hereby represents and warrants to the Owner that it has full power and authority to enter into and fully perform its obligations under this Agreement without the need for any further corporate or governmental consents or approvals, and that the persons executing this Agreement are authorized to execute and deliver it.

3.5 **Duly Licensed.** Construction Manager represents that it is duly licensed to perform the services under this Contract and that it will continue to maintain all licenses and approvals required to conduct its business.

3.6 **No Solicitation.** Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Construction Manager, to solicit or secure this Contract 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 Construction Manager, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. In the event of a breach or violation of this provision by Construction Manager, the Owner shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the Fee, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

3.7 **Financial Capability.** Construction Manager certifies that it is financially able to provide the services under this Contract. Construction Manager further warrants and represents that it has no obligation or indebtedness that would impair its ability to meet the completion dates or schedules.

## ARTICLE 4 – SCHEDULE

4.1 **Master Project Schedule.** Construction Manager shall develop a master project schedule utilizing a bar chart format including the pre-construction schedule described in Section 2.4, construction schedule and City acceptance of the Project. This schedule will serve as the framework for the subsequent development of all detailed schedules. The master project schedule shall be updated monthly throughout the Project.

### 4.2 **Construction schedule.**

4.2.1 No later than submittal of the proposed GMP, Construction Manager shall prepare and submit to the City's project manager for review, a detailed construction schedule, in quadruplicate, and in acceptable electronic format (i.e., .pdf) graphically depicting the activities contemplated to occur as a necessary incident to performance of the Work, showing the sequence in which the Construction Manager proposes for each such activity to occur as necessary incident to performance of the Work required to complete the Project, showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion respectively) of each activity. City's review for the purposes of this provision and any other provisions related to the Construction Manager's responsibility to prepare and submit schedules shall be limited to a determination that the activities, duration and logic are reasonable. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.

4.2.2 **Final Completion.** Final Completion. Final completion shall be achieved no later than XXX

4.2.3 **Sub-contractor schedules.** Upon the award of each sub-contract, the Construction Manager shall review and update the construction schedule taking into account the work schedule of the other sub-contractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for planning and monitoring the performance of the sub-contractors.

4.2.4 **Submittal review schedule:** The Construction schedule shall indicate appropriate dates by which submittals must be made for Designer review and the dates by which the Designer must notify the Construction Manager of the outcome of such review in order to avoid any delay.

4.3 **Schedule Updates.** The Construction Manager shall update and/or revise the Master Project schedule and the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress or performance of the Work already performed or will affect the progress of the performance of the Work yet to be performed in contrast with the planned progress of performance of such Work, as depicted on the original construction schedule and all updates and/or revisions thereto. Each such update and/or revision to the construction schedule shall be submitted to the Owner and Designer with each monthly pay request and at such earlier intervals as circumstances may require. Failure of the Construction Manager to update, revise, and submit the construction schedule with each pay request shall be sufficient grounds to find the Construction Manager in material default and to terminate the Contract or to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Designer is submitted. Each such update and/or revision to the construction schedule shall be submitted to the City in quadruplicate. In no event shall submittal and review of a schedule update, whether or not objected to or approved by the Owner, constitute evidence of an adjustment to the substantial or final completion date or to the GMP.

4.4 **Schedule Review.** Owner's approval of any schedule shall only indicate the Owner's acknowledgement of the dates therein and shall not constitute approval of the accuracy, adequacy, or logic of such schedules or of the means, methods or sequencing of the Work contained in such schedules.

4.5 **Time of Essence.** Construction Manager understands that time is of the essence in connection with the performance of the Work under this Contract. Construction Manager affirms that it understands the schedule for completion of the Work and that all anticipated costs to achieve the schedule have been included in the GMP for the Project.

4.6 **Maintenance of Schedule.** Construction Manager shall expedite the Work by whatever means the Construction Manager may use, including, without limitation, increasing staffing or working overtime to maintain the agreed construction schedule. If expediting the Work is required due to reasons within the control or responsibility of the Construction Manager, then the additional costs incurred shall be chargeable

to the Direct Construction Costs as part of, and subject to, the GMP. If the expediting of the Work is required due to reasons outside the control or responsibility of the Construction Manager, then in such event, the additional costs incurred shall be the subject of an appropriate adjustment by Change Order, as elsewhere provided in the General Conditions.

4.7 **Work Hours.** Notwithstanding any contrary provision in the General Conditions, Work at the project site shall be performed Monday through Friday, 7 am to 5 pm, Saturdays 8 am to 5 pm., unless otherwise agreed in writing by the City.

**ARTICLE 5 - OWNER'S RESPONSIBILITIES**

5.1 **Funding.** It is understood and agreed that the Owner's obligation to pay under this Contract is contingent upon an appropriation for its purposes by the City Commission.

5.2 **Owner Costs.** The Owner shall pay for the following costs:

- Permit(s)
- Utility charges and all meter fees related to irrigation meters and taps.

5.3 **Drawings and Specifications.** The Construction Manager will be furnished a reproducible set of all copies of Drawings and Technical Specifications reasonably necessary and ready for printing.

5.4 **Subsoil Conditions.** Notwithstanding any provision to the contrary in the General Conditions, in the event any portion of the Work site is determined to require remediation of contamination, Owner shall contract for the services of a geotechnical or other consulting specialist to direct the Construction Manager in performing such remediation. The GMP may be amended to account for the Construction Manager's Direct Construction Costs for such remediation.

5.6 **Underground Utilities and Facilities.** Notwithstanding any provision to the contrary in the General Conditions, conflicts or unforeseen work due to unknown underground utilities, may be addressed by change order.

**ARTICLE 6 – FEE FOR PRE-CONSTRUCTION SERVICES**

6.1. **Pre-Construction Fee.** The fee to be paid by the Owner to Construction Manager for all pre-construction services under this Contract (except any Additional Services) including all costs for personnel, consultants and sub-contractors, materials, equipment, presentation and outreach materials, and any other costs to perform the pre-construction services, shall not exceed XXX Dollars (\$XXX).

6.2 **Fee schedule.** CM agrees to provide the pre-construction services for each task set forth in Section 2.4 to this Contract and agrees to accept the lump sum fee indicated below for each such task:

- A. Task 1: \$ \_\_\_\_\_
- B. Task 2: \$ \_\_\_\_\_

6.3 **Invoices.** Invoices must identify the PO number and the Contract Number. Invoices shall be submitted directly to:

**City of West Palm Beach Accounts Payable,  
P.O. Box 3366  
West Palm Beach, FL 33402-3366.**

The payment request amount shall be related to the percentage of services completed for the specific task. Invoices received from CM shall be reviewed and are subject to the prior approval of the City to determine if services have been rendered in conformity with the Contract.

6.4 **Payment.** The Pre-construction Fee shall be paid in accordance with the fee schedule in Section 6.2 and upon acceptance of deliverables satisfactory to the City and receipt of a proper invoice from CM. Payment of Fees will be made in accordance with the Local Government Prompt Payment Act, Section 218.70, et al., Florida Statutes, as amended, which provides for prompt payment, interest payments, a dispute resolution provided detailed invoices are submitted in compliance with the terms of this Contract.

6.5 No payment made under this Contract shall be conclusive evidence of the performance of this Contract by Construction Manager, either wholly or in part, and no payment shall be construed to be an acceptance of or to relieve Construction Manager of liability for the defective, faulty or incomplete rendition of the Work.

## **ARTICLE 7 - GUARANTEED MAXIMUM PRICE**

7.1 **Basis for GMP.** The GMP shall be made up of the sum of the following Contract Price Elements ("Contract Price Elements"):

- A. Construction Costs – Direct Construction Costs, as defined in Section 8.1;
- B. General Conditions /Administration Costs; as defined in Section 8.2;
- C. Construction Manager's Fee, as defined in Article 9;
- D. Owner's Contingency, as defined in Section 7.7.

7.2 **GMP.** Pursuant to the Project Schedule, the Construction Manager shall submit to Owner a proposed Guaranteed Maximum Price for the construction services for the Project, which shall include the Direct Construction Costs, General Conditions/Administration Costs, Construction Manager's Fee, and any Owner's Contingency. The sum of the Direct Construction Costs, General Conditions/Administration Costs, and Construction's Manager's Fee is guaranteed by the Construction Manager not to exceed the amount established as the GMP. Costs in excess of the GMP, as it may be amended, shall be paid by the Construction Manager without reimbursement by Owner.

7.3 Construction Manager and City agree that the GMP under this Contract shall be the maximum amount City is obligated to pay Construction Manager for the complete performance of the Work and construction of the Project.

7.4 **GMP Amendment.** The GMP shall be established by a formal written amendment to this Contract which sets forth the Direct Construction Costs, General Conditions /Administration Costs, and Construction Manager's Fee and the total sum established as the Guaranteed Maximum Price for the Project. In the event a GMP cannot be developed for all phases of the Project before the Owner wishes to commence Work, a separate GMP may be developed for each phase of Work by amendment to the Project GMP and approved by formal amendment to this Contract.

7.5 **Changes to GMP.** In no event shall the GMP be modified except by Amendment to this Contract. Construction Manager understands and acknowledges that any increase in the GMP may require the approval of the City Commission.

7.6 **Contract Price Element Adjustment.** The City's Project Manager is authorized to issue a Contract Price Element Adjustment Memo to reallocate sums among the Contract Price Elements within the GMP, provided there is no increase in the GMP. Construction Manager shall notice the City, in writing, within seven (7) calendar days of receipt of a Contract Price Element Adjustment Memo, of any objections or claims arising from the Contract Price Element Adjustment Memo or same shall be deemed waived. Construction Manager does not guarantee any specific line item price provided as part of the GMP. When subcontracts of the Project are bid and have been executed, if the sum of the bids is below the estimated Direct Construction Costs, a Contract Price Element Adjustment Memo may be issued to move the surplus to the Owner's Contingency fund.

7.7 **Owner's Contingency.** The Owner may designate an amount as an Owner Contingency, pursuant to the General Condition 10.13, which contingency funds are included for the purpose of defraying any expenses due to unforeseen circumstances or Owner-requested changes. The Owner's Contingency shall be determined with the GMP but shall not be part of the GMP. Use of Owner's contingency funds requires prior written approval of the Owner, in accordance with the General Conditions. The Construction Manager will be required to furnish documentation evidencing expenditures charged to any contingency item prior to the release of funds by the Owner. Without limiting the reasons for Owner denying a request for funding from the Owner's Contingency, and by way of illustration only, the Owner's Contingency shall not be used for a) design errors or omissions which a prudent construction manager should reasonably have detected; b) Construction Manager/sub-contractor mistakes in fabrication, installation or construction of the Work; c) liquidated damages; d) any costs and expenses in the event this Contract is terminated for cause; e) Construction Manager's Fee. All Owner's Contingency funds not spent shall remain funds of the Owner.

7.8 **Savings.** At final completion, all savings within the GMP shall inure to the benefit and be payable to the Owner. Savings shall be the net difference obtained by deducting from the GMP (as may be amended), the actual Direct Construction Costs, Construction Manager's Fee, and the CM Contingency funds expended. Any liquidated damages and Owner's Contingency are not part of this calculation.

7.9 **Taxes.** The GMP will include those taxes in the Direct Construction Costs which are legally enacted at the time the GMP is established.

7.10 **Lack of Agreement.** In the event that Construction Manager and Owner are unable to agree on a GMP, the Owner, in its sole discretion, may terminate this Contract. Owner's shall be responsible for payment to Construction Manager for that portion of the pre-construction services fee actually earned in the performance of pre-construction services.

## **ARTICLE 8 – CONTRACT PRICE ELEMENTS.**

8.1. **Direct Construction Costs.** The term "Direct Construction Costs" shall mean the sum of all direct costs necessarily and reasonably incurred and paid by Construction Manager in the performance of the Work. The basis of payment for Direct Costs shall be Construction Manager's actual direct costs. The Direct Construction Costs shall include only the following items:

8.1.1 **Construction Manager's Direct Construction Cost:** Construction Manager's Direct Construction Costs, including payments made by the Construction Manager to its sub-contractors and material suppliers for Work performed or material provided.

8.1.2 **Construction Manager's Labor Costs:** Wages paid for labor in the direct employ of Construction Manager in the performance of actual construction of the Work.

8.1.3 **Materials and Equipment:** Cost of all materials and the costs of transportation and storage thereof, and manufacturers' field services required in connection therewith; rentals of all construction equipment, machinery and parts, in accordance with rental agreements and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery and parts shall cease when the use thereof is no longer necessary for the Work.

8.1.4 **General Requirements.** Other costs directly associated with performance of the work, including but not limited to: Costs for security fencing, barricades, safety equipment, pedestrian protections and dust control; Costs of temporary electric power, lighting, water, sanitary facilities required for the performance of the Work, or required to protect the Work from weather damage; Costs of removal and disposal of debris from the site; Costs of surveys, measurements and layout work reasonably required for the execution of the Work; Costs of preparation of shop drawings, coordination plans, photographs and as-built drawings; Costs for testing laboratory, except relating to defective or non-conforming work; Temporary Erosion Control, Temporary Pest Control, Security Service, Protection of Installed Work, Traffic and Site Barricades, Temporary Fire Protection, Temporary Traffic / Direction Signage.

8.2 **General Administration and General Conditions Costs.** Such costs shall include:

8.2.1 General administration costs such as salaries, benefits, compensation for Construction Manager's employees working on and/or assigned to the project including: Project Executive, Project Manager, Project Superintendent, Assistant Superintendent, Project Coordinator, Accountant, Safety Supervisor.

8.2.2 General Conditions costs shall include Temporary Field Office, Telephone, Cellular Telephones, Furniture, Office Supplies, Drinking Water, Janitor Supplies, Computers, Printers, Copy Machine, Fax Machine, Alarm System, Installation of Equipment, Reproduction of Documents and Postage and FedEx costs..

8.2.3 Insurance and Bond Costs

8.2.4 Costs for community outreach and notices.

8.3 Legal costs incurred in connection with disputes between Construction Manager and sub-contractors, or between Construction Manager and Owner, are the responsibility of the Construction Manager and shall not be included in any Construction Price Element.

8.4 **Invoices.** In addition to the requirements of General Condition 12, invoices and payment requests shall comply with the following:

8.4.1 **Invoice Detail.** All payment requests shall detail regarding the Contract Price Elements to be shown in a manner as will allow ready comparison to the approved GMP detail and shall be substantiated with invoice detail.

8.4.2 **Invoice Sets.** Five (5) sets of each invoice shall be submitted, and shall show the description and project site, and shall reference this Contract and contract number.

8.4.3 Monthly General Administration and General Conditions payment requests will be determined based on percent of Project completion.

8.5 **Retention.**

8.5.1 **Subject to retention:** Direct Construction Costs, Construction Manager's Direct Labor Costs in the performance of actual construction work, Material and Equipment costs are subject to retention.

8.5.2 **Not subject to retention:** General Requirement costs, General Administration and General Conditions costs, Insurance and Bond Costs are not subject to retention.

8.6 Subject to force majeure, any and all claims relating to unforeseen material cost increases or escalation are fully waived by Construction Manager.

8.7 All penalties incurred due to fault of the Construction Manager for late payment of cost of the Project will be paid by the Construction Manager.

## **ARTICLE 9 - CONSTRUCTION MANAGER'S FEE**

9.1 **Construction Manager's Fee.** The Construction Manager's compensation for construction management services performed during the Project construction phase shall established with the GMP ("Construction Manager's Fee"), which is included in the GMP.

9.2 **Payable.** Construction Manager's Fee shall be payable monthly on a percentage of completion basis, subject to the retainage and payment provisions set forth in the General Conditions. Owner may withhold payment of Construction Manager's Fee until final resolution of all claims between Owner and Construction Manager under this Contract.

9.3 **Construction Managers Exclusive Remedy:** In the event the substantial or final completion date(s) are extended, regardless of whether delay is caused by any act or neglect of the City or the Designer, or is attributable to the City or the Designer, the Construction Manager's sole and exclusive remedy is an extension of the construction completion date. Notwithstanding any provision in the General Conditions, City shall grant extensions of Contract time, and shall reimburse Construction Manager for the costs of all permits, Direct Construction Costs, and General Administration / General Conditions Costs, as well as any costs for inspections and submittals required as result of delays not caused by the Construction Manager, such as errors or omissions in the design documents, drawings and specifications.

## **ARTICLE 10 - CHANGE IN THE PROJECT**

10.1 **Change Orders.** Owner may order changes in the Work within the general scope of this Contract and within the GMP, consisting of additions, deletions or other revisions. All changes in the work shall be by written change order, properly approved by the City's authorized signatory, and as provided in the General Condition 8.

10.2 The Construction Manager expressly acknowledges that commencing work without a written executed Change Order approved in writing by the City and Construction Manager, or a Construction Change Directive issued by City, in advance of commencement of work waives any claim by Construction Manager to additional sums or time.



10.3 Agreement on any Change Order shall constitute a final settlement and release by Construction Manager of all matters relating to the 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 GMP and the Contract Time.

10.4 **Emergencies.** In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in this Contract and General Conditions.

#### **ARTICLE 11 – LIQUIDATED DAMAGES**

11.1 **Liquidated Damages.** If the actual completion date for substantial completion or final completion occurs later than the time indicated in the GMP Amendment, or the agreed construction schedule, as amended, or later than the scheduled completion date if a duly authorized change order for time is issued, liquidated damages shall be paid by Construction Manager, for unexcused delay in performance of the work, in accordance with General Condition 19. The construction services Work to be performed under this Contract shall commence on the date of Notice to Proceed for construction services, with such extensions of time as are provided for in the General Conditions. If said work is not substantially completed by the specified time, the Contractor shall be liable and hereby agrees to pay to the City as liquidated damages, and not as a penalty, the sum of One Thousand Five Hundred Dollars (\$1,500.00) per calendar day for each and every day or part of a day thereafter that said work remains incomplete, in accordance with the General Conditions. Liquidated damages shall not, in the aggregate, exceed \$60,000. Owner and Construction Manager mutually agree to waive consequential damages against each other.

#### **ARTICLE 12 – CONSTRUCTION BOND**

12.1 In accordance with General Condition 13, within ten (10) days of receipt of a Notice to Proceed with the construction services under this Contract, Construction Manager will record the required public construction bond, in the amount of the GMP, with the Clerk of the Court in the Public Records of Palm Beach County and provide a certified copy of the recorded bond to Owner prior to commencing construction services Work and submittal of the first invoice for construction services Work.

#### **ARTICLE 13 - INSURANCE**

13.1 **Coverages.** Construction Manager shall obtain and maintain in force at all times during the term of the Contract, insurance coverage from a company or companies lawfully authorized to do business in Florida, pertaining to Professional Liability, Property Damage and Workers Compensation in the following types and amounts:

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

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

**WORKERS' COMPENSATION:** Workers' Compensation and Employer's Liability Insurance with limits of Employer's Liability Insurance not less than \$1,000,000 "each accident," \$1,000,000 "disease policy limit," and \$1,000,000 "disease each employee."

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

**POLLUTION:** Not less than \$3,000,000 IF hazardous materials, including lead, asbestos, PCBs or other pollutants may be present. Any liability coverage on claims made basis shall remain effective for five (5) years after final payment.

13.2 Additional Insured. All required insurance (except Worker's Compensation and Professional Liability) shall include an Additional Insured endorsement identifying the "City of West Palm Beach, its commissioners, officers, employees and agents" as Additional Insureds. No costs shall be paid by the Owner for an additional insured endorsement.

13.3 Certificate of Insurance. Evidence of insurance, being a current ACORD certificate of insurance or its equivalent, executed by the insurer, or its agent or broker, evidencing that a policy of insurance and any required endorsements have been issued by the agent/broker shall be delivered to Owner prior to execution of any contract awarded. The Certificate of Insurance shall be dated and show the name of the insured, the specific contract by name and contract number, the name of the insurer, the number of the policy, its effective date, and its termination date.

13.4 Renewal; Cancellation. Coverage is not to cease and is to remain in full force and effect until all performance required of Construction Manager is completed. Policies must be endorsed to provide the Owner with at least thirty (30) days' notice of cancelation and or/or restriction.

13.5 Sub-Contractors. Construction Manager shall contractually require and verify that its sub-contractors will maintain during the term of their Contract, the above types of insurance, in coverage amounts acceptable to the Owner.

13.6 Waivers of Subrogation. The Owner and Construction Manager waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Designer, Designer's consultants, separate contractors described in [this Contract], if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Contract or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as trustee. The Owner or Construction Manager, as appropriate, shall require of the Designer, Designer's consultants, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

13.7 Anything to the contrary notwithstanding, the liabilities of Construction Manager and any sub-contractors under this Contract shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages.

## **ARTICLE 14 - INDEMNIFICATION**

14.1 Construction Manager shall indemnify and hold harmless the Owner, its commissioners, officers, employees and agents (excluding the design professionals), from and against any and all claims, obligations, liability, expenses, losses and causes of action, including attorneys' fees and costs, to the extent the same are caused by: (i) an act, negligence, recklessness or intentional wrongful misconduct of Construction Manager or its subcontractors, or the commissioners, officers, employees or agents of either,

while engaged in or about the performance of the Work; or while in or about the project site or premises; or (ii) arising from accident or any injury to Construction Manager or its subcontractors while engaged in or about the performance of the Work, or while in or about the project site or premises, not caused by act of Owner, Owner's agents, servants, or other contractors of Owner; or (iii) arising out of the violation of federal, state, county or municipal laws, ordinances or regulations by Construction Manager or its subcontractor; or (iv) arising from liens or claims for services rendered for labor or materials furnished in or for the performance of the Work. The extent of Construction Manager's indemnification shall be limited to one and one-half times the contract price or \$1 million per occurrence, whichever is greater. This paragraph shall not be construed to require Construction Manager to indemnify Owner for Owner's own negligence, or intentional acts of the Owner, its agents or employees. Nothing in this paragraph shall be construed as a contractual waiver by Owner of the limits of sovereign immunity under Sec 768.28, Florida Statutes. This paragraph shall survive the expiration or termination of the Contract. (725.06 F.S. and 768.28 F.S.)

## **ARTICLE 15 - SUBCONTRACTS**

### **15.1 Required Subcontract Conditions:**

15.1.1 By an appropriate written agreement, the Construction Manager shall require each subcontractor to the extent of the work to be performed by the sub-contractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager by the Construction Documents, assumes toward the Owner. Said agreements shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the sub-contractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each subcontractor to enter into similar agreements with its sub-sub-contractor.

15.1.2 All subcontracts shall contain an explicit "no damages for delay" provision which is consistent with General Condition 4.8.14. Each subcontract shall require the subcontractor to expressly agree that such clause or provision constitutes the sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses or additional compensation.

15.1.3 Each subcontract shall require that any claims by subcontractor for delay or additional cost must be submitted to Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims. Extensions of time will not be granted for delays caused by inadequate construction force, failure of Construction Manager or its subcontractors to place orders for equipment or material sufficiently in advance to ensure timely delivery, or temporary stoppages due to normal seasonal rain or other inclement weather.

15.1.4 Insurance Requirements by sub-contractors. Each sub-contract shall require that each sub-contractor secure and maintain at its own cost and for the life of the Project its own valid Worker's Compensation Insurance, including a 'minimum premium' workers' compensation policy where any Employee Leasing Firms or laborers are employed or used by sub-contractor, as well as Commercial General Liability with coverage of at least \$500,000 aggregate, and all insurance required by the specifications or General Conditions in the Contract Documents, in a company or companies lawfully authorized to do business in Florida. The Owner shall be named as Additional Insured on sub-contractor liability policies.

15.1.5 Owner is an express, intended third party beneficiary of any agreements between Construction Manager its subcontractors.

15.1.6 No relationship of agency, employment contract, obligation or otherwise shall be created between Owner and any subcontractor and a provision to such effect shall be inserted into all subcontracts.

15.2 **Responsibility for Subcontractors.** Owner's approval of any subcontractor shall not relieve Construction Manager from any liability or obligation under the Contract or any applicable laws. Construction Manager shall be responsible for any and all acts, defaults, omissions or negligence of its subcontractors and shall be and remain liable and obligated to Owner for all Work subcontracted. The Owner shall have no liability to any subcontractor of the Construction Manager for any work or

payment for any work performed by such subcontractor on behalf of the Construction Manager for the Project. The Designer shall not resolve any disputes between Construction Manager and its subcontractors. It is expressly acknowledged that Construction Manager shall be solely contractually bound for the payments of amounts due to any and all sub-contractors to the Construction Manager.

**15.3 Payments to Sub-contractors.** As required by Sec. 255.073, Florida Statutes, and General Condition 10.9, Construction Manager shall pay each sub-contractor, from payments made by Owner to Construction Manager, the amount to which said sub-contractor is entitled reflecting any retainage. Construction Manager shall likewise require each subcontractor to make payments to its sub-sub-contractors pursuant to the statute. The Construction Manager shall not withhold payments to sub-contractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owner, adjusting pay requests and project bookkeeping as required. Before issuance of final payment to sub-contractors, Construction Manager shall ensure that sub-contractor has submitted satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, all releases of liens have been provided, warranty information is complete, and As-Built documentation has been provided to Construction Manager.

**15.4 Subcontracts to be provided.** The Construction Manager shall provide a copy of each subcontract to the Owner upon request.

## **ARTICLE 16 – DEFAULT**

16.1 In addition to any other provisions regarding default contained in the General Conditions or other Contract Documents, and in addition to any other remedies which are otherwise provided in the General Conditions or other Contract Documents, in the event of default by Construction Manager, Owner may:

- a. Terminate this Contract if due to breach or other actions of Construction Manager which has not been cured to Owner's satisfaction within 45 calendar days of written notice by Owner;
- b. Withhold payments to Construction Manager until the breach is cured;
- c. Offset any damages suffered by Owner against payments due to Construction Manager;
- d. Pursue any and all other remedies legally available.

## **ARTICLE 17 - TERMINATION**

17.1 Termination by the Construction Manager. In addition to any other provisions regarding default contained in the General Conditions or other Contract Documents, and in addition to any other remedies which are otherwise provided in the General Conditions or other Contract Documents, If the Work is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Work should be stopped for a period of sixty (60) days for the Owner's failure to make payments thereon, then the Construction Manager may, upon seven (7) days written notice to the Owner, request payment for all Work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, and reasonable sited-related termination expenses incurred by the Construction Manager. Under no event shall the Construction Manager be entitled to claim lost profits, which claim is hereby expressly waived by the Construction Manager and its Surety.

17.2 Owner's Right to Termination for Cause.

17.2.1 If the Owner terminates this Contract for cause in accordance with the General Conditions, the GMP or the actual Direct Construction Costs, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and the Construction Manager's Fee shall be reduced by an amount required to manage the making good of such deficiencies. The Construction Manager shall not be allowed to recover any resultant costs. The Construction Manager shall remain responsible for maintaining schedule and shall not be entitled to any damages or extension of the schedule or any increase in GMP.

17.2.2 If the Construction Manager'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 Sum has been expended. The Surety shall then be responsible for all of the obligations and duties of the Construction Manager 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 Guaranteed Maximum Price in effect as of termination. The Surety may not assign those obligations without the written consent of the Owner. The Surety shall be responsible for the payment of all costs relating to the termination of the employment of the Construction Manager.

17.2.3 If the Construction Manager refuses to provide public records to the City pursuant to the provisions of Chapter 119, Florida Statutes, and this Contract, then the Owner may, without prejudice to any other right or remedy, terminate this Contract for cause, in accordance with the General Conditions.

17.3 Termination by Owner For Convenience. If the Owner terminates this Contract for convenience, it shall reimburse the Construction Manager for any unpaid Direct Construction Costs, plus that portion of the monthly payments of the Construction Manager's Fee which have become due up to the date of termination, and as provided in the General Conditions. In case of such termination, the Owner may assume and become liable for obligations, commitments and unsettled contractual claims that the Construction Manager has previously undertaken or incurred in good faith in connection with said Work. The Construction Manager shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in him the rights and benefits of the Construction Manager under such obligations or commitments.

## **ARTICLE 18 - MISCELLANEOUS**

18.1 Assignment. Neither the Owner nor the Construction Manager shall assign its interest in this Contract without the written consent of the other, except as to the assignment of proceeds.

18.2 Amendment. This Contract may only be modified by written amendment executed by the Owner and Construction Manager. Any amendments to this Contract: (1) shall be subject to the mutual written agreement of the parties; (2) shall be in the form of numbered amendments; (3) shall be executed by the duly authorized representatives of both parties; and, (4) shall become part of the public records of the Owner. It is expressly understood, moreover, that no oral discussions, assents or representations shall constitute an enforceable amendment to this Contract unless it is reduced to writing in accordance with this paragraph.

18.3 Liens. The parties acknowledge that no liens may attach to the Work, as a public Project. Nevertheless, the Construction Manager agrees to keep the Project, the improvements thereof and the ground appurtenant thereto, free of liens for or on account of any work done or materials furnished under this Agreement. In the event such a lien is filed or claimed against the Project, and such lien is either invalid or Construction Manager has been paid in whole or in part for the work described in the lien, the Construction Manager agrees that he will, within five (5) days after written notice from Owner, discharge the lien or liens to the extent of its invalidity or to the extent of payments made and cause a satisfaction of such lien to be recorded in the Public Records of Palm Beach County, Florida, or post a bond sufficient to release the lien or liens, and cause the Clerk of the Circuit Court of Palm Beach County, Florida, to discharge such lien pursuant to Fla. Stat. §713.24 (1997). In the event the Construction Manager fails to so discharge or bond the lien or liens within such period as required above, Owner shall thereafter have the right, but not the obligation, to discharge or bond the lien or liens. Additionally, the Owner shall thereafter have the right, but not the obligation, to retain out of any payment then due or thereafter to become due the Construction Manager, monies sufficient to discharge the amount of any such lien or liens and to pay Owner's reasonable attorney's fees and costs incurred in connection therewith."

### **18.4. Relationship of the Parties.**

18.4.1 Trust. CM agrees and accepts the relationship of trust and confidence established with the Owner and covenants with the Owner to furnish CM's best, reasonable skill and judgment, and to cooperate with the Engineer in furthering the interests of the Owner.

18.4.2 Pre-construction services. CM shall furnish pre-construction services and use its best efforts to perform those services in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Designer, CM, and other persons or entities employed by the Owner for the Project. Information under the Owner's control, or responses or actions required from the Owner, shall be furnished by the Owner with reasonable promptness to avoid delay in CM's performance of the pre-construction services.

18.4.3 Construction Services. If a construction services contract is agreed and executed by Owner and CM, the CM shall cease to be an agent of Owner and shall become the single point of responsibility for performance of all work to complete the Project within the scheduled time, under a GMP.

18.5. State Taxes. CM understands that in performing the services for the Owner, CM is not exempt from paying sales tax to CM's suppliers for materials required for CM to perform under this Contract. CM shall not be authorized to use the Owner's tax exemption number for purchasing supplies or materials.

18.6 Availability of Funds. This Contract is expressly conditioned upon the availability of funds lawfully appropriated and available for the purposes set out herein as determined in the sole discretion of the Owner. If funding for this Contract is in multiple fiscal years, funds must be appropriated each year prior to costs being incurred. Nothing in this paragraph shall prevent the making of Contracts with a term of more than one year, but any Contract so made shall be executory only for the value of the Professional Services to be rendered or paid for in succeeding fiscal years. In the event funds to finance this Contract become unavailable, the Owner may terminate this Contract upon no less than twenty-four (24) hours notice to CM. The Owner shall be the sole and final authority as to the availability of funds.

18.7. Records Maintenance.

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

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

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

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

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

18.7.6 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY CLERK, WHO IS THE CITY'S CUSTODIAN OF PUBLIC RECORDS, AT:

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

18.8. **Ethics Requirements.**

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

18.8.2 **Conflicts of Interest.**

- a. Contractor represents that it has not given or accepted a kickback in relation to the Contract and has not solicited the Contract by payment or acceptance of a gratuity or offer of employment.
- b. Contractor represents that it has not solicited the Contract by payment of a gift or gratuity or offer of employment to the mayor or members of the City of West Palm Beach commission, any official, department director, head of any City of West Palm Beach agency, employee of the City of West Palm Beach, any City of West Palm Beach agency or selection committee, or member of any board, committee, or agency of the City of West Palm Beach or any of their immediate family or close personal relation (the "Conflict Group").
- c. Contractor represents that it does not employ, directly or indirectly any member of the Conflict Group.
- d. Contractor represents that neither it nor its subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any City commissioner, mayor or officer, during tenure or for 2 years thereafter, has any interest, direct or indirect.
- e. Contractor represent that no member of the Conflict Group is a stockholder of an interest of 10% or more, in any business entity affiliated with Contractor.
- f. Contractor represents that it has not knowingly given, directly or indirectly, any gift with a value greater than \$100 in the aggregate in any calendar year to any member of the Conflict Group that provides regulation, oversight, management or policy-setting recommendations regarding Contractor or its business.
- g. In the event Contractor is permitted to utilize subcontractors to perform any Work under the Contract, Contractor agrees to prohibit such subcontractors, by written contract, from having any such conflicts of interest.

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

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

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

**18.9. Compliance with Laws.**

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

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

18.9.3 Discriminatory Vendor List. In accordance with Fla. Stat. Sec. 287.134, Contractor represents that it has never been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services.

18.9.4 Public Entity Crimes. Contractor certifies that Contractor, its affiliates, suppliers, subcontractors and consultants who will perform under the Contract 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 and that execution of the Contract will not violate the Public Entities Crimes Act (Sec. 287.133, Florida Statutes). Violation of this section may result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

18.9.5 Convicted Vendor List. Pursuant to Fla. Stat. Sec. 287.133, Contractor represents that it has not been named on the Convicted Vendor List maintained by the State of Florida within 36 months from the date of submittal of its bid related to this Contract.

18.9.6 Scrutinized Companies Lists. Contractor represents that Contractor is not on the Scrutinized Companies that Boycott Israel List, maintained by the State of Florida, and is not engaged in a boycott of Israel. Additionally, if the Contract Price is One Million Dollars (\$1,000,000) or more, in accordance with Sec. 215.473 Fla. Stat., Contractor represents that neither the Contractor firm nor its principals or owners are listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engages in business activities in Sudan or Cuba. Violation of this section may result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

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

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

18.9.9 Unauthorized Aliens. Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Contract. Contractor shall take all commercially reasonable precautions to ensure that it and its sub-contractors do not employ persons who are not authorized to work by the immigration laws or the Attorney General of the United States.



18.9.10 Prohibited Persons. Neither Contractor nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Contractor) is or will be an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("EO13224"), (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>), (iii) who commits, threatens to commit or supports "terrorism," as that term is defined in EO13224, (iv) is subject to sanctions of the United States government or is in violation of any federal, state, municipal or local laws, statutes, codes, ordinances, orders, decrees, rules or regulations relating to terrorism or money laundering, including, without limitation, EO13224 and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, or (v) who is otherwise affiliated with any entity or person listed above (any and all parties described in clauses (i) – (v) above are herein referred to as a "Prohibited Person").

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

18.9.12 Terrorist Financing. CM represents that it is not in violation of any laws relating to terrorism or money laundering, including the Executive Order No. 13224 on Terrorist Financing.

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

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

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

18.13. Confidentiality. CM agrees that it will make no statements, press releases or publicity releases concerning this Contract or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Contract, or any particulars thereof, during the period of the Contract, without first notifying the Owner and securing its consent in writing.

18.14. No Pledge. CM shall not pledge the Owner's credit or attempt to make the Owner a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any other form of indebtedness.

18.15. Communications and Notice. All written notices, demands 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 by electronic transmission producing a written record, or hand delivered to the appropriate parties at the addresses(es) listed on the first page of this Contract.

18.16. **Litigation; Governing Law; Venue; Waiver of Jury Trial.** This Contract shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law without regard to conflicts of law provisions. The Owner and Construction Manager submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit concerning this Contract shall be Palm Beach County, Florida, or the Federal Southern District of Florida. Construction Manager agrees to waive all defenses to any suit filed in Florida based upon improper venue or *forum nonconveniens*. **TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS CONTRACT.**

18.17. **Remedies.** No remedy conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy granted by this Contract or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy shall preclude any other or further exercise thereof.

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

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

18.20. **Waiver.** Any waiver by either party of any one or more of the covenants, conditions, or provisions of this Contract, shall not be construed to be a waiver of any subsequent or other breach of the same or any covenant, condition or provision of this Contract.

18.21. **Headings.** The headings contained in this Contract are provided for convenience only and shall not be considered in construing, interpreting or enforcing this Contract.

18.22. **Severability of Provisions.** In the event that any term or provision of this Contract shall to any extent be held invalid or unenforceable, it is agreed that the remainder of this Contract, or the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and every other term and provision of this Contract shall be deemed valid and enforceable to the maximum extent permitted by law.

18.23 **Entire Contract; Controlling Provisions; Amendment**

18.23.1 This Contract, including the General Conditions and Contract Documents identified in Section 1.2 above, which are incorporated into this Contract in their entirety, embody the entire Contract and understanding of the parties with respect to the subject matter of this Contract and supersede all prior and contemporaneous Contracts and understandings, oral or written, relating to said subject matter.

18.23.2 This Contract may only be modified by written amendment executed by the Owner and CM. Any amendments to this Contract: (1) shall be subject to the mutual written agreement of the parties; (2) shall be in the form of numbered amendments; (3) shall be executed by both parties; and, (4) shall become part of the public records of the Owner. It is expressly understood, moreover, that no oral discussions, assents or representations shall constitute an enforceable amendment to this Contract unless it is reduced to writing in accordance with this paragraph.

\*\*\*\*\*

**Construction Manager-at-Risk for  
Belmonte Road & Pershing Way Water & Sewer Improvements  
(S Olive Avenue to S Flagler Drive)**

RFQ 17-18-407

**CONTRACTOR VERIFICATION FORM**

PRIME BIDDER:

Name of Firm: \_\_\_\_\_

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

\_\_\_\_\_

Telephone: (     ) \_\_\_\_\_

Fax: (     ) \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

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 –May be obtained from City Construction Services)

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

**REPRESENTATIONS AND DISCLOSURES**

RFQ No. 17-18-407

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } SS:

I am an officer of the Proposer firm, named below, submitting its qualifications under a RFQ and am authorized to make the following Representations and Disclosures on behalf of the Proposer. I certify or affirm that to the best of my knowledge and belief, the following statements are true:

1. No Lobbying. Proposer acknowledges that contact by a Proposer, or anyone representing a Proposer, regarding this ITB with the Mayor, any City Commissioner, officer, City employee, other than an employee of the West Palm Beach Procurement Division, is grounds for disqualification.
2. There are no actual, apparent or potential conflicts of interest with Proposer or any sub-consultants or subcontractors that are present or could develop with respect to the scope of services and any parties to this solicitation or any third parties.
3. Proposer has identified any services it has provided to the City in the past three (3) years.
4. Submittal of Proposer's Proposal is made without connection with any persons, company or party making another submittal, and it is in all respects fair and made in good faith without collusion or fraud.
5. Proposer has not filed for bankruptcy in the past five (5) years.
6. Neither Proposer nor any of Proposer's principals have been indicted for or convicted of a felony or fraud.
7. Final completion shall be TBD.
8. Liquidated damages for delay are agreed to be \$ TBD per calendar day until Substantial Completion; \$ TBD per calendar day beyond the scheduled Final Completion date.
9. Small Business participation for this project is 15%.
10. If applicable, Proposer and its subcontractors shall employ a minimum of 15% of on-site labor, from persons residing within the municipal boundaries of the City of West Palm Beach.
11. If applicable, Proposer and its subcontractors shall pay their employees a living wage of no less than \$14.00 per hour, which shall be increased to \$15.00 per hour as of October 1, 2019.
13. Proposer certifies that it has not been placed on the Convicted Vendor List maintained by the State of Florida for a period of 36 months from the date of this Bid.
14. Proposer certifies that it has not been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services.

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

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

17. Proposer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Proposer, to solicit or secure an award under this RFQ 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 Proposer, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from an award.

18. Proposer 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 RFQ will be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

19. Proposer recognizes and agrees that the City will not be responsible or liable in any way for any losses that the Proposer may suffer from the disclosure of Proposal information to third parties.

I certify or affirm that to the best of my knowledge and belief, the above representation and disclosure statements are true.

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

Business Address: (Street, City, State, Zip Code) \_\_\_\_\_

State of Incorporated: \_\_\_\_\_ Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

**PROPOSER:**

\_\_\_\_\_  
***Signature of Official authorized to bind Bidder.***

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

Title: \_\_\_\_\_

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

The Representations and Disclosures were AFFIRMED AND SIGNED before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_ (name) as  
\_\_\_\_\_ (title) of  
\_\_\_\_\_ (Proposer firm), who is  
personally known to me or produced  
\_\_\_\_\_ as identification.

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

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

Commission \_\_\_\_\_

No.

Notary Stamp:

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



**Procurement Division/Small Business Program**  
 401 Clematis Street, 3rd Floor  
 West Palm Beach, FL 33401-4702  
 Tel. (561) 822-2100  
 Fax (561) 822-1564

Website: <http://wpb.org/Departments/Procurement/Small-Business/Certification>

**Form SB01 – Attachment C**

**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 (PBCOSBA) certified Small Businesses can be used to meet the goal established for this project/contract. Submit this form with your bid/proposal.

**SECTION I. General Information**

Bidder or Proposer's Name: \_\_\_\_\_  
 Preparer's Name: \_\_\_\_\_ Title \_\_\_\_\_  
 RFQ Title: Construction Manager-at-Risk for Belmonte Road & Pershing Way Water & Sewer Improvements (S Olive Avenue to S Flagler Drive) Project Number: \_\_\_\_\_  
 RFQ Number: 17-18-407 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
1. _____	_____	\$ _____	_____ %	_____ %
2. _____	_____	\$ _____	_____ %	_____ %
3. _____	_____	\$ _____	_____ %	_____ %
4. _____	_____	\$ _____	_____ %	_____ %
5. _____	_____	\$ _____	_____ %	_____ %
6. _____	_____	\$ _____	_____ %	_____ %
<b>TOTAL</b>		\$ _____	_____ %	_____ %

Preparer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_



WEST PALM BEACH

Procurement Division/Small Business Program

401 Clematis Street, 3rd Floor

West Palm Beach, FL 33401-4702

Tel. (561) 822-2100

Fax (561) 822-1564

Website: <http://wpb.org/Departments/Procurement/Small-Business/Certification>

**Form SB02**

## Subcontractors Listing

**Bidder/Proposer's**

**Name:** \_\_\_\_\_ **Telephone No.** \_\_\_\_\_

Construction Manager-at-Risk for  
Belmonte Road & Pershing Way Water & Sewer

**RFQ Title:** Improvements (S Olive Avenue to S Flagler Drive) **RFQ No.:** 17-18-407

**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, 3rd Floor  
 West Palm Beach, FL 33401-4702  
 Tel. (561) 822-2100  
 Fax (561) 822-1564

Website: <http://wpb.org/Departments/Procurement/Small-Business/Certification>

**Form SB03**

**Letter of Intent**

Instructions: The Bidder/Proposer will complete Section I. The Small Business subcontractor will complete Sections II and III. It is the responsibility of the bidder/Proposer to verify that the undersigned is a City Certified Small Business. **Only City of West Palm Beach 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. **Note!** This form needs to be completed for each certified Small Business selected.

**SECTION I. General Information**

Proposer's Name: \_\_\_\_\_  
 Construction Manager-at-Risk for  
 Belmonte Road & Pershing Way Water & Sewer Improvements  
 RFQ Title: \_\_\_\_\_  
 (S Olive Avenue to S Flagler Drive)  
 RFQ Number: \_\_\_\_\_  
 RFQ 17-18-407

**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: \_\_\_\_\_

## Equal Benefits Certification

**ATTACHMENT D**

**This form must be completed and submitted with your firm’s submittal /proposal /bid.**

**Equal Benefits Ordinance.** Section 66-9 of the City’s Code of Ordinances provides that, with limited exceptions, when contracting for goods, services or construction in an amount of \$50,000 or more, with persons or businesses with five or more employees that also provide benefits to employees’ spouses and dependents, the city shall contract only with those persons or businesses that provide equal benefits to employees’ domestic partners.

**Check only one box below:**

**1.** The firm certifies and represents that it will comply during the entire term of the contract with Sec. 66-9 of the City’s Code of Ordinances by providing benefits to employees’ domestic partners equal to those benefits provided to employees’ spouses and dependents; or

**2.** The firm does not need to comply with Sec. 66-9 of the City’s Code of Ordinances because of an allowable exemption: (Check exemptions that apply):

- The firm’s price for the contract term awarded is \$50,000 or less.
- The firm employs less than five (5) employees.
- The firm does not provide benefits to employees’ spouses nor employees’ dependents.
- The firm is a government entity.
- The contract is for the sale or lease of property.
- Compliance would violate grant requirements or regulations of federal / state law.
- The contract is an emergency procurement or necessary to respond to an emergency situation.

**3.** The firm does not comply with Sec. 66-9 of the City’s Code of Ordinances and does not have an allowable exemption.

I, \_\_\_\_\_, \_\_\_\_\_  
 (Print Name of Authorized Officer) (Title)

of \_\_\_\_\_  
 (Name of Firm)

hereby attest that I have the authority to sign this certification on behalf of the firm and certify that the above information is true, complete and correct.

Signature: \_\_\_\_\_

STATE OF \_\_\_\_\_

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

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_, as an act of \_\_\_\_\_ (firm), who is

personally known to me or produced the following identification: \_\_\_\_\_.

Notary Signature: \_\_\_\_\_

Print Notary Name: \_\_\_\_\_

Commission No. \_\_\_\_\_

## CITY OF WEST PALM BEACH

### Local Workforce Commitment

*This certification must be provided for City construction contracts for utility work and road and right-of-way work with a contract price in excess of \$200,000 and with an on-site labor component greater than or equal to 25% of the contract value, except where state or federal law, regulations, or grant requirements mandate to the contrary,*

I, \_\_\_\_\_,  
(Print Name of Authorized Officer) (Title)

of \_\_\_\_\_  
(Name of Firm)

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

Firm Phone No. \_\_\_\_\_ Contact Person: \_\_\_\_\_

hereby attest that:

1. I have the authority to sign this certification on behalf of the firm named above and certify that the information provided is true, complete and correct.
2. The firm is submitting a bid for the following project:  
ITN No. \_\_\_\_\_ Project: \_\_\_\_\_
3. The Project  Does  Does Not have an on-site labor requirement of 25% or more.
4. The firm hereby commits that not less than 15% of on-site labor shall be residents of the City of West Palm Beach (not mailing address). Local workforce participation may include employees of both the contractor and its subcontractors to meet the requirement.
5. I understand that the city residency of the onsite labor component will be subject to verification by the City.
6. *Job Fair.* If the Bid is \$1,000,000 or more, the firm acknowledges that it shall be required to hold one job fair within the city for the purpose of encouraging local workforce participation.
7. The firm agrees to produce all documents and records necessary to prove compliance with the Local Workforce Ordinance and agrees to require all subcontractors to do the same.
8. The firm acknowledges that failure to provide this Certification is grounds for denial of award of the contract and failure to comply with the Local Workforce Ordinance is grounds to void the contract.

Signature: \_\_\_\_\_

STATE OF \_\_\_\_\_ }

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

The Local Workforce Commitment was sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as an act of \_\_\_\_\_ (*firm*), who is personally known to me or produced the following identification: \_\_\_\_\_.

Notary Signature: \_\_\_\_\_

Print Notary Name: \_\_\_\_\_

Commission No. \_\_\_\_\_

## Living Wage Certification

*This certification must be provided for any construction contract with a total contract value exceeding Two Hundred Thousand Dollars (\$200,000) and which is not subject to the Davis-Bacon Act or the payment of Davis-Bacon wage rates and is not a contract for a "public works project" as defined in Fla. Stat. Sec. 255.0992.*

*A copy of this certificate shall be made available to the public upon request.*

I, \_\_\_\_\_, \_\_\_\_\_  
(Print Name of Authorized Officer) (Title)

of \_\_\_\_\_  
(Name of Firm)

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

Firm Phone No. \_\_\_\_\_ Contact Person: \_\_\_\_\_

hereby attest that:

7. I have the authority to sign this certification on behalf of the firm named above and certify that the information provided is true, complete and correct.
8. The firm is submitting a bid for the following project:  
ITN No. \_\_\_\_\_ Project: \_\_\_\_\_
9. The estimated bid amount exceeds \$200,000.
10. The firm acknowledges the City's living wage rate of \$14.00 per hour, which shall be increased to \$15.00 per hour as of October 1, 2019.
11. The firm hereby commits to pay all covered employees the living wage rate, including, without limitation, any annual increases established by the City Commission.
12. A statement of the wage levels for all employees that will provide services under the contract is attached.
13. The firm acknowledges the requirements of the Living Wage Program in Sec. 66-250 of the City's Code of Ordinances, including the requirements for submittal of payroll information and the requirement for noticing employees by posting or paystub notices.
14. The firm agrees to produce all documents and records necessary to prove compliance with the Living Wage Program and agrees to require all subcontractors to do the same.
15. The firm acknowledges that failure to provide this Certification is grounds for denial of award of the contract and failure to comply with the Living Wage Program is grounds to withhold payments and/or to void the contract.

Signature: \_\_\_\_\_

STATE OF \_\_\_\_\_ }

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

The Living Wage Certification was sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as an act of \_\_\_\_\_ (*firm*), who is personally known to me or produced the following identification: \_\_\_\_\_.

Notary Signature: \_\_\_\_\_

Print Notary Name: \_\_\_\_\_

Commission No. \_\_\_\_\_

## Scrutinized Corporation Certification

I, \_\_\_\_\_, \_\_\_\_\_  
(Print Name of Authorized Officer) (Title)

of \_\_\_\_\_  
(Name of Firm)

hereby attest that:

1. For a bid of any amount, the company and its principals are not on the Scrutinized Companies that Boycott Israel List maintained by the State of Florida and do not engage in any boycott of Israel;
2. For a bid of One Million Dollars or more, the company and its principals certify that they:
  - a. are not on the Scrutinized Companies with Activities in Sudan List;
  - b. are not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List;
  - c. do not engage in business in Syria or Cuba.
3. I have the authority to sign this certification on behalf of the company and certify that the above information is true, complete and correct.

Signature: \_\_\_\_\_

STATE OF \_\_\_\_\_ }

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

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_, as an act of \_\_\_\_\_ (*firm*), who is

personally known to me or produced the following identification: \_\_\_\_\_.

Notary Signature: \_\_\_\_\_

Print Notary Name: \_\_\_\_\_

Commission No. \_\_\_\_\_