The City of

Boynton Beach

City Commission Agenda

Tuesday, January 21, 2025, 6:00 PM

City Hall Commission Chambers
100 E. Ocean Avenue

Boynton Beach City Commission

Ty Penserga, Mayor (At Large)
Aimee Kelley, Vice Mayor (District IV)
Angela Cruz, Commissioner (District I)
Woodrow L Hay, Commissioner (District II)
Thomas Turkin, Commissioner (District III)

Daniel Dugger, City Manager
Shawna Lamb, City Attorney
Maylee De Jesus, City Clerk

Mission
To create a sustainable community by providing exceptional municipal services, in a financially responsible manner.

America's Gateway to the Gulfstream

www.boynton-beach.org

Welcome
Thank you for attending the City Commission Meeting

General Rules & Procedures for Public Participation at City of Boynton Beach Commission Meetings

The Agenda:

There is an official agenda for every meeting of the City Commissioners, which determines the order of business conducted at the meeting. The City Commission will not take action upon any matter, proposal, or item of business, which is not listed upon the official agenda, unless a majority of the Commission has first consented to the presentation for consideration and action.

- **Consent Agenda Items:** These are items which the Commission does not need to discuss individually and which are voted on as a group.
- **Regular Agenda Items:** These are items which the Commission will discuss individually in the order listed on the agenda.
- **Voice Vote:** A voice vote by the Commission indicates approval of the agenda item. This can be by either a regular voice vote with "Ayes & Nays" or by a roll call vote.

Speaking at Commission Meetings:

The public is encouraged to offer comment to the Commission at their meetings during Public Hearings, Public Audience, and on any regular agenda item, as hereinafter described.

City Commission meetings are business meetings and, as such, the Commission retains the right to impose time limits on the discussion on an issue.

- **Public Hearings:** Any citizen may speak on an official agenda item under the section entitled "Public Hearings."
- **Public Audience:** Any citizen may be heard concerning any matter within the scope of the jurisdiction of the Commission - Time Limit - Three (3) Minutes.

Regular Agenda Items: Any citizen may speak on any official agenda item(s) listed on the agenda after a motion has been made and properly seconded, with the exception of Consent Agenda Items that have not been pulled for separate vote, reports, and presentations. - Time Limit - Three (3) Minutes.

Addressing the Commission: When addressing the Commission, please step up to either podium and state your name for the record.

Decorum: Any person who disrupts the meeting while addressing the Commission may be ordered by the presiding officer to cease further comments and/or to step down from the podium. Failure to discontinue comments or step down when so ordered shall be treated as a continuing disruption of the public meeting. An order by the presiding officer issued to control the decorum of the meeting is binding, unless over-ruled by the majority vote of the Commission members present.

Please turn off all cellular phones in the City Commission Chambers while the City Commission Meeting is in session.

The City of Boynton Beach encourages interested parties to attend and participate in public meetings either in-person or via communications media technology online. To view and/or

participate in the City Commission meeting online you have the following options:

1. **Watch the meeting online, but not participate:**

   https://www.boynton-beach.org/748/Watch-City-Commission-Meetings

2. **Watch the meeting online and provide public comment during the meeting:**

   YouTube channel (https://www.youtube.com/@cityofboynton).

   Please click onto the description / more tab under the video player to see:

   *The Agenda link

   *Live-To-Air Public Comment link

   *Instructions on how to make a comment link

   *Tech Support hotline number

If you are following the agenda and want to speak specifically during the agenda item labeled “Public comments”, you are permitted to start the connectivity process during the item that precedes public comments to ensure that all contributors are in que, screened and ready when that segment of the agenda is presented, or please wait until your topic of concern is being discussed before requesting to join the meeting for public comment.

Please note that time limits will be enforced so comments must be limited to no more than 3 minutes.

*Presenters, Consultants, and Subject Matter Experts (SME) may join at any time with prior approval.

For additional information or for special assistance prior to the meeting, please contact Maylee De Jesús, City Clerk at cityclerk@bbfl.us or (561) 742-6061.

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1. **<u>Openings</u>**

   A. Call to Order - Mayor Ty Penserga
   Roll Call.

Invocation by Commissioner Woodrow Hay.

Pledge of Allegiance to the Flag led by Mayor Ty Penserga

Agenda Approval:
1. Additions, Deletions, Corrections
2. Adoption

2. **Other**

A. Information Items by members of the City Commission.
City Commissioners to disclose any informational items to the public.

3. **Announcements, Community and Special Events And Presentations**

A. Announcement- 2025 International Kinetic Art Experience.
The City of Boynton Beach is pleased to announce that the 2025 International Kinetic Art Experience in Boynton Beach will be held from noon to 6 p.m. Saturday, February 1, and from 11 a.m. to 4 pm. Sunday, February 2. Both the outdoor and indoor experiences will highlight meaningful, eye-catching, interactive art by prominent kinetic artists whose work uses movement or perceived movement to achieve its effect. The event will feature works by artists from around the world, reflecting a variety of styles and modes of movement.

The indoor installations will be located on the second floor of the Arts & Cultural Center. The outdoor installations are accessed via an easy-to-walk, self-guided tour through downtown Boynton Beach along Ocean Avenue. The indoor portion will close at 4 p.m. both days.

There will be an “Artists’ Talks” symposium, an artisan market, children’s art activities, live music and food trucks throughout the family-friendly cultural experience. This event is a FREE event that is open to the public.

For more information, please visit kineticboyntonbeach.com.

4. **Public Audience**

Public Audience: Any citizen may be heard concerning any matter within the scope of the jurisdiction of the Commission. Speakers will be limited to 3-minute presentations (at the discretion of the Chair, this 3-minute allowance may need to be adjusted depending on the level of business coming before the City Commission).

5. **Administrative**

A. Advisory Board Appointments.
City Commission to reappoint and appoint eligible members of the community to serve in vacant positions on City Advisory Boards.

B. Community Support Funds.
Approve Community Support Fund request from Commissioner Cruz.

6. **Consent Agenda**

A. Proposed Resolution No. R25-017- Approve a Sub-Merchant Application & Agreement with Wonderware, Inc., d/b/a CORE Business Technologies, to accept electronic payments.
Staff recommends approval of Proposed Resolution No. R25-017.

B. Proposed Resolution No. R25-018- Approve the auction of the vehicles/equipment submitted by the Fleet Maintenance Division for disposal by using the online auctioneer JJ Kane Auctioneers.

Staff recommends approval of Proposed Resolution No. R25-018.

C. Proposed Resolution No. R25-019- Approve calling for a General City Election to be held on Tuesday, March 11, 2025, for the purpose of electing one City Commissioner for District I, one City Commissioner for District III, and one Mayor, and calling for a general City Run-Off Election to be held on Tuesday, March 25, 2025, if necessary. Proposed Resolution No. R25-020- Approving the 2025 Municipal Election(s) Vote Processing Equipment Use and Elections Services Agreement between the City and Palm Beach County Supervisor of Elections Office.
Staff recommends approval of Proposed Resolution No. R25-019 and Resolution No. R25-020.

D. Proposed Resolution No. R25-021- Designating a Canvassing Board for the March 2025 Municipal Election.
Staff recommends approval of Proposed Resolution No. R25-021.

E. Proposed Resolution No. R25-022- Ratifying the Conflict of Interest Waiver relating to Weiss Serota, et al's representation of the City of Boca Raton in connection with MELISSA LAVAGLIO v. CITY OF BOCA RATON, CITY OF BOYNTON BEACH, ET AL., Case No. 9:24-CV-81352, in the United States District for the Southern District of Florida and waive any claim of conflict arising from such representation.
Staff recommends approval of Proposed Resolution No. R25-022.

F. Proposed Resolution No. R25-023- Authorize the City to apply for the Site Rehabilitation of Petroleum Contamination & Petroleum Cleanup Participation Program (PCPP) for the cleaning of petroleum contamination and rehabilitation at the Public Works Compound, and if awarded, accept and execute a grant agreement with the Florida Department of Environmental Protection, subject to the approval of the City Attorney.
Staff recommends approval of Proposed Resolution No. R25-023.

G. Proposed Resolution No. R25-024- Ratifying a Right of Entry and Release Agreement for Training on Private Property with FED27, LLC.
Staff recommends approval of Proposed Resolution No. R25-024.

7. **Consent Bids and Purchases over $100,000**

A. Proposed Resolution No. R25-025- Approve an Amendment to the Construction

Contract for ITB UTL24-019 East Water Treatment Plant High Service Pumps 5 & 6 Improvements Project with Florida Design Drilling, LLC, adding a 10% Contingency Funding in the amount of $45,862.50, for staff-authorized change orders to address unforeseen conditions, bringing the total not-to-exceed purchase order amount to $504,487.50
Staff recommends approval of Proposed Resolution No. R25-025.

B. Proposed Resolution No. R25-026- Award Invitation to Bid (ITB) No. PWE24-024 for the Fire Station #5 Emergency Generator Replacement Project to J.T. Equipment Service Co. and approve an Agreement between the City and J.T. Equipment Service Co. for an amount of $744,307 plus a ten percent contingency of $74,430.70 that will be utilized for unforeseen conditions totaling $818,737.70 pending legal approval of the final contract.
Staff recommends approval of Proposed Resolution No. R25-026.

C. Proposed Resolution No. R25-027- Awarding Request for Qualifications No. UTL24-031 for East and West Water Plant Upgrades and Treatment Options Evaluation, Planning, and Design for Emerging Contaminants Removal- Engineering Services to Jacobs Engineering Group Inc., and approving an Agreement between the City and Jacobs Engineering Group Inc. in the amount not to exceed $5,400,000. Proposed Resolution No. R25-028- Approving an amendment to the Utilities CIP Budget to use Utility Reserve funds for $5,400,000 until the City receives reimbursement from the State Revolving Funded (SRF) Loan for East and West Water Treatment Plant upgrades and treatment Operations Evaluation.
Staff recommends approval of Proposed Resolution No. R25-027 and Resolution No. R25-028.

8. **Public Hearing**

6 P.M. or as soon thereafter as the agenda permits. T he City Commission will conduct these public hearings in its dual capacity as Local Planning Agency and City Commission.

9. **City Manager's Report**

10. **Regular Agenda**

A. Discussion regarding Recreation and Parks fees and approval of Proposed Resolution No. R25-029- Amending the current Recreation and Parks Division fee schedule, specifically the pickleball and pool admittance fees previously approved on November 19, 2024, Resolution No. R24-290.
Staff recommends approval of Proposed Resolution No. R25-029.

B. Procurement Policy Update and Our Roadmap to Future Codification our City's New Procurement Code.
Presentation by Andrew Rozwadowski

C. Year-end Red Light Camera Presentation.
Boynton Beach Police Department's Traffic Unit will present year-end Red Light

Camera data to the City Commission.

D. Quarterly CIP Update.
PowerPoint Presentation for CIP Quarterly Update.

11. **Future Agenda Items**

A. Discussion regarding Citywide Master Plan to light up the City.- **TBD**

Requested by Commissioner Turkin.

B. Discussion on additional paving in fiscal year 24-25 - **TBD**
Requested by Commissioner Turkin

C. Discussion on utility lift station upgrades and odor control - **TBD**
Requested by Commissioner Hay.

D. Discussion regarding the City's Comprehensive Plan. - **TBD**
Requested by Commissioner Cruz.

E. Discussion regarding how to attract more affordable housing within the City.- **TBD**

Requested by Vice Mayor Kelley.

F. Discussion regarding requirements for Advisory Board Appointments.- **Pending meeting with Vice Mayor Kelley**
Requested by Vice Mayor Kelley.

G. Discussion regarding Hazard Pay for Community Standards.- **Pending meeting with Commissioner Cruz**
Requested by Commissioner Cruz.

H. Discussion regarding Amendments to the Code of Ordinances regarding flooding in the community.- **Pending meeting with Commissioner Cruz**
Requested by Commissioner Cruz.

I. Discussion regarding combining City properties together to create senior affordable housing . **- Pending meeting with Mayor Penserga**
Requested by Mayor Penserga.

12. **Adjournment**

Notice

If a person decides to appeal to any decision made by the City Commission with respect to any matter considered at this meeting, He/She will need a record of the proceedings and, for such purpose, He/She may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. (F.S. 286.0105)

The City shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in and enjoy the benefits of a service, program, or activity conducted by the City. Please contact the City Clerk's office, (561) 742-6060 or (TTY) 1-800-955-8771, at least 48 hours prior to the program or activity in order for the City to reasonably accommodate your request.

Additional agenda items may be added subsequent to the publication of the agenda on the City's web site. Information regarding items added to the agenda after it is published on the City's web site can be obtained from the office of the

City Clerk.

City of Boynton Beach
Agenda Item Request Form

Meeting Date: 01/21/2025

Announcement- 2025 International Kinetic Art Experience.

Requested Action: The City of Boynton Beach is pleased to announce that the 2025 International Kinetic Art Experience in Boynton Beach will be held from noon to 6 p.m. Saturday, February 1, and from 11 a.m. to 4 pm. Sunday, February 2. Both the outdoor and indoor experiences will highlight meaningful, eye-catching, interactive art by prominent kinetic artists whose work uses movement or perceived movement to achieve its effect. The event will feature works by artists from around the world, reflecting a variety of styles and modes of movement.

The indoor installations will be located on the second floor of the Arts & Cultural Center. The outdoor installations are accessed via an easy-to-walk, self-guided tour through downtown Boynton Beach along Ocean Avenue. The indoor portion will close at 4 p.m. both days.

There will be an “Artists’ Talks” symposium, an artisan market, children’s art activities, live music and food trucks throughout the family-friendly cultural experience. This event is a FREE event that is open to the public.

For more information, please visit kineticboyntonbeach.com.

Explanation of Request: The City of Boynton Beach is pleased to announce that the 2025 International Kinetic Art Experience in Boynton Beach will be held from noon to 6 p.m. Saturday, February 1, and from 11 a.m. to 4 pm. Sunday, February 2. Both the outdoor and indoor experiences will highlight meaningful, eye-catching, interactive art by prominent kinetic artists whose work uses movement or perceived movement to achieve its effect. The event will feature works by artists from around the world, reflecting a variety of styles and modes of movement.

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There will be an “Artists’ Talks” symposium, an artisan market, children’s art activities, live music and food trucks throughout the family-friendly cultural experience. This event is a FREE

event that is open to the public.

For more information, please visit kineticboyntonbeach.com.

How will this affect city programs or services? This announcement will bring positive attention to the Event and the City of Boynton Beach.

Account Line Item and Description: N/A

Fiscal Impact: N/A

City of Boynton Beach
Agenda Item Request Form

Meeting Date: 01/21/2025

Advisory Board Appointments.

Requested Action: City Commission to reappoint and appoint eligible members of the community to serve in vacant positions on City Advisory Boards.

Explanation of Request:

The City Clerk's Office has received applications from City residents who are seeking to become new board members.

The attached list contains term openings and vacancies on the various advisory boards with the designated Commission members having responsibility for the appointment to fill each term opening and vacancy.

How will this affect city programs or services? Appointments are necessary to keep City Advisory Boards full and operating as effectively as possible.

Fiscal Impact: There is no fiscal impact to the budget for this item.

Attachments:
Advisory_Board_Appointments_Reappointments_and_Applicants_for_January 21 2025.docx
Bath, Sol - Afrordable Housing Advisory Committee.pdf
Sperling, Jordan - Building Board of Adjustment & Appeals.pdf

Affordable Housing Advisory Committee
3 Year Term

Mayor	Penserga	Citizen who is actively engaged as a for-profit provider of affordable housing
I	Cruz	Citizen who represents essential services personnel
II	Hay	Citizen who represents those areas of labor actively engaged in home building in connection with affordable housing
Applicant:	Sol Bath	Citizen who is actively engaged as a for-profit provider of affordable housing

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Art Advisory Board
Regular member 2 (2 year) terms
Alternate Member 2 (1 year) terms

I	Cruz	Regular	Vacant
II	Turkin	Regular	Vacant
Applicants:	None		

Building Board of Adjustment and Appeals
Regular Member 2 (2 year) terms
Alternate Member 2 (1 year) terms

Mayor	Penserga	Regular	Replaces Daniel Berger – 2nd term expired
Vice Mayor	Kelley	Regular	Replaces Paul Bortz – 2nd term expired
I	Cruz	Regular	Replaces Timothy Dornblaser – 2nd term expired
II	Hay	Regular	Replaces Sanford Guritzky – 2nd term expired
III	Turkin	Regular	Vacant
Mayor	Penserga	Regular	Vacant
Vice Mayor	Kelley	Alternate	Vacant
I	Cruz	Alternate	Vacant
Applicant:	Jordan Sperling		

Education and Youth Advisory Board
Regular Member 2 (2 year) terms
Alternate/Student Member 2 (1 year) terms

Vice Mayor	Kelley	Regular	Vacant
Applicants:	None		

Historic Resources Preservation Board – Quasi-judicial
Regular Member 2 (2 year) terms
Alternate Member 2 (1 year) terms

Mayor	Penserga	Alternate	Replaces Victor Norfus – did not apply for 2nd term
I	Cruz	Alternate	Vacant
Applicants:	None		

Recreation and Parks Board
Regular member 2 (2 year) terms
Alternate Member 2 (1 year) terms

I	Cruz	Alternate	Vacant
Applicants:	None		

Senior Advisory Board
Regular member 2 (2 year) terms
Alternate Member 2 (1 year) terms

Vice Mayor	Kelley	Alternate	Vacant
I	Cruz	Alternate	Vacant

Applicants: None

Stanzione, Tammy

From: solbath86 <noreply@123formbuilder.com>
Sent: Wednesday, December 11, 2024 1:44 PM
To: City Clerk
Subject: Advisory Board Appointment application
Attachments: resume2023_2.pdf

This Message Is From an External Sender
This message came from outside your organization.

Today's date	12/09/2024
Name	Sol Bath
Phone number	561-352-4146
Address	1690 Renaissance Commons Blvd Apt 1506 Boynton Beach FL 33426 United States
Email	solbath86@gmail.com
Current occupation or, if retired, prior occupation	Payroll/Human Resources Specialist
Education	Bachelor's
Are you a registered voter?	Yes
Do you reside within the Boynton Beach City limits?	Yes
Do you own/manage a business within City limits?	No
If "yes", name of business:	
Are you currently serving on a City board?	No
Have you served on a City board in the past?	No
If "yes", which board(s) and when?	
Have you ever been convicted of a crime?	No
If "yes", when and where?	
Advisory Board	Affordable Housing Advisory Committee

If appointed by the City Commission to serve as Board Chair or Vice Chair are you willing to serve in this capacity?	Yes
Personal Qualifications	I bring a diverse background in hospitality, health, and property management, along with experience as a licensed realtor dedicated to helping families achieve homeownership. As a single mother and community advocate, I understand the importance of affordable housing and am passionate about educating others to empower informed decisions. My skills and experiences make me a strong candidate for the Affordable Housing Advisory Committee.
Professional Memberships	NAR Realtors Association
Feel free to attach/upload an extra sheet or resume.	https://form.123formbuilder.com/upload_dld.php?fileid=798604d85bf5509c82a9e05e506c5487
Certification	I, the applicant, hereby certify that the statements and answers provided herein are true and accurate. I understand that, if appointed, any false statements may be cause for removal from a board.

The message has been sent from 23.117.252.146 (United States) at 2024-12-11 13:43:44 on Chrome 131.0.0.0
Entry ID: 737
Referrer: https://www.boynton-beach.org/
Form Host: https://form.123formbuilder.com/583214/advisory-board-appointment-application

Sol Bath

561-352-4146
Solbath86@gmail.com

Intro

Accounting/Payroll roles are my passion; normally it is the fast paced, attention to detail and precision on every task what keeps the role so entertaining. Being able to juggle in between the different skill sets for the role inspires the curiosity of constant learning.
I believe that nothing is impossible simply because 'where there is a will, there is a way'
I look forward to having the pleasure and opportunity to interview in person with you and see how I can fulfill my role to the best of your needs.

Languages

I am Fluent in both Spanish and English

Experience

Senior Payroll Specialist/ HR
Ventron Management | Feb 2022- Present

-Process and prepare payroll for 500 employees in multiple states for a portfolio of 22 properties for commercial and residential real estate.
-Maintain employee records in the payroll system such as changes to pay rates, updating new hires and terminations and other transactions such as salaries, deductions, commissions, bonuses, leaves of absences and other adjustments
-Ensure timesheets are approved by management and appear valid
-Address and resolve employee payroll inquiries
-Communicate effectively with leadership team
-Set up new hires and collect necessary documents
-Produce reports to relevant departments and initiative to automatize the process to ensure effectiveness.
-Research payroll discrepancies and assist accounting with reconciliations
-Reference property budgets
-Inspect automated system output such as registers and standard reports
-Process special pay including commissions/bonuses
-Ensure Kronos information is accurate such as managers, timesheet access, PTO accruals etc.
-Maintain payroll related legal and regulatory compliance
-Calculate allocations and ensure they are setup correctly
-Ensure wage and hour compliance
-Assist with investor audits and other types of audits related to payroll
-Identifies and recommends updates to payroll processing software, systems, and procedures.

Payroll Specialist
CEMEX USA |May 2018- Feb 2022

-Process payroll for 7000+ employees in the organization in the states of GA, FL and CA on a weekly basis.
-Maintain personnel database regarding salaries

-Manage organization budget and expenses
-Report to department supervisor regarding daily activities and issues
-Work directly with clients to achieve organization goals as required
-Address and resolve employee complaints relating to the payroll system
-Work with company database programs to process payroll **SAP** and **Kronos**.
-Prepare reports to relevant departments about payroll, company budget and expense
-Certified Payroll tasks included collecting and verifying timesheets for CA employees, ensuring that federal and state compliance rules were met and preparing the payroll each work period(weekly basis for about 2,000 employees)

Administrative Assistant/Event Coordinator(part-time)
Hugo's Gourmet Catering | Dec 2018- May 2019

-Attend inbound and outbound of calls –requesting high-end private catering services
-Create menus according to clients' requests and dietary needs.
-Facilitate Proposal for corporate and private events.
-Coordinate staffing for industrial kitchen and staffing for private events- weddings, anniversaries, corporate events, etc.
-Implement a "time card system" to keep track of employees' payroll.
-Maintain internal books- using Excel- for sales taxes and internal accounting.
-Process different payments- credit cards, checks, and cash- from clients
-Increase conversion and sales for up to 43% in comparison of last year's
-Coordinate outside vendors and communicate to different venues for events
-Organize events' logistics such as staffing, outside vendors, food items, layout of tables and décor.
-Maintain a calendar of events up to date and ensure the head chef's schedule was up to date.
-Meet with potential clients at local venues to coordinate, organize or identify the different needs of a private event.

Administrative Role/ Events Coordinator/Property Manager
Di Lemme Development Group| February 2016- Nov 2018

-Record and Edit Videos Related to the Industry Set-up and Breakdown of monthly conferences.
-Supervised personnel to ensure all procedures were done upon company standards.
-Keep up to date with CRM after any 'live events or conferences"
-Collect emails and phone calls and create a follow-up system to ensure potential client's feel acknowledged which facilitate the sales of products or packages based on the industry.
-Use different software to edit and produce videos on a daily and weekly basis
-In charge of different outlets of social media posting on a daily basis.
-Maintain 3 rental properties in order to coordinate cleaning staff, supplies, maintenance , property bills and taxes.

Candidate Coordinator/ Talent Acquisition Specialist
The Lindquist Group | May 2016- January 2017

-Revise profile and accuracy of resume and letters of recommendation
-Coordinate and perform candidates interviews to finalize candidate process
-Assist with all software and computer equipment including-installation and constant monitoring with the IT department during a change in the company's software system.
-Assisting Senior Recruiter finding the right talent and monitoring reports.
-Assisted in the creation of materials and scripts for the company interviews

Legal Secretary/ Receptionist
Harrington Law Associates | Nov 2015- April 2016
-Maintain calendars and schedules for a number of attorneys
-Develop and maintain a comprehensive and organized billing system.
-Ensure all billable hours were accurately recorded
-Arrange for the filing of court documents and delivery of legal paperwork
-Input correspondence and legal paperwork in the company's software and email correspondence to the clients
-Schedule, coordination and confirmation of court dates, appointments and meeting on make part of the hourly basis tasks
-Providing excellent verbal skills during communication with clients, paralegals, legal secretaries, court employees in both Spanish and English were a must.

Front Desk Agent & Night Auditor
The Ritz-Carlton Resorts of Naples| May 2010 – Feb 2012

-Process all guest check-ins by confirming reservations, assigning room, and issuing room key; also, all check-outs including resolving any late and disputed charges.
-Answer, record, and process all guest calls, messages, requests, questions, or concerns. Including parking procedures to guests/visitors and dispatch bell staff or valet staff as needed.
-Supply guests with directions and information regarding property and local areas of interest.
-Run daily reports (number of arrivals, departures), identify any special requests, and check reports for accuracy.
-Complete designated cashier and closing reports in the computer system.
-Complete monthly up-sells according to company's standards.
-Trainer for the department in all the different shifts.

Order Taker and FB department
The Ritz-Carlton Palm Beach| Nov. 2009 – May 2010

-Receive and record guest orders for In Room Dining Service using MICROS.
-Support team by ensuring timely and orderly delivery of Food and Beverage amenities.
-Communicate all special meal requirements, allergies, dietary needs, and special requests.

-Complete knowledge of menu items, wine lists, cocktails, and department information.

HOME HEALTH AIDE
Private Family Palm Beach , FL| July 2005 – July 2009

-Provide full-time home health care services, instruction and psychological support to patients.
-Work alongside a team of 3 caretakers to provide 24/7 care.
-Keep record of services performed and of patient's condition and progress.
-Prepare meals, run errands, and maintain the household in order. Arrange all healthcare appointments; drive to and from doctor's appointments, physical therapy and social events

EDUCATION

Phoenix University
Currently enrolled for AA on Accounting and Business Management

Gold Coast Schools of Real Estate
Real Estate Sales Associate

Hodges University
A.A Liberal Arts

South Tech Academy
Phlebotomy Technician

National Notary Association
Notary Public

Palm Beach State College
40 Hour Child Care

Penn State University
Certificate in Family Stabilization for Children

Softwares

-PRISM
-SAP HR & Kronos
-Microsoft Office - Word, Excel, Power Point, Outlook
-Canva and Spark Post(Adobe)- Graphic Design
-Filmora Wondershare, Cyberlink Power Director, Video
-Scribe- Video Editing.
-Udemy- E-course Creator
-MICROS and OPERA- Hotel
-Zoho- CRM Basic Knowledge
-Event Coordinator Certificate
-Basic Fundamentals: Management and HR Management Certificate

REFERENCES UPON REQUEST

Stanzione, Tammy

From: City Clerk
Sent: Wednesday, December 04, 2024 11:53 AM
To: Stanzione, Tammy
Subject: FW: Advisory Board Appointment application
Attachments: Jordan_Sperling_Resume_12.04.24.pdf

From: jsperling <noreply@123formbuilder.com>
Sent: Wednesday, December 4, 2024 11:08 AM
To: City Clerk <CityClerk@bbfl.us>
Subject: Advisory Board Appointment application

This Message Is From an External Sender
This message came from outside your organization.

Today's date	12/04/2024
Name	Jordan Sperling
Phone number	
Address	2114 Tuscany Way Boynton Beach Boynton Beach FL 33434 United States
Email	jsperling@snlandplan.com
Current occupation or, if retired, prior occupation	Urban Planner & Project Manager
Education	Master's Degree
Are you a registered voter?	Yes
Do you reside within the Boynton Beach City limits?	Yes
Do you own/manage a business within City limits?	No

If "yes", name of business:	Schmidt Nichols
Are you currently serving on a City board?	No
Have you served on a City board in the past?	No
If "yes", which board(s) and when?	
Have you ever been convicted of a crime?	No
If "yes", when and where?	
Advisory Board	Building Board of Adjustment & Appeals
If appointed by the City Commission to serve as Board Chair or Vice Chair are you willing to serve in this capacity?	Yes
Personal Qualifications	My current skills in land use analysis and community engagement as an urban planner and project manager can contribute significantly to thoughtful, balanced development decisions that prioritize the well-being of residents while fostering sustainable growth. I want to actively participate in shaping the character and quality of life in our town by carefully reviewing proposals and ensuring they align with our comprehensive plan and zoning regulations.
Professional Memberships	Palm Beach County Planning Congress American Planning Association, Florida Chapter US Green Building Council LEED Green Associate Professional
Feel free to attach/upload an extra sheet or resume.	https://form.123formbuilder.com/upload_dld.php?fileid=74e1bc2c93075cba087846d05e9e4611
Certification	I, the applicant, hereby certify that the statements and answers provided herein are true and accurate. I understand that, if appointed, any false statements may be cause for removal from a board.

The message has been sent from 170.55.60.202 (United States) at 2024-12-04 11:07:46 on Chrome 131.0.0.0
Entry ID: 736
Referrer: https://www.boynton-beach.org/
Form Host: https://form.123formbuilder.com/583214/advisory-board-appointment-application

Jordan Sperling

sperlinga1@gmail.com•2267 NW 30th Road•Boca Raton, FL 33431•561.654.1556

OBJECTIVE

To obtain a full-time urban planner and project manager position where I can use my analytical and problem-solving abilities to further company growth and develop professionally.

EDUCATION

Masters in Urban & Regional Planning 2020
Florida Atlantic University, Boca Raton, FL
GPA: 3.80/4.00

Bachelor of Arts in Real Estate 2015
University of Florida, Gainesville, FL
GPA: 3.72/4.00

Associate of Arts in Legal Studies 2013
University of Central Florida, Orlando, FL
GPA: 3.76/4.00

Relevant Coursework-Real Estate Finance & Investments, Business Law, Real Estate Analysis

WORK EXPERIENCE

Urban Planner & Project Manager, Schmidt Nichols, West Palm Beach, FL 2017-Present
- Oversees the entitlement approval process from initiation, through use approval, and construction
- Prepares presentations for public meetings and presents development projects before government bodies
- Responsible for all phases of development planning (consultant coordination, review of codes and regulations)
- Evaluates rezoning, large and small scale land use amendments, site plans, and other similar applications

Mortgage Loan Originator, Paramount Residential Mortgage Group, Orlando, FL 2016-2017
- Works closely with customers to create loan packages that meet their specific needs
- Educates customers regarding mortgage loans and the different types of loans available
- Provides present and potential customers with superior level of customer service
- Oversees the loan transaction from initiation, through processing, approval and closing

SPORTS MANAGEMENT & LAW EXPERIENCE

Marketing Manager, Lawlor & Zigler, Boca Raton, FL 2012-2015
- Prepared contract negotiations for NFL teams
- Performed market research for prospective NFL players
- Trained clients in all phases to maximize their potential at the NFL combine

VOLUNTEER EXPERIENCE

Treasurer, JCC Softball, Boca Raton, FL 2008-2011
- Responsible for the general financial oversight of JCC Softball
- Performed fundraisers for charity
- Recorded all action in the progress of the game

Supervisor, Miracle League, Delray Beach, FL 2008-2011
- Promoted community support and sponsorship of Miracle Leagues
- Fostered the construction of special facilities to meet the unique needs of players
- Provided opportunities for children with disabilities to play baseball

AWARDS & AFFILIATIONS

LEED Green Associate 2024
Author, Senior Thesis 2014-2015
Recipient, University of Florida Dean's List for Academic Honors 2014
Member, University of Florida Real Estate Society 2014

SKILLS

Computer: Microsoft Word, Excel, PowerPoint, ARGUS-Valuation DCF, LoopNet, CoStar Group, Salesforce
Languages: Spanish (Conversational)

LICENSES

State of Florida Real Estate Sales Associate
State of Florida Mortgage Loan Originator



EDUCATION LEVEL:

Masters Urban and Regional Planning, Florida Atlantic University

Bachelors of Real Estate, University of Florida, 2015

YEARS EXPERIENCE: 7.5

AFFILIATIONS:

FAU Planning Society

Palm Beach County Planning Congress
American Planning Association
Florida Chapter
US Green Building Council
LEED Green Associate Professional

JORDAN SPERLING | URBAN PLANNER

PROFESSIONAL EXPERIENCE

Jordan Sperling is an urban planner who recently graduated from the University of Florida. In 2017, Jordan joined Schmidt Nichols as an urban planner and is currently enrolled in the Masters of Urban & Regional Planning (MURP) Program at Florida Atlantic University (FAU).

Prior to starting at Schmidt Nichols, Jordan had the opportunity to work with Marcus & Millichap Real Estate Investment Services as a research and financial analyst. As an analyst, he prepared offering memoranda and performed long-term investment property analysis, participated in due diligence activities, and provided updated marking analysis and materials to senior agents on an ongoing basis.

As an urban planner, Jordan's responsibilities include preparation of planning studies and due diligence reports in support of new projects, programs, and regulations to present detailed reports before government bodies. In addition, Jordan is also responsible for evaluating rezoning, ordinance amendments, site plans, variances, and other similar development applications.

RELEVANT EXPERIENCE

Hammock Church and Public Charter School, Palm Beach County, FL
Fount MUPD, Palm Beach County, FL
Turnpike Crossing East PIPD, Palm Beach County, FL
Penske PBIA Parcel G, Palm Beach County, FL
Penske Body Shop, Palm Beach County, FL
A1 Industrial Park, Palm Beach County, FL
Winners Church, Palm Beach County, FL
Precision Equipment, Palm Beach County, FL
St. Jude Catholic Church and School, Palm Beach County, FL
Opportunity, Inc. Early Learning Center, Palm Beach County, FL
Westgate Green Market, Palm Beach County, FL
Little Angels Daycare, Palm Beach County, FL
Northlake & 140th School, Palm Beach County, FL
Community Assisted Living, Palm Beach County, FL
Delray Dunes, Palm Beach County, FL
Four Brothers Recycling, Palm Beach County, FL
Vertical Bridge Tower, Palm Beach County, FL
Summit Zero Townhomes, Palm Beach County, FL
Easy Storage, Palm Beach County, FL
Boynton Atrium CLF, Palm Beach County, FL
Cabana Colony, Palm Beach Gardens
Skilled Nursing Northpointe, West Palm Beach, FL
Palm Beach Garage, West Palm Beach, FL
Merry Place, West Palm Beach, FL
Duke Quantum Industrial, Boynton Beach, FL
First Data Parking Expansion, Coral Springs, FL

City of Boynton Beach
Agenda Item Request Form

Meeting Date: 01/21/2025

Community Support Funds.

Requested Action: Approve Community Support Fund request from Commissioner Cruz.

How will this affect city programs or services? NA

Budgeted Item: Yes

Account Line Item and Description: Community Support Funds 001-1110-511-83-01

Fiscal Impact: There will be no fiscal impact to the budget for this item.

Attachments:
Young In Faith, LLC-Santaluces Community High School- Guery Ullysse.doc

EXHIBIT "A"

COMMUNITY SUPPORT FUNDS
REQUEST FORM

Part I - Summary of Request (to be completed by City Clerk)

Date of Request: November 19, 2024
Requested by Mayor/Commissioner: Commissioner Cruz
Amount Requested: $2,000
Recipient/Payee: Young in Faith, LLC

Description of project, program, or activity to be funded: helps lead Young in Faith and its efforts in high schools in Boynton Beach to bring encouraging clubs and lunch discussions all year long that help students feel supported in making good decisions with their life even if they are surrounded with peer pressure to make bad decisions

Part II - Availability of funds

The annual appropriation of funds available to the requesting Member of the Commission listed above is $6,000.

The balance of funds available for the requesting Member of the Commission is $4,000.

Accordingly:

- ✓ There are funds available as requested
  There are insufficient funds available as requested

Dated: _____ By: _____
Maylee De Jesús, City Clerk

Part III-Eligibility Evaluation

- ✓ Public funds will not be used to improve private property unless there is a clear public need, purpose and benefit
- ✓ The recipient/payee provides services within the City
- ✓ The public purpose is beneficial to the entire community served by such donation

Dated:_____ By: _____
Requesting Member of the City Commission

City of Boynton Beach
Agenda Item Request Form

Meeting Date: 01/21/2025

Proposed Resolution No. R25-017- Approve a Sub-Merchant Application & Agreement with Wonderware, Inc., d/b/a CORE Business Technologies, to accept electronic payments.

Requested Action: Staff recommends approval of Proposed Resolution No. R25-017.

Explanation of Request: Currently the City is performing all payment functions in-house. The Solid Waste Division is currently utilizing a system called Routeware that provides routing capabilities for all commercial customers. The City is upgrading the current system and adding an electronic billing system with billing, routing, on-board computers, and online customer self-service all in one easy-to-use solution. City staff is requesting to replace Click2Gov with CoreBT to collect payments for processing the City's roll off, compactor, and bagster services. These services include but are not limited to creating and mailing invoices, receiving and sorting payments, posting payments, reconciling payments, collecting or processing bad payments, managing customers at City Hall who prefer to pay in-person, working in conjunction with Finance to adjust or refund payments, performing monthly past due letter mailing, and tracking inactivity fees. Administrative tasks include ordering, maintaining, and storing paper supplies.

The vendor, CORE, provides a total solution for taking the daily billing and processing for distribution of an electronic bill, processing payments including checks, credit card, and pay by phone, providing daily payment reconciliation reports in reference to a daily payment, tracking past due amounts, and inactivity fees. CORE provides a user-friendly website for customer account access and payment options.

The Agreement requires the City waive liability of the vendor. A Liability Waiver of a third party must be approved by the City Commission.

How will this affect city programs or services? The City will be able to focus on the customer, account management, and providing accurate and proper billing statements with correct services, customers and history. The City will also be able to focus on active collections on non-paying customers.

Currently the City pays a $1.00 fee for all e-check transactions that will be reduced to .75 cents. The Department anticipates an estimated annual expenditure of $3,000

Budgeted Item: Yes

Account Line Item and Description: Software Maintenance: 431-2515-534-46-91

Fiscal Impact: This will help alleviate administrative duties and help staff focus on providing better customer service to our customers in-person and phone assistance, account management, reduce past due collection efforts, and track inventory of equipment.

Attachments:
R25-017 Agenda_Item_2578-2023_Resolution_for_CORE_application_and_agmt.docx
Exhibit A to Resolution - Sub-Merchant Application & Agreement.pdf

RESOLUTION NO. R25-017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, APPROVING A SUB-MERCHANT APPLICATION AND AGREEMENT WITH WONDERWARE INC., D/B/A CORE BUSINESS TECHNOLOGIES, TO ACCEPT ELECTRONIC PAYMENTS; AND FOR ALL OTHER PURPOSES.

WHEREAS, on April 17, 2018, the City Commission approved Resolution No. R18-063 authorizing the City Manager to sign a proposal with Routeware, Inc., utilizing the HGACBuy Contract #FL03-17 for the purchase of an onboard computing system for installation in Public Works Solid Waste vehicles; and

WHEREAS, on May 21, 2024, the City Commission approved Resolution No. R24-118 approving a Statement of Work with Routeware, Inc., for the Encore/eMobile products, service, and implementation for the Solid Waste Division, utilizing the City of Boynton Beach HGACBuy Interlocal Contract for Cooperative Purchasing No: ILC18-6755; and

WHEREAS, the City Commission, upon the recommendation of staff, has deemed it in the best interests of the City's citizens and residents to approve a Sub-Merchant Application and Agreement with Wonderware, Inc., d/b/a CORE Business Technologies, to accept electronic payments.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption.

SECTION 2. The City Commission of the City of Boynton Beach, Florida, does hereby approve a Sub-Merchant Application and Agreement with Wonderware Inc., d/b/a CORE Business Technologies, to accept electronic payments, in form and substance similar to that attached as Exhibit A.

SECTION 3. The City Commission of the City of Boynton Beach, Florida, hereby authorizes the Mayor to execute the Sub-Merchant Application and Agreement. The Mayor is further authorized to execute any ancillary documents required under the Agreement or necessary

to accomplish the purposes of the Agreement and this Resolution.

SECTION 4. The Mayor-executed Sub-Merchant Application and Agreement shall be forwarded to Adrianna Greco-Arencibia to obtain execution by CORE Business Technologies. Adrianna Greco-Arencibia shall be responsible for ensuring that one fully executed Agreement is returned to the City, to be provided to the Office of the City Attorney for forwarding to the City Clerk for retention as a public record.

SECTION 5. This Resolution shall take effect in accordance with law.

PASSED AND ADOPTED this _____ day of _____ 2025.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Ty Penserga	____	____
Vice Mayor – Aimee Kelley	____	____
Commissioner – Angela Cruz	____	____
Commissioner – Woodrow L. Hay	____	____
Commissioner – Thomas Turkin	____	____
VOTE	_____	

ATTEST:

_____
Maylee De Jesús, MPA, MMC
City Clerk

_____
Ty Penserga
Mayor

(Corporate Seal)

APPROVED AS TO FORM:

_____
Shawna G. Lamb
City Attorney

Routeware

CORE

950 Warren Avenue, 4th Floor, East Providence, RI 02914 | 866.567.2673

SUB-MERCHANT APPLICATION & AGREEMENT

(for Government Entities)

SUB-MERCHANT LEGAL ENTITY: Sales Rep:

Government Entity: City of Boynton Beach	**Federal Tax ID Number:** 59-6000282
Physical Address: 100 E Ocean Ave	**Mailing Address:** 100 E Ocean Ave
City: Boynton Beach **State:** FL **Zip:** 33435	**City:** Boynton Beach **State:** FL **Zip:** 33435
Main Contact: Stephanie Brown **Title:** Public Works System Analyst	**Email Address:** browns@bbfl.us
Business Phone #: 561-742-6200	**Website Address:** http://www.boynton-beach.org/

Government Entity Type: Local Government	**Chain Merchant:** ☐ NO ☐ YES **Bank Chain:**
Established Date: 09/26/1898	**Sub-Merchant Number:**
Current Processor:	**POS Debit:** ☐ NO ☐ YES **Networks:**

(Z) Star MAC (W) Star East (Q) Star West (G) Interlink (8) Maestro (K) EBT

LOCATION INFORMATION: Location No:

Cardholder Statement Descriptor (20 Char) City of Boynton Beach **SIC:** _____

Location/Dept Address: 100 E Ocean Ave **City:** Boynton Beach **ST:** FL **Zip:** 33435

Mailing Address: 100 E Ocean Ave **City:** Boynton Beach **ST:** FL **Zip:** 33435

Customer Service Phone Number: 561-742-6200 **Phone #:** 561-742-6200

Main Contact: Stephanie Brown **Title:** Public Works System Analyst **Email:** browns@bbfl.us

Avg Ticket: $138 **Max:** 10,000.00 **Monthly Vol:** 1900 **EMV-Chip %** ____ **Keyed CP%** ____ **Keyed CNP %** ____ **Internet %** ____

Government Services Offered (be specific): Roll-Off dumpster services; compactor emptying services; bulk trash pickup

Sell To: Business: _____ % **Public:** _____ %

Terminal / Payment Application: _____ **Version:** _____

Sub-Merchant uses an Independent Servicer (store, maintain, or transmits cardholder data)? _____ (if yes, provide the following)

Servicer / Payment App. Manufacturer: _____ **Phone:** _____

American Express SE# (10 Digits): _____ **American Express Annual Volume:** _____

☐ *Sub-Merchant opts out of accepting American Express and any future commercial marketing communications from American Express.*

Please Mark all Card Types Accepted:	*For Details on how these transactions qualify at each level, please refer to your Merchant Operating Guide.
☒ **Debit Cards: V/MC** (consumer signature cards / all foreign issued cards / PIN debit cards)	☒ **Other Cards: V/MC/DISC/AMEX** (business credit / debit, consumer credit, & all foreign issued cards)

E-COMMERCE SUB-MERCHANTS: *Complete if Processing Less Than 70 % Card Present*

Internet transactions encrypted by SSL or Better: ☐ Yes ☐ No **URL:**

Digital Certificate Utilized: ☐ Yes ☐ No **Certificate Issuer:** **Certificate Exp Date:**

SUB-MERCHANT INQUIRY:

Has Sub-Merchant ever been terminated from accepting payment cards from any payment network for this government entity?
☐ NO ☐ YES (please explain) _____

Has Sub-Merchant ever filed bankruptcy?
☐ NO ☐ YES (please explain) _____

How Many Chargebacks Last Year? **Total Amount: $**

DDA BANK ACCOUNT INFORMATION:

This area should also be completed for Additional locations if DDA is different from main location. Please Include a Voided Check.
If this is a "Deposit Only" account, then a letter from the Financial Institution verifying Transit and Routing Number and DDA# is required.

Account Type:	ACH Deposit Routing/Transit #	ACH Deposit Account Number	Bank Name:
C K	026009593	001611435311	Bank of America
Account Type:	**ACH Fees Routing/Transit #**	**ACH Fees Account Number**	**Contact:** / **Phone:**
C K	026009593	001611435311	Karen L. Dolores / 888.715.1000 ext 21669

Sub-Merchant hereby authorizes Acquirers and Provider to initiate credit and/or debit entries for amounts originating under the Sub-Merchant Agreement (via ACH or otherwise) including any reversals or adjustments on original entries to the Sub-Merchant's Bank Account (as defined in the Sub-Merchant Agreement).

NOTE: Attach Voided Check or Bank Letter

SUB-MERCHANT SIGNATURE AUTHORIZATION

Government Entity: City of Boynton Beach

The undersigned certifies and agrees to as follows:

1. The undersigned and any of the persons identified below are duly authorized to sign this Sub-Merchant Services Agreement and bind the entity indicated above to it. If any official indicated below resigns or is replaced, that official's successor(s) in office shall be deemed to have signed this certification and the Sub-Merchant Services Agreement. These persons also have the authority to perform the duties and functions defined in 2, 3 and 4 below.

TITLE	PRINT NAME	SIGNATURE

2. The persons listed below are duly authorized to act for and on behalf of the entity indicated above in any manner relating to this Merchant Processing Agreement and any additional merchant location forms.
3. Both CORE and WorldPay may rely on the authority granted in this certification and the undersigned official represents and warrants that this certification shall remain in full force and effect until revoked upon written notice to CORE.
4. The following are the names, titles and genuine signatures of the persons authorized by this certification to perform ongoing organizational processes and updates:

TITLE	PRINT NAME	SIGNATURE

I have subscribed my name as the official indicated above as of _____ **(date)**

Signature: _____ **Print Name:** _____.

Title: _____;

THIS SUB-MERCHANT APPLICATION IS ACCEPTED UPON THE SIGNING BY CORE BUSINESS TECHNOLOGIES

CORE Business Technologies ("CORE")

Accepted By: _____

950 Warren Ave, 4th Floor
East Providence, RI 02914

Date

SUB-MERCHANT SERVICES AGREEMENT

BANK DISCLOSURE

Member Bank Information: Member Bank, Fifth Third Bank, located in Cincinnati, OH, is responsible for the credit and debit card processing services provided hereunder.

Important Member Bank Responsibilities:

1. Member Bank, and not Provider, is the entity approved to extend acceptance of Card Brand products directly to you.
2. Member Bank must be a principal (signer) to this Agreement.
3. Subject to this Agreement, Member Bank is responsible for and must provide settlement funds to you.
4. Member Bank is responsible for all funds held in reserve.
5. Member Bank is responsible for educating you on pertinent Operating Regulations with which you must comply; but this information may be provided to you by Provider.

Important Merchant Responsibilities:

1. Ensure compliance with cardholder data security and storage requirements.
2. Maintain fraud and chargebacks below Card Brand thresholds.
3. Review and understand the terms of this Agreement.
4. Comply with applicable Operating Regulations.
5. Retain a signed copy of this Disclosure Page.

Merchant Resources

(a) You may download "Visa Regulations" from Visa's website at:
http://usa.visa.com/merchants/operations/op_regulations.html

(b) You may download "Mastercard Rules" from Mastercard's website at:
http://www.mastercard.com/us/merchant/support/rules.html

(c) You may download "Discover Network Rules" from Discover's website at:
http://www.discovernetwork.com/merchants/

(d) You may download "American Express Merchant Operating Guide" from American Express' website at:
http://www.americanexpress.com/merchantopguide

The responsibilities listed above do not replace the terms of the Sub-Merchant Agreement and are provided to ensure you understand some important obligations of each party and that the Member Bank is the ultimate authority should you experience any problems.

Sub-Merchant: _____

Address: _____

Authorized Signature: _____

Name: _____

Title: _____

Date: _____

INTRODUCTION

This SUB-MERCHANT SERVICES AGREEMENT (this "Sub-Merchant Agreement") governs the payment processing and other related services (the "Acquirer Services") provided by Worldpay, LLC ("Worldpay") and its designated Member Bank (collectively, "Acquirers") to you ("Sub-Merchant") pursuant to this Sub-Merchant Agreement. The Acquirer Services are being provided in conjunction with the Sub-Merchant Agreement entered into between Sub-Merchant and Wonderware Inc. d/b/a CORE Business Technologies ("Provider"). In consideration of Sub-Merchant's receipt of credit or debit card ("Card") funded payments, and participation in programs affiliated with Mastercard International Inc. ("Mastercard"), VISA U.S.A. Inc. ("VISA"), Discover ("Discover"), American Express Travel Related Services Company, Inc. ("American Express"), and certain similar entities (collectively, "Card Brands"), Sub-Merchant is required to (i) enter into a direct relationship with an entity that is a member of the Card Brands, and (ii) agree to comply with Card Brand rules as they pertain to applicable Card payments. By entering into this Sub-Merchant Agreement, Sub-Merchant is fulfilling the Card Brand rule of entering into a direct relationship with a Member of the Card Brands; however, Acquirers understand that Sub-Merchant has contracted with Provider to obtain certain processing services.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises contained herein, the parties agree as follows:

1. THE ACQUIRER SERVICES.

1.1 PROVISION AND USE OF ACQUIRER SERVICES

Sub-Merchant acknowledges that even though Sub-Merchant signs up for the payment processing feature of the Services, Sub-Merchant is not guaranteed use of that feature of the Services. The payment processing feature will not be available to Sub-Merchant unless and until Provider and/or Acquirers have confirmed that Sub-Merchant is eligible to use the Acquirer Services and this Sub-Merchant Agreement has become binding on all parties as provided herein. If that occurs, the Acquirer Services will be provided to Sub-Merchant subject to and in accordance with this Sub-Merchant Agreement. Sub-Merchant will only use the Acquirer Services for business purposes and not for personal, family, or household use.

1.2 REQUIRED INFORMATION

Sub-Merchant agrees to provide Provider and/or Acquirers with such information (including financial statements and other financial information) as they may request in order to confirm that Sub-Merchant is eligible to receive the Acquirer Services. In addition, Sub-Merchant will furnish to Provider and/or Acquirers from time to time, promptly upon their request, (i) a list of the current addresses of all Sub-Merchant's offices, (ii) a list of all assumed business names (d/b/a's) used by Sub-Merchant, and (iii) a list of all products and services provided by Sub-Merchant. Sub-Merchant agrees that all information Sub-Merchant provides to Provider and/or Acquirers will be accurate and complete and Sub-Merchant agrees to keep such information up-to-date. Sub-Merchant agrees to provide Provider with at least 30 days' prior written notice of Sub-Merchant's intent to change the scope or nature of its business or its current type of products or services. If Acquirers determine such a change is material to its relationship with Sub-Merchant, Acquirers may refuse to process Card transactions made subsequent to the change or terminate this Sub-Merchant Agreement. Sub-Merchant further agrees to provide Provider with prompt written notice if it is the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Sub-Merchant will also provide Provider with prompt written notice of (i) any adverse change in Sub-Merchant's financial condition, (ii) any planned or anticipated liquidation or substantial change the basic nature of its business, (iii) any transfer or sale of any substantial part (25% or more in value) of its total assets, or (iv) if Sub-Merchant or its parent is not a corporation whose shares are listed on a national securities exchange or on the over-the-counter market, any change in the control or ownership of Sub-Merchant or its parent. Sub-Merchant will also notify Provider of any judgment, writ, warrant of attachment, execution, or levy against any substantial part (25% or more in value) of its total assets not later than three (3) days after Sub-Merchant obtains knowledge of any such judgment, writ, warrant of attachment, execution or levy.

1.3 VERIFICATION

Sub-Merchant authorizes Provider and/or Acquirers to make, from time to time, any business and personal credit inquiries (including, but not limited to, credit reports for Sub-Merchant's directors, officers, and principals), identity-verification inquiries, transaction-verification inquiries (including, but not limited to, with customers), and any other inquiries considered necessary relating to this Sub-Merchant Agreement, and to provide any information and documentation to Member and/or the Card Brands as may be required by them. Sub-Merchant also authorizes any person or credit reporting agency to compile information to answer those inquires and to furnish that information to Provider and/or Acquirers.

1.4 AUDIT RIGHT

In the event Acquirers reasonably suspect that they are subject to a financial or reputational risk due to Sub-Merchant's actions or omissions, Sub-Merchant authorizes Acquirers to perform an audit or inspection of Sub-Merchant's operations to confirm compliance with this Sub-Merchant Agreement upon reasonable advance notice and at Acquirers' expense. Sub-Merchant agrees to cooperate, in good faith, with any such audit conducted by Acquirers. Further, Sub-Merchant acknowledges and agrees that the Card Brands have the right to audit Sub-Merchant's business to confirm compliance with the Operating Regulations.

1.5 DATA OWNERSHIP

Acquirers will own all data associated with Sub-Merchant's use of the Acquirer Services. Sub-Merchant acknowledges that this data may be used by Acquirers for any purpose including the following: (a) providing and improving the Acquirer Services; (b) internal usage, including but not limited to, data analytics provided that such data is anonymous and aggregated with other customer data; and (c) complying with applicable legal requirements and assisting law enforcement agencies.

2. CARD ACCEPTANCE.

2.1 ACCEPTANCE

Sub-Merchant will honor, without discrimination, any valid Card properly tendered by a person asserting to be the person in whose name the Card is issued ("Cardholder"). Sub-Merchant will not accept any payments from a Cardholder relating to previous charges for merchandise or services.

2.2 SUB-MERCHANT IDENTITY AND RETURNS

Sub-Merchant will properly disclose to the Cardholder, at the time of the Card transaction, Sub-Merchant's name, return policy, and other limitations Sub-Merchant may have on accepting returned merchandise. Sub-Merchant's refund polices for purchases made with a Card must be at least as favorable as Sub-Merchant's refund policy for purchases made with any other form of payment.

2.3 REQUEST AT TIME OF PAYMENT

When accepting payment, Sub-Merchant will request the Card expiration date and ZIP code or postal code from the Cardholder's billing address. It is also highly recommended that Sub-Merchant obtain the security code from each Card, but Sub-Merchant must not store this information permanently.

2.4 CARD AUTHORIZATION

Sub-Merchant is required to obtain an authorization through the Services, in accordance with this Sub-Merchant Agreement, for each Card transaction. Acquirers reserve the right to refuse to process any Card transaction presented by Sub-Merchant unless it includes a proper authorization. Authorizations are not a guarantee of acceptance or payment of a transaction and do not waive any provision of this Sub-Merchant Agreement, or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card. Acquirers may refuse to authorize any transaction.

2.5 ADJUSTMENTS
All transactions and deposits are subject to audit and final verification by Provider and/or Acquirers and may be adjusted for inaccuracies. All credits provided to Sub-Merchant are provisional and subject to chargebacks and adjustments in accordance with the Operating Regulations, whether or not a transaction is charged back by the Card issuer.

2.6 SALES TRANSMITTALS
Sub-Merchant will retain a copy of the sales transmittal for the completed transaction in accordance with the Operating Regulations. Within three (3) business days of Provider's and/or Acquirers' request, Sub-Merchant will produce copies of sales transmittals and other transaction evidence. Acquirers will have chargeback rights with respect to such transactions for sales transmittals not so produced.

3. COMPLIANCE WITH RULES AND LAWS.

3.1 COMPLIANCE WITH OPERATING REGULATIONS AND LAWS
Sub-Merchant agrees to participate in, and to cause third parties acting as Sub-Merchant's agent ("Agents") to participate in, the Card Brands in compliance with, and subject to, the by-laws, operating regulations and/or all other rules, policies, and procedures of the Card Brands (collectively, the "Operating Regulations"). In the event of any conflict between the terms of this Sub-Merchant Agreement and the terms of the Operating Regulations, the terms of the Operating Regulations shall prevail.

Sub-Merchant further agrees to comply with the terms of this Sub-Merchant Agreement, all applicable federal, state, and local laws, rules, and regulations (collectively, the "Laws") and such other policies and procedures as Acquirers may from time to time prescribe relating to Sub-Merchant's acceptance of Cards ("Policies"). Without limiting the foregoing, Sub-Merchant agrees that it will fully comply with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), VISA, Mastercard, Discover, American Express and/or other networks, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the Mastercard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Card Brands ("Security Requirements"). For purposes of this section, Agents include, but are not limited to, Sub-Merchant's software providers and/or equipment providers.

Sub-Merchant agrees to assist Provider and/or Acquirers regarding Sub-Merchant's compliance with the Operating Regulations, the Laws, Security Requirements, or the Policies. Acquirers may, within their sole discretion, suspend the Acquirer Services for a reasonable period of time required to investigate suspicious or unusual activity, and Acquirers shall have no liability for any Sub-Merchant losses arising from any suspension of funds disbursement. Acquirers may reverse Card transactions which they believe, in their sole discretion, to violate this Sub-Merchant Agreement, Operating Regulations, the Laws, Security Requirements or the Policies, and Sub-Merchant agrees to reimburse Acquirers for any such reversal.

3.2 DATA SECURITY
Sub-Merchant agrees to keep secure all systems and media containing account, Cardholder, or transaction information (physical or electronic) and destroy in a manner that will render the data unreadable all such media that is no longer necessary or appropriate to store. If Sub-Merchant stores Cardholder account numbers, expiration dates, and other personal Cardholder data in a database, Sub-Merchant agrees to follow Card Brand guidelines and the Operating Regulations (including Security Requirements) on securing such data. Sub-Merchant may not retain or store magnetic stripe or CVV2, CVC2, or CID data after authorization. Sub-Merchant shall maintain industry "best practices" regarding continuity procedures and systems to ensure security of Cardholder account information in the event of a disruption, disaster, or failure of Sub-Merchant's data storage system and/or facility. Sub-Merchant agrees to display its consumer privacy policy on its website as well as its security method for transmission of Cardholder data.

3.3 PROHIBITED PRACTICES
Sub-Merchant must not (i) require a cardholder to complete a postcard or similar document that includes the cardholder's account number, Card expiration date, signature, or any other Card account data in plain view when mailed, (ii) add any tax to transactions, unless applicable law expressly requires that a Sub- merchant impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately), (iii) request or use an account number for any purpose other than as payment for its goods or services, (iv) disburse funds in the form of travelers checks if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Sub-Merchant, (v) disburse funds in the form of cash unless Sub-Merchant is dispensing funds in the form of travelers checks, TravelMoney cards, or foreign currency (in such case, the transaction amount is limited to the value of the travelers checks, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Sub-Merchant), or Sub- merchant is participating in a cash back service, (vi) submit any transaction receipt for a transaction that was previously charged back to the acquirers and subsequently returned to Sub-Merchant, irrespective of cardholder approval, (vii) accept a Visa consumer credit card or commercial Visa product issued by a U.S. issuer to collect or refinance an existing debt, (viii) accept a Card to collect or refinance an existing debit that has been deemed uncollectable by Sub-Merchant, or (ix) submit a transaction that represents collection of a dishonored check. Sub-Merchant further agrees that, under no circumstance, will Sub- merchant store Cardholder data in violation of the Laws or the Operating Regulations including but not limited to the storage of track-2 data. Neither Sub-Merchant nor its Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.

3.4 RECURRING TRANSACTIONS
For any recurring transaction, Sub-Merchant must (i) obtain the Cardholder's prior written consent to periodically charge the Cardholder on a recurring basis for the goods or services purchased , (ii) retain this permission for the duration of the recurring services and provide it upon request to Provider and/or Acquirers or the issuing bank of the Cardholder's Card, (iii) retain written documentation specifying the frequency of the recurring charge, and the duration of time during which such charges may be made, and the amount or range of amounts that may be charged, and (iv) notify the Cardholder that he or she may cancel recurring billing charges at any time. Cardholder must retain evidence of such written consent for at least 24 months from the date Sub-Merchant submits the last recurring billing charge. Sub-Merchant will honor any Cardholder cancellation, and if this Sub-Merchant Agreement is terminated for any reason, Sub-Merchant will, at its own cost, advise all Cardholders to whom Sub-Merchant submits recurring billing charges that Sub-Merchant no longer accepts the Card for amounts owed.

3.5 BONA FIDE TRANSACTIONS
Sub-Merchant shall only complete sales transactions produced as the direct result of bona fide sales made by Sub-Merchant to cardholders in the ordinary course of business in accordance with this Sub-Merchant Agreement, the Operating Regulations, and the Laws, and is expressly prohibited from processing, factoring, laundering, offering, and/or presenting sales transactions which are produced as a result of sales made by any person or entity other than Sub-Merchant.

3.6 MINIMUM/MAXIMUM TRANSACTIONS
Sub-Merchant may set a minimum transaction amount to accept a Card that provides access to a credit account, under the following conditions: (i) the minimum transaction amount does not differentiate between Card issuers; (ii) the minimum transaction amount does not differentiate between Mastercard, Visa, or any other Card Brand; and (iii) the minimum transaction amount does not exceed ten dollars (or any higher amount established by the Federal Reserve). Sub-Merchant may set a maximum transaction amount to accept a Card that provides access to a credit account, under the following conditions: Sub-Merchant is a (i) department, agency, or instrumentality of the U.S. government; (ii) corporation owned or controlled by the U.S. government; or (iii) Sub-Merchant whose primary business is reflected by one of the following MCCs: 8220, 8244, 8249 –Schools, Trade or Vocational; and the maximum transaction amount does not differentiate between Mastercard, Visa, or any other Card Brand.

3.7 ILLEGAL TRANSACTIONS

Sub-Merchant may not submit or knowingly permit any cardholder to submit any transaction that is illegal or that Sub-Merchant should have known is illegal, including but not limited to transactions involving pornography, money laundering, or financing terrorist activities. Sub-Merchant agrees to comply with any and all instructions Provider gives Sub-Merchant from time to time regarding payment processing provided hereunder. Sub- merchant agrees that Provider may investigate and audit Sub-Merchant's compliance with this Sub-Merchant Agreement from time to time, and Sub-Merchant agrees to cooperate fully with Provider in any investigation or audit.

3.8 USE OF TRADEMARKS

The Card Brands are the sole and exclusive owners of their marks and Sub-Merchant's use of their marks must comply with the Operating Regulations. Acquirers are the sole and exclusive owner of their respective marks and Sub-Merchant's use of Acquirer marks will fully comply with Acquirer policies and instructions. At any time Acquirers may prohibit Sub-Merchant's use of the marks or require changes to Sub-Merchant's use of the marks as Acquirers deem necessary or appropriate. Sub-Merchant's right to use Acquirer marks or the Card Brand marks will cease upon termination of this Sub-Merchant Agreement and Sub-Merchant agrees not to contest the ownership of the marks for any reason.

3.9 THIRD PARTY SERVICE PROVIDERS

Sub-Merchant must provide Provider written notification regarding Sub-Merchant's use of any Agents. Sub-Merchant will be liable for any breach of the Operating Regulations by an Agent. If there is unauthorized access to Cardholder data in the possession of Sub-Merchant or its Agents, Sub-Merchant must immediately notify Provider and cooperate with Provider and/or Acquirers regarding reasonable requests for information regarding the security breach.

3.10 CONFIDENTIALITY

Sub-Merchant agrees to retain in strictest confidence all information and data belonging to or relating to Acquirer's business and will safeguard such information and data by using the same degree of care, but no less than a reasonable amount of care, that Sub-Merchant uses to protect its own confidential information.

3.11 DISPUTES

a. SUB-MERCHANT'S DUTY TO MONITOR

Acquirers will not, and have no obligation to, confirm the validity of the recipient or the underlying transaction pursuant to which funds are transferred. Acquirers assume no liability for any unauthorized transfer request and the attendant transfer of funds, unless and until Sub-Merchant provides appropriate and timely notice of the unauthorized transfer requests to Provider. It is Sub-Merchant's sole obligation and responsibility to promptly and consistently inspect Sub-Merchant's transaction history and must immediately report any possible errors to Provider.

b. DISPUTES, INQUIRIES, AND CHARGEBACKS

Working with Provider, Acquirers will handle Card Brand inquiries about Sub-Merchant's Card transactions, in addition to disputes between Sub-Merchant and a customer involving Card payment transactions. Based on customer disputes, Acquirers may reverse Card transactions ("chargebacks"), and Provider and/or Acquirers will offset the value of such chargebacks from monies owed to Sub-Merchant. Sub-Merchant must not reenter or reprocess any Card transaction that has been charged back, but instead will allow the chargeback process to proceed to its conclusion as described in the Operating Regulations. If Sub-Merchant disagrees with a chargeback, Sub-Merchant may request a chargeback reversal within the applicable Card Brand's timeline in the Operating Regulations. "Excessive Activity" means: chargebacks in excess of .50% of the transaction ratio of Sub-Merchant's Card transactions; or, chargebacks in excess of .50% of the transaction ratio of the dollar amount of Sub-Merchant's Card transactions; or, returns in excess of 3% of the transaction ratio of Sub-Merchant's Card transactions; or, denied transactions in excess of 5% of the transaction ratio of Sub-Merchant's Card transactions. The existence of Excessive Activity will be a breach of this Sub-Merchant Agreement and may result in action as Acquirers deem necessary, including, but not limited to, termination or suspension of processing privileges or creation or maintenance of a reserve. Acquirers may revoke or reverse any credit given to Sub-Merchant where: (i) the Card transaction was not made in compliance with this Sub-Merchant Agreement and the Operating Regulations, the Laws, or the Policies; (ii) the Cardholder disputes liability to Provider and/or Acquirers for any reason, including but not limited to those chargeback rights enumerated in the Operating Regulations; (iii) the Card transaction was not directly between Sub-Merchant and the Cardholder; or (iv) a deposit to Sub-Merchant was made erroneously.

c. REFUND CREDITS

Sub-Merchant will issue a credit memorandum instead of making a cash advance, a disbursement, or a refund on any Card transaction. Provider and/or Acquirers will debit from amounts owing Sub-Merchant for the total face amount of each credit memorandum submitted. Sub-Merchant will not submit a credit relating to any Card transaction not originally submitted to Provider, nor will it submit a credit that exceeds the amount of the original Card transaction. Sub-Merchant will, within the time period specified by the Operating Regulations, provide Provider and/or Acquirers with a credit memorandum or credit statement for every return of goods or forgiveness of debt for services that were the subject of a Card transaction.

3.12 SPECIAL MASTERCARD TERMS

As used in this Section 3.12: (i) "Corporation" means Mastercard International Incorporated, Maestro International Inc., and their subsidiaries and affiliates; (ii) "Interchange System" means the computer hardware and software operated by and on behalf of the Corporation for the routing, processing, and settlement of transactions (iii) "Marks" means the names, logos, trade names, logotypes, trademarks, service marks, trade designations, and other designations, symbols, and marks that the Corporation owns, manages, licenses, or otherwise controls and makes available for use by authorized entities in accordance with the Standards, and "Mark" means any one of the Marks; and (iv) "Standards" means the Amended and Restated Certificate of Incorporation and the bylaws, operating rules, regulations, policies, and procedures of the Corporation, including but not limited to any manuals, guides or bulletins, as may be amended from time to time.

Sub-Merchant acknowledges and agrees: (i) Sub-Merchant will comply at all times with all applicable Standards, as amended from time to time; (ii) the Corporation is the sole and exclusive owner of the Marks, and Sub-Merchant will not contest the ownership of the Marks for any reason; (iii) the Corporation may at any time, immediately and without advance notice, prohibit the Sub-Merchant from using any of the Marks for any reason; and (iv) the Corporation has the right to enforce any provision of the Standards and to prohibit the Sub-Merchant and/or Provider from engaging in any conduct the Corporation deems could injure or could create a risk of injury to the Corporation, including injury to reputation, or that could adversely affect the integrity of the Interchange System, the Corporation's "confidential information" (as defined in the Standards), or both; and Sub-Merchant will not take any action that could interfere with or prevent the exercise of this right by the Corporation.

Sub-Merchant agrees that Provider may require any changes to Sub-Merchant's website or otherwise that Provider deems necessary or appropriate to ensure that Sub-Merchant remains in compliance with the Standards governing the use of the Marks.

In addition to the termination provisions set forth in Section 5, this Sub-Merchant Agreement will automatically and immediately terminate if the Corporation de-registers Provider or if an Acquirer ceases to be approved by the Corporation for any reason or if such Acquirer fails to have a valid license with the Corporation to use any Mark accepted by Sub-Merchant. Further, Provider, at its discretion or at the direction of an Acquirer or the Corporation, may terminate this Sub-Merchant Agreement immediately for activity deemed to be fraudulent or otherwise wrongful by Provider, an Acquirer, or the Corporation. In the event of any conflict or inconsistency between any provision of this Sub-Merchant Agreement and the Standards, the Standards will govern as to any transaction involving the Corporation or its Cards.

4. FEES, SETTLEMENT, TAXES & IRS REPORTING.

4.1 FEES

Sub-Merchant agrees to pay to Provider on demand (i) any and all service or processing fees, taxes, or other charges associated with payment transactions processed through

the Service, as specified in Provider's Fee Schedule as in effect from time to time, or in another applicable document (e.g., an order form), (ii) any adjustments, fees, penalties, or costs incurred by Provider as a result of any dispute related to a User Payment (as defined below) or to any payment transaction alleged to have processed through the Service; and (iii) any fees or charges imposed by third parties (including Card Brands and Acquirers) related to disputed, returned, or cancelled transactions or User Payments. Sub-Merchant authorizes and directs Provider to deduct the amounts Sub-Merchant owes under this paragraph from User Payments, and Sub-Merchant understands that User Payments Provider remits to Sub-Merchant will be net of these amounts.

Sub-Merchant further agrees that Provider may withhold the following amounts from User Payments, and Sub-Merchant understands that User Payments Provider remits to Sub-Merchant will be net of these amounts: (i) the amount of any User Payment that is subject to dispute or reasonably anticipated to be subject to dispute as determined in Provider's sole discretion (such as in the case of Card charge backs) and any related adjustments, fees, penalties, or costs Provider incurs or reasonably anticipates Provider will incur as a result of the dispute; (ii) any third-party fees or charges Provider incurs or reasonably anticipates Provider will incur as a result of a disputed, returned, or cancelled User Payments, including any imposed on Provider by Acquirers; (iii) any taxes or other amounts as required by law; and (iv) any other amounts Sub-Merchant owes to Provider under the Sub-Merchant Agreement, including any amounts that Provider reasonably believes are or may be owed to Provider as a result of any breach by Sub-Merchant of this Sub-Merchant Agreement or pursuant to Sub-Merchant's indemnification obligations under the Sub-Merchant Agreement. Sub-Merchant authorizes Provider to use the funds so withheld to satisfy Sub- merchant's obligations in respect of any matters described in this paragraph.

To the extent the funds so withheld exceed the amount(s) actually required to satisfy Sub-Merchant's obligations, the remaining funds will be treated as User Payments received by Provider during the calendar month in which Provider determines (in Provider's sole and reasonable discretion) that Sub-Merchant's obligations have been satisfied and remitted to Sub-Merchant in accordance with the paragraphs above. In the event amounts deducted or withheld from User Payments are insufficient to pay all amounts Sub-Merchant owes to Provider hereunder, Sub-Merchant agrees to pay such amounts on demand, and to pay all attorneys' fees and costs and expenses of collection Provider incurs in collecting amounts Sub-Merchant owes.

4.2 SETTLEMENT

Upon receipt of Sub-Merchant's sales data for Card transactions through the Services, Acquirers will process Sub-Merchant's sales data to facilitate the funds transfer between the various Card Brands and Sub-Merchant. After Acquirers receive credit for such sales data, Acquirers will either fund Sub-Merchant directly or through Provider to an account designated by Provider ("Provider Designated Account"), for such Card transactions. Sub-Merchant agrees that Acquirers' deposit of funds to the Provider Designated Account shall discharge Acquirers of their settlement obligation to Sub-Merchant. Any dispute concerning the amount or receipt of settlement shall be between Provider and Sub-Merchant. Acquirers will debit the Provider Designated Account for funds owed to Acquirers as a result of the Acquirer Services provided hereunder. Further, if a cardholder disputes a transaction, if a transaction is charged back for any reason, or if Acquirers reasonably believe a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from Sub-Merchant or Provider.

4.3 REMITTANCE BY PROVIDER

Unless Sub-Merchant and Provider otherwise agree in writing, funds received by Provider in respect of payments by Cardholders to Sub-Merchant that are processed through the Service ("User Payments") will be remitted to Sub-Merchant (net of amounts Acquirers and/or Provider is authorized to deduct or withhold, as described above and in this Sub-Merchant Agreement) not later than thirty (30) days after the end of the calendar month in which such User Payments are received by Provider. Funds will be remitted in the form Sub-Merchant selects when Sub-Merchant registers for payment processing services, or as subsequently updated as permitted by the Service.

If Sub-Merchant believes that Provider has failed to remit User Payments owed to Sub-Merchant, Sub-Merchant must notify Provider in writing within ninety (90) days of the date of such remittance or from the date when Sub-Merchant purports such remittance would have been due, specifying in reasonable detail the amounts Sub-Merchant believes are owed. Sub-Merchant's failure to so notify Provider shall result in Sub-Merchant's waiver of any claim relating to such disputed remittance. Amounts owed to Sub-Merchant shall be calculated solely based on records maintained by Provider, which shall be presumed correct absent manifest error. Sub-Merchant shall have no audit rights hereunder.

4.4 SUB-MERCHANT ACCOUNT

To ensure proper remittance of User Payments, Sub-Merchant is solely responsible for providing and maintaining accurate contact and payment information associated with Sub-Merchant's account, which may include without limitation applicable tax information. If Provider believes that Provider is obligated to obtain tax information and Sub-Merchant does not provide this information to Provider after Provider has requested it, Provider may refuse to remit User Payments to Sub-Merchant until Sub-Merchant provides this information or otherwise satisfies Provider that Sub-Merchant is not a person or entity from whom Provider is required to obtain tax information. Sub-Merchant agrees to pay all applicable taxes or charges imposed by any government entity in connection with Sub-Merchant's participation in the Service.

4.5 RESERVE

Provider and/or Acquirers may, in their reasonable discretion, establish a reserve if they believe there is a risk of potential chargebacks, returns, or any other risk or liability associated with Sub-Merchant's use of the Acquirer Services or to ensure current or future payment owed to Provider and/or Acquirers. Provider will provide sub-Merchant with notice of the reserve and the terms of the reserve. Provider and/or Acquirers may require that a certain portion of Sub-Merchant's Card transaction proceeds be held by Acquirers in reserve for a certain period of time, or that Sub-Merchant make a lump sum payment for the reserve. Provider and/or Acquirers may change the terms of the reserve at any time by providing Sub-Merchant with notice of the new terms. Provider and/or Acquirers have the right to use funds otherwise owed to Sub-Merchant to establish, increase, or maintain funds in reserve. Acquirers may hold a reserve as long as Provider and/or Acquirers deem necessary to mitigate risks associated with Sub-Merchant's transactions. Sub-Merchant understands and agrees that if Sub-Merchant is required to establish a reserve, Sub-Merchant has an obligation under this Sub-Merchant Agreement to maintain at all times the balance in the reserve set by Provider and/or Acquirers. Either Provider and/or Acquirers may, without notice, apply funds designated as reserves against any outstanding amounts owed to them, respectively, under this Sub-Merchant Agreement. Provider and/or Acquirers may also debit the reserve to exercise their rights under this Sub-Merchant Agreement, to collect any amounts due to them including, without limitation, rights of set-off and recoupment. Sub-Merchant agrees that it is liable for all obligations associated with its use of the Acquirer Services even after the release of any reserve. Sub-Merchant will not be entitled to a return of any sums remaining in reserve for up to 270 days following termination of its use of the Acquirer Services.

4.6 TAXES & IRS REPORTING

To comply with IRS 1099-K reporting requirements, either Provider or Acquirers may be required to file a form 1099-K with the U.S. Internal Revenue Service (IRS). Provider and/or Acquirers may collect federal backup withholding upon transaction settlement, on behalf of the IRS, from Sub-Merchant if Sub-Merchant does not supply its legal name, SSN or EIN, or if it fails to respond to a request from Provider and/or Acquirers to verify the same.

5. TERM AND TERMINATION.

5.1 TERM

This Sub-Merchant Agreement shall be deemed accepted and binding upon Sub-Merchant, Acquirers and Provider upon its execution by both Parties (the "Effective Date"). This Sub-Merchant Agreement shall commence on the Effective Date (and shall continue for four (4) years (the "Initial Term"). Thereafter, this Sub-Merchant Agreement shall renew automatically for one (1) year periods unless either Party notifies the other upon one hundred eighty (180) days prior written notice (each a "Renewal Term") (collectively, the "Initial Term" and each "Renewal Term," the "Term"). Either Party may terminate this Sub-Merchant Agreement in the event of a breach of this Sub-Merchant Agreement by the other Party that has not been cured to such Party's reasonable satisfaction within thirty (30) days of the breaching Party's receipt of written notice.

5.2 TERMINATION

Notwithstanding the foregoing, Acquirers may immediately cease providing Acquirer Services and/or terminate this Sub-Merchant Agreement without notice if (i) Sub-Merchant or Provider fails to pay any amount to Acquirers when due, (ii) in Acquirers' opinion, provision of a service to Sub-Merchant or Provider may be a violation of the Operating Regulations or any applicable Laws, (iii) Acquirers believes that Sub-Merchant has violated or is likely to violate the Operating Regulations or the Laws, or (iv) Acquirers or Providers are required to do so by any of the Card Brands.

Further, Provider may terminate this Sub-Merchant Agreement at any time, in Provider's sole discretion, without prior notice to Sub-Merchant. If this Sub-Merchant Agreement is terminated by any party hereto, the provisions of Section 4 above will continue to apply until Sub-Merchant has paid all amounts owed to Provider in respect of the Services provided by Provider prior to termination.

5.3 FAILURE OF ACQUIRER SERVICES

Sub-Merchant agrees to provide Acquirers, via a communication with Provider, with written notice, specifically detailing any alleged failure of Acquirer Services, within thirty (30) days of the date on which the alleged failure or error first occurred; failure to so provide notice shall be deemed an acceptance by Sub-Merchant and a waiver of any and all rights to dispute such failure or error. Acquirers shall bear no liability and have no obligations to correct any errors resulting from Sub- merchant's failure to comply with the duties and obligations of the preceding sentence.

5.4 EVENTS OF DEFAULT

An "Event of Default" shall mean the occurrence or existence of one or more of the following events or conditions, whatever the reason for such Event of Default and whether voluntary, involuntary or effected by operation of law: (a) Sub-Merchant fails to pay any obligation under this Sub-Merchant Agreement to Acquirers or Provider when due; (b) any representation or warranty made by Sub-Merchant under this Sub-Merchant Agreement, the Sub-Merchant Application or any financial statement, certificate, report, exhibit or document required to be furnished by Sub-Merchant to Acquirers or Provider pursuant to this Sub-Merchant Agreement shall prove false or misleading in any material respect as of the time when made, including any omission of material information necessary to make such representation, warranty or statement not misleading or the failure to provide required information; (c) Sub-Merchant shall default in the performance or observance of any covenant, agreement or duty under this Sub-Merchant Agreement or any Card Brand Regulation; (d) Sub-Merchant is no longer allowed by a Card Brand to accept such Card Brand's Cards as payment or Sub-Merchant's name appears on a Card Brand's terminated merchant file; (e) Acquirers or Provider reasonably conclude that any criminal, fraudulent, unauthorized or suspicious activity has occurred or is imminent with respect to Sub-Merchant's acceptance of Cards or Sub-Merchant's performance under this Sub-Merchant Agreement; (f) there is an unexplained material change in Sub-Merchant's processed volume, average ticket size or mode of sale; (g) Acquirers or Provider reasonably conclude that there exists a risk of an abnormal level of chargebacks or that Sub-Merchant may not fund Fees, Third-Party Costs for which Sub-Merchant is responsible hereunder, dispute items, or penalties as they occur; (h) Sub-Merchant has defaulted on any obligation for borrowed money and the effect thereof may permit the holder of such indebtedness to accelerate the time when repayment is due; (i) there is an adverse material change in Sub-Merchant's business, operations, financial condition, properties, assets or prospects; (j) one or more judgments against Sub-Merchant for the payment of money remain undischarged, unsatisfied or unstayed for a period of forty five (45) consecutive days; (k) Sub-Merchant's lender takes possession of Sub-Merchant's inventory; (l) a writ or warrant of attachment, garnishment, execution, or similar process shall have been issued against Sub-Merchant or any of Sub-Merchant's assets; (m) a proceeding shall have been instituted with respect to Sub-Merchant (1) seeking an order for relief or a declaration entailing a finding that Sub-Merchant is insolvent or seeking a similar declaration or finding, or seeking dissolution, winding up, charter revocation or forfeiture, liquidation, reorganization, arrangement, adjustment, composition or other similar relief with respect to Sub-Merchant, Sub-Merchant's assets or Sub-Merchant's debts under any law relating to bankruptcy, insolvency, relief of debtors or protection of creditors, termination of legal entities or any other similar law now or hereafter in effect, or (2) seeking appointment of a receiver, trustee, custodian, liquidator, assignee, sequestrator or other similar official for Sub-Merchant or for all or any substantial part of Sub-Merchant's assets; or (n) Sub-Merchant shall become insolvent, shall become generally unable to pay Sub-Merchant's debts as they become due, shall voluntarily suspend transaction of Sub-Merchant's business, shall make a general assignment for the benefit of creditors, shall institute a proceeding described in subsection (m)(1) above, or shall consent to any such order for relief, declaration, finding or relief described therein, shall institute a proceeding described in subsection (m)(2) above, or shall consent to any such appointment or to the taking of possession by any such official of all or any substantial part of Sub-Merchant's assets, shall dissolve, windup, revoke or forfeit Sub-Merchant's charter (or other constituent documents) or liquidate Sub-Merchant or any substantial part of Sub-Merchant's assets, or shall take any action in furtherance of any of the foregoing; (o) accept a Card for an unlawful Internet gambling transaction; or (p) Sub-Merchant fails to become or remain "PCI compliant" (as required under applicable Card Brand Regulations) and/or Sub-Merchant fails to certify such compliance to Provider upon request. You shall notify Acquirers and Provider in writing immediately upon becoming aware of an Event of Default, or an event which, with the passing of time or the giving of notice, or both, would constitute an Event of Default.

5.5 REMEDIES UPON EVENT OF DEFAULT

Upon the occurrence of any Event of Default, Acquirers and Provider may employ any or all of the following remedies it deems appropriate: (a) terminate this Sub-Merchant Agreement immediately upon notice to Sub-Merchant; (b) without prior notice to Sub-Merchant, refuse to accept or revoke acceptance of any sales or credit, or the electronic transmission thereof if applicable, received by Acquirers or Provider on or at any time after the occurrence of any Event of Default; (c) without prior notice to Sub-Merchant, Acquirers or Provider may debit Sub-Merchant's accounts in an amount equal to any amount then owed to Acquirers or Provider; (d) establish a reasonable reserve using Sub-Merchant's funds in Acquirers' possession to cover foreseeable Fees, Third-Party Costs for which Sub-Merchant is responsible hereunder, dispute items, penalties, and Cardholder credits; (e) increase the Fees commensurate with the increased risk; (f) require Sub-Merchant to deposit, as cash collateral, such amounts as Acquirers or Provider may require to secure Sub-Merchant's obligations hereunder; (g) report to one or more credit reporting agencies any outstanding indebtedness to Acquirers or Provider; or (h) take such other action as may be permitted by law.

5.6 EARLY TERMINATION

For purposes of this Section 5.6, an "Early Termination" shall mean: (i) a termination of this Sub-Merchant Agreement by Acquirers or Provider following an Event of Default specified in Section 5.4 above (ii); a termination of this Sub-Merchant Agreement by Sub-Merchant for any reason whatsoever, other than following written termination notice given by Sub-Merchant pursuant to Section 1.2 or Section 5; or (iii) Sub-Merchant's deposit or submission of any of Sub-Merchant's Card Brand branded transactions with any entity other than Acquirers. Your payment of the monthly minimum Fees shall not fulfill Sub-Merchant's obligation to Provider. The parties agree that the actual damages which will result to Provider from an Early Termination are not readily ascertainable as of the effective date of this Sub-Merchant Agreement. In addition, Sub-Merchant acknowledges and agrees that in reliance on this Sub-Merchant Agreement and other long-term agreements, Provider will incur additional long-term costs, including without limitation, computer hardware, software, and labor. Accordingly, upon the occurrence of an Early Termination, Sub-Merchant shall pay to Provider, in addition to all amounts owed for the Services provided to Sub-Merchant pursuant to this Sub-Merchant Agreement, an amount equal to the greater of (i) $500.00; or (ii) thirty percent (30%) of the average total monthly Fees paid by Sub-Merchant (or Service Fees collected by Provider, if applicable) during the preceding six (6) months (or shorter period if this Sub-Merchant Agreement has not been in effect for six (6) months), times the number of months, or portion thereof, remaining in the Term resulting from failure to provide timely termination notice as described in Section 5.1 of this Sub-Merchant Agreement. The parties intend that this Early Termination fee be in lieu of Provider's lost profits for the remainder of this Sub-Merchant Agreement, but not in lieu of any other damages to which Provider might otherwise be entitled arising out of Sub-Merchant's wrongful acts or omissions.

6. SUB-MERCHANT WARRANTIES.

Sub-Merchant represents and warrants the following: (1) that all information submitted by Sub-Merchant to Provider and/or Acquirers relating to Sub-Merchant Application, which is incorporated into the Sub-Merchant Agreement by reference, to use the Acquirer Services is correct, complete, and fully describes and details the nature, type, and scope of the business in which Sub-Merchant is engaged; (2) that Sub-Merchant has never been placed on the Mastercard MATCH system or the Combined Terminated Merchant File, and if so, Merchant has disclosed this to Provider and/or Acquirers; and (3) that all transactions are bona fide and no transaction involves the use of a Card for

any purpose other than the purchase of goods or services from Sub-Merchant and does not involve a Cardholder obtaining cash from Sub-Merchant unless allowed by the Operating Regulations.

7. INDEMNIFICATION.

As between Sub-Merchant and Acquirers, Sub-Merchant will be responsible for, and at its own expense, defend itself against any suits, claims, losses, demands, or damages arising out of in connection with (A) any dispute with a Cardholder or any third party relating to any Card transaction, or (B) any breach by Sub-Merchant of any obligation under this Sub-Merchant Agreement. Sub-Merchant will not make any claims against Acquirers for any liabilities, claims, losses, costs, expenses and demands of any kind or nature, arising out of or in connection with any of the foregoing suits, claims, losses, demands or damages. Further, Sub-Merchant will not make any claims against Acquirers for any actions they take against the settlement account or the reserve account in accordance with this Sub-Merchant Agreement, except to the extent such actions are attributable to Acquirers' negligence, willful misconduct, or their breach of this Sub-Merchant Agreement.

Acquirers will be responsible for and will at their own expense defend themselves against any suits, claims, losses, demands, or damages arising solely out of (A) Acquirers' breach of this Sub-Merchant Agreement, or (B) Acquirers' negligence or willful misconduct.

8. LIMITATION OF LIABILITY.

Sub-Merchant's sole and exclusive remedy for any and all claims against Acquirers arising out of or in any way related to the transactions contemplated herein shall be termination of this Sub-Merchant Agreement. In the event that Sub-Merchant has any claim arising in connection with the Acquirer Services, rights, and/or obligations defined in this Sub-Merchant Agreement, Sub-Merchant shall proceed against Provider and not against Acquirers, unless otherwise specifically set forth in the Operating Regulations. In no event shall Acquirers have any liability to Sub-Merchant with respect to this Sub-Merchant Agreement or the Acquirer Services. Sub-Merchant acknowledges Acquirers are only providing this Sub-Merchant Agreement to assist in Provider's processing relationship with Sub- merchant, that Acquirers are not liable for any action or failure to act by Provider, and that Acquirers shall have no liability whatsoever in connection with any products or services provided to Sub-Merchant by Provider.

Acquirers' total liability under this Sub-Merchant Agreement for any reason will not exceed in the aggregate the amount of $5,000. In no event will Acquirers be liable for indirect, special, or consequential damages.

9. DISCLAIMER OF WARRANTIES.

THE ACQUIRER SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY STATED IN THIS SUB-MERCHANT AGREEMENT, ACQUIRERS SPECIFICALLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND/OR NON-INFRINGEMENT, ARISING OUT OF OR RELATED TO THIS SUB-MERCHANT AGREEMENT.

SOME STATES DO NOT ALLOW EXCLUSIONS AND LIMITATIONS OF CERTAIN IMPLIED WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO SUB-MERCHANT. EACH PARTY ACKNOWLEDGES THAT IT HAS NOT ENTERED INTO THIS SUB-MERCHANT AGREEMENT IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION EXCEPT THOSE SPECIFICALLY SET FORTH HEREIN.

10. INTELLECTUAL PROPERTY RESTRICTIONS.

All materials or intellectual property provided by Acquirers to Sub-Merchant in connection with the Acquirer Services ("Materials") are owned by Acquirers or their third-party licensors. Sub-Merchant shall not (and shall not permit any agent or third party) to: (a) copy all or any portion of any Materials; (b) decompile, disassemble, or otherwise reverse engineer (except to the extent expressly permitted by applicable Law, notwithstanding a contractual obligation to the contrary) the Acquirer Services or Materials, or any portion thereof, or determine or attempt to determine any source code, algorithms, methods, or techniques used or embodied in the Acquirer Services or any Materials or any portion thereof; (c) modify, translate, or otherwise create any derivative works based upon the Acquirer Services or any Materials; (d) distribute, disclose, market, rent, lease, assign, sublicense, pledge, or otherwise transfer the Acquirer Services or any Materials, in whole or in part, to any third party; or (e) remove or alter any copyright, trademark, or other proprietary notices, legends, symbols, or labels appearing on the Acquirer Services or in any Materials.

11. MISCELLANEOUS.

11.1 SEVERABILITY AND WAIVER

If any provision of this Sub-Merchant Agreement is held invalid, illegal, void, or unenforceable by reason of any judicial decision, all other provisions of this Sub-Merchant Agreement shall nevertheless remain in full force and effect. No course of dealing, delay, or failure to enforce any provision or exercise any right under this Sub-Merchant Agreement by Acquirers shall be construed as a waiver or estoppel of such provision or right, nor shall it amend this Sub-Merchant Agreement or affect the validity of this Sub-Merchant Agreement or curtail Acquirers' ability to enforce such provision or exercise such right in the future. All waivers must be in writing and signed by Acquirers.

11.2 RIGHTS AND REMEDIES CUMULATIVE

The rights conferred upon Acquirers in this Sub-Merchant Agreement are not intended to be exclusive of each other or of any other rights and remedies Acquirers have under this Sub-Merchant Agreement, at law or in equity. Rather, each right Acquirers have at law or in equity will be cumulative and concurrent and in addition to every other right.

11.3 ENTIRE AGREEMENT

This Sub-Merchant Agreement, Sub-Merchant Application, including the Operating Regulations and the Policies, and any amendment or supplement to this Sub-Merchant Agreement, all of which are incorporated into this Sub-Merchant Agreement, constitutes the entire agreement between Sub-Merchant and Acquirers with respect to the matters contained herein, and all prior or other agreements or representations, written or oral, are superseded by this Sub-Merchant Agreement. Sub-Merchant agrees that in entering into this Sub-Merchant Agreement Sub-Merchant has not relied on any statement of Acquirers or its representatives. The parties acknowledge and agree (i) that this Sub-Merchant Agreement applies only to Card transaction generated within the United States; and (ii) that this is a contract for commercial services.

11.4 ASSIGNABILITY

This Sub-Merchant Agreement may not be assigned by Sub-Merchant, directly or by operation of law, without the prior written consent of Acquirers and Provider. This Sub-Merchant Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees, and assignees.

11.5 AMENDMENTS

Acquirers and/or Provider may amend this Sub-Merchant Agreement at any time. Notwithstanding the foregoing, Provider will give Sub-Merchant not fewer than thirty (30) days advance notice of any new or increased fees imposed on Sub-Merchant in connection with payment processing under this Sub-Merchant Agreement.

11.6 CONSENT TO DO BUSINESS ELECTRONICALLY, ELECTRONIC COMMUNICATION, AND NOTICES

Sub-Merchant consents to do business electronically, which means that Sub-Merchant agrees that all notices, instructions, or any other communications regarding transactions under this Sub-Merchant Agreement (all of which are referred to herein as the "Communications") may be presented, delivered, stored, retrieved, and transmitted to Sub-Merchant electronically. Sub-Merchant agrees to notify Provider of any change in its electronic or mailing address or other contact information.

11.7 EXECUTION OF AGREEMENT

The parties agree that this Sub-Merchant Agreement may be executed (a) in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement; and (b) by using an electronic or handwritten signature, which are of equal effect, whether on original or electronic copies. Member Bank is a party to this Sub-Merchant Agreement. Member Bank may be changed, and its rights and obligations assigned to another party by Acquirers at any time without notice to Merchant. As of the commencement of this Sub-Merchant Agreement, Member Bank shall be Fifth Third Bank, located at Cincinnati, OH.

11.8 CHOICE OF LAW; JURISDICTION; WAIVER

THIS SUB-MERCHANT AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF IN WHICH SUB-MERCHANT IS LOCATED. SUB-MERCHANT, ACQUIRERS AND PROVIDER HEREBY IRREVOCABLY AND UNCONDITIONALLY: (A) AGREE THAT ANY ACTION, SUIT OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY STATEMENT, COURSE OF CONDUCT, ACT, OMISSION OR EVENT OCCURRING IN CONNECTION WITH THIS AGREEMENT (COLLECTIVELY, "RELATED LITIGATION") MUST BE BROUGHT IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE COUNTY AND STATE IN WHICH SUB-MERCHANT ARE LOCATED; (B) SUBMIT TO THE JURISDICTION OF SUCH COURTS; (C) WAIVE ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY RELATED LITIGATION BROUGHT IN ANY SUCH COURT; (D) WAIVE ANY CLAIM THAT ANY SUCH RELATED LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, AND WAIVE ANY RIGHT TO OBJECT, WITH RESPECT TO ANY RELATED LITIGATION BROUGHT IN ANY SUCH COURT, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUB-MERCHANT OR ACQUIRERS AND PROVIDER; (E) CONSENT AND AGREE TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY RELATED LITIGATION BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO SUB-MERCHANT AT THE ADDRESS IN THE APPLICATION AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW); AND (F) WAIVE THE RIGHT TO TRIAL BY JURY IN ANY RELATED LITIGATION. THE PREVAILING PARTY IN ANY RELATED LITIGATION SHALL BE ENTITLED TO RECOVER ITS REASONABLE ATTORNEY'S FEES, COST AND EXPENSES.

AGREED AND ACCEPTED

SUB-MERCHANT:		**WONDERWARE INC. D/B/A CORE BUSINESS TECHNOLOGIES**	
BY:	_____	**BY:**	_____
TITLE:	_____	**TITLE:**	_____
AUTHORIZED SIGNATURE:	_____	**AUTHORIZED SIGNATURE:**	_____
DATE:	_____	**DATE:**	_____

SPECIAL PROVISIONS FOR AMERICAN EXPRESS ADDENDUM

This SPECIAL PROVISIONS FOR AMERICAN EXPRESS ADDENDUM (this "Addendum") is made a part of the terms and conditions of the SUB-MERCHANT SERVICES AGREEMENT between [redacted] ("Customer") and Wonderware Inc. d/b/a CORE Business Technologies ("CORE") dated [redacted] (the "Sub-Merchant Agreement"), and applies to American Express Card acceptance (capitalized terms herein not defined elsewhere in the Sub-Merchant Agreement shall have the meanings assigned in the American Express Operating Regulations). Customer's participation in American Express Card acceptance is subject to the approval of American Express. With respect to participation in an American Express acceptance program, in the event of a conflict between the terms of this Addendum and other terms of the Sub-Merchant Agreement, the terms below shall control.

1. **Rules.** Customer shall be bound by the American Express Operating Regulations, including the Merchant Operating Guide which is located at: www.americanexpress.com/merchantopguide ("MOG"). The provisions of the MOG are incorporated herein by reference.

2. **Transaction Data.** Customer authorizes CORE and/or its affiliates to submit American Express transactions to, and receive settlement on such transactions from, American Express on behalf of Customer.

3. **Data Security Requirements.** Customer shall comply with the data security requirements of protecting Cardholder information set forth in Section 8 of the MOG.

4. **Treatment of American Express Cardholder Information.** Customer shall treat acknowledges that any and all American Express Cardholder information is confidential and the sole property of the Card issuer, American Express or any of its affiliates. Except as otherwise specified, Customer must not disclose Cardholder information, nor use nor store it, other than to facilitate transactions at Customer's establishments in accordance with the Sub-Merchant Agreement.

5. **Disclosure and Use of Data Collected Under the Sub-Merchant Agreement.** CORE may disclose to American Express data and information that CORE collects as part of performing American Express payment processing services or transaction related services including information about Customer, as further set forth in Section 2.7 of the MOG. American Express may use such information for purposes set forth in Sections 2.7 and 2.8 of the MOG.

6. **Conversion to American Express Direct Customer.** Customer acknowledges that it may be converted from the American Express Card acceptance program to a direct relationship with American Express if and when its transaction volumes exceed the eligibility thresholds for the program. If this occurs, upon such conversion, (i) Customer will be bound by American Express' then-current Card acceptance agreement; and (ii) American Express will set pricing and other fees payable by Customer.

7. **Assignment of Transactions.** Customer shall not process transactions or receive payments on behalf of, or (unless required by applicable law) re-direct payments to, any third party.

8. **American Express as Third Party Beneficiary.** Notwithstanding anything in the Sub-Merchant Agreement to the contrary, American Express shall have third-party beneficiary rights, but not obligations, to the terms of the Sub-Merchant Agreement applicable to American Express Card acceptance to enforce such terms against Customer. Customer acknowledges that it is not a third party beneficiary under the agreement between American Express and CORE for the provision of American Express payment processing services or transaction related services to Customer (the "AMEX TPSP Agreement").

9. **Termination of American Express Card Acceptance.** You acknowledge that CORE shall be required to terminate Customer's participation in American Express Card acceptance if the TPSP Agreement terminates for any reason or American Express terminates CORE's authorization to provide the payment processing services. In the event Customer's participation in the program is terminated for any reason, Customer must immediately remove all American Express branding and marks from Customer's website and wherever else they are displayed.

10. **Billing and Refund Policies.** Customer's billing and refund policies for American Express purchases must comply with Sections 4.11 and 7.4 of the MOG.

11. **Acceptance of American Express.** Customer must accept American Express as payment for goods and services in accordance with Section 3.1 of the MOG, the Sub-Merchant Agreement and this Addendum. Customer covenants not to engage in the activities listed in the second paragraph of Section 3.2 of the MOG.

12. **Inquiries and Chargebacks.** Customer must comply with the requirements set forth in Section 11 of the MOG relating to the processes for chargebacks and inquiries.

13. **Specific Industries.** Customer must comply with the industry-specific requirements of Section 12 of the MOG.

14. **Discounts or In-Kind Incentives.** Customer may offer discounts or in-kind incentives from Customer's regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that Customer complies with the requirements of the third paragraph of Section 3.2 of the MOG.

15. **Display of American Express Marks.** Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Customer must indicate Customer's acceptance of American Express Cards and display American Express' marks as prominently and in the same manner as any other Card networks. Customer's use of the American Express marks shall be in accordance with the third paragraph of Section 3.2.1 of the MOG.

16. Confidentiality of Cardholder Information. Any and all Cardholder information is confidential and the sole property of the applicable Card issuer, American Express or its affiliates. Except as otherwise specified, Customer must not disclose Cardholder information, nor use nor store it, other than to facilitate transactions at Customer's business locations and websites in accordance with the Sub-Merchant Agreement.

17. Website Information Display. Customer's business website must display the following: (a) an accurate description of the goods/services offered, including the currency type for the transaction (e.g., U.S. Dollars) (note: transaction currency must be in U.S. Dollars); (b) Customer's physical address in the U.S.; (c) an email address or telephone number for customer service disputes; (d) return/refund policy; (e) a description of Customer's delivery policy (e.g., no overnight delivery); (f) a description of Customer's security practices (e.g., information highlighting security practices the Customer uses to secure transactions on its systems, including transactions conducted on the Internet); (g) a statement of known export restrictions, tariffs, and any other regulations; and (h) a privacy statement regarding the type of personal information collected and how the information is used. Additionally, Customer must provide to its customers the option to decline being included in marketing campaigns or having their personal information included on lists sold to third parties.

18. Customer Service Information. Customer will maintain customer service information that is readily available for review by Cardholders transacting with Customer. The customer service information will provide clear instructions on how to contact CORE or Customer, including an active customer service email address and telephone number.

19. Compliance with Laws. Customer will at all times comply with applicable laws, rules and regulations related to the conduct of Customer's business.

20. Claims. A claim against American Express, or a claim against CORE or any other entity that American Express has a right to join in resolving a claim, will be resolved through arbitration in accordance with Section 13 of the MOG.

21. American Express Limitation of Liability. IN NO EVENT SHALL AMERICAN EXPRESS OR ITS AFFILIATES, SUCCESSORS, OR PERMITTED ASSIGNS BE LIABLE TO CUSTOMER OR ANY OTHER THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY) ARISING OUT OF OR IN CONNECTION WITH CUSTOMER'S PARTICIPATION IN THE PROGRAM, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. AMERICAN EXPRESS WILL NOT BE RESPONSIBLE TO CUSTOMER FOR DAMAGES ARISING FROM DELAYS OR PROBLEMS CAUSED BY TELECOMMUNICATIONS CARRIERS, INTERNET SERVICE PROVIDERS, OTHER COMMUNICATIONS NETWORKS OR THE BANKING SYSTEM, EXCEPT THAT ITS RIGHTS TO CREATE RESERVES AND EXERCISE CHARGEBACKS WILL NOT BE IMPAIRED BY SUCH EVENTS. CUSTOMER FURTHER AGREES TO ABIDE BY THE LIMITATION OF LIABILITY PROVISIONS IN THE AMEX TPSP AGREEMENT.

22. American Express Right to Modify or Terminate Agreement. American Express has to the right to modify the Sub-Merchant Agreement with respect to American Express transactions or to terminate Customer's acceptance of American Express transactions and to require CORE to investigate Customer's activities with respect to American Express transactions.

Except as otherwise amended pursuant to this Addendum, the Sub-Merchant Agreement remains in full force and effect in accordance with its terms. This Addendum may be executed in one or more counterparts (including by means of signature pages transmitted via PDF or other electronic means), each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

Customer and CORE have entered into this Addendum as of _____ .

Customer:	**Wonderware Inc. d/b/a CORE Business Technologies**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

SPECIAL PROVISIONS FOR PAYPAL PAYFLOW GATEWAY ADDENDUM

This SPECIAL PROVISIONS FOR PAYPAL PAYFLOW GATEWAY ADDENDUM (this "Addendum") is made a part of the terms and conditions of the SUB-MERCHANT SERVICES AGREEMENT between City of Boynton Beach ("Sub-Merchant") and Wonderware Inc. d/b/a CORE Business Technologies ("CORE") dated _____ (the "Sub-Merchant Agreement"), and applies to provisioning of PayPal Payflow Pro Gateway Services ("PayPal Gateway") by CORE for Sub-Merchant. Sub-Merchant's acceptance and usage of PayPal Gateway is subject to the approval of PayPal and governed by a direct agreement between Sub-Merchant and PayPal (the "Payflow Gateway Services Agreement").

1. **Governing Agreement.** Sub-Merchant shall be bound by the Payflow Gateway Services Agreement, which is located at: https://www.paypal.com/us/webapps/mpp/ua/payflowresold-full?locale.x=en_US. The provisions of the Payflow Gateway Services Agreement are incorporated herein by reference.

2. **PayPal Right to Modify or Terminate Payflow Gateway Services Agreement.** PayPal has to the right to modify the Payflow Gateway Services Agreement with respect to PayPal Gateway.

Except as otherwise amended pursuant to this Addendum, the Sub-Merchant Agreement remains in full force and effect in accordance with its terms. This Addendum may be executed in one or more counterparts (including by means of signature pages transmitted via PDF or other electronic means), each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

PayPal Payflow Pro Gateway Fees		
Monthly Fee	**Transaction Fee**	***One-Time* Setup Fee**
$25.00	$0.10	$125.00
Add-on Services (optional)		
	Setup Fee / Monthly Fee	**Additional Cost Per Transaction**
Recurring Billing	$27.95 / $20.95	$0.00
Advanced Fraud Protection Service	$0 / $39.95	$0.10
Buyer Authentication	$100.00 / $9.95	$0.10

Sub-Merchant and CORE have entered into this Addendum as of _____.

Sub-Merchant:

By:_____

Name:_____

Title:_____

Wonderware Inc. d/b/a CORE Business Technologies

By:_____

Name: Chris Lewis

Title: COO

CORE
Merchant Services

Merchant Card & ACH Payment Processing Fee Schedule

PREPARED FOR:

City of Boynton Beach

ABSORBED FEE PRICING				
FEE CLASS	FEE TYPE	FEE SCOPE	FEE RATE *	FEE BILLING FREQUENCY & UNIT
CARD	Interchange	Visa	Pass-Through	Billed Monthly
		Mastercard	Pass-Through	Billed Monthly
		Discover	Pass-Through	Billed Monthly
		American Express	Pass-Through	Billed Monthly
	Discount Rate	All Cards	0.25%	Billed Monthly & Per Volume
	Transaction Fee	All Cards	$0.25	Billed Monthly & Per Transaction
	Chargeback Fee	All Cards	$15.00	Billed Monthly & Per Chargeback
	Retrieval Fee	All Cards	$10.00	Billed Monthly & Per Retrieval

**** The fees set forth will not be changed for the Initial Term of the Sub-Merchant Services Agreement except (i) as mutually agreed to in writing between CORE and Sub-Merchant or (ii) if CORE determines, at its sole discretion, any necessary changes to the Absorbed pricing or Service Fee pricing it charges to the Sub-Merchant's payers as a result of changes in card brand interchange, dues, assessments, miscellaneous processing fees or new fees imposed by a third party. CORE agrees to provide Sub-Merchant with written notification of any such needed pricing changes at least 30 days prior to changes taking effect.***

Agreed and Accepted

Name : _____

Title: _____

Authorized Signature: _____

Date: _____

City of Boynton Beach
Agenda Item Request Form

Meeting Date: 01/21/2025

Proposed Resolution No. R25-018- Approve the auction of the vehicles/equipment submitted by the Fleet Maintenance Division for disposal by using the online auctioneer JJ Kane Auctioneers.

Requested Action:

Staff recommends approval of Proposed Resolution No. R25-018.

Explanation of Request:

The Fleet Maintenance Division is submitting twenty-one (21) units to be disposed of at auction using the online auctioneer JJ Kane Auctioneers. The proceeds will generate revenue for the Fleet Maintenance Fund.

The division has verified that the units are no longer of use and has completed all proper documentation for disposal.

How will this affect city programs or services?

The disposal of obsolete, damaged, and surplus vehicles/equipment will eliminate the need to store them and allow the Finance Department to remove them from the City's fixed asset records.

Account Line Item and Description:

Fleet – Sale of Surplus – GL Account 501-0000-365-01-00

Fiscal Impact:

The revenue generated from the sale of surplus vehicles/equipment will be placed in the Fleet Maintenance Fund and will be used for the future procurement of vehicles/equipment.

Attachments:
R25-018 Agenda_Item_2612-2023_Resolution_for_vehicle_and_equipment_auction_using_JJ_Kane.docx
Exhibit A to Resolution - Vehicles - Equipment for Auction List.pdf

JJ Kane Contract Agreement.pdf
JJ Kane Contract Agreement - Last page singed.pdf

RESOLUTION NO. R25-018

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, APPROVING THE AUCTION OF THE VEHICLES/EQUIPMENT SUBMITTED BY THE FLEET MAINTENANCE DIVISION FOR DISPOSAL BY USING THE ONLINE AUCTIONEERS JJ KANE AUCTIONEERS; PROVIDING AN EFFECTIVE DATE; AND FOR ALL OTHER PURPOSES.

WHEREAS, on August 15, 2023, the City Commission approved Resolution No. R23-102 approving an Agreement with JJ Kane Auctioneers to facilitate the sale at public auction of City-owned vehicles and equipment that have been identified as surplus; and

WHEREAS, the Fleet Maintenance Division is submitting twenty-one (21) units to be disposed of at auction by using the online auctioneer JJ Kane Auctioneers; and

WHEREAS, the Fleet Maintenance Division has verified that the units are no longer of use and have completed all proper documentation for disposal, and requests the City Commission's review, evaluation, and approval to sell the surplus vehicles/equipment; and

WHEREAS, the proceeds will generate revenue for the Fleet Maintenance Fund; and

WHEREAS, the City Commission, upon recommendation of staff, has deemed it to be in the best interests of the citizens and residents of the City to approve the auction of the Vehicles/Equipment submitted by the Fleet Maintenance Division for disposal by using the online auctioneers JJ Kane Auctioneers.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption.

SECTION 2. The City Commission of the City of Boynton Beach, Florida, does hereby approve the auction of the Vehicles/Equipment submitted by the Fleet Maintenance Division for disposal by using the online auctioneers, JJ Kane Auctioneers. A copy of the Vehicle List to be auctioned is attached hereto and incorporated herein as "Exhibit A."

SECTION 3. This Resolution shall take effect in accordance with law.

PASSED AND ADOPTED this _____ day of _____ 2025.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Ty Penserga	____	____
Vice Mayor – Aimee Kelley	____	____
Commissioner – Angela Cruz	____	____
Commissioner – Woodrow L. Hay	____	____
Commissioner – Thomas Turkin	____	____
VOTE	_____	

ATTEST:

_____
Maylee De Jesús, MPA, MMC
City Clerk

_____
Ty Penserga
Mayor

APPROVED AS TO FORM:

(Corporate Seal)

_____
Shawna G. Lamb
City Attorney

UNIT #	YEAR	MAKE	MODEL	DESCRIPTION	VIN # OR SERIAL #	DEPARTMENT
1906	2019	LODAL	T28-U300	SIDE LOAD GARBAGE TRUCK	1L9AH47B7KK006214	SOLID WASTE
8591	2014	CATERPILLAR	416E	BACKHOE LOADER	CAT0416FEKSF01738	CEMETARY
1863	2018	FREIGHTLINER	M2106	TOP LOAD RECYCLE TRUCK	1FVACYFE0JHJP8303	SOLID WASTE
8701	2007	CAM SPRAY	CS3500-RTB	TRAILER POWER WASHER	1T9UF10117P640048	UTILITIES PUMPING
8133	2003	GODWIN	CD225M	PUMP 8"	1GCHC24K48E197562	SEWAGE
8163	2006	THOMPSON	6TSV-410	PUMP 6"	1T9CH13216P634721	UTILITIES PUMPING
8101	1994	CUMMINS	4BT3-9-G2	TRAILER GENERATOR 125K	44733433	RECREATIONS
8605	2006	GODWIN	G1T416	PORTABLE LIGHT TOWER	61585	RECREATIONS
8141	2002	GODWIN	CD300M	PUMP 12"	0229797-10	SEWAGE
8614	2006	CONTINENTAL	HOMBRE	BOAT TRAILER 18'	1ZJBA2296M044398	POLICE
1581	2015	PETERBILT	337	GRAPPLE GARBAGE TRUCK	2NP2HJ4X0FM273647	SOLID WASTE
894	2018	FORD	FUSION	MID SIZE SEDAN	3FA6P0G77JR270214	FIRE
4961	2019	FORD	EXPLORER	SPORT UTILITY MID PURSUIT	1FM5K8AR3KGA28876	POLICE
4860	2018	FORD	EXPLORER	SPORT UTILITY MID PURSUIT	1FM5K8AR4JGB46370	POLICE
3732	2017	FORD	FUSION	MID SIZE SEDAN PURSUIT	3FA6P0G76HR369195	POLICE
7800	2018	FORD	EXPLORER	SPORT UTILITY MID PURSUIT	1FM5K8ARXJGB46373	POLICE
4963	2019	FORD	EXPLORER	SPORT UTILITY MID PURSUIT	1FM5K8AR7KGA28878	POLICE
4006	2010	CHEVROLET	EXPRESS	CARGO VAN 3/4T LOW ROOF	1GCZGFBG0A1132946	POLICE
4960	2019	FORD	EXPLORER	SPORT UTILITY MID PURSUIT	1FM5K8AR1KGA28875	POLICE
3727	2017	FOIRD	ESCAPE	SPORT UTILITY COMPACT	1FMCU0F7XHUD67493	POLICE
8560	2015	TORO	GROUNDMASTER 7200	MOWER 72" DIESEL	314000127	PARKS & GROUNDS

AIM ID	LOT #	STATUS
		TOWED 12/16/2024
		TOWED 12/16/2024
		TOWED 12/16/2024
		TOWED 12/16/2024
		TOWED 12/16/2024
		TOWED 12/16/2024
		TOWED 12/16/2024
		TOWED 12/16/2024
		TOWED 12/16/2024
		TOWED 12/16/2024
		TOWED 12/16/2024



Contact: Dave Persad
Seller Name: The City of Boynton Beach
Express Mail Address (No P.O. Boxes):

222 NE 9th Ave
Boynton Beach, FL 33435

Phone: 561-742-6215
Email: persadd@bbfl.us

Date Emailed To Seller: 7.17.2023

This agreement (this "Agreement"), effective as of July 17th 2023, is by and among The City of Boynton Beach (hereinafter called "Seller"), J.J. Kane Exchange, LLC ("Exchange"), and J.J. Kane Associates Inc. d/b/a "J.J. Kane Auctioneers," "Ken Porter Auctions" and "First Capitol Auction" ("Associates" and, together with Exchange, hereinafter called "Auctioneer"), acting as agent for Seller. Seller and Auctioneer, intending to be legally bound, hereby agree as follows:

1) Term and Termination. The term of this Agreement shall begin on the date hereof and shall continue until terminated by either party hereto. Either party hereto may terminate this Agreement at any time upon 60 days' prior written notice to the other party. Upon termination of this Agreement, Auctioneer shall provide written notice to Seller describing any unsold Auction Items (defined below) and, unless otherwise mutually agreed to by the parties hereto, Auctioneer shall be permitted to attempt to sell such Auction Items at auction for an additional 60 days following the effective date of the termination of this Agreement. At the end of such additional 60 day period, any unsold Auction Items will be released to Seller; provided, that Seller shall be required to reimburse Auctioneer for any and all expenses incurred by Auctioneer in connection with the transportation, storage, decommissioning, and other related costs of preparing such unsold Auction Items for sale prior to Auctioneer's release of such Auction Items to Seller.

2) Engagement.
   a) Seller hereby engages Auctioneer to facilitate the sale at public absolute auction sale Seller's property identified by Seller (the "Auction Item"), excluding any chemicals, hazardous materials or other environmentally unsafe equipment or materials unless mutually agreed upon in writing by Seller and Auctioneer.
      i) Seller shall be responsible for clean-up/disposal of petroleum products/chemical spills coming from Auction Items that are offered for sale under this Agreement. The prompt and proper clean-up of any spills, leaks or other releases of petroleum or chemical substances and materials will be performed in accordance with all applicable federal, state and local laws and regulations. Seller acknowledges and agrees that in the event a spill has occurred, notification by Auctioneer to certain federal, state and/or local agencies may be required. Seller shall be responsible for all costs resulting in the clean-up of any spills/leaks or other releases of petroleum or chemical spills in accordance with any applicable laws and regulations. All clean-up/proper disposal costs will be billed back to Seller and deducted from Seller's sale proceeds. If said proceeds do not cover the total cost of spill cleanup/disposal, Seller will be billed the difference and Auctioneer shall be paid within 10

business days of dated invoice. The obligations set forth in this Section 2 shall survive the termination or expiration of this Agreement.

b) Seller hereby acknowledges and agrees that any auction conducted over the internet via online bidding will be conducted by Exchange and any applicable third party internet auction platform.

c) Auctioneer may, in its sole discretion, accept or reject any Auction Items proposed for auction sale by Seller.

3) Auctioneer Personnel. Auctioneer shall provide all necessary auctioneers, accountants, clerks and office staff required to achieve the efficient and orderly performance of the auction sale contemplated by this Agreement. Auctioneer shall employ qualified personnel to perform these jobs and shall perform the engagement contemplated by this Agreement in a professional and skilled manner.

4) As-Is & Where-Is Auction Sales.

a) Auction Items will be offered for sale individually, or in the case of small miscellaneous items sold in lots as determined by Auctioneer. All Auction Items will be sold on an "As-Is Where-Is" basis without any warranties of any kind, expressed or implied.

b) Seller agrees to disclose to Auctioneer any known defects or faults with Auction Items prior to listing such Auction Items with Auctioneer for sale.

c) In the case that a known defect or condition of any Auction Item is not disclosed by Seller to Auctioneer prior to listing, Auctioneers shall have the right, in its sole discretion, to declare such Auction Item a "No Sale" in which case Seller shall retain possession of such Auction Item and reimburse Auctioneer for any and all costs and expenses incurred by Auctioneer in connection with the transportation, storage, decommissioning and sale preparation of such Auction Item.

d) In accordance with applicable state and federal emissions regulations, Seller shall notify Auctioneer of any alterations of OEM emission systems that have occurred on vehicle or equipment Auction Items (e.g., dpf, def, system deletes or other engine control software or hardware alterations not approved by OEM).

5) Marketable Title.

a) Seller specifically represents and warrants to Auctioneer that Seller is the sole owner of, and has good, valid and marketable title to, all of the Auction Items to be sold by Auctioneer pursuant to this Agreement, free and clear of any liens, security interests, mortgages, debts or other encumbrances or restrictions of any kind not otherwise disclosed in writing by Seller to Auctioneer on or prior to the date of this Agreement. Seller further represents and warrants that there are no outstanding judgments or liens against Seller and that there are no legal actions, claims or proceedings pending or, to the knowledge of Seller, threatened against or adversely affecting Seller whatsoever which in any way would hinder, prevent or otherwise affect Seller's or Auctioneer's right or ability to sell the Auction Items at auction sale.

b) Seller acknowledges and agrees that Auctioneer may elect to conduct UCC lien searches on any Auction Items deemed necessary by Auctioneer, in its sole discretion. Seller shall be responsible for the cost of any such lien searches payable in accordance with Section 11(c) below.

c) Seller agrees to deliver, upon Auctioneer's request, any documents, certificates, proofs of ownership or titles that may be required to effectively deliver and convey title to the Auction Items sold by Auctioneer pursuant to this Agreement.

d) In the case that there is a delay in the new purchaser receiving a free and clear title to any vehicle or trailer Auction Items sold hereunder, the net proceeds from the sale will be held by Auctioneer until a free and clear title is delivered to the purchaser; provided, that, at the election of Auctioneer, in its sole discretion, the applicable Auction Item may be withdrawn from the auction sale and remain Seller's property.

e) Seller acknowledges and agrees that, although Auctioneer guarantees free and clear title to the purchaser of each Auction Item and Auctioneer will use its commercially reasonable best efforts to obtain and convey such title in accordance with applicable law, Auctioneer shall in no way be responsible for any losses, damages, costs, expenses or fees (including, without limitation, attorneys' fees) arising out of or relating to any delay in obtaining and/or conveying free and clear title to the purchaser of any Auction Item sold hereunder.
f) Seller acknowledges and agrees that, if requested, Auctioneer may provide the name of Seller to the applicable purchaser of any vehicle Auction Item sold hereunder.
g) If Seller is a motor vehicle dealer, Seller's dealer state & dealer number are as follows: (list dealer state & dealer number): _____.
h) The obligations set forth in this Section 5 shall survive the termination or expiration of this Agreement.

6) Titles On-Site.
a) Seller agrees to deliver or cause to be delivered to Auctioneer all signed certificates of title, letters of authorization to sell vehicle Auction Items and any other related paperwork (e.g., a seller-specific bill of sale) no later than 10 days prior to the applicable auction sale.
b) In order to comply with applicable motor vehicle rules and to enable new purchasers to assume ownership with minimal problems, a letter of authorization on Seller's letterhead must accompany all certificates of title associated with Auction Items. Set forth below is a sample letter:

To Whom It May Concern:

[SELLER NAME] hereby authorizes J.J. Kane Auctioneers to sell vehicles and/or equipment owned by _____ at the auction sale conducted on Saturday, _____ in _____, ___.

Sincerely,
[SELLER NAME]
[DATE]

7) Delivery of Auction Items. Unless Seller requests for Auctioneer to arrange for the pickup and transportation of any Auction Items to the applicable auction site by a third party service provider in accordance with Section 11(b) below, Seller shall deliver or cause to be delivered the Auction Items to the auction sale site no later than ten days prior to the applicable auction sale or to such other location agreed to in writing by Auctioneer. All Auction Items shall be delivered to Auctioneer in running condition (except as noted by Seller) with adequate fuel levels and a duplicate set of keys.

8) Insurance Coverage.
a) Seller shall, at their own expense, maintain and carry in full force and effect appropriate insurance coverage on the Auction Items being sold hereunder until the day of the auction sale.
b) Auctioneer and owner of the auction sale site property will not be responsible for any damages to Auction Items resulting from acts of nature, theft, accident and/or vandalism while such Auction Items are located at the sale site.
c) Auctioneer shall be responsible for any loss or damage to Auction Items due to Auctioneer's willful or negligent acts or omissions.

9) Commission.

a) Seller agrees that Auctioneer will charge the buyer of each Auction Item sold hereunder a base buyer's fee equal to 10% of the gross sale price paid for such Auction Item, subject to increase depending on the applicable (i) sales platform (e.g., live auction or internet only), (ii) type of buyer (on-site or internet) and/or (iii) Auction Item location, which shall not exceed 15% of the gross sales price paid for the Auction Item.
b) **[Seller agrees to pay Auctioneer a Seller's commission equal to 0% of the total gross sale price for sold Auction Items.]**
c) Seller agrees that, when applicable, Auctioneer may deduct its commission from the gross proceeds of the auction sale.

10) Non-Sales.
a) In the event that a successful bidder fails to pay for an Auction Item for which such bidder is designated to be the high bidder, then the applicable Auction Item will be deemed a "Non-Sale," no commission will be charged on such Auction Item and Seller will retain ownership of such Auction Item.
b) In certain instances Auctioneer may be required to refund the would-be purchaser of an Auction Item that has been deemed a "Non-Sale." In the event Seller has already received the proceeds for such a "Non-Sale" Auction Item, Auctioneer will be entitled to relist the Auction Item on Seller's behalf. Seller agrees to assist Auctioneer in obtaining all title and registration paperwork necessary to relist the Auction Item (including duplicate title). Auctioneer will not assume ownership of the Auction Item at any time. Seller agrees that Auctioneer shall be entitled to use the proceeds of any auction sale following such a relisting to recover any amounts previously refunded to the would-be purchaser, together with administrative fees and costs as may be charged or incurred by Auctioneer.

11) Reimbursed Expenses.
c) If applicable and pre-approved by Seller, Seller agrees that Auctioneer may deduct the exact cost for any additional services that Auctioneer provides Seller from the proceeds of the auction sale.
(1) Advertising: $_____
(2) Decommissioning & Washing: $_____
(3) Repairs: $_____
(4) Other: $_____
d) If Seller requests for Auctioneer to arrange for the pickup and transportation of Auction Items by a third party service provider, Auctioneer will invoice Seller a transportation fee equal to the cost of pickup and transportation plus 10%.
e) If Auctioneer elects to conduct UCC lien searches on any Auction Items, Auction will be entitled to deduct the cost of such lien searches from the gross proceeds of the auction sale or, if no sale occurs, invoice Seller for such cost.

12) Payment.
a) Auctioneer will charge and collect from the purchaser the purchase price for the Auction Items sold at the auction sale, together with all applicable taxes. Auctioneer will collect payment in full from the purchaser prior to the removal of any Auction Items from the auction site. Seller shall be responsible for the payment of all income taxes resulting from or payable in connection with the sale of the Auction Items hereunder.
b) Within 14 business days following the auction sale, Auctioneer shall to remit to Seller the net proceeds from the Auction Items sold at auction, less Auctioneer's applicable commission as outlined in Section 9 above and any expenses as outlined in Section 11 above, together with a written report listing all Auction Items sold by Auctioneer and proof of payment for expenses. Payment shall be made by Auctioneer via electronic transfer or by a check made payable to

Seller. Any proceeds check will be made payable to Seller and mailed to the same name and address of Seller set forth on the first page of this Agreement unless otherwise directed in writing by Seller.

13) Absolute Unreserved Auction Sales.
   a) Seller understands that Auctioneer conducts absolute unreserved public auction sales where each Auction Item is sold to the highest bidder regardless of price.
   b) Furthermore, Seller understands/agrees that it is illegal for Seller or any agent thereof to bid on and/or buy-back any Auction Items owned by Seller.
   c) If Seller or any agent of Seller attempts to bid on and/or buy back any of the Auction Items, Auctioneer will, at Auctioneer's discretion, choose one of the following actions:
      (1) Pass the Auction Item currently being offered for sale along with all other Auction Items.
      (2) Sell the Auction Item to the last "Good Faith" bidder before Seller or its agent began bidding on such Auction Item.
   d) Seller shall reimburse Auctioneer for any lost revenue, including seller's commission, buyer's fee and/or any pre-approved reimbursed expenses in the event of a "Buy Back".

14) Advertised Auction Items. At Auctioneer's discretion, in the event that Seller removes any advertised Auction Item from the auction sale, Seller agrees to pay Auctioneer a handling fee of $500.00 for each such Auction Item that is removed from the sale.

15) Breach of Contract. In the event that Seller breaches any covenant or makes any misrepresentation in this Agreement, Seller agrees to indemnify, defend and hold Auctioneer harmless from any and all costs, expenses, damages and liabilities arising out of or relating to such breach or misrepresentation, including, without limitation, attorneys' fees and other costs incurred by Auctioneer in any action or proceeding arising out of or relating to such breach or misrepresentation. The obligations set forth in this Section 15 shall survive the termination or expiration of this Agreement.

16) Indemnification. Seller hereby agrees to indemnify, defend and hold Auctioneer and its parent, subsidiaries and affiliates and each of their respective directors, officers, employees and other representatives (collectively, "Indemnified Persons") harmless from any and all costs, expenses, damages and liabilities (including, without limitation, attorneys' fees) incurred or sustained by, or imposed upon any Indemnified Person arising out of or relating to: (a) Seller's ownership and maintenance (or lack thereof) of the Auction Items, (b) the condition of the Auction Items at time of auction, (c) the applicable purchaser's use of the Auction Items and/or any property damage or bodily injury arising therefrom, (d) any title defects or delays in delivering free and clear title to the Auction Items, (e) any breach of this Agreement by Seller, (f) any violations of applicable state and federal laws, including, without limitation, state and federal emissions laws and regulations, or (g) the enforcement of this indemnity by Auctioneer. The obligations set forth in this Section 16 shall survive the termination or expiration of this Agreement.

17) Entire Agreement; Headings.
   a) This Agreement contains the entire agreement between the parties and there are no other terms, obligations or representations, written or oral, other than those contained in this Agreement. This Agreement may be modified only by a further writing that is duly executed by both parties.
   b) Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

18) Digger Derricks and Aerial Devices.

a) Section 18(b) below shall apply to digger derricks and the following vehicle-mounted aerial devices (hereinafter referred to as an "aerial device") sold as Auction Items hereunder:
   (1) Extensible boom aerial devices;
   (2) Aerial ladders;
   (3) Articulating boom aerial devices;
   (4) Vertical towers; and
   (5) A vehicle or other combination of any of the above, which vehicle may be a truck, a trailer, or an all-terrain vehicle.

b) Seller acknowledges and agrees that it shall be the sole and exclusive responsibility of Seller to provide Auctioneer with, and Seller shall provide to Auctioneer, all of the operations, maintenance and manufacturer's manual(s) (collectively, "Manuals") for each digger derrick or aerial device to be auctioned by Auctioneer hereunder and that such responsibility shall continue in perpetuity notwithstanding Auctioneer's auction of the corresponding digger derrick or aerial device for Seller. In the event Seller does not provide all Manuals for each digger derrick or aerial device to Auctioneer, Auctioneer shall, in its own discretion, refuse to auction the associated digger derrick or aerial device until such time as the Manuals have been provided by Seller to Auctioneer. Auctioneer may notify Seller of the name and location of the successful purchaser of a digger derrick or aerial device within a reasonable time following completion of the sale. Seller hereby acknowledges its responsibilities in accordance with American National Standards Institute A92.2-2009 (including, without limitation, Section 8.7 thereof) and A10-31 in full, including, without limitation, section 8.7 thereof. Seller hereby acknowledges and agrees that failure by Seller to provide all Manuals for any digger derrick or aerial device sold at public auction hereunder shall be deemed a breach of Section 15 above for which Auctioneer shall be entitled to indemnification pursuant to Section 16 above.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

SELLER:

_____
(Seller Name)

Sign: _____
Name: Daniel Duggar
Title: City Manager

ASSOCIATES:

J.J. Kane Associates, Inc. dba J.J. Kane Auctioneers

By: _____
Name: Gregg Martini
Title: Account Manager

EXCHANGE:

J.J. Kane Exchange, LLC

By: _____
Name: _____
Title: _____

Revised: 11/04/2020

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF BOYNTON BEACH CORPORATE SEAL INCORPORATED 1920 FLORIDA

SELLER:

(Seller Name)

Sign: _____
Name: Daniel Dugger
Title: City Manager

ASSOCIATES:

J.J. Kane Associates, Inc. dba J.J. Kane Auctioneers

By: _____
Name: Gregg Martini
Title: Account Manager

EXCHANGE:

J.J. Kane Exchange, LLC

By: _____
Name: Gregg Martini
Title: Account Manager

Revised: 11/04/2020

City of Boynton Beach
Agenda Item Request Form

Meeting Date: 01/21/2025

Proposed Resolution No. R25-019- Approve calling for a General City Election to be held on Tuesday, March 11, 2025, for the purpose of electing one City Commissioner for District I, one City Commissioner for District III, and one Mayor, and calling for a general City Run-Off Election to be held on Tuesday, March 25, 2025, if necessary. Proposed Resolution No. R25-020- Approving the 2025 Municipal Election(s) Vote Processing Equipment Use and Elections Services Agreement between the City and Palm Beach County Supervisor of Elections Office.

Requested Action: Staff recommends approval of Proposed Resolution No. R25-019 and Resolution No. R25-020.

Explanation of Request: The City Charter of the City of Boynton Beach, Florida, Article III, Section 40, and other applicable laws require that all general and special elections be called by resolution. The Agreement with the Supervisor of Elections authorizes them to provide the necessary personnel to program, operate, and maintain the vote processing equipment necessary to hold the election.

How will this affect city programs or services? NA

Budgeted Item: Yes

Account Line Item and Description: 001-1310-512.49-15 Election Expense

Fiscal Impact: This is a budgeted item.

Attachments:
Exhibit A to Resolution - 2025 Municipal Election Agreement (Final).pdf
R25-019 Agenda_Item_2664-2025_Resolution_for_SOE_Vote_processing_equipment_agmt.docx
R25-020 Agenda_Item_2664-2025_Resolution_for_General_City_Election_and_Run-off_for_March_2025.docx

2025 MUNICIPAL ELECTION(S)
VOTE PROCESSING EQUIPMENT USE
AND ELECTIONS SERVICES AGREEMENT

This Vote Processing Equipment Use and Elections Services Agreement (hereinafter referred to as the "Agreement") is hereby entered into by and between the **Palm Beach County Supervisor of Elections Office** (hereinafter referred to as "SOE") and **_____, Florida** (hereinafter referred to as "MUNICIPALITY").

WITNESSETH:

WHEREAS, pursuant to Section 101.34, Florida Statutes, SOE is the legal custodian of certified vote processing equipment owned by Palm Beach County, Florida, and is hereby charged with the responsibility for custody and maintenance of said equipment; and,

WHEREAS, MUNICIPALITY desires, or is otherwise statutorily obligated, to conduct an election that requires the use of vote processing equipment to count ballots; and,

WHEREAS, all vote processing equipment requires specially trained and knowledgeable individuals to program, operate and maintain said equipment; and,

WHEREAS, the Palm Beach County Board of County Commissioners has authorized SOE to provide any necessary terms and conditions for the use of such voting equipment; and,

WHEREAS, SOE can provide the necessary personnel to program, operate and maintain said equipment; and,

WHEREAS, MUNICIPALITY hereby acknowledges it may be responsible for other applicable requirements under the Florida Election Code and any provision of MUNICIPALITY'S Charter or municipal ordinances which may not be addressed or included in this Agreement.

NOW THEREFORE, in consideration of the premises and of the mutual promises, terms and conditions stated herein, SOE and MUNICIPALITY agree as follows:

ARTICLE 1 – RECITALS

The above recitals are true and correct and incorporated herein.

ARTICLE 2 – AGREEMENT

SOE shall provide MUNICIPALITY such necessary vote processing equipment and election services according to the terms and conditions stated in this Agreement, for the purposes of conducting the Uniform Municipal Election ("UME") to be held on March 11, 2025, along with the necessary vote processing equipment and election services to facilitate polling locations and polling places as may be necessary and agreed upon by the parties. Except for the UME and run-off elections resulting from the UME which are required by MUNICIPALITY charter or ordinance, no other municipal elections will be conducted by SOE except by separate written signed agreement of the parties hereto. Except as may be modified by the parties in said separate written agreement, the

terms of this Agreement shall apply to all other municipal elections conducted by SOE during the term hereof.

ARTICLE 3 – OPERATION AND PROGRAMING SERVICES

3.1 Municipal Services. For each election, MUNICIPALITY shall pay SOE for election operations, as provided in the attached Exhibits "A" or "B."

3.2 Vote-By-Mail Ballots. For each election, MUNICIPALITY shall pay SOE for each Vote-By-Mail ballot request processed plus actual postage costs, including Return Postage. MUNICIPALITY shall also pay SOE for each Vote-By-Mail ballot signature verified (*see* Exhibits "A" and "B").

3.3 Repairs. For any election, all maintenance, repairs or other troubleshooting services for vote processing equipment, including any processors or tablets, will be performed exclusively by SOE and such services are included in all stated charges. However, SOE does reserve the right to seek reimbursement from MUNICIPALITY for any damage caused by any neglect or unauthorized acts by any employee or representative of MUNICIPALITY.

ARTICLE 4 – OTHER ELECTION CHARGES

4.1 Precinct Services. For each election, MUNICIPALITY shall pay SOE for precinct preparation and poll worker training in accordance with Exhibits "A" and "B."

4.2 Fee Schedule. For each election, MUNICIPALITY shall pay SOE for any other goods or services not specifically provided for in this Agreement but that may be described or listed in the Municipal Fee Schedule(s) attached hereto as Exhibits "A" and "B". Where MUNICIPALITY holds elections concurrent with other municipal elections conducted by SOE, the Fee Schedule in Exhibit "A" controls. For all other elections for MUNICIPALITY that are not conducted as part of the UME on March 11, 2025, the Run-Off Election and Stand-Alone Election Fee Schedules set forth in Exhibit "B" control.

4.3 Other. For each election and upon proper notice to MUNICIPALITY, MUNICIPALITY shall pay SOE for any other election services not contemplated herein which may be needed to conduct an orderly election that meets the requirements of law.

ARTICLE 5 – TERM

For each election, the terms of this Agreement begin upon execution of this Agreement by both the SOE and MUNICIPALITY and shall terminate on December 31, 2025, or when all ballots for any election have been processed, all election results have been certified, all vote processing equipment has been returned to the SOE's warehouse and an audit, if applicable, has been completed, whichever is later. In the event of an election contest or challenge, SOE agrees to cooperate in providing any public records which the SOE maintains or otherwise controls.

ARTICLE 6 – APPLICABLE REQUIREMENTS OF FLORIDA'S ELECTION CODE

MUNICIPALITY shall properly call the election in accordance with any Florida Statutes, applicable charter provisions or city ordinances. MUNICIPALITY agrees that the Municipal Clerk is responsible for the conduct of the MUNICIPALITY's elections and for ensuring compliance with all applicable Florida Statutes, including the Florida Election Code and any municipal charter provisions and ordinances; provided, however, such statute, charter, or ordinance may specifically impose or delegate certain duties to the SOE; for provisions in a Municipal charter of ordinance, the SOE must consent to the duties set forth in the charter or ordinance in order to be bound by it. Any obligations or duties not set forth in this Agreement or otherwise provided for by law shall be the sole responsibility of MUNICIPALITY.

ARTICLE 7 – NOTICE AND ADVERTISEMENT OF ELECTIONS

7.1 Uniform Municipal Election. SOE shall prepare and arrange for publication of all legal advertising required by state and federal statutes in both English and Spanish and SOE shall be responsible for obtaining the accurate and complete translation of any such advertising. If additional advertisements are required by the MUNICIPALITY'S charter, ordinance(s) or resolution(s), MUNICIPALITY shall be responsible for preparing and arranging for publication of all such legal advertising which is not already satisfied under state and federal statutes. MUNICIPALITY shall be responsible for the accurate and complete translation of any such advertisements.

7.2 Non-UME/Run-Off Election/Stand-Alone Municipal Election(s). In the event of a run-off election and for all stand-alone municipal elections non conducted as part of the UME, MUNICIPALITY shall prepare and arrange for publication of all legal advertising required by state and federal statutes, city charter and city ordinances. MUNICIPALITY agrees that all advertisements of elections conducted in Palm Beach County shall be published in both English and Spanish and that MUNICIPALITY shall be responsible for the accurate and complete translation of any such notices. SOE shall, if available, provide samples of required advertising upon request.

ARTICLE 8 – QUALIFYING OF CANDIDATES

MUNICIPALITY may provide qualifying packets to candidates. MUNICIPALITY shall accept and process all qualifying papers and fees. For audio ballots, MUNICIPALITY shall collect pronunciation guides from candidates at the time of qualifying and shall submit them to SOE at the close of qualifying.

If petitions are part of the qualifying process, the SOE shall be responsible for verifying that all names appearing on such petitions belong to qualified electors of MUNICIPALITY. The SOE agrees to verify any and all signatures for any qualifying petitions timely submitted by MUNICIPALITY in the order such petitions are received. MUNICIPALITY shall pay SOE Ten Cents ($0.10) per name, or such other amount as determined per Florida Statutes or the Florida Administrative Code, checked to verify any signatures on qualifying petitions. SOE agrees to verify any signatures for any qualifying petitions timely submitted by MUNICIPALITY in the order that such petitions are received. Except as set forth in the following paragraph, SOE shall complete signature verification of petitions within 30 days of receipt of the petitions from MUNICIPALITY.

When MUNICIPALITY provides SOE with candidate petitions before the signature verification cutoff deadline (before noon of the 28th day preceding the first day of qualifying), SOE will verify the signed petitions no later than the 7th day before the first day of qualifying. (*See* Section 99.095(3), Florida Statutes.) If the candidate reaches the required number of signatures, SOE will continue to verify timely submitted signed petitions until the candidate indicates in writing to stop verification.

In no event shall SOE issue any recommendations or make any legal determinations as to the qualifications of eligibility of any candidate for municipal office.

ARTICLE 9 – PRINTING OF BALLOTS AND BALLOT SERVICES

9.1 Uniform Municipal Election.

SOE shall place an order for sufficient quantity of Election Day ballots with a third-party printer as selected exclusively by SOE. MUNICIPALITY shall reimburse SOE for payment to printer if

the MUNICIPALITY's races cause the ballot to add an additional page, in which case MUNICIPALITY shall be responsible for the costs of the additional page. MUNICIPALITY shall pay SOE a per-ballot fee for each Vote-By-Mail ballot printed that is not otherwise being printed by SOE for the Election(s), including any additional pages required for MUNICIPLITY'S races or questions.

MUNICIPALITY shall furnish, immediately upon the conclusion of the qualifying period, all ballot information in English. SOE agrees to provide, at MUNICIPALITY's cost and expense, translation of MUNICIPALITY's ballot language from English to Spanish, including the name of the candidates as they are to appear on the ballot, the name of MUNICIPALITY, the name of the election, the title of office or referendum title, explanation, and questions, in accordance with Section 203 of the Voting Rights Act, as well as Creole translations for the ExpressVote machine.

SOE agrees to provide the layout of the ballot(s) based on the information furnished by MUNICIPALITY and deliver ballot layout to the approved printer. Both SOE and MUNICIPALITY must approve the ballot proof(s).

Once test ballots are received from the printer, SOE will test all vote processing equipment in accordance with the standards established by the Florida Division of Elections and any applicable Florida Statutes. Upon receipt of the printed ballots from the printer, SOE shall receive, securely store and account for all ballots until disbursed to poll workers. SOE shall also control and limit all access to un-voted ballots while in possession of SOE.

9.2 Non-UME/Run-Off Election/Stand-Alone Municipal Election(s).

In the event of a run-off election and for all stand-alone municipal elections not conducted during the UME, MUNICIPALITY will be responsible for providing all information stated in 9.1. MUNICIPALITY will again be responsible for the cost of providing any translations and must again approve ballot content and layout prior to printing.

MUNICIPALITY will also be responsible for reimbursing SOE for any and all costs incurred in accordance with the fee schedule shown in Exhibit "B," and all other costs of the election incurred by SOE.

ARTICLE 10 – POLL WORKERS

10.1 Selection and Training of Poll Workers. SOE will select poll workers from a group of trained poll workers. SOE will assign standby poll workers to be available on Election Day. SOE will train all poll workers in accordance with the Florida Election Code and other guidelines, procedures or regulations as followed or adopted for the conduct of elections in Palm Beach County. The clerk for MUNICIPALITY, or a representative, shall be in attendance for poll worker training sessions. Poll workers shall undergo job specific training and complete the required number of training hours as specified by SOE poll worker department management. All necessary supplies and ballots will be provided by SOE and stored in precinct cabinets or transported in poll worker clerk bags.

10.2 Uniform Municipal Election. SOE shall pay poll workers directly for their services.

Non-UME/Run-Off Election/Stand-Alone Municipal Election(s). In the event of a run-off election and for all stand-alone municipal elections non conducted during the UME, MUNICIPALITY shall promptly pay poll workers directly for their services in the same amounts/at the same hourly rates that SOE pays poll workers which, as of the Effective Date hereof, is set forth in Exhibit "B." If SOE changes the rates of pay/hourly rates SOE is paying poll workers, MUNICIPALITY agrees to pay the current rates of pay/hourly rates being paid by SOE at that time.

ARTICLE 11 – SELECTION OF POLLING PLACES

SOE shall provide a list of Polling Place(s) intended for use as a voting location. Each location

shall meet necessary Americans with Disabilities Act (ADA) requirements. In the event of a run-off election and all stand-alone municipal elections not conducted during the UME, MUNICIPALITY shall provide ADA compliant Polling Places. If the polling place is different than what is shown on the voters' most recent voter information card, MUNICIPALITY shall pay the cost for the SOE to mail in a new voter information card with the new location on it. If the location is temporary for the municipal election, MUNICIPALITY shall also pay the costs for the follow-up mailing of the voter information card to designate the previous location as the again-current polling location.

ARTICLE 12 – SAMPLE BALLOTS

12.1 Uniform Municipal Election.

SOE shall prepare, proof and deliver sample ballot layout to third-party vendor for distribution to registered voters. MUNICIPALITY shall review the sample ballot(s) and confirm the accuracy of the election date, office, candidate name(s) (including the order of appearance on the ballot), polling locations, polling places and all other information contained therein. SOE shall coordinate the mailing of the sample ballots to all registered voters in the municipality prior to the election, including accurate polling place information.

12.2 Non-UME/Run-Off Election/Stand-Alone Municipal Election(s).

In the event of a run-off election and for all stand-alone municipal elections not conducted as during the UME, SOE ***shall not*** create or mail sample ballots. If MUNICIPALITY wishes to create a sample ballot, MUNICIPALITY must create the sample ballot and if desired by MUNICIPALITY, provide copies to SOE and SOE will post it on SOE's website.

ARTICLE 13 – VOTE-BY-MAIL BALLOTS

MUNICIPALITY shall refer all requests for Vote-By-Mail ballots to SOE. Unless the Clerk for MUNICIPALITY provides written direction to the contrary, SOE agrees to accept all requests for Vote-By-Mail ballots by telephone, mail, email or in person. SOE also agrees to mail Vote-By-Mail and overseas ballots as requested by registered voters, receive and securely store any voted Vote-By-Mail ballots, verify the signatures on any returned voted Vote-By-Mail ballot certificates, facilitate voter signature cures, accommodate public inspection of Vote-By-Mail ballot mailing envelopes and voter certificates, and account for all Vote-By-Mail ballots.

SOE may begin processing Vote-By-Mail ballots prior to Election evening, pursuant to Section 101.68, Florida Statutes.

In the event of a run-off election and for all stand-alone municipal elections not conducted during the UME, if MUNICIPALITY does not use the County Canvassing Board, MUNICIPALITY shall schedule and coordinate the date on which the MUNICIPALITIY's Canvassing Board is to assemble to canvass the Vote-By- Mail ballots. If applicable, MUNICIPALITY shall coordinate for the use of SOE facilities to conduct the Canvassing Board activities. MUNICIPALITY shall notice and advertise in both English and Spanish, as needed, the dates of any Canvassing Board meetings. MUNICIPALITY shall convene the Canvassing Board to determine which voted Vote-By-Mail ballots are to be tabulated. MUNICIPALITY shall provide for collection of results from each precinct (See Exhibit "B"). MUNICIPALITY must also ensure they have a Canvassing Board member present for opening, duplication,

tabulation and all other activities requiring Canvassing Board presence by law, at the time specified by SOE.

ARTICLE 14 – TRANSPORTATION OF ELECTIONS EQUIPMENT AND SUPPLIES

14.1 Uniform Municipal Election.

SOE will be responsible for delivery and pick-up of vote processing equipment. Election equipment will be delivered by SOE, or a third-party representative of SOE, on an agreed upon date, up to eight (8) days prior to the election. SOE, or a third-party representative of SOE, will pick up voting equipment on an agreed upon date. SOE shall have full discretion and authority to hire and employ any outside third parties to assist with or perform delivery and pick up of voting equipment (Exhibit "A").

14.2 Non-UME/Run-Off Election/Stand-Alone Municipal Election(s).

In the event of a run-off election and for all stand-alone municipal elections not conducted during the UME, SOE will maintain responsibility for transportation of equipment and supplies as stated in 14.1.

MUNICIPALITY shall reimburse SOE for any and all costs incurred for equipment delivery and pickup in accordance with the fee schedule set forth in Exhibit "B".

14.3 MUNICIPALITY is not permitted to deliver any election equipment.

ARTICLE 15 – LOCATION AND STORAGE OF VOTING EQUIPMENT

All voting equipment shall be stored, maintained and located in a well-protected, secure, temperature-controlled, indoor room or facility. Once the voting equipment is delivered to a voting site, no equipment shall be relocated without the prior written approval of SOE.

ARTICLE 16 – CANVASSING OF ELECTION RESULTS

16.1 Uniform Municipal Election. SOE shall schedule and coordinate the date on which the Canvassing Board is to assemble to canvass the results of the election. SOE shall notice and advertise, as needed, the dates of any canvassing board meetings. If a municipality does not use the County Canvassing Board, it shall direct its Canvassing Board Members to convene on such date and time and notice and advertise as necessary. SOE or MUNICIPALITY (as applicable) shall convene the Canvassing Board to determine voter intent and which voted Vote-By-Mail ballots are to be tabulated. SOE shall provide for collection of results from each precinct.

16.2 Non-UME/Run-Off Election/Stand-Alone Municipal Election(s). In the event of a run-off election and for all stand-alone municipal elections not conducted during the UME, if MUNICIPALITY doesn't use the County Canvassing Board, MUNICIPALITY shall schedule and coordinate the date on which MUNICIPALITIY's Canvassing Board is to assemble to canvass the results of the election. If applicable, MUNICIPALITY shall coordinate for the use of SOE facilities to conduct the Canvassing Board activities. MUNICIPALITY shall notice and advertise in both English and Spanish, as needed, the dates of any Canvassing Board meetings. MUNICIPALITY shall convene the Canvassing Board to determine voter intent and which voted Vote-By-Mail ballots are to be tabulated. MUNICIPALITY shall provide for collection of results from each precinct (See Exhibit "B"). MUNICIPALITY must also ensure they have a Canvassing Board member present for opening, duplication, tabulation and all other activities requiring Canvassing Board presence by law.

ARTICLE 17 – AUDITS

MUNICIPALITY agrees to pay SOE for the costs of the Audit any additional costs as may be necessary, including overtime expenses, for conducting the audit.

ARTICLE 18 – POST-ELECTION RECORDS RETENTION

SOE shall process affirmation forms and sort, inventory, and pack all election materials for pickup by SOE for retention and disposition. SOE shall store or cause to be stored all necessary election records and ballots until expiration of retention period as prescribed by applicable Florida Statutes and Rules.

ARTICLE 19 – VOTER HISTORY

SOE will record voter history for all electors voting in the municipal election(s) in a timely manner.

ARTICLE 20 – OTHER NECESSARY COSTS

As provided in Article 4, any additional costs or fees that may be incurred by SOE in compliance with the Florida Election Code and as a direct result of MUNICIPALITY's election(s), that are not specified in this Agreement, shall be paid for by MUNICIPALITY at rates and fees as established by SOE. Examples of such additional costs or reimbursements include, but are not limited to, the following:

A. Recounts. Any expenditure by the SOE for conducting a recount, including any overtime expenses for reprogramming voting equipment, and other expenses as may be necessary to conduct a recount; and,

B. Attorneys' Fees and Costs. Actual attorneys' fees and costs incurred by SOE for research or representation on any matter that are incurred as a direct result of MUNICIPALITY's participation in the UME or any subsequent municipal election, shall be invoiced by SOE for reimbursement by MUNICIPALITY.

ARTICLE 21 – HOLD HARMLESS COVENANT

The parties to this Agreement and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions and negligence of the other party. Furthermore, nothing herein shall be construed as a waiver by either party of sovereign immunity pursuant to Section 768.28, Florida Statutes.

Each party to this Agreement shall be liable for its own actions and negligence. To the extent permitted by law, MUNICIPALITY shall indemnify, defend and hold harmless the SOE against any actions, claims or damages arising out of MUNICIPALITY's negligence, willful or intentional acts or omissions in connection with its performance under this Agreement; and SOE shall indemnify, defend and hold harmless MUNICIPALITY against any actions, claims or damages arising out of the negligence, willful or intentional acts or omissions of the SOE in connection with its performance under this Agreement. Nothing herein shall be construed as consent by either the SOE or MUNICIPALITY to be sued by third parties in any matter arising from this Agreement. MUNICIPALITY also agrees to indemnify SOE against any administrative challenges, civil suits or other legal challenges or appeals that may arise, including all attorneys' fees and costs, from the contest of MUNICIPALITY'S election results or the validation of any of MUNICIPALITY'S candidate qualifications. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the waiver or limits set forth at Section 768.28, Florida Statutes. In no case shall such limits for SOE or MUNICIPALITY extend beyond $200,000 for any one person or beyond $300,000 for any judgment which, when totaled with all other

judgments, arises out of the same incident or occurrence. Furthermore, nothing herein shall be construed as consent by MUNICIPALITY or the SOE, as a state agency or subdivision of the State of Florida, to be sued by third parties in any matter arising out of any contract.

These provisions shall not be construed to constitute agreement by either party to indemnify the other for such others' negligent, willful or intentional acts or omissions.

ARTICLE 22 – ENTIRETY AND AMENDMENTS

The Agreement embodies this entire agreement between SOE and MUNICIPALITY and supersedes all prior agreements and understandings relating to the conduct of elections. No modification, amendment or alteration to this Agreement shall be effective of binding unless submitted in writing and executed by the duly authorized representatives of both SOE and MUNICIPALITY.

ARTICLE 23 – EFFECTIVE DATE

The effective date of this Agreement shall be the latest date of execution by duly authorized representatives of SOE and MUNICIPALITY as shown on the signature page hereto.

ARTICLE 24 – NOTICES

NOTICES: All formal notices affecting the provisions of this Agreement may be delivered in person or be sent by registered mail or by a recognized overnight courier such as FedEx, to the individual designated below, until such time as either party furnishes the other party written instructions to contact another individual or different location.

For the SOE:	**For the MUNICIPALITY:**
Supervisor of Elections	_____
4301 Cherry Road	_____
West Palm Beach, Florida 33409	_____
Attention: Wendy Sartory Link	Attention: _____

ARTICLE 25 -- NONWAIVER

A waiver by either party of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing and duly signed by both parties to this Agreement. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

ARTICLE 26 – SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void or voidable, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void or voidable provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being held void should a provision which is of the essence of the Agreement be determined to be void by a court of competent jurisdiction.

IN WITNESS WHEREOF, we, the undersigned, do hereby state that we have the authority to bind and obligate as promised herein, SOE and MUNICIPALITY for the purposes of executing this Agreement on the dates set forth below.

Signature	Signature
Wendy Sartory Link Name (Printed or Typed)	Name (Printed or Typed)
Palm Beach County Supervisor of Elections Title	Title
Date	Date
Witness Signature	Witness Signature
Witness Name (Printed or Typed)	Witness Name (Printed or Typed)

EXHIBIT "A"

Palm Beach County Supervisor of Elections
Schedule of Municipal Election Fees
Uniform Municipal Elections 2025

Standard Operation and Programming	
Polling Place Operations	
Ballot Preparation and Printing	
Vote-By-Mail (VBM) Ballot Requests and Postage	
Post-Election Reporting and Audit	
Service Center Operations and Tabulation	
Total (small municipality ≤ 2k registered voters = $600)	**$750.00**
VBM Services Other Than Required for PPP	
VBM Ballot Services – Per Ballot Processed	$6.50/Ballot
VBM Return Mail Postage Costs – Actual Cost	**.53**
Unanticipated Costs	**TBD**

EXHIBIT "B"

Palm Beach County Supervisor of Elections
Schedule of Non-UME/Municipal Run-Off/Stand-Alone
Election Fees 2025

General Municipal Non-UME/Run-Off/Stand-Alone Election Services	**Estimated Costs**
Vote-by-Mail Ballot Services Outgoing	$6.50/Ballot
Vote-by-Mail Ballot Returned	$.53/ballot
Run-Off/Stand-Alone Election Day Services	$12,143.35
Precinct Services (per precinct)	$275.97
Accounting/Billing	$141.36
Polling Location Inspection (if applicable)	$ 66.53
POLL WORKER PAY Election Day lump sum*: Clerk: $440.00 Assistant Clerk: $340.00 VST: $355.00 Inspector: $255.00 Deputy: $225.00 Standby Poll Worker (deployed by SOE): Paid at rate for the position for which they are trained. *Rate of pay is a lump sum that includes training and election day. The Clerk, Assistant Clerk, and VST pay rate also includes Monday set-up. If applicable: a Clerk may be required to assist with precinct register pick-up from SOE and delivery to the polling location. This extra duty would increase his/her pay by $25.00, making his/her pay rate $465.00. *If Applicable: An Inspector or Deputy may be required to assist in the ride along duties at the end of the night to fulfill party diversity requirements. This extra duty would increase his/her pay by $25.00, making his/her pay rate as follows: Inspector $280.00 Deputy $250.00 Any additional items requested by the municipality will be invoiced separately	TBD
On call support ($2500 range)	Invoiced by Vendor TBD

*Itemized invoices will be provided in the event of a run-off election.

RESOLUTION NO. R25-019

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, APPROVING THE 2025 MUNICIPAL ELECTION(S) VOTE PROCESSING EQUIPMENT USE AND ELECTIONS SERVICES AGREEMENT BETWEEN THE CITY AND PALM BEACH COUNTY SUPERVISOR OF ELECTIONS OFFICE; AND FOR ALL OTHER PURPOSES.

WHEREAS, pursuant to section 101.34, Florida Statutes, the Palm Beach County Supervisor of Elections Office ("SOE") is the legal custodian of certified vote processing equipment owned by Palm Beach County, Florida, and is hereby charged with the responsibility for custody and maintenance of said equipment; and

WHEREAS, the City desires, or is otherwise statutorily obligated, to conduct an election that requires the use of vote processing equipment to count ballots; and

WHEREAS, all vote processing equipment requires specially trained and knowledgeable individuals to program, operate, and maintain said equipment; and

WHEREAS, the Palm Beach County Board of County Commissioners has authorized SOE to provide any necessary terms and conditions for the use of such voting equipment; and

WHEREAS, SOE can provide the necessary personnel to program, operate, and maintain said equipment; and

WHEREAS, the City hereby acknowledges it may be responsible for other applicable requirements under the Florida Election Code and any provision of the City's Charter or municipal ordinances which may not be addressed or included in this Agreement; and

WHEREAS, the City Commission, upon the recommendation of staff, has deemed it in the best interests of the city's citizens and residents to approve the 2025 Municipal Election(s) Vote Processing Equipment Use and Elections Services Agreement between the City and Palm Beach County Supervisor of Elections Office.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption.

SECTION 2. The City Commission of the City of Boynton Beach, Florida, does hereby approve a 2025 Municipal Election(s) Vote Processing Equipment Use and Elections Services Agreement between the City and Palm Beach County Supervisor of Elections Office (the "Agreement"), in form and substance similar to that attached as Exhibit A.

SECTION 3. The City Commission of the City of Boynton Beach, Florida, hereby authorizes the Mayor to execute the Agreement. The Mayor is further authorized to execute any ancillary documents required under the Agreement or necessary to accomplish the purposes of the Agreement and this Resolution.

SECTION 4. The Mayor-executed Agreement shall be forwarded to Maylee De Jesus to obtain execution of the Agreement by the Supervisor of Elections. Maylee De Jesus shall be responsible for ensuring that one fully executed Agreement is returned to the City for retention as a public record.

SECTION 5. This Resolution shall take effect in accordance with law.

[SIGNATURES ON THE FOLLOWING PAGE]

PASSED AND ADOPTED this _____ day of _____ 2025.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Ty Penserga	____	____
Vice Mayor – Aimee Kelley	____	____
Commissioner – Angela Cruz	____	____
Commissioner – Woodrow L. Hay	____	____
Commissioner – Thomas Turkin	____	____
VOTE	_____	

ATTEST:

_____
Maylee De Jesús, MPA, MMC
City Clerk

_____
Ty Penserga
Mayor

APPROVED AS TO FORM:

(Corporate Seal)

_____
Shawna G. Lamb
City Attorney

RESOLUTION NO. R25-20

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, CALLING FOR A GENERAL CITY ELECTION TO BE HELD ON TUESDAY, MARCH 11, 2025, FOR THE PURPOSE OF ELECTING ONE (1) CITY COMMISSIONER FOR DISTRICT I, ONE (1) CITY COMMISSIONER FOR DISTRICT III, AND ONE (1) MAYOR; CALLING FOR A GENERAL CITY RUN-OFF ELECTION TO BE HELD ON TUESDAY, MARCH 25, 2025, IF NECESSARY; AND FOR ALL OTHER PURPOSES.

WHEREAS, the City Charter of the City of Boynton Beach, Florida, Article III, Section 40, and other applicable laws, provide that all general and special elections be called by resolution adopted by the City Commission for the March 11, 2025, General City Election for the purpose of electing one (1) City Commissioner for District I, one (1) City Commissioner for District III, and one (1) Mayor; and

WHEREAS, the City Charter of the City of Boynton Beach, Florida, Article III, Section 41 and other applicable laws, provides that a General City Run-off Election be called by the City Commission for March 25, 2025, and held on such date in the event of necessity thereof as to any of the aforesaid offices; and

WHEREAS, the City Commission, upon the recommendation of staff, has deemed it in the best interests of the city's citizens and residents to call for a General City Election to be held on Tuesday, March 11, 2025, for the purpose of electing one City Commissioner for District I, one City Commissioner for District III, and one Mayor, and call for a General City Run-Off Election to be held on Tuesday, March 25, 2025, if necessary.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption.

SECTION 2. The City Commission of the City of Boynton Beach, Florida, does hereby call for a General City Election to be held on Tuesday, March 11, 2025, for the purpose of electing one City Commissioner for District I, one City Commissioner for District III, and one Mayor.

SECTION 3. The City Commission of the City of Boynton Beach, Florida, does hereby call

for a General City Run-Off Election to be held on Tuesday, March 25, 2025, to be held on such date in accordance with the aforementioned laws and ordinances in the event of a necessity thereof as to the aforesaid offices in Districts I, Districts III, and Mayor.

SECTION 4. Persons desiring to qualify with the City Clerk as candidates for the office of Districts I, Districts III, and Mayor may do so in the manner provided by law between the dates of Tuesday, November 12, 2024, beginning at 12:00 noon and Tuesday, November 26, 2024, ending at 12:00 noon.

SECTION 5. The Palm Beach County Supervisor of Elections, acting on behalf of the City Clerk, is hereby authorized and directed to close the registration books prior to said General Election and to keep the said books closed for the required period in accordance with the registration law.

SECTION 6. The Supervisor of Elections is authorized and directed to deliver the appropriate registration books to the proper City precinct boards on or before the day and hour set for the opening of the polls for the aforementioned General City Election and General City Run-off Election, as the case may be. The Clerk of each election precinct board is authorized and directed to forthwith return, or cause to be returned by an authorized person or persons of said board, the said registration books to the Supervisor of Elections immediately following each such election.

SECTION 7. The polling places designated and fixed by the Board of County Commissioners of Palm Beach County, Florida, are adopted pursuant to law as the polling places for said General City Election and said General City Run-off Election if required.

SECTION 8. The City Clerk is authorized and directed under the applicable laws and code provisions to perform such ministerial duties as are necessary and proper to provide for the holding and conducting of said elections.

SECTION 9. The City Clerk is authorized to expend such sums of money as may be necessary and proper in connection with the preparation for and holding of said elections, including the authorized compensation to be paid to the election inspectors and clerks, as outlined in the Agreement with the Palm Beach County Supervisor of Elections.

SECTION 10. The City Clerk is directed to furnish a certified copy of this Resolution to the

Palm Beach County Supervisor of Elections.

SECTION 11. This Resolution shall take effect in accordance with law.

PASSED AND ADOPTED this _____ day of _____ 2025.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Ty Penserga	____	____
Vice Mayor – Aimee Kelley	____	____
Commissioner – Angela Cruz	____	____
Commissioner – Woodrow L. Hay	____	____
Commissioner – Thomas Turkin	____	____
VOTE	_____	

ATTEST:

_____
Maylee De Jesús, MPA, MMC
City Clerk

_____
Ty Penserga
Mayor

APPROVED AS TO FORM:

(Corporate Seal)

_____
Shawna G. Lamb
City Attorney

City of Boynton Beach
Agenda Item Request Form

Meeting Date: 01/21/2025

Proposed Resolution No. R25-021- Designating a Canvassing Board for the March 2025 Municipal Election.

Requested Action: Staff recommends approval of Proposed Resolution No. R25-021.

Explanation of Request: The Palm Beach County Supervisor of Elections requires that the City Commission designate, by Resolution, a Canvassing Board for the City's Municipal Elections. The City has designated the Palm Beach County Supervisor of Elections as the City's Canvassing Board for Municipal Elections in the past, and staff recommends continuing to designate them for the 2025 Elections.

How will this affect city programs or services? NA

Account Line Item and Description: NA

Fiscal Impact: There is no fiscal impact for this item.

Attachments:
R25-021 Agenda_Item_2665-2025_Resolution_for_Canvassing_Board_for_March_2025_Municipal_Election.docx

RESOLUTION NO. R25-021

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, DESIGNATING THE PALM BEACH COUNTY SUPERVISOR OF ELECTIONS AS THE CITY'S CANVASSING BOARD FOR THE MARCH 2025 MUNICIPAL ELECTION; AND FOR ALL OTHER PURPOSES.

WHEREAS, the Palm Beach County Supervisor of Elections requires that the City Commission designate, by Resolution, a Canvassing Board for the City Municipal Elections; and

WHEREAS, designating the Palm Beach County Supervisor of Elections as the City's Canvassing Board for Municipal Elections would remove redundancy of Officials attending to the same election activities such as the pre-election testing of tabulation equipment, and opening, tabulation, duplication, and the canvassing of ballots and is the preference of the Supervisor of Elections; and

WHEREAS, the City Commission has determined that the responsibility to “canvass the returns” is a ministerial and non-legislative function that can be delegated by the City Commission; and

WHEREAS, the City Commission, upon the recommendation of staff, has deemed it in the best interests of the city's citizens and residents to designate the Palm Beach County Supervisor of Elections as the City's canvassing board for the March 2025 municipal election.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption.

SECTION 2. The City Commission of the City of Boynton Beach, Florida, does hereby designate the Palm Beach County Supervisor of Elections as the City's canvassing board for the March 2025 municipal election. The Canvassing Board will handle the canvassing of ballots for the general municipal election and for runoff elections, if necessary.

SECTION 3. The City Commission of the City of Boynton Beach, Florida, hereby authorizes the Mayor to execute any ancillary documents as may be necessary to accomplish the

purpose of this Resolution.

SECTION 4. If any clause, section, or other part or application of this Resolution shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and so not affecting the validity of the remaining portions or applications remaining in full force and effect.

SECTION 5. The City shall indemnify and hold harmless the members of the canvassing board in the event either or both are the subject of litigation arising from their duties as canvassing board members.

SECTION 6. This Resolution shall take effect in accordance with law.

PASSED AND ADOPTED this _____ day of _____ 2025.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Ty Penserga	____	____
Vice Mayor – Aimee Kelley	____	____
Commissioner – Angela Cruz	____	____
Commissioner – Woodrow L. Hay	____	____
Commissioner – Thomas Turkin	____	____
VOTE	_____	

ATTEST:

_____
Maylee De Jesús, MPA, MMC
City Clerk

_____
Ty Penserga
Mayor

APPROVED AS TO FORM:

(Corporate Seal)

_____
Shawna G. Lamb
City Attorney

City of Boynton Beach
Agenda Item Request Form

Meeting Date: 01/21/2025

Proposed Resolution No. R25-022- Ratifying the Conflict of Interest Waiver relating to Weiss Serota, et al's representation of the City of Boca Raton in connection with MELISSA LAVAGLIO v. CITY OF BOCA RATON, CITY OF BOYNTON BEACH, ET AL., Case No. 9:24-CV-81352, in the United States District for the Southern District of Florida and waive any claim of conflict arising from such representation.

Requested Action: Staff recommends approval of Proposed Resolution No. R25-022.

Explanation of Request: The City of Boynton Beach is represented by Weiss Serota Helfman Cole and Bierman P.A. (the "firm") as Outside Counsel for Labor and Employment investigations.

The firm desires to represent the City of Boca Raton in regard to in connection with MELISSA LAVAGLIO v. CITY OF BOCA RATON, CITY OF BOYNTON BEACH, ET AL., Case No. 9:24-CV-81352, in the United States District for the Southern District of Florida. The firm requests that the City of Boynton Beach waive any potential conflict and has stated that it is able to provide competent and diligent representation to both the City of Boynton Beach in unrelated matters and the City of Boca Raton in the matter described herein.

The City of Boynton Beach desires to waive the potential conflict of interest between the City of Boynton Beach and the firm.

The Commission, upon recommendation of staff, has deemed it to be in the best interests of the citizens and residents of ratify the Conflict of Interest Waiver dated January 13, 2025, relating to the firm's representation of the City of Boca Raton in regards to MELISSA LAVAGLIO v. CITY OF BOCA RATON, CITY OF BOYNTON BEACH, ET AL., Case No. 9:24-CV-81352.

How will this affect city programs or services? N/A

Account Line Item and Description: N/A

Fiscal Impact: N/A

Attachments:
R25-022 Agenda_Item_2671-2025_Resolution_for_Weiss_Serota_conflict_waiver.docx
Exhibit A to Resolution - CONFLICT WAIVER.pdf

RESOLUTION NO. R25-022

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, RATIFYING THE CONFLICT OF INTEREST WAIVER RELATING TO WEISS SEROTA, ET AL.'S REPRESENTATION OF THE CITY OF BOCA RATON IN CONNECTION WITH MELISSA LAVAGLIO V. CITY OF BOCA RATON, CITY OF BOYNTON BEACH, ET AL., CASE NO. 9:24-CV-81352, IN THE UNITED STATES DISTRICT FOR THE SOUTHERN DISTRICT OF FLORIDA, AND WAIVE ANY CLAIM OF CONFLICT ARISING FROM SUCH REPRESENTATION; PROVIDING AN EFFECTIVE DATE; AND FOR ALL OTHER PURPOSES.

WHEREAS, the City of Boynton Beach is represented by Weiss Serota Helfman Cole and Bierman P.A. (the "firm") as Outside Counsel for Labor and Employment investigations; and

WHEREAS, the firm desires to represent the City of Boca Raton in regard to in connection with MELISSA LAVAGLIO v. CITY OF BOCA RATON, CITY OF BOYNTON BEACH, ET AL., Case No. 9:24-CV-81352, in the United States District for the Southern District of Florida. The firm requests that the City of Boynton Beach waive any potential conflict and has stated that it is able to provide competent and diligent representation to both the City of Boynton Beach in unrelated matters and the City of Boca Raton in the matter described herein; and

WHEREAS, the City of Boynton Beach desires to waive the potential conflict of interest between the City of Boynton Beach and the firm; and

WHEREAS, the Commission, upon recommendation of staff, has deemed it to be in the best interests of the citizens and residents of the City to waive a potential conflict of interest relating to the firm's representation of the City of Boca Raton in regards to MELISSA LAVAGLIO v. CITY OF BOCA RATON, CITY OF BOYNTON BEACH, ET AL., Case No. 9:24-CV-81352.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption.

SECTION 2. The City Commission of the City of Boynton Beach, Florida, does hereby waive the potential conflict of interest between the City and the firm and ratifies the Conflict of

Interest Waiver as provided in the waiver attached hereto as Exhibit A.

SECTION 3. The City Commission of the City of Boynton Beach, Florida, hereby ratifies the City Attorney's execution of the written waiver.

SECTION 4. This Resolution shall take effect in accordance with law.

PASSED AND ADOPTED this _____ day of _____ 2025.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Ty Penserga	____	____
Vice Mayor – Aimee Kelley	____	____
Commissioner – Angela Cruz	____	____
Commissioner – Woodrow L. Hay	____	____
Commissioner – Thomas Turkin	____	____
VOTE	_____	

ATTEST:

_____
Maylee De Jesús, MPA, MMC
City Clerk

_____
Ty Penserga
Mayor

APPROVED AS TO FORM:

(Corporate Seal)

_____
Shawna G. Lamb
City Attorney

CONFLICT WAIVER

On behalf of the City of Boynton Beach, I hereby consent to Weiss Serota, et al.'s representation of the City of Boca Raton in connection with MELISSA LAVAGLIO v. CITY OF BOCA RATON, CITY OF BOYNTON BEACH, ET AL., Case No. 9:24-CV-81352, in the United States District for the Southern District of Florida and waive any claim of conflict arising from such representation.

Date: 01/13/2025

CITY OF BOYNTON BEACH

By: Shawna G. Lamb

Name: Shawna G. Lamb

Title: City Attorney

City of Boynton Beach
Agenda Item Request Form

Meeting Date: 01/21/2025

Proposed Resolution No. R25-023- Authorize the City to apply for the Site Rehabilitation of Petroleum Contamination & Petroleum Cleanup Participation Program (PCPP) for the cleaning of petroleum contamination and rehabilitation at the Public Works Compound, and if awarded, accept and execute a grant agreement with the Florida Department of Environmental Protection, subject to the approval of the City Attorney.

Requested Action: Staff recommends approval of Proposed Resolution No. R25-023.

Explanation of Request: The Public Works Department is applying for the Site Rehabilitation of Petroleum Contamination & Petroleum Cleanup Participation Program (PCPP), for the cleaning of petroleum contamination and rehabilitation at the Public Works Compound.

The Public Works Compound assessments indicate that remediation is necessary and failure to enter the PCPP Agreement is a failure to comply with the statutory requirements to participate in PCPP.

The project has no cost to the City, as the assigned contractor, American Environmental Engineering of Florida, Inc., has agreed to reduce the cost of the state rate. The estimated project cost is $125,000.

The program guidelines and application were provided in March 2023 and the application period is due in February 2025.

How will this affect city programs or services? The City of Boynton Beach, committed to well-being and protection of its employees, residents and visitors, finds it imperative to provide safety.

Account Line Item and Description: No account needed, no fiscal impact to the City.

Fiscal Impact: No account needed, no fiscal impact to the City.

Attachments:
R25-023 Agenda_Item_2554-2023_Resolution_for_FDEP_Site_Rehab_of_Petroleum_Contamination___PCPP.docx
Exhibit A to Proposed Resolution - PCPP - Application
Exhibit B to Proposed Resolution - Cost Share Contractor Recommendation Sheet
Exhibit C to Proposed Resolution - PCPP Cost Estimate

PCPP AEE - Letter of Commitment
Petroleum Cleanup Participation Program - Presentation

RESOLUTION NO. R25-023

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, AUTHORIZING THE CITY TO APPLY FOR, AND IF AWARDED, AUTHORIZING THE MAYOR TO ACCEPT THE GRANT AND EXECUTE AN AGREEMENT WITH THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP) FOR THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S SITE REHABILITATION OF PETROLEUM CONTAMINATION & PETROLEUM CLEANUP PARTICIPATION PROGRAM FOR THE CLEANING OF PETROLEUM CONTAMINATION AND REHABILITATION AT THE PUBLIC WORKS COMPOUND; AND FOR ALL OTHER PURPOSES.

WHEREAS, the Public Works department of the City of Boynton Beach desires to apply for the Florida Department of Environmental Protection's ("FDEP") Site Rehabilitation of Petroleum Contamination & Petroleum Cleanup Participation Program ("PCPP") for the cleaning of petroleum contamination and rehabilitation at the City's Public Works Compound (the "Project"); and

WHEREAS, Public Works Compound assessments indicate that remediation is necessary and that entering the PCPP Agreement is statutorily necessary per section 376.3071, Florida Statues, as noted in correspondence from the Florida Department of Environmental Protection, including the application and agreement, attached hereto as Exhibit A; and

WHEREAS, the City recommends the use of FDEP's assigned contractor, American Environmental Engineering of Florida, Inc., as outlined in the Department's Cost Share Site Contractor Recommendation Sheet, attached hereto Exhibit B; and

WHEREAS, the estimated cost of the Project is $125,000, with an estimated amount of $31,250 to be covered by American Environmental Engineering of Florida, Inc., as further detailed in the PCCP Scope of Work and Cost Estimate, attached hereto as Exhibit C; and

WHEREAS, the City Commission, upon the recommendation of staff, has deemed it in the best interests of the city's citizens and residents to authorize the City to apply for and, if awarded, accept the Florida Department of Environmental Protection's Site Rehabilitation of Petroleum Contamination & Petroleum Cleanup Participation Program for the cleaning of petroleum contamination and rehabilitation at the Public Works compound.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption.

SECTION 2. The City Commission of the City of Boynton Beach, Florida, does hereby authorize the City to apply for the Florida Department of Environmental Protection's Site Rehabilitation of Petroleum Contamination & Petroleum Cleanup Participation Program for the cleaning of petroleum contamination and rehabilitation at the Public Works compound.

SECTION 3. The City Commission of the City of Boynton Beach, Florida, hereby authorizes the Mayor to execute the PCPP Agreement, the Cost Share Site Contractor Recommendation Sheet, and any ancillary documents necessary to apply for or accept the grant or otherwise accomplish this Resolution's purpose that does not increase the financial obligations of the City.

SECTION 4. The Mayor-executed PCPP Agreement shall be forwarded to Ydelsi Rodriguez to obtain execution by FDEP. Ydelsi Rodriguez shall be responsible for ensuring that one fully executed Agreement is returned to the City to be provided to the Office of the City Attorney for forwarding to the City Clerk for retention as a public record.

SECTION 5. This Resolution shall take effect in accordance with law.

[SIGNATURES ON THE FOLLOWING PAGE]

PASSED AND ADOPTED this _____ day of _____ 2025.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Ty Penserga	____	____
Vice Mayor – Aimee Kelley	____	____
Commissioner – Angela Cruz	____	____
Commissioner – Woodrow L. Hay	____	____
Commissioner – Thomas Turkin	____	____
VOTE	_____	

ATTEST:

_____
Maylee De Jesús, MPA, MMC
City Clerk

_____
Ty Penserga
Mayor

APPROVED AS TO FORM:

(Corporate Seal)

_____
Shawna G. Lamb
City Attorney

FLORIDA DEPARTMENT OF Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

July 8, 2024

City of Boynton Beach
PO Box 310
Boynton Beach, FL 33425-0310

Subject: **Second Notice** of State Funding for Site Rehabilitation of Petroleum Contamination & Petroleum Cleanup Participation Program (PCPP) Requirements
Boynton Beach City- Public Works
222 NE 9th Ave
Boynton Beach, Palm Beach County, FL
FDEP Facility ID# 508630524
Eligible Discharge Date: 03/24/1988 (PCPP)
Priority Score: 28

Dear Property Owner:

This is your second notice informing you that state funding is available for the cleanup of petroleum contamination at the above listed location from the Petroleum Cleanup Participation Program (PCPP) pursuant to Section 376.3071, Florida Statutes (F.S.). This discharge is eligible for PCPP up to $400,000 in state-funding per eligible PCPP discharge (less any funds spent to date, with an additional $100,000 auxiliary funding for remediation and monitoring if needed). Because site rehabilitation funding assistance is now available for the eligible discharge, the property owner, operator, or person otherwise responsible for site rehabilitation must enter into a PCPP Agreement providing the Department with either a 25% cost savings, 25% copayment, or combination of both copayments and cost savings equal to 25% of the site rehabilitation costs.

Our records indicate that you are the current property owner of the subject location. The Department has limited contamination assessment information already on file indicating remediation is necessary. Failure to enter into the PCPP Agreement is a failure to comply with the statutory requirements to participate in PCPP. See also subsection 376.302(1)(b), F.S. **Please submit the required PCPP Agreement within 30 days of receipt of this notice.**

PCPP Instructions and the PCPP Agreement template (Attachments A and B) are attached and can be downloaded at the following link:
https://floridadep.gov/waste/petroleum-restoration/content/petroleum-cleanup-participation-program-pcpp

A list of ATCs can be found at the following link:
https://prodapps.dep.state.fl.us/www_stcm/contractors/Atc_region/Atc_region_v

The PCPP Agreement and any backup documentation applicable can be submitted to email DWM_PRP_PCPP@FloridaDEP.gov.

If you do not have access to equipment that would enable you to view or complete the documents digitally, please reply to this letter by contacting the PCPP Coordinator (contact information below) and the items can be mailed to the address you provide. In addition, you may mail the necessary documents to:

PCPP Coordinator
Bob Martinez Center
2600 Blair Stone Road MS 4580
Tallahassee, Florida 32399
Email: DWM_PRP_PCPP@FloridaDEP.gov
Phone: 850-245-8882

Failure to timely enter into a PCPP Agreement is a failure to comply with the statutory requirements to participate in PCPP and will result in the Department terminating the discharge's eligibility for state funded cleanup under PCPP, pursuing penalties pursuant to section 376.302, F.S., or other remedies allowed by law. Terminating PCPP eligibility will result in all parties responsible for the contamination being required to rehabilitate the contamination in accordance with Chapter 62-780, Florida Administrative Code (F.A.C.) at their own expense with no State funding assistance. If such parties fail to timely conduct site rehabilitation the discharge will be turned over to the appropriate enforcement authorities and, pursuant to Chapters 376 and 403, F.S., the Department may pursue enforcement against any responsible parties to compel clean up and, possibly, penalties.

If you choose not to participate in the PCPP, inform the Department PCPP Coordinator (contact information below) within 30 days of receipt of this letter and immediately begin site rehabilitation in accordance with Chapter 62-780, F.A.C., at your own expense.

If you should have any questions, please contact the PCPP Coordinator at (850) 245-8882 or reply to this letter contact at the letterhead address, Mail Station 4580.

Sincerely,

PCPP Coordinator and staff
Florida Department of Environmental Protection
Petroleum Restoration Program

Attachment(s): A. PCPP Agreement Instructions
B. PCPP Agreement template

ec: Facility Oculus File

INSTRUCTIONS FOR COMPLETION OF Petroleum Cleanup Participation Program (PCPP) AGREEMENT

A PCPP Agreement (located online here: **https://floridadep.gov/waste/petroleum-restoration/content/petroleum-cleanup-participation-program-pcpp**) is required for all PCPP eligible discharges that are within funding range at a facility to allow state funding assistance. There are two PCPP Agreements available for use: a standard PCPP Agreement, and a PCPP Agreement with Site Access language and options included. If a site access agreement has not been completed and your facility only has PCPP eligible discharge(s), then a PCPP Agreement with Site Access should be utilized. If your facility has multiple eligible discharges (such as EDI, ATRP, PLRIP, etc), then a standard PCPP Agreement should be used. A separate site access agreement should be completed (or may be requested if one has not already been completed by the real property owner) if this is the case.* *If you do not have access to the documents, please call 850-245-8882 to request the document be mailed to you.* If you are downloading a PCPP Agreement from the above link, the Agreement must be completed by filling in the blanks (including entering the facility ID on each footer), making selections where required, initialing where required, and signing the document. If you received a PCPP Agreement with a mailed request letter, then the first unnumbered paragraph and facility ID on each page will be completed for you.

The PCPP Agreement, once completed, should then be either e-mailed (scanned version acceptable) to **DWM_PRP_PCPP@FloridaDEP.gov** or mailed to Attn: PCPP Coordinator, Petroleum Restoration Program, Department of Environmental Protection, 2600 Blair Stone Road, MS 4580, Tallahassee, Florida 32399-2400. If State funding is expended before a Closure Order is issued, the PCPP Agreement shall be terminated and the cleanup will transition to the owner/responsible party (Participant).

The Agreement includes 21 or 22 standard paragraphs regarding the terms and conditions of the PCPP as well as site access. For information regarding completing the site access portion of the Agreement, please refer to the instructions located here: **https://floridadep.gov/waste/petroleum-restoration/documents/site-access-source-instructions**

In addition, **there are three options concerning Participant preference that must be answered by checking the corresponding boxes and initialing**. **Only one selection may be made (1, 2, or 3).** Please see the instructions following each selection for more information.

1. **Participant is providing a 25% cost savings to the Department. Please initial by this selection only if this is the option elected.**

By electing to offer the Department a 25% cost savings, you are committing to either recommend to the Department one of its Agency Term Contractors (ATC) who is willing to reduce their contracted rates to achieve a 25% cost savings to the state to meet this option **OR** you are committing to accept a more restrictive closure (Risk Management Option II, RMO II) thereby effectively saving the Department at least 25% of the cost it would have taken to reach a closure of RMO I. You must make the sub-selection on the Agreement to indicate which cost savings (ATC reduced rate or RMO II) you will utilize.

If your recommended ATC will be reducing its rates to meet the 25% cost savings, you must include as backup documentation to the PCPP Agreement the following items:

- The PCPP Scope of Work and Cost Estimate (template located at **https://floridadep.gov/waste/petroleum-restoration/documents/cost-estimate-template-pcpp**). This includes the proposed course of action with task breakdown, cost estimate and the proposed cleanup endpoint. If the PCPP Agreement submission does not include the required cost estimate documentation and timetable, the submittal will be deemed insufficient and you will be asked to re-submit.
- A Commitment of Rate Reduction Letter (template located at **https://floridadep.gov/waste/petroleum-restoration/documents/pcpp-atc-rate-letter-commitment-rate-reduction**) from the ATC committing to a reduction of its DEP ATC rates (this letter will become a part of the PCPP Agreement as Exhibit B)
- And a Cost Share Site Contractor Recommendation Sheet **https://floridadep.gov/waste/petroleum-restoration/forms/cost-share-site-contractor-recommendation-sheet**.

If you elected a 25% cost savings as demonstrated in the form of conditional closure of RMO II, you must include as backup documentation to the PCPP Agreement the following items:

- A general recommended course of action and cost proposal. If the RMO II is for less than total cleanup versus RMO I, the proposal must clearly demonstrate that the proposed course of action will achieve 25% cost savings. Failure to clearly demonstrate a cost savings to the State may result in unsuccessful negotiation of the PCPP Agreement.
- An executed PCPP Conditional Closure Agreement including its Attachment B Conditional Closure Agreement Contractor Recommendation (**https://floridadep.gov/waste/petroleum-restoration/documents/pcpp-conditional-closure-agreement**). (this document will become a part of the PCPP Agreement as Exhibit B)
- An interim declaration of interim restrictive covenant for PCPP discharges only (DIRC; this DIRC is not the same as nor does it not go through the same DEP review as a DRC under Rule 62-780.680, F.A.C.) (**https://floridadep.gov/waste/petroleum-restoration/documents/declaration-interim-restrictive-covenant-pcpp**). (this document will become a part of the PCPP Agreement as Exhibit B)

2. Participant is paying a 25% copayment of the cost to cleanup. Please initial by this selection only if this is the option elected.

By electing to offer the Department a 25% copayment, you are committing to paying 25% of all costs (up to the State's funding cap limitations). You must timely and directly pay your ATC. The ATC will invoice you at intervals for Department approved work performed at the site.

If you elected to pay the 25% copayment/cost share you must include the following as backup documentation to the PCPP Agreement:

- The PCPP Scope of Work and Cost Estimate (template located at **https://floridadep.gov/waste/petroleum-restoration/documents/cost-estimate-template-pcpp**). This includes the proposed course of action with task breakdown, cost estimate and the proposed cleanup endpoint. If your Cost Share Site Contractor Recommendation Sheet indicates an ATC, they can complete the cost estimate on your behalf. If your Cost Share Site Contractor

Recommendation Sheet indicates FDEP is electing the ATC, FDEP will complete a cost estimate on your behalf.

- Cost Share Site Contractor Recommendation Sheet (https://floridadep.gov/waste/petroleum-restoration/forms/cost-share-site-contractor-recommendation-sheet).

3. Participant is providing a combination of both a copayment and cost savings equal to 25% of the cost of cleanup. Please initial by this selection only if this is the option elected.

By electing to offer the Department a combination of a copayment plus cost savings equal to 25%, you are committing to providing 25% of all costs with a negotiated split as specified between you and your recommended ATC. An example of this split might be that the ATC will reduce its rates to achieve a 15% cost savings and you will pay 10% copayment of the cost of cleanup (up to the funding cap limitations). You must timely and directly pay your ATC. The ATC will invoice you at intervals for approved work performed at the site.

If you elected to pay the 25% copayment/cost savings combination you must include the following as backup documentation to the PCPP Agreement:

- The PCPP Scope of Work and Cost Estimate (template form is located at https://floridadep.gov/waste/petroleum-restoration/documents/cost-estimate-template-pcpp). This includes the proposed course of action with task breakdown, cost estimate and the proposed cleanup endpoint with the negotiated split. If the proposed course of action and cost estimate does not include the required cost savings (detailed breakdown of copay and reduction percentages) and timetable, the submittal may be deemed insufficient and you will need to re-submit.
- The Commitment of Rate Reduction Letter (template is located at https://floridadep.gov/waste/petroleum-restoration/documents/pcpp-atc-rate-letter-commitment-rate-reduction) from the ATC committing to a reduction of its DEP ATC rates (this letter will become a part of the PCPP Agreement as Exhibit B)
  Cost Share Site Contractor Recommendation Sheet (https://floridadep.gov/waste/petroleum-restoration/forms/cost-share-site-contractor-recommendation-sheet).

If during the review it is noted that the cost to closure will exceed the $400,000 cap, the PCPP staff may request the use of $100,000 auxiliary funding via memo. If approved, the PCPP staff will revise the PCPP Agreement paragraph 4 to increase the cap to $500,000. No action is required on the participant's part and no other aspects of the agreement change.

*** If a facility does not have an executed site access agreement (SAA) prior to the PCPP Agreement completion, the PCPP Agreement with Site Access is required. The PCPP Agreement with Site Access include SAA language and options under section 13.** The SAA can only be completed by the real property owner. The SAA will include permission for necessary cleanup related activities and a section to complete (A-D) wherein the Participant selects "YES" or "NO" to questions regarding options available related to site access. If you have questions regarding the PCPP Agreement or Site Access, please call the PCPP Coordinator at 850-245-8882 or email **DWM_PRP_PCPP@FloridaDEP.gov**.

AGREEMENT FOR PETROLEUM CLEANUP PARTICIPATION PROGRAM

This Agreement is entered into by and between the Florida Department of Environmental Protection (hereinafter "Department"), whose address is 2600 Blair Stone Road, Tallahassee, Florida, and City of Boynton Beach (hereinafter "Participant"), whose address is 100 E. Ocean Ave. Boynton Beach FL, 33435 (collectively the "Parties") to perform certain site rehabilitation activities for contamination determined eligible for the Petroleum Cleanup Participation Program (hereinafter "PCPP") in accordance with Section 376.3071(13), Florida Statutes (F.S.). The petroleum contamination subject of this Agreement is the discharge(s) date(s) 03/24/1988 at the Boynton Beach City-Public Works (facility name) facility located at 222 NE 9th Ave, Boynton Beach, Palm Beach County, Florida, (Property) depicted on the attached legal description Exhibit A, DEP **Facility ID #** 508630524, Parcel # 08-43-45-21-06-001-0010.

WHEREAS, in accordance with Section 376.3071(13), F.S., the Department is authorized to provide state funding assistance for petroleum discharges determined eligible for PCPP, based on the site's priority ranking established pursuant to Section 376.3071(5)(a), F.S., and Chapter 62-771, Florida Administrative Code (F.A.C.); and

WHEREAS, in accordance with Section 376.3071(13), F.S., the Department has determined the described contamination eligible and Participant provided the required Limited Contamination Assessment Report (hereinafter "LCAR") or assessment data [Groundwater Sampling Event Annual Report dated 09/06/2022 (Report Title and Date)] exists and was determined to be sufficient to support the proposed course of action and to estimate the cost of the course of action; and

WHEREAS, the Participant shall provide one of the following: a 25% cost savings to the Department, a 25% copayment by the Participant, or a combination of both a cost savings and copayment that totals 25%.

WHEREAS, the Contractor who will conduct the work under this Agreement does so pursuant to Chapter 62-772.401(2), F.A.C. The Contractor, to be eligible to perform work under this Agreement, must be an Agency Term Contractor (ATC) awarded under the Department's Petroleum Restoration Program and is currently in good standing under the Agency Term Contract. The Contractor shall perform the work at the Facility pursuant to the terms and conditions of its i) ATC, ii) this Agreement, and iii) any and all issued Purchase Orders ("POs").

PARTICIPANT AGREES TO PROCEED UNDER THE SELECTED OPTION
(please select and initial only ONE option and appropriate sub-options if applicable)

1. ☑ Participant is providing a 25% cost savings to the Department:

   ☑ Attached as Exhibit B the agency term contractor's (ATC's) written acceptance to a reduction in its Department ATC rates.

   OR

   ☐ Attached as Exhibit B is the Participant's executed PCPP Conditional Closure Agreement (CCA, including Attachment B Conditional Closure Agreement Contractor Recommendation) with an endpoint of RMO II. Also attach evidence of a properly recorded interim declaration of restrictive covenant.

Participant Initials _____
If cost savings selected

2. ☐ Participant is paying a 25% copayment of the cost to cleanup.

Participant Initials _____
If copayment selected

3. ☐ Participant is providing a combination of both a cost savings and copayment equal to 25% of the cost of cleanup (Attached as Exhibit B, recommended ATC's written acceptance to a reduction in its Department ATC rates and the Participant copayment percentage combination).

Participant Initials _____
If combination selected

NOW, THEREFORE, in consideration of the mutual benefits to be derived here from, the Department and the Participant do hereby agree as follows:

GENERAL.

1. All activities associated with the performance of this Agreement shall be in conformance with the provisions of Chapter 376, F.S., and Chapters 62-780, 62-771, and 62-772, F.A.C. The Parties hereto agree that this Agreement shall additionally be subject to the applicable provisions of Chapter 287, F.S.

2. The Participant understands that during the course of site rehabilitation, the Department may, based on the statutes, rules and guidance of the Department, revise a site rehabilitation strategy due to technical or cost considerations.

TERM OF AGREEMENT AND SPENDING LIMITS.

3. This Agreement is effective on the date of execution by the Parties until the earlier of: (1) the Department has determined that rehabilitation is complete pursuant to Chapter 62-

780, F.A.C. and issues a Site Rehabilitation Completion Order (SRCO) or Conditional Site Rehabilitation Completion Order (CSRCO); or (2) the funding limitations set forth in Section 376.3071(13)(b), F.S., are exhausted and site rehabilitation has not been achieved.

4. The PCPP program funding cap per eligible PCPP discharge is $400,000, less any funds previously spent to date, with an additional $100,000 in auxiliary funding (available via amendment to this agreement if needed for remediation or monitoring in order to achieve a No Further Action determination).

COVENANTS AND REPRESENTATIONS OF THE DEPARTMENT.

5. In accordance with Sections 376.3071, F.S., and rules adopted pursuant to that Section, the Department will prepare Work Assignments, and procure the work as appropriate with the contractor designated and will thereby be responsible to the contractor solely for the Department's percentage of its cost share, whether that cost is 100% after a cost savings has been demonstrated, 75% cost share, or combination of both.

6. The Department will review and approve site rehabilitation activities in accordance with the terms of the procurement orders and Chapter 62-780, F.A.C., and shall make copies of such documents available to the Participant in the electronic site file Oculus (https://depedms.dep.state.fl.us/Oculus/servlet/login). The Participant is further advised and understands that the Department may task a locally contracted county with review of site rehabilitation documents or procurement documents under this Agreement.

7. In accordance with Section 287.0582, F.S., the State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. The Participant understands that this Agreement shall not result in the encumbering of State funds upon execution of the Agreement.

COVENANTS AND REPRESENTATIONS OF THE PARTICIPANT.

8. The Participant represents that he or she or it is qualified to enter into this Agreement and able to fully perform their duties under this Agreement. Participant acknowledges that the responsibilities and obligations of this Agreement survive the transfer of the above referenced facility/property.

9. When the Participant is paying a 25% copayment, or copayment combination, the Participant further agrees that it shall be subject to the prompt payment provisions of Section 215.422, F.S., upon receipt of an invoice for its share of costs from the Contractor, when such invoice is accompanied by a written approval by the Department of the work completed.

10. When Participants are paying a copayment, the Participant shall maintain and provide upon request, documentation that the invoice amount was paid. Failure to timely and adequately pay the contractor and provide proof of that payment to the Department upon request shall be considered a material breach of the PCPP Agreement pursuant to paragraph 14 and may result in loss of eligibility. The Department will request confirmation of payment/ contractor certification either via letter or e-mail after the Department has approved the contractor's work.

11. In accordance with Chapter 376, F.S., it is unlawful for the Participant to receive any remuneration, in cash or in kind, from a Contractor performing cleanup activities subject of this Agreement. This would include an agreement whereby the Participant does not make timely payments of the required copayment when the option of 25% copayment or copayment and cost savings combination.

12. When a Participant is paying 25% copayment or copayment and cost savings combination, the Participant shall maintain books, records, documents and other evidence pertaining to compensation and payments directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles and practices consistently applied. The Department, the State of Florida or their authorized representatives shall have access, without cost, except reasonable costs associated with photocopying such records, to such records for audit purposes during the term of this Agreement and for five years following termination of this Agreement.

13. If the Participant is also the real property owner of the Property (Owner), Owner hereby give(s) permission to the Department and all of its Contractors, subcontractors, and vendors ("Contractor"), in addition to the ATC to enter the Owner's property to conduct all investigations, inspections, site rehabilitation, and other activities necessary to comply with this Agreement for as long as this Agreement is effective. Such permission includes but is not limited to:

a. The Owner authorizes the Department and its Contractors to act as its authorized representative in signing all required forms and documents necessary for obtaining applicable permits related to environmental infrastructure improvements including well construction, repair, maintenance, modification, and abandonment pursuant to Chapter 373 F.S.
b. Access to the Property is required to maintain eligibility in the PCPP and Owner may not revoke this Agreement with the Department until the appropriate site rehabilitation completion order is issued under Chapter 62-780.680 or a low- scored site initiative order issued pursuant to Section 376.3071(12)(b), Florida Statutes, is final.
c. The Department acknowledges and accepts its responsibility under applicable law (Section 768.28, Florida Statutes) for damages caused by the acts of its employees while on the Property.
d. The Owner retains the right to use the Property, however, neither the Department nor the Contractor are responsible for any inconvenience, economic injury, or business damage that Owner may suffer due to the performance of activities conducted to fulfill this Agreement.
e. The Owner shall not interfere with the Department or Contractors when performing the activities to fulfill this Agreement. Owner shall not damage any equipment including wells, piping, and remediation system that may be located on the Property. Owner shall notify the Department 90 days prior to commencement of any construction, paving, demolition, or other work on the Property that may damage or destroy any part of the equipment installed under this Agreement.

If Participant is not the current real property owner, a Site Access Agreement (SAA) must be executed by the real property owner and timely submitted to the Department before work can proceed. The Department will request site access from the real property owner. If an acceptable SAA is not timely submitted by the current real property owner, eligibility in the PCPP may be revoked, regardless of this PCPP Agreement. Participant shall assist the Department in contacting and obtaining a SAA.

Please complete the following only if the Participant is the Owner:

A. Are additional requirements attached to this agreement? If neither are checked, the Department will assume "NO." Note: Additional requirements must be on a separate page titled Exhibit C and include the facility ID#, owner signature and date on the page. If an Exhibit C is not submitted to the Department with the signed Site Access Agreement, the Department will consider that you have changed your selection from "YES "to "NO".

☐ YES ☑ NO

B. Do you wish to participate or provide input with respect to rehabilitation of this facility? If neither are checked, the Department will assume "NO."

☑ YES ☐ NO

C. Do you want the site rehabilitation Contractor to contact you to obtain a separate site access agreement? Note: Optional site access agreements between the owner and site rehabilitation Contractor must be completed within (90) calendar days.

Since such an agreement is neither necessary nor required, state-funded site rehabilitation activities will begin whether or not you and the site rehabilitation Contractor have executed this optional agreement. Entities listed in paragraph 3 which this agreement provides immediate access for are excluded from this option of obtaining an additional site access agreement.

☑ YES ☐ NO

Only applicable if Participant agreed to proceed under the selected option 2 (25% copayment).

D. If you wish to exercise the option to reject one Contractor prior to assignment of work, please enter an email address. _____. If you do not have an email address, you can enter a telephone number instead.

TERMINATION OF AGREEMENT AND REMEDIES FOR BREACH OF AGREEMENT.

14. This Agreement may be terminated for material breach of obligations by either Party. Material breach means substantial failure to comply with the terms and conditions of this Agreement. A Party terminating the Agreement shall give written notice of the breach to the other Party within 14 days of discovery of facts giving rise to the breach. Such notice shall be of sufficient detail so that the Party allegedly in breach can formulate a remedy. If the breach is remedied within 15 days of the notice, the Agreement shall remain in effect. If the

breach is not remedied within 15 days of the notice, the Agreement may be terminated within 15 days of the close of the 15 day remedy period. Failure to timely pay the Participant's 25% co-payment or 25% copayment and cost savings combination is considered a material breach of this PCPP Agreement. In the event that the Department determines, in its sole discretion, that the Participant is in breach of this Agreement, the Department reserves the right to exercise all remedies at law and equity.

15. The Department reserves the right to unilaterally cancel this Agreement for refusal by the Participant to allow public access to all documents, papers, letters or other material regardless of the physical form, characteristics, or means of transmission, made or received subject to the provisions of Chapter 119, F.S., in conjunction with this Agreement (public records). The Department may terminate this agreement without cause with notice to the Participant pursuant to paragraph 17.

16. The parties hereto agree to waive any right to jury trial under this Agreement.

NOTICES.

17. Any notice or written communication required or permitted hereunder between the Parties shall be considered received when delivered via electronically by e-mail or delivered in person or by mail by the appropriate Party Representative. Party Representatives are as follows:

Department Representative:

Kenneth Busen, P.G.
PCPP Coordinator
Petroleum Restoration Program Department of Environmental Protection
2600 Blair Stone Road, MS 4580
Tallahassee, Florida 32399-2400
Phone: (850) 245-8745
E-mail: Kenneth.Busen@FloridaDEP.gov

Participant Representative:

_____
Name

_____
Title

_____
Street Address

_____
City, State, Zip

_____
Phone

_____
Email

AMENDMENTS.

18. Any amendment to this Agreement must be in writing and signed by the Parties.

ASSIGNMENT.

19. This Agreement shall not be assigned by either Party without prior written consent of the non-assigning Party. The Department will not accept assignment of this Agreement to any person or entity that, in the Department's determination, is unable to reliably comply with the 25% cost savings, co-payment, or combination of both obligation.

CHOICE OF LAW/FORUM.

20. The parties hereby agree that any and all actions or disputes arising out of this Agreement shall be governed by the laws of the State of Florida; and any such actions shall be brought in Leon County, Florida.

RESPONSIBILITY FOR SITE REHABILITATION WHERE CLEANUP COSTS EXCEED SPENDING LIMITATIONS.

21. In accordance with Section 376.3071(13)(f), F.S., in the event that the funding limitations specified in Section 376.3071(13), F.S., are exhausted or exceeded prior to completion of site rehabilitation, the Participant shall be obligated to continue site rehabilitation activities in accordance with Section 376.3071(5), F.S., and Chapter 62-780, F.A.C. If the Participant fails to timely continue the site rehabilitation activities the Department and its contractors) are permitted to continue performing assessment and remedial activities that the Department, at its sole discretion, deems appropriate. The Department will designate its own contractor(s) to undertake site rehabilitation actions without the approval of the Participant or any other party. The Department or its contractor(s) will perform any assessment and remedial activities that the Department, at its sole discretion deems appropriate to address the remaining petroleum contamination. As such, the Department, at its sole discretion, may choose to undertake assessment or cleanup activities that are less

stringent than the requirements of Chapters 62-780 and 62- 777, F.A.C., and which may not result in the issuance of a Site Rehabilitation Completion Order. Pursuant to Section 376.3071(7)(b), F.S., the Department will seek recovery for all sums expended by the Department for actions taken pursuant to this paragraph. Therefore, the Department explicitly reserves its right to seek recovery from the Participant or any other responsible party that amount which was expended by the Department in these matters.

ENTIRE AGREEMENT.

22. It is hereby understood and agreed that this Agreement states the entire agreement and that the Parties are not bound by any stipulations, representations, agreements or promises, oral or otherwise, not printed in this Agreement. This Agreement is binding upon execution of the Agreement and is for the benefit of the Parties and to no other entities or persons not signatories to this Agreement. This PCPP Agreement is the primary Agreement between the Parties and any conflict between the PCPP Agreement and any of the attachments the PCPP Agreement controls. No exhibit or attachment to this PCPP Agreement can modify any statutes, rules, or procedures applicable to the Petroleum Restoration Program.

FOR THE DEPARTMENT:

_____
Natasha Lampkin
Program Administrator
Petroleum Restoration Program

FOR THE PARTICIPANT:

_____
Participant Signature

Print Name: _____

Title: _____

Date: _____

Exhibits: **Exhibit A** - Legal Description of the Property [*Attach a legal description of the Property –from the most current deed and or a survey sketch/map of the property with GPS or other locational information*]

Exhibit B - Documents required to be submitted and attached to this Agreement pursuant to the option selected one page 1 and 2 of this Agreement.

Exhibit A

Legal Description:

CONGRESS GROVE LTS 1 THRU 7 BLK 1, S 1/2 OF 40 FT ABND PT OF 8TH LYG N OF & ADJ TO & N 1/2 OF 30 FT ABND CONGRESS CT LYG S OF & ADJ TO

Below is a checklist of the appropriate documents required to be submitted as Exhibit B with the PCPP Agreement.

1. a. When Participant is providing a 25% cost savings (as demonstrated in the form of reduced rates by the proposed ATC) to the Department attach:

☐ ATC's written commitment to a reduction in its Department ATC rates

OR

1.b. When Participant is providing a 25% cost savings (RMO II) to the Department attach:

☐ Participant's executed PCPP Conditional Closure Agreement (CCA) with an endpoint of RMO II, with Attachment B Conditional Closure Agreement Contractor Recommendation

☐ Participant's signed PCPP Declaration of Interim Restrictive Covenant (DIRC, only the current real property owner(s) can execute this document)

OR

2. When Participant is paying a 25% copayment of the cost to cleanup: none required

OR

3. When Participant is providing a combination of both a cost savings and copayment equal to 25% of the cost of cleanup attach:

☐ ATC's written commitment to reduction in its Department ATC rates with details of percentages for copayment and reduced rates

Please note, the above constitutes documentation required for Exhibit B, which will become a part of the PCPP Agreement. Additional Backup Documentation (such as the cost share contractor selection sheet, scope of work and cost estimate template, etc.) may also be required as a separate file during the PCPP submission process. Refer to the PCPP Instructions for Completion (https://floridadep.gov/waste/petroleum-restoration/documents/instructions-completion-pcpp-agreement) for full details on submitting.

FLORIDA DEPARTMENT OF
Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

PETROLEUM RESTORATION PROGRAM

COST SHARE SITE CONTRACTOR RECOMMENDATION SHEET

The Responsible Party (RP) may use this sheet to recommend an Agency Term Contractor with a contract in the same region as the site to perform work pursuant to a cost-share agreement in the Petroleum Restoration Program (PRP) that meets the 25% or higher cost share requirement pursuant to Chapter 62-772, Florida Administrative Code, Procurement Procedures for the Petroleum Restoration Program. The entity selecting the Contractor must be a party to the executed cost share agreement.

Site Name: Boynton Beach City - Public Works FDEP Facility ID#: 508630524

Site Address: 222 NE 9th Avenue Parcel ID#: 06-43-45-21-06-001-0010

Responsible Party Name: City of Boynton Beach

Responsible Party Rep. Name & Title: _____

Responsible Party Rep. Phone # & E-mail: _____

Select only one of the contractor options listed below:

(●) Recommend a PRP Agency Term Contractor with a valid contract in the region of the site:

Co. Name: American Environmental Engineering of Florida, Inc. DEP Contractor ID#: 10

Rep. Name & Title: Robert Brown, President

Rep. Phone # & E-mail: 850-545-0672 robert.brown@aeeus.com

( ) Allow the DEP to select a competitively procured contractor for the next scope of work in accordance with s. 287.057, Florida Statute.

I understand that the contractor selection option chosen above cannot be changed once it has been approved by the Department, unless poor performance by the Contractor is affirmatively demonstrated.

Ty Penserga - Mayor _____ _____

Responsible Party Rep. Name & Title | Signature | Date

Completed forms should be emailed to DWM.PRP.Contractor.Recommendations@dep.state.fl.us or sent to the letterhead address, Mail Station 4580, Attention: Robert Perlowski. Questions about cost share site contractor selection may be referred to Rob Perlowski at 850-245-8917 or at Robert.Perlowski@dep.state.fl.us.

A list of Agency Term Contractors by region is available on the Petroleum Restoration Program Website at https://floridadep.gov/waste/petroleum-restoration/content/qualified-contractor-information

PCPP Scope of Work (SOW) and Cost Estimate for 25% Cost Savings via Rate Reduction

Facility Name	Boynton Beach City - Public Works
Facility Address	222 NE 9th Avenue, Boynton Beach, Palm Beach County
FDEP Facility #	508630524
PCPP Eligibility Discharge Date(s)	3/24/1988
Priority Score	28

Based on the results of the Groundwater Sampling Annual report submitted by Envirospec, Inc., the scope of work and estimated cost to complete cleanup is described below:

SOW/Phase		**Estimated Cost**	
Baseline/Assessment		$	10,000.00
RAP		$	10,000.00
RAC/Injection		$	75,000.00
Groundwater Monitoring		$	20,000.00
		$	-
Well Abandonment/Site Restoration		$	10,000.00
	Subtotal	$	125,000.00
25% cost savings in the form of reduced rates			($31,250.)
FDEP Estimated total cost to closure		**$**	**93,750.00**

Any cost above the discharge(s) funding cap (and auxiliary funding, if applicable) will be the responsibility of the responsible party/owner

Estimated timetable and endpoint 12/31/2026

Robert Brown, P.E. — 12/3/2024

Scope and Estimate provided by — Date

American Environmental Engineering of Florida, Inc.

Company Name

EXHIBIT A

December 3, 2024

Sent via email to DWM_PRP_PCPP@floridaDEP.gov

PCPP Coordinator
Florida Department of Environmental Protection
2600 Blair Stone Road
Mail Station 4580
Tallahassee, Florida 32399-2400

Subject: Commitment of Rate Reduction for Petroleum Cleanup Participation Program (PCPP) Agreement
Boynton Beach City – Public Works
222 NE 9th Avenue
Boynton Beach, Palm Beach County, Florida
FDEP Facility ID # 508630524
Discharge Date(s): 03/24/1988 PCPP
Score: 28

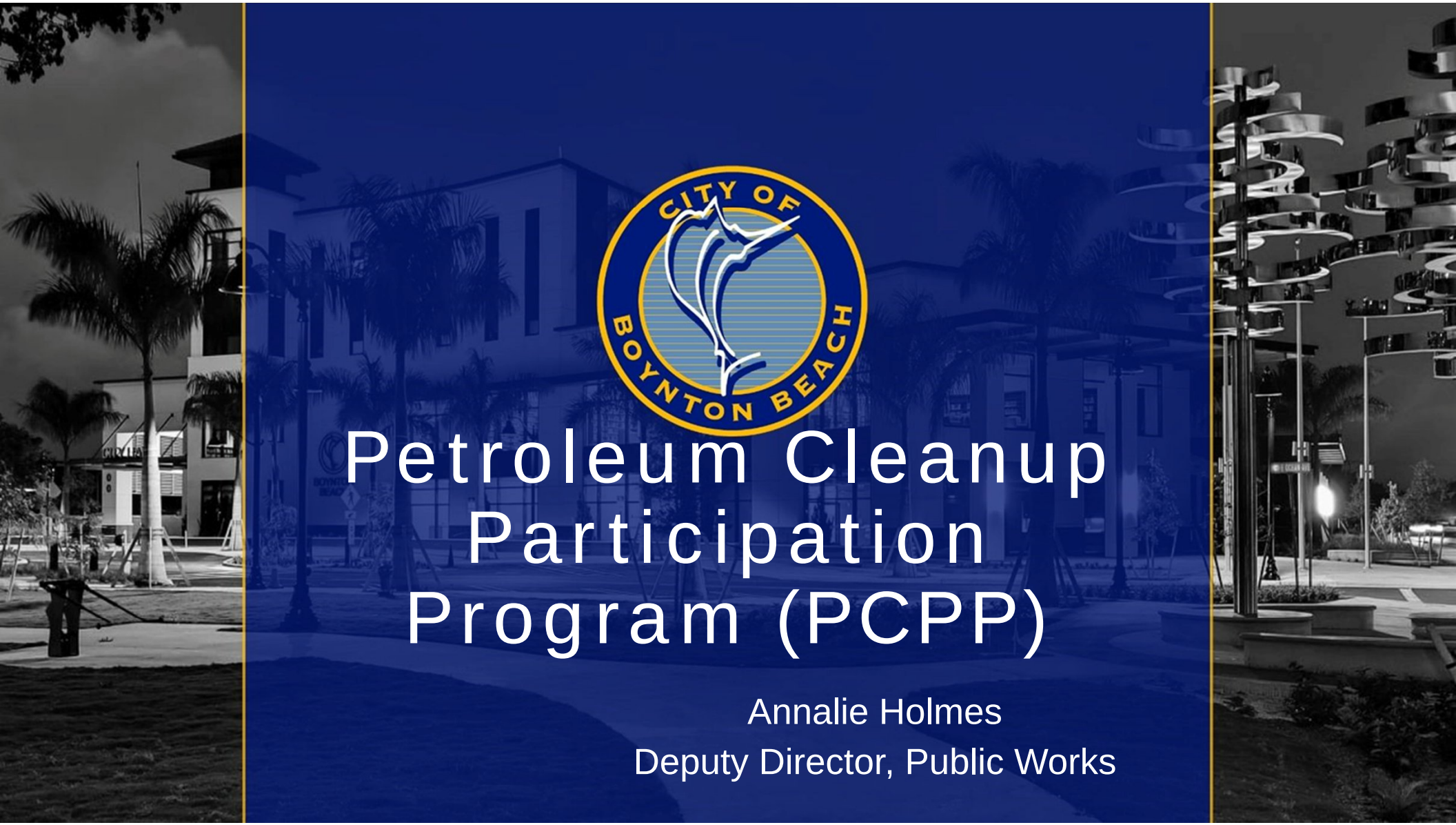
PCPP Coordinator,

As part of the July 01, 2020 revisions to Section 376.3071(13) Florida Statutes, owners/responsible parties (RP) may meet their 25% obligation via cost savings demonstrated in the form of reduced rates by the proposed agency term contractor (ATC). This letter serves to notify the Florida Department of Environmental Protection (FDEP) Petroleum Restoration Program (PRP) that American Environmental Engineering of Florida, Inc. (DEP Contractor ID# 00010), as the recommended contractor for the above referenced facility, agrees to a reduction of rates, in its ATC contract in the same region as the listed facility, as required to achieve the 25% cost savings.

Sincerely,

Robert Brown, P.E.
President
American Environmental Engineering of Florida, Inc.

ec: Juan Manzano, City of Boynton Beach, ManzanoJ@bbfl.us



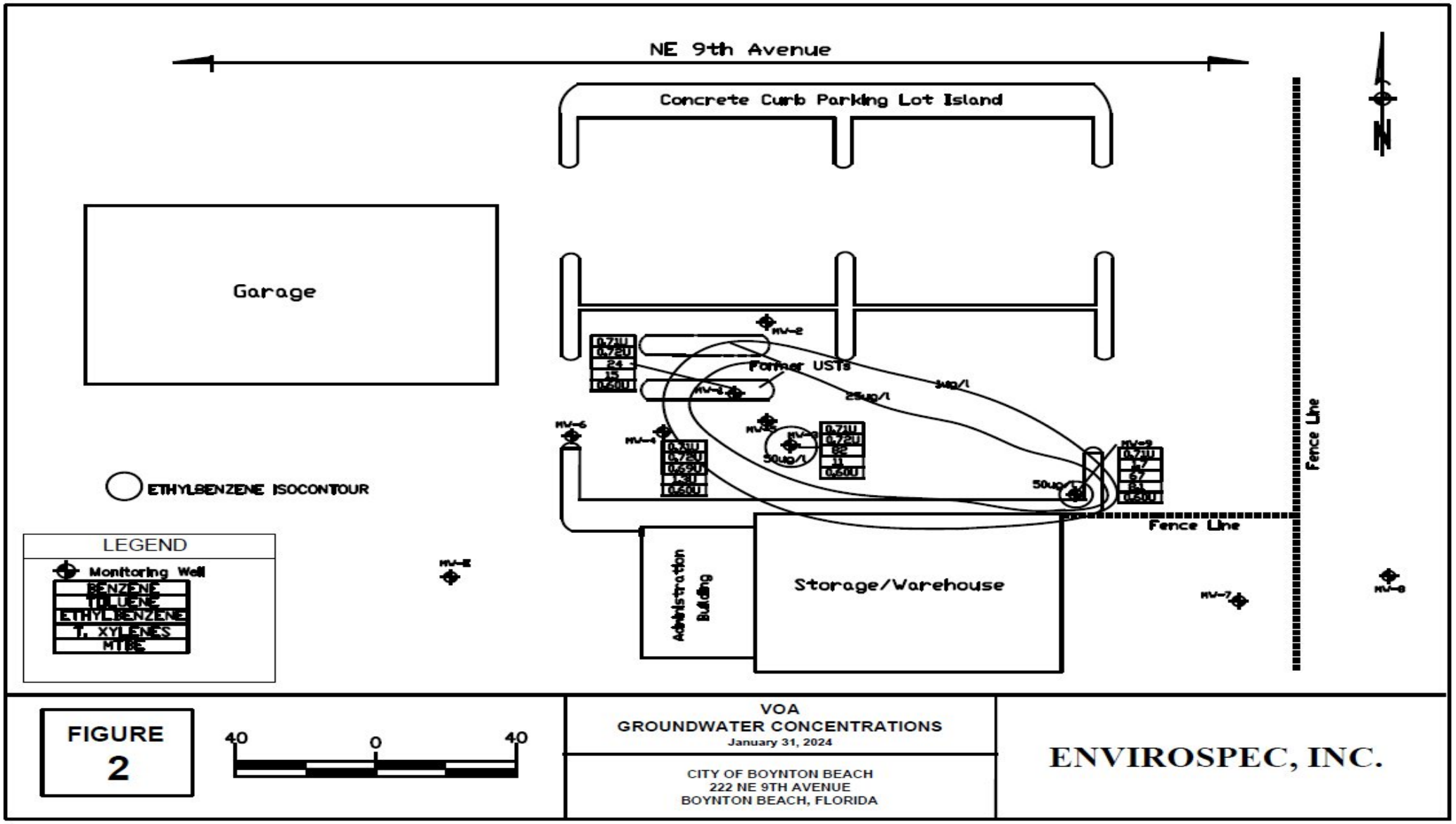
Petroleum Cleanup Participation Program (PCPP)

Annalie Holmes
Deputy Director, Public Works

Overview

- In 2014 existing underground single walled fiberglass fuel tanks were replaced with above ground double walled steel fuel tanks.
- As required by FDEP monitoring of the PW site soils continued throughout the years via onsite monitoring wells.
- Monitoring identified contaminants.
- Contaminant levels have continued to decrease over the years.




NE 9th Avenue
Concrete Curb Parking Lot Island
Garage
Former USTs
MV-2
MV-3
MV-4
MV-5
MV-6
MV-8
MV-9
3ug/l
25ug/l
50ug/l
50ug/l
Fence Line
Fence Line
ETHYLBENZENE ISOCONTOUR
LEGEND
Monitoring Well
BENZENE
TOLUENE
ETHYLBENZENE
T. XYLENES
MTBE
Administration Building
Storage/Warehouse
MV-7
MV-8
FIGURE 2
40
0
40
VOA
GROUNDWATER CONCENTRATIONS
January 31, 2024
CITY OF BOYNTON BEACH
222 NE 9TH AVENUE
BOYNTON BEACH, FLORIDA
ENVIROSPEC, INC.

Petroleum Cleanup Participation Program (PCPP)

- Florida Department of Environmental Protection offering State Funding for Site Rehabilitation.
- Up to $400,000 in state-funding.
- An additional $100,000 auxiliary funding.

Cost

- Estimated cost is $125,000.
- Grant will cover 75%.
- Contractor will absorb 25%.
- No cost to the city



Timeline

- Agreement must be executed by 2/1/25.
- FDEP will review the package for approval.
- FDEP with assign a project manager to coordinate with the selected contractor.
- Estimated completion within a year.



Impact to Operations

- Minimal impact.
- No excavation required.
- No disruption to fuel facility.





City of Boynton Beach
Agenda Item Request Form

Meeting Date: 01/21/2025

Proposed Resolution No. R25-024- Ratifying a Right of Entry and Release Agreement for Training on Private Property with FED27, LLC.

Requested Action: Staff recommends approval of Proposed Resolution No. R25-024.

Explanation of Request: FED27, LLC ("Owner") is the owner of 2617 S Federal Hwy, Boynton Beach, 34837, PCN: 08-43-45-33-00-000-5080 ("Property"). The Owner is permitting the City of Boynton Beach, its employees, contractors, or agents to enter the Property prior to demolition to conduct training exercises.

How will this affect city programs or services? This agreement will allow public safety personnel the opportunity to conduct training exercises in an unoccupied building prior to demolition at no charge. These trainings provide our public safety personnel opportunities to hone in on their skills for the betterment of the community as a whole.

Account Line Item and Description: N/A

Fiscal Impact: N/A

Attachments:
R25-024 Agenda_Item_2672-2025_Resolution_for_Right_of_Entry.docx
Exhibit A Police and Fire - Hold harmless - Fed27 2617 S Federal Hwy-Final.docx

RESOLUTION NO. R25-024

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, RATIFYING A RIGHT OF ENTRY AND RELEASE AGREEMENT FOR TRAINING ON PRIVATE PROPERTY WITH FED27, LLC; AND FOR ALL OTHER PURPOSES.

WHEREAS, FED27, LLC ("Owner") is the owner of 2617 S Federal Hwy, Boynton Beach, 34837, PCN: 08-43-45-33-00-000-5080 ("Property"). The Owner is permitting the City of Boynton Beach ("City"), its employees, contractors, or agents to enter the Property to conduct training exercises (the "Training"); and

WHEREAS, the City Commission, upon the recommendation of staff, has deemed it in the best interests of the City's citizens and residents to ratify a Right of Entry and Release Agreement for Training on Private Property with FED27, LLC.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption.

SECTION 2. The City Commission of the City of Boynton Beach, Florida, does hereby ratify a Right of Entry and Release Agreement for Training on Private Property between FED27, LLC and the City (the "Agreement"), in form and substance similar to that attached as Exhibit A.

SECTION 3. The City Commission of the City of Boynton Beach, Florida, hereby ratifies the City Manager's execution of the Agreement. The City Manager is further authorized to execute any ancillary documents required under the Agreement or necessary to accomplish the purposes of the Agreement and this Resolution.

SECTION 4. The City Clerk shall retain the fully executed Agreement as a public record of the City.

SECTION 5. This Resolution shall take effect in accordance with law.

[SIGNATURES ON THE FOLLOWING PAGE]

PASSED AND ADOPTED this _____ day of _____ 2025.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Ty Penserga	____	____
Vice Mayor – Aimee Kelley	____	____
Commissioner – Angela Cruz	____	____
Commissioner – Woodrow L. Hay	____	____
Commissioner – Thomas Turkin	____	____
VOTE	_____	

ATTEST:

_____
Maylee De Jesús, MPA, MMC
City Clerk

_____
Ty Penserga
Mayor

APPROVED AS TO FORM:

(Corporate Seal)

_____
Shawna G. Lamb
City Attorney

RIGHT OF ENTRY AND RELEASE AGREEMENT FOR TRAINING ON PRIVATE PROPERTY

INFORMATION

Property Owner: FED27, LLC ("Owner")

Owner Address and PCN: 613 NW 3rd Avenue, Fort Lauderdale, FL 33311-7449, Property ID No. 4942 34 07 6810 ("Property")

Property Address and PCN: 2617 S Federal Hwy, Boynton Beach, 34837, PCN: 08-43-45-33-00-000-5080

NOTICE

This is a Right of Entry and Release Agreement (hereinafter referred to as "Agreement"). This Agreement is intended to be a legally binding document, and when signed, it has legal consequences for the signer. Please read this document carefully before signing.

RIGHT OF ENTRY AND RELEASE

The Owner is the owner of the Property. Owner is permitting the City of Boynton Beach ("City"), its employees, contractors, or agents to enter the Property to conduct training exercises (the "Training"). By executing this Agreement, the Owner authorizes the City to conduct Training. For other good and valuable consideration to the Owner, the Owner agrees as follows:

1. Grant of Access: The Owner hereby grants the City temporary access and authorization to enter the Property on February 28, 2025, to conduct the Training. If the City is unable to perform and/or complete the Training on the date and times specified herein, the City will obtain written authorization from the Owner, in Owner's sole and absolute discretion, agreeing to an alternative date and/or time. Any such written authorization shall automatically become an amendment to this Agreement.

2. Release and Indemnification.

   a. By Owner. Owner acknowledges that the structures on the Property are under condemnation or unfit for human habitation, are beyond rehabilitation and that the City's Training may result in further damage to the structures on the Property. Owner will not hold the City liable for damages to the structures as a result of the Training. The post-Training condition of the structure and Property and subsequent demolition will be the sole responsibility of the Owner. Building façade to be kept in suitable condition per City code, in order to eliminate any risk of violations (i.e., not limited to code, building, enforcement, etc.); provided, however, if Training results in any violations of City code, City shall pay to cure any such violations.

   b. By City. City hereby releases, waives, discharges, and covenants not to sue the Owner from any and all causes of action, liability, claims, liabilities, expenditures, or damages that may be sustained by the City arising out of or relating to the Training, including, without limitation, claims for personal or bodily injury, property damage, or economic and non-economic losses. Further, the City hereby agrees to defend and indemnify Owner for any and all claims, injuries, or damages of any kind or nature (including, without limitation, attorneys' fees, court costs,

and expenses) asserted against Owner by a third party, or any employees, officers, contractors, agents or affiliates of the City, that arises from or related to the Training. Notwithstanding anything in this section, City is a municipal corporation of the State of Florida and has sovereign immunity from certain claims under Florida law, including section 768.28, Florida Statutes. If City is required to indemnify Owner under this Agreement, the limitations on tort liability under section 768.28, Florida Statutes, shall be the applicable limitations for City's indemnification obligations under this Agreement, regardless of the nature or basis of the claim asserted; provided, however, that City expressly waives sovereign immunity with respect to the indemnification obligation in this Section 2(b). Except as set forth herein, nothing herein is intended to serve as a waiver of sovereign immunity by City, nor shall anything included herein be construed as consent by City to be sued by third parties in any matter arising out of this Agreement. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

3. The undersigned Owner affirms that they own the Property, have authority to execute this Release, and have read, understand, and agree to the terms contained herein, and hereby knowingly, freely, and voluntarily sign this Agreement.

IN WITNESS WHEREOF, this Agreement has been fully executed on behalf of the parties hereto by its duly authorized representatives as of the date last set forth below.

CITY OF BOYNTON BEACH

By: _____
Danial Dugger, City Manager

Attest: _____
City Clerk

Date: _____, 2025.

OWNER

Print Name: _____

Signature: _____

Date: _____

Telephone Number: _____

Email: _____

CITY ATTORNEY'S OFFICE
Approved as to form and legality

By: _____

City of Boynton Beach
Agenda Item Request Form

Meeting Date: 01/21/2025

Proposed Resolution No. R25-025- Approve an Amendment to the Construction Contract for ITB UTL24-019 East Water Treatment Plant High Service Pumps 5 & 6 Improvements Project with Florida Design Drilling, LLC, adding a 10% Contingency Funding in the amount of $45,862.50, for staff-authorized change orders to address unforeseen conditions, bringing the total not-to-exceed purchase order amount to $504,487.50

Requested Action: Staff recommends approval of Proposed Resolution No. R25-025.

Explanation of Request: On February 15, 2024, Purchasing Services issued an Invitation to Bid for the East Water Treatment Plant High Service Pumps 5 & 6 Improvement Project with a mandatory pre-bid and site visit meeting held on February 21, 2024, to review the project with interested and qualified contractors. The purpose of the Bid was to obtain the services of a qualified contractor construction services for the installation of variable frequency drives (VFDs) for High Service Pumps 5 & 6 and piping modifications to connect High Service Pumps 5 & 6 to the existing filter backwash supply line. This work is required before implementing the Generator Replacement project, including additional piping modifications for High Service Pumps 1 through 4. The City awarded and entered into a contract with Florida Design Drilling, LLC in an amount not to exceed $458,625. City staff has identified a need to provide contingency funding for unforeseen conditions in the contract. The current Purchasing Policy Manual, effective December 20th, 2024, provides that "Any change order over the original amount shall require the Commission's approval if the total amount approved is over $200,000." Adding 10% contingency funding for unforeseen change orders in the amount of $45,862.50 brings the not-to-exceed PO and contract amount to a total of $504,487.50.

How will this affect city programs or services? Implementation of the project will allow for the continuation of optimal water treatment operations to meet drinking water regulations and increase operational reliability and flexibility.

Budgeted Item: Yes

Account Line Item and Description: Utilities CIP account # 403-5000-533-65-02 Project # WT2316.

Fiscal Impact: Funds for this expenditure are available in the Utilities CIP account: 403-5000-533.65-02 WT2316.

Attachments:
R25-025 Agenda Item 2616-2023 Resolution for UTL24-019 Amd #1.docx
Exhibit A to Resolution First Amendment - ITB UTL24-019 East Water Treatment Plant High Service Pumps 5 & 6 Improvments Project.pdf
Executed R24-107.pdf
Florida Design Drilling - EWTP HSP 5 & 6 - PO # 241406.pdf
UTL24-019 FL Design Drilling LLC - NTP.pdf
UTL24-019_EWTP_High_Service_Pumps_5___6_Impr_Project.pdf
First Amendment - ITB UTL24-019 East Water Treatment Plant High Service Pumps 5 & 6 Improvments Project.pdf

RESOLUTION NO. R25-025

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE CONSTRUCTION CONTRACT FOR ITB UTL24-019 EAST WATER TREATMENT PLANT HIGH SERVICE PUMPS 5 & 6 IMPROVEMENTS PROJECT WITH FLORIDA DESIGN DRILLING, LLC, ADDING A 10% CONTINGENCY FUNDING IN THE AMOUNT OF $45,862.50, FOR STAFF-AUTHORIZED CHANGE ORDERS TO ADDRESS UNFORESEEN CONDITIONS, BRINGING THE TOTAL NOT-TO-EXCEED AMOUNT TO $504,487.50; AND FOR ALL OTHER PURPOSES.

WHEREAS, on May 7, 2024, the City and Florida Design Drilling, LLC ("Vendor") entered into a Construction Contract No. UTL24-019 for East Water Treatment Plant High Service Pumps 5 & 6 Improvements Project (the "Agreement"); and

WHEREAS, the Parties desire to amend the Agreement to add a 10% Contingency Funding in the amount of $45,862.50 for staff-authorized change orders to address unforeseen conditions, bringing the total not-to-exceed purchase order amount to $504,487.50; and

WHEREAS, the City Commission, upon the recommendation of staff, has deemed it in the best interests of the city's citizens and residents to approve a First Amendment to the Construction Contract for ITB UTL24-019 East Water Treatment Plant High Service Pumps 5 & 6 Improvements Project with Florida Design Drilling, LLC, adding a 10% Contingency Funding in the amount of $45,862.50, for staff-authorized change orders to address unforeseen conditions, bringing the total not-to-exceed amount to $504,487.50.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption.

SECTION 2. The City Commission of the City of Boynton Beach, Florida, does hereby approve a First Amendment to the Construction Contract for ITB UTL24-019 East Water Treatment Plant High Service Pumps 5 & 6 Improvements Project between Florida Design Drilling, LLC and the City adding a 10% Contingency Funding in the amount of $45,862.50, for staff-authorized

change orders to address unforeseen conditions, bringing the total not-to-exceed amount to $504,487.50 (the "Amendment"), in form and substance similar to that attached as Exhibit A.

SECTION 3. The City Commission of the City of Boynton Beach, Florida, hereby authorizes the Mayor to execute the Amendment. The Mayor is further authorized to execute any ancillary documents as may be necessary to accomplish the purpose of this Resolution.

SECTION 4. The City Clerk shall retain the fully executed Amendment as a public record of the City. A copy of the fully executed Amendment shall be provided to Keith Webber to forward to the Vendor.

SECTION 5. This Resolution shall take effect in accordance with law.

PASSED AND ADOPTED this _____ day of _____ 2025.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Ty Penserga	____	____
Vice Mayor – Aimee Kelley	____	____
Commissioner – Angela Cruz	____	____
Commissioner – Woodrow L. Hay	____	____
Commissioner – Thomas Turkin	____	____
VOTE	_____	

ATTEST:

_____
Maylee De Jesús, MPA, MMC
City Clerk

_____
Ty Penserga
Mayor

APPROVED AS TO FORM:

(Corporate Seal)

_____
Shawna G. Lamb
City Attorney

AMENDMENT NO. 1 TO AGREEMENT BETWEEN THE CITY OF BOYNTON BEACH AND FLORIDA DESIGN DRILLING, LLC FOR EAST WATER TREATMENT PLANT HIGH SERVICE PUMPS 5 & 6 IMPROVEMENTS PROJECT

This First Amendment ("Amendment") is entered into by and between the City of Boynton Beach, a Florida municipal corporation ("City"), and Florida Design Drilling, LLC, a Florida Limited Liability Company registered to transact business in the State of Florida ("Vendor") (collectively referred to as the "Parties").

RECITALS

A. On May 7, 2024, the Parties entered into Contract No. UTL24-019 (the "Agreement") for East Water Treatment Plant High Service Pumps 5 & 6 Improvements Project.

B. The Parties desire to amend the Agreement to add a 10% Contingency Funding in the amount of $45,862.50 for staff-authorized change orders to address unforeseen conditions, bringing the total not-to-exceed purchase order amount to $504,487.50.

Now, therefore, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, City and Vendor agree as follows:

1. The above Recitals are true and correct and are incorporated herein by reference. All capitalized terms not expressly defined within this Amendment shall retain the meaning ascribed to such terms in the Agreement.

2. Except as modified herein, all remaining terms and conditions of the Agreement shall remain in full force and effect.

3. The Agreement is hereby amended as follows:

Amendment to Article 4: CONTRACT PRICE. Article 4 is hereby amended to include 10% Contingency Funding in the amount of Forty-Five Thousand Eight Hundred Sixty-Two and 50/100 Dollars ($45,862.50) for staff-authorized change orders to address unforeseen changes. The total not to exceed amount pursuant to this Agreement is hereby increased from Four Hundred Fifty-Eight Thousand Six Hundred Twenty-Five and 00/100 Dollars ($458,625.00) to Five Hundred Four Thousand Four Hundred Eighty-Seven and 50/100 Dollars ($504,487.50).

4. In the event of any conflict or ambiguity between this Amendment and the Agreement, the Parties agree that this Amendment shall control. The Agreement, as amended herein by this Amendment, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the Parties

agree that there are no commitments, agreements, or understandings concerning the subject matter hereof that are not contained in the Agreement as amended in this Amendment. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

5. Vendor acknowledges that through the date this Amendment is executed by Vendor, Vendor has no claims or disputes against City with respect to any of the matters covered by the Agreement.

6. The following new sections are added to Article 18 of the Agreement as follows:

18.10 Contingency Funds. ALL CONTINGENCY SUMS ARE CITY'S CONTINGENCY AND REMAIN THE CITY'S PROPERTY UNTIL EXPENSE IS APPROVED. The Agreement price shall not include any contingency amounts. If the Agreement or schedule of bid prices includes an agreed sum as contingency, such amount is identified solely for budget purposes and remains the City's funds. City may approve the 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 the Vendor to cover shortfalls in the Vendor's bid amount and not for use by the City to increase the scope of work. Vendor shall obtain prior written approval from City prior to the expenditure of contingency funds, and Vendor will be required to furnish documentation evidencing expenditures charged to contingency and/or allowances prior to the release of such funds by City. All uncommitted contingency funds remain the funds of City.

18.11 Public Entity Crime Act. Vendor represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Vendor further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Vendor has been placed on the convicted vendor list.

18.12 Prohibited Telecommunications Equipment. Vendor represents and certifies that Vendor and all subvendors do not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. Vendor represents and certifies that Vendor and all subvendors shall not provide or use such covered telecommunications equipment, system, or services during the duration of the term of the Agreement.

18.13 Sovereign Immunity. Except to the extent sovereign immunity may be deemed

waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by City, nor shall anything included herein be construed as consent by City to be sued by third parties in any matter arising out of this Agreement.

18.14 Anti-Human Trafficking. On or before the Effective Date of this Amendment, Vendor shall provide City with an affidavit attesting that the Vendor does not use coercion for labor or services, in accordance with Section 787.06(13), Florida Statutes.

7. The effective date of this Amendment shall be the date of complete execution by the Parties.

8. This Amendment may be executed in multiple originals, and may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(The remainder of this page is blank.)

CITY OF BOYNTON BEACH

CITY OF BOYNTON BEACH

By_____
Ty Penserga, Mayor

____ day of _____, 2025

Attest:_____
City Clerk

CITY ATTORNEY'S OFFICE
Approved as to form and legality

By:_____

FLORIDA DESIGN DRILLING, LLC

By_____
Authorized Signer

JEFFREY HOLST, SENIOR VICE PRESIDENT
Print Name and Title

14TH day of JANUARY, 2025



RESOLUTION NO. R24-107

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, AWARDING BID NO. UTL24-019 FOR THE EAST WATER TREATMENT PLANT HIGH SERVICE PUMPS 5 & 6 IMPROVEMENT PROJECT TO FLORIDA DESIGN DRILLING, LLC, AND APPROVING THE CONSTRUCTION CONTRACT WITH FLORIDA DESIGN DRILLING, LLC, FOR AN AMOUNT NOT TO EXCEED $458,625; PROVIDING AN EFFECTIVE DATE, AND FOR ALL OTHER PURPOSES.

WHEREAS, on February 15, 2024, Purchasing Services issued an Invitation to Bid for the East Water Treatment Plant High Service Pumps 5 & 6 Improvement Project with a mandatory pre-bid and site visit meeting held on February 21, 2024, in order to review the project with interested and qualified contractors. The purpose of the Bid was to obtain the services of a qualified contractor construction services for the installation of variable frequency drives (VFDs) for High Service Pumps 5 & 6 and piping modifications to connect High Service Pumps 5 & 6 to the existing filter backwash supply line. This work is required prior to implementing the Generator Replacement project, which will include additional piping modifications for High Service Pumps 1 through 4; and

WHEREAS, on March 18, 2024, Purchasing received and electronically opened two (2) bid proposals for Bid No UTL24-019 for the East Water Treatment Plant High Service Pumps 5 & 6 Improvement, one bid from Florida Design Drilling, LLC, and one bid from Hinterland Group, Inc. The two bids were accepted and evaluated. Bid proposals and supplemental information were reviewed by Purchasing Services and Globaltech, Inc., the project engineer on record. Based on the references and bid review of all information provided as well as the specific project experience qualification established in the bid documents, Purchasing Services,

City Staff, and Globaltech, Inc., recommend the project be awarded to Florida Design Drilling, LLC, as the lowest, most responsive, responsible bidder with the bid amount of $458,625; and

WHEREAS, the City Commission of the City of Boynton Beach, upon the recommendation of staff, deems it in the best interest of the citizens and residents of the City of Boynton Beach to award Bid No. UTL24-019 for the East Water Treatment Plant High Service Pumps 5 & 6 Improvement Project to Florida Design Drilling, LLC, and approve the Construction Contract with Florida Design Drilling, LLC, for an amount not to exceed $458,625.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. The City Commission of the City of Boynton Beach hereby approves the award of Bid No. UTL24-019 for the East Water Treatment Plant High Service Pumps 5 & 6 Improvement Project to Florida Design Drilling, LLC, and approves the Construction Contract with Florida Design Drilling, LLC, for an amount not to exceed $458,625 (the "Agreement"), in form and substance similar to that attached as **"Exhibit A."**

SECTION 3. The City Commission of the City of Boynton Beach hereby authorizes the City Manager to execute the Agreement. The City Manager is further authorized to execute any ancillary documents required under the Agreement or necessary to accomplish the purposes of the Agreement, including any term extensions as provided in the Agreement, provided such documents do not modify the financial terms/material terms.

SECTION 4. The City Clerk shall retain one fully executed Agreement as a public record and forward a copy to Joel Lacroze and Kris Pinto to forward to Florida Design Drilling, LLC.

SECTION 5. This Resolution shall take effect as provided by law.

PASSED AND ADOPTED this 7th day of May 2024.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Ty Penserga	✓	
Vice-Mayor – Aimee Kelley	✓	
Commissioner – Angela Cruz	✓	
Commissioner – Woodrow L. Hay	✓	
Commissioner – Thomas Turkin	✓	
VOTE	5.0	

ATTEST:

Maylee De Jesús, MPA, MMC
City Clerk

Ty Penserga
Mayor

(Corporate Seal)

APPROVED AS TO FORM:

Shawna G. Lamb
City Attorney

CITY OF BOYNTON BEACH CORPORATE SEAL INCORPORATED 1920 FLORIDA

CONSTRUCTION CONTRACT
EAST WATER TREATMENT PLANT HIGH SERVICE PUMPS 5 & 6 IMPROVEMENTS PROJECT

THIS AGREEMENT is entered into by and between the CITY OF BOYNTON BEACH, a municipal corporation organized and existing under the laws of Florida, with a business address of 100 East Ocean Ave., Boynton Beach, FL 33435, hereinafter referred to as "CITY", and Florida Design Drilling, LLC a Partnership authorized to do business in the State of Florida, with a business address of 7733 Hooper Road, West Palm Beach, FL 33411, hereinafter referred to as the "VENDOR," each a "Party" and collectively the "Parties."

WHEREAS, the CITY has selected the VENDOR to perform construction services related to the East Water Treatment Plant High Service Pumps 5 & 6 Improvements Project; and,

WHEREAS, at its meeting of **May 7, 2024**, by Resolution No. _____, the CITY Commission approved this award to VENDOR and authorized the proper CITY officials to execute this Agreement hereinafter referred to as Contract No.: **UTL24-019** and used interchangeably with "contract".

NOW, THEREFORE, CITY and VENDOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. SCOPE OF WORK. VENDOR shall furnish all labor, materials, equipment, services, and incidents necessary to perform all "WORK" described in the Contract Documents (as defined in Article 8 below) and related thereto for the Project.

Article 2. CONSULTANT. Shall mean ("GLOBALTECH, INC"), which has designed the Project and will assume all duties and responsibilities and will have the rights and authority assigned to CONSULTANT in connection with the completion of the WORK in accordance with the Contract Documents.

Article 3. CONTRACT TIME: TERMINATION: LIQUIDATED DAMAGES.

3.1 **Contract Time**. The WORK will be substantially completed within **(360) [three hundred sixty]** calendar days from the effective date of this Agreement, when the Contract Time commences to run as provided in paragraph **2.3** of the General Conditions and completed and ready for final payment in accordance with paragraph **14.9** of the General Conditions within **60** calendar days from the date of Substantial Completion.

3.2 **Termination for Convenience**. This Agreement may be terminated by CITY for convenience, upon providing fourteen (14) business days of written notice to VENDOR for such termination. In the event of termination, VENDOR shall be paid its compensation for services performed until the termination date, including services reasonably related to termination. In the event that VENDOR abandons this Agreement or causes it to be terminated, VENDOR shall indemnify CITY against loss pertaining to this termination.

3.3 **Termination for Cause.** In addition to all other remedies available to CITY, this Agreement shall be subject to cancellation by CITY for cause, should VENDOR neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by VENDOR of written notice of such neglect or failure.

3.4 **Liquidated Damages.** The CITY and VENDOR recognize and acknowledge that time is of the essence of this Contract and that the CITY will suffer financial loss if the WORK is not completed within the times specified in paragraph **3.1** above, plus any extensions thereof

allowed in accordance with **Article 12** of the General Conditions. Each of the parties acknowledges that it has attempted to quantify the damages which would be suffered by the CITY in the event of the failure of VENDOR to perform in a timely manner, but neither one has been capable of ascertaining such damages with certainty. CITY and VENDOR also recognize and acknowledge the delays, expense, and difficulties involved in proving in a legal preceding the actual loss suffered by the CITY if the WORK is not completed on time. Accordingly, instead of requiring any such proof, the CITY and VENDOR agree that as liquidated damages for delay (but not as a penalty) VENDOR shall pay the CITY, **[Eight Hundred]** Dollars **($ 800.00)** for each day of that expires after the time specified in paragraphs **3.1** for substantial completion until the WORK is substantially complete. After Substantial Completion, if VENDOR shall neglect, refuse or fail to complete the remaining WORK within the Contract Time or any proper extension thereof granted by the CITY, VENDOR shall pay CITY [**Two Hundred**] Dollars **($ 200.00)** for each day that expires after the time specified in paragraph **3.1** for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

CITY shall pay VENDOR, for the faithful performance of the Contract, in lawful money of the United States of America, and subject to the additions and deductions as provided in the Contract Documents, a total sum as follows:

Based on the Contract prices shown in the Bid Form submitted to the CITY as subsequently revised and as stated herein, a copy of such Bid Form being a part of the Contract Documents, the aggregate amount of this Contract (obtained from either the lump sum price, the application of unit prices to the quantities shown in the Bid Form or the combination of both) not to exceed:

Four Hundred Fifty-Eight Thousand Six Hundred Twenty-Five Dollars and Zero Cents	**$ 458, 625.00**
(Written)	**(Numerical)**

Article 5. PAYMENT PROCEDURES.

VENDOR shall submit Applications for Payment in accordance with **Article 14** of the General Conditions. CITY will process Applications for Payment as provided in the General Conditions.

5.1 Progress Payments. CONTRACT may submit an Application for Payment as recommended by CONSULTANT, for WORK completed during the Project at intervals of not more than once a month. All progress payments will be on the basis of the progress of WORK measured by the schedule of values established in Paragraph **2.9.1** of the General Conditions and in the case of Unit Price Work based on the number of units completed or, in the event there is no schedule of values, as provided in the General Requirements.

5.2 Prior to Substantial Completion progress payments will be made in an amount equal to 90% of WORK completed, but, in each case, less the aggregate of payments previously made and less such amounts as CONSULTANT shall determine, or CITY may withhold, in accordance with paragraph **14.5** of the General Conditions.

5.3 VENDOR shall submit with each Application for Payment, an updated progress schedule acceptable to the CITY and a Warranty of Title/Release of Liens relative to the Work that is the subject of the Application. Each Application for Payment shall be submitted to the CITY for approval. The CITY shall make payment to the VENDOR within thirty (30) days after approval by the CITY of VENDOR'S Application for Payment and submission of an acceptable updated progress schedule.

5.4 The CITY may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

a. Defective Work not remedied.
b. Claims filed or reasonable evidence indicating probable filing of claims by other parties against VENDOR.
c. Failure of VENDOR to make payments properly to SUBCONTRACTORS or for material or labor.

d. Damage to another VENDOR not remedied.
e. Liquidated damages and costs incurred by the CITY for extended construction administration.
f. Failure of VENDOR to provide any document(s) required by the Contract Documents.

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

5.5 Final Payment. Upon final completion and acceptance of the WORK in accordance with paragraph **14.10** of the General Conditions, CITY shall pay the remainder of the Contract Price as recommended by CONSULTANT as provided in paragraph **14.10.**

5.6 All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

Article 6. RETAINAGE.

Five percent (5) of all monies earned by the VENDOR shall be retained by the CITY until Final Completion of the construction services purchased (defined as that point at which one hundred (100) percent of the construction of the work as defined in the Contract Schedule of Values has been performed under the contract by the VENDOR) has been reached and acceptance by CITY.

Within 30 calendar days after reaching the earlier of substantial completion or beneficial occupancy, the City/Owner and the Vendor will inspect the work and develop a punch list covering those items required to render complete, satisfactory, and acceptable construction services purchased by the City/Owner. The punch list will include a schedule of values that provides the estimated cost to complete each item on the punch list. If the City/Owner and Vendor are unable to agree on an item or value, the City/Owner has final discretion whether to include an item and the amount for valuation of the cost to complete each item on the punch list. Within 20 business days after the creation of the punch list, the remaining contract balance, including retainage, will be paid to the Vendor less an amount equal to 150 percent of the cost to complete the items on the punch list. Upon reaching final acceptance for an item or all items, the 150 percent withheld for each item will be released with final payment. For projects valued at $10 million or more, the 30-calendar day period may be extended to 45 days.

Article 7. CONTRACTOR GUARANTEE.

VENDOR warrants all work, materials, and equipment shall be free from damages and/or defects owing to faulty materials or workmanship for a period of one (1) year after completion of the WORK covered by this Contract. The VENDOR, free of all costs to the CITY, shall replace any part of the equipment, materials, or work included in this Contract, which proves to be defective by reason of faulty materials, damages, and/or workmanship within twelve (12) month period.

Article 8. CONTRACT DOCUMENTS.

The Documents hereinafter listed shall form the Contract and they are as fully a part of the Contract as if attached hereto:

8.1 Request for Bid
8.2 Instructions to Proposers / Bidders
8.3 Proposal Forms (including the Proposal, Schedule(s), Submission Requirements of Proposer / Bidder, and all required certificates, licenses, affidavits, and other documentation)
8.4 Contract
8.5 VENDOR's Bid Bond, Performance, and Payment Bond
8.6 Standard Terms and Conditions for Bidders
8.7 Special Conditions
8.8 General Conditions for Construction

8.9 Specifications & Technical Requirements

8.10 Engineering Design Handbook and Construction Standards for the City of Boynton Beach (available online at: https://www.boynton-beach.org/engineering/new-construction-department- public-works-engineering-division)

8.11 **Attachment A** – 115380 E WTP High Service Pumps 5 and 6 Imp (UT-3A-03) – Bid Set/Drawings

Article 9. NOTICE: All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to CITY shall be mailed to:

Daniel Dugger, City Manager
City of Boynton Beach
100 East Ocean Ave,
Boynton Beach, FL 33435
Telephone No. (561) 742-6000

And if sent to the VENDOR shall be mailed to:

Florida Design Drilling, LLC
Att: Jeffrey Holst
7733 Hooper Road
West Palm Beach, FL 33411
Telephone #: (561) 844-2966
Email: jeff@fldrilling.com

Article 10. INDEMNITY.

10.1 The VENDOR shall indemnify and hold harmless the CITY and its officers, employees, agents, instrumentalities, and the State of Florida, Division of Emergency Management from liability, losses or damages, including attorneys' fees and costs of defense through the conclusion of any appeals, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of or resulting from the negligence, recklessness, or intentional wrongful misconduct of VENDOR, its employees, agents, partners, principals or subcontractors during the term of this Agreement or resulting thereafter. The VENDOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. The VENDOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the VENDOR shall in no way limit the responsibility to indemnify, keep, and save harmless and defend the CITY or its officers, employees, agents, and instrumentalities as herein provided.

10.2 VENDOR's aggregate liability pursuant to this indemnification provision shall not exceed one and one-half (1 1/2) times the contract price or One Million Dollars ($1,000,000) per occurrence, whichever is greater.

10.3 Upon completion of all services, obligations, and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

10.4 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of VENDOR.

10.5 Nothing contained herein is intended nor shall be construed as a contractual waiver of the CITY's rights, limits, and immunities under the common law or Section 768.28, Florida Statutes, as may be amended from time to time, 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. VENDOR and CITY agree that any liability of the CITY under this Contract shall be limited to the amounts set forth in Sec. 728.68, Florida Statutes.

Article 11. REIMBURSEMENT OF CONSULTANT EXPENSES.

Should the completion of this Contract be delayed beyond the specified or adjusted time limit, VENDOR shall reimburse the CITY for all expenses of consulting and inspection incurred by the CITY during the period between said specified or adjusted time and the actual date of final completion. All such expenses for consulting and inspection incurred by the CITY will be charged to the VENDOR and be deducted from payments due VENDOR as provided by this Contract. Said expenses shall be further defined as CONSULTANT charges associated with the construction contract administration, including resident project representative costs.

Article 12. FLORIDA'S PUBLIC RECORDS LAW.

The CITY is a public agency subject to Chapter 119, Florida Statutes. The VENDOR shall comply with Florida's Public Records Law. Specifically, the VENDOR shall:

12.1 Keep and maintain public records required by the CITY to perform the service;

12.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statute or as otherwise provided by law;

12.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, VENDOR shall destroy all copies of such confidential and exempt records remaining in its possession once the VENDOR transfers the records in its possession to the CITY; and,

12.4 Upon completion of the contract, VENDOR shall transfer to the CITY, at no cost to the CITY, all public records in VENDOR's possession. All records stored electronically by VENDOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

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

CITY CLERK'S OFFICE
100 E. OCEAN AVENUE
BOYNTON BEACH, FLORIDA 33435
561-742-606
CityClerk@bbfl.us

Article 13. E-VERIFY.

13.1 CONTRACTOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

13.1.1 Definitions for this Section:

A. "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for a salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.

B. "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for a salary, wages, or other remuneration.

C. "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

13.1.2 Registration Requirement; Termination: Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-Verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E- Verify System to verify the employment eligibility of:

A. All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and

B. All persons (including sub-vendors/sub-consultants/sub-contractors) assigned by Contractor to perform work pursuant to the contract with the City of Boynton Beach. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Boynton Beach; and

C. The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

Article 14. PROHIBITION AGAINST CONSIDERING SOCIAL, POLITICAL OR IDEOLOGICAL INTERESTS IN GOVERNMENT CONTRACTING – F.S. 287.05701.

VENDOR is hereby notified of the provisions of section 287.05701, Florida Statutes, as amended, that the CITY will not request documentation of or consider VENDOR's social, political, or ideological interests when determining if the VENDOR is a responsible VENDOR. VENDOR is further notified that the CITY's governing body may not give preference to a Vendor based on the VENDOR's social, political, or ideological interests.

Article 15. SCRUTINIZED COMPANIES.

By execution of this Agreement, VENDOR certifies that VENDOR is not participating in a boycott of Israel. VENDOR further certifies that VENDOR is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has VENDOR been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the CITY will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of contract. The CITY shall provide notice, in writing, to the VENDOR of the CITY's determination concerning the false certification. VENDOR shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, the VENDOR shall have ninety (90) days following

receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the VENDOR does not demonstrate that the CITY's determination of false certification was made in error then the CITY shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

Article 16. COVENANT AGAINST CONTINGENT FEES.

The VENDOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the VENDOR, to solicit or secure this Agreement, and that VENDOR has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the VENDOR any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Article 17. TRUTH IN NEGOTIATION CERTIFICATE.

B. Execution of this Agreement by the VENDOR shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement is accurate, complete, and current as of the date of the Agreement and no higher than those charged to the VENDOR's most favored customer for the same or substantially similar service.

C. The said rates and cost shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to outside vendors. The CITY shall exercise its rights under this "Certificate" within one (1) year following payment.

Article 18. MISCELLANEOUS.

18.1 Any and all legal action necessary to enforce the terms of this Agreement shall be governed by the laws of the State of Florida. Any legal action arising from the terms of this Agreement shall be submitted to a court of competent jurisdiction located exclusively in Palm Beach County.

18.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

18.3 City and VENDOR each binds itself, their partners, successors, assigns and legal representatives to the other party hereto, their partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

18.4 In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

18.5 Prior to final payment of the amount due under the terms of this Agreement, to the extent permitted by law, a final waiver of lien shall be required to be submitted by the VENDOR, as well as all suppliers and subcontractors whom worked on the project that is the subject of this Agreement. Payment of the invoice and acceptance of such

payment by VENDOR shall release City from all claims of liability by VENDOR in connection with this Agreement.

18.6 At all times during the performance of this Agreement, VENDOR shall protect CITY's property from all damage whatsoever on account of the work being carried on under this Agreement.

18.7 It shall be the VENDOR's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, city, state, and federal agencies as applicable.

18.8 This Agreement represents the entire and integrated agreement between City and VENDOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement is intended by the parties hereto to be final expression of this Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made. In the event of a conflict between this Agreement, the solicitation and the VENDOR's bid proposal, this Agreement shall govern then the solicitation, and then the bid proposal.

18.9 This Agreement will take effect once signed by both parties. This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

Article 19. <u>DEFAULT OF CONTRACT & REMEDIES.</u>

19.1 **Correction of Work.** If, in the judgment of CITY, work provided by VENDOR does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, CITY reserves the right to require that VENDOR correct all deficiencies in the work to bring the work into conformance without additional cost to CITY, and/or replace any personnel who fail to perform in accordance with the requirements of this Agreement. CITY shall be the sole judge of non-conformance and the quality of workmanship.

19.2 **Default of Contract**. The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by VENDOR:

19.2.1 The abandonment of the project by VENDOR for a period of more than seven (7) business days.

19.2.2 The abandonment, unnecessary delay, refusal of, or failure to comply with any of the terms of this Agreement or neglect, or refusal to comply with the instructions of the CITY's designee.

19.2.3 The failure by VENDOR to observe or perform any of the terms, covenants, or conditions of this Agreement to be observed or performed by VENDOR, where such failure shall continue for a period of seven (7) days after written notice thereof by CITY to VENDOR; provided, however, that if the nature of VENDOR's default is such that more than seven (7) days are reasonably required for its cure, then VENDOR shall not be deemed to be in default if VENDOR commences such cure within said seven (7) day period and thereafter diligently prosecutes such cure to completion.

19.2.4 The assignment and/or transfer of this Agreement or execution or attachment thereon by VENDOR or any other party in a manner not expressly permitted hereunder.

19.2.5 The making by VENDOR of any general assignment or general arrangement for the benefit of creditors, or the filing by or against VENDOR of a petition to

have VENDOR adjudged a bankruptcy, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against VENDOR, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of VENDOR's assets, or for VENDOR's interest in this Agreement, where possession is not restored to VENDOR within thirty (30) days; for attachment, execution or other judicial seizure of substantially all of VENDOR's assets, or for VENDOR's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

19.3 **Remedies in Default.** In case of default by VENDOR, CITY shall notify VENDOR, in writing, of such abandonment, delay, refusal, failure, neglect, or default and direct VENDOR to comply with all provisions of the Agreement. A copy of such written notice shall be mailed to the Surety on the Performance Bond. If the abandonment, delay, refusal, failure, neglect or default is not cured within seven (7) days of when notice was sent by CITY, CITY may declare a default of the Agreement and notify VENDOR of such declaration of default and terminate the Agreement. The Surety on the Performance Bond shall within ten (10) days of such declaration of default, rectify or cause to be rectified any mismanagement or breach of service in the Agreement and assume the work of VENDOR and proceed to perform services under the Agreement, at its own cost and expense.

19.3.1 Upon such declaration of default, all payments remaining due VENDOR at the time of default, less all sums due CITY for damages suffered, or expenses incurred by reason of default, shall be due and payable to Surety. Thereafter the Surety shall receive monthly payments equal to those that would have been paid by the VENDOR had the VENDOR continued to perform the services under the Agreement.

19.3.2 CITY may complete the Agreement, or any part thereof, either by day labor, use of a subcontractor, or by re-letting a contract for the same, and procure the equipment and the facilities necessary for the completion of the Agreement, and charge the cost of same to VENDOR and/or the Surety together with the costs incident thereto to such default.

19.3.3 In the event CITY completes the Agreement at a lesser cost than would have been payable to VENDOR under this Agreement, if the same had been fulfilled by VENDOR, CITY shall retain such differences. Should such cost to CITY be greater, VENDOR shall pay the amount of such excess to the CITY.

19.3.4 Notwithstanding the other provisions in this Article, CITY reserves the right to terminate the Agreement at any time, whenever the service provided by VENDOR fails to meet reasonable standards of the trade after CITY gives written notice to the VENDOR of the deficiencies as set forth in the written notice within fourteen calendar (14) days of the receipt by VENDOR of such notice from CITY.

SIGNATURE PAGE FOLLOWS

"This Agreement will take effect once signed by both parties. This Agreement may be signed by the parties in counterparts, whether signed physically or electronically, which together shall constitute one and the same agreement among the parties. A facsimile signature shall constitute an original signature for all purposes."

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year set forth below their respective signatures.

CITY OF BOYNTON BEACH

Daniel Dugger, City Manager

Date: May 7, 2024

FLORIDA DESIGN DRILLING, LLC

(Signature), Florida Design Drilling, LLC

Jeffrey Holst

Print Name of Authorized Official

Senior Vice President

Title

4/5/24

Date

(Corporate Seal)

FLORIDA DESIGN DRILLING LLC LIMITED LIABILITY SEAL FLORIDA QT. 2005

Attest/Authenticated:

Witness

Fernanda Sousa

Print Name

Approved as to Form:

Shawna G. Lamb, Office of the City Attorney

Attested/Authenticated:

Maylee De Jesus, City Clerk

CITY OF BOYNTON BEACH CORPORATE SEAL INCORPORATED 1920 FLORIDA

PURCHASE ORDER

CITY OF BOYNTON BEACH, FLORIDA

PROCUREMENT SERVICES DEPARTMENT
100 EAST OCEAN AVE
P.O. BOX 310
BOYNTON BEACH, FLORIDA 33425-0310

P.O. #: 241406
DATE: 06/05/24

VENDOR 16151

TO: FL DESIGN DRILLING CORP.
7733 HOOPER RD
WEST PALM BEACH, FL 33411

SHIP TO:
City of Boynton Beach
EAST UTILITY ADMIN
124 E. WOOLBRIGHT ROAD
BOYNTON BEACH, FL 33435

REQUISITION NO. 87401	ORDERING DEPARTMENT: UTIL/ENG-JL/MM		INQUIRIES REGARDING PURCHASE ORDER CALL (561)742-6310
DATE NEEDED:	* CONTRACT NO.	COMMISSION APPROVED:	

LINE#	QUANTITY	UOM	ITEM NO. AND DESCRIPTION	UNIT COST	EXTENDED COST
1	458625.00	EA	VARIABLE FREQUENCY DRIVES	1.0000	458625.00

REMARKS:
EWTP HIGH SERVICE PUMPS 5 & 6
INSTALLATION OF VARIABLE FREQUENCY DRIVES
(VFDs) FOR HIGH SERVICE PUMPS AND PIPING
MODIFICATIONS TO EXISTING FILTER BACKWASH
SUPPLY LINE
COMMISSION APPROVED 05/07/2024 R24-107
PROJECT # WT2316 UTL21-019
NOT TO EXCEED $458,625.00 W/O COMMISSION APPROVAL
CERTIFICATE OF INSURANCE EXPIRES 01/05/2025

PROCUREMENT SERVICES: Anthony Dawkins June 5, 2024		P.O. TOTAL:	458625.00
FLORIDA STATE SALES TAX EXEMPTION CERTIFICATE NO. 85-8012621544C-0 THE CITY OF BOYNTON BEACH IS EXEMPT FROM FEDERAL EXCISE TAXES: WHERE TAX APPLIES INVOICE MUST SHOW GROSS PRICE, AMOUNT OF THE TAX, AND NET PRICE. EXEMPTION CERTIFICATE WILL BE FURNISHED UPON REQUEST.	**IMPORTANT INSTRUCTIONS** OUR PURCHASE ORDER NUMBER MUST APPEAR ON ALL PACKAGES, TICKETS, INVOICES, STATEMENTS, AND CORRESPONDENCE. **MAIL INVOICES TO:** **FINANCIAL SERVICES DEPARTMENT** **P.O. BOX 310** **BOYNTON BEACH, FL 33425-0310**	1.RENDER SEPARATE INVOICE FOR THIS ORDER OR FOR EACH SHIPMENT THEREON IMMEDIATELY FOLLOWING SHIPMENT. 2.PREPAID FREIGHT CHARGEABLE TO THE CITY OF BOYNTON BEACH MUST BE SUPPORTED BY CARRIER'S RECEIPT. 3.INVOICES AND STATEMENTS SUBJECT TO CASH DISCOUNT SPECIFIED HEREON.	

ORIGINAL

CITY OF BOYNTON BEACH
GENERAL TERMS AND CONDITIONS

Tax Exemption:

The City (buyer) is tax exempt, ID# 85-8012621544C-0

Acceptance of Contract:

This order is the City's offer to purchase the goods and/or services described on the reverse side from the Vendor (seller). The City's placement of this order is expressly conditioned upon the Vendor's acceptance of all the terms and conditions of purchase contained on or attached to this Purchase Order ("Contract").

Amendments:

No agreement or understanding to modify this Contract shall be binding upon the City unless in writing and signed by the City's authorized agent. All specifications, drawings, and data submitted to the Vendor with this order are hereby incorporated and made a part hereof.

Compliance with Laws:

The Vendor certifies that in performing this Contract, they will comply with all applicable provisions of the federal, state and local laws, regulations, rules and orders.

Delivery:

All prices must be F.O.B. destination. Time is of the essence on this Contract. If completed deliveries are not made at the time agreed, the City reserves the right to cancel or purchase elsewhere and to hold Vendor accountable. If delivery dates cannot be met, Vendor agrees to advise the City, in writing of the earliest possible shipping date for acceptance by the City.

Inspection:

Goods and Material must be properly packaged. Damaged goods and materials will not be accepted, or if the damage is not readily apparent at the time of the delivery, the goods shall be returned at no cost to the City. The City reserves the right to inspect the goods at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the goods at the time of delivery.

Laws Governing:

This Contract shall be governed by and construed according to the laws of the State of Florida. Venue shall be in the Circuit Court for the 15th Judicial Circuit, In and For Palm Beach County, Florida.

Material Safety Data Sheets:

Proper Material Safety Data Sheets, in compliance with OSHA's Hazard Communications Standard, must be provided by the Vendor to the City at the time of purchase or delivery.

Patents and Copyrights:

If an article sold and delivered to the City hereunder shall be protected by any applicable patent or copyright, the Vendor agrees to indemnify and save harmless the City from and against any and all suits, claims, judgments, and costs instituted or recovered against it by any person whomsoever on account of the use or sale of such articles by the City in violation or right under such patent or copyright.

Payment:

All invoices shall be addressed to the ordering department at City of Boynton Beach, P.O. Box 310, Boynton Beach, FL 33425-0310, as indicated on the front of this Purchase Order and must include Vendor's name and phone number, and clearly list quantities, item descriptions and units of measure.

Public Records:

The City of Boynton Beach is public agency subject to Chapter 119, Florida Statutes. The Vendor shall comply with Florida's Public Records Law.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS:

CITY CLERK'S OFFICE
100 EAST OCEAN AVENUE
BOYNTON BEACH, FLORIDA, 33435
561-742-6060
CityClerk@BBFL.US

E-Verify:

By accepting this Purchase Order, Vendor/Contractor and any sub-contractors related to this purchase becomes obligated to comply with section 448.095, Fla. Stat., "Employment Eligibility," including registration and use of the E-Verify system. Please contact the Purchasing Division for more information if you are unsure of the requirements this imposes.

Risk of Loss:

Vendor agrees to bear all risk of loss, injury, or destruction of goods and materials ordered herein which may for any reason occur prior to acceptance by the City. No such loss, injury or destruction shall release Vendor from any obligations hereunder.

Scrutinized Companies - Sections 287.135 and 215.473, Fla. Stat.:

Vendor certifies that Vendor is not participating in a boycott of Israel. Vendor further certifies that Vendor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Vendor been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the City will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to Vendor of the City's determination concerning the false certification. Vendor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, Vendor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Vendor does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the contract and seek civil remedies pursuant to section 287.135, Florida Statutes, as amended from time to time.

Uniform Commercial Code:

All applicable portions of the Florida Uniform Commercial Code shall govern this Contract with the City

Warranty:

The Vendor warrants to the City that all goods and services furnished hereunder will conform in all respects to the terms of this order, including any drawings, specifications or standards incorporated herein, and/or defects in materials, workmanship, and free from such defects in design. In addition, Vendor warrants that the goods and services are suitable for and will perform in accordance with the purposes for which they were intended.

Termination:

Upon thirty (30) calendar days' written notice to Vendor, City may, without cause and without prejudice to any other right or remedy, terminate this Agreement for City's convenience. Where the Agreement is terminated for the convenience of City, the notice of termination to Vendor must state that the Agreement is being terminated for the convenience of the City under this termination clause, the effective date of the termination, and the extent of termination. Vendor shall be paid for the services up to and including the effective date of the termination. This shall mean payment for all completed tasks and payment for uncompleted tasks based upon a percentage of completion of such uncompleted tasks. Vendor shall not be paid on account of loss of anticipated profits or out of or resulting from such termination.

Indemnification and Insurance:

Vendor shall define, indemnify and hold City, its employees, its customers and users of the purchased goods and/or services, harmless from any property damage, personal injuries, or death arising out of Vendor's (or its subcontractors) work or performance hereunder and shall procure and maintain liability insurance as required by the City. Nothing contained in this Contract shall waive City's sovereign immunity.

Conflict:

In the event of any conflict or ambiguity by and between the terms and provisions of this Contract and any other document the Parties agree the terms and provisions contained in this Contract shall control to the extent of any such conflict or ambiguity.

The City of Boynton Beach

Procurement Services
100 E. Ocean Avenue
Boynton Beach, FL 33435
P. O. Box 310
Boynton Beach, Florida 33435-0310
Phone Contact (561) 742-6310

NOTICE TO PROCEED

TO: **Florida Design Drilling, LLC**
7733 Hooper Road
West Palm Beach, FL 33411

DATE: July 9, 2024

PROJECT: UTL24-019 East Water Treatment Plant High Service Pumps 5 & 6 Improvement Project

Please consider this letter as formal notice to mobilize on-site and proceed with construction of the WORK. Contractor shall commence WORK in accordance with Resolution No. R24-107, Contract Agreement dated May 7, 2024 within Three Hundred Sixty (**360**) calendar days for Substantial Completion and Sixty (**60**) days for Final Completion from the Commencement Date specified below.

Commencement Date:	**July 9, 2024**
Substantial Completion:	**July 3, 2025**
Final Acceptance Date:	**September 1, 2025**

The CITY's designated representative for all activities relating to this project will be:

Primary Contact Person:
Contact Person: Joel Lacroze — **Utilities Department**
Title: Project Manager III, Engineering — **Telephone: 561-742-6492**

Secondary Contact Person:
Contact Person: Keith Webber — **Utilities Department**
Title: Assistant Director, Engineering — **Telephone: 561-742-6454**

Taralyn Pratt
Taralyn Pratt, Assistance Purchasing Manager

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by:

JEFFREY HOST — Date: 7/9/24
Print Name

Signature: [signature] — Title: SENIOR VICE PRESIDENT

cc: Utilities – Joel Lacroze, Project Manager III, Engineering
Florida Design Drilling, LLC
Central File

CONSTRUCTION CONTRACT
EAST WATER TREATMENT PLANT HIGH SERVICE PUMPS 5 & 6 IMPROVEMENTS PROJECT

THIS AGREEMENT is entered into by and between the CITY OF BOYNTON BEACH, a municipal corporation organized and existing under the laws of Florida, with a business address of 100 East Ocean Ave., Boynton Beach, FL 33435, hereinafter referred to as **"**CITY", and Florida Design Drilling, LLC a Partnership authorized to do business in the State of Florida, with a business address of 7733 Hooper Road, West Palm Beach, FL 33411, hereinafter referred to as the "VENDOR," each a "Party" and collectively the "Parties."

WHEREAS, the CITY has selected the VENDOR to perform construction services related to the East Water Treatment Plant High Service Pumps 5 & 6 Improvements Project; and,

WHEREAS, at its meeting of **May 7, 2024**, by Resolution No. _____, the CITY Commission approved this award to VENDOR and authorized the proper CITY officials to execute this Agreement hereinafter referred to as Contract No.: **UTL24-019** and used interchangeably with "contract".

NOW, THEREFORE, CITY and VENDOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. SCOPE OF WORK. VENDOR shall furnish all labor, materials, equipment, services, and incidents necessary to perform all "WORK" described in the Contract Documents (as defined in Article 8 below) and related thereto for the Project.

Article 2. CONSULTANT. Shall mean ("GLOBALTECH, INC"), which has designed the Project and will assume all duties and responsibilities and will have the rights and authority assigned to CONSULTANT in connection with the completion of the WORK in accordance with the Contract Documents.

Article 3. CONTRACT TIME; TERMINATION; LIQUIDATED DAMAGES.

3.1 **Contract Time**. The WORK will be substantially completed within **(360) [three hundred sixty]** calendar days from the effective date of this Agreement, when the Contract Time commences to run as provided in paragraph **2.3** of the General Conditions and completed and ready for final payment in accordance with paragraph **14.9** of the General Conditions within **60** calendar days from the date of Substantial Completion.

3.2 **Termination for Convenience**. This Agreement may be terminated by CITY for convenience, upon providing fourteen (14) business days of written notice to VENDOR for such termination. In the event of termination, VENDOR shall be paid its compensation for services performed until the termination date, including services reasonably related to termination. In the event that VENDOR abandons this Agreement or causes it to be terminated, VENDOR shall indemnify CITY against loss pertaining to this termination.

3.3 **Termination for Cause.** In addition to all other remedies available to CITY, this Agreement shall be subject to cancellation by CITY for cause, should VENDOR neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by VENDOR of written notice of such neglect or failure.

3.4 **Liquidated Damages.** The CITY and VENDOR recognize and acknowledge that time is of the essence of this Contract and that the CITY will suffer financial loss if the WORK is not completed within the times specified in paragraph **3.1** above, plus any extensions thereof

allowed in accordance with **Article 12** of the General Conditions. Each of the parties acknowledges that it has attempted to quantify the damages which would be suffered by the CITY in the event of the failure of VENDOR to perform in a timely manner, but neither one has been capable of ascertaining such damages with certainty. CITY and VENDOR also recognize and acknowledge the delays, expense, and difficulties involved in proving in a legal preceding the actual loss suffered by the CITY if the WORK is not completed on time. Accordingly, instead of requiring any such proof, the CITY and VENDOR agree that as liquidated damages for delay (but not as a penalty) VENDOR shall pay the CITY, **[Eight Hundred]** Dollars **($ 800.00)** for each day of that expires after the time specified in paragraphs **3.1** for substantial completion until the WORK is substantially complete. After Substantial Completion, if VENDOR shall neglect, refuse or fail to complete the remaining WORK within the Contract Time or any proper extension thereof granted by the CITY, VENDOR shall pay CITY [**Two Hundred**] Dollars **($ 200.00)** for each day that expires after the time specified in paragraph **3.1** for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

CITY shall pay VENDOR, for the faithful performance of the Contract, in lawful money of the United States of America, and subject to the additions and deductions as provided in the Contract Documents, a total sum as follows:

Based on the Contract prices shown in the Bid Form submitted to the CITY as subsequently revised and as stated herein, a copy of such Bid Form being a part of the Contract Documents, the aggregate amount of this Contract (obtained from either the lump sum price, the application of unit prices to the quantities shown in the Bid Form or the combination of both) not to exceed:

Four Hundred Fifty-Eight Thousand Six Hundred Twenty-Five Dollars and Zero Cents	**$ 458, 625.00**
(Written)	**(Numerical)**

Article 5. PAYMENT PROCEDURES.

VENDOR shall submit Applications for Payment in accordance with **Article 14** of the General Conditions. CITY will process Applications for Payment as provided in the General Conditions.

5.1 Progress Payments. CONTRACT may submit an Application for Payment as recommended by CONSULTANT, for WORK completed during the Project at intervals of not more than once a month. All progress payments will be on the basis of the progress of WORK measured by the schedule of values established in Paragraph **2.9.1** of the General Conditions and in the case of Unit Price Work based on the number of units completed or, in the event there is no schedule of values, as provided in the General Requirements.

5.2 Prior to Substantial Completion progress payments will be made in an amount equal to 90% of WORK completed, but, in each case, less the aggregate of payments previously made and less such amounts as CONSULTANT shall determine, or CITY may withhold, in accordance with paragraph **14.5** of the General Conditions.

5.3 VENDOR shall submit with each Application for Payment, an updated progress schedule acceptable to the CITY and a Warranty of Title/Release of Liens relative to the Work that is the subject of the Application. Each Application for Payment shall be submitted to the CITY for approval. The CITY shall make payment to the VENDOR within thirty (30) days after approval by the CITY of VENDOR'S Application for Payment and submission of an acceptable updated progress schedule.

5.4 The CITY may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

a. Defective Work not remedied.
b. Claims filed or reasonable evidence indicating probable filing of claims by other parties against VENDOR.
c. Failure of VENDOR to make payments properly to SUBCONTRACTORS or for material or labor.

d. Damage to another VENDOR not remedied.
e. Liquidated damages and costs incurred by the CITY for extended construction administration.
f. Failure of VENDOR to provide any document(s) required by the Contract Documents.

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

5.5 Final Payment. Upon final completion and acceptance of the WORK in accordance with paragraph **14.10** of the General Conditions, CITY shall pay the remainder of the Contract Price as recommended by CONSULTANT as provided in paragraph **14.10.**

5.6 All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

Article 6. RETAINAGE.

Five percent (5) of all monies earned by the VENDOR shall be retained by the CITY until Final Completion of the construction services purchased (defined as that point at which one hundred (100) percent of the construction of the work as defined in the Contract Schedule of Values has been performed under the contract by the VENDOR) has been reached and acceptance by CITY.

Within 30 calendar days after reaching the earlier of substantial completion or beneficial occupancy, the City/Owner and the Vendor will inspect the work and develop a punch list covering those items required to render complete, satisfactory, and acceptable construction services purchased by the City/Owner. The punch list will include a schedule of values that provides the estimated cost to complete each item on the punch list. If the City/Owner and Vendor are unable to agree on an item or value, the City/Owner has final discretion whether to include an item and the amount for valuation of the cost to complete each item on the punch list. Within 20 business days after the creation of the punch list, the remaining contract balance, including retainage, will be paid to the Vendor less an amount equal to 150 percent of the cost to complete the items on the punch list. Upon reaching final acceptance for an item or all items, the 150 percent withheld for each item will be released with final payment. For projects valued at $10 million or more, the 30-calendar day period may be extended to 45 days.

Article 7. CONTRACTOR GUARANTEE.

VENDOR warrants all work, materials, and equipment shall be free from damages and/or defects owing to faulty materials or workmanship for a period of one (1) year after completion of the WORK covered by this Contract. The VENDOR, free of all costs to the CITY, shall replace any part of the equipment, materials, or work included in this Contract, which proves to be defective by reason of faulty materials, damages, and/or workmanship within twelve (12) month period.

Article 8. CONTRACT DOCUMENTS.

The Documents hereinafter listed shall form the Contract and they are as fully a part of the Contract as if attached hereto:

8.1 Request for Bid
8.2 Instructions to Proposers / Bidders
8.3 Proposal Forms (including the Proposal, Schedule(s), Submission Requirements of Proposer / Bidder, and all required certificates, licenses, affidavits, and other documentation)
8.4 Contract
8.5 VENDOR's Bid Bond, Performance, and Payment Bond
8.6 Standard Terms and Conditions for Bidders
8.7 Special Conditions
8.8 General Conditions for Construction

8.9 Specifications & Technical Requirements

8.10 Engineering Design Handbook and Construction Standards for the City of Boynton Beach (available online at: https://www.boynton-beach.org/engineering/new-construction-department- public-works-engineering-division)

8.11 **Attachment A** – 115380 E WTP High Service Pumps 5 and 6 Imp (UT-3A-03) – Bid Set/Drawings

Article 9. NOTICE: All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to CITY shall be mailed to:

Daniel Dugger, City Manager
City of Boynton Beach
100 East Ocean Ave,
Boynton Beach, FL 33435
Telephone No. (561) 742-6000

And if sent to the VENDOR shall be mailed to:

Florida Design Drilling, LLC
Att: Jeffrey Holst
7733 Hooper Road
West Palm Beach, FL 33411
Telephone #: (561) 844-2966
Email: jeff@fldrilling.com

Article 10. INDEMNITY.

10.1 The VENDOR shall indemnify and hold harmless the CITY and its officers, employees, agents, instrumentalities, and the State of Florida, Division of Emergency Management from liability, losses or damages, including attorneys' fees and costs of defense through the conclusion of any appeals, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of or resulting from the negligence, recklessness, or intentional wrongful misconduct of VENDOR, its employees, agents, partners, principals or subcontractors during the term of this Agreement or resulting thereafter. The VENDOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. The VENDOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the VENDOR shall in no way limit the responsibility to indemnify, keep, and save harmless and defend the CITY or its officers, employees, agents, and instrumentalities as herein provided.

10.2 VENDOR's aggregate liability pursuant to this indemnification provision shall not exceed one and one-half (1 1/2) times the contract price or One Million Dollars ($1,000,000) per occurrence, whichever is greater.

10.3 Upon completion of all services, obligations, and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

10.4 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of VENDOR.

10.5 Nothing contained herein is intended nor shall be construed as a contractual waiver of the CITY's rights, limits, and immunities under the common law or Section 768.28, Florida Statutes, as may be amended from time to time, 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. VENDOR and CITY agree that any liability of the CITY under this Contract shall be limited to the amounts set forth in Sec. 728.68, Florida Statutes.

Article 11. REIMBURSEMENT OF CONSULTANT EXPENSES.

Should the completion of this Contract be delayed beyond the specified or adjusted time limit, VENDOR shall reimburse the CITY for all expenses of consulting and inspection incurred by the CITY during the period between said specified or adjusted time and the actual date of final completion. All such expenses for consulting and inspection incurred by the CITY will be charged to the VENDOR and be deducted from payments due VENDOR as provided by this Contract. Said expenses shall be further defined as CONSULTANT charges associated with the construction contract administration, including resident project representative costs.

Article 12. FLORIDA'S PUBLIC RECORDS LAW.

The CITY is a public agency subject to Chapter 119, Florida Statutes. The VENDOR shall comply with Florida's Public Records Law. Specifically, the VENDOR shall:

12.1 Keep and maintain public records required by the CITY to perform the service;

12.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statute or as otherwise provided by law;

12.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, VENDOR shall destroy all copies of such confidential and exempt records remaining in its possession once the VENDOR transfers the records in its possession to the CITY; and,

12.4 Upon completion of the contract, VENDOR shall transfer to the CITY, at no cost to the CITY, all public records in VENDOR's possession. All records stored electronically by VENDOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

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

CITY CLERK'S OFFICE
100 E. OCEAN AVENUE
BOYNTON BEACH, FLORIDA 33435
561-742-606
CityClerk@bbfl.us

Article 13. E-VERIFY.

13.1 CONTRACTOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

13.1.1 Definitions for this Section:

A. "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for a salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.

B. “Subcontractor” means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for a salary, wages, or other remuneration.

C. “E-Verify system” means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

13.1.2 Registration Requirement; Termination: Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-Verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security’s E- Verify System to verify the employment eligibility of:

A. All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and

B. All persons (including sub-vendors/sub-consultants/sub-contractors) assigned by Contractor to perform work pursuant to the contract with the City of Boynton Beach. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security’s E-Verify System during the term of the contract is a condition of the contract with the City of Boynton Beach; and

C. The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

Article 14. PROHIBITION AGAINST CONSIDERING SOCIAL, POLITICAL OR IDEOLOGICAL INTERESTS IN GOVERNMENT CONTRACTING – F.S. 287.05701.

VENDOR is hereby notified of the provisions of section 287.05701, Florida Statutes, as amended, that the CITY will not request documentation of or consider VENDOR's social, political, or ideological interests when determining if the VENDOR is a responsible VENDOR. VENDOR is further notified that the CITY's governing body may not give preference to a Vendor based on the VENDOR's social, political, or ideological interests.

Article 15. SCRUTINIZED COMPANIES.

By execution of this Agreement, VENDOR certifies that VENDOR is not participating in a boycott of Israel. VENDOR further certifies that VENDOR is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has VENDOR been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the CITY will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of contract. The CITY shall provide notice, in writing, to the VENDOR of the CITY's determination concerning the false certification. VENDOR shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, the VENDOR shall have ninety (90) days following

receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the VENDOR does not demonstrate that the CITY's determination of false certification was made in error then the CITY shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

Article 16. COVENANT AGAINST CONTINGENT FEES.

The VENDOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the VENDOR, to solicit or secure this Agreement, and that VENDOR has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the VENDOR any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Article 17. TRUTH IN NEGOTIATION CERTIFICATE.

B. Execution of this Agreement by the VENDOR shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement is accurate, complete, and current as of the date of the Agreement and no higher than those charged to the VENDOR's most favored customer for the same or substantially similar service.

C. The said rates and cost shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to outside vendors. The CITY shall exercise its rights under this "Certificate" within one (1) year following payment.

Article 18. MISCELLANEOUS.

18.1 Any and all legal action necessary to enforce the terms of this Agreement shall be governed by the laws of the State of Florida. Any legal action arising from the terms of this Agreement shall be submitted to a court of competent jurisdiction located exclusively in Palm Beach County.

18.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

18.3 City and VENDOR each binds itself, their partners, successors, assigns and legal representatives to the other party hereto, their partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

18.4 In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

18.5 Prior to final payment of the amount due under the terms of this Agreement, to the extent permitted by law, a final waiver of lien shall be required to be submitted by the VENDOR, as well as all suppliers and subcontractors whom worked on the project that is the subject of this Agreement. Payment of the invoice and acceptance of such

payment by VENDOR shall release City from all claims of liability by VENDOR in connection with this Agreement.

18.6 At all times during the performance of this Agreement, VENDOR shall protect CITY's property from all damage whatsoever on account of the work being carried on under this Agreement.

18.7 It shall be the VENDOR's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, city, state, and federal agencies as applicable.

18.8 This Agreement represents the entire and integrated agreement between City and VENDOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement is intended by the parties hereto to be final expression of this Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made. In the event of a conflict between this Agreement, the solicitation and the VENDOR's bid proposal, this Agreement shall govern then the solicitation, and then the bid proposal.

18.9 This Agreement will take effect once signed by both parties. This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

Article 19. <u>DEFAULT OF CONTRACT & REMEDIES.</u>

19.1 **Correction of Work.** If, in the judgment of CITY, work provided by VENDOR does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, CITY reserves the right to require that VENDOR correct all deficiencies in the work to bring the work into conformance without additional cost to CITY, and/or replace any personnel who fail to perform in accordance with the requirements of this Agreement. CITY shall be the sole judge of non-conformance and the quality of workmanship.

19.2 **Default of Contract**. The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by VENDOR:

19.2.1 The abandonment of the project by VENDOR for a period of more than seven (7) business days.

19.2.2 The abandonment, unnecessary delay, refusal of, or failure to comply with any of the terms of this Agreement or neglect, or refusal to comply with the instructions of the CITY's designee.

19.2.3 The failure by VENDOR to observe or perform any of the terms, covenants, or conditions of this Agreement to be observed or performed by VENDOR, where such failure shall continue for a period of seven (7) days after written notice thereof by CITY to VENDOR; provided, however, that if the nature of VENDOR's default is such that more than seven (7) days are reasonably required for its cure, then VENDOR shall not be deemed to be in default if VENDOR commences such cure within said seven (7) day period and thereafter diligently prosecutes such cure to completion.

19.2.4 The assignment and/or transfer of this Agreement or execution or attachment thereon by VENDOR or any other party in a manner not expressly permitted hereunder.

19.2.5 The making by VENDOR of any general assignment or general arrangement for the benefit of creditors, or the filing by or against VENDOR of a petition to

have VENDOR adjudged a bankruptcy, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against VENDOR, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of VENDOR's assets, or for VENDOR's interest in this Agreement, where possession is not restored to VENDOR within thirty (30) days; for attachment, execution or other judicial seizure of substantially all of VENDOR's assets, or for VENDOR's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

19.3 **Remedies in Default.** In case of default by VENDOR, CITY shall notify VENDOR, in writing, of such abandonment, delay, refusal, failure, neglect, or default and direct VENDOR to comply with all provisions of the Agreement. A copy of such written notice shall be mailed to the Surety on the Performance Bond. If the abandonment, delay, refusal, failure, neglect or default is not cured within seven (7) days of when notice was sent by CITY, CITY may declare a default of the Agreement and notify VENDOR of such declaration of default and terminate the Agreement. The Surety on the Performance Bond shall within ten (10) days of such declaration of default, rectify or cause to be rectified any mismanagement or breach of service in the Agreement and assume the work of VENDOR and proceed to perform services under the Agreement, at its own cost and expense.

19.3.1 Upon such declaration of default, all payments remaining due VENDOR at the time of default, less all sums due CITY for damages suffered, or expenses incurred by reason of default, shall be due and payable to Surety. Thereafter the Surety shall receive monthly payments equal to those that would have been paid by the VENDOR had the VENDOR continued to perform the services under the Agreement.

19.3.2 CITY may complete the Agreement, or any part thereof, either by day labor, use of a subcontractor, or by re-letting a contract for the same, and procure the equipment and the facilities necessary for the completion of the Agreement, and charge the cost of same to VENDOR and/or the Surety together with the costs incident thereto to such default.

19.3.3 In the event CITY completes the Agreement at a lesser cost than would have been payable to VENDOR under this Agreement, if the same had been fulfilled by VENDOR, CITY shall retain such differences. Should such cost to CITY be greater, VENDOR shall pay the amount of such excess to the CITY.

19.3.4 Notwithstanding the other provisions in this Article, CITY reserves the right to terminate the Agreement at any time, whenever the service provided by VENDOR fails to meet reasonable standards of the trade after CITY gives written notice to the VENDOR of the deficiencies as set forth in the written notice within fourteen calendar (14) days of the receipt by VENDOR of such notice from CITY.

SIGNATURE PAGE FOLLOWS

"This Agreement will take effect once signed by both parties. This Agreement may be signed by the parties in counterparts, whether signed physically or electronically, which together shall constitute one and the same agreement among the parties. A facsimile signature shall constitute an original signature for all purposes."

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year set forth below their respective signatures.

CITY OF BOYNTON BEACH

_____

Daniel Dugger, City Manager

Date: _____

FLORIDA DESIGN DRILLING, LLC

_____

(Signature), Florida Design Drilling, LLC

Jeffrey Holst

Print Name of Authorized Official

Senior Vice President

Title

4/5/24

Date

(Corporate Seal)

FLORIDA DESIGN DRILLING LLC
LIMITED LIABILITY
SEAL
EST. 2005
FLORIDA

Attest/Authenticated:

_____

Witness

Fernanda Sousa

Print Name

Approved as to Form:

_____

Shawna G. Lamb, Office of the City Attorney

Attested/Authenticated:

_____

Maylee De Jesus, City Clerk

CFN 20240123257
OR BK 34945 PG 322
RECORDED 4/11/2024 1:04 PM
Palm Beach County, Florida
Joseph Abruzzo, Clerk
Pgs: 322 - 329; (8pgs)

FRONT PAGE OF
PUBLIC PAYMENT BOND

Florida Statute 255.05

CG
4.11.24

BOND NO. GM236865

CONTRACTOR: Florida Design Drilling LLC
7733 Hooper Road
West Palm Beach, FL 33411
561-844-2966

SURETY: Great Midwest Insurance Company
800 Gessner, Suite 600
Houston, TX 77024
713-935-0226

AGENT: Acrisure
220 Congress Park Drive, Suite 100
Delray Beach, FL 33445
561-454-8210

OBLIGEE: City of Boynton Beach
100 East Ocean Avenue
Boynton Beach, FL 33435
561-742-6310

PROJECT: East Water Treatment Plant High Service Pumps 5 & 6 Improvements
Contract No. UTL24-019

LOCATION: City of Boynton Beach, Florida

Bond No. GM236865

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that Florida Design Drilling LLC
(Insert name of Vendor)

7733 Hooper Road, West Palm Beach, FL 33411 as Principal, (Address or legal title of Vendor)

hereinafter called Vendor, and Great Midwest Insurance Company
(Name and address of Surety)

800 Gessner, Suite 600, Houston, TX 77024

as Surety, hereinafter called Surety, are held and firmly bound unto CITY OF BOYNTON BEACH, P.O. BOX 310, BOYNTON BEACH, FLORIDA 33425-0310 as Obligee, hereinafter called Owner, in the amount of Four Hundred Fifty-Eight Thousand Six Hundred Twenty-Five & 00/100 Dollars ($ $458,625.00), for payment whereof Vendor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Vendor has by written agreement dated MAY 7TH, 2024, entered into a contract with Owner for East Water Treatment Plant High Service Pumps 5 & 6 Improvements in accordance with drawings and specifications prepared by Globaltech, Inc. which contract is by reference made a part of hereof, and is hereinafter referred to as the Contract.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Vendor shall promptly and faithfully perform such Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Vendor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

1. Arrange for the Vendor, with the consent of the Owner, to perform and complete the Contract in accordance with its terms and conditions, or
2. Undertake to perform and complete the Contract itself, through its agents or independent Vendors; or
3. Obtain a bid or bids from qualified Vendors acceptable to the Owner for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the most responsible

vendor, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the most responsible vendor, arrange for a contract between such vendor and Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by Owner to Vendor under the contract and any amendments thereto, less the amount properly paid by Vendor to Principal.

If the Surety does not proceed as provided above with reasonable promptness, the Surety shall be deemed to be in default on this bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided above, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

If the Surety elects to act as set forth above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Vendor under the Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Contract. Subject to the commitment by the Owner to pay the balance of the Contract Price, the Surety is obligated, without duplication, for:

1. The responsibilities of the Vendor for correction of defective work and completion of the Contract;
2. Additional legal, design professional and delay costs resulting from the Vendor's default, and resulting from the actions or failure to act of the Surety set forth above; and
3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the Vendor.

If the Surety elects to act in accordance with the requirements of this bond, the Surety's liability is limited to the amount of this bond.

The Surety shall not be liable to the Owner or others for obligations of the Vendor that are unrelated to the Contract, and the balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

Any suit under this bond must be instituted before the expiration of one (1) year from the date on which final payment under the Contract falls due, or within one (1) year after the Vendor ceased working, or within one (1) year after the Surety refuses or fails to perform its obligations under this bond. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties in the jurisdiction of the suit shall be applicable.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

This bond is issued in compliance with Section 255.05, Florida Statutes as may be amended. A claimant, except a laborer, who is not in privity with the Vendor and who has not received payment for its labor, materials, or supplies shall, within 45 days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish the Vendor with a notice that he intends to look to the bond for protection. A claimant who is not in privity with the Vendor and who has not received payment for its labor, materials, or supplies shall, within 90 days after performance of the labor or after complete delivery of the materials or supplies, deliver to the Vendor and to the Surety written notice of the performance of the labor or delivery of the materials or supplies and the nonpayment. No action for the labor, materials, or supplies may be instituted against the Vendor or the Surety unless both notices have been given. No action shall be instituted against the Vendor or the Surety on the bond after one (1) year from the performance of the labor or completion of delivery of the materials or supplies.

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

When this bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 11th day of APRIL, 2024.

Florida Design Drilling LLC
Vendor

(Seal)

Witness Fernanda Sousa

Title Jeffrey Hoist, Senior Vice President

Great Midwest Insurance Company
Surety

Witness Rita Lazarides

Attorney-in-Fact Brett M. Rosenhaus
& Florida Licensed Agent

END OF PERFORMANCE BOND

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

Bond No. GM236865

THE PROVISIONS AND LIMITATIONS OF SECTION 255.05 FLORIDA STATUTES, INCLUDING BUT NOT LIMITED TO THE NOTICE AND TIME LIMITATIONS IN SECTIONS 255.05(2) AND 255.05(10), ARE INCORPORATED IN THIS BOND BY REFERENCE.

PAYMENT BOND

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENTS: that Florida Design Drilling LLC
(Insert name of Vendor)

7733 Hooper Road, West Palm Beach, FL 33411 as
Principal, (Address or legal title of Vendor)

hereinafter called Principal, and Great Midwest Insurance Company
(Name and address of Surety)

800 Gessner, Suite 600, Houston, TX 77024

as Surety, hereinafter called Surety, are held and firmly bound unto CITY OF BOYNTON BEACH, P.O. BOX 310, BOYNTON BEACH, FLORIDA 33425-0310 as Obligee, hereinafter called Owner, for the use and benefit of claimants as here below defined, in the amount of

Four Hundred Fifty-Eight Thousand Six Hundred Twenty-Five & 00/100 Dollar

s ($ 458,625.00), for payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated MAY 7TH, 2024, entered into a contract with Owner for East Water Treatment Plant High Service Pumps 5 & 6 Improvements in accordance with drawings and specifications prepared by Globaltech, Inc. which contract is by reference made a part of hereof, and is hereinafter referred to as the Contract.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90)

days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. If there is no Owner default under the Contract, the Surety's obligation to the Owner under this bond shall arise after the Owner has notified Principal and Surety of claims, demands, liens, or suits against the Owner or Owner's property by any person seeking payment for labor, materials, or equipment furnished for use in the performance of the Contract and tendered defense of such claims, demands, liens, or suits to the Principal and Surety.

4. No suit or action shall be commenced hereunder by any claimant:

   a. Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which such claimant is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for when the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer.

   b. After the expiration of one (1) year following the date on which Principal ceased work on such Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

   c. Other than in a State Court of competent jurisdiction in and for the County or other political subdivision of the State in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

5. When a claimant has satisfied the conditions of section 4, Surety shall promptly and at the Surety's expense take the following actions:

   a. Send an answer to claimant with a copy to the Owner, within sixty (60) days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

   b. Pay or arrange for payment of any undisputed amounts.

   c. The Surety's failure to discharge its obligations under section (a) or (b) shall not be deemed to constitute a waiver of defenses the Surety or Principal may have or acquire as to a claim, except as to undisputed amounts for which the Surety and claimant have reached agreement. If, however, the Surety fails to discharge its obligations under section (a) or (b), the Surety shall indemnify the claimant for the reasonable attorney's fees the claimant incurs thereafter to recover any sums found to be due and owing to the claimant.

6. The amount of this bond shall be reduced by and to the extent of a payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics liens which may be filed of record against such improvements, whether or not claim for the amount of such lien be presented under and against this bond.

7. The Surety shall not be liable to the Owner, claimants or others for obligations of the Principal that are unrelated to the Contract. The Owner shall not be liable for the payment of any costs or expenses of any claimant under this bond, and shall have under this bond no obligation to make payments to, or give notice on behalf of, claimants or otherwise have any obligations to claimants wider this bond.

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

8. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.

9. This bond is issued in compliance with Section 255.05, Florida Statutes, as may be amended, and the provisions and limitations of Section 255.05, Florida Statutes, including, but not limited to the notice and time limitations in Sections 255.05(2) and 255.05(10) are incorporated into this bond by reference. A claimant, except a laborer, who is not in privity with the Principal and who has not received payment for its labor, materials, or supplies shall, within 45 days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish the Principal with a notice that he intends to look to the bond for protection. A claimant who is not in privity with the Principal and who has not received payment for its labor, materials, or supplies shall, within 90 days after performance of the labor or after complete delivery of the materials or supplies, deliver to the Principal and to the Surety written notice of the performance of the labor or delivery of the materials or supplies and the nonpayment. No action for the labor, materials, or supplies may be instituted against the Principal or the Surety unless both notices have been given. No action shall be instituted against the Principal or the Surety on the bond after one (1) year from the performance of the labor or completion of delivery of the materials or supplies.

10. When this bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this bond shall be construed as a statutory bond and not as a common law bond.

11. Upon request by any person or entity appearing to be a potential beneficiary of this bond, the Principal and Owner shall promptly furnish a copy of this bond or shall permit a copy to be made

12. The Principal and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference, subject to the terms set forth above.

Signed and sealed this 11th day of APRIL, 2024.

FLORIDA DESIGN DRILLING LLC LIMITED LIABILITY SEAL EST. 2005 FLORIDA

Florida Design Drilling LLC
Principal (Seal)

Witness Fernanda Sousa

Witness Rita Lazarides

Jeffrey Holst, Senior Vice President
Great Midwest Insurance Company
Surety

Attorney-in-Fact Brett M. Rosenhaus
& Florida Licensed Agent

GREAT MIDWEST INSURANCE COMPANY

END OF PAYMENT BOND

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

POWER OF ATTORNEY

Great Midwest Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **GREAT MIDWEST INSURANCE COMPANY**, a Texas Corporation, with its principal office in Houston, TX, does hereby constitute and appoint:

Dale A. Belis, Marilyn Ann Blome, Donald Bramlage, Edward M. Clark, Christian Collins, F. Danny Gann, David R. Hoover, Jarrett Merlucci, Laura D. Mosholder, Charles J. Nielson, Jessica P. Reno, Audria R. Ward, Edward T. Ward, Kevin Wojtowicz, Richard Zimmerman, Charles D. Nielson, Brett M. Rosenhaus

its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **GREAT MIDWEST INSURANCE COMPANY**, on the 1st day of October, 2018 as follows:

Resolved, that the President, or any officer, be and hereby is, authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed Ten Million dollars ($10,000,000.00), which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed in the Company's sole discretion and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **GREAT MIDWEST INSURANCE COMPANY**, has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 11th day of February, 2021.

GREAT MIDWEST INSURANCE COMPANY

BY _____
Mark W. Haushill
President

GREAT MIDWEST INSURANCE COMPANY CORPORATE SEAL TEXAS CORPORATION

ACKNOWLEDGEMENT

On this 11th day of February, 2021, before me, personally came Mark W. Haushill to me known, who being duly sworn, did depose and say that he is the President of **GREAT MIDWEST INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

CHRISTINA BISHOP
Notary Public, State of Texas
Comm. Expires 04-14-2026
Notary ID 131090488

BY _____
Christina Bishop
Notary Public

CERTIFICATE

I, the undersigned, Secretary of **GREAT MIDWEST INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Sealed at Houston, TX this 11 Day of APRIL 2024.

GREAT MIDWEST INSURANCE COMPANY CORPORATE SEAL TEXAS CORPORATION

BY _____
Leslie K. Shaunty
Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

City of Boynton Beach
Risk Management Department
INSURANCE ADVISORY FORM

Under the terms and conditions of all contracts, leases, and agreements, the City requires appropriate coverages listing the City of Boynton Beach as Additional Insured. This is done by providing a Certificate of Insurance listing the City as "Certificate Holder" and "The City of Boynton Beach is Additional Insured as respect to coverages noted." Insurance companies providing insurance coverages must have a current rating by A.M. Best Co. of "B+" or higher. *(NOTE: An insurance contract or binder may be accepted as proof of insurance if Certificate is provided upon selection of vendor.)* The following is a list of types of insurance required of contractors, lessees, etc., and the limits required by the City: **(NOTE: This list is not all inclusive, and the City reserves the right to require additional types of insurance, or to raise or lower the stated limits, based upon identified risk.)**

TYPE (Occurrence Based Only)	**MINIMUM LIMITS REQUIRED**	
General Liability	General Aggregate	$ 1,000,000.00
Commercial General Liability	Products-Comp/Op Agg.	$ 1,000,000.00
Owners & Contractor's Protective (OCP)	Personal & Adv. Injury	$ 1,000,000.00
Asbestos Abatement	Each Occurrence	$ 1,000,000.00
Lead Abatement	Fire Damage (any one fire)	$ 50,000.00
Broad Form Vendors	Med. Expense (any one person)	$ 5,000.00
Premises Operations		
Underground Explosion & Collapse		
Products Completed Operations		
Contractual		
Independent Contractors		
Fire Legal Liability		
Professional Liability	Aggregate - $1,000,000.00	
Automobile Liability	Combined Single Limit	$ 1,000,000.00
Any Auto		
All Owned Autos		
Hired Autos		
Non-Owned Autos		
Excess Liability	Each Occurrence	to be determined
Umbrella Form	Aggregate	to be determined
Worker's Compensation Statutory Limits		
Employer's Liability	Each Accident	$ 1,000,000.00
	Disease, Policy Limit	$ 1,000,000.00
	Disease Each Employee	$ 1,000,000.00
Property:		
Homeowners Revocable Permit		$ 300,000.00
Builder's Risk		Limits based on Project Cost
Installation Floater		Limits based on Project Cost
Other - As Risk Identified		to be determined

INSURANCEADVISORYFORM Revised 04/2021

AMENDMENT NO. 1 TO AGREEMENT BETWEEN THE CITY OF BOYNTON BEACH AND FLORIDA DESIGN DRILLING, LLC FOR EAST WATER TREATMENT PLANT HIGH SERVICE PUMPS 5 & 6 IMPROVEMENTS PROJECT

This First Amendment ("Amendment") is entered into by and between the City of Boynton Beach, a Florida municipal corporation ("City"), and Florida Design Drilling, LLC, a Florida Limited Liability Company registered to transact business in the State of Florida ("Vendor") (collectively referred to as the "Parties").

RECITALS

A. On May 7, 2024, the Parties entered into Contract No. UTL24-019 (the "Agreement") for East Water Treatment Plant High Service Pumps 5 & 6 Improvements Project.

B. The Parties desire to amend the Agreement to add a 10% Contingency Funding in the amount of $45,862.50 for staff-authorized change orders to address unforeseen conditions, bringing the total not-to-exceed purchase order amount to $504,487.50.

Now, therefore, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, City and Vendor agree as follows:

1. The above Recitals are true and correct and are incorporated herein by reference. All capitalized terms not expressly defined within this Amendment shall retain the meaning ascribed to such terms in the Agreement.

2. Except as modified herein, all remaining terms and conditions of the Agreement shall remain in full force and effect.

3. The Agreement is hereby amended as follows:

Amendment to Article 4: CONTRACT PRICE. Article 4 is hereby amended to include 10% Contingency Funding in the amount of Forty-Five Thousand Eight Hundred Sixty-Two and 50/100 Dollars ($45,862.50) for staff-authorized change orders to address unforeseen changes. The total not to exceed amount pursuant to this Agreement is hereby increased from Four Hundred Fifty-Eight Thousand Six Hundred Twenty-Five and 00/100 Dollars ($458,625.00) to Five Hundred Four Thousand Four Hundred Eighty-Seven and 50/100 Dollars ($504,487.50).

4. In the event of any conflict or ambiguity between this Amendment and the Agreement, the Parties agree that this Amendment shall control. The Agreement, as amended herein by this Amendment, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the Parties

agree that there are no commitments, agreements, or understandings concerning the subject matter hereof that are not contained in the Agreement as amended in this Amendment. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

5. Vendor acknowledges that through the date this Amendment is executed by Vendor, Vendor has no claims or disputes against City with respect to any of the matters covered by the Agreement.

6. The following new sections are added to Article 18 of the Agreement as follows:

18.10 Contingency Funds. ALL CONTINGENCY SUMS ARE CITY'S CONTINGENCY AND REMAIN THE CITY'S PROPERTY UNTIL EXPENSE IS APPROVED. The Agreement price shall not include any contingency amounts. If the Agreement or schedule of bid prices includes an agreed sum as contingency, such amount is identified solely for budget purposes and remains the City's funds. City may approve the 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 the Vendor to cover shortfalls in the Vendor's bid amount and not for use by the City to increase the scope of work. Vendor shall obtain prior written approval from City prior to the expenditure of contingency funds, and Vendor will be required to furnish documentation evidencing expenditures charged to contingency and/or allowances prior to the release of such funds by City. All uncommitted contingency funds remain the funds of City.

18.11 Public Entity Crime Act. Vendor represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Vendor further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Vendor has been placed on the convicted vendor list.

18.12 Prohibited Telecommunications Equipment. Vendor represents and certifies that Vendor and all subvendors do not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. Vendor represents and certifies that Vendor and all subvendors shall not provide or use such covered telecommunications equipment, system, or services during the duration of the term of the Agreement.

18.13 Sovereign Immunity. Except to the extent sovereign immunity may be deemed

waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by City, nor shall anything included herein be construed as consent by City to be sued by third parties in any matter arising out of this Agreement.

18.14 Anti-Human Trafficking. On or before the Effective Date of this Amendment, Vendor shall provide City with an affidavit attesting that the Vendor does not use coercion for labor or services, in accordance with Section 787.06(13), Florida Statutes.

7. The effective date of this Amendment shall be the date of complete execution by the Parties.

8. This Amendment may be executed in multiple originals, and may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(The remainder of this page is blank.)

CITY OF BOYNTON BEACH

CITY OF BOYNTON BEACH

By_____
Ty Penserga, Mayor

____ day of _____, 2025

Attest:_____
City Clerk

CITY ATTORNEY'S OFFICE
Approved as to form and legality

By:_____

FLORIDA DESIGN DRILLING, LLC

By_____
Authorized Signer

_____
Print Name and Title

_____ day of _____, 2025

City of Boynton Beach
Agenda Item Request Form

Meeting Date: 01/21/2025

Proposed Resolution No. R25-026- Award Invitation to Bid (ITB) No. PWE24-024 for the Fire Station #5 Emergency Generator Replacement Project to J.T. Equipment Service Co. and approve an Agreement between the City and J.T. Equipment Service Co. for an amount of $744,307 plus a ten percent contingency of $74,430.70 that will be utilized for unforeseen conditions totaling $818,737.70 pending legal approval of the final contract.

Requested Action: Staff recommends approval of Proposed Resolution No. R25-026.

Explanation of Request: The City of Boynton Beach's Fire Department requires a new generator to power the firehouse in the event of an emergency. An emergency generator is crucial for ensuring uninterrupted power during emergencies, particularly in critical facilities such as fire stations, hospitals, and schools. It provides a reliable backup power source, maintaining essential operations and safeguarding public safety when the main power supply is disrupted, especially during natural disasters or other unforeseen events. The City's Public Works Department developed specifications to seek a contractor to install a new emergency generator as outlined in the project plans. The scope of work included the selective demolition of the existing generator enclosure, removal of the current generator, installation of the new generator, and the necessary infrastructure.

On September 12, 2024, the Purchasing Division issued Invitation to Bid (ITB) No. PWE24-024 for the Fire Station #5 Emergency Generator Replacement Project. A pre-bid meeting was held on September 23, 2024, accompanied by a site visit, which several interested bidders attended. The ITB closed on November 7, 2024, with two bid submissions. The results are as follows:

J.T. Equipment Service Co. - $744,307
Canseco Electrical Contractors, Inc. - $870,000

After reviewing the submissions, the Purchasing Division determined that J.T. Equipment Service Co. was the lowest responsive and responsible bidder. As a result, staff recommends that the Commission approve the contract with J.T. Equipment Service Co. for $744,307, plus a ten percent contingency of $74,430.70 to account for any unforeseen conditions, bringing the total contract value to $818,737.70.

J.T. Equipment Service Co. is expected to complete the project within ninety days, in accordance with the contract terms.

How will this affect city programs or services? This will provide Fire Station #5 with a new emergency generator.

Budgeted Item: Yes

Account Line Item and Description: Account Line Item:
303-4128-522.62-10 Machinery and Equipment/Safety Equipment

Fiscal Impact: This is Budgeted item approved by commission. FY 24/25 budget for Fire Station #5 improvements were budgeted at $850,000.

Attachments:
R25-026 Agenda_Item_2663-2025_Resolution_for_ITB_PWE24-024_Award_and_JT_Equipment_Agmt.docx
Exhibit A to Resolution - PWE24-024 - Fire Generator - Contract Unsigned
PWE24-024 - JT Equipment - Complete Submission.pdf
PWE24-024 ITB - Fire Station # 5 Emergency Generator Replacement.pdf

RESOLUTION NO. R25-026

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, AWARDING INVITATION TO BID NO. PWE24-024 FOR THE FIRE STATION #5 EMERGENCY GENERATOR REPLACEMENT PROJECT TO J.T. EQUIPMENT SERVICE COMPANY; APPROVING AN AGREEMENT BETWEEN THE CITY AND J.T. EQUIPMENT SERVICE COMPANY FOR AN AMOUNT OF $744,307 PLUS A TEN PERCENT CONTINGENCY OF $74,430.70 THAT WILL BE UTILIZED FOR UNFORESEEN CONDITIONS TOTALING AN AMOUNT NOT TO EXCEED $818,737.70; AND FOR ALL OTHER PURPOSES.

WHEREAS, the City of Boynton Beach's Fire Department requires a new generator to power the firehouse in the event of an emergency; and

WHEREAS, an emergency generator is crucial for ensuring uninterrupted power during emergencies, particularly in critical facilities such as fire stations, hospitals, and schools. It provides a reliable backup power source, maintaining essential operations and safeguarding public safety when the main power supply is disrupted, especially during natural disasters or other unforeseen events; and

WHEREAS, the City's Public Works Department developed specifications to seek a contractor to install a new emergency generator as outlined in the project plans. The scope of work included the selective demolition of the existing generator enclosure, removal of the current generator, installation of the new generator and the necessary infrastructure; and

WHEREAS, on September 12, 2024, the Purchasing Division issued Invitation to Bid (ITB) No. PWE24-024 for the Fire Station #5 Emergency Generator Replacement Project; and

WHEREAS, a pre-bid meeting was held on September 23, 2024, accompanied by a site visit, which was attended by several interested bidders; and

WHEREAS, the ITB closed on November 7, 2024, with two bid submissions; and

WHEREAS, after reviewing the submissions, the Purchasing Division determined that J.T. Equipment Service Company (“Contractor”) was the lowest responsive and responsible bidder; and

WHEREAS, the City has selected the Contractor to perform construction services related to the Fire Station # 5 Emergency Generator Replacement Project; and

WHEREAS, after reviewing the submissions, the Purchasing Division determined that the Contractor was the lowest responsive and responsible bidder; and

WHEREAS, the City Commission, upon the recommendation of staff, has deemed it in the best interests of the city's citizens and residents to award Invitation to Bid No. PWE24-024 for the Fire Station #5 Emergency Generator Replacement Project to J.T. Equipment Service Company, and approve an Agreement between the City and J.T. Equipment Service Company for an amount of $744,307 plus a ten percent contingency of $74,430.70 that will be utilized for unforeseen conditions totaling an amount not to exceed $818,737.70.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption.

SECTION 2. The City Commission of the City of Boynton Beach, Florida, does hereby award Invitation to Bid No. PWE24-024 for the Fire Station #5 Emergency Generator Replacement Project to J.T. Equipment Service Company ("Contractor").

SECTION 3. The City Commission of the City of Boynton Beach, Florida, does hereby approve an Agreement between the Contractor and the City for an amount of $744,307 plus a ten percent contingency of $74,430.70 that will be utilized for unforeseen conditions totaling an amount not to exceed $818,737.70 (the "Agreement"), in form and substance similar to that attached as Exhibit A.

SECTION 4. The City Commission of the City of Boynton Beach, Florida, hereby authorizes the Mayor to execute the Agreement. The Mayor is further authorized to execute any ancillary documents required under the Agreement or necessary to accomplish the purposes of the Agreement and this Resolution.

SECTION 5. The Mayor-executed Agreement shall be forwarded to Andrew Rozwadowski to obtain execution of the Agreement by the Contractor. Andrew Rozwadowski shall be responsible for ensuring that one fully executed Agreement is returned to the City to be provided to the Office of the City Attorney for forwarding to the City Clerk for retention as a public

record.

SECTION 6. This Resolution shall take effect in accordance with law.

PASSED AND ADOPTED this _____ day of _____ 2025.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Ty Penserga	____	____
Vice Mayor – Aimee Kelley	____	____
Commissioner – Angela Cruz	____	____
Commissioner – Woodrow L. Hay	____	____
Commissioner – Thomas Turkin	____	____
VOTE	_____	

ATTEST:

_____
Maylee De Jesús, MPA, MMC
City Clerk

_____
Ty Penserga
Mayor

APPROVED AS TO FORM:

(Corporate Seal)

_____
Shawna G. Lamb
City Attorney

AGREEMENT BETWEEN THE CITY OF BOYNTON BEACH AND J.T. EQUIPMENT SERVICE CO.

PWE24-024 - FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

THIS AGREEMENT is entered into by and between the CITY OF BOYNTON BEACH, a municipal corporation organized and existing under the laws of Florida, with a business address of 100 East Ocean Ave., Boynton Beach, FL 33435, hereinafter referred to as "CITY", and J.T. Equipment Service Company, a Florida Profit Corporation authorized to do business in the State of Florida, with a business address of 14258 SW139th Court, Miami, Florida 33186 hereinafter referred to as the "CONTRACTOR," each a "Party" and collectively the "Parties."

WHEREAS, the City of Boynton Beach's Fire Department requires a new generator to power the firehouse in the event of an emergency.

WHEREAS, an emergency generator is crucial for ensuring uninterrupted power during emergencies, particularly in critical facilities such as fire stations, hospitals, and schools. It provides a reliable backup power source, maintaining essential operations and safeguarding public safety when the main power supply is disrupted, especially during natural disasters or other unforeseen events.

WHEREAS, the City's Public Works Department developed specifications to seek a contractor to install a new emergency generator as outlined in the project plans. The scope of work included the selective demolition of the existing generator enclosure, removal of the current generator, installation of the new generator, and the necessary infrastructure.

WHEREAS, on September 12, 2024, the Purchasing Division issued Invitation to Bid (ITB) No. PWE24-024 for the Fire Station #5 Emergency Generator Replacement Project.

WHEREAS, a pre-bid meeting was held on September 23, 2024, accompanied by a site visit, which was attended by several interested bidders.

WHEREAS, the ITB closed on November 7, 2024, with two bid submissions.

WHEREAS, after reviewing the submissions, the Purchasing Division determined that J.T. Equipment Service Co. was the lowest responsive and responsible bidder.

WHEREAS, the CITY has selected the CONTRACTOR to perform construction services related to the Fire Station # 5 Emergency Generator Replacement Project; and,

WHEREAS, after reviewing the submissions, the Purchasing Division determined that J.T. Equipment Service Co. (CONTRACTOR) was the lowest responsive and responsible bidder.

WHEREAS, at its meeting of **January 21, 2024**, by Resolution No. _____, the CITY Commission approved this award to CONTRACTOR and authorized the proper CITY officials to execute this Agreement hereinafter referred to as Contract No.: **PWE24-024** and used interchangeably with "contract".

NOW, THEREFORE, CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. SCOPE OF WORK. CONTRACTOR shall furnish all labor, materials, equipment, services,

and incidents necessary to perform all "WORK" described in the Contract Documents (as defined in Article 7 below) and related thereto for the Project. The terms and conditions of Bid No. PWE24-024 and CONTRACTOR's bid are expressly incorporated into this Agreement by reference. Any conflict or discrepancy between the terms of this Agreement, Bid No. PWE24-024, and CONTRACTOR's bid, shall be resolved pursuant to the following order of precedence (1) this Agreement, (2) Bid No. PWE24-024; and 3. CONTRACTOR's bid.

Article 2. **CONSULTANT.** Shall mean the City of Boynton Beach, which has designed the Project and will assume all duties and responsibilities and will have the rights and authority assigned to CONSULTANT in connection with the completion of the WORK in accordance with the Contract Documents.

Article 3. **CONTRACT TIME: TERMINATION: LIQUIDATED DAMAGES.**

3.1 **Contract Time**. Upon receipt of materials including the generator, the WORK will be substantially completed within **Ninety (90)** calendar days from the effective date of this Agreement, when the Contract Time commences to run as provided in paragraph **2.3** of the General Conditions and completed and ready for final inspection and payment in accordance with paragraph **14.9** of the General Conditions within **Thirty (30)** calendar days from the date of Substantial Completion.

3.2 **Termination for Convenience**. This Agreement may be terminated by CITY for convenience, upon providing fourteen (14) business days of written notice to CONTRACTOR for such termination. In the event of termination, CONTRACTOR shall be paid its compensation for services performed until the termination date, including services reasonably related to termination. In the event that CONTRACTOR abandons this Agreement or causes it to be terminated, CONTRACTOR shall indemnify CITY against loss pertaining to this termination.

3.3 **Termination for Cause**. In addition to all other remedies available to CITY, this Agreement shall be subject to cancellation by CITY for cause, should CONTRACTOR neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by CONTRACTOR of written notice of such neglect or failure.

3.4 **Liquidated Damages**. The CITY and CONTRACTOR recognize and acknowledge that time is of the essence of this Contract and that the CITY will suffer financial loss if the WORK is not completed within the times specified in paragraph **3.1** above, plus any extensions thereof allowed in accordance with **Article 12** of the General Conditions. Each of the parties acknowledges that it has attempted to quantify the damages, which would be suffered by the CITY in the event of the failure of CONTRACTOR to perform in a timely manner, but neither one has been capable of ascertaining such damages with certainty. CITY and CONTRACTOR also recognize and acknowledge the delays, expense, and difficulties involved in proving in a legal preceding the actual loss suffered by the CITY if the WORK is not completed on time. Accordingly, instead of requiring any such proof, the CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay the CITY, **Eight Hundred Dollars ($800.00)** for each day that expires after the time specified in paragraphs **3.1** for substantial completion until the WORK is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining WORK within the Contract Time or any proper extension thereof granted by the CITY, CONTRACTOR shall pay CITY **Two Hundred Dollars [$200.00]** for each day that expires after the time specified in paragraph **3.1** for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

CITY shall pay CONTRACTOR, for the faithful performance of the Contract, in lawful money of the United States of America, and subject to the additions and deductions as provided in the Contract Documents, a total sum as follows:

Based on the Contract prices shown in the Bid Form submitted to the CITY as subsequently revised and as stated herein, a copy of such Bid Form being a part of the Contract Documents, the aggregate amount of this Contract (obtained from either the lump sum price, the application of unit prices to the quantities shown in the Bid Form or the combination of both) not to exceed: **Seven Hundred Forty-Four Thousand Three Hundred Seven Dollars ($744,307.00).**

Contingency Funds - ALL CONTINGENCY SUMS ARE CITY'S CONTINGENCY AND REMAIN THE CITY'S PROPERTY 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 the city's funds. The city may approve the 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 the Contractor to cover shortfalls in the Contractor's bid amount and not for use by the City to increase the scope of work.

Contractor shall obtain prior written approval from City 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 City. All uncommitted contingency funds remain the funds of City.

Contingency. City and Contractor agree the Project budget shall include City's contingency, which shall be utilized as outlined above, **The Contingency shall be ten percent or $74,430.70 to account for any unforeseen conditions only approved by the City Manager.**

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with **Article 14** of the General Conditions. CITY will process Applications for Payment as provided in the General Conditions.

5.1 Progress Payments. CONTRACT may submit an Application for Payment as recommended by CONSULTANT, for WORK completed during the Project at intervals of not more than once a month. All progress payments will be on the basis of the progress of WORK measured by the schedule of values established in Paragraph **2.9.1** of the General Conditions and in the case of Unit Price Work based on the number of units completed or, in the event there is no schedule of values, as provided in the General Requirements.

5.2 Prior to Substantial Completion progress payments will be made in an amount equal to 90% of WORK completed, but, in each case, less the aggregate of payments previously made and less such amounts as CONSULTANT shall determine, or CITY may withhold, in accordance with paragraph **14.5** of the General Conditions.

5.3 CONTRACTOR shall submit with each Application for Payment, an updated progress schedule acceptable to the CITY and a Warranty of Title/Release of Liens relative to the Work that is the subject of the Application. Each Application for Payment shall be submitted to the CITY for approval. The CITY shall make payment to the CONTRACTOR within thirty (30) calendar days after approval by the CITY of CONTRACTOR'S Application for Payment and submission of an acceptable updated progress schedule.

8.3 Proposal Forms (including the Proposal, Schedule(s), Submission Requirements of Proposer / Bidder, and all required certificates, affidavits, and other documentation)
8.4 Contract
8.5 CONTRACTOR's Bid Bond, Performance, and Payment Bond
8.6 General Conditions for Construction
8.7 Special Terms and Conditions
8.8 City Construction Standards and Details (available online at: https://www.boynton-beach.org/engineering/new-construction-department- public-works-engineering-division)
8.9 Attachment "A" – Emergency Generator ARCH SS – Bid Set/Drawings
8.10 Attachment "B" – Emergency Generator ELEC SS – Bid Set/Drawings

ARTICLE 9. NOTICE. All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to CITY shall be mailed to:

Daniel Dugger, City Manager
City of Boynton Beach
100 East Ocean Ave, Boynton Beach, FL 33435
Telephone No. (561) 742-6000

And if sent to the CONTRACTOR shall be mailed to:

J.T Equipment Services Co.
14258 SW 139th Court
Miami, Florida 33186
305-238-0023

Article 10. INDEMNITY.

10.1 The CONTRACTOR shall indemnify and hold harmless the CITY and its officers, employees, agents, instrumentalities, and the State of Florida, Division of Emergency Management from liability, losses or damages, including attorneys' fees and costs of defense through the conclusion of any appeals, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of or resulting from the negligence, recklessness, or intentional wrongful misconduct of CONTRACTOR, its employees, agents, partners, principals or subcontractors during the term of this Agreement or resulting thereafter. The CONTRACTOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. The CONTRACTOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR shall in no way limit the responsibility to indemnify, keep, and save harmless and defend the CITY or its officers, employees, agents, and instrumentalities as herein provided.

10.2 CONTRACTOR's aggregate liability pursuant to this indemnification provision shall not exceed one and one-half (1 1/2) times the contract price or One Million Dollars ($1,000,000) per occurrence, whichever is greater.

10.3 Upon completion of all services, obligations, and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

10.4 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR.

10.5 Nothing contained herein is intended nor shall be construed as a contractual waiver of the CITY's rights, limits, and immunities under the common law or Section 768.28, Florida Statutes, as may be amended from time to time, nor a waiver of any defense the CITY may have and shall not be construed as consent to be sued by third parties based on any claims arising under this Contract. CONTRACTOR and CITY agree that any liability of the CITY under this Contract shall be limited to the amounts set forth in Sec. 728.68, Florida Statutes.

Article 11. REIMBURSEMENT OF CONSULTANT EXPENSES.

Should the completion of this Contract be delayed beyond the specified or adjusted time limit, CONTRACTOR shall reimburse the CITY for all expenses of consulting and inspection incurred by the CITY during the period between said specified or adjusted time and the actual date of final completion. All such expenses for consulting and inspection incurred by the CITY will be charged to the CONTRACTOR and be deducted from payments due CONTRACTOR as provided by this Contract. Said expenses shall be further defined as CONSULTANT charges associated with the construction contract administration, including resident project representative costs.

Article 12. FLORIDA'S PUBLIC RECORDS LAW.

The CITY is a public agency subject to Chapter 119, Florida Statutes. The CONTRACTOR shall comply with Florida's Public Records Law. Specifically, the CONTRACTOR shall:

12.1 Keep and maintain public records required by the CITY to perform the service;

12.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statue or as otherwise provided by law;

12.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession once the CONTRACTOR transfers the records in its possession to the CITY; and,

12.4 Upon completion of the contract, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by CONTRACTOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

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

CITY CLERK'S OFFICE
100 E. OCEAN AVENUE
BOYNTON BEACH, FLORIDA 33435
561-742-606
CityClerk@bbfl.US

Article 13. E-VERIFY.

13.1 CONTRACTOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

13.1.1 *Definitions for this Section:*

A. "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for a salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.

B. "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for a salary, wages, or other remuneration.

C. "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

13.1.2 Registration Requirement; Termination: Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-Verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

A. All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and

B. All persons (including sub-vendors/sub-consultants/sub-contractors) assigned by Contractor to perform work pursuant to the contract with the City of Boynton Beach. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Boynton Beach; and

C. The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

Article 14. PROHIBITION AGAINST CONSIDERING SOCIAL, POLITICAL OR IDEOLOGICAL INTERESTS IN GOVERNMENT CONTRACTING -- F.S. 287.05701.

CONTRACTOR is hereby notified of the provisions of section 287.05701, Florida Statutes, as amended, that the CITY will not request documentation of or consider CONTRACTOR's social, political, or ideological interests when determining if the CONTRACTOR is a responsible CONTRACTOR. CONTRACTOR is further notified that the CITY's governing body may not give preference to a CONTRACTOR based on the CONTRACTOR's social, political, or ideological interests.

Article 15. SCRUTINIZED COMPANIES.

By execution of this Agreement, CONTRACTOR certifies that CONTRACTOR is not participating in a boycott of Israel. CONTRACTOR further certifies that CONTRACTOR is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has CONTRACTOR been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the CITY will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of contract. The CITY shall provide notice, in writing, to the CONTRACTOR of the CITY's determination concerning the false certification. CONTRACTOR shall have five (5) calendar days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, the CONTRACTOR shall have ninety (90) calendar days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the CONTRACTOR does not demonstrate that the CITY's determination of false certification was made in error then the CITY shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

Article 16. COVENANT AGAINST CONTINGENT FEES.

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement, and that CONTRACTOR has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Article 17. MISCELLANEOUS.

17.1 Any and all legal action necessary to enforce the terms of this Agreement shall be governed by the laws of the State of Florida. Any legal action arising from the terms of this Agreement shall be submitted to a court of competent jurisdiction located exclusively in Palm Beach County.

17.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may

become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

17.3 City and CONTRACTOR each binds itself, their partners, successors, assigns and legal representatives to the other party hereto, their partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

17.4 In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

17.5 Prior to final payment of the amount due under the terms of this Agreement, to the extent permitted by law, a final waiver of lien shall be required to be submitted by the CONTRACTOR, as well as all suppliers and subcontractors whom worked on the project that is the subject of this Agreement. Payment of the invoice and acceptance of such payment by CONTRACTOR shall release City from all claims of liability by CONTRACTOR in connection with this Agreement.

17.6 At all times during the performance of this Agreement, CONTRACTOR shall protect CITY's property from all damage whatsoever on account of the work being carried on under this Agreement.

17.7 It shall be the CONTRACTOR's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, city, state, and federal agencies as applicable.

17.8 This Agreement represents the entire and integrated agreement between City and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement is intended by the parties hereto to be final expression of this Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made. In the event of a conflict between this Agreement, the solicitation and the CONTRACTOR's bid proposal, this Agreement shall govern then the solicitation, and then the bid proposal.

17.9 This Agreement will take effect once signed by both parties. This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

Article 18. DEFAULT OF CONTRACT & REMEDIES.

18.1 **Correction of Work**. If, in the judgment of CITY, work provided by CONTRACTOR does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, CITY reserves the right to require that CONTRACTOR correct all deficiencies in the work to bring the work into conformance without additional cost to CITY, and/or replace any personnel who fail to perform in accordance with the requirements of this Agreement. CITY shall be the sole judge of non-conformance and the quality of workmanship.

18.2 **Default of Contract**. The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by CONTRACTOR:

18.2.1 The abandonment of the project by CONTRACTOR for a period of more than seven (7) business days.

18.2.2 The abandonment, unnecessary delay, refusal of, or failure to comply with any of the terms of this Agreement or neglect, or refusal to comply with the instructions of the CITY's designee.

18.2.3 The failure by CONTRACTOR to observe or perform any of the terms, covenants, or conditions of this Agreement to be observed or performed by CONTRACTOR, where such failure shall continue for a period of seven (7) calendar days after written notice thereof by CITY to CONTRACTOR; provided, however, that if the nature of CONTRACTOR's default is such that more than seven (7) calendar days are reasonably required for its cure, then CONTRACTOR shall not be deemed to be in default if CONTRACTOR commences such cure within said seven (7) calendar day period and thereafter diligently prosecutes such cure to completion.

18.2.4 The assignment and/or transfer of this Agreement or execution or attachment thereon by CONTRACTOR or any other party in a manner not expressly permitted hereunder.

18.2.5 The making by CONTRACTOR of any general assignment or general arrangement for the benefit of creditors, or the filing by or against CONTRACTOR of a petition to have CONTRACTOR adjudged a bankruptcy, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against CONTRACTOR, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of CONTRACTOR's assets, or for CONTRACTOR's interest in this Agreement, where possession is not restored to CONTRACTOR within thirty (30) days; for attachment, execution or other judicial seizure of substantially all of CONTRACTOR's assets, or for CONTRACTOR's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

18.3 **Remedies in Default**. In case of default by CONTRACTOR, CITY shall notify CONTRACTOR, in writing, of such abandonment, delay, refusal, failure, neglect, or default and direct CONTRACTOR to comply with all provisions of the Agreement. A copy of such written notice shall be mailed to the Surety on the Performance Bond. If the abandonment, delay, refusal, failure, neglect or default is not cured within seven (7) days of when notice was sent by CITY, CITY may declare a default of the Agreement and notify CONTRACTOR of such declaration of default and terminate the Agreement. The Surety on the Performance Bond shall within ten (10) days of such declaration of default, rectify or cause to be rectified any mismanagement or breach of service in the Agreement and assume the work of CONTRACTOR and proceed to perform services under the Agreement, at its own cost and expense.

18.3.1 Upon such declaration of default, all payments remaining due CONTRACTOR at the time of default, less all sums due CITY for damages suffered, or expenses incurred by reason of default, shall be due and payable to Surety. Thereafter the Surety shall receive monthly payments equal to those that would have been paid by the CONTRACTOR had the CONTRACTOR continued to perform the services under the Agreement.

18.3.2 CITY may complete the Agreement, or any part thereof, either by day labor, use of a subcontractor, or by re-letting a contract for the same, and procure the equipment and the facilities necessary for the completion of the Agreement, and charge the cost of same to CONTRACTOR and/or the Surety together with the costs incident thereto to such default.

18.3.3 In the event CITY completes the Agreement at a lesser cost than would have been payable to CONTRACTOR under this Agreement, if the same had been fulfilled by CONTRACTOR, CITY shall retain such differences. Should such cost to CITY be greater, CONTRACTOR shall pay the amount of such excess to the CITY.

18.3.4 Notwithstanding the other provisions in this Article, CITY reserves the right to terminate the Agreement at any time, whenever the service provided by CONTRACTOR fails to meet reasonable standards of the trade after CITY

gives written notice to the CONTRACTOR of the deficiencies as set forth in the written notice within fourteen calendar (14) days of the receipt by CONTRACTOR of such notice from CITY.

Article 19. SOVEREIGN IMMUNITY. *Nothing contained herein is intended to serve as a waiver* of sovereign immunity by the CITY or as a waiver of limits of liability or rights the CITY may have under the doctrine of sovereign immunity or under Section 768.28, Florida Statutes.

Article 20. UNCONTROLLABLE FORCES.

Neither the CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

Neither party shall, however, be excused from performance if non-performance is due to forces which are preventable, removable, or remediable, and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

Article 21. NON-WAIVER. Waiver by the CITY of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

Article 22. INDEPENDENT CONTRACTOR. The CONTRACTOR and the CITY agree that the CONTRACTOR is an independent contractor with respect to the Work provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither CONTRACTOR nor any employee of CONTRACTOR shall be entitled to any benefits accorded CITY employees by virtue of the services provided under this Agreement. The CITY shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to CONTRACTOR, or any employee of CONTRACTOR.

Article 23. INSURANCE. During the performance of the Work under this Agreement, CONTRACTOR shall maintain the insurance policies required by the Insurance Advisory in the Contract Documents, and provide originals or certified copies of all policies to CITY's Risk Management. All policies shall be written by an insurance company authorized to do business in Florida. CONTRACTOR shall be required to obtain all applicable insurance coverage prior to commencing any Work pursuant to this Agreement.

Article 24. OWNERSHIP AND USE OF DOCUMENTS. All documents, drawings, specifications and other materials produced by the CONTRACTOR in connection with the services rendered under this Agreement shall be the property of the CITY whether the project for which they are made is executed or not. The CONTRACTOR shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with CONTRACTOR's endeavors.

Article 25. COMPLIANCE WITH LAWS. CONTRACTOR shall, in performing the Work contemplated by this Agreement, faithfully observe and comply with all federal, State of Florida,

and City of Boynton Beach ordinances and regulations that are applicable to the Work rendered under this Agreement.

This Agreement will take effect once signed by both parties. This Agreement may be signed by the parties in counterparts, whether signed physically or electronically, which together shall constitute one and the same agreement among the parties. A facsimile signature shall constitute an original signature for all purposes.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year set forth below their respective signatures.

CITY OF BOYNTON BEACH

Ty Penserga, Mayor

Date

Approved as to Form:

Office of the City Attorney

J.T. Equipment Service Company
(CONTRACTOR)

James K Thurmond

(Signature), J.T. Equipment Service Company

James Thurmond
Print Name of Authorized Official

President
Title

January 21, 2025
Date

(Corporate Seal)

Attest/Authenticated:

Witness

Daniela Cadena
Print Name

Attested/Authenticated:

Maylee De Jesus, City Clerk

CORPORATE ACKNOWLEDGEMENT

STATE OF Florida)
COUNTY OF Miami Dade)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 21 day of January, 2025, by James Thurmon on behalf of JT Equipment Service Co, a _____. He/she is personally known to me or has produced FL Driver License as identification.

ANDRES BARCIA
Notary Public - State of Florida
Commission # HH 284687
My Comm. Expires Jul 6, 2026

NOTARY PUBLIC

Andres Barcia
(Name of Notary Typed, Printed or Stamped)

Public Notary
Title or Rank

Serial number, if any

PWE24-024 - Fire Station # 5 Emergency Generator Replacement Project

Opening Date: September 12, 2024 12:00 PM

Closing Date: November 7, 2024 3:00 PM

Vendor Details

Company Name:	J.T. Equipment Service Co.
Does your company conduct business under any other name? If yes, please state:	Florida
Address:	14258 SW 139th CT Miami, Florida 33186
Contact:	James Thurmond
Email:	james@jtequipment.net
Phone:	305-238-0023
HST#:	65-0157778

Submission Details

Created On:	Monday October 28, 2024 12:09:45
Submitted On:	Thursday November 07, 2024 12:56:01
Submitted By:	James Thurmond
Email:	james@jtequipment.net
Transaction #:	d1b1ec5b-dd10-426a-955d-0e63106294ca
Submitter's IP Address:	104.10.125.85

Schedule of Prices

The Bidder hereby Bids and offers to enter into the Contract referred to and to supply and do all or any part of the Work which is set out or called for in this Bid, at the unit prices, and/or lump sums, hereinafter stated.

*Denotes a "**MANDATORY"** field

Do not enter $0.00 dollars unless you are providing the line item at zero dollars to the Owner (unless otherwise specified).

If the line item and/or table is "**NON-MANDATORY**" and you are not bidding on it, leave the table and/or line item blank.Do not enter a $0.00 dollar value.

BID PROPOSAL SHEET - FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT

BID PROPOSAL SHEET - Price Proposal Online Form

The undersigned declares that he/she has carefully examined the specifications and is thoroughly familiar with its provisions and with the quality, type, and grade of service required.

The undersigned proposes to deliver the service in accordance with the specifications for **"FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT".**

DESCRIPTION	EST. QTY	UNIT	LS Dollar Amount *	
Demolition / Removal of Old Generator and debris, including all labor	1	LS	$58,008.0000	*
Installation including all labor of new structure and new generator	1	LS	$92,659.0000	*
Any equipment including but not limited to the new generator	1	LS	$593,640.0000	*
Total Dollar Amount For Project (Cost should equal adding items 1 through 3)	1	LS	$744,307.0000	*

Confirmation of Minority Owned Business

A requested form to be made a part of our files for future use and information. Please fill out and indicate in the appropriate spaces provided which category best describes your company. Return this form to make it an official part of with your Proposal responses

Description	Response *	Comments	
Is your company a Minority Owned business?	No		
Please select the appropriate response	Not Applicable		
Do you possess a certification qualifying your business as a Minority Owned business?	No		
Issuing organization name	Input response in comments box to the right	N/A	*
Date of Issuance	Input response in comments box to the right	N/A	*

Letter of Interest

The Letter of Interest shall summarizes the Bidder's primary qualifications and a firm commitment to provide the proposed services.

Line Item	Description	Response *
1	The Letter of Interest shall summarize the Proposer's primary qualifications and a firm commitment to provide the proposed services.	We are a Florida State licensed Mechanical Contractor CMC039556 in business since 1989. We have an established relationship with Stuart & Stevenson, who will be supplying the generator and all it's accessories. We have an established relationship with Universal Electric of Florida, who also has extended experience in generator installations. We will pull the proper permits. We have an extensive record of completing successful projects in Florida since 1989.

References

In order to be considered for this project**, the Bidder must** list the minimum number of three (3) successfully completed or in progress projects within the last five (5) years of similar scope and complexity in the State of Florida, which shows experience and demonstrates expertise in providing the services as stated herein.

The City is interested in learning of other firms' or government agencies' experiences with your company; as such**, please do not list the City of Boynton as a reference.**

Contact persons must be informed that they are being used as a reference and that the City or their designee will be contacting them for information. Selection Committee Members or designee will email and or call each reference up to three (3) times. If there is no answer after the third attempt, the City will apply no points toward the evaluation criteria.

***Note the City will not attempt to correct any of the supplied contact information, it is the responsibility of the Proposer to supply correct reference contact information.**

If the proposer cannot satisfy the requirements for similar work, the City may reject the bid.

Description	**Reference 1 - Completed or In Progress** *	**Reference 2 - Completed or In Progress** *	**Reference 3 - Completed or In Progress** *
Name of Firm:	Delray Beach Fire Station No. 113	School Board of Broward County TSSC Building	Stranahan HS Ft Lauderdale
Scope of Work:	Supply and Install 350 KW Genset	Remove and replace an existing 1250 KW Genset	Supply & Install a new 100 KW Genset
Project Location:	1905 SW 4th Ave Delray Beach, FL 33444	7720 West Oakland Park Blvd. Sunrise, FL 33351	1800 SW 5th PL Ft Lauderdale, FL
Project Lead/Manager:	Phillip Kroyman	Phillip Kroyman	David Zubak
Cost of Service:	$1,350,000.00	$620,000.00	$1,600,000.00
Start Date of Service:	January 2024	March 2024	February 2023
End Date of Service:	April 2025	January 2025	August 2024
Contact Person:	Patrick Mach	Phil Dorsett	Shawn Anderson
Title:	Project Lead Manager	School Board Supervisor	Project Manager
Email:	patrickm@gulfbuilding.com	phdorsett@browardschools.com	sanderson@thornton-inc.com
Phone #:	561-613-9071	754-321-4653	561-935-7584

Subcontractors

The Bidder shall state all Subcontractor(s) and type of Work proposed to be used for this project. Bidders shall not indicate "TBD" (To Be Determined) or "TBA" (To Be Announced) or similar wording and shall not indicate multiple choices of Subcontractor names for any Subcontractor category in their list of Subcontractors.

Subcontractors

The Bidder proposes the following major subcontractors for the major areas of work for the Project. The Bidder is further notified that all subcontractors shall be properly licensed, bondable and shall be required to furnish the City with a Certificate of Insurance in accordance with the contract general conditions. This page may be reproduced for listing additional subcontractors, if required.

Owner reserves the right to reject any subcontractors who has previously failed in the proper performance of an award, or failed to deliver on time contracts in a similar nature, or who is not responsible (financial capability, lack of resources, etc.) to perform under this award. Owner reserves the right to inspect all facilities of any subcontractors in order to make a determination as to the foregoing.

☐

By clicking here I confirm that there are no Subcontractor(s)/Subconsultant(s) and the Bidder shall perform the project with their "**OWN FORCES**".

Name	Address	Scope of work	license No	Contract Amount	Percentage (%) of Contract
Futura USA	14260 SW 139th Court Miami, Florida 33186	removal of the roof structure, painting and reinstalling it. Verification of the slab for the next generator barricades. Etc.	CGC 1524678 FL	$61,680.00	8.2%
Universal Electric of Florida Inc.	6784 NW 17th Ave Ft, Lauderdale, FL 33309	Electrical disconnections, new connections and all electrical work needed.	Philco #13001664 FL Universal #13001975 FL	$29,832.00	4%

Documents

Ensure your submission document(s) conforms to the following:

Documents should NOT have a security password, as City of Boynton Beach may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by City of Boynton Beach.

If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."

If the attached file(s) cannot be opened or viewed, your Bid Call Document may be rejected.

DOCUMENTS THAT

MUST ACCOMPANY PROPOSAL

IN ORDER FOR SUBMITTAL

TO BE CONSIDERED

COMPLETE AND ACCEPTABLE

- Bid Form & Bid Bond Documents - Bid & Bond Form.pdf - Thursday November 07, 2024 11:23:40
- Bidder's Qualification Statement - Bidders Qualification Statement.pdf - Thursday November 07, 2024 10:52:41
- Anti-Kickback Affidavit - Anti Kick Back Affidavit.pdf - Thursday November 07, 2024 10:55:27
- Non-Collusion Affidavit of Proposer - Non Collusion Affidavit Proposer.pdf - Thursday November 07, 2024 10:57:23
- Certification Pursuant to Florida Statute § 287.135 - Certificate Pursuant.pdf - Thursday November 07, 2024 10:59:08
- Certificates, Professional Licenses, Business Permits, W-9 and COI - Local Business Certification.pdf - Thursday November 07, 2024 12:15:18
- Warranties - Warranties.pdf - Thursday November 07, 2024 11:05:06
- E-Verify Form Under Section § 448.095 Florida Statutes - E Verify Form.pdf - Thursday November 07, 2024 11:08:08
- Bidder's Site Inspection Form - Letter of Attendance.pdf - Thursday November 07, 2024 12:55:12
- Affidavit of Compliance with Foreign Entity Laws and Affidavit of Compliance with Anti-Human Trafficking Laws - Affidavit Compliance.pdf - Thursday November 07, 2024 11:10:59
- Additional Document (optional)

Bonding Upload Section

Refer to Bid Document

ATTENTION ALL INTERESTED BIDDERS:

All Bidders are required to submit a five percent (5%) Bid Bond with the Bid Form or the Bid shall be rejected as non-responsive. A one hundred percent (100%) Payment and Performance Bond is required upon notification by the City of the award the Contract to the selected firm.

No bids may be withdrawn for a period of ninety (90) days after the Bid opening. Bids must be accompanied by an acceptable 5% Bid Bond, cash, certified check, or money order. Said bid bond is to be furnished and executed by a surety company of recognized standing, authorized to do business in the State of Florida, and having a Registered Agent in Florida. The bid bond amount shall be 5% of the bid price and shall constitute a guarantee that the contractor, if awarded the contract, will enter into a written contract with the City to perform this work pursuant to the bid.

- Bid Bond - Bid Bond.pdf - Thursday November 07, 2024 11:39:13

Addenda & Declarations

The Bidder hereby acknowledges and agrees:

1. To provide all goods, services, and construction, as more specifically set out and in accordance with the solicitation, including but not limited to the scope of work, specifications, drawings, Addenda (if issued by the Owner), the terms and conditions, etc. stated therein, which are expressly acknowledged and made part of this Contract.

2. This Bid is made without any connections, knowledge, comparison of figures, or arrangements with any other company, firm, or person making a Bid for the same Work and is in all respects fair and without collusion or fraud.

3. I/WE do hereby Bid and offer to enter into a Contract to do all the Work as specified in the solicitation which shall include all costs but not limited to; freight, duty, currency, etc. in accordance with the prices and terms as submitted by the Bidder herein.

4. If I/WE withdraw this Bid before the formal Contract is executed by the Awarded Bidder for the said Work or One Hundred Twenty (120) Calendar Days, whichever event first occurs, the amount of the Bid Bond accompanying this Bid (if applicable to this bid) shall be forfeited to the Owner.

5. I/WE acknowledge and agree that any issued Addendum/Addenda forms part of the solicitation.

6. I/WE (including any related or affiliated entities and any principal thereof) have no unresolved litigation with the Owner.

Palm Beach County Inspector General Acknowledgement

The Consultant 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 Consultant Agreement, and in furtherance thereof may demand and obtain records and testimony from the Consultant and its sub-consultants and lower tier sub-consultants.

The Consultant understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the Consultant or its subconsultants or lower tier sub-consultants to fully cooperate with the Inspector General when requested may be deemed by the municipality to be a material breach of this contract justifying its termination.

Confirmation of Drug Free Workplace

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more submittals which are equal with respect to price, quality, and service are received by the City of Boynton Beach or by any political subdivision for the procurement of commodities or contractual services, a submittal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie submittals will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

Give each employee engaged in providing the commodities or contractual services that are under submittal a copy of the statement specified in subsection (1).

In the statement specified in subsection (1), notify the employee that, as a condition of working on the commodities or contractual services that are under submittal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or- plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than 5 days after such conviction.

Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by, any employee who is so convicted.

Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

☑ I/We have the authority to bind the Company and submit this Bid on behalf of the Bidder. - James Richard Thurmond , President, J.T. Equipment Service Co,
The bidder shall declare any potential or actual conflict of interest that could arise from Bidding on this Bid. Do you have a conflict of interest?

○ **Yes** ◉ **No**

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document

Please check the box in the column "**I have reviewed this addendum"** below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addenda 5 Fri October 25 2024 09:26 AM	☑	–
Addenda No. 4 Fri October 11 2024 08:55 AM	☑	1
Addendum 3 Thu September 26 2024 01:11 PM	☑	1
Addendum 2 Wed September 25 2024 01:01 PM	☑	2
Addendum 1 Thu September 19 2024 08:26 AM	☑	1

BID FORM

FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

BID No.: PWE24-024

TO BE COMPLETED AND UPLOADED ONLINE

The City of Boynton Beach is seeking qualified VENDORS to furnish, install and provide all labor for **FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT** on an 'as needed basis'.

Submitted By: JT Equipment Services (VENDOR) Date: 11/06/2024

To furnish and deliver all materials and to do and perform all WORK in accordance with the Bid Documents, as follows:

1. The undersigned VENDOR proposes and agrees, if this Bid is accepted, to enter into a contract with the CITY to perform and furnish all WORK as specified herein for the Contract Price and within the Contract Period indicated in this Bid.

2. This Bid will remain subject to acceptance for ninety (90) days after the day of Bid opening. VENDOR will sign and submit the necessary documents required by the CITY within ten (10) days after the date of CITY's Award Letter.

3. In submitting this Bid, VENDOR represents, as more fully set forth in the Contract, that

   a. VENDOR has examined the Bid Documents, including all addenda. Receipt of all of which is hereby acknowledged;

   b. VENDOR has familiarized itself with the nature and extent of the Bid Documents, locality, and all local conditions and laws and regulations that in any manner may affect the cost, progress, performance, or furnishing of the WORK.

   c. VENDOR has given the CITY written notice of all conflicts, errors, or discrepancies that it has discovered in the Bid Documents, and the written resolution thereof by the CITY is acceptable to VENDOR.

4. VENDOR proposes to furnish the WORK in conformity with the specifications listed. The Bid Prices quoted have been checked and certified to be correct. Such Bid Prices are fixed and firm and shall be paid to VENDOR for the successful completion of its obligation as specified in the Bid Documents.

THIS PAGE TO BE SUBMITTED ALONG WITH BID FOR
PACKAGE TO BE CONSIDERED COMPLETE AND ACCEPTABLE

5. VENDOR agrees that the WORK will be substantially completed within **(90)** consecutive calendar days after the receipt of the Notice to Proceed and final completion will occur within **30** consecutive calendar days after the Notice of Substantial Completion.

6. VENDOR accepts the provisions of the Contract as to liquidated damages in the event of failure to complete the WORK on time.

7. Communications concerning this Bid shall be as follows:

Contact Person: James Thurmond
Business Address: 14258 SW 139th CT
City, State, Zip Code: Miami, FL, 33186
Business Phone Number: 305-987-2325
Email Address: James@Jtequipment.net
Cell Phone Number: 305-987-2325

8. Other pertinent information is as follows:

License Number (Please Attach Copy): 2056208
Federal Tax ID#: _____
Federal Employment ID #: 65-0157778

Submitted on this 15th day of November 20 24

a. (If an individual, partnership, or non-incorporated organization)

Signature of VENDOR: _____

By: _____

b. (If a corporation)
(Affix Seal)

Signature of VENDOR: James R Thurmond

By: _____

Attested by Secretary: _____

Incorporated under the laws of the State of Florida.

THIS PAGE TO BE SUBMITTED ALONG WITH BID FOR PACKAGE TO BE CONSIDERED COMPLETE AND ACCEPTABLE

BID BOND

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

KNOW ALL MEN BY THESE PRESENTS, that J.T. Equipment Service Co., 14258 Southwest 139th Court, Miami , FL 33186 as Principal, and The Ohio Casualty Insurance Company, 175 Berkeley Street, Boston, MA 02116, as Surety, authorized to do business in the State of Florida are held and firmly bound unto the Owner, City of Boynton Beach in the penal sum of Five Percent of Amount Bid Dollars ($5% Percent of Amount Bid) lawful money of the United States, for the payment of which sum will and truly to be made, we bond ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying bid, dated November 07, 20 24, for:

(FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT)

NOW THEREFORE,

A. If the principal shall not withdraw such Bid within ninety (90) calendar days after date of opening of the same, and shall within ten (10) business days after the prescribed forms are presented to the principal for signature, enter into a written Contract with the City in accordance with the Bid as accepted, and give bonds with goods and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such Contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and effect.

B. In the event of the withdrawal of such Bid within the period specified, or the failure to enter into such Contract and give such bonds within the time specified, if the principal shall pay the City the difference between the amount specified in such Bid and the amount for which the City may procure the required work and supplies, if the latter amount be in excess of the former then the above obligations shall be void and of no effect, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals, this 7th day of November, 20 24, being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of is governing body.

WITNESS: (If Sole Ownership or Partnership, two (2) Witnesses required).

(If Corporation, Secretary only will attest and affix seal).

PRINCIPAL:

J.T. Equipment Service Co.
Name of Firm

WITNESS:

John Cadena
Daniela Cadena

Signature of Authorized Officer (affixed seal)

President
Title

14258 SW. 139TH COURT
Business Address

MIAMI FLORIDA 33186
City and State

SURETY:

The Ohio Casualty Insurance Company
Corporate Surety

WITNESS:

Kristy Collins, Secretary

Attorney-in-Fact (affix seal) Charles J. Nielson, Attorney-In-Fact

175 Berkeley Street
Business Address

Boston, MA 02116
City and State

Acrisure, 15050 NW 79th Court, Suite 200, Miami Lakes, FL 33016
Name of Local Insurance Agency

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CERTIFICATE AS TO CORPORATE PRINCIPAL

I, JAMES THURMOND, certify that I am the Secretary of the Corporation named as Principal in the within bond; that JAMES THURMOND who signed the such Bid Bond on behalf of the Principal, was then PRESIDENT of such Corporation; that I know their signature, and their signature hereto is genuine; and that such bond was duly signed, sealed, and attested for and in behalf of such Corporation by authority of its governing body.

James R. Thurmond
Secretary (corporate seal)

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

Charles J. Nielson, Attorney-In-Fact

Before me, a Notary Public duly commissioned, qualified and acting, personally appeared by means of X physical presence or ___online notarization _____ to me well known, who being by me first duly sworn upon oath, says that they are the Attorney-in-Fact, for the The Ohio Casualty Insurance Company and that they have been authorized by The Ohio Casualty Insurance Company to execute the foregoing bond on behalf of the VENDOR named therein in favor for the City of Boynton Beach.

Notary Public State of Florida
Alicia Angelillo
My Commission HH 521471
Expires 4/21/2026

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This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8205265-964011**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Charles D. Nielson, Charles J. Nielson, David R. Hoover, Jarrett Merlucci, Shawn A. Burton

all of the city of Miami Lakes state of FL each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 12th day of April, 2021.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: _____
David M. Carey, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 12th day of April, 2021 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.

Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: _____
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.
Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.
Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 7th day of November, 2024.

By: _____
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

LMS-12873 LMIC OCIC WAIC Multi Co 02/21

BIDDER'S QUALIFICATION STATEMENT

FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

BID No.: PWE24-024

TO BE COMPLETED AND UPLOADED ONLINE

The undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter:

Check One

Corporation	✓
Partnership	
Individual	
Other	

Submitted By:
Name: James Thurmond
Address: 14258 SW 139th Ct
City, State, Zip: Miami, FL, 33186
Telephone No.: 305-987-2325
Email Address: James@Jtequipment.net

1. State the true, exact, correct, and complete name of the partnership, corporation, trade or fictitious name under which you do business and the address of the place of business.

   The correct name of the Vendor is: J.T Equipment Services CO

   The address of the principal place of business is: 14258 SW 139th CT Miami, FL 33186

2. If Vendor is a corporation, answer the following:

   a. Date of Incorporation: June 6, 1989
   b. State of Incorporation: Florida
   c. President's name: James Thurmond
   d. Vice President's name: _____
   e. Secretary's name: _____
   f. Treasurer's name: _____
   g. Name and address of Resident Agent: James Thurmond

3. If Vendor is an individual or a partnership, answer the following:

   a. Date of organization: _____

   b. Name, address, and ownership units of all partners:

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c. State whether general or limited partnership: _____

4. What is the last project of this nature that you have completed?
Broward County School Board, Dominion Tower, AT&T,

5. If Vendor is other than an individual, corporation, or partnership, describe the organization and give the name and address of principals:
N/A

6. If Vendor is operating under a fictitious name, submit evidence of compliance with the Florida Fictitious Name Statute.
N/A

7. How many years has your organization been in business under its present business name?
35

Under what other former names has your organization operated?
N/A

8. Have you ever failed to complete work awarded to you. If so, when, where, and why?
NO

9. List the pertinent experience of the key individuals of your organization (continue on insert sheet, if necessary).
James Thurmond - President, John Cadena - Office manger
Miles Shipp - Project Manager

10. Indicate registration, License Numbers, or Certificate Numbers for the business or professions, which are the subject of this Bid. Attach Certificate of Competency and or State Registration.
CMC 039556

11. Will you sublet any part of this WORK? If so, give details.
Crane Company to remove and replace the generator Generator tank recertification, Roof Removal and replacement.

12. State the name and address of the Attorney, if any, for the business.
Benjamin Klein - 1124 Kane concourse, Bay Harbor Island, FL 33154

13. State the names and addresses of all businesses and/or individuals who own and interest of more than five percent (5%) of the Vendor's business and indicate the percentage owned of each such business and/or individual:
James Thurmond 100%

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14. State the names, addresses, and the type of business of all firms that are partially or wholly owned by the Vendor:
JT Equipment Service Co

15. Has the Vendor or any principals of the Firm failed to qualify as a responsible Vendor, refused to enter into a contract after an award has been made, failed to complete a contract during the past five (5) years, or been declared to be in default in any contract in the last five (5) years? If yes, please explain below:
NO

16. What will be your turnaround time for written responses to the City's inquires?
5 Days

17. Is the financial statement submitted with your bid (if applicable) for the identical organization name for Question #1?
YES ☑ NO ☐

18. If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsidiary).

19. List and describe all bankruptcy petitions (voluntary or involuntary) which have been filed by or against the Vendor, its parent or subsidiaries, or predecessor organizations during the past five (5) years. Include in the description, the disposition of each petition.
None

20. List all claims, arbitrations, administrative hearings, and lawsuits brought by or against the Vendor or its predecessor organization(s) during the last five (5) years. The list shall include all case names, case arbitration or hearing identification numbers, the name of the project in which the dispute arose, and a description of the subject matter of the dispute.
None

21. Is the Vendor currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify in detail the circumstances and prospects for resolution.
NO

22. Bank References (include name, job title, address, and telephone number of contact person) – Minimum 1
TD Bank - Claudia Balarez, Financial Advisor, 19195 Dixie Hwy, Cutler Bay, FL 33157, 305-971-2386

23. Annual Average Services Revenue of the Vendor for the last three years as follows:

		Revenue Index Number
a.	Government Related Work	987,674.95
b.	Non-Governmental Related Work	2,558,744.88
	Total Work (a +b):	3,546,419.83

Services Revenue Index Number

1.	Less than $100,000
2.	$100,000 to less than $250,000
3.	$250,000 to less than $500,000
4.	$500,000 to less than $1 million
5.	$1 million to less than $2 million
6.	$2 million to less than $5 million
7.	$5 million to less than $10 million
8.	$10 million to less than $25 million
9.	$25 million to less than $50 million
10.	$50 million or greater

24. Provide description of policies and methods for project monitoring and budgeting control as well as adherence to project schedule.
Critical path Method

25. Provide a description of quality assurance/quality control management methods.
Project management, Start up - Load Bank Testing.

The VENDOR acknowledges and understands that the information contained in response to this Qualification's Statement shall be relied upon by CITY in awarding the contract and such information is warranted by VENDOR to be true. The discovery of any omission or misstatement that materially affects the VENDOR'S qualifications to perform under the contract shall cause the CITY to reject the Bid, and if after the award, to cancel and terminate the award and/or contract.

The VENDOR also acknowledges that all information listed above may be checked by the CITY and authorizes all entities or persons listed above to answer any and all questions. VENDOR hereby indemnifies the CITY and persons or entities listed above and holds them harmless from any claim arising from such authorization of the exercise thereof, including the dissemination of information requested above.

(Signed) James R. Thurmond
(Title) President

The foregoing instrument was acknowledged before me, by means of ☑ physical presence or ☐ online notarization, this 6th day of November, 2024 by James Thurmond, who is personally known to me or who has produced FL DL# T655-456-49-402-5 as identification.

Subscribed and sworn to before me
This 6th day of November, 2024

MIGUEL R TEJADA
Notary Public - State of Florida
Commission # HH 469433
My Comm. Expires Dec 26, 2027
Bonded through National Notary Assn.

Notary Public (Signature)

My Commission Expires: 12/26/2027

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ANTI-KICKBACK AFFIDAVIT

FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

BID No.: PWE24-024

TO BE COMPLETED AND UPLOADED ONLINE

STATE OF FLORIDA)
: SS
COUNTY OF PALM BEACH)

I, the undersigned hereby duly sworn, depose and say that no portion of the sum herein submitted will be paid to any employees of the City of Boynton Beach as a commission, kickback, reward of gift, directly or indirectly by me or any member of my integrator or by an officer of the corporation.

By: James R. Thurmond
NAME - SIGNATURE

The foregoing instrument was acknowledged before me, by means of ☑ physical presence or ☐ online notarization, this 6th day of November, 2024 by James Thurmond, who is personally known to me or who has produced FLDL# T665-456e-49-401 as identification.

Sworn and subscribed before me
this 6th day of November, 2024

Printed Information:

James Thurmond
NAME

President
TITLE

JT Equipment Services Co
COMPANY

NOTARY PUBLIC, State of Florida
at Large

MIGUEL R TEJADA
Notary Public - State of Florida
Commission # HH 469433
My Comm. Expires Dec 26, 2027
Bonded through National Notary Assn.

"OFFICIAL NOTARY SEAL" STAMP

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NON-COLLUSION AFFIDAVIT OF PROPOSER

FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

BID No.: PWE24-024

TO BE COMPLETED AND UPLOADED ONLINE

State of Florida)

County of Miami-Dade)

Jaime Thurmond, being first duly sworn, deposes and says that:

1) He is President (Title) of JT Equipment Service Co (Name of Corporation or Integrator), the Vendor that has submitted the attached Bid:

2) He is fully informed respecting the preparation and contents of the attached submittal and of all pertinent circumstances respecting such submittal;

3) By signing and submitting this bid, the Vendor certifies that this bid is made independently and free from collusion;

4) Further, the said Vendor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Vendor, integrator or person to submit a collusive or sham BID in connection with the Contract for which the attached BID has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communications or conference with any other Vendor, integrator or person to fix the price or prices in the attached Bid or of any other Vendor, or to fix any overhead, profit or cost element of the Bid price or the Bid price of other Vendor or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Boynton Beach or any person interested in the proposed Contract; and

5) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Vendor or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

6) Vendor shall disclose below, to their best knowledge, any City of Boynton Beach officer or employee, or any relative of any such officer or employee as defined in Section 112.3135(1) (c), Florida Statutes, who is an officer of director or, or has a material interest in, the Vendor's business, who is in a position to influence this procurement. Any City of Boynton Beach officer or employee who has any input into the writing of specifications or requirements, solicitation of offers, decision to award, evaluation of offers, or any other activity pertinent to this procurement is presumed, for purposes hereof, to be in a position to indirectly own any of the total assets or capital stock of any business entity owned or operated by the Vendor, or if they otherwise stand to personally gain if the contract is awarded to this Vendor.

7) Failure to submit this executed statement as part of the bid shall make the bid nonresponsive and not eligible for award consideration. In the event the VENDOR does not indicate any names, the CITY shall interpret this to mean that the VENDOR has indicated that no such relationships exist. Failure of a VENDOR to disclose any relationship described herein shall be reason for termination of bid or award, whichever is applicable, with no time to cure.

NAME	RELATIONSHIP
Mike Sands	Customer
Araddy Morejon	Vendor

Witnesses:

Julia Grimaldo
Typed name:

Daniela Cadena
Typed name:

VENDOR:

Signed: James Thurmond

Name: James Thurmond

Title: President

The foregoing instrument was acknowledged before me, by means of ☑ physical presence or ☐ online notarization, this 6th day of November, 2024 by James Thurmond, who is personally known to me or who has produced FLDL # T655-456-49-402 as identification.

Subscribed and sworn to before me

This 6th day of November, 2024

Notary Public (Signature)

My Commission Expires: 12/26/2027

MIGUEL R TEJADA
Notary Public - State of Florida
Commission # HH 469433
My Comm. Expires Dec 26, 2027
Bonded through National Notary Assn.

(Signed)_____

(Title)_____

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CERTIFICATION PURSUANT TO FLORIDA STATUTE § 287.135

FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

BID No.: PWE24-024

TO BE COMPLETED AND UPLOADED ONLINE

I, James Thurmond President, on behalf of JT Equipment Service Co certify
Print Name and Title — Company Name

that James Thurmond does not:
Company Name

1. Participate in a boycott of Israel; and
2. Is not on the Scrutinized Companies that Boycott Israel List; and
3. Is not on the Scrutinized Companies with Activities in Sudan List; and
4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
5. Has not engaged in business operations in Syria.

Submitting a false certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to the Vendor of the City's determination concerning the false certification. The Vendor shall have ninety (90) calendar days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Vendor does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute § 287.135.

Section 287.135, Florida Statutes, prohibits the City from:

1) Contracting with companies for goods or services if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel; and

2) Contracting with companies, for goods or services that are on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, or are engaged in business operations in Syria.

As the person authorized to sign on behalf of the Vendor, I hereby certify that the company identified above in the section entitled "Vendor Name" does not participate in any boycott of Israel, is not listed on the Scrutinized Companies that Boycott Israel List, is not listed on either the Scrutinized Companies with activities in the Iran

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Petroleum Energy Sector List, and is not engaged in business operations in Syria. I understand that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. I further understand that any contract with the City for goods or services may be terminated at the option of the City if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

JT Equipment Service Co — COMPANY NAME

SIGNATURE

James Thurmond — PRINT NAME

President — TITLE

11/06/2024 — DATE

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CITY OF BOYNTON BEACH
LOCAL BUSINESS STATUS CERTIFICATION

I, James Thurmond the President of
(Name of officer of company) (Title of officer of company)

JT Equipment Services, located at 14258 SW 139th Ct, Miami FL 33186
(Name of Corporation/Company) (Business Address)

certify that I am an authorized representative of the business and, on behalf of the Business, request that it be deemed to be a local business for purposes of the City of Boynton Beach Local Preference Program. Answering yes to Question 1 and Question 2 below will qualify the business as a local business. In support of this request, I certify the following to be true and correct:

NAME OF BUSINESS: JT Equipment Services Co			
1. Is the business located within the City limits of Boynton Beach, Florida?	YES	NO ✓	Number of Years: _____
2. Does the business have a business tax receipt issued in the current year?	YES ✓	NO	Business License Number: 2056208
3. Is the business registered with the Florida Division of Corporations?	YES ✓	NO	

I understand that misrepresentation of any facts in connection with this request may be cause for removal from the certified local business list. I also agree that the business is required to notify the City in writing should it cease to qualify as a local business.

Print Name: James Thurmond Signature: James R. Thurmond

FOR PURCHASING USE ONLY

Business License Active: ☐ **Year Established:** ☐

Verified by: _____ **Date:** _____

Ron DeSantis, Governor

Melanie S. Griffin, Secretary

Florida dbpr

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE MECHANICAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

THURMOND, JAMES RICHARD

J.T. EQUIPMENT SERVICE CO.
14258 SW 139TH COURT
MIAMI FL 33186

LICENSE NUMBER: CMC039556

EXPIRATION DATE: AUGUST 31, 2026

Always verify licenses online at MyFloridaLicense.com

ISSUED: 08/28/2024

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

000781

Local Business Tax Receipt

Miami–Dade County, State of Florida

–THIS IS NOT A BILL – DO NOT PAY

LBT

2056208

BUSINESS NAME/LOCATION

J T EQUIPMENT SERVICE CO
14258 SW 139TH CT
MIAMI FL 33186–5912

RECEIPT NO.

RENEWAL
2516798

EXPIRES
SEPTEMBER 30, 2025

Must be displayed at place of business
Pursuant to County Code
Chapter 8A – Art. 9 & 10

OWNER

JAMES R THURMOND

SEC. TYPE OF BUSINESS

196 GENERAL MECHANICAL CONTRACTOR
CMC039556

PAYMENT RECEIVED BY TAX COLLECTOR

$75.00 07/22/2024
CHECK21–24–029537

Worker(s) 10

This Local Business Tax Receipt only confirms payment of the Local Business Tax. The Receipt is not a license, permit, or a certification of the holder's qualifications, to do business. Holder must comply with any governmental or nongovernmental regulatory laws and requirements which apply to the business.

The RECEIPT NO. above must be displayed on all commercial vehicles – Miami–Dade Code Sec 8a–276.

For more information, visit www.miamidade.gov/taxcollector

2024 FLORIDA PROFIT CORPORATION ANNUAL REPORT

FILED
Apr 19, 2024
Secretary of State
9160191347CC

DOCUMENT# L19891

Entity Name: J.T. EQUIPMENT SERVICE CO.

Current Principal Place of Business:

J.T. EQUIPMENT SERVICE CO.
14258 SW 139 COURT
MIAMI, FL 33186-5516

Current Mailing Address:

J.T. EQUIPMENT SERVICE CO.
14258 SW 139 COURT
MIAMI, FL 33186-5516 US

FEI Number: 65-0157778

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

JAMES, THURMOND R
14258 SW 139TH CT
MIAMI, FL 33186-5516 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: JAMES R THURMOND 04/19/2024

Electronic Signature of Registered Agent — Date

Officer/Director Detail :

Title	PRESIDENT
Name	THURMOND, JAMES R
Address	JAMES THURMOND 14258 SW 139 COURT
City-State-Zip:	MIAMI FL 33186-5516

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: JAMES THURMOND PRESIDENT 04/19/2024

Electronic Signature of Signing Officer/Director Detail — Date

State of Florida
Department of State

I certify from the records of this office that J.T. EQUIPMENT SERVICE CO. is a corporation organized under the laws of the State of Florida, filed on September 28, 1989.

The document number of this corporation is L19891.

I further certify that said corporation has paid all fees due this office through December 31, 2022, that its most recent annual report/uniform business report was filed on January 25, 2022, and that its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capital, this the Twenty-fifth day of January, 2022



Secretary of State

Tracking Number: 1293431749CC

To authenticate this certificate,visit the following site,enter this number, and then follow the instructions displayed.

https://services.sunbiz.org/Filings/CertificateOfStatus/CertificateAuthentication

Form **W-9**
(Rev. March 2024)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Go to *www.irs.gov/FormW9* for instructions and the latest information.

Give form to the requester. Do not send to the IRS.

Before you begin. For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

Print or type. See *Specific Instructions* on page 3.

1 Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.)

2 Business name/disregarded entity name, if different from above.
JT Equipment Service, Co.

3a Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor ☐ C corporation ☑ S corporation ☐ Partnership ☐ Trust/estate

☐ LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) . . . . .

Note: Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner.

☐ Other (see instructions)

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any)

Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any)

(Applies to accounts maintained outside the United States.)

3b If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions . . . . . ☐

5 Address (number, street, and apt. or suite no.). See instructions.
14258 SW 139th Court

Requester's name and address (optional)

6 City, state, and ZIP code
Miami, FL 33186

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number
[ ][ ][ ] - [ ][ ] - [ ][ ][ ][ ]

or

Employer identification number
6 5 - 0 1 5 7 7 7 8

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here | **Signature of U.S. person** James Thurmond | **Date** 9/10/2024

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9*.

What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 11/07/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
biBERK P.O. BOX 113247 Stamford, CT 06911	PHONE (A/C, No, Ext): 844-472-0967	FAX (A/C, No): 203-654-3613
	E-MAIL ADDRESS: customerservice@biBERK.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Berkshire Hathaway Direct Insurance Company	10391
INSURED J.T. EQUIPMENT SERVICE CO. 14258 Southwest 139th Cou Miami, FL 33186	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 2,000,000
	CLAIMS-MADE [X] OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	POLICY [ ] PRO-JECT [ ] LOC						PRODUCTS - COMP/OP AGG	$
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
A	UMBRELLA LIAB [X] OCCUR			N9UM811247	12/10/2023	12/10/2024	EACH OCCURRENCE	$ 2,000,000
	EXCESS LIAB [ ] CLAIMS-MADE						AGGREGATE	$ 2,000,000
	DED RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						PER STATUTE [ ] OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] N/A						E.L. EACH ACCIDENT	$
	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
	Professional Liability (Errors & Omissions): Claims-Made						Per Occurrence/ Aggregate	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

JT Equipment Service Co.
14258 Southwest 139th Court
Miami, FL 33186-

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 11/07/2024

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PRODUCER	CONTACT NAME:	
biBERK P.O. BOX 113247 Stamford, CT 06911	PHONE (A/C, No, Ext): 844-472-0967	FAX (A/C, No): 203-654-3613
	E-MAIL ADDRESS: customerservice@biBERK.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Berkshire Hathaway Direct Insurance Company	10391
INSURED J.T. Equipment Service CO. 14258 Southwest 139th Court Miami, FL 33186	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY [ ] PRO-JECT [ ] LOC X OTHER:			N9BP469129	12/10/2023	12/10/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 50,000 $ 5,000 $ Included $ 2,000,000 $ 2,000,000
	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $
	UMBRELLA LIAB [ ] OCCUR EXCESS LIAB [ ] CLAIMS-MADE DED [ ] RETENTION $						EACH OCCURRENCE AGGREGATE	$ $
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [ ] N/A If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $
	Professional Liability (Errors & Omissions): Claims-Made						Per Occurrence/ Aggregate	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

This policy is primary as to losses it covers, and the Insurer will not seek contribution if there is a written agreement between the insured and the certificate holder.

CERTIFICATE HOLDER

JT Equipment Service Co.
14258 Southwest 139th Court
Miami, FL 33186-

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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CERTIFICATE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY): 11/07/2024

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PRODUCER

biBERK
P.O. BOX 113247
Stamford, CT 06911

CONTACT NAME:
PHONE (A/C, No, Ext): (844) 472-0967 FAX (A/C, No): (203) 654-3613
E-MAIL ADDRESS: salessupport@biberk.com
PRODUCER CUSTOMER ID:

INSURED

J.T. Equipment Service CO.
14258 Southwest 139th Court
Miami, FL 33186

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Berkshire Hathaway Direct Insurance Compai	238210
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

LOCATION OF PREMISES / DESCRIPTION OF PROPERTY (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Location: 14258 Southwest 139th CourtMiami, FL 33186
Bldg #001: Plumbing - Residential or Domestic- 7581101

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INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	COVERED PROPERTY	LIMITS
	X PROPERTY CAUSES OF LOSS — DEDUCTIBLES BASIC — BUILDING 250 BROAD — CONTENTS X SPECIAL EARTHQUAKE WIND FLOOD	N9BP469129	12/10/2023	12/10/2024	BUILDING PERSONAL PROPERTY BUSINESS INCOME EXTRA EXPENSE RENTAL VALUE BLANKET BUILDING BLANKET PERS PROP BLANKET BLDG & PP	$ 0 $ 0 $ 25,000 $ * $ $ n/a $ n/a $ n/a
	INLAND MARINE CAUSES OF LOSS NAMED PERILS	TYPE OF POLICY POLICY NUMBER				
	CRIME TYPE OF POLICY					
	BOILER & MACHINERY / EQUIPMENT BREAKDOWN					

SPECIAL CONDITIONS / OTHER COVERAGES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

* Business Income & Extra Expense is a combined limit on this policy.

CERTIFICATE HOLDER

JT Equipment Service Co.
14258 Southwest 139th Court
Miami, FL 33186-

CANCELLATION

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AUTHORIZED REPRESENTATIVE

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 11/07/2024

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PRODUCER	CONTACT NAME:	
biBERK P.O. BOX 113247 Stamford, CT 06911	PHONE (A/C, No, Ext): 844-472-0967	FAX (A/C, No): 203-654-3613
	E-MAIL ADDRESS: customerservice@biBERK.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Berkshire Hathaway Direct Insurance Company	10391
INSURED JT Equipment Service Co. 14258 Southwest 139th Court Miami, FL 33186	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 0
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 0
							MED EXP (Any one person)	$ 0
							PERSONAL & ADV INJURY	$ 0
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 0
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$ 0
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N] N/A If yes, describe under DESCRIPTION OF OPERATIONS below			N9WC462203	12/10/2023	12/10/2024	X PER STATUTE ☐ OTH-ER	
							E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
	Professional Liability (Errors & Omissions): Claims-Made						Per Occurrence/ Aggregate	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

JT Equipment Service Co.
14258 Southwest 139th Court
Miami, FL 33186-

CANCELLATION

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AUTHORIZED REPRESENTATIVE

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WARRANTIES

In consideration of, and to induce the Award of **THE CITY OF BOYNTON BEACH, FLORIDA,** Construction Contract described in these Bid Documents, the Vendor represents and warrants to the City of Boynton Beach, Florida:

1. The Vendor is financially solvent and sufficiently experienced and competent to perform all of the work required of the Vendor in the Construction Contract; and

2. That the facts stated in the Vendor's Bid and information given the Vendor pursuant to the request or proposal for Bids, instructions to Vendors and Specifications are true and correct in all respects; and

3. That the Vendor has read and complied with all of the requirements set forth in the request for Bids, instructions to Vendors and Specifications; and

4. That the Vendor warrants all materials supplied by it under the terms of the Construction Contract are delivered to the City of Boynton Beach, Florida, free from any security interest, and other lien, and that the Vendor is a lawful owner having the right to sell the same and will defend the conveyance to the City of Boynton Beach, Florida, against all persons claiming the whole or any part thereof; and

5. That the materials supplied to the City of Boynton Beach, Florida, under the Construction Contract are free from the rightful claims of any persons whomsoever, by way of patent or trademark infringement or the like; and

6. That the materials supplied under the Construction Contract are merchantable within the meaning of the Uniform Commercial Code Section 2-314; and

7. That the materials supplied under the Construction Contract are free from defects in materials and workmanship under normal use and service and that any such materials found to be defective shall be replaced by the Vendor as per the attached Warranty.

8. That the materials supplied pursuant to the Construction Contract are fit for the purposes for which they are intended to be used; that under normal use and maintenance the material will continue to be fit for such purposes for the warranty period after delivery, provided that the City shall give the Vendor notice that the materials failed to fulfill the warranty; such notice shall state in what respect the materials have failed to fulfill the warranty, where upon the Vendor shall be allowed a reasonable time after receipt of such notice to correct the defect and the City agrees to cooperate in this regard. If the materials cannot be made to fulfill the Contract within the warranty period the Vendor will either furnish duplicate materials, or at its option refund the amount paid, which shall constitute a settlement in full for all damages occasioned by reason at this warranty of fitness; and

9. That this Warranty is included in exposures for which the Vendor has products liability and completed operations insurance, in minimum amounts of One Million ($1,000,000.00) Dollars for property damage and One Million ($1,000,000.00) Dollars for personal injury as shown on the Certificates of such Insurance attached hereto, and the Vendor agrees to keep such insurance coverage during the period of this Warranty; and

10. That it is an express condition of this Warranty that the item(s) hereby warranted shall be operated and maintained by the City in accordance with the manufacturer's recommendations as to those

portions of the item(s) that are not fabricated by the Vendor, and in accordance with the Vendor's recommendations, a copy of which has either been supplied to the City of Boynton Beach should maintain complete and accurate records made at the time of performance of maintenance showing compliance with such instructions, and by acceptance of this Warranty, the City of Boynton Beach, Florida, agrees to present such records to the Vendor upon request in the event of a claim hereunder by the City;

11. The foregoing Warranties apply as a minimum and are supplemental to other Warranties offered. They are not substituted, but in addition to, any other Warranties offered; and

12. That it is agreed and understood by the Vendor that the City of Boynton Beach, Florida, is induced to enter the Construction Contract in reliance upon this Warranty.

SIGNED, sealed and delivered on this 12th day of November, 2024

(SEAL) James R. Thrush

VENDOR:

By JT Equipment Services Cor

ATTEST:

_____

Secretary

THIS PAGE TO BE SUBMITTED ALONG WITH BID
FOR
PACKAGE TO BE CONSIDERED COMPLETE AND
ACCEPTABLE

CITY OF BOYNTON BEACH
E-VERIFY FORM UNDER SECTION 448.095, FLORIDA STATUTES
TO BE COMPLETED AND UPLOADED ONLINE

Project Name: **FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT**

Solicitation No.: **PWE24-024**

1. Definitions:

   "CONTRACTOR" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "CONTRACTOR" includes, but is not limited to, a vendor or consultant.
   "SUB-CONTRACTOR" means a person or entity that provides labor, supplies, or services to or for a CONTRACTOR or another SUB-CONTRACTOR in exchange for salary, wages, or other remuneration.
   "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.
2. Effective January 1, 2021, CONTRACTORS, shall register with and use the E-Verify system in order to verify the work authorization status of all newly hired employees. CONTRACTOR shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

   a) All persons employed by a CONTRACTOR to perform employment duties within Florida during the term of the contract; and

   b) All persons (including sub-vendors/sub-consultants/sub-CONTRACTORS) assigned by CONTRACTOR to perform work pursuant to the contract with the City of Boynton Beach. The CONTRACTOR acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Boynton Beach; and

   c) Should vendor become the successful CONTRACTOR awarded for the above-named project, by entering into the contract, the CONTRACTOR shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. CONTRACTOR shall also require all SUB-CONTRACTORS to provide an affidavit attesting that the SUB-CONTRACTOR does not employ, contract with, or subcontract with, an unauthorized alien. The CONTRACTOR shall maintain a copy of such affidavit for the duration of the contract.
3. Contract Termination

   a) If the City has a good faith belief that a person or entity with which it is contracting has knowingly violated s. 448.09 (1) Fla. Stat., the contract shall be terminated.

   b) If the City has a good faith belief that a SUB-CONTRACTOR knowingly violated s. 448.095 (2), but the CONTRACTOR otherwise complied with s. 448.095 (2) Fla. Stat., shall promptly notify the CONTRACTOR and order the CONTRACTOR to immediately terminate the contract with the SUB-CONTRACTOR.

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c) A contract terminated under subparagraph a) or b) is not a breach of contract and may not be considered as such.

d) Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination.

e) If the contract is terminated for a violation of the statute by the CONTRACTOR, the CONTRACTOR may not be awarded a public contract for a period of 1 year after the date of termination.

Company Name:	JT Equipment Services Corp
Authorized Signature:	[signature]
Print Name:	James Thurmond
Title	President
Date:	11/06/2024
Phone:	305-987-2325

STATE OF Florida)
COUNTY OF Miami-Dade)

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐ online notarization, this 6th day of November, 2024, by James Thurmond on behalf of J.T Equipment Services Corp He/she is personally known to me or has produced FLDL#T655-456-49-402-0 as identification.

[signature]
NOTARY PUBLIC

MIGUEL R TEJADA
Notary Public - State of Florida
Commission # HH 469433
My Comm. Expires Dec 26, 2027
Bonded through National Notary Assn.

Miguel R. TEJADA
(Name of Notary Typed, Printed or Stamped)

Title or Rank

Serial number, if any

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BID BOND

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

KNOW ALL MEN BY THESE PRESENTS, that J.T. Equipment Service Co., 14258 Southwest 139th Court, Miami , FL 33186 as Principal, and The Ohio Casualty Insurance Company, 175 Berkeley Street, Boston, MA 02116, as Surety, authorized to do business in the State of Florida are held and firmly bound unto the Owner, City of Boynton Beach in the penal sum of Five Percent of Amount Bid Dollars ($5% Percent of Amount Bid) lawful money of the United States, for the payment of which sum will and truly to be made, we bond ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying bid, dated November 07, 20 24, for:

(FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT)

NOW THEREFORE,

A. If the principal shall not withdraw such Bid within ninety (90) calendar days after date of opening of the same, and shall within ten (10) business days after the prescribed forms are presented to the principal for signature, enter into a written Contract with the City in accordance with the Bid as accepted, and give bonds with goods and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such Contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and effect.

B. In the event of the withdrawal of such Bid within the period specified, or the failure to enter into such Contract and give such bonds within the time specified, if the principal shall pay the City the difference between the amount specified in such Bid and the amount for which the City may procure the required work and supplies, if the latter amount be in excess of the former then the above obligations shall be void and of no effect, otherwise to remain in full force and effect.

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IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals, this 7th day of November, 20 24, being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of is governing body.

WITNESS: (If Sole Ownership or Partnership, two (2) Witnesses required).

(If Corporation, Secretary only will attest and affix seal).

PRINCIPAL:

J.T. Equipment Service Co.
Name of Firm

WITNESS:

John Cadena
Daniela Cadena

Signature of Authorized Officer (affixed seal)

President
Title

14258 SW. 139TH COURT
Business Address

MIAMI FLORIDA 33186
City and State

SURETY:

The Ohio Casualty Insurance Company
Corporate Surety

WITNESS:

Kristy Collins, Secretary

Attorney-in-Fact (affix seal) Charles J. Nielson, Attorney-In-Fact

175 Berkeley Street
Business Address

Boston, MA 02116
City and State

Acrisure, 15050 NW 79th Court, Suite 200, Miami Lakes, FL 33016
Name of Local Insurance Agency

THIS PAGE TO BE SUBMITTED ALONG WITH BID
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CERTIFICATE AS TO CORPORATE PRINCIPAL

I, JAMES THURMOND, certify that I am the Secretary of the Corporation named as Principal in the within bond; that JAMES THURMOND who signed the such Bid Bond on behalf of the Principal, was then PRESIDENT of such Corporation; that I know their signature, and their signature hereto is genuine; and that such bond was duly signed, sealed, and attested for and in behalf of such Corporation by authority of its governing body.

James R. Thurmond
Secretary (corporate seal)

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

Charles J. Nielson, Attorney-In-Fact

Before me, a Notary Public duly commissioned, qualified and acting, personally appeared by means of X physical presence or ___online notarization _____ to me well known, who being by me first duly sworn upon oath, says that they are the Attorney-in-Fact, for the The Ohio Casualty Insurance Company and that they have been authorized by The Ohio Casualty Insurance Company to execute the foregoing bond on behalf of the VENDOR named therein in favor for the City of Boynton Beach.

Alicia Angelillo

Notary Public State of Florida
Alicia Angelillo
My Commission HH 521471
Expires 4/21/2026

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This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8205265-964011**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Charles D. Nielson, Charles J. Nielson, David R. Hoover, Jarrett Merlucci, Shawn A. Burton

all of the city of Miami Lakes state of FL each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 12th day of April, 2021.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: _____
David M. Carey, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 12th day of April, 2021 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.

Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: _____
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.
Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings
Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 7th day of November, 2024.

By: _____
Renee C. Llewellyn, Assistant Secretary

LMS-12873 LMIC OCIC WAIC Multi Co 02/21

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

Affidavit of Compliance with Foreign Entity Laws

The undersigned, on behalf of the entity listed below ("Entity"), hereby attests under penalty of perjury as follows:

1. Entity is not owned by the government of a foreign country of concern as defined in Section 287.138, Florida Statutes. (Source: § 287.138(2)(a), Florida Statutes)

2. The government of a foreign country of concern does not have a controlling interest in Entity. (Source: § 287.138(2)(b), Florida Statutes)

3. Entity is not organized under the laws of, and does not have a principal place of business in, a foreign country of concern. (Source: § 287.138(2)(c), Florida Statutes)

4. The undersigned is authorized to execute this affidavit on behalf of Entity.

Date: November 06, 2024 Signed: James R. Thurmond

Entity: JT Equipment Service Corp Name: Jame Thurmond

Title: President

STATE OF Florida
COUNTY OF Miami Dade

The foregoing instrument was acknowledged before me, by means of ☑ physical presence or ☐ online notarization, this 6th day of November, 2024, by Jame Thurmond, as _____ for _____, who is personally known to me or who has produced FLDL# T655-456-41-402-0 as identification.

Notary Public Signature: _____ State of Florida at Large (Seal)

Print Name: Miguel R. TEJADA My commission expires: 12/26/27

MIGUEL R TEJADA
Notary Public - State of Florida
Commission # HH 469433
My Comm. Expires Dec 26, 2027
Bonded through National Notary Assn.

Affidavit of Compliance with Anti-Human Trafficking Laws

In accordance with section 787.06 (13), Florida Statutes, the undersigned, on behalf of the entity listed below ("Entity"), hereby attests under penalty of perjury that:

Entity does not use coercion for labor or services as defined in Section 787.06, Florida Statutes, entitled "Human Trafficking."

Date: November 06, 2024 Signed: James R Thurmond

Entity: JT Equipment Service Corp Name: Jame Thurmond

Title: President

STATE OF FL
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me, by means of ☑ physical presence or ☐ online notarization, this 6th day of November, 2024, by James Thurmond, as _____ for _____, who is personally known to me or who has produced FL DL# J165-456-49-[illegible]0 as identification.

Notary Public Signature: _____ State of Florida at Large (Seal)

Print Name: Miguel R. TEJADA My commission expires: 12/26/27

MIGUEL R TEJADA
Notary Public - State of Florida
Commission # HH 469433
My Comm. Expires Dec 26, 2027
Bonded through National Notary Assn.

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JT EQUIPMENT SERVICE CO.

James Thurmond
President, JT Equipment Service
14258 SW 139th Court
Miami, FL 33186
James@jtequipment.net
305-238-0023

November 7th, 2024

City of Boynton Beach
City Hall, Room 115
100 E. Ocean Avenue
Boynton Beach, FL 33435

Re: **BID No. PWE24-024 - Fire Station #5 Emergency Generator Replacement Project**

To Whom It May Concern,

This letter serves as formal confirmation of my attendance at the mandatory pre-bid meeting for the Fire Station #5 Emergency Generator Replacement Project, BID No. PWE24-024, held on September 23rd, 2024 at 9:00 a.m. in Room 115 at the City of Boynton Beach City Hall. As President of JT Equipment Service, I, James Thurmond, personally attended this meeting and signed the provided Attendee Confirmation Sheet upon arrival along with John Cadena representative of Futura USA.

Unfortunately, we have misplaced the signed attendee verification document. We hereby affirm that we were present at the meeting as required and intend to provide the original confirmation document upon locating it.

Thank you for your understanding and consideration of this declaration. We are committed to fulfilling all bid requirements and will promptly forward the confirmation sheet as soon as it is recovered.

Sincerely,
James Thurmond
President, JT Equipment Service

Witness:

John Cadena
Representative of Futura USA

INVITATION TO BID
FOR
FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

BID No.: PWE24-024

MANDATORY PRE-BID CONFERENCE TO BE HELD:
September 23, 2024 9 AM

LOCATION:

CITY OF BOYNTON BEACH
CITY HALL, ROOM 115
100 E. OCEAN AVENUE
BOYNTON BEACH, FL 33435
(Entrance to Conference Room 115 is on Seacrest Boulevard)

ONLINE SUBMISSION ONLY
Boynton-beach.bidsandtenders.net
BID CLOSING DATE: October 11, 2024
BID CLOSING TIME: 10 A. M.

THE DEADLINE FOR QUESTIONS CONCERNING THIS BID IS:
September 30, 2024 NO LATER THAN 2:30 P.M.

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Attachment 'B' – Emergency Generator ELEC SS Bid Specs / Drawings

Attachment 'C' – Schedule of Bids Items
Attachment 'D" – Performance Evaluation Form

When completed and executed, these documents, along with the Plans and Specifications, collectively with applicable Power of Attorney certifications for bond agents and Certificates of Insurance for the Contractor, forms the Contract for this Project.

The City of Boynton Beach

Finance/Procurement Services
100 E. Ocean Avenue
Boynton Beach, FL 33435
P. O. Box 310
Boynton Beach, Florida 33425-0310
Telephone: (561) 742-6323

INVITATION TO BID
FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT
BID No. PWE24-024

Electronic bids shall be received by the bidding system up until: **October 11, 2024; No Later Than 10 A.M. (Local Time).**

All Bid's received will be publicly opened and acknowledge of receipt. Bid's received after the assigned date and time are not permitted by the bidding system. For the above reasons, it is recommended that Vendor(s) allow sufficient time to complete your online Submission and to resolve any issues that may arise.

ATTENTION, ALL INTERESTED RESPONDENTS:

To obtain documents online please visit Boynton-beach.bidsandtenders.net. Documents are not provided in any other manner.

SCOPE OF WORK:

The City of Boynton Beach is seeking a qualified Contractor/Vendor for installation of a new emergency generator as designated in the plans. Work to include the selective demolition of the existing generator enclosure, removal of the existing generator, the installation of a new generator, and associated infrastructure. The Contractor/Vendor shall furnish, install, and provide all labor and materials to complete installation of the new generator. The scope of work will be performed to completion based on the established bid pricing.

The foregoing description is general in nature; specific scopes of work will utilize these bid documents, Technical Specifications, and are hereby incorporated into this bid document by reference.

The scope of work is more clearly defined in the Contract Documents, Special Conditions, and Terms and Conditions for City Furnished Materials (if applicable), Technical Specifications, and Project Drawings, which are hereby not listed in any order of precedence.

REQUIRED QUALIFICATIONS:

At the time of bid submittal, the Vendor must possess and provide written evidence (copies of current licenses/certifications) that show that the firm (Vendor) or principal in the firm or a subcontractor of the firm be licensed to contract the scope of work in Palm Beach County with the following:

- General Contractors License

A MANDATORY Pre-Bid Conference is scheduled for **September 23, 2024, at 9 AM.** to be held at the City of Boynton Beach, City Hall Room 115, 100 E. Ocean Avenue, Boynton Beach, Florida 33435. The purpose of this meeting is to provide a forum for all concerned parties to discuss the proposed ITB, answer questions on the solicitation document, provide instruction for submitting to the Invitation to Bid, and discuss other relevant issues. In the event that any discussions or questions at the pre-bid meeting require, in the City's opinion, official additions, deletions or clarifications of the solicitation, or any other document, the City will issue an addendum to this Invitation to Bid, as the City determines is appropriate.

No oral representation or discussion taking place at the pre-bid meeting will be binding or may be relied upon by any person or entity. All questions prior to the pre-bid meeting shall be submitted in writing through the City's e-procurement bidding system Boynton-beach.bidsandtenders.net by the submit questions deadline date and time.

At the time of the bid opening, each Vendor shall be presumed to have inspected the sites and to have read to be thoroughly familiar with the plans and contract documents (including all addenda). The failure or omission of any Vendor to examine any form, instrument or document shall in no way relieve any Vendor from any obligation in respect to this bid.

ATTENTION ALL INTERESTED BIDDERS:

All Vendors are required to submit a five percent (5%) Bid Bond with the Bid Form or the Bid shall be rejected as non-responsive. A one hundred percent (100%) Payment and Performance Bond is required upon notification by the City of the award the Contract to the selected firm.

No bids may be withdrawn for a period of ninety (90) days after the Bid opening. Bids must be accompanied by an acceptable 5% Bid Bond, cash, certified check, or money order. Said bid bond is to be furnished and executed by a surety company of recognized standing, authorized to do business in the State of Florida, and having a Registered Agent in Florida. The bid bond amount shall be 5% of the bid price and shall constitute a guarantee that the Vendor, if awarded the contract, will enter into a written contract with the City to perform this work pursuant to the bid.

LOBBYING / CONE OF SILENCE:

Consistent with the requirements of Chapter 2, Article VIII, Lobbyist Registration, of the Palm Beach County Code of Ordinances, Boynton Beach imposes a Cone of Silence. A cone of silence shall be imposed upon each competitive solicitation as of the deadline to submit the proposal, bid, or other response and shall remain in effect until the City Commission awards or approves a contract, rejects all bids or responses, or otherwise takes action that ends the solicitation process. While the cone of silence is in effect, no proposer or its agent shall directly or indirectly communicate with any member of City Commission or their staff, the Manager, any employee of Boynton Beach authorized to act on behalf of Boynton Beach in relation to the award of a particular contract or member of the Selection Committee in reference to the solicitation, with the exception of the Purchasing Manager or designee. (Section 2-355 of the Palm Beach County Code of Ordinances.) Failure to abide by this provision may serve as grounds for disqualification for award of contract to the proposer. Further, any contract entered into in violation of the cone of silence shall render the transaction voidable.

The cone of silence shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before Selection Committees, contract negotiations during any public meeting, presentations made to the City Commission, and protest hearings. Further, the cone of silence shall not apply to contract negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence with Boynton Beach as may be permitted by the competitive solicitation. Additionally, the cone of silence shall not apply to any purchases made in an amount less than the competitive solicitation threshold set forth in the Purchasing Manual.

PUBLIC RECORDS DISCLOSURE:

Pursuant to Florida Statutes §119.071(1)(b)(2), sealed Bids, Proposals, or Responses received by the City in response to a Request for Qualification or Invitation to Bid are exempt from public records disclosure requirements until the City provides a notice of an intended decision or **thirty (30) days** after the opening of the Proposals/Bids, whichever is earlier. If the City rejects all Responses submitted in accordance with a Request for Proposal/Qualification or Invitation to Bid, and the City concurrently provides notice of its intent to reissue the competitive solicitation, the rejected Responses remain exempt from public disclosure until such time as the City provides notice of a decision or intended decision concerning the competitive solicitation or until the City withdraws the reissued competitive solicitation. A Bid, Proposal, Response or reply is not exempt for longer than twelve (12) months after the initial City notice rejecting all Bids, Proposals, or Responses.

Questions related to this Bid are to be submitted to the Purchasing representative through the Bidding System only by clicking on the “Submit a Question” button for this specific Solicitation.

CITY OF BOYNTON BEACH

INVITATION TO BID
FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

BID No.: PWE24-024

INSTRUCTIONS TO BIDDERS

1. The City of Boynton Beach utilizes an electronic online bidding system service for notification and distribution of its solicitation documents, please visit Boynton-beach.bidsandtenders.net.

2. ELECTRONIC BID SUBMISSIONS ONLY shall be received by the City's e-Procurement Bidding System. Hardcopy submissions are not permitted.

3. Electronic Request for Qualifications/Request for Proposals/Invitation to Bid Proposals for this solicitation shall be received by the City's e-Procurement bidding system no later than: **October 11, 2024 No Later Than 10 AM (Local Time).**

4. Late responses are not permitted by the bidding system. It shall be the sole responsibility of the Vendor to have their Request for Qualification/Request for Proposal/Invitation to BID submittal submitted online.

5. Vendors shall acknowledge receipt of any addenda through the Bidding System by checking a box for each addenda and any applicable attachment.

6. It is the responsibility of the Vendor to have received all Addenda that are issued. Vendors should check online at Boynton-beach.bidsandtenders.net prior to submitting their Submittal and up until the Bid closing time and date in the event additional addenda is issued.

7. To obtain documents online please visit Boynton-beach.bidsandtenders.net. You may preview the solicitation documents with a Preview Watermark prior to registering for the opportunity. Documents are not provided in any other manner.

8. Vendors are cautioned that the timing of their Submittal submission is based on when the Submittal is RECEIVED by the Bidding System, not when a Submittal is submitted, as the Submittal transmission can be delayed due to file transfer size, transmission speed, etc.

9. For the above reasons, it is recommended that the Vendor allow sufficient time to complete your Bid Submission and to resolve any issues that may arise.

10. Vendors should contact bids&tenders support listed below, at least twenty-four (24) hours prior to the closing time and date, if they encounter any problems. The Bidding System will send a confirmation email to the Vendor advising that their submittal was submitted successfully. If you do not receive a confirmation email, contact bids&tenders support at support@bidsandtenders.net.

11. To ensure receipt of the latest information and updates via email regarding this Request for Qualifications/Request for Proposals/Invitation to Bid, or if a Vendor has obtained this Solicitation from a third party, the responsibility is on the Vendor to create a Bidding System Vendor account and register as a Plan Taker for the Solicitation.

12. All expenses for making SUBMITTAL responses to the City are to be borne by the Vendor.

13. A sample draft agreement that the City intends to execute with the successful firm(s) is contained within this Request for Qualifications/Request for Proposals/Invitation to Bid for review. Any exceptions taken to the terms and conditions of the City's agreement shall be considered a part of Vendor's solicitation response and will be considered by the City in its evaluation. Any exception not specifically stated is deemed waived. Submission of any exceptions to the agreement does not denote acceptance by the City. Furthermore, taking exceptions to the City's terms and conditions may be viewed unfavorably by the City/evaluation committee and ultimately may impact the overall evaluation of a vendor's submittal. The City reserves the right to modify the contract language prior to execution following the selection of the top firm(s).

14. Each Vendor, by submission of a proposal response, acknowledges that in the event of any legal action challenging the award of a Request for Qualifications/Request for Proposals/Invitation to Bid; damages, if any, shall be limited to the actual cost of the preparation of the Bid or Proposal.

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FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

BID No.: PWE24-024

STANDARD TERMS AND CONDITIONS FOR BIDDERS

Unless otherwise agreed to by the City of Boynton Beach ("City"), the following Standard Terms and Conditions are applicable to this solicitation and the resulting agreement/contract. The term "vendor" as used below may collectively apply to vendors, bidders, proposers, consultants, contractors, subcontractor, and subconsultant.

1. FAMILIARITY WITH LAWS: The Vendor is presumed to have full knowledge of and be in compliance with all Federal, State, and Local laws, ordinances, rules, and regulations that in any manner affect the equipment and the services provided to the City. Ignorance on the part of the Vendor will in no way relieve Vendor of responsibility to adhere to such regulations.

2. RFP/RFQ/BID FORMS: The Vendor will submit an RFP/RFQ/BID on the RFP/RFQ/BID forms provided. The Vendor must state the price and the time of delivery for which they propose to deliver the equipment or service requested. The Vendor is required to be licensed to do business as an individual, partnership, or corporation in the State of Florida. All RFP/RFQ/BID forms must be executed and submitted for easy identification. Bids/Proposals not submitted on Bid or Proposal forms herein may be rejected. All RFPs/RFQs/BIDs are subject to the conditions specified within this solicitation document. Submittals which do not comply with these conditions are subject to rejection.

3. EXECUTION OF RFP/RFQ/BID: RFP/RFQ/BID must contain a manual signature of an authorized representative in the space provided on all affidavits and proposal sheets.

4. NO SUBMITTAL: A NO SUBMITTAL response can be submitted online through the e-Procurement bidding system.

5. SOLICITATION DEADLINE: It is the Vendor's responsibility to ensure that the Bid/Proposal is submitted electronically by or at the proper time and date prior to the solicitation deadline. Late Submittal Responses are not permitted by the e-Procurement Bidding System.

6. RIGHT TO REJECT BID: The City reserves the right to reject any or all bids or proposals, waive technical errors, or to accept a portion of any bids that are deemed to be the most responsive, responsible Vendor(s) which represents the most advantageous bid to the City. In determining the "most advantageous bid", price, quantifiable factors, and other factors are considered. Such factors include but are not limited to specifications; delivery requirements; the initial purchase price; life expectancy; cost of maintenance and operation; operating efficiency; training requirements; disposal value; and other factors contributing to the overall acquisition cost of an item. Consideration may be given, but is not necessarily limited to conformity to the specifications; including timely delivery; product warranty; a Vendor's proposed service; ability to supply and provide service; delivery to required schedules, and past performances in other contracts with the City or other government entities.

7. AGREEMENT EXTENSION: The City reserves the right to extend automatically for a period not to exceed an additional ninety (90) calendar days by mutual agreement and by filing a written notice signed by the vendor to the City's Purchasing Department without further City Commission action. The extension shall provide the City with continual service while a new contract is solicited, evaluated, and/or awarded.

8. RIGHTS OF THE CITY: The City expressly reserves the right to:

    A. Waive as an informality, minor deviations from specifications at a lower price than the most responsive, responsible Vendor meeting all aspects of the specifications and consider it if it is determined that total cost is lower and the overall function is improved or not impaired;
    B. Waive any defect, irregularity, or informality in any RFP, RFQ, or BID procedure;
    C. Reject or cancel any or all RFP, RFQ or BID;
    D. Reissue a Request for Proposals (RFP), Request for Qualifications (RFQ), or Invitation to Bid (BID);
    E. Extend the RFP, RFQ, BID deadline time and date;
    F. Procure any item by other means;
    G. Increase or decrease the quantity specified in the Request for Proposals (RFP), Request for Qualifications (RFQs), Invitation to Bid (BID);
    H. Consider and accept an alternate RFP/RFQ/BID as provided herein when most advantageous to the City.

9. STANDARDS: Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective Vendor has:

    A. Available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain such, necessary to indicate its capability to meet all contractual requirements;
    B. A satisfactory record of performance;
    C. A satisfactory record of integrity;
    D. Qualified legally to Contract within the State of Florida and the City of Boynton Beach;
    E. Supplied all necessary information in connection with the inquiry concerning responsibility;

10. DISQUALIFICATION OF PROPOSER: More than one Proposal from an individual, firm, partnership, corporation or association under the same or different names shall not be considered. All proposals shall be rejected if there is reason to believe that collusion exists between Vendors. Automatic disqualifiers are as follows:

    A. Not including an executed Vendor signature.
    B. Not being licensed to perform the required work or to provide the required product.
    C. Not being eligible to submit a proposal due to violations listed under Item No.29, “Public Entity Crimes.”
    D. Not completing the RFP, RFQ, or BID Submittal Forms as required.

11. DIRECT PURCHASES: Procedure used by the City to make direct purchases of any materials/equipment and make direct payment to the Vendor. The City reserves the right to issue purchase orders for materials to either the Contractor’s / Consultant’s / Vendor’s or the City’s suppliers for construction/public works-related materials when deemed in the best interest of the City.

12. INFORMATION AND DESCRIPTIVE LITERATURE: Vendors must furnish all information requested in the spaces provided on the bid/proposal form. Further, as may be specified elsewhere, each Vendor must submit for bid evaluation cuts, sketches, and descriptive literature, and technical specifications covering the products offered. Reference to literature submitted with a previous bid or on file with the buyer will not satisfy this provision.

13. SIGNING OF CONTRACT: The Award Letter will be presented to the Successful Vendor. Within ten (10) calendar days after issuance of the award letter, the successful Vendor shall sign and deliver the Contract with the required bonds and insurance certificates to the City. After receipt and approval of such documents, the Contract will be executed. Within thirty (30) calendar days thereafter, the City shall deliver a fully signed and executed Contract to the successful Vendor. At times a purchase order will be issued in lieu of a contract agreement. The General Terms and Conditions of the City’s purchase order shall apply and prevail over any conflicting terms or conditions.

14. INTERPRETATIONS: To ensure fair consideration for all Vendors, the City prohibits communication to or with any department, officer, or employee during the solicitation process except as otherwise specified. If the Vendor should be in doubt as to the meaning of any of the RFP, RFQ, or BID

documents, or is of the opinion that the plans and/or specifications contain errors, contradictions, or reflect omissions; the Vendor shall direct questions to the Purchasing representative through the Bidding System only by clicking on the "Submit a Question" button for this Bid, no later than ten (10) days prior to the RFP, RFQ, or BID deadline.

15. CONFLICT OF INTEREST: The award hereunder is subject to all conflict of interest provisions of the City of Boynton Beach, Palm Beach County, of the State of Florida.

16. SUBCONTRACTING: If a Vendor subcontracts any portion of a Contract for any reason, the Vendor must state the name and address of the sub-contractor/sub-consultant and the name of the person to be contacted on the online form within the e-bidding system under "Schedule of Subcontractors". The City of Boynton Beach reserves the right to accept or reject any or all bids/proposals wherein a sub-contractor/sub-consultant is named and to make the award to the Vendor, who, in the opinion of the City, will be in the best interest of and/or most advantageous to the City. The City also reserves the right to reject a Bid/Proposal of any Vendor if the RFP, RFQ, or BID names a sub-contractor/sub-consultant who has previously failed in the proper performance of an award or failed to deliver on time Contracts of a similar nature, or who is not in a position to perform properly under this award. The City reserves the right to inspect all facilities of any sub-contractor/sub-consultant in order to make determination as to the foregoing. The sub-contractor/sub-consultant will be equally responsible for meeting all requirements specified in this Request for Proposals (RFP), Request for Qualifications (RFQ), or BID. Vendors are encouraged to seek minority and women business enterprises for participation in sub-contractor/sub-consultant contracting opportunities. The City reserves all rights in order to make a determination as to the foregoing.

17. ADDENDA: From time to time, the City may issue an addendum to change the intent or to clarify the meaning of the Contract documents. Since all addenda are available to Vendor through the City's e-Procurement System Boynton-beach.bidsandtenders.net, it is the responsibility of each Vendor to have received ALL addenda that are issued. Vendors should check online at Boynton-beach.bidsandtenders.net prior to submitting their bid/proposal and up until the bid closing time and date in the event, additional addenda are issued. If a Vendor submits their bid/proposal prior to the BID closing time and date and an addendum has been issued, the Bidding System shall WITHDRAW the Vendor's submission and the submittal status will change to an INCOMPLETE STATUS and Withdraw the Bid Proposal. The Vendor can view this status change in the "MY BIDS" section of the Bidding System.

    The Vendor is solely responsible to:

    - make any required adjustments to their Bid/Proposal; and
    - acknowledge the addenda; and
    - Ensure the re-submitted Bid/Proposal is RECEIVED by the Bidding System no later than the stated Bid/Proposal closing time and date.

18. ADDITIONAL QUANTITIES: The City reserves the right to acquire additional quantities of the bid/proposal products or services at the prices bid/proposal in this solicitation. If additional quantities are not acceptable, the bid sheets must be noted: **"BID/PROPOSAL IS FOR SPECIFIED QUANTITY ONLY".**

19. SAMPLES: Samples of items, when called for, must be furnished free of expense, and if not used, tested, or destroyed, upon request, will be returned at the Vendor's expense. Request for the return of samples may be made within ten (10) days following the RFP, RFQ, or BID deadline. Each individual sample must be labeled with the Vendor's name, manufacturer's brand name and number, and item reference.

20. DEMONSTRATIONS: Performance of the equipment/services upon request can be deemed a part of the evaluation process in determining the award of the Vendor. Demonstrations of the merits of the equipment/services that meet City requirements shall be requested by Procurement Services. Equipment demonstrated shall be a minimum of one (1) year old. All required staff, to be assigned per the individual bid/proposal product or service application, will form the Bid/Proposal Award Committee to evaluate and submit a group award recommendation. The City reserves the right to make separate and independent awards based on its needs and the combined evaluation results.

21. ESCALATOR CLAUSE: Any bid or proposal which is submitted subject to an escalator clause will be rejected.

22. EXCEPTIONS: Incorporation in a bid of exceptions to any portion(s), of the Contract documents may invalidate the bid. Exceptions to the Technical and Special Provisions shall be clearly and specifically noted in the Vendor's proposal on a separate sheet marked "**EXCEPTIONS TO THE SPECIFICATIONS**" and this sheet shall be attached to the bid. The use of the Vendor's standard forms or the inclusion of the manufacturer's printed documents shall not be construed as constituting an exception within the intent of the Contract documents. Any exceptions not noted in Vendor's proposal shall be deemed waived.

23. ALTERNATES: Where a base bid/proposal is provided for, the Vendor shall submit a bid/proposal on the base bid/proposal and may exercise their own prerogative in submitting a bid/proposal on alternate items. The Owner reserves the right to accept or reject the alternates or base bid/proposal or any combination thereof. The Owner, or a representative, further reserves the unqualified right to determine whether any particular item or items of material, equipment, or the like, is an approved equal, and reserves the unqualified right to a final decision regarding the approval or rejection of the same.

24. NONCONFORMANCE TO CONTRACT CONDITIONS: Items may be tested for compliance with specifications under the direction of appropriate testing laboratories. The data derived from any tests for compliance with specifications are public records and open to examination thereto in accordance with Chapter 119, Florida Statutes. Items delivered not conforming to specifications may be rejected and returned at the vendor's expense. These items and items not delivered as per delivery date in the bid and or Purchase Order may result in the Vendor being found in default in which event any and all procurement costs may be charged against the defaulted Vendor. Any violation of these stipulations may also result in the vendor's name being removed from the City of Boynton Beach's vendor mailing list.

25. DISPUTES: In case of any doubt or difference of opinion as to the items to be furnished hereunder, the decision of the City Manager shall be final and binding on both parties.

26. ANTITRUST CAUSE OF ACTION: In submitting a bid/proposal to the City of Boynton Beach, the Vendor offers and agrees that if the bid/proposal is accepted, the Vendor will convey, sell, assign or transfer to the City of Boynton Beach all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of Florida for price-fixing relating to the particular commodities or services purchased or acquired by the City of Boynton Beach. At the City of Boynton Beach's discretion, such assignment shall be made and become effective at the time the purchasing agency tenders final payment to the Vendor.

27. GOVERNMENTAL RESTRICTIONS: In the event, any governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship, or performance of the items offered on this proposal prior to their delivery, it shall be the responsibility of the successful Vendor to notify the City at once, indicating in a letter the specific regulation which required an alteration. The City reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract at no expense to the City.

28. LEGAL REQUIREMENTS: Federal, State, County, and City laws, ordinances, rules, and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the Vendor will in no way be a cause for relief from responsibility.

29. ON PUBLIC ENTITY CRIMES – All Request for Proposals, Request for Qualifications, Invitations to Bid as defined by Section 287.012(11), Florida Statutes, requests for proposals as defined by Section 287.012(16), Florida Statutes, and any contract document described by Section 287.058, Florida Statutes, shall contain a statement informing persons of the provisions of paragraph (2)(a) of Section 287.133, Florida Statutes, which reads as follows:

    "A person or affiliate who has been placed on the convicted vendor list following a conviction for public

entity crime may not submit a bid on a contract or provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list".

30. SCRUTINIZED COMPANIES LISTS Florida Statues Section 287.135: By submission of this RFP, RFQ, or Bid, the Vendor certifies that the Vendor is not participating in a boycott of Israel. Vendor further certifies that Vendor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Vendor been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the City will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to Vendor of the City's determination concerning the false certification. Vendor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, Vendor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Vendor does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

31. NON-COLLUSION AFFIDAVIT: The vendor certifies that it has entered into no agreement to commit a fraudulent, deceitful, unlawful, or wrongful act, or any act that may result in an unfair advantage for one or more vendors over other vendors. A conviction for the commission of any fraud or act of collusion in connection with any sale, quote, quotation, proposal, or another act incident to doing business with the City may result in permanent debarment. No premiums, rebates, or gratuities are permitted; either with, prior to, or after any delivery of material or provision of services. Any such violation may result in award cancellation, return of materials, discontinuation of services, and removal from the vendor list(s), and/ or debarment or suspension from doing business with the City.

    Each Vendor shall complete the Non-Collusion Affidavit Form and shall submit the form with their Proposal. The City considers the failure of the Vendor to submit this document to be a major irregularity and may be cause for rejection of the Proposal.

32. TRADE SECRET: Any language contained in the Vendor's Proposal purporting to require confidentiality of any portion of the Proposal, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Vendor submits any documents or other information to the City which the Vendor claims are Trade Secret information and exempt from Florida Statutes Chapter 119.07 (Public Records Laws), the Vendor shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Vendor must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Vendor's Proposal constitutes a Trade Secret. The City's determination of whether an exemption applies shall be final, and the Vendor agrees to defend, indemnify, and hold harmless the City its officers, employees, volunteers, and agents, against any loss or damages incurred by any person or entity as a result of the City's treatment of records as public records. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

    EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR PROPOSAL AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR PROPOSAL OR ANY PART THEREOF AS COPYRIGHTED.

33. ANTI-KICKBACK AFFIDAVIT: Each Vendor shall complete the Anti-Kickback Affidavit Form and shall submit this form with their Proposal. The City considers the failure of the Vendor to submit this document to be a major irregularity and may be cause for rejection of the Proposal.

34. CONFIRMATION OF MINORITY-OWNED BUSINESS: It is the desire of the City of Boynton Beach to

increase the participation of minority-owned businesses in its contracting and procurement programs. While the City does not have any preference or set-aside programs in place, it is committed to a policy of equitable participation for these firms. Therefore, each Vendor shall complete the Confirmation of Minority-Owned Business Form and shall submit the form with its Bid/Proposal.

35. ADVERTISING: In submitting a RFP, RFQ, or BID, the Vendor agrees not to use the results as a part of any commercial advertising. Violation of this stipulation may be subject to action covered under "**NONCONFORMANCE WITH CONTRACT CONDITIONS**".

36. ASSIGNMENT: Any Purchase Order issued pursuant to this Request for Proposals, Request for Qualifications, or Invitation to Bid and the funds which may be come due hereunder are not assignable except with the prior written approval of the City.

37. INDEMNIFICATION: The selected Vendor(s) shall hold and save harmless the City of Boynton Beach, Florida its officers, agents, volunteers, and employees from liability of any kind in the performance of this Contract. Further, the selected Vendor(s) shall indemnify, save harmless and undertake the defense of the City, its City Commissioners, agents, and employees from and against any and all claims, suits, actions, damages, or causes of action arising during the term of this Contract, for any personal or bodily injury, loss of life, or damage to property arising directly or indirectly from Vendor's operation pursuant to this Contract, and from and against all costs, counsel fees, expenses and liabilities incurred in an about any such claims, the investigation thereof, or the defense of any action or proceedings brought thereon, including through the conclusion of any appeals, and from and against any orders or judgments which may be entered therein. The extent of Vendor'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. The City shall notify the Vendor within ten (10) days of receipt by the City of any claim, suit, or action against the City arising directly or indirectly from the operations of the Vendor hereunder, for which the City may be entitled to a claim or indemnity against the Vendor, under the provisions of this Contract. Vendor shall have the right to control the defense of any such claim suit or actions. The Vendor shall also be liable to the City for all costs, expenses, attorneys' fees, and damages that may be incurred or sustained by the City by reason of the Vendor's breach of any of the provision of the contract. Vendor shall not be responsible for negligent acts of the City or its employees.

38. PURCHASING AGREEMENT WITH OTHER GOVERNMENTAL ENTITIES: If a Vendor is awarded a contract as a result of this Request for Proposal or Invitation to Bid, Vendor will, if Vendor has sufficient capacity or quantities available, provide to other Florida governmental agencies so requesting, the products or services awarded in accordance with the terms and conditions of the Invitation to Bid and resulting award.

39. AWARD OF CONTRACT: The low monetary bid will NOT in all cases be awarded the Contract or Purchase Order. Contracts or Purchase Orders will be awarded by the City to the most responsive, responsible Vendor whose bid represents the most advantageous bid to the City, price, and other factors considered. Evaluation of bids will be made based upon the evaluation factors and standards set forth herein. The City reserves the right to reject any and all bids and to waive technical errors as set forth herein. In the event of a Court challenge to an award by any Vendor, damages, if any, resulting from an award shall be limited to actual bid preparation costs incurred by the challenging Vendor. In no case will the award be made until all necessary investigations have been made into the responsibility of the Vendor and the City is satisfied that the most responsive, responsible Vendor is qualified to do the work and has the necessary organization, capital, and equipment to carry out the required work within the time specified.

40. AS SPECIFIED: A Purchase Order will be issued to the successful Vendor with the understanding that all items/services delivered must meet the specifications herein. Items/services delivered not as specified, will be returned at no expense or penalty to the City of Boynton Beach.

41. DELIVERY: Prices shall be quoted F.O.B. Boynton Beach, Florida. F.O.B. destination indicates that the seller is responsible for the shipment until it reaches its destination. Any and all freight charges are to be included in the bid/proposal total. The Vendor's invoice payment terms must be shown.

42. WARRANTY REQUIREMENTS: Each item, including all components and all installed accessories and equipment, shall be guaranteed by the Vendor to be free of defective parts and workmanship. This

warranty shall be for a period of 365 days or the time designated in the standard factory warranty, whichever is longer. The warranty will be the same as that offered to the commercial trade and shall be honored by any of the manufacturer's authorized dealers. Warranty will cover parts, labor, and any necessary shipping. Warranty repairs may be accomplished on City property if space is available; this will be at the sole discretion of the City. Contact Procurement Services for permission to perform warranty service on City property. Warranty to start at the time of acceptance by the City; however, in cases where vehicles or equipment are not immediately placed in service, the Vendor will provide a delay of warranty start-up time. The period of warranty delay will be coordinated by Procurement Services.

43. PRICES, TERMS, AND PAYMENT: Firm prices shall be quoted and include all packing, handling, shipping charges, and delivery to the destination shown herein. Vendor is requested to offer a cash discount for prompt invoice payment. Discount time will be computed from the date of satisfactory delivery at the place of acceptance or from receipt of the correct invoice at the office specified, whichever is later.

    Upon delivery, the City shall make a final inspection. If this inspection shows that the equipment/service has been delivered/performed in a satisfactory manner in accordance with the specifications, the City shall receive the same. Final payment due to the Vendor shall be withheld until a visual inspection is made by the **CITY'S DESIGNEE** and merits of performance evaluated. This total acceptance will be done in a reasonable and timely manner. Acceptance shall not exceed thirty (30) days. If any equipment/service has to be rejected for any reason, the Vendor shall be required to pick up the equipment, accomplish the necessary repairs and return the equipment to the City. Warranty repairs may be accomplished on City property if space is available; this will be at the discretion of the City. Title to or risk loss or damage to all items shall be the responsibility of the Vendor unless such loss or damages have been proven to be the result of negligence by the City.

44. TIME OF DELIVERY: The Vendor shall state in the bid/proposal the time of delivery of the equipment. Time is of importance to the City and the Vendor is hereby notified that the date of delivery will be considered as a factor in the evaluation of the bids.

    All equipment shall be completely assembled, adjusted, and clean. All standard equipment and specified options shall be installed and the unit made ready for continuous, heavy-duty service. In addition to new equipment pre-delivery service, a thorough condition and specification compliance from these specifications, including manufacturer's standard equipment items, and accessory equipment supplied by the equipment dealer, which is clearly necessary for the complete operation of the vehicle, shall be considered a requirement although not directly specified in these specifications.

45. CERTIFICATIONS, LICENSE, AND PERMITS: Unless otherwise directed by the City, the vendor should provide a copy of all applicable certificates of Competency or Licenses issued by the State of Florida or the Palm Beach County Construction Industry Licensing Board in the name of the vendor. If applicable, the vendor shall also maintain a current Local Business Tax Receipt (Occupational License) for County and all permits required to complete the agreement/contractual service at no additional cost to City. A County Local Business Tax Receipt (Occupational License) is required unless specifically exempted by law. It shall be the responsibility of the successful vendor to obtain all certifications, licenses, and permits, if required, to complete the services at no additional cost to the City. It is the responsibility of the vendor to ensure all required certifications, licenses, and permits are maintained and are current throughout the term of the agreement/contract, inclusive of any renewals. Licenses and permits shall be readily available for review by the Purchasing Agent and City Inspectors. Failure to meet this requirement shall be considered a default of the agreement/contract.

46. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH: The Vendor certifies that all material, equipment, etc., contained in this bid meets all O.S.H.A. requirements. Vendor further certifies that if awarded as the successful Vendor, and the material equipment, etc. delivered is subsequently found to be deficient in any O.S.H.A. requirement in effect on the date of delivery, all costs necessary to bring the materials, equipment, etc., into compliance with the aforementioned requirements shall be borne by the Vendor.

    Vendor certifies that all employees, subcontractors, agents, etc. shall comply with all O.S.H.A. and State safety regulations and requirements.

47. PALM BEACH COUNTY INSPECTOR GENERAL: The Vendor 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 any contracts resulting from this solicitation, and in furtherance thereof, may demand and obtain records and testimony from the Vendor and its subcontractors and lower-tier subcontractors. The Vendor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the Vendor or its subcontractors or lower-tier subcontractors to fully cooperate with the Inspector General when requested, may be deemed by the municipality to be a material breach of this contract justifying its termination.

48. PUBLIC RECORDS: Sealed documents received by the City in response to a Request for Proposals, Request for Qualifications or Invitation to Bid are exempt from public records disclosure until thirty (30) days after the opening of the Bid unless the City announces intent to award sooner, in accordance with Florida Statutes 119.07.

    The City is a public agency subject to Chapter 119, Florida Statutes. The Vendor shall comply with Florida's Public Records Law. Specifically, the Vendor shall:

    A. Keep and maintain public records required by the City to perform the service;

    B. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Fla. Stat. or as otherwise provided by law;

    C. Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, Vendor shall destroy all copies of such confidential and exempt records remaining in its possession once the Vendor transfers the records in its possession to the City; and

    D. Upon completion of the contract, Vendor shall transfer to the City, at no cost to the City, all public records in Vendor's possession. All records stored electronically by Vendor must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

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

CITY CLERK'S OFFICE
100 EAST OCEAN AVENUE
BOYNTON BEACH, FLORIDA, 33435
561-742-6060
CityClerk@bbfl.us

49. E-VERIFY: Vendor is aware of and complies with the requirements of Section 448.095, Florida Statues, as may be amended from time to time and briefly described herein below.

    1) Definitions for this Section:

    "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages,

or other remuneration. “Contractor” includes, but is not limited to, a vendor or consultant.

“Subcontractor” means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

“E-Verify system” means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

2) Registration Requirement; Termination:

Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-Verify System in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security’s E-Verify System to verify the employment eligibility of:

a. All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and
b. All persons (including sub-vendors/sub-consultants/sub-contractors) assigned by Contractor to perform work pursuant to the contract with the City of Boynton Beach. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security’s E-Verify System during the term of the contract is a condition of the contract with the City of Boynton Beach; and
c. The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

50. PROHIBITION AGAINST CONSIDERING SOCIAL, POLITICAL, OR IDEOLOGICAL INTERESTS IN GOVERNMENT CONTRACTING - F.S. 287.05701: Vendors are hereby notified of the provisions of section 287.05701, Florida Statutes, as amended, that the City will not request documentation of or consider a Vendor's social, political, or ideological interests when determining if the Vendor is a responsible Vendor. Vendors are further notified that the City's governing body may not give preference to a Vendor based on the Vendor's social, political, or ideological interests.

51. VENUE AND GOVERNING LAW: Any and all legal actions arising from or necessary to enforce this solicitation and resulting agreement/contract will be held in Palm Beach County and shall be interpreted according to the laws of Florida.

52. SOVEREIGN IMMUNITY: Nothing contained herein is intended to serve as a waiver of sovereign immunity by the City or as a waiver of limits of liability or rights the City may have under the doctrine of sovereign immunity or under Section 768.28, Florida Statutes.

53. LOCAL BUSINESS PREFERENCE
The City of Boynton Beach Administrative Policy No. 10.16.01 provides for a local business preference. “For all acquisitions made pursuant to Sealed Competitive Bid, as provided in Sec. 10.05, the City shall give preference to a Local Business if the Local Business’ bid is determined to be within five percent (5%) or five thousand dollars ($5,000.00), whichever is less, of the lowest responsible and responsive bidder. In revenue-generating contracts where award, if any, is to be made to the Vendor returning the highest amount to the City, the same preference set forth herein shall be applied with respect to the highest bid/proposal.”

In order to be considered for a local business preference, **a Vendor must include the Local Business Status Certification Form at the time of bid, or proposal submittal.** Failure to submit this form at the time of bid/proposal submittal will result in the Vendor being found ineligible for the local business preference for this solicitation.

Failure of the Vendor to comply with the provisions set forth in this General Condition shall constitute a Default and Breach of the Agreement with the City.

54. LEGAL EXPENSES: The City shall not be liable to a vendor for any legal fees, court costs, or other legal expenses arising from the submission of a Request for Proposals, Request for Qualifications, or Invitation to Bid, the interpretation or enforcement of the agreement/contract, or from any other matter generated by or relating to the agreement/contract.

55. NO THIRD-PARTY BENEFICIARIES: No provision of the agreement/contract is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity, not a party to the agreement/contract, including but not limited to any citizen or employees of the City and/or Vendor.

56. SUCCESSORS AND ASSIGNS: The City and the Vendor each binds itself and its successors and assigns to the other party in respect to all provisions of the Bid or proposal and any resulting Contract. Neither the City nor the Vendor shall assign, sublet, convey or transfer its interest in the Contract without the prior written consent of the other.

57. FUNDING OUT: The resultant Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission for the City of Boynton Beach in the annual budget for each fiscal year of the Agreement, and is subject to termination based on lack of funding.

58. INSURANCE REQUIREMENTS: Vendor shall, at its sole expense, maintain in full force and effect at all times during the life of this agreement/contract, insurance coverages, and limits (including endorsements), as required by the City. These requirements shall not in any manner limit or qualify the liabilities and obligations assumed by the vendor under this agreement/contract. All coverages shall be provided on a primary basis with the City endorsed as an Additional Insured as follows: "The City of Boynton Beach". The Vendor shall provide the City with a Certificate of Insurance evidencing such coverages prior to the commencement of any services and within a time frame specified by the City (normally within 2 working days after request). Failure to maintain the required insurance shall be considered a default of agreement/contract.

59. MISTAKES: Vendors are expected to examine the specifications, delivery schedule, bid or proposal prices, extensions, and all instructions pertaining to supplies and services. Failure to do so will be at Vendor's risk.

60. FORCE MAJEURE: The agreement/contract which is awarded to the successful vendor may provide that the performance of any act by the City or Vendor thereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from the performance by acts of God, pandemic, epidemic, emergency orders, the elements, war rebellion, strikes, lockouts or any cause beyond the reasonable control of such party, provided, however, the City shall have the right to provide substitute service from third parties or City forces and in such event, the City shall withhold payment due to vendor for such period of time. If the condition of force majeure exceeds a period of 14 business days the City may, at its option and discretion, cancel or renegotiate the agreement/contract.

61. PERFORMANCE DURING EMERGENCY: The vendor agrees and promises that immediately preceding, during, and after a public emergency, disaster, hurricane, flood, or act of God, City shall be given "first priority" for all goods and/or services under the agreement/contract. The vendor agrees to provide all goods and/or services to City immediately preceding, during, and after a public emergency, disaster, hurricane, flood, or act of God, at the terms, conditions, and prices as provided in this solicitation on a "first priority" basis. The vendor shall furnish a 24-hour phone number to the City. Failure to provide the goods and/or services to the City on a first priority basis immediately preceding,

during, and after a public emergency, disaster, hurricane, flood, or act of God, shall constitute a breach of agreement/contract and subject the vendor to sanctions from doing further business with the City.

62. SALES PROMOTIONS / PRICE REDUCTIONS / MOST FAVORED CUSTOMER: Should sales promotions occur during the term of the agreement/contract that lower the price of the procured item, the vendor shall extend to the City the lower price offered by the manufacturer on any such promotional item. Additionally, any time after award, the vendor may offer a reduced price, which shall remain in effect for the duration of the agreement/contract. The vendor warrants that the price(s) shall not exceed the vendor's price(s) extended to its most favored customer for the same or similar goods or services in similar quantities, or the current market price, whichever is lower. In the event the vendor offers more favorable pricing to one of its customers, the vendor shall extend to the City the same pricing or the then-current market price, whichever is lower.

63. REMEDIES: No remedy herein 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 given hereunder now or hereafter existing at law, or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

64. ENDORSEMENTS: No endorsements by the City of the goods and/or services will be used by the vendor in any way, manner or form.

65. SEAL, LOGO, and FLAGS: The Vendor shall not use the seal(s), logos, crests, or reproductions of flags or likenesses of the City or agency officials without specific written pre-approval.

66. DRUG-FREE WORKPLACE: The Vendor shall implement and maintain a drug-free workplace program of at least the following items:

    a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

    b. Inform employees about the dangers of drug abuse in the workplace, the Vendor's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

    c. Give each employee engaged in providing the services that are under agreement/contract a copy of the statement specified in Item Number A above.

    d. In the statement specified in Item Number A above, notify the employees that, as a condition of providing the services that are under agreement/contract, the employee will abide by the terms of the statement and will notify the Vendor of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893, Florida Statutes, or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) calendar days after such conviction or plea.

    e. Impose a sanction on, or require satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, for any employee who is so convicted or so pleads.

    f. Make a good faith effort to continue to maintain a drug-free workplace through the implementation of Section 287.087, Florida Statutes.

67. PROTEST PROCEDURE: Protest procedures are provided in the City of Boynton Beach Purchasing Policy. Protests shall be submitted in writing, addressed to the Purchasing Manager, via hand delivery, or mail, along with a protest cash bond in an amount equal to 5% of the bid or $5,000, whichever is less. The bond will be refunded to a protester if the protest is upheld. The protest must identify the solicitation, specify the basis for the protest, and be received by the Purchasing Department within the

deadlines as follows:

A. If the protest relates to a Request for Proposals, Request for Qualifications, or Invitation to Bid, the protest shall be received prior to the bid or proposal submittal deadline date.
B. If the protest relates to any other matter relating to the RFP, RFQ, or BID, including, but not limited to, the Award of an Agreement/contract, the protest must be received no later than seven (7) regular business days after the date of notification of award by the Purchasing Staff.

Failure to file a protest as outlined in the City of Boynton Beach's Purchasing Policy shall constitute a waiver of proceedings.

68. DEFAULT AND TERMINATION FOR CAUSE: The City may, by written notice of default to the vendor, terminate the agreement/contract in whole or in part if the vendor fails to satisfactorily perform any provisions of this agreement/contract, or fails to make progress so as to endanger performance under the terms and conditions of this agreement/contract, or provides repeated nonperformance, or does not remedy such failure within a period of 30 calendar days after receipt of notice from the City of Boynton Beach specifying such failure. In the event the City terminates the agreement/contract in whole or in part because of default of the vendor, the City may procure goods and/or services similar to those terminated, and the vendor shall be liable for any excess costs incurred due to this action.

69. TERMINATION FOR CONVENIENCE: Whenever the interests of the City so require, terminate the agreement/contract, in whole or in part, for the convenience of the City. Purchasing shall give fourteen (14) business days prior written notice of termination to the vendor, specifying the portions of the agreement/contract to be terminated and when the termination is to become effective. If only portions of the agreement/contract are terminated, the vendor has the right to withdraw, without adverse action, from the entire agreement/contract.

Unless directed differently in the notice of termination, the vendor shall incur no further obligations in connection with the terminated work and shall stop work to the extent specified on the date given in the notice of termination. Additionally, unless directed differently, the vendor shall terminate outstanding orders and/or subcontracts related to the terminated work.

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FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

BID No.: PWE24-024

SPECIAL TERMS AND CONDITIONS

PURPOSE: The City of Boynton Beach is seeking a qualified Contractor/Vendor for installation of a new emergency generator as designated in the plans. Work to include the selective demolition of the existing generator enclosure, removal of the existing generator, the installation of a new generator and associated infrastructure. The Contractor/Vendor shall furnish, install, and provide all labor and materials to complete the installation of the new generator. The scope of work will be performed to completion based on the established bid pricing.

GENERAL DEMOLITION NOTES:

1. REMOVE EXISTING STEEL ROOF FRAMING AND METAL SCREENING OVER GENERATOR AS NEEDED FOR REMOVAL OF EXISTING & INSTALLATION OF NEW GEN-SET. SALVAGE FOR RE-USE ALL FRAMING, PLATES, CONNECTION, AND BOLTS. VERIFY QUALITY AND CONDITION, AND REPLACE DAMAGED AND UNUSABLE COMPONENTS WITH NEW AS NEEDED FOR A SAFE AND CODE COMPLIANT STRUCTURE.

2. REMOVE ELECTRICAL GENERATOR AND EQUIPMENT AS NEEDED, REPLACE WITH NEW INCLUDING ALL WIRING, CONNECTIONS, AND ATTACHMENTS AS REQUIRED (SEE MEP PLANS FOR ADDITIONAL INFORMATION).

3. EXISTING CHILLER EQUIPMENT TO REMAIN. CONTRACTOR TO MAINTAIN FULL FUNCTION OF CHILLER DURING DEMOLITION AND CONSTRUCTION OF PROJECT.

4. EXISTING FUEL TANK TO REMAIN. CONTRACTOR TO HAVE FUEL TANK SURVEYED BY GEN-SET REPRESENTATIVE TO DETERMINE CONDITION, REPORT TO OWNER & ARCHITECT ON CONDITION.

5. EXISTING FUEL LINES TO BE DEMOLISHED (SEE MEP), CONTRACTOR TO SAFE OFF UNTIL NEW LINES INSTALLED.

NEW WORK NOTES:

1. FURNISH AND INSTALL THE NEW EMERGENCY GENERATOR AS SHOWN IN THIS PLAN AND THE ELECTRICAL PLANS. THE GENERAL CONTRACTOR SHALL BE RESPONSIBLE FOR ALL POWER CONNECTIONS, FEEDERS, AND DEVICES REQUIRED TO MAKE THE NEW EQUIPMENT OPERATIONAL.

2. THE GENERAL CONTRACTOR SHALL BE RESPONSIBLE FOR ENSURING THAT THE EXISTING CONCRETE HOUSEKEEPING PAD IS STRUCTURALLY SOUND AND WILL ACCOMMODATE THE INSTALLATION AND ANCHORING OF THE NEW GENERATOR EQUIPMENT.

3. THE GENERAL CONTRACTOR SHALL BE RESPONSIBLE FOR THE REPLACEMENT OF AND RECONNECTION OF ALL POWER FEEDS, SWITCHES, AND DEVICES AS REQUIRED TO MAKE THE NEW GENERATOR OPERATIONAL. ANY POWER CIRCUITING, SWITCHES, AND ANY OTHER DEVICES THAT REQUIRE REMOVAL, ALTERATION, OR REPLACEMENT TO ACCOMMODATE THE REMOVAL, INSTALLATION, AND COMPLETE OPERATION OF THE NEW GENERATOR SHALL BE FURNISHED AND INSTALLED BY THE GENERAL CONTRACTOR.

4. THE GENERAL CONTRACTOR SHALL BE RESPONSIBLE FOR THE REPLACEMENT OF AND

RECONNECTION OF THE FUEL LINES. ANY FUEL LINES AND ANY OTHER DEVICES THAT REQUIRE REMOVAL, ALTERATION, OR REPLACEMENT TO ACCOMMODATE THE REMOVAL, INSTALLATION AND COMPLETE OPERATION OF NEW GENERATOR SHALL BE FURNISHED AND INSTALLED BY THE GENERAL CONTRACTOR.

5. THE GENERAL CONTRACTOR SHALL BE RESPONSIBLE FOR THE REINSTALLATION OF THE EXISTING STEEL ROOFING STRUCTURE. THIS SHALL INCLUDE THE PRIMARY WIDE FLANGE BEAMS, BRACING TURN-BUCKLES, INTERMEDIATE FRAMING AND THE UPPER EXPANDED METAL MESHING. THE EXISTING STRUCTURE IS CURRENTLY SECURED AND FASTENED THROUGH THE USE OF BOLTED CONNECTIONS. ANY CONNECTORS, CONNECTORS AND FRAMING MEMBERS DAMAGED OR RENDERED STRUCTURAL UNSOUND SHALL BE REPLACED. THESE MEMBERS SHALL BE PROVIDED BY THE GENERAL CONTRACTOR AND WILL BE LIKE KIND IN NATURE.

6. THE GENERAL CONTRACTOR SHALL PREPARE THE SURFACES OF THE NEWLY REINSTALLED OR REPLACED STRUCTURE STEEL. ALL NEWLY REINSTALLED OR REPLACED STRUCTURAL STEEL SHALL BE PRIMED AND PAINTED WITH A COMMERCIAL GRADE, EXTERIOR LATEX ACRYLIC PAINT

AWARD: At bid submittal, the Vendor must submit the Schedule of Bid Items. Bids will be evaluated based on the price proposal. Successful Bidder awarded shall ensure that proper and sufficient staff, equipment, organization, materials, references, past performance, etc. will be provided for this contract to meet the specifications denoted herein at a paramount level.

The City further reserves the right to waive irregularities and technicalities and/or to request resubmission. There is no obligation on the part of the City to award the bid to the lowest bidder or any bidder. The City reserves the right to make the award to a responsible bidder submitting a responsive bid most advantageous and in the best interest of the City. The City shall be the sole judge of the bids and the City's decision shall be final.

INSURANCE: It shall be the responsibility of the successful Vendor to maintain workers' compensation insurance, property damage, liability insurance, and vehicular liability insurance, during the time any of the vendor's personnel are working on the City of Boynton Beach property. The vendor shall furnish the City with a certificate of insurance after award has been made prior to the start of any work on City property. Said insured companies must be authorized to do business in the State of Florida and the City will not accept any company that has a rating less than B+ in accordance to A.M. Best's Key Rating Guide, latest edition.

PERFORMANCE WARRANTY: The vendor shall guarantee all work, equipment, and materials included in the services against any defects in workmanship; and shall satisfactorily correct, at no cost to the City, any such defect that may become apparent within a period of one year after completion of work. The warranty period shall commence upon the date of acceptance, inspection, and approval by the City Representative only. If the vendor is notified in writing of a deficiency in the work provided, within one year from completion of the work, the vendor shall, at the City's option, re-perform the work in question at no additional cost to the City, or refund the City the original charges for the work in question, including the difference in cost if any, to re-perform the work if completed by another vendor.

INVOICING AND PAYMENT: Payment for any and all invoice(s) that may arise as a result of a contract or purchase order issued pursuant to this ITB shall minimally meet the following conditions to be considered as a valid payment request. Timely submission of a properly certified invoice(s) in strict accordance with the price(s) and delivery elements as stipulated in the Contract document should be submitted to:

City of Boynton Beach
P.O. Box 310
Boynton Beach, FL 33425-0310
Email: AP@bbfl.us

All invoices submitted shall consist of as follows:

- Clearly referenced the subject Contract or Purchase Order number;
- Provide sufficient salient description to identify the goods and services for which payment is requested;
- Contain date of delivery;
- Original or legible copy of a signed delivery receipt including both manual signature and printed name of the designated City employee or authorized agent; be clearly marked as “partial”, “complete”, or “final invoice.” The City will accept partial deliveries. The invoice shall contain the Bidder’s Federal Employer Identification Number.

The City’s terms of payment, unless otherwise stated in the Contract Documents are “Net 30 Days” after acceptance of goods or services and receipt of an acceptable invoice as described herein. Any other items of payment must have been previously approved by the City and appear on the Contract or Purchase Order document to be binding on the City. Should the City return an invoice for correction, the Vendor shall re-submit a corrected invoice to the City for processing.

- It will be the sole responsibility of the Vendor to properly dispose of all construction debris at an authorized landfill and all incurred costs shall be borne by the Vendor.

- All work areas must meet safety requirements for pedestrian and vehicular traffic and must be left in a clean and orderly manner. All grass areas and/or private property that are damaged while work area is under construction shall be restored as found by the Vendor prior to leaving the work areas after completion of work. It is recommended that the Vendor keep a before and after picture history, at no cost to the City, should any questions arise and be made available to the Project Manager if needed.

- All work must meet or exceed the Florida Building Code and City of Boynton Beach Standards.

- The supervision of the execution of this Contract is vested wholly in the Project Manager or his representative, and the orders of the City Commission and/or Utilities Director are to be given through him. The instructions of the Project Manager or his representative are to be strictly and promptly followed in every case. The Vendor may designate a foreman or other representative to receive such instructions in his absence, and failing to do so, he will be held responsible for the execution of any instructions it may be necessary to give in his absence. The Project Manager or his representative is to have free access to the materials and the work at all times for laying out, measuring, inspecting, or oversight of the same, and the Vendor is to afford him all necessary facilities and assistance for so doing.

- To prevent all disputes and litigation, it is agreed by the parties hereto that the Utilities Director or City representative shall decide all questions, difficulties, and disputes of any nature which may arise relative to the interpretation of the specifications, construction, prosecution, and fulfillment of the contract and task orders, and as to the character, quality, amount and value of any work done and materials furnished under or by reason of the Contract, and his estimates and decisions upon all claims, questions, and disputes shall be final and conclusive upon the parties hereto.

- Time is an essential element of the contract. Delay in the execution of work will inconvenience and possibly endanger the public and interfere with business, it is important that once work commences at any site, it be carried through to completion without delays or suspension of operations unless deemed to be necessary by the Project Manager or Inspector.

- In the event any delays or suspension of operations occur, the City reserves the right to hire off-duty police, erect barricades, or take whatever actions are necessary to provide for the safety of the site. All costs involved in doing so shall be just claims against the Vendor or the Vendor’s Performance and Payment Bond. By submitting a bid, the Vendor agrees to the conditions as stated above.

PLANS AND SPECIFICATIONS: The specifications and all other documentation that make up and constitute the contract shall be followed in strict accordance as to work, material, and dimensions except

when the Utilities Project Manager may authorize in writing an exception. Measurement discrepancies shall be decided upon by the Utilities Project Manager or his representative and the Vendor shall not proceed when in doubt as to any dimension or measurement.

PERFORMANCE OF WORK:

a. The Vendor will furnish a qualified Superintendent who will be present at all times while work is being performed, and shall be authorized to act for the Vendor. The Vendor shall maintain sufficient plant, equipment, and labor on the job site to meet the requirements of the work.

b. Equipment shall be kept in a satisfactory operating condition and capable of safely and efficiently performing the work. All operations shall be subject to inspection by the Project Manager or his representative at all times.

   The Vendor shall submit for approval by the Project manager or his representative a description of the type of materials and equipment to be used; and to the method of procedure to be used in the performance of the work.

c. It is expressly understood that the Vendor is in all respects an independent Vendor for this work, notwithstanding that under certain conditions, he is bound to follow the directions of the Project Manager or his representative, and is in no respect and agent, servant or employee of the City.

d. Any performance or non-performance issues noted by the Project Manager or their representative(s) will be brought to the attention of the Vendor through the use of the **Performance Evaluation Form**, see Attachment 'D'. The Project Manager or their representative(s) will conduct annual performance evaluations based on areas serviced under this contract/agreement.

RESTORATION OF PROPERTY: Property, public or private, if damaged during construction or removed for the convenience of the work shall be repaired or replaced at the expense of the Vendor in a manner acceptable to the Utilities Project Manager, prior to the final acceptance of the work. Such facilities shall include but are not limited to: signalization equipment and miscellaneous hardware removed from the construction site, driveways, walkways, walls, fences, mailboxes, sod, landscaping, irrigation systems, footings, or underground utilities.

DELAYS:

a. If the Vendor should be delayed in the progress of the work included in the Contract by unforeseeable causes beyond his control, the time for completion of the work may be extended by the Utilities Project Manager or his representative. Requests for extensions of time must be submitted in writing to the Utilities Project Manager or his representative within seven (7) days from the Vendor's knowledge of a delay. Vendor shall not receive any compensation for additional time required to complete the work as a result of any delay.

b. The Vendor shall assume all risks resulting from delays except that should the City, by act or omission, intentionally and without reason, cause delays which result in actual loss to the Vendor. Reimbursement thereof may be adjusted and allowed by the City only after being notified in writing by the Vendor at the time of the delay and after being given an opportunity to verify such money losses as they occur. No payment or adjustment will be allowed to the Vendor as reimbursement for any other delays whatsoever; regardless of by what or by whom caused, even though by other Vendors on the same work, or by times, seasons, or weather; other than amounts provided in the Contract for payment which shall be understood to include and cover all risks due to delays except as stated in the foregoing.

c. If the Vendor fails to start the work within the time specified, and if the City should nevertheless permit the Vendor to continue and complete the same without official extension of time in writing, such permission shall not modify nor waive any liability of the Vendor for damages arising from non-completion of work within the time limit, but all such liabilities shall be subject to continuation in full force against the Vendor.

d. Liability of the Vendor will include any claim by any person for bodily or property damage after the Notice to Proceed was given for the requested work.

MATERIALS:

a. The Vendor shall provide the services of all workmen, mechanics, tradesmen, and other employees trained and skilled in their various occupations and all materials and equipment. The request for work to be performed will require the Vendor to supply all labor, equipment, materials and work incidental to, or described or implied as incidental to, the construction included under this Contract, notwithstanding any omission in the drawings or specifications.

b. Wherever not explicitly described, materials and workmanship of every kind shall be in keeping with industry standards. The Vendor shall perform his work in proper sequence to the work or other Vendors and to acts or operations of the City and shall properly join his work to existing or new construction.

c. All materials and every process and operation of manufacture, construction and erection shall be subject to inspection at all times, and the Utilities Project Manager or his representatives and their representatives shall have free access to all parts of the work of construction and erection. The Vendor shall remove, reconstruct, replace, and make good, as may be directed, without charge, any defective work. Oversight or error or judgment of inspectors, or previous acceptance, shall not relieve the Vendor from the obligation to make good defects whenever discovered.

FINAL CLEAN-UP:

Upon completion of the work specified herein, and before acceptance of any part thereof, and any payment made to include final payment, the Vendor shall remove from the site completed, all machinery, equipment surplus, and discarded materials and temporary structures. The disposal of all materials, rubbish, and construction debris shall be made at a legal disposal site or by other manner if prior approval is granted by the Project Manager. Materials cleared from the site and deposited on the adjacent or nearby property will not be considered as having been disposed of properly.

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FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

BID No.: PWE24-024

BIDDERS SUBMISSION REQUIREMENTS

Submittal of General Information and Procurement Forms and Documents. Procurement forms must be complete, signed, notarized, uploaded, and/or acknowledged when required and submitted. In addition, all other requests and supporting documentation are required to be included.

Bids or Proposals may be found non-responsive if the Vendor fails to provide the information requested in the Invitation to Bid/ Request for Qualifications/Request for Proposals; fails to utilize or complete the required forms; provide incomplete, indefinite, or ambiguous responses; fails to comply with applicable deadlines; provide improper or undated signatures; or provide information that is false, misleading, or exaggerated.

a) Online Acknowledgement

__ Proposer Acknowledgement
__ Addenda Acknowledgement
__ Confirmation of Drug-Free Workplace
__ Palm Beach Inspector General

b) Online Forms

__ Letter of Interest
__ Confirmation of Minority-Owner Business
__ Local Business Certification
__ Statement of Non-Submittal (if applicable)
__ Schedule of Sub-Consultants
__ References

c) Upload Online

__ Bid Form
__ Bid Bond Documents
__ Bidders Qualification Statement
__ Anti-Kickback Affidavit
__ Non-Collusion Affidavit
__ Certification Pursuant to Florida Statute § 287.135
__ Schedule of Bid Items
__ Scheduled & Emergency Repair Scenarios
__ Submit current Florida Professional License (General Contractor License) including evidence of possession of required licenses or business permits
__ Warranties
__ Affidavit of Compliance with Foreign Entity Laws
__ Affidavit of Compliance with Anti-Human Trafficking Laws
__ E-Verify Form Pursuant to Florida Statute § 448.095
__ W-9
__ Submit any Supplemental information relative to this Bid

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ARTICLE 1 – DEFINITIONS

Whenever used in the Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.1 **Acceptance:** Written Acknowledgement by the CITY's Project Manager that the Work is fully complete in accordance with the Contract Documents.

1.2 **Addenda:** Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding requirements of the Contract.

1.3 **Application for Payment:** The form accepted by the CONSULTANT which is to be used by CONTRACTOR to request progress payment and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.4 **Award Letter:** The official written notice by the CITY to the apparent successful Bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated with the award letter, within the time specified, the CITY may enter into a Contract.

1.5 **Bid:** The offer of the BIDDER submitted on the prescribed form setting forth the prices of the Work.

1.6 **Bidder:** Any person, firm or corporation submitting a Bid for the Work directly to the CITY.

1.7 **Bid Documents:** Includes the Invitation to Bid, Instructions to Bidders, Bid Form, and proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

1.8 **Bonds:** Bid, performance and payment bonds and other instruments of security, furnished by the CONTRACTOR and their surety in accordance with the Contract Documents and in accordance with the law of the State of Florida.

1.9 **Change Order:** A written order to the CONTRACTOR executed by the CITY, CONSULTANT, and CONTRACTOR authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time that may be as a result of an emergency or unforeseen physical conditions which occur after execution of the Contract. Such change order shall be in accordance with para 9.4 "Clarifications and Interpretations" or orders minor changes in the Work in accordance with para. 10.1 "Authorized Changes in the Work".

1.10 **CITY:** The City of Boynton Beach, Florida, a municipal corporation, its authorized and legal representatives, the public entity with whom the CONTRACTOR has entered into the agreement and for whom the Work is to be provided. The term **CITY** will be used interchangeably with the term **OWNER.**

1.11 **CITY's Representative:** The person or persons designated by the CITY's Project Manager. The CITY's Project Manager may include the CONSULTANT.

1.12 **Consultant:** The person, firm or corporation named as such in the Contract Documents that acts as the CITY's authorized agent within the scope of work entrusted to them at the CITY.

1.13 **Consultant's Representative:** An authorized representative of the CONSULTANT assigned to observe the Work performed and materials furnished by the CONTRACTOR.

1.14 **Contract:** The written agreement between CITY and CONTRACTOR covering the Work to be performed. The term **Contract** will be used interchangeably with the term **Agreement.**

1.15 **Conformed Contract Documents:** Contract Documents which consolidate all bidding documents including all addenda which are incorporated by and signed and sealed by the CONSULTANT. The Conformed Contract Documents shall be used by the CONTRACTOR to create the Record Drawings for the Project.

1.16 **Contract Documents:** The Contract Documents establishing the rights and obligations of the parties and include the Contract, Contract/Bid, Addenda, CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the notice of award, when attached as an exhibit to the Contract, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, Special Conditions, and the Drawings as the same are more specifically identified in the Contract, together shall all Written Amendments, Change Orders, Field Change Orders (change orders as a result of Field changes), and CONSULTANT's written interpretations and clarifications issued on or after the Effective Date of the Contract. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format or text, data, graphics, and the like that may be furnished by CITY to CONTRACTOR are not Contract Documents.

1.17 **Contract Price:** The total monies payable by the CITY to the CONTRACTOR under the terms and conditions of the Contract Document.

1.18 **Contract Time:** The number or numbers of successive days or dates stated in the Contract Documents for the completion of the Work.

1.19 **CONTRACTOR:** The individual, partnership, corporation, joint venture, or other legal entity with whom the CITY has entered into the Contract to perform work to complete the project that is the subject of the Bid.

1.20 **DAY:** A calendar day of 24 hours measured from midnight to the next midnight.

1.21 **Defective Work:** Work that is unsatisfactory, faulty, or deficient, or that does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents; or Work that has been damaged prior to the CONSULTANT's recommendation of final payment.

1.22 **Drawings:** The drawings, plans, maps, profiles, diagrams, and other graphic representations which show character, location, nature, extent and scope of the Work, which have been prepared or approved by CONSULTANT and are included and/or referred to in the Contract Documents. Shop Drawings are not Drawings as defined in this paragraph.

1.23 **Effective Date of the Contract:** The date indicated in the Contract, but if no such date is indicated, it means the last date on which the Contract is signed by the last of all parties to execute the Contract.

1.24 **Field Order:** A written order issued by the CITY's Project Manager or the CONSULTANT which clarifies or interprets the Contract Documents. The Field Order shall not impact Contract Price or Contract Time.

1.25 **General Requirements:** See General Conditions and Section 1 of the Technical Specifications as Special Conditions.

1.26 **Laws and Regulations; Laws or Regulations:** Laws, rules, codes, regulations, ordinances and/or orders promulgated by a lawfully constituted body authorized to issue such Laws and Regulations, either federal, state or local.

1.27 **Local Public Agency:** Any public entity which has regulatory jurisdiction over any part of the Work during the construction project.

1.28 **Notice to Proceed:** The written notice issued by the CITY, or its agents, to the CONTRACTOR authorizing the CONTRACTOR to proceed with the Work and establishing the date of commencement of the Contract Time, and the date the Contract Work to be completed.

1.29 **Partial Utilization:** Placing a portion of the Work in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the Work.

1.30 **Project:** The total construction of which the Work to be provided under the Contract Documents.

1.31 **Resident Project Representative:** The authorized representative of the CONSULTANT who is assigned to the Site or any part thereof.

1.32 **Responsible Bidder, Offeror, Quoter, or Respondent:** An individual or business that has submitted a bid, offer, proposal, quotation, or response, which has the capability in all respects to perform fully the Contract requirements, and the integrity and reliability which will give reasonable assurance of good faith and performance.

1.33 **Responsive Bidder, Offeror, Quoter, or Respondent, Vendor, Contractor:** an individual, or business that has submitted a bid, offer, proposal, quotation, or response, which conforms in all material respects to the solicitation, including but not limited to compliance with any W/MBE requirements contained within the solicitation.

1.34 **Shop Drawings:** All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by or for the CONTRACTOR, a Subcontractor, manufacturer, supplier or distributor and which illustrate the equipment, material or some portion of the Work and as required by the Contract Documents. Shop Drawings are not part of the Contract Documents and failure of the CONSULTANT or the CITY or any of its representatives to take exception to any product, material, system or installation depicted on Shop Drawings that are not in conformance with the requirements of the Contract Documents shall not constitute a Field Order or Change Order or any other modification of the Contract Documents, and shall not relieve the CONTRACTOR from complying with any portion of the Contract Documents.

1.35 **Special Conditions:** When included as part of the Contract Documents, Special Conditions refer only to the Work under this Contract. Special Conditions take precedence over the General Conditions.

1.36 **Specifications:** Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards or workmanship as applied to the Work and certain administrative details applicable thereto.

1.37 **Sub-Bidder:** One who submits a Bid to a Bidder.

1.38 **Sub-Contractor:** An individual, firm, or corporation having a direct contract with the CONTRACTOR or with any other Sub-Contractor for the performance of a part of the Work at the Site.

1.39 **Substantial Completion:** For purposes of this Contract, and for compliance of those procedures, duties and obligations as set forth in Florida Statutes § 218.70 and § 218.735, the term Substantial Completion shall be as follows, in lieu of any other definition:

a. "Substantial Completion" is defined as the point where the CITY is able to enjoy beneficial occupancy of the WORK and where the Work has achieved that level of completion such that the CITY is able to utilize 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 where a lack of completion of such incidental or incomplete items of Work shall adversely affect the complete operation of other areas of the Work.
b. Additional conditions (if any) needed to achieve Substantial Completion of the Work and which are project specific as set forth in attached Special Conditions.
c. When the entire Project is considered to be Substantially Complete, this does not constitute Final Acceptance or Final Completion of the entire Project.

1.40 **Successful Bidder:** The lowest, qualified, responsible and responsive Bidder to whom the CITY (on the basis of the CITY's evaluation as hereinafter provided) makes an award.

1.41 **Supplementary General Conditions:** The part of the Contract Documents which amends or supplements these General Conditions.

1.42 **Supplier:** A manufacturer, fabricator, supplier, distributor, material man, or vendor.

1.43 **Surety:** The corporate body which is bound with the CONTRACTOR and which engages to be responsible for the CONTRACTOR and their acceptable performance of the Work.

1.44 **Unbalanced Bids:**

a. Mathematically Unbalanced Bid: a bid containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.
b. Materially Unbalanced Bid: a bid which generates a reasonable doubt that award to the Bidder submitting a mathematically unbalanced

bid will result in the lowest ultimate cost to the CITY; or which is so mathematically unbalanced as to result in an advanced payment.

1.45 **Unit Price Work:** Work to be paid for on the basis of unit prices.

1.46 **Utilities:** All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities which have been installed underground or above ground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum, telephone, or other communications, cable television, water supply or distribution, sewage and drainage removal, traffic or other control systems.

1.47 **Work:** Any and all obligations, duties, and responsibilities necessary to the successful completion of the Project assigned to or undertaken by the successful Bidder/ CONTRACTOR under the Contract Documents, including all labor, materials, equipment, and other incidentals, and the furnished thereof.

1.48 **Written Amendment:** A written amendment of the Contract Documents, signed by the CITY and CONTRACTOR on or after the Effective Date of the Contract.

ARTICLE 2 – PRELIMINARY MATTERS

2.1 DELIVERY OF BONDS AND INSURANCE CERTIFICATES:

2.1.1 The CONTRACTOR shall deliver to the CITY such Bonds and Insurance Policies, Certificates or other documents as the CONTRACTOR may be required to furnish in accordance with the Contract Documents. The aforementioned documents must be submitted to the CITY prior to any work being performed.

2.2 COPIES OF DOCUMENTS:

2.2.1 The CITY shall furnish to CONTRACTOR ONE (1) copy (unless additional copies exist) of the Conformed Contract Documents for the execution of the Work. CONTRACTOR shall be responsible for procuring additional copies from the CONSULTANT.

2.3 NOTICE TO PROCEED:

2.3.1 The Contract Times shall commence to run on the date stated in the Notice to Proceed.

2.4 COMMENCEMENT THE WORK:

2.4.1 CONTRACTOR shall begin to perform the Work on the commencement date stated in the Notice to Proceed, but no Work shall be done at the Site prior to such commencement date.

2.4.2 CONTRACTOR's Review of the Contract Documents: Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to CONSULTANT any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from CONSULTANT before proceeding with any Work affected thereby.

2.5 PRE-CONSTRUCTION MEETING:

2.5.1 The CONTRACTOR is required to attend a preconstruction meeting within ten (10) days after the effective date of the Contract, but before any Work at the Site is started (unless otherwise specified in the Special Conditions). This meeting shall be attended by the CITY, CONSULTANT and others as appropriate in order to discuss the Work.

2.5.2 The CONTRACTOR's initial schedule for shop drawings submittals, obtaining permits and Plan of Operation and Critical Path Method (CPM) Schedule shall be reviewed and finalized. As a minimum, the CONTRACTOR's representatives should include its project manager and schedule expert. If the submittals are not finalized at the end of the meeting, additional meetings shall be held so that the submittals can be finalized prior to the submittal of the first Application for Payment. No Application for Payment shall be processed prior to receiving acceptable initial submittals from the CONTRACTOR.

2.5.3 CITY shall schedule pre-construction meeting.

2.5.3.1 Attendance Required: CITY's Project Manager, CONSULTANT, and CONTRACTOR/CM Project Manager and Superintendent.

2.5.3.2 Agenda: Distribution of Conformed Contract Documents, Confirmation based on prior submission (during Bid process) of the list of Subcontractors, list of Products, Project Safety Plan, Schedule of Values and Progress Schedule.

2.5.3.3 Designation of personnel representing the parties in Contract and the CONSULTANT.

2.5.3.4 Procedures and processing of field decisions, submittals, substitutions, applications for payments, proposal requests, Change Orders, and Contract close-out procedures.

2.5.3.5 Issuance of Notice to Proceed.

2.5.3.6 Copies of the Application for Payment, Change Order, Submittal Requirements/Record, Request for Information (RFI), Shutdown Request, Boynton Beach Department of Engineering Right-of-Way Permit Procedure and Project Sign format will be distributed.

2.6 SITE MOBILIZATION MEETING:

2.6.1 CITY will schedule a meeting at the Project Site prior to CONTRACTOR occupancy.

2.6.2 Attendance Required: CITY, CONSULTANT, Special Consultants, and CONTRACTOR, CONTRACTOR's superintendent, and major Sub-Contractors.

2.6.3 Agenda:

2.6.3.1 Use of premises by CITY and CONTRACTOR.

2.6.2.1 CITY's requirements and partial occupancy.

2.6.2.2 Construction facilities and controls provided by CITY.

2.6.2.3 Temporary utilities provided by the CITY.
2.6.2.4 Survey and building layout
2.6.2.5 Security and housekeeping procedures.
2.6.2.6 Schedules
2.6.2.7 Application for Payment Procedures
2.6.2.8 Procedures for testing
2.6.2.9 Procedures for maintaining record documents.
2.6.2.10 Requirements for start-up of equipment.
2.6.2.11 Inspection and acceptance of equipment put into service during construction period.
2.6.2.12 CONSULTANT shall record minutes and distribute copies within two (2) days after meeting to participants, with copies to all, participants including CONTRACTOR, and those affected by decisions made.

2.7 PROGRESS MEETINGS

2.7.1 Schedule and administer meetings throughout progress of the Work at maximum monthly intervals. Make arrangements for meetings, prepare agenda with copies for participants, and preside at meetings.

2.7.2 Attendance Required: Job superintendent, major Sub-Contractors and suppliers, CITY, CONSULTANT, as appropriate to agenda topics for each meeting.

2.7.3 Agenda:
2.7.3.1 Review minutes of previous meetings.
2.7.3.2 Review of work progress.
2.7.3.3 Field observations, problems and decisions.
2.7.3.4 Identification of problems that impeded planned progress.
2.7.3.5 Review of submittal, schedule and status of submittals.
2.7.3.6 Review of off-site fabrication and delivery schedules.
2.7.3.7 Maintenance of progress schedule.
2.7.3.8 Corrective measures to regain projected schedules.
2.7.3.9 Planned progress during succeeding work period.
2.7.3.10 Coordination of projected progress.
2.7.3.11 Maintenance and quality of work standards.
2.7.3.12 Effect of proposed changes on progress schedule and coordination.
2.7.3.13 Other business related to work.
2.7.3.14 Record minutes and distribute copies within two (2) days after meeting to participants, with copies to CONSULTANT, CITY, and those affected by decisions made.

2.8 PRE-INSTALLATION MEETING:

2.8.1 When required in individual specification section, convene a pre-installation meeting at the site prior to commencing work on the section.

2.8.2 Require attendance of parties directly affecting, or affected by, work of the specific section.

2.8.3 Notify CITY and CONSULTANT five (5) working days in advance of meeting date.

2.8.4 Prepare agenda and preside at meeting.

2.8.5 Review conditions of installation, preparation and installation procedures.

2.8.6 Review coordination with related work.

2.8.7 Record minutes and distribute copies within three (3) days after meeting to participants with copies to CONSULTANT, CITY and those affected by decisions made.

2.9 FINALIZING SCHEDULES:

2.9.1 Within ten (10) days of receiving the Notice to Proceed, the CONTRACTOR shall submit the final schedule approved by the CITY and CONSULTANT. The finalized progress schedule shall be acceptable to the CITY as providing an orderly progression of the Work to completion within the Contract Time. Such acceptance shall neither impose on the CITY's responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility thereof. The finalized schedule of Shop Drawing submissions shall be acceptable to the CITY as providing a workable arrangement for processing the submissions. The finalized Schedule of Values shall be acceptable to the CITY as to form and substance.

2.10 SUBMITTAL PROCEDURES:

2.10.1 SCOPE OF WORK: Administrative and procedural requirements for processing of submittals during construction process. Submittals may include the following:
a) Proposed Products Lists
b) Proposed Vendor List
c) Product Data
d) Shop Drawings
e) Samples
f) Design Data
g) Field Test Reporting
h) Quality Control Reporting

i) Certificates
j) Manufacturer's Installation, Handing and Storage Instructions
k) Manufacturer's Field Reports
l) Erection Drawings
m) Close-out Documents
n) Warranties
o) Scheduling of Work
p) Construction Progress Schedule
q) Submittals Schedule
r) Survey and Layout Data
s) Construction Progress Reporting
t) Periodic Work Observation
u) Photographic Documentation
v) Purchase Order Tracking
w) Operation and Maintenance Documentation

2.10.2 RELATED SECTIONS:

A. Payment Procedures
B. Project Coordination
C. References
D. Quality Control
E. Product Storage and Handling Requirements
F. Close-out Submittals

2.10.2.1 SEE 2.10.2 RELATED SECTIONS AND SUBMITTAL SECTIONS 2.10.1 FOR INDIVIDUAL SUBMITTAL PROCEDURES.

2.10.3 SUBMITTAL PROCEDURES - GENERAL

2.10.3.1 Submittal Procedures shall be in conformance with General Conditions of the Contract and as amended by the CITY.
2.10.3.2 Transmit each submittal with CITY's Standard Transmittal Form.
2.10.3.3 Sequentially number each transmittal form. Revise submittals with original number and a sequential alphabetic suffix.
2.10.3.4 Identify project, CONTRACTOR, Sub-Contractor or supplier pertinent drawing and detail number, and specification section number, as appropriate.
2.10.3.5 Apply CONTRACTOR's stamp, signed or initialed certifying that review, approval, verification of products required, field dimensions, adjacent construction work, and coordination of information are in accord with requirements of the Work and Contract Documents.
2.10.3.6 Schedule submittals to expedite the Project, and delivery to CONSULTANT and CITY at business address. Coordinate submission of related items.
2.10.3.7 For each submittal for review, allow fifteen (15) days including delivery time to and from the CONTRACTOR.
2.10.3.8 Identify variations from Contract Documents and product or system limitations, which may be detrimental to successful performance of the completed Work.
2.10.3.9 Provide space for CONTRACTOR and CONSULTANT review stamps.
2.10.3.10 When revised for resubmission, identify all changes made since previous submission.
2.10.3.11 Distribute copies of reviewed submittals as appropriate. Instruct parties to promptly report any inability to comply with requirements.
2.10.3.12 Submittals not requested will not be recognized or processed.

2.10.4 PRODUCT DATA

2.10.4.1 Product Data for Review:
2.10.4.1.1 Submit to CONSULTANT for review for purpose of checking for conformance with information given and design concept expressed in Contract Documents.

2.10.4.1.2 After review, provide copies and distribute per Submittal Procedures article above and for Record Documents purposes described in the Special Conditions 01740 "Project Documentation and Closeout."

2.10.4.2 Product Data for Project Information:
2.10.4.2.1 Submittal for CONSULTANT's knowledge as contract administrator for CITY.

2.10.4.3 Product Data for Project Close-out:
2.10.4.3.1 Submit for CITY's benefit during and after the project completion.

2.10.4.4 Submit required number of copies as per CONTRACTOR/CM, plus two (2) copies for CONSULTANT.

2.10.4.5 Mark each copy to identify applicable products, models, options and other data.

2.10.4.6 Supplement manufacturers' standard data to provide information unique to project.

2.10.4.7 Indicate product utility and electrical characteristics, utility connection requirements, and location of utility outlets for service for functional equipment and appliances.

2.10.4.8 After review, distribute in accord with Submittal Procedures article above and provide copies for Record Documents described in the

Special Conditions 01740 "Project Documentation and Closeout."

2.10.5 CONSTRUCTION SUBMITTALS

2.10.5.1 Submit one (1) copy of Building Permit, Site Permits, Environmental Permits, or other permits required for construction of work.

2.10.5.2 Submit Payment Applications to CONSULTANT for review for purpose of checking conformance with information given and design concept expressed in Contract Documents.

2.10.5.3 Certificates:
- 2.10.5.3.1 When specified, submit certification by manufacturer, installation/application Sub-Contractor, or CONTRACTOR to CONSULTANT, in quantities specified for Product Data.
- 2.10.5.3.2 Indicate material or Product conforms to or exceeding specified requirements.
- 2.10.5.3.3 Submit supporting reference date, affidavits, and certifications as appropriate.
- 2.10.5.3.4 Certificates may be recent or previous test results on material or Product, but must be acceptable to CONSULTANT.

2.10.5.4 Manufacturer's Instructions:
- 2.10.5.4.1 When specified, submit printed instructions for delivery, storage, assembly, installation, start-up, adjusting, and finishing, to CONSULTANT for delivery to CITY in quantities specified for Product Data.
- 2.10.5.4.2 Indicate special procedures, perimeter conditions requiring special attention, and special environmental criteria required for application or installation.
- 2.10.5.4.3 Refer to Quality Control and Warranty sections for quality assurance requirements.

2.10.5.5 Manufacturer's Field Reports:
- 2.10.5.5.1 Submit reports to CONSULTANT and CITY's Project Manager.
- 2.10.5.5.2 Submit report within ten (10) days of observation to CONSULTANT.
- 2.10.5.5.3 Submit for information for purpose of assessing conformance with information given and design concept expressed in Documents.

2.10.5.6 Erection Drawings:
- 2.10.5.6.1 Submit drawings to CONSULTANT and CITY's Project Manager.
- 2.10.5.6.2 Submit for information for purpose of assessing conformance with information given and design concept expressed in Documents.
- 2.10.5.6.3 Data indicating inappropriate or unacceptable work is subject to rejection by CONSULTANT or CITY.

ARTICLE 3 – USE OF CONTRACT DOCUMENTS

3.1 INTENT:

3.1.1 The Contract Documents comprise the entire agreement between the CITY and CONTRACTOR concerning the Work. The Contract Documents are complementary: what is called for by one is as binding as if called for by all. The Contract Documents shall be construed in accordance with the laws of the State of Florida with venue in Palm Beach County, Florida.

3.1.2 It is the intent of the Contract Documents to describe the Work, functionally complete, to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result shall be provided whether or not specifically called for.

3.2 REFERENCE TO STANDARDS:

3.2.1 Reference to standard specifications, manuals or codes of any technical society, organization, or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties or responsibilities of the CITY, CONTRACTOR or CONSULTANT or any of their agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to CITY, CONSULTANT, or CONSULTANT's agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of the Contract Documents.

3.3 REVIEW OF CONTRACT DOCUMENTS:

3.3.1 The Contract Documents which comprise the Contract between the CITY and the CONTRACTOR are attached hereto and made part hereof and consist of the following:
- 3.3.1.1 The Purchase Order
- 3.3.1.2 Contractor's Bid and Bid Bonds
- 3.3.1.3 Bid Documents consisting of:
- 3.3.1.4 Invitation to Bid and Instructions to Bidders
- 3.3.1.5 General Conditions
- 3.3.1.6 Supplemental Conditions
- 3.3.1.7 Technical Specifications
- 3.3.1.8 All Plans
- 3.3.1.9 All Addenda
- 3.3.1.10 Recorded Public Construction Performance and Payment Bond in a form supplied by the CITY, which shall be provided to the CITY by the CONTRACTOR, along with the return of an executed Purchase Order. The CONTRACTOR shall be responsible for recording the Public Construction Bond.

3.3.1.11 Insurance Certificates shall be provided by the CONTRACTOR, along with the return of an executed copy of the Contract.
3.3.1.12 Any modifications, including change orders, duly delivered after execution of this Contract.
3.3.1.13 Executed Notice to Proceed

3.3.2 Except for duly authorized and executed Modifications including but not limited to change orders and contract amendments, any conflict between the terms and conditions of this Contact and the terms and conditions of any of the other Contract Documents shall be interpreted in favor of this Contract.

3.3.3 If, during the performance of the Work, CONTRACTOR finds a conflict, error, or discrepancy in the Contract Documents, the CONTRACTOR shall so notify the CONSULTANT, in writing, at once and before proceeding with the Work affected thereby, and shall obtain written interpretation or clarification except in an emergency as authorized in paragraph 6.13

3.4 ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS:

3.4.1 In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as follows:
1. Change Order
2. Construction Contract or Purchase Order.
3. Addenda, with later date having greater priority.
4. Bid Form
5. Special Conditions
6. Supplemental General Conditions
7. Invitation to Bid
8. Instructions to Bidders
9. General Conditions
10. Technical Specifications
11. Contract Drawings

The captions or subtitles of the several articles and divisions of these Contract Documents constitute no part of the context and hereof, but are only labels to assist in locating and reading the provisions hereof.
However, In the event of inconsistent or conflicting provisions of the Purchase Order or Contract and referenced documents, the following descending order of precedence shall prevail:
1. Specifications
2. Drawings
3. Special/Supplemental Conditions
4. General Conditions
5. Item Description.

3.4.2 With reference to Drawings, the order of precedence is as follows:
1. Figures govern over scaled dimensions.
2. Detail drawings govern over general drawings.
3. Addenda/Change Order drawings govern over any other drawings.
4. Drawings govern over standard drawings.

3.4.3 Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5 (Amending of Contract Documents), the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:
1. the provisions of any such standard, specifications, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
2. The provisions of any such Law or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
3. No provision of any such standard, specifications, manual, code or instruction shall be effective to change the duties and responsibilities of CITY, CONTRACTOR or CONSULTANT, or any of their Sub-Contractors, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to CITY, CONSULTANTS or any of CONSULTANT's agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of para 9.11 (Limitations on Consultant) or any other provision of the Contract Documents.

3.5 AMENDING CONTRACT DOCUMENTS:

3.5.1 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof by a Change Order (pursuant to Article 10, Changes in Work).
3.5.2 Additionally, the requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, in one or more of the following ways:
3.5.2.1 A Change Order (pursuant to paragraph 10, Changes in Work)
3.5.2.2 CONSULTANT's approval of a Shop Drawings or sample (pursuant to paragraph 6.11, Shop Drawings and Samples), or
3.5.2.3 CONSULTANT's written interpretation or clarification (pursuant to paragraph 9.4, Clarifications and Interpretations).

3.6 REUSE OF DOCUMENTS:

3.6.1 Neither CONTRACTOR nor any Sub-Contractor or Supplier or other persons or organizations performing or furnishing any of the Work under a direct or indirect contract with the CITY shall have or acquire any title to or ownership rights in any of the Contract Documents, drawings, Special Conditions or other documents used on the Work; and, they shall not reuse any of these on extensions of the Project or any other project without prior written consent of the CITY and CONSULTANT.

ARTICLE 4 – SITE OF WORK

4.1 AVAILABILITY OF LANDS:

4.1.1 The CITY shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed; rights-of-way and easements for access thereto and such other lands which are designated for the use of the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities shall be obtained and paid for by the CITY, unless otherwise provided in the Contract Documents. Nothing contained in the Contract Documents shall be interpreted as giving the CONTRACTOR exclusive occupancy of the lands of rights-of-way provided. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities of storage of materials and equipment.

4.1.2 Occupying Private Land: The CONTRACTOR shall not enter upon nor use any property not under the control of the CITY until a written temporary construction easement agreement has been executed by the CONTRACTOR and the property owner, and a copy of such easement furnished to the CITY and CONSULTANT prior to said use; and neither the CITY nor the CONSULTANT shall be liable for any claims or damages resulting from the CONTRACTOR's trespass on or use of any such properties. The CONTRACTOR shall provide the CITY with a signed release from the property owner confirming that the lands have been satisfactorily restored upon completion of the Work.

4.1.3 Work in State, County and CITY Rights-of-Way and Easements: When the Work involves the installation of sanitary sewers, storm sewers, drains, water mains, manholes, underground structures, or other disturbances of existing features in or across streets, rights-of-way, easements, or other property; the CONTRACTOR shall (as the Work progresses) promptly back-fill, compact, grade and otherwise restore the disturbed area to a basic condition which shall permit resumption of pedestrian or vehicular traffic and any other critical activity or function consistent with the original use of the land. Unsightly mounds of earth, large stones, boulders, and debris shall be removed so that the Site presents a neat appearance as part of the Contract.

4.1.4 Work Adjacent to Telephone, Power, Cable TV, and Gas Company Structures: In all cases where Work is to be performed near telephone, power, water, sewer, drainage, cable TV, or gas company facilities; the CONTRACTOR shall provide written notification to the respective companies of the areas of which Work is to be performed, prior to the actual performance of any Work in these areas.

4.1.5 Use of Public Streets: The use of public streets and alleys shall be such as to provide a minimum of inconvenience to the public and to other vehicular and non-vehicular traffic. The CONTRACTOR shall remove any earth or excavated materials spilled from trucks and clean the streets to the satisfaction of the CITY, the CONSULTANT, the Florida Department of Transportation, or other agency or governmental entity having jurisdiction, as applicable.

4.2 REPORTS OF PHYSICAL CONDITIONS:

4.2.1 **Subsurface Explorations:** Where applicable, reference is made in the Special Conditions for identification of those reports of explorations and tests of subsurface conditions at the Site that have been utilized by CONSULTANT in preparation of the Contract Documents.

4.2.2 **Existing Structures:** Where applicable, reference is made to the Special Conditions for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 4.3 herein) which are at or contiguous to the Site that have been utilized by CONSULTANT in preparation of the Contract Documents.

4.2.3 Neither the CITY nor CONSULTANT makes any interpretation as to the completeness of the reports or drawings referred to in paragraphs 4.2.1 "Subsurface Explorations" or 4.2.2 "Existing Structures" above or the accuracy of any data or information contained herein. CONTRACTOR may rely upon the general accuracy of the technical data contained in such reports and drawings but not for the completeness thereof for CONTRACTOR''s purposes including but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by the CONTRACTOR and safety precautions and programs incident thereto. The CONTRACTOR may not rely upon any interpretation of such technical data, including any interpolation or extrapolation thereof, or any non-technical data, interpretations, and opinions contained therein.

4.2.4 Where the dimensions and location of existing structures are of importance to the installation or connection of new Work, the CONTRACTOR shall verify such dimensions and locations in the field before the fabrication of any materials or equipment which is dependent on the correctness of such information. There shall be no additional cost to the CITY for CONTRACTOR's failure to verify such dimensions and locations, or for inaccurate verifications by CONTRACTOR. CONTRACTOR shall bear the full cost of any modifications to the Work which result from subsurface conditions which result from subsurface conditions which could have been reasonably been discovered prior to commencement of the Work or a portion of the work.

4.3 PHYSICAL CONDITIONS – UNDERGROUND FACILITIES:

4.3.1 **Indicated:** The information and data indicated in the Contract Documents with respect to existing Underground Utilities at or contiguous to the Site is based on information and data furnished to the CITY or CONSULTANT by the owners of such Underground Facilities or by others.

4.3.1.1 The CITY and CONSULTANT shall not be responsible for the accuracy or completeness of any such information or data, and

4.3.1.2 The CONTRACTOR shall notify the Underground Service Alert (USA) System, Phone No. 1-800-227-2600 and Sunshine State One Call Services (1-800-432-4770) at least forty-eight (48) hours in advance of the commencement of Work at any site to allow the member of utilities to examine the construction site and mark the location of the utilities' respective facilities.

4.3.1.3 The CONTRACTOR acknowledges that some (or all) of the utility companies with facilities shown on the drawings may not be members of the USA System or Sunshine State One Call Services; and therefore, not automatically contacted by the above referenced telephone number. The CONTRACTOR will be responsible for making themselves aware of utility company facilities not reported by the USA System or Sunshine State One Call Services, and shall be liable for any and all damages stemming from repair or delay costs or any other expenses resulting from the unanticipated discovery of underground utilities. The CONTRACTOR shall be responsible for notifying all of the utilities at least forty-eight (48) hours in advance of the commencement of Work at any site to allow the utilities to examine the construction site and mark the location of the utilities' respective facilities. The CONTRACTOR shall also be responsible for verifying that each utility has responsibly responded to such notification.

4.3.1.4 CONTRACTOR shall have full responsibility for reviewing and checking all such information and data. Further, the

CONTRACTOR shall be responsible for locating all Underground Facilities whether or not shown or indicated in Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.10, and repairing any damage thereto resulting from Work, the cost of all of which shall be considered as having been included in the Contract Price.

4.3.1.5 All water pipes, sanitary sewers, storm drains, force mains, gas mains, or other pipes, telephone or power cables or conduits, pipe or conduit casings, curbs, sidewalks, service lines, and all other obstructions, whether or not shown, shall be temporarily removed from or supported across utility line excavations. Where it is necessary to temporarily interrupt services, the CONTRACTOR shall notify both the CITY and occupant of such facilities five (5) calendar days before the interruption and again immediately before service is resumed. Before disconnecting any pipes or cables, the CONTRACTOR shall obtain permission from the CITY or occupant, or shall make suitable arrangements for their disconnection by the CITY or occupant. The CONTRACTOR shall be responsible for all damages to any such pipes, conduits or cables, and shall restore them to service promptly, as part of the Work, as soon as the Work has progressed past the point involved. Approximate locations of known water, sanitary, drainage, natural gas, power, telephone and cable TV installations along the route of new pipelines or in the vicinity of new Work are shown, but are to be verified in the field by the CONTRACTOR prior to performing the Work. The CONTRACTOR shall uncover these pipes, ducts, cables, etc. carefully by hand prior to installing their work. Any discrepancies or differences found shall be immediately brought to the attention of the CONSULTANT in order that necessary changes may be made to permit installation of the Work.

4.3.2 **Not Indicated:** If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown, nor located by the facilities owner and which CONTRACTOR could not reasonably have been expected to be aware of; CONTRACTOR shall promptly, after becoming aware of thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 6.10), identify the owner of such Underground Facility and give written notice thereof to that owner, the CITY and CONSULTANT. The CONSULTANT shall promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility. The Contract Documents shall be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.13.

4.4 DIFFERING SITE CONDITIONS

4.4.1 The CONTRACTOR shall notify the CONSULTANT in writing, of the following unforeseen conditions, hereinafter called differing Site conditions, within twenty-four (24) hours upon their discovery (but in no event later than seven (7) days after their discovery) and before they are disturbed:

4.4.1.1 Subsurface or latent physical conditions at the Site of Work differing materially from those indicated, described, or delineated in the Contract Documents, including those reports discussed in paragraph 4.2 and 4.3 (Physical Conditions, Underground Facilities), and

4.4.1.2 Any unknown physical conditions at the Site of the Work of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents including those reports and documents discussed in paragraph 4.2 and 4.3

4.4.2 CONSULTANT shall promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto, and advise the CITY in writing (with a copy to the CONTRACTOR) of CONSULTANT's findings and conclusions.

4.4.3 If CONSULTANT concludes that because of newly discovered conditions a change in the Contract Documents is required, a Change Order shall be issued as provided in Article 10 (Changes in Work) to reflect and document the consequences of the difference.

4.4.4 In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, shall be allowable to the extent that they are attributable to any such inaccuracy or difference. No such change shall occur if the differing site conditions could reasonably have been discovered by CONTRACTOR prior to commencement of Work, or a portion of the Work, through the subsurface explorations described in Sections 4.2 and 4.3. If the CITY and CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefor as provided in Article 11 (Change of Contract Price) and Article 12 (Change of Contract Time).

4.4.5 The CONTRACTOR's failure to give notice of differing Site conditions within twenty-four (24) hours or no later than seven (7) days of their discovery and before they are disturbed, shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature.

4.5 REFERENCE POINTS:

4.5.1 The CITY shall provide, if available, engineering surveys to establish reference points for construction, which in CONSULTANT's judgment are necessary to enable CONTRACTOR to proceed with the Work.

4.5.2 CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified in the General Requirements), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of the CITY. The CONTRACTOR shall report to the CONSULTANT whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

ARTICLE 5 – BONDS AND INSURANCE

13.1.1 CONTRACTOR shall upon delivery of the executed Contract or receipt of Award letter from the CITY, furnish Performance and Payment Bonds, each in an amount at least ONE HUNDRED PRECENT (100%) of the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. Said bonds must be provided to the CITY within ten (10) business days of the Award Letter or delivery of a Purchase Order or contract to the CONTRACTOR to execute and return to the CITY; or the CITY, at its sole discretion and option may terminate the contract. These bonds shall remain in effect at least until one (1) year

after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Special Conditions. Each Bond shall be furnished in an amount equal to ONE HUNDRED PERCENT (100%) of the amount of the Contract award. The form and conditions of the Bond and the Surety shall be as specified and supplied by the CITY in the Bid Documents.

13.1.2 The Surety shall be a nationally recognized Surety Company, acceptable to the CITY, listed on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations vs Treasury Department, and meet other requirements of Section 287.0935 Florida Statutes.

For projects exceeding five hundred thousand dollars ($500,000), all bonds shall be placed with sureties with Best Ratings as stated below:

The name, address, and telephone number of the surety and its agent must be listed on the bond.

13.1.3 For contracts up to $499,999.99, the surety shall have twice the minimum surplus and capital required by the Florida Insurance Code at the time the Bid is issued for the Work, otherwise the surety shall have the minimum ratings:

CONTRACT AMOUNT	BEST KEY RATING
Under $500,000	Class IX A or better
$500,000 to $2,499,999.99	Class XI A or better
Over $2,500,000	Class XIV A or better

13.1.4 The Bond shall specifically incorporate and acknowledge the Surety's responsibility for liquidated damages.

13.1.5 Bonds shall be executed and issued by a registered agent, licensed and having an office in the State of Florida representing such corporate sureties.

13.1.6 If the CONTRACTOR is a partnership, the Bond shall be signed by each of the individuals who are partners; if a corporation, the Bond shall be signed in the correct corporate name by duly authorized officer, agent, or attorney-in-fact. There shall be an appropriate number of executed counterparts of the bond corresponding to the number of counterparts in the Contract. Each executed bond shall be accompanied by a) appropriate acknowledgement of the respective parties; b) appropriate duly certified copy of Power-of-Attorney or other certification of authority where Bond is executed by agent, officer or other representative of CONTRACTOR or Surety; c) duly certified extract from by-laws or resolutions of Surety under which Power-of-Attorney, or other certificate of Authority of its agent, officer or representative was issued.

13.1.7 If the Surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent, or its right to do business is terminated in the state of Florida or it ceases to meet the requirements of paragraph 5.1.3 and 5.1.4, CONTRACTOR shall within five (5) days thereafter substitute another Bond and Surety, both of which must be in conformance with paragraph 5.1.3 and 5.1.4. **Under no circumstances shall the successful CONTRACTOR begin Work until they have supplied to the CITY Performance and Payment Bonds and Affidavit for Bond using the CITY's form, and the CITY has approved the Bond.**

13.1.8 **The Bonds must be recorded in the Legal Records Department of Palm Beach County, Florida. Proof of recordation must be submitted to Procurement Services Division. The Bond number must be stated on the first page of the Bond.**

14.1 INSURANCE:

14.1.1 The CONTRACTOR agrees to, in the performance of Work and services under this Agreement, comply with all federal, state, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement that are applicable to the CONTRACTOR, its employees, agents, or Sub-Contractors, if any, with respect to the Work and services described herein. The CONTRACTOR shall obtain at CONTRACTOR's expense all necessary insurance in such form and amount as required by the CITY's Risk Management Department before beginning work under this Agreement. The CONTRACTOR shall maintain such insurance in full force and effect during the life of this Agreement. The CONTRACTOR shall provide to the CITY's Risk Management Department, all insurance certificates required under this section prior to beginning any work under this Agreement. The CONTRACTOR shall indemnify and save the CITY harmless from any damage resulting to it for failure to either CONTRACTOR or any Sub-Contractor to obtain or maintain such insurance.

The following are required types and minimum limits of insurance coverage, which the CONTRACTOR agrees to maintain during the term of this Contract, unless otherwise stated:

Line of Business/Coverage	Occurrence	Aggregate
	$1,000,000	$2,000,000
Commercial General Liability, including:		
Premises/Operations		
Contractual Liability		
Personal Injury		
Explosion, Collapse, Underground Hazard		
Products/Completed Operations		
Broad Form Property Damage		
Cross Liability and Severability of Interest Clause		
Automobile Liability (including owned, non- owned, and hired)	**$1,000,000**	**$2,000,000**

Worker's Compensation & Employer's Liability - Statutory Limits:
$1,000,000 per each disease
$1,000,000 per each accident and
$1,000,000 each employee

14.1.2 The CITY reserves the right to require higher limits depending upon the scope of work under this Agreement.

14.1.3 Neither the CONTRACTOR nor any Sub-Contractor shall commence work under this Contract until they have obtained all insurance required under this section and have supplied the CITY with evidence of such coverage in the form of an insurance certificate and endorsement. The CONTRACTOR shall ensure that all Sub-Contractors shall comply with the above guidelines and shall maintain the necessary coverage throughout the term of this Agreement. In the CITY's sole discretion, CONTRACTOR's failure to timely secure all required insurance shall void this Agreement and the Bid Award and the CITY may select and contract with another reasonable Bidder.

14.1.4 All insurance carriers shall be rated at least A-VII per A.M. Best's Key Rating Guide and be licensed to do business in Florida. Policies shall be "Occurrence" form. Each carrier shall give the CITY sixty (60) days notice prior to cancellation.

14.1.5 The CONTRACTOR's general liability insurance policies shall be endorsed to add the CITY of Boynton Beach, its employees, representatives and elected officials as an "additional insured". The CONTRACTOR's Worker's Compensation carrier shall provide a Waiver of Subrogation to the CITY. The CONTRACTOR shall be responsible for the payment of all deductibles and self-insured retentions.

14.1.6 The CITY may require that the CONTRACTOR purchase a contract or performance bond equal to the cost of the Project. If the CONTRACTOR is to provide professional services under this Agreement, the CONTRACTOR must provide the CITY with evidence of Professional Liability Insurance with, at a minimum, a limit of $1,000,000 per occurrence and $2,000,000 in the aggregate. "Claims-Made" forms are acceptable for Professional Liability Insurance.

14.1.7 The CITY may require higher limits for Professional Liability Insurance depending on the size of the project. In any event, the Bidder shall maintain such Professional Liability Insurance in effect for three (3) years after the completion of the Project.

14.1.8 If any operations are to be undertaken or are about navigable waters, the CITY will require coverage included with the Worker's Compensation Insurance, the U.S. Longshoremen and Harbor Workers Act and/or Jones Act.

14.1.9 Should the CITY require the Bidder to carry Builder's Risk Insurance for the Project, it must be in the amount equal to the full replacement cost of the Project.

14.1.10 Fulfillment by the Bidder of the insurance provisions does *not* limit the Bidder's liability to the amount of the policy limits.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.1 CONTRACTOR STATUS:

6.1.1 The CONTRACTOR is an independent contractor and is not an employee or agent of the CITY. Nothing in this Contract shall be interpreted to establish any relationship other than that of an independent contractor, between the CITY and the CONTRACTOR, its employees, agents, Sub-Contractors, or assigns, during or after the performance of this Contract. The CONTRACTOR shall take the whole responsibility for the means, methods, techniques, sequences, and production of the Work.

6.2 CONTRACTOR RISK:

6.2.1 The CONTRACTOR shall bear all losses resulting to CONTRACTOR, on account of the amount or character of the Work, or because of the nature of the ground beneath, in or on which the Work is done is different from what was assumed or expected, or because of bad weather, or because of errors or omissions in their or its bid on the Contract Price, or except as otherwise provided in the Contract Documents because of any other causes whatsoever. Execution of this Contract by the CONTRACTOR is a representation that the CONTRACTOR has visited the Site, has conducted sufficient investigation of the surface and sub-surface conditions in order to submit its bid, has become familiar with the local conditions under which the Work is to be performed, and correlated personal observations with the

requirements of the Contract Documents.

6.2.2 The CONTRACTOR shall protect the entire Work, all materials under the Contract and the CITY's property (including machinery and equipment) in, or on, or adjacent to the Site of the Work until final completion of Work, from action of the elements, acts of other contractors, or except as otherwise provided in the Contract Documents, and from any other causes whatsoever; should any damage occur by reason of any of the foregoing, the CONTRACTOR shall repair at their own expense to the satisfaction of the CITY or its Project Manager. Neither the CITY, nor its officers, employees, or agents assume any responsibility for collection of indemnities or damages from any person or persons causing injury to the Work of the CONTRACTOR.

6.2.3 At its expense, the CONTRACTOR shall take all necessary precautions (including without limitation) the furnishing of guards, fences, warning signs, walks, flags, cables and lights for the safety of and the prevention of injury, loss and damage to persons and property. The term "persons" includes without limitations, members of the public, the CITY and its employees and agents, the Project Manager and his/her employees, CONTRACTOR's employees, CONTRACTOR''s Sub-Contractors and Sub-Contractors respective employees, who are on or about or adjacent to the premises where said Work is to be performed. CONTRACTOR shall comply with all applicable provisions of safety laws, rules, ordinances, regulations and orders of duly constituted federal, state, and local authorities and building codes.

6.2.4 The CONTRACTOR assumes all risk of loss, damage and destruction to all of its materials, tools, appliances and property of every description and that of its Sub-Contractors and Sub-Contractor's respective employees or agents, and injury to or death of the CONTRACTOR, its employees, Sub-Contractors or Sub-Contractor's respective employees or agents, including legal fees, court costs or other legal expenses, arising out of or in connection with the performance of this Contract.

6.3 SUPERVISION AND SUPERINTENDENCE:

6.3.1 The CONTRACTOR shall supervise and direct the Work. It shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR shall employ and maintain at the Worksite(s), a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as its CONTRACTOR's representative at the Site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the Site at all times as required to perform adequate supervision and coordination of the Work. (Copies of written communications given to the superintendent shall be mailed to the CONTRACTOR's home office). CONTRACTOR shall notify the CITY in writing of the name, title and contact information for the designated supervisor/superintendent.

6.4 LABOR, MATERIALS AND EQUIPMENT:

6.4.1 The CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. They shall at all times maintain good discipline and order at the Site. Except in connection with the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the Site shall be performed during regular working hours as defined in the Special Conditions herein, and CONTRACTOR shall not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday observed by the CITY, without the CITY's Project Manager's written consent.

6.4.2 Materials and Equipment: The CONTRACTOR shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work. All material stored on the job site shall remain the responsibility of the CONTRACTOR until incorporated in the Work. The CITY shall not reimburse the CONTRACTOR for materials lost, stolen, or damaged while stored on the job site.

6.4.3 Condition of Materials: All materials and equipment shall be new. When special makes or grades of material which are normally packaged by the supplier or manufacturer are specified or approved, such materials shall be delivered to the Site in their original packages or container with seals unbroken and labels intact.

6.4.4 Installation/Assembly: All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in the Contract Documents.

6.4.5 Materials, Equipment, Products and Substitutions: CONTRACTOR shall verify that materials, equipment, and products incorporated in the Work are fit for their intended purpose before being purchased by the CONTRACTOR. However, the CONTRACTOR shall submit to the CONSULTANT and the CITY's Project Manager a list of proposed materials, equipment or products, together with such samples considered substitutes as may be necessary to determine their acceptability and obtain approval, pursuant to Section 32, Instruction to Bidders if prior to award, or after award, within ten (10) calendar days after the CONTRACTOR should have been aware of the need for substitution, unless otherwise stipulated in the Special Conditions. No request for payment for "or equal" equipment shall be approved until this list has been received and approved by the CONSULTANT. The CITY may require the CONTRACTOR to furnish at CONTRACTOR's expense, a special performance guarantee or other surety with respect to any substitute.

6.4.5.1 Whenever a material, article, or piece of equipment is identified on the Drawings or Specifications by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements, and that other products of equal capacities, quality and function may be considered. The CONTRACTOR may request the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the Contract Documents by reference to brand name or catalogue number and if, the opinion of the CONSULTANT and CITY, such material, article, or piece of equipment is of equal substance and function to that specified, the CONSULTANT with concurrence of the CITY's Project Manager may approve its substitution and use by the CONTRACTOR.

6.4.5.2 The application shall state that the evaluation and acceptance of the proposed substitute shall not prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work shall require a change in any of the Contract Documents (or in the provisions of any other direct contract with the CITY for Work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair, and replacement service shall be indicated.

6.4.5.3 The application shall also contain itemized estimate of all costs and cost savings that shall result directly or indirectly from acceptance of such substitute, including costs or redesign and claims of other contractors affected by CONSULTANT in evaluating the proposed substitute. CONSULTANT may require CONTRACTOR to furnish at CONTRACTOR's expense, additional data about the proposed substitute.

6.4.5.4 Incidental changes or extra component parts required to accommodate the substitute shall be made by the CONTRACTOR without an increase in the Contract Price or Contract Time. The CONTRACTOR shall reimburse the CITY for charges of the CONSULTANT and CONSULTANT'S consultants for evaluating each proposed substitution. These costs shall include transportation, to operating installation at factories, etc.

6.4.5.5 No substitute shall be ordered or installed without the written approval of the CONSULTANT with the CITY's Project Manager's concurrence.

6.4.5.6 Delay caused by obtaining approvals for substitute materials or installations shall be attributable to CONTRACTOR and shall not be considered justifiable grounds for an extension of construction time.

6.4.5.7 Should any work or materials, equipment or products not conform with requirements of the Drawings and Specifications or become damaged during the progress of the Work, such Work or materials shall be removed and replaced, together with any work disarranged by such alterations, at any time before completion and acceptance of the Project. All such work shall be done at the expense of the CONTRACTOR.

6.4.5.8 No materials or supplies for the Work shall be purchased by the CONTRACTOR or by any Sub-Contractor subject to any chattel mortgage or under conditional sale or other agreement by which an interest is retained by the Seller. The CONTRACTOR warrants that it has clear title to all materials and supplies used by them in the Work.

6.4.5.9 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction, if applicable, to the CITY and CONSULTANT, if CONTRACTOR submits sufficient information to allow CITY and CONSULTANT to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by the CITY and CONSULTANT shall be similar to that provided in paragraph 6.4.5.1 (Materials, Equipment, Products and Substitutions, par. 2) as applied by CONSULTANT and as may be supplemented in the Special Conditions.

6.4.5.10 Any two (2) or more pieces of material or equipment of the same kind, type or classification, and being used for identical types of service, shall be made by the same manufacturer.

6.5 CONCERNING SUBCONTRACTORS:

6.5.1 The CONTRACTOR shall not employ any sub-contractor, other persons or organization (whether initially or as a substitute) against whom the CITY or the CONSULTANT may have reasonable objection, nor shall the CONTRACTOR be required to employ any sub-contractor against whom it has reasonable objection. The CONTRACTOR shall not make any substitution for any sub-contractor who has been accepted by the CITY's Project Manager and the CONSULTANT, unless the CONSULTANT determines that there is good cause for doing so. If after bid opening and prior to the award of the Contract, the CITY objects to certain suppliers or sub-contractors, the CITY may permit CONTRACTOR to submit an acceptable substitute so long as there is no change in the Contract Price or Contract Time. If the Contract Price or Contract Time is increased or extended, the CITY may return the Bid Bond and award the Contract to the next qualified, competent Bidder. If after the award of the Contract, the CITY objects to certain suppliers or sub-contractors, the CITY shall permit CONTRACTOR to make an appropriate and acceptable substitution which is also acceptable to the CITY. No acceptance by the CITY or the CONSULTANT of any such sub-contractor, supplier, or other person or organization shall constitute a waiver of any right of the CITY or CONSULTANT to reject *defective* Work.

6.5.2 Responsibility: The CONTRACTOR shall be fully responsible for all acts and omissions of its Sub-Contractors and of persons and organizations directly or indirectly employed by the CONTRACTOR and of persons and organizations for whose acts any of CONTRACTOR or Sub-Contractor may be liable to the same extent that they are responsible for the acts and omissions of persons directly employed by CONTRACTOR. Nothing in the Contract Documents shall create any contractual relationship between CITY or CONSULTANT and any Sub-Contractor or other person or organization having a direct contract with CONTRACTOR, nor shall it create any obligation on the part of CITY or CONSULTANT to pay or to see to the payment of any moneys due any sub-contractor or other person or organization, except as may otherwise be required by law. CITY or CONSULTANT may furnish to any sub-contractor or other person or organization, to the extent practicable, evidence of amounts paid to CONTRACTOR on account on specific Work done in accordance with the Schedule of Values.

6.5.3 Division of Work: The divisions and sections of the Specifications and the identifications of any Drawings shall not control the CONTRACTOR in dividing the Work among sub-contractors or delineating the Work to be performed by any specific trade.

6.5.4 Terms and Conditions: The CONTRACTOR agrees to bind specifically every sub-contractor to the applicable terms and conditions of the Contract Documents for the benefit of the CITY.

6.5.5 Agreement: Any and all Work performed for the CONTRACTOR by a sub-contractor shall be pursuant to an appropriate agreement between the CONTRACTOR and the sub-contractor.

6.5.6 Responsibility: The CONTRACTOR shall be responsible for the coordination of the trades, sub-contractors and material men engaged upon in work of the Project...

6.5.7 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the Work, to bid sub-contractors to the CONTRACTOR by the terms of these General Conditions and other Contract Documents insofar as applicable to the Work of sub-contractors, and to give the CONTRACTOR the same power as regards terminating any sub-contract that the CITY may exercise over the CONTRACTOR under any provisions of the Contract Documents.

6.5.8 The CITY or CONSULTANT shall not undertake to settle any differences between the CONTRACTOR and his sub-contractors or between sub-contractors.

6.5.9 If in the opinion of the CITY's Project Manager or CONSULTANT, any subcontractor on the Project proves to be incompetent or otherwise unsatisfactory; such Sub-Contractor shall be replaced if and when directed in writing.

6.5.10 CONTRACTOR shall also:

6.5.10.1 Observe work of each subcontractor to monitor compliance with Schedule.
6.5.10.2 Verify that labor and equipment are adequate for the Work and the Schedule.
6.5.10.3 Verify that product procurement schedules are adequate.
6.5.10.4 Verify that product deliveries are adequate to maintain schedule.
6.5.10.5 Report non-compliance to CONSULTANT with recommendation for changes.

6.6 PATENTS, FEES AND ROYALTIES:

6.6.1 The CONTRACTOR shall pay all license fees and royalties and assume all cost incidents to the use of any invention, design, process or device which is the subject of patent rights or copyrights held by others. They shall indemnify and hold harmless the CITY and CONSULTANT and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorney's fees) arising out of any infringement of such rights during or after completion of the Work, and shall defend all such claims in connection with any alleged infringement of such rights.

6.6.2 Patent rights: The CONTRACTOR shall be responsible for determining the application of patent rights and royalties on materials, appliances, articles or systems prior to bidding. However, they shall not be responsible for such determination on systems which do not involve purchase by them of materials, appliances and articles.

6.7 PERMITS, LAWS AND REGULATIONS:

6.7.1 Permits: The CONTRACTOR shall secure and pay for all construction permits and licenses and shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of its Bid. The CITY shall assist the CONTRACTOR, when necessary, in obtaining such permits and licenses. The CITY shall be invoiced at actual cost without markup.

6.7.2 The CONTRACTOR shall also pay all public utility charges. The CONTRACTOR shall be responsible for obtaining dewatering permits as required. CONTRACTOR shall be responsible for complying with the South Florida Water Management District (SFWMD), Florida Department of Environmental Regulations, United States Environmental Protection Agency and any other regulatory agency requirements including financial responsibility (fines, etc).

6.7.3 Laws and Regulations: The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If the CONTRACTOR observes that the Specifications or Drawings are at variance therewith, they shall give the CONSULTANT prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate modification. If the CONTRACTOR performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the CONSULTANT, they shall bear all costs arising therefrom; however, is shall not be their primary responsibility to make certain that the Drawings and Specifications are in accordance with such laws, ordinances, rules and regulations.

6.8 TAXES:

6.8.1 Cost of all sales and other taxes for which the CONTRACTOR is liable under the Contract shall be included in the Contract Price stated by the CONTRACTOR.

6.9 RECORD DOCUMENTS/RIGHT TO AUDIT:

6.9.1 The CONTRACTOR shall keep in a safe place one record copy of all Specifications, Drawings, Addenda, Modifications, and Shop Drawings at the site in good order and annotated to show all changes made during the construction process. Such documents shall be available to the CONSULTANT and shall be delivered to the CONSULTANT for the CITY upon completion of the Project. Such documents shall be used for this purpose only. Final acceptance of the project shall be withheld by the CITY until approval of all documents specified herein is made by the CITY's Project Manager.

6.9.2 The awarded CONTRACTOR shall maintain during the term of the Contract all books, reports, and records in accordance with generally accepted accounting practices and standards for records directly related to this Contract. The form of all records and reports shall be subject to the approval of the CITY's auditor. The awarded CONTRACTOR agrees to make available to the CITY's auditor, during normal business hours, all books of account, reports, and records relating to this Contract for the duration of the Contract and retain them for a minimum period of three (3) years.

6.9.3 The awarded CONTRACTOR shall be aware that the Palm Beach County, Office of Inspector General investigators shall have the power without limitation to audit, investigate, monitor, inspect and review the operations, activities, performance and procurement process of the CONTRACTOR, its Sub-Contractors and lower tier subcontractors and its officers, agents and employees relating to the Contract.

6.9.4 If the CONTRACTOR submits a claim to the CITY for additional compensation, the CITY shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled to audit the CONTRACTOR's books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which claim has been submitted. The right to audit shall include the right to inspect the CONTRACTOR's plants, or such parts thereof, as may be or have been engaged in the performance of the Work. The CONTRACTOR further agrees that the right to audit encompasses all subcontracts and is binding upon all Sub-Contractors. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the CITY deems desirable during the CONTRACTOR's normal business hours at the office of the CONTRACTOR. Upon request by the CITY, CONTRACTOR shall provide the accounting records and documents, and other financial data and shall submit true copies of requested records to the CITY.

6.10 SAFETY, PROTECTION AND EMERGENCIES:

6.10.1 CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.10.1.1 All employees on the Work and other persons, who may be affected thereby,

6.10.1.2 All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Site, and

6.10.1.3 Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

6.10.2 CONTRACTOR shall comply with all applicable laws, ordinances, rules and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss on or off the Work and shall erect and maintain all necessary safeguards for such safety and protection.

6.10.3 CONTRACTOR shall notify owner of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.

6.10.4 All damage, injury or loss to any property referred to in paragraph 6.10.1.2 or 6.10.1.3 caused directly or indirectly, in whole or in part, by CONTRACTOR, any Sub-Contractor, Supplier or any other person or organization directly or indirectly employed by any such entity to perform or furnish any of the Work for anyone for whose acts may be liable, shall be remedied by CONTRACTOR. CONTRACTOR shall not be liable for acts or omissions attributable to the CITY or CONSULTANT.

6.10.5 CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and CONSULTANT has issued a notice to the CITY and CONTRACTOR in accordance with paragraph 14.6 (Substantial Completion) that the Work is acceptable or until any and all final "punch list" items are completed, whichever is later.

6.10.6 The safety provisions of applicable laws and building and construction codes shall be observed and the CONTRACTOR shall take or cause to be taken such additional safety and health measures as the Local Public Agency involved may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" as published by the Associated General Contractors of America, Inc. to the extent that such provisions are not in conflict with applicable laws.

6.10.7 The CONTRACTOR shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from Work, arising out of an and in the course of employment on Work under the Contract. The CONTRACTOR shall promptly furnish the reports concerning these matters to the appropriate Local Public Agency within forty-eight (48) hours of the event or as per specific timeframe specified by such Local Public Agency.

6.10.8 SAFETY REPRESENTATIVE: CONTRACTOR shall designate a responsible representative at the Site whose duty shall be prevention of accidents. This person shall be CONTRACTOR's superintendent unless otherwise designated in writing by CONTRACTOR to the CITY.

6.10.9 HAZARD COMMUNICATION PROGRAMS: CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employees at the Site in accordance with Laws and Regulations.

6.10.10 SUPERINTENDENT: The CONTRACTOR shall designate a responsible member of their organization at the Site whose duty shall be prevention of accidents. This person shall be the CONTRACTOR's superintendent unless otherwise designated in writing by the CONTRACTOR to the CITY's Project Manager.

6.10.11 EMERGENCIES: In emergencies affecting the safety of the persons or the Work or property of the Site or adjacent thereto, the CONTRACTOR, without special inspection or authorization from the CONSULTANT or the CITY's Project Manager is obligated to act, at its discretion, to prevent damage, injury or loss.

6.10.12 CONTRACTOR shall give CITY's Project Manager and CONSULTANT prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If CONSULTANT determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations.

6.10.13 During adverse weather, and against the possibility thereof, the CONTRACTOR shall take all necessary precautions to ensure that the Work shall be done in a good and workmanlike condition and is satisfactory in all respects. When required, protection shall be provided by the use of tarpaulins, wood and other acceptable means. The CONTRACTOR shall be responsible for all changes caused by adverse weather, including unusually high winds and water levels and they shall take such precautions and procure such additional insurance as they deem prudent. The CONSULTANT may suspend construction operations at any time when in their judgment, the conditions are unsuitable or the proper precautions are not being taken, whatever the weather or water level conditions may be, in any season.

6.10.14 If the CONTRACTOR believes that additional work done by them in an emergency which arose from causes beyond their control entitles them to an increase in the Contract Price or an extension of the Contract Time, they may make a claim therefor as provided in Article 11 (Change in Contract Price) and Article 12, (Change in Contract Time).

6.10.15 **NATIONAL EMERGENCY:** In the event the CITY is prevented from proceeding with any or all of the Work as stated in the Contract due to a declaration of war, or national emergency by the United States government, whereas the construction of the type contracted for herein is specifically prohibited by statute or government edict, or due to the stoppage of construction caused by any governmental agency, state, CITY, town, or county regulations, orders, restrictions, or due to circumstances beyond the CITY's control; then the CITY herein reserves the right to either suspend the Work to be done for an indefinite period of time or to cancel this Contract outright by giving notice by registered mail of such intention to the CONTRACTOR herein. In the event of any conditions above mentioned occurring after the Work herein has already commenced, then the CITY shall be liable for only the cancellation or suspension without the addition of prospective profits or other change whatsoever.

6.11 SHOP DRAWINGS AND SAMPLES:

6.11.1 Shop Drawings: After checking and verifying all field measurements, the CONTRACTOR shall submit to the CONSULTANT and the CITY's Project Manager for review in accordance with the accepted schedule of Shop Drawing submissions, (see paragraph 2.9) copies (or at

the CONSULTANT's option, one reproducible copy) of all Shop Drawings, which shall have been checked by and stamped with the approval of the CONTRACTOR. The data shown on the Shop Drawings shall be complete with respect to dimensions, design criteria, materials of construction and the like to enable the CONSULTANT to review the information as required.

Shop Drawings shall include but not be limited to the following information:

6.11.1.1 Fabrication and Installation Drawings and details
6.11.1.2 Template placement diagrams
6.11.1.3 Manufacturer's installation instructions
6.11.1.4 Product patterns and colors
6.11.1.5 Coordination Drawings
6.11.1.6 Schedules
6.11.1.7 Product mix formula
6.11.1.8 Product design or engineering calculations
6.11.1.9 Other information as required by project

After review, produce copies and distribute per Submittal Procedures article above and for Record Documents purposes described in Section 6.37 Closeout Submittals. Submit to CONSULTANT for purpose of checking conformance with information given and design concept and on to the CITY's Project Manager.

6.11.2 SAMPLES: The CONTRACTOR shall also submit to the CONSULTANT for review, with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples must have been checked by and stamped with the approval of the CONTRACTOR, identified clearly as to material, manufacturer, any pertinent catalogue numbers and the use for which intended.

CONTRACTOR shall submit to CONSULTANT for purpose of checking conformance with information given and design concept expressed in the documents.

After review, CONSULTANT shall submit color board to CITY's Project Manager per Submittal Procedures. Samples shall also conform to the following:

6.11.2.1 Sample finishes and colors shall be from full range or manufacturers' standard and colors, textures, and patterns for CONSULTANT's selection and preparation of color board for CITY's approval.
6.11.2.2 After review and approval by the CITY, provide duplicates and distribute per Submittal Procedures.
6.11.2.3 Submit samples to illustrate functional and aesthetic characteristics of the product, with integral parts and attachment devices. Coordinate sample submittals for interfacing work.
6.11.2.4 Include identification on each sample with full project information.
6.11.2.5 Submit number of samples specified in specifications, one of which CONSULTANT shall retain. Reviewed samples may be used in Work, if indicated.

6.11.3 DEVIATIONS: At the time of each submission, the CONTRACTOR shall, in writing, call the CONSULTANT's attention to any deviations that the Shop Drawings or sample may have from the requirements of the Contract Documents.

6.11.4 CONFORMANCE REVIEW: The CONSULTANT shall review within fifteen (15) days or as extended by CITY; Shop Drawings and samples, but their review shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The review of a separate item as such shall not indicate review of the assembly in which the item functions. The CONTRACTOR shall make any corrections required by the CONSULTANT at the CONTRACTOR's expense and shall return the required number of corrected copies of Shop Drawings and resubmit new samples until the review is satisfactory to the CONSULTANT. The CONTRACTOR shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections called for by the CONSULTANT on previous submissions. The CONTRACTOR's stamp of approval on any Shop Drawings or sample shall constitute a representation to the CITY and the CONSULTANT that the CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalogue numbers and similar data or they assume full responsibility for doing so, and that they have reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents. Shop Drawings submitted without the CONTRACTOR's stamp or specific written indication shall be returned without action. Shop Drawings and submittal data shall be reviewed two times, thereafter all further review time shall be charged to the CONTRACTOR.

6.11.5 APPROVAL: No work requiring a Shop Drawing or sample submission shall be commenced until the submission has been reviewed and approved by the CONSULTANT. A copy of each Shop Drawing and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the CONSULTANT.

6.11.6 SPECIFIC DEVIATIONS: The CONSULTANT's review of Shop Drawings or samples shall not relieve the CONTRACTOR from their responsibility for any deviations from the requirements of the Contract Documents unless the CONTRACTOR has in writing, called the CONSULTANT's attention to such deviation at the time of submission and the CONSULTANT has given written approval to the specific deviation, nor shall any review by the CONSULTANT relieve the CONTRACTOR from responsibility for errors or omission in the Shop Drawings.

6.11.7 Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to CONSULTANT's review and acceptance of the pertinent submission shall be at the sole expense and responsibility of the CONTRACTOR.

6.12 SITE CLEAN UP:

6.12.1 SITE: The CONTRACTOR shall clean up behind the Work as much as is reasonably possible as the Work progresses. Upon completion of the Work, and before acceptance of and final payment for the Project by the CITY, the CONTRACTOR shall remove all their surplus and discarded, and excavated materials, and rubbish from the roadways, sidewalks, parking areas, lawns and all adjacent property; shall clean all portion of Work involved in any building under this Contract, so that no further cleaning by the CITY is necessary prior to their occupancy; shall restore all property, both public and private, which has been disturbed or damaged during the prosecution of the Work; and shall leave the whole in a neat and presentable condition.

6.12.2 BUILDING CLEAN-UP: Clean-up operations shall consistently be carried on by the CONTRACTOR at all times to keep the premises free

from accumulation of waste materials and rubbish. Upon completion of the Work, they shall remove all rubbish, tools, scaffolding, surplus materials, etc., from the building and shall leave their work "broom clean" or the like, unless specified elsewhere in the Contract. The CONTRACTOR shall do the following special cleaning for all trades upon completion of the Work:

6.12.2.1 Remove putty stains and paint from and wash and polish all glass. Do not scratch or otherwise damage glass.
6.12.2.2 Remove all marks, stains, fingerprints and other soil and dirt from painted, stained and decorated work.
6.12.2.3 Remove all temporary protections and clean and polish floors.
6.12.2.4 Clean and polish all hardware for all trades; this shall include removal of all stains, dust, dirt, paint, etc.
6.12.2.5 General: In case of dispute, the CITY may remove the rubbish and charge the cost to the CONTRACTOR.

6.13 PUBLIC CONVENIENCE AND SAFETY:

6.13.1 Convenience: The CONTRACTOR shall, at all times, conduct the Work in such a manner as to insure the least practicable obstruction to public travel. The convenience of the general public and of the residents along and adjacent to the area of the Work shall be provided for in a satisfactory manner, consistent with the operation and local conditions.

6.13.2 Safety: "Street Closed" signs shall be placed immediately adjacent to the Work, in a conspicuous position, at such locations as traffic demands. At any time that streets are required to be closed, CONTRACTOR shall obtain approval to close the street from the appropriate regulatory agencies having jurisdiction. The CONTRACTOR shall notify law enforcement agencies, fire departments, and parties operating emergency vehicles before the street is closed and also as soon as area is opened. Approval from the CITY shall be coordinated through the Department of Public Works/Engineering, including notification of the news media and affected property owners. Access to fire hydrants and other fire extinguishing equipment shall be provided and maintained at all times. Traffic paths shall be maintained for local traffic.

6.14 SANITARY PROVISIONS:

6.14.1 The CONTRACTOR shall furnish necessary toilet conveniences, secluded from public observation, for use of all personnel on the Work, whether or not in their employ. They shall be kept in a clean and sanitary condition and shall comply with the requirements and regulations of the public authorities having jurisdiction. They shall commit no public nuisance. Temporary sanitary facilities shall be removed upon completion of the Work and the premises shall be left clean.

6.15 INDEMNIFICATION:

6.15.1 CONTRACTOR agrees to protect, defend, indemnify, and hold harmless the CITY, its employees, representatives, and elected officials from any and all claims and liabilities including all attorney's fees and court costs, including appeals for which the CITY, its employees, representatives, and elected officials can or may be held liable as a result of injury (including death) to persons or damage to property occurring by reason of any negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR, its employees, or agents, arising out of or connected with this Agreement. The CONTRACTOR shall not be required to indemnify the CITY or its agents, employees, representatives, or elected officials when an occurrence results solely from the wrongful acts or omissions of the CITY, or its agents, employees or representatives.

6.15.2 The CONTRACTOR, without exemption, shall indemnify and hold harmless, the CITY, its employees, representatives and elected officials from liability of any nature or kind, including cost and expenses for or on account of any copyright, service marked, trademarked patented or unpatented invention, process, or any other intellectual property right or item manufactured by the CONTRACTOR. Further, if such a claim is made, or is pending, the CONTRACTOR may, at its option or expense, procure for the CITY the right to use, replace, or modify the item to render it non-infringing. If none of the alternatives are reasonably available, the CITY agrees to return the article on request to the CONTRACTOR and receive reimbursement from the CONTRACTOR for such. If the CONTRACTOR used any design, device or materials covered by letters, patent or copyright, it is mutually agreed and understood, without exception, that the Bid prices shall include all royalties or cost arising from the use of such design, device or materials in any way involved in the Work. This article shall survive the termination of any contract with the CITY of Boynton Beach.

6.15.3 The parties agree that Twenty-five Dollars ($25.00) of the total compensation paid to the CONTRACTOR for performance of this Agreement shall represent the specific consideration for the CONTRACTOR's indemnification of the CITY.

6.15.4 The CITY reserves the right to select its own legal counsel to conduct any defense in any such proceedings and all costs and fees associated therewith shall be the responsibility of the CONTRACTOR under this indemnification agreement.

6.15.5 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. It is the specific intent of the parties hereto that the foregoing indemnification complies with F.S. § 725.06 (Chapter 725). It is further the specific intent and agreement of the parties that all of the Contract Documents on this Project are hereby amended to include the foregoing indemnification and the "Specific Consideration" therefor.

6.15.6 Nothing contained herein is intended nor shall be construed to waive the CITY's rights and immunities under the common law or Florida Statutes § 768.28, as amended from time to time.

6.16 CLAIMS:

6.16.1 In any and all claims against the CITY or the CONSULTANT or any of its agents or employees, by any employee of the CONTRACTOR, any Sub-Contractor, anyone directly or indirectly employed for whose acts may be liable; the indemnification obligation under paragraph 6.15 (Indemnification) shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any Sub-Contractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

6.16.2 Obligation: The obligations of the CONTRACTOR under paragraph 6.13 shall not extend to the liability of the CONSULTANT's negligent acts, errors or omissions or their employees or agents.

6.17 RESPONSIBILITY FOR CONNECTING TO EXISTING WORK:

6.17.1 It shall be the express responsibility of the CONTRACTOR to connect their Work to each part of the existing work or work previously

installed as required by the Drawings and Specifications to provide a complete installation.

6.18 WORK IN STREET, HIGHWAY AND OTHER RIGHTS-OF-WAY:

6.18.1 Excavation, grading, fill, storm drainage, paving and other construction or installations in rights-of-way of streets, highways, pubic carrier lines, utility lines (either aerial, surface or subsurface) etc. shall be done in accordance with requirements of these Specifications and authorities having jurisdiction. The CONTRACTOR shall be responsible for obtaining all permits necessary for the Work. Upon completion of the Work, CONTRACTOR shall present to CONSULTANT certificates, in triplicate from the proper authorities stating that the Work has been done in accordance with their requirements.

6.18.2 The CITY shall cooperate with the CONTRACTOR in obtaining action from any utilities or public authorities involved in the above requirements.

6.19 COOPERATION WITH GOVERNMENTAL DEPARTMENTS, PUBLIC UTILITIES, ETC.:

6.19.1 The CONTRACTOR shall be responsible for making all necessary arrangements with governmental departments, public utilities, public carriers, service companies and corporations owning or controlling roadways, railways, water, sewer, gas, electrical, cable television, telephone, and telegraph facilities such as pavements, tracks, piping, wires, cables, conduits, poles, guys, etc. , including incidental structures connected therewith, that are encountered in the Work in order that such items may be properly shored, supported and protected, or the CONTRACTOR may relocate them with utility owner's approval.

6.19.2 NOTICES: The CONTRACTOR shall give all proper notices, shall comply with requirements of such parties in the performance of their Work, shall permit entrance of such parties on the Project in order that they may perform their necessary work, and shall pay all charges and fees made by such parties for this Work.

6.19.3 GOVERNMENT AGENCY CAUSED DELAYS: The CONTRACTOR's attention is called to the fact that there may be delays on the Project due to work to be done by governmental departments, public utilities, and others in repairing or moving poles, conduits, etc. The CONTRACTOR shall cooperate with the above parties in every way possible, so that the construction can be completed in the least possible time.

6.19.4 CODES, LAWS, ORDINANCES AND REGULATIONS: The CONTRACTOR shall have made themselves familiar with all codes, laws, ordinances and regulations which in any manner affect those engaged in the Work, or materials and equipment used in the Work, or in any way affect the conduct of the Work, and no plea of misunderstanding shall be considered on account of their ignorance thereof.

6.20 USE OF PREMISES:

6.20.1 CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the project site and land and areas identified in, and permitted by the Contract Documents and other land and areas permitted by laws, ordinances, and regulations, rights-of-way, permits, easements, and directions of the CITY's Project Manager or Representative, and shall not reasonably encumber the premises with construction equipment or other materials or equipment.

6.20.2 CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the CITY or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the CITY or CONSULTANT by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by Contract or otherwise resolve the claim. CONTRACTOR shall to the fullest extent permitted by laws and regulations, indemnify and hold the CITY harmless from and against all claims, damages, losses and expenses (including, but not limited to fees of engineers, architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against the CITY or CONSULTANT to the extent based on a claim arising out of CONTRACTOR's performance of the Work.

6.20.3 During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the Site clean and ready for occupancy by the CITY. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.20.4 CONTRACTOR shall not overload or permit any part of any structure to be loaded with such weight as shall endanger its safety, nor shall it subject any part of the Work to stresses or pressures that shall endanger it.

6.20.5 CONTRACTOR shall enforce the CITY's Project Manager's instructions in connection with signs, advertisements, fires and smoking.

6.20.6 CONTRACTOR shall arrange and cooperate with CITY in routing the parking of automobiles of its employees, sub-contractors and other personnel, and in routing material delivery trucks and other vehicles to the Project Site.

6.21 PROTECTION OF EXISTING PROPERTY IMPROVEMENTS:

6.21.1 Any existing surface and subsurface improvements, such as pavements, curbs, sidewalks, pipes or utilities, footings, or structures (including portions thereof), trees and shrubbery, not indicated on the Drawings or noted in the Specifications as being removed or altered shall be protected from damage during construction of the Project. Any such improvements damaged during construction of the Project, whether or not such improvements appear on the Drawings, shall be restored to a condition equal or better, to the original state at the time of award of Contract. Such restoration or repair shall be at the sole expense of the CONTRACTOR, and no claim for an increase in the Contract Price under paragraph 6.21 or under Article 10 shall be allowed.

6.22 TEMPORARY HEAT:

6.22.1 The CONTRACTOR shall provide heat, fuel and services as necessary to protect all work and materials, within all habitable areas of

permanent building construction against injury from dampness and cold, until final acceptance of all work and materials for the Project, unless building is fully occupied by the CITY prior to such acceptance. In which case the CITY shall assume all expenses of heating from date of full occupancy. Unless otherwise specifically permitted by Special Conditions, the permanent heating system shall not be used to provide temporary heat. CONTRACTOR's proposed methods of heating shall be submitted for approval.

6.23 SCHEDULE:

6.23.1 CONTRACTOR shall submit to CONSULTANT for review and comment (to the extent indicated in paragraph 2.6 Finalizing Schedule) proposed adjustments in the progress schedule to reflect the impact thereon of new developments; these shall conform generally to the progress schedule then in effect and additionally shall comply with any provisions of the General Requirements applicable thereto. All approved changes shall be memorialized as change orders.

6.24 CONTINUING THE WORK:

6.24.1 CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the CITY. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Article 15 (Suspension and Termination of Work) or as CONTRACTOR and the CITY may otherwise agree in writing.

6.25 CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE:

6.25.1 CONTRACTOR warrants and guarantees to CITY and CONSULTANT that all work shall be in accordance with the Contract Documents and shall not be *defective.* That CONTRACTOR guarantees to repair, replace or otherwise make good to the satisfaction of the CITY any defect in workmanship or material appearing in the Work; and further guarantees the successful performance of the Work for the service intended.

CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

6.25.1.1 Abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, sub-contractors or suppliers; or

6.25.1.2 Normal wear and tear under normal usage

6.25.2 CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following shall constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

6.25.2.1 Observations by CONSULTANT.

6.25.2.2 Recommendation of any progress or final payment by CONSULTANT.

6.25.2.3 The issuance of a certificate of Substantial Completion or any payment by CITY or CONTRACTOR under the Contract Documents.

6.25.2.4 Use or occupancy of the Work or any part thereof by CITY.

6.25.2.5 Any acceptance by CITY or any failure to do so; and

6.25.2.6 Any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by CONSULTANT pursuant to paragraph 14.10.

6.26 DELETION/OVERSIGHT/MISSTATEMENT:

6.26.1 Any deletion, oversight or misstatement of the Specifications shall not release the Bidder from the responsibility of completing the Project within the agreed upon timeframe.

6.26.2 The cost of incidental work described in these Contract requirements, for which there are no specific Contract items shall be considered as part of the general cost of doing the Work and shall be included in the prices for the various Contract items. No additional payment will be made therefore.

6.27 EXCEPTIONS TO SPECIFICATIONS:

6.27.1 Any exceptions to the Specifications and/or drawings must be brought to the attention of the CITY's Procurement Services Division in writing prior to the expiration of the Bid question period. Failure to list any exceptions with the Procurement Services Division in writing prior to the end of the Bid question period means that the Bidder is complying 100% with the Specifications. All materials may be inspected by the CITY upon delivery for compliance with said Specifications. Deviations from the Specifications shall be cause for the Bid to be rejected as non-responsive unless the deviation was approved prior to the submittal of bids.

6.27.2 Any deletion, oversight or misstatement of these Specifications shall not release the Bidder from full responsibility for unsatisfactory workmanship and/or materials, together with all appurtenances necessary for unrestricted operation, as determined by the CITY in its sole discretion.

6.28 SILENCE OF SPECIFICATIONS:

6.28.1 The apparent silence of any Specification as to any details, or the omission from the Specifications of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and that materials of the first quality and correct type, size and design are to be used. All workmanship is to be of first quality.

6.28.2 Work not specified in the Specifications, but involved in carrying out their intent or in the complete and proper execution of the Work, is required and shall be performed by the CONTRACTOR as though it were specifically delineated or described.

6.29 QUALITY:

6.29.1 Items delivered as a result of award from this Bid shall be free of defects. Any item(s) not meeting this specification shall be replaced by the awarded Bidder/CONTRACTOR at no additional charge to the CITY.

6.30 CONDITIONS OF MATERIALS:

6.30.1 All materials and products supplied by the CONTRACTOR in conjunction with this Bid shall be new, warranted for merchantability, fit for a particular purpose, free from defects and consistent with industry standards. The products shall be delivered to the CITY in excellent condition. In the event that any of the products supplied to the CITY are found to be *defective* or do not conform to the Specifications, the CITY reserves the right to return the product to the Bidder at no cost to the CITY.

6.30.2 The successful CONTRACTOR shall furnish all guarantees and warranties to the CITY's Project Manager or designee prior to final acceptance and payment. The warranty period shall commence upon final acceptance of the product.

6.31 DISPOSAL:

6.31.1 Before the CONTRACTOR disposes of any existing improvements or equipment which is to be removed as a portion of the Work, and for which disposition is not specifically provided for elsewhere in these Specifications, it shall contact the CITY to determine if the removal items are to be salvaged. Items to be salvaged by the CITY shall be neatly stockpiled or stored in a neat and acceptable manner at the construction site easily accessible to the CITY. Equipment and materials that shall not be salvaged by the CITY shall become the property of the CONTRACTOR to be removed from the Site and disposed in an acceptable manner, pursuant to local, state and federal laws and regulations.

6.32 OCCUPATIONAL HEALTH AND SAFETY:

6.32.1 If the CONTRACTOR, delivers any toxic substance items as defined in the Code of Federal Regulations Chapter 29, it shall furnish to the CITY's Procurement Services Division, a Material Safety Data Sheet (MSDS). The Material Safety Data Sheet shall be provided to the CITY with initial shipment and shall be revised on a timely basis as appropriate. The MSDS must include the following information:

6.32.1.1 The chemical name and the common name of the toxic substance.

6.32.1.2 The hazards or other risks in the use of the toxic substance to include:

6.32.1.2.1 The potential for fire, explosion, corrosion and reactivity.

6.32.1.2.2 The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and

6.32.1.2.3 The primary routes of entry and symptoms of overexposure.

6.32.1.3 The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances including appropriate emergency treatment in case of overexposure.

6.32.1.4 The emergency procedure for spills, fire, disposal and first aid.

6.32.1.5 A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information.

6.32.1.6 The year and month, if available, that the information was compiled and the name, address and emergency telephone number of the manufacturer responsible for preparing the information. Any questions regarding this requirement should be directed to: Department of Labor and Employment Security, Bureau of Industrial Safety and Health, Toxic Waste Information Center, 2551 Executive Center Circle West, Tallahassee, FL. 32301-5014, Telephone: 1-800-367-4378.

6.33 OCCUPATIONAL, SAFETY AND HEALTH ASSOCIATION (OSHA)

6.33.1 The CONTRACTOR warrants that the product/services supplied to the CITY shall conform in all respects to the standards set forth in the Occupational Safety and Health Act 1970, as amended, and the failure to comply with this condition shall be considered as a breach of Contract.

6.34 CONDITIONS AND PACKAGING:

6.34.1 CONTRACTOR understands and agrees that any item offered or shipped pursuant to this Bid shall be new (current production model at the time of the Bid). All containers shall be suitable for storage or shipment, and all prices shall include standard commercial packaging.

6.35 UNDERWRITERS' LABORATORIES (UL):

6.35.1 Unless otherwise stipulated in the Bid, all manufactured items and fabricated assemblies shall be UL listed or re-examination tested where such item has been established by UL for the items offered and furnished.

6.36 ASBESTOS:

6.36.1 CONTRACTOR shall not use any asbestos or asbestos-based fiber materials in the Work performed under this Contract.

6.36.2 If the CONTRACTOR during the course of the Work observes the existence of asbestos in any structure, building or facility, the CONTRACTOR shall promptly notify the CITY and the CONSULTANT. The CONTRACTOR shall not perform any Work pertinent to the asbestos material prior to receipt of written notice with special instructions from the CITY through the CONSULTANT.

6.37 CLOSE-OUT SUBMITTALS

6.37.1 SCOPE OF WORK:

6.37.1.1 Close-out procedures

6.37.1.2 Final cleaning

6.37.1.3 Adjusting

6.37.1.4 Project record documents

6.37.1.5 As-built survey
6.37.1.6 Operation and maintenance data
6.37.1.7 Spare parts and maintenance products
6.37.1.8 Warranties and bonds
6.37.1.9 Maintenance service

6.37.2 CLOSE-OUT PROCEDURES

6.37.2.1 The CONTRACTOR shall submit written certification to the CITY and CONSULTANT that the Contract Documents were reviewed, Work inspected and that Work is complete in accordance with Contract Documents and ready for CITY's Project Manager and CONSULTANT's review.

6.37.2.2 The CONTRACTOR shall provide submittals to CONSULTANT and CITY's Project Manager that are required by local, state and federal authorities.

6.37.2.3 The CONTRACTOR shall submit final application for payment to CONSULTANT and CITY's Project Manager identifying total adjusted contract sum, previous payments and sum remaining due.

6.37.2.4 CITY may opt to occupy portions of completed facilities upon Substantial Completion of those portions of Work.

6.37.3 FINAL CLEANING

6.37.3.1 The CONTRACTOR shall execute final cleaning prior to final project assessment.
6.37.3.2 The CONTRACTOR shall clean interior and exterior glass and surfaces exposed to view; remove temporary labels, stains and foreign substances, wax, clean and polish transparent and glossy surfaces, vacuum carpet and soft surfaces.
6.37.3.3 The CONTRACTOR shall clean equipment and fixtures to sanitary condition with cleaning materials per manufacturer's written recommendations.
6.37.3.4 The CONTRACTOR shall replace filters of operating equipment
6.37.3.5 The CONTRACTOR shall clean debris from roofs, gutters, downspouts and drainage systems.
6.37.3.6 Clean Site; The CONTRACTOR shall sweep paved areas, rake clean landscaped surfaces.
6.37.3.7 The CONTRACTOR shall remove waste and surplus materials, rubbish, and construction facilities from Site.
6.37.3.8 The CONTRACTOR shall clean and sanitize water fountains (coolers).
6.37.3.9 The CONTRACTOR shall clean ledges, countertops, and shelves with all-purpose and non-abrasive cleaners leaving no residue.

6.37.4 ADJUSTING

6.37.4.1 The CONTRACTOR shall adjust operating products and equipment to ensure smooth and unhindered operations.

6.37.5 PROJECT RECORD DOCUMENTS

6.37.5.1 CONTRACTOR shall maintain in accordance with the Special Conditions in a safe place at the Site, one (1) record copy of all Drawings, Specifications, Addenda, Change Orders, Field Change Directives and written interpretations and clarifications (issued pursuant to para. 9.4) in good order and annotated to show all changes made during construction. The record documents together will all approved samples and counterpart of all approved Shop Drawings will be available to the CONSULTANT for reference at all times. Upon completion of the Work, these record documents, samples, and Shop Drawings will be delivered to CONSULTANT for the CITY.

6.37.6 OPERATION AND MAINTENANCE DATA:

6.37.6.1 The CONTRACTOR shall submit documentation as noted in individual product specifications and as noted herein.

6.37.7 SPARE PARTS AND MAINTENANCE PRODUCTS:

6.37.7.1 The CONTRACTOR shall provide spare parts; maintenance and extra products in quantities specified in the Specifications to the CITY and obtain receipt prior to final payment.

6.37.8 WARRANTIES:

6.37.8.1 The CONTRACTOR shall submit documentation as noted in individual product specifications and as noted herein and Provide duplicate notarized copies to the CITY.
6.37.8.2 The CONTRACTOR shall execute and assemble transferrable warranty documents from sub-contractors, suppliers and manufacturers.
6.37.8.3 The CONTRACTOR shall provide such warranty documents with a Table of Contents and assemble in D-size, 3-ring white binders with typed title sheet of contents inside durable plastic front cover.
6.37.8.4 The CONTRACTOR shall submit above-referenced warranties to the CITY prior to Final Application for Payment.

6.37.9 MAINTENANCE SERVICE:

6.37.9.1 The CONTRACTOR shall furnish service and maintenance of components indicated in specification sections for one-year from date of Substantial Completion.

6.37.9.2 The CONTRACTOR shall examine, clean, adjust, and lubricate system components as required for reliable operation.

6.37.9.3 The CONTRACTOR shall include systematic examination, adjustment, and lubrication of components repairing or replacing parts as required with parts produced by the manufacturer of the original component.

6.37.9.4 CITY shall approve in writing transfers or reassignments of maintenance service tasks.

6.37.10 ASBESTOS CERTIFICATION:

6.37.10.1 The CONTRACTOR shall provide a notarized letter to CITY certifying that no asbestos containing building materials were used as a building material in the Project, pursuant to Florida Statutes § 255.40.

6.37.11 PRODUCTS:

6.37.11.1 APPROVED PRODUCTS: The CONTRACTOR shall use only cleaning and maintenance products approved for use pursuant to local, state and federal laws and regulations.

6.38 TEMPORARY BARRIERS AND ENCLOSURES:

6.38.1 SCOPE OF WORK:

6.38.1.1 The CONTRACTOR shall provide temporary barriers and enclosures to provide construction work areas separate from Owner's on-going business operations.

6.38.1.2 The CONTRACTOR shall protect new work, existing facilities and grounds from damage, theft, vandalism, and unauthorized entry.

6.38.1.3 The CONTRACTOR shall provide a chain link fencing surrounding and separating areas under construction, including areas for CONTRACTOR's mobilization and parking separate from existing CITY facilities and on-going business activities.

6.38.1.4 The CONTRACTOR shall provide demising walls and other barriers as required to separate building area under construction that permits safe and unobstructed exiting of partially Owner occupied buildings.

6.38.1.5 The CONTRACTOR shall provide safety of construction workers and CITY staff and visitors located in areas of CITY's facilities not under renovation or construction.

6.38.1.6 The CONTRACTOR shall control dust, erosion and sediment, noise, pollution, rodent and environmental control.

6.38.2 ENTRY CONTROL:

6.38.2.1 The CONTRACOR shall restrict entrance of persons and vehicles onto Project site and existing facilities in accordance with Special Conditions – 01540 and 01541 Security Procedures.

6.38.2.2 Prior to Project commencement, CONTRACTOR's on-site personnel shall meet with CITY's Project Manager to delineate areas for CONTRACTOR's operations to include storage, office trailers, parking, and lay-down areas.

6.38.2.3 Interruption of pre-approved entry controls shall be coordinated with the CITY's Project Manager prior to proposed interruption.

6.38.2.4 The CONTRACTOR shall allow entrance only to the Project site to authorized persons with proper identification.

6.38.2.5 CONTRACTOR/CM shall post "No Trespassing" and "Hard Hat Area" signs along Project perimeter and at construction access points. "No Trespassing" sign shall include statutory language that area is construction site and that trespassing and theft are felonies and violators will be prosecuted. "No Trespassing" sign shall include name of CONTRACTOR/CM. "No Trespassing" signs shall not be larger than 24" (600mm) by 24" (600mm). "Hard Hat Area" sign shall not be larger than 12" (300mm) by 12" (600mm).

6.38.3 DEMISING WALLS:

6.38.3.1 Where the location of construction is contiguous to or within existing CITY premises, the CONTRACTOR shall provide demising walls to physically separate new or renovation work from existing on-going CITY operations.

6.38.3.2 Demising walls shall be contiguous plywood with vapor barrier and wood framing to prevent unauthorized entrance, dust or debris from entering occupied portion of the area.

6.38.3.4 Where construction is overhead, the CONTRACTOR shall provide safe and secure method of access through or adjacent to work with system of scaffolding, plywood or wood planking overhead to prevent falling debris or materials from interrupting safe passage through construction area.

6.38.4 TEMPORARY FENCING:

6.38.4.1 Areas under construction including areas for CONTRACTOR's mobilization and parking shall be separated from CITY facilities to allow for ongoing activities.

6.38.4.2 The CONTRACTOR shall provide chain link fencing along construction zone boundaries.

6.38.4.3 CONTRACTOR shall submit a detailed temporary fencing plan to the CITY and CONSULTANT for review and approval. The plan shall comply with all applicable regulatory code requirements including the latest edition of the Florida Building Code.

6.38.4.4 The CONTRACTOR shall provide access gates required by code for CITY's and CONTRACTOR's access to occupied portion of project site and for construction access.

6.39 ENVIRONMENTAL CONTROLS:

The CONTRACTOR shall:

6.39.1 Protect existing building and adjacent property from dust produced by construction operations. Use encapsulating or wetting devices to control moisture content of traffic and construction areas.

6.39.2 Control surface drainage to prevent off-site discharge or pollutants and prevent erosion and sedimentation.

6.39.3 Provide berms, dikes or drains to divert water flow away from existing structures into storm water retention areas.

6.39.4 Provide methods necessary to prevent mud and debris from entering storm water system.

6.39.5 Provide methods necessary to prevent excessive noise on Site. CONTRACTOR shall comply with OSHA and CITY's noise requirements.

6.39.6 Provide methods necessary to prevent pests and insects from damaging the Work.

6.39.7 Provide methods necessary to prevent contamination of soil, water, and atmosphere from discharge of noxious, toxic substances or pollutants from construction operations.

6.39.8 SUBMITTALS:

6.39.8.1 Comply with Section 2.10 "Submittal Procedures."

6.39.8.2 Submit site plan and floor plans indicating locations and material construction of proposed protective structures.

6.39.9 TEMPORARY FENCING:

6.39.9.1 Provide a six (6) foot high, minimum ten (10) gage minimum or galvanized steel fabric.

6.39.9.2 Fencing shall have six (6) foot high visual fabric cover to block visual access to construction activities.

6.39.9.3 Provide 5/8" C/D plywood sheets, pressure treated or other means of weather protection, with 2 x 4 wood framing at edges and 24" maximum vertical spacing.

6.39.10 TEMPORARY WALLS:

6.39.10.1 Provide demising Wall: 5/8" C/D plywood sheets, 2 x 4 wood framing at 24" maximum spacing, and 10 mil black polyethylene vapor barrier covering with sealed joints.

6.39.10.2 Provide overhead Protection: Metal scaffolding with ¾" B/C plywood or 2" x 12" wood planking.

6.39.11 EXECUTION/INSTALLATION AND REMOVAL:

6.39.11.1 Install temporary fencing prior to start of vertical construction and removed upon completion of work.

6.39.11.2 Install demising walls prior to start of renovations or building additions and removed work.

6.39.11.3 Protect or remove walls during storm events where winds are anticipated over seventy-four (74) miles per hour.

6.40 SECURITY PROCEDURES:

6.40.1 The CONTRACTOR shall protect new work, existing facilities and grounds from damage, theft, vandalism, and unauthorized entry.

6.40.2 The CONTRACTOR shall initiate security program in coordination with Owner's existing security system at time of Project, mobilizing to ensure safety of employees or persons at the unaffected areas.

6.40.3 The CONTRACTOR shall maintain a security program throughout construction period until Owner's Project acceptance.

6.40.4 PERSONNEL IDENTIFICATION:

6.40.4.1 CONTRACTOR/CM on-site staff, sub-contractors and vendors on Site shall wear identification badges at all times.

6.40.4.2 Identification badges shall be current at time of Project and shall be re-verified and re-issued annually if Project extends past original badge expiration date.

6.40.5 SUBMITTALS:

6.40.5.1 The CONTRACTOR shall comply with Section 2.10 "Submittal Procedures".

6.40.5.2 The CONTRACTOR shall provide a list of personnel proposed to be utilized.

6.40.5.3 The CONTRACTOR shall submit a list of personnel proposed to be substituted for persons already identified to be utilized on the Project.

6.40.5.4 The CONTRACTOR shall provide a security plan to CITY indicating how construction site is to be secured to include normal and emergency egress and ingress.

6.41 PRODUCT SUBSTITUTION PROCEDURES

6.41.1 The CONTRACTOR shall follow the administrative and procedural requirements listed below in Section 6.41.2 for consideration of request for substitution during the design and construction phases.

6.41.2 CONTRACTOR'S SUBMITTAL PROCEDURES:

6.41.2.1 Transmit each substitution request on company letterhead.

6.41.2.2 During bidding phase, substitution requests shall be directed to the CITY's Procurement Services Division.

6.41.2.3 During the construction phase, substitution requests shall be directed to the CONSULTANT.

6.41.2.4 Substitution requests shall identify Project, CONTRACTOR/CM and CONSULTANT during the bidding phase plus Sub-Contractor or supplier during construction phase, indicating Specification Section and Paragraph Number of specified material and pertinent drawing and detail numbers, as appropriate. Include complete information as required in the Substitution Form. Incomplete information will result in automatic rejection of the substitution request.

6.41.2.5 Apply CONTRACTOR's stamp; signed or initialed certifying that review, approval, verification of products required, field dimensions, adjacent construction work, and coordination of information are in accordance with the requirements of the Work and Contract Documents.

6.41.2.6 Schedule submittals to expedite the Project, and deliver to CONSULTANT or CONTRACTOR/CM at business address. Coordinate submission of related items.

6.41.2.7 For each submittal for review, allow fifteen (15) working days including delivery time to and from the CONSULTANT or CONTRACTOR/CM.

6.41.2.8 Identify variations from Contract Documents and product or system limitations, which may be detrimental to successful performance of the completed work.

6.41.2.9 Provide space for CONTRACTOR/CM and CONSULTANT review stamps.

6.41.2.10 When revised for resubmission, identify all changes made since previous submission.

6.41.2.11 Distribute copies of review submittals as appropriate. Instruct parties to promptly report any inability to comply with requirements.

6.41.2.12 Submittals not requested will not be recognized or processed.

6.41.3 SUBSTITUTION REQUESTS

Requests for substitutions shall be made no later than ten (10) calendar days prior to Bid date. Requests received afterwards may not be considered.

6.41.4 SCOPE OF WORK:

The CONTRACTOR shall follow the administrative and procedural requirements set forth in Section 6.41.5 to assure quality of construction before and during construction.

Section 6.41.5 states the CONTRACTOR's general requirements for mockups and field samples, constructed, applied or assembled at the Site for review for use as a quality standard.

6.41.5 COORDINATION AND PROJECT CONDITIONS

6.41.5.1 Coordinate scheduling, submittals, and work to ensure efficient and orderly sequence of installation of interdependent construction elements, with provisions for accommodating items installed later.

6.41.5.2 Verify utility requirements and characteristics of operating equipment are compatible with building utilities.

6.41.5.3 Coordinate work of various sections having interdependent responsibilities for installing, connecting to, and placing in service, such equipment.

6.41.5.4 Coordinate space requirements, supports and installation of mechanical and electrical work that is indicated diagrammatically on Drawings.

6.41.5.5 Follow routing shown for pipes, ducts and conduits as closely as practicable; place runs parallel with line of building. Utilize spaces efficiently to maximize accessibility for other installations for maintenance, and for repairs.

6.41.5.6 Within finished areas, except as otherwise indicated; conceal pipes, ducts, and wiring within the construction. Coordinate locations of fixtures and outlets with finish elements.

6.41.5.7 Coordinate completion and clean up work of separate sections in preparation for Substantial Completion and for portions of

work designated for CITY's partial occupancy.

6.41.5.8 After CITY occupancy of premises, coordinate access to Site for correction of *defective* work and work not in accordance with the Contract Documents, to minimize disruption of CITY's activities.

6.41.5.9 Change orders for extra work required by CONTRACTOR/CM due to poor coordination with sub trades will not be considered by the CITY.

6.42 FIELD ENGINEERING

CONTRACTOR shall employ Land Surveyor registered in State of Florida approved by CITY.

6.42.1 CONTRACTOR shall locate and protect survey control and reference points.

6.42.2 CONTRACTOR shall control datum for survey established by CITY provided survey.

6.42.3 CONTRACTOR shall verify setbacks and easements; confirm drawing dimensions and elevations.

6.42.4 CONTRACTOR shall provide field engineering services and establish elevations, lines and levels, utilizing recognized engineering survey practices.

6.42.5 CONTRACTOR shall submit copy of site drawing and certificate signed by the Land Surveyor that the elevations and locations of the Work are in conformance with the Contract Documents.

ARTICLE 7 – OTHER WORK

7.1 RELATED WORK AT SITE:

7.1.1 The CITY may perform other work related to the Project at the Site pursuant to other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof shall be given to CONTRACTOR prior to starting any such Other Work; and if CONTRACTOR believes that such performance shall involve additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefore as provided in Article 11 (Change in Contract Price) and Article 12 (Changes in Contract Time). If the performance of additional work by other contractor or the CITY is noted in the Contract Documents, no additional adjustment of time or compensation shall be considered.

7.1.2 CONTRACTOR shall afford the CITY and other contractors who are party to such a direct contract (or the CITY, if the CITY is performing the additional work with the CITY's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the work with the CONTRACTOR's. CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of other contractors by cutting, excavating or otherwise altering other contractor's work and shall only cut or alter other contractor's work with the written consent of the CITY and CONSULTANT and the other contractors whose work shall be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of the CITY and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in such direct contracts between the CITY and other contractors.

7.1.3 If any part of CONTRACTOR's work depends for proper execution for results upon the work of any such other contractor, other than CONTRACTOR's own SubContractor, CONTRACTOR shall inspect and promptly report to CONSULTANT in writing, any delays, defects or deficiencies in such other contractor's work that render it unavailable or unsuitable for such proper execution and results of CONTRACTOR's work. CONTRACTOR's failure to report shall constitute an acceptance of the other contractor's work as fit and proper for integration with CONTRACTOR's work except for latent defects and deficiencies in the other contractor's work.

7.2 COORDINATION:

7.2.1 If the CITY contracts with others for the performance of other work on the Project at the Site, the person or organization who shall have authority and responsibility for coordination of the activities among the various prime contractors shall be identified in the Special Conditions and the specific matters to be covered by such authority and responsibility shall be itemized, and the extent of such authority and responsibilities shall be provided in the Special Conditions. Unless otherwise provided in the Special Conditions, neither the CITY nor the CONSULTANT shall have any authority or responsibility in respect of such coordination.

ARTICLE 8 – THE CITY'S RESPONSIBILITIES

8.1 COMMUNICATIONS TO CONTRACTOR:

8.1.1 CITY shall issue all communications to CONTRACTOR, and provide a copy to CONSULTANT.

8.2 FURNISH DATA:

8.2.1 CITY shall promptly furnish the data required of the CITY under the Contract Documents.

8.3 PAYMENTS:

8.3.1 CITY shall make payments to CONTRACTOR promptly when they are due as provided in Section 14.5 (Review of Application for Progress Payment) and Section 14.10 (Final Payment and Acceptance) of the General Conditions.

8.4 LANDS, EASEMENTS: REPORTS AND TESTS:

8.4.1 The CITY's duties in respect to providing lands and easements and providing engineering surveys, if available and to establish reference points are set forth in paragraphs 4.11 (Availability of Land) and 4.5.1 (Reference Points) of the General Conditions.

8.4.2 The CITY shall identify and make available to CONTRACTOR copies of reports of physical conditions at the Site and Drawings of existing structures that have been utilized in preparing the Contract Documents as set forth in Paragraph 4.2 (Report of Physical Conditions).

8.5 CHANGE ORDERS:

8.5.1 The CITY shall execute Change Orders as provided in Article 10 (Changes in the Work) of the General Conditions.

8.6 SUSPENSION OF WORK:

8.6.1 The CITY's may stop Work, suspend Work or terminate the services of CONTRACTOR pursuant to Paragraph 13.5 (CITY May Stop Work), Paragraph 15.1 (CITY May Suspend Work). Paragraph 15.2 (CITY May Terminate for Cause) and Paragraph 15.3 (CITY May Terminate Without Cause).

8.7 ESTIMATED DOLLAR VALUE:

8.7.1 No guarantee of the dollar amount of this Bid is implied or given. Final amount will be based on actual usage/quantities.

8.8 QUANTITIES:

8.8.1 Quantities shown are estimates only. No guarantee or warranty is given or implied by the CITY as to the total amount that may or may not be purchased from any resulting contract. The CITY reserves the right to decrease or increase quantities or add or delete any item from the contract if it is determined that it best serves the interests of the CITY. Orders shall be placed as needed by individual locations during the contract period. The CONTRACTOR agrees that the price(s) offered shall be maintained irrespective of the quantity actually purchased.

8.9 ADDITIONAL TERMS AND CONDITIONS:

8.9.1 No additional terms and conditions included with the Bid response shall be evaluated or considered, have any force or effect, and are inapplicable to this Bid. It is understood and agreed that the conditions in these Bid Documents are the only conditions applicable to this Bid and the CONTRACTOR's authorized signature on the Bid Form attests to this.

ARTICLE 9 – CONSULTANT'S STATUS DURING CONSTRUCTION:

9.1 CITY'S REPRESENTATIVE:

9.1.1 The CONSULTANT (if specifically designated), or a specifically designated employee of the CITY, shall act as the CITY's Representative during the construction period. .

9.1.2 The CONSULTANT's or CITY's Representative's decision with the consent of the CITY's Project Manager in matters relating to aesthetics shall be final, if pursuant to the terms of the Contract Documents.

9.1.3 CONSULTANT or CITY's Representative shall work with the CITY to:
- 9.1.3.1 Establish on-site lines of authority and communications; and
- 9.1.3.2 Schedule and conduct pre-construction meeting and progress meetings.

9.1.4 CONSULTANT or CITY's Representative shall also work with the CITY to establish procedures for:
- 9.1.4.1 Submittals
- 9.1.4.2 Reports and Records
- 9.1.4.3 Recommendations
- 9.1.4.4 Coordination of drawings
- 9.1.4.5 Schedules
- 9.1.4.6 Resolution of conflicts

9.1.5 CONSULTANT shall also:
- 9.1.5.1 Interpret Contract specifications and Drawings
- 9.1.5.2 Transmit written interpretations to CONTRACTOR, and to other concerned parties;
- 9.1.5.3 Assist in obtaining permits and approvals
- 9.1.5.4 Verify that CONTRACTOR and SubContractors have obtained inspections for Work and for temporary facilities; and
- 9.1.5.5 Assist CITY to control the use of Site.

9.2 VISITS TO SITE:

9.2.1 After written Notice to Proceed with the Work, the CONSULTANT shall make visits to the Site at intervals appropriate to the various stages of construction or as per CONSULTANT's contract with CITY to observe the progress and quality of the executed Work and to determine in general, if the Work is proceeding in accordance with the Contract Documents. On the basis of its on-site observations, as an experienced and qualified design professional, CONSULTANT shall keep the CITY informed of the progress of the Work and endeavor to guard the CITY against defects and deficiencies in the Work of the CONTRACTOR.

9.3 PROJECT REPRESENTATION:

9.3.1 The CITY of Boynton Beach or its authorized agents, inspectors or representatives shall act within the scope of duties entrusted to them by the CITY.

9.4 CLARIFICATIONS AND INTERPRETATIONS:

9.4.1 The CONSULTANT or CITY's Representative shall issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the CITY may determine necessary, which shall be consistent with the Contract Documents. If CONTRACTOR believes that a written clarification of interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Article 11 (Change in Contract Price) and Article 12 (Change in Contract Time) of the General Conditions.

9.5 MEASUREMENTS:

9.5.1 MEASUREMENTS: All Work completed under the Contract shall be measured by the CONSULTANT's or CITY's Representative or Project Representative according to the United States Standard Measures. All linear surface measurements shall be made horizontally or vertically as required by the item measured.

9.6 REJECTING DEFECTIVE WORK:

9.6.1 The CONSULTANT, CITY's Representative or Project Representative shall have authority to disapprove or reject Work which is "defective" (which term is hereinafter used to describe Work that is unsatisfactory, faulty or defective, or does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to final inspection). The CONSULTANT, CITY's Representative or Project Representative shall also have authority to require special inspection or testing of the Work as may be individually or severally deemed necessary, whether or not the Work is fabricated, installed or completed.

9.7 SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS:

9.7.1 The CONSULTANT's responsibility for Shop Drawings and samples shall be pursuant to Sections 6.11 (Shop Drawings and Samples) of the General Conditions.

9.7.2 The CONSULTANT's responsibilities as to Change Orders shall be pursuant to Article 10, (Changes in Work), Article 11 (Change in Contract Price) and Article 12 (Change in Contract Time) of the General Conditions.

9.7.3 The CONSULTANT's responsibilities in respect to Applications for Payment, etc. shall be pursuant to Article 14 (Payment to Contractor and Completion) of the General Conditions.

9.8 DETERMINATIONS FOR UNIT PRICES:

9.8.1 The CITY's Project Manager and CONSULTANT shall determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. The CITY's Project Manager and CONSULTANT shall review with CONTRACTOR, CONSULTANT's preliminary determinations on such matters before rendering a written decision by recommendation of an Application for Payment or otherwise. The CITY's Project Manager's written decisions shall be final and binding upon the CITY and CONTRACTOR unless, within ten (10) days after the date of any such decision, the CONTRACTOR delivers to the CITY and to CONSULTANT written notice of intention to appeal from such a decision.

9.9 DECISIONS ON DISPUTES:

9.9.1 The CITY's Project Manager with the input of the CONSULTANT shall be the initial interpreter of the requirements of the Contract Documents and evaluator of the acceptability of the Work under the Contract. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Articles 11 (Change in Contract Price) and Article 12 (Change in Contract Time) in respect to changes in the Contract Price or Contract Time shall be referred initially to CONSULTANT with the consent of the CITY's Project Manager, the CONSULTANT shall render a decision on the claim or disputed matter in writing within a reasonable time. Written notice of each such claim, dispute and other matter shall be delivered by the claimant to the CITY's Project Manager and CONSULTANT and the other party(ies) to the Contract promptly (but in no event later than ten (10) days) after the start of the occurrence or event giving rise thereto, and written supporting data shall be submitted to the CITY's Project Manager and CONSULTANT within ten (10) days after such occurrence, unless CONSULTANT with the consent of the CITY's Project Manager allows an additional period of time to ascertain more accurate data in support of such claim, dispute or other matter.

9.9.2 The CITY's Project Manager and CONSULTANT shall submit any response to the claimant within ten (10) days after receipt of the claimant's last submittal (unless the CITY's Project Manager and CONSULTANT allow additional time). CONSULTANT with the consent of the CITY's Project Manager shall render a formal decision in writing by thirty (30) days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. The CITY's Project Manager's written decision, on such claim, dispute, or other matter shall be final and binding upon CONTRACTOR unless:

i) an appeal from CITY/CONSULTANT's decision is taken within the time limits and in accordance with the procedures set forth pursuant to Article 16 (Dispute Resolution); or

ii) a written notice of intention to appeal from the CITY's Project Manager and CONSULTANT's written decision is delivered by CONTRACTOR to the CITY's Project Manager and CONSULTANT within ten (10) days after the date of such decision and a formal proceeding is instituted by the appealing party in forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable laws and regulations within thirty (30) days of the date of such decision, unless otherwise agreed in writing by CITY and CONTRACTOR.

9.9.3 The rendering of a decision by the CITY's Project Manager pursuant to Paragraphs 9.8.1, (Determinations of Unit Prices), 9.9.1 and 9.9.2 (Dispute Resolution) with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in Paragraph 14.11 (Waiver of Claims) shall be a condition precedent to any exercise by CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by laws or regulations in

respect of any such claim, dispute or other matter pursuant to Article 16.

9.10 INSPECTION AND TESTING:

9.10.1 CONSULTANT shall inspect Work to assure performance pursuant to the requirements of Contract Documents as follows:
9.10.1.1 Administer special testing and inspections of suspect Work.
9.10.1.2 Reject Work which does not comply with requirements of Contract Documents.

9.10.2 Coordinate Testing Laboratory Services:
9.10.2.1 Verify that required laboratory personnel and present.
9.10.2.2 Verify that tests are made in accordance with specified standards.
9.10.2.3 Review test reports for compliance with specified criteria.
9.10.2.4 Recommend and administer any required re-testing.

9.11 LIMITATIONS ON CONSULTANT:

9.11.1 Neither CONSULTANT's authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by CONSULTANT either to exercise or not exercise such authority shall give rise to any duty or responsibility of CONSULTANT to CONTRACTOR, any SubContractor, any Supplier or any other person or organization performing any of the Work, or to any surety.

9.11.2 Whenever in the Contract Documents the term "as ordered", "as directed", "as required", "as allowed", "as approved", or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory", or adjectives of the like effect or import are used to describe a requirement, direction, review or judgment of the CONSULTANT as to the Work, it is intended that such requirement, direction, review or judgment shall be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to CONSULTANT any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraphs 9.11.3 or 9.11.4 of the General Conditions.

9.11.3 CONSULTANT shall not be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and CONSULTANT shall not be responsible to CONTRACTOR or CONTRACTOR's failure to perform or furnish the Work pursuant to the Contract Documents.

9.11.4 CONSULTANT shall not be responsible for the acts or omissions of CONTRACTOR or of any SubContractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

ARTICLE 10 – CHANGES IN THE WORK

10.1 AUTHORIZED CHANGES IN THE WORK

10.1.1 Without invalidating the Contract and without notice to any surety, the CITY may at any time order additions, deletions or revisions in the Work; these changes shall be authorized by a Field Order or Change Order. Upon receipt of any such order or document, CONTRACTOR shall promptly proceed with the Work involved that shall be performed under the applicable conditions of the Contract Documents, except as otherwise specifically provided.

10.1.2 If the CITY and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Change Order, a claim may be made therefor as provided in Article 11 (Change in Contract Price) and Article 12 (Change in Contract Time) of the General Conditions.

10.2 UNAUTHORIZED CHANGES IN THE WORK

10.2.1 CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in Section 3.2 (References to Standards) except in the case of an emergency as provided in Paragraph 6.10.11 (Emergencies) or except in the case of uncovering Work as provided in Paragraph 13.4.2 (Uncovering Work).

10.3 EXECUTION OF CHANGE ORDERS:

10.3.1 The CITY and CONTRACTOR shall execute appropriate Change Orders (or Written Amendments) covering:
10.3.1.1 Changes in Work, which are ordered by the CITY, pursuant to Paragraph 10.1.1 (Changes in the Work) or are required because of acceptance of *defective* Work under Paragraph 13.9, or are agreed by the parties.
10.3.1.2 Changes in the Contract Price or Contract Time which the parties agree to.
10.3.1.3 Changes in Contract Price or Contract Time which embody the substance of any written decision rendered by CONSULTANT pursuant to Paragraph 9.9.1 (Decisions on Disputes), provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable laws and regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in Paragraph 6.24.1.

10.3.2 Surety: It is distinctly agreed and understood that any changes made in the Contract Documents for this Work (whether such changes increase or decrease the amount thereof) or any change in the manner or time of payments or time of performance made by the CITY to the CONTRACTOR shall in no way annul, release or affect the liability and surety on the Bonds given by the CONTRACTOR. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to Contract Price or Contract Time) is required by the provisions of any Bond to be given to a Surety, the giving of any such notice shall be the CONTRACTOR's responsibility, and the amount of each applicable Bond shall be adjusted accordingly.

10.3.3 Notwithstanding, anything to the contrary contained within the Contract Documents, all change orders involving additional cost or

extensions of time, shall be governed pursuant to the ordinances of the CITY.

ARTICLE 11 – CHANGE OF CONTRACT PRICE

11.1 GENERAL

11.1.1 The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at its expense without change in the Contract Price.

11.1.2 The Contract Price may only be changed by a Change Order. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to CONSULTANT promptly (not later than ten (10) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within thirty (30) days after such occurrence and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of such event. All claims for adjustment in the Contract Price shall be determined by CITY and CONSULTANT in accordance with Paragraph 9.8.1, if the CITY and CONTRACTOR cannot otherwise agree on the amount involved. Any claim for an adjustment in the Contract Price shall not be waived if not submitted in accordance with this Paragraph 11.1.2.

11.1.3 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:

11.1.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents by application of unit prices to the quantities of the items involved (subject to provisions of Section 11.5. (Unit Price Work) inclusive).

11.1.3.2 By mutual acceptance of a lump sum (which shall include an allowance for overhead and profit in accordance with Paragraph 11.3.1.2a (Contractor's Fee).

11.1.3.3 On the basis of the Cost of the Work (determined as provided in Section 11.2, inclusive) plus a CONTRACTOR's fee for overhead and profit) determined as provided in Section 11.3, Contractor's Fee, inclusive.

11.2 COST OF THE WORK:

11.2.1 **General**: The term Cost of the Work means the sum of all costs necessary incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by the CITY, such costs shall be in amounts no higher than those prevailing in the locality of the Project and must be approved by the CITY and CONSULTANT before any payment. Such costs shall include only the following items listed below in Paragraphs 11.2.2 thru 11.2.6 and shall not include any of the costs itemized in Paragraph 11.2.7 (Exclusions to Cost of the Work).

11.2.2 **Labor**: The term Cost of the Work includes payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications including the expenses of performing work after regular hours on Saturday, Sunday and legal holidays, agreed upon by the CITY and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. Employees under this paragraph shall include superintendents and foremen on site.

11.2.3 **Materials and Equipment:** The term Cost of Work includes cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Supplier's field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless the CITY deposits funds with CONTRACTOR with which to make payments, in which case, the cash discounts shall accrue to the CITY. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to the CITY, and CONTRACTOR shall make provisions so that they may be obtained.

11.2.4 **Subcontractor:** The term Cost of the Work includes payments made by CONTRACTOR to the SubContractors for Work performed by SubContractors, The CONTRACTOR shall obtain competitive bids from subcontractors acceptable to CONTRACTOR and shall deliver such bids to the CITY who shall then determine with the advice of the CONSULTANT, which bids shall be accepted. If a subcontract provides that the subcontractor is to be paid on the basis of Cost of Work plus a fee, the subcontractor's Cost of the Work shall be determined in the same manner as CONTRACTOR's Cost of Work. All subcontracts shall be subject to all provisions of the Contract Documents.

11.2.5 **Costs of Special Consultants:** The term Cost of the Work includes special consultants employed for services specifically related to the Work including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants.

11.2.6 **Supplemental Costs:** The term Cost of the Work includes the following:

a. Costs, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and tools not owned by the workers that are consumed in the performance of Work, and costs less than market value of such items used but not consumed which remain the property of the CONTRACTOR.

b. Rentals of all construction equipment and machinery and the parts thereof, whether rented from CONTRACTOR or others in accordance with rental agreements approved by the CITY with the advice of CONSULTANT, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof – in accordance with terms of such rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

c. Cost of premiums for additional bonds and insurance required because of changes in the WORK.

11.2.7 **Exclusions to Cost of the Work:** The term Cost of the Work shall not include any of the following:

11.2.7.1 **Payroll costs** and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships) general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site in CONTRACTOR''s principal or branch office for general administration of the Work and not specifically included in the agreed

upon schedule of job classifications referred to in Paragraph 11.2.2 (Labor) or specifically covered by Paragraph 11.2.5 (Costs of Special Consultants) – all of which are to be considered administrative costs covered by the CONTRACTOR's fee pursuant to Paragraph 11.3 of the General Conditions.

11.2.7.2 **Expenses** of any of CONTRACTOR's offices, including principal and branch offices, other than CONTRACTOR's office at the Site.

11.2.7.3 **Any part** of CONTRACTOR's capital expenses including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

11.2.7.4 **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 the cost of premiums covered by subparagraph 11.2.6 (c) above.

11.2.7.5 **Costs due** to the negligence or intentional acts of the CONTRACTOR, any subcontractor, supplier or anyone whose acts CONTRACTOR or subcontractor 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.

11.2.7.6 **Costs associated** with fringe benefits that are greater than actual costs; i.e. where worker hours exceed a typical 8-hour day and 40-hour workweek.

11.2.7.7 **Other overhead** or general expense costs of any kind and the costs of any item not specifically and expressly included in Section 11.2 (Cost of the Work).

11.3 CONTRACTOR'S FEE:

11.3.1 The CONTRACTOR's fee for overhead and profits shall be determined as follows:

11.3.1.1 A mutually acceptable fixed fee; or if none can be agreed upon;

11.3.1.2 A fee based on the following percentages of the various portions of the Cost of the Work:

a. For costs incurred under Paragraphs 11.2.2 (Labor) and 11.2.3 (Materials and Equipment) the CONTRACTOR's fee shall be five (5%) percent.

b. For costs incurred under Paragraph 11.2.4 (Subcontractors), the CONTRACTOR's fee shall be five (5%) percent; and if a subcontract is on the basis of Cost of the Work plus a fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all subcontractors shall be five (5%) percent.

c. No fee shall be payable on the basis of costs itemized under Paragraphs 11.2.5 (Cost of Consultants), 11.2.6 (Supplemental Costs) and 11.2.7 (Exclusions).

d. The amount of credit to be allowed by CONTRACTOR to the CITY for any such change which results in a net decrease in cost shall be the amount of the actual net decrease plus a deduction in CONTRACTOR's fee by an account equal to ten (10%) percent of the net decrease; and

e. When both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of net change in accordance with Paragraphs 11.3.1.2(a) through 11.3.1.2(d) inclusive.

11.3.2 Whenever the cost of any work is to be determined pursuant to Paragraph 11.2.1 (General) or Paragraph 11.2.7 (Exclusions), CONTRACTOR shall submit in writing to the CITY and CONSULTANT and in form acceptable to CONSULTANT, an itemized breakdown together with supporting data.

11.4 ALLOWANCES:

11.4.1 It is understood that CONTRACTOR has included in the Contract Price all allowances named in the Contract Documents and shall cause the Work so covered in the Contract documents to be done by such subcontractors or suppliers and for such sums within the limit of the allowances as acceptable to the CITY, CONTRACTOR agrees that:

11.4.1.1 The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes and

11.4.1.2 CONTRACTOR's costs for unloading and handling on the Site, including labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof shall be valid.

11.4.1.3 Prior to final payment, an appropriate Change Order shall be issued as recommended by CONSULTANT to reflect actual amounts due CONTRACTOR on account of Work covered by allowances and the Contract Price shall be correspondingly adjusted.

11.5 UNIT PRICE WORK:

11.5.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price shall be deemed to include for all Unit Price Work, an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work, times the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR shall be made by CONSULTANT and CITY in accordance with Paragraph 9.8 - Determination of Unit Prices.

11.5.2 Each unit price shall be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

11.5.3 Where the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Contract and there is no corresponding adjustment with respect to any other item of work, and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim pursuant to applicable provisions of these General Conditions for an increase in the Contract Price, if the parties are unable to agree as to the amount of any such increase.

11.5.4 Where the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Contract and there is no corresponding adjustment with respect to any other item of work and if the CITY believes that CONTRACTOR has incurred reduced expense as a result thereof, CITY may make a claim for a decrease in the Contract Price in accordance with Article 11 – Change in Contract Price if the parties are unable to agree as to the amount of any decrease.

11.6 OMITTED WORK:

11.6.1 The CITY may at any time, by written order, without Notice to the Sureties, require omission of such contract Work as it may find necessary or desirable. An order for omission of Work shall be valid only by an executable Change Order. All Work so ordered must be omitted by the CONTRACTOR. The amount by which the Contract Price shall be reduced shall be determined as follows:

11.6.1.1 By such applicable unit prices, or rates for work of a similar nature or character as set forth in the Contract, or

11.6.1.2 By the appropriate lump sum price set forth in the Contract, or

11.6.1.3 By the reasonable and fair estimated cost of such omitted Work and profit percentage as determined by the CONTRACTOR and the CONSULTANT, and approved by the CITY.

ARTICLE 12 – CHANGE OF CONTRACT TIME

12.1 GENERAL

12.1.1 The Contract Time may only be changed by a Change Order. Any claim for an extension or shortening of Contract Time shall be based on written notice delivered by the party making the claim to the other party and to CONSULTANT promptly (but in no event later than seven (7) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice to the extent of the claim with supporting data shall be delivered within seven (7) days after such occurrence and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of such event. Claims made beyond these time limits shall be null and void. Reporting of the general nature of the claim shall include at a minimum:

12.1.1.1 Nature of the delay or change in the Work.

12.1.1.2 Dates of commencement/cessation of the delay or change in the Work.

12.1.1.3 Activities on the progress schedule current as of the time of delay or change in the Work affected by the delay or change in the Work.

12.1.1.4 Identification and demonstration that the delay or change in the Work impacts the construction schedule.

12.1.1.5 Identification of the source of delay or change in the Work.

12.1.1.6 Anticipation on impact extent of the delay or change in the Work.

12.1.1.7 Recommended action to minimize delay.

12.1.2 Requests for extension of time shall be fully documented and shall include copies of daily logs, letters, shipping orders, delivery tickets, and other supporting information. In case of continuing cause of delay, only one (1) claim is necessary. Normal working weeks are based on a five (5) day week. All claims for adjustment of the Contract Time shall be determined by the CITY with input from the CONSULTANT. No claim for an adjustment in the Contract Time shall be valid if not submitted in accordance with the requirements of this Article 12 the General Conditions.

12.1.3 If CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) that, in the sole judgment of the CITY whose decision shall be binding upon CONTRACTOR is due to delay beyond the control of the CONTRACTOR, the Contract Times (or Milestones) shall be extended in an amount equal to the time lost due to such delay if a claim is made therefore as provided in Article 12 of the General Conditions.

12.1.4 Delays beyond the control of CONTRACTOR shall include acts or neglect by the CITY, acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7 – Related Work at Site, fires, floods, epidemics, or acts of God.

12.1.5 The CONTRACTOR must mitigate any loss of time to include but not be limited to performing ancillary Work as is applicable to the Project.

12.1.6 Claims for delay due to inclement weather (i.e. beyond the 10-year mean average) shall be the made within ten (10) days of the inclement weather occurrence.

12.1.7 Delays attributable to and within the control of a SubContractor or supplier shall be deemed to be delays within the control of the CONTRACTOR.

12.1.8 If the CONTRACTOR is prevented from completing any part of the Work within the Contract Time (or Milestones) due to delay beyond the control of both CITY and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. In no event shall CITY be liable to CONTRACTOR, and SubContractor, any supplier, any other person or organization, or to any surety or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of the CONTRACTOR, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts of neglect by utility owners or other contractors performing work as contemplated by Article 7 – Related Work at Site.

12.2 LIQUIDATED DAMAGES

12.2.1 The CITY and CONTRACTOR recognize and acknowledge that time is of the essence of this Contract and that the CITY shall suffer financial loss if the Work is not completed within the times specified in Paragraph 2.3 – Notice to Proceed plus any extensions thereof allowed in accordance with Article 12 – Change of Contract Time. Each of the parties acknowledge that it has attempted to quantify the damages which would be suffered by CITY in the event of the failure of CONTRACTOR to perform in a timely manner, but neither one has been capable of ascertaining such damages with any certainty. CITY and CONTRACTOR also recognize and acknowledge the delays, expenses and difficulties involved in providing proof of such damages in a legal proceeding, the actual loss suffered by the CITY if the Work is not completed on time. Accordingly, instead of requiring any such proof, the CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay the CITY:

BASE BID	LIQUIDATED DAMAGES PER DAY
$1,000 to $20,000	$100
$20,001 to $75,000	$200
$75,001 to $150,000	$500

$150,001 to $350,000	$750
$350,001 to $750,000	$800
$750,001 to $1,000,000	$1,000
$1,000,001 to $2,000,000	$1,200
$2,000,001 to $3,000,000	$1,500
$3,000,001 to $4,000,000	$1,600
$4,000,001 to $5,000,000	$1,700
$5,000,001 to $6,000,000	$1,800
$6,000,001 to $7,000,000	$1,900
$7,000,001 to $8,000,000	$2,000
$8,000,001 to $9,000,000	$2,100
$9,000,001 to $10,000,000	$2,200
$10,000,001 to $11,000,000	$2,300
$11,000,001 to $12,000,000	$2,400
$12,000,001 and over	$2,500

For each day that expires after the time specified in Paragraph 2.3 – Notice to Proceed, for Substantial Completion until the Work is substantially complete.

12.2.2 After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the CITY, CONTRACTOR shall pay CITY:

BASE BID	LIQUIDATED DAMAGES PER DAY
$1,000 to $20,000	$25.00
$20,001 to $75,000	$50.00
$75,001 to $150,000	$125.00
$150,001 to $350,000	$187.50
$350,001 to $750,000	$200.00
$750,001 to $1,000,000	$250.00
$1,000,001 to $2,000,000	$300.00
$2,000,001 to $3,000,000	$370.00
$3,000,001 to $4,000,000	$400.00
$4,000,001 to $5,000,000	$425.00
$5,000,001 to $6,000,000	$450.00
$6,000,001 to $7,000,000	$475.00
$7,000,001 to $8,000,000	$500.00
$8,000,001 to $9,000,000	$525.00
$9,000,001 to $10,000,000	$550.00
$10,000,001 to $11,000,000	$575.00
$11,000,001 to $12,000,000	$600.00
$12,000,001 and over	$625.00

For each day that expires after the time specified in Paragraph 2.3 – Notice to Proceed.

12.2.3 This sum is not a penalty. The CITY reserves the right to additionally recover direct job site expenses, including CONSULTANT's expenses incurred during the period of any delay. The CONTRACTOR shall be liable for liquidated damages even if the Contract is terminated by the CITY for cause or if the CONTRACTOR abandons the Work. The liability of the CONTRACTOR and its surety or sureties for damages provided by this Article is joint and several.

ARTICLE 13 – TESTS AND INSPECTIONS, CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.2 NOTICE OF DEFECTS:

13.2.1 Prompt notice of all defects for which CITY or CONSULTANT have actual knowledge shall be given to CONTRACTOR. All *defective* Work, whether or not completed, may be rejected, corrected or accepted as provided in Article 13 – Tests and Inspections: Correction, Removal or Acceptance of Defective Work.

13.2.2 Unremedied defects identified for correction during the guarantee period but remaining after its expiration shall be considered as part of the obligations of the guarantee. Defects in material, workmanship or equipment which are remedied as a result of obligations of the guarantee, shall subject the remedied portion of the Work to an extended guarantee period of one (1) year after the defect has been remedied. The Surety shall be bound with and for the CONTRACTOR in the CONTRACTOR's observance of the guarantee.

13.3 ACCESS TO WORK:

13.3.1 CONSULTANT's and CONSULTANT's representatives, other representatives of the CITY, testing agencies and governmental agencies with jurisdictional interests shall have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

13.4 TESTS AND INSPECTIONS:

13.4.1 CONTRACTOR shall give CONSULTANT timely notice of readiness of the Work for all required inspections, tests or approvals.

13.4.2 If any federal, state or local laws and regulations require any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefore pay all costs in connection therewith, and furnish CONSULTANT the required

certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and pay all costs in connection with any inspection or testing required in connection with the CITY's or CONSULTANT's acceptance of supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work.

13.4.3 All inspections, tests or approvals other than those required by federal, state, or local laws or regulations shall be performed by organizations acceptable to the CITY and CONSULTANT.

13.4.4 If any work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of CONSULTANT, it must, if requested by CONSULTANT, be uncovered for observation. Such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given CONSULTANT timely written notice of CONTRACTOR's intention to cover the same and CONSULTANT has not acted with reasonable promptness in response to such notice.

13.4.5 Observations by CITY, CONSULTANT inspections or tests or approvals by others shall not relieve CONTRACTOR from CONTRACTOR's obligation's to perform the Work pursuant to the Contract Documents.

13.4.6 General: For tests specified to be made by the CONTRACTOR, the testing personnel shall make the necessary inspections and tests, the testing work and testing report thereof shall be in such form as will facilitate checking to determine compliance with the Contract Documents. Five (5) copies of the report shall be submitted and authoritative certification thereof must be furnished to the CONSULTANT as a prerequisite for the acceptance of any material or equipment.

13.4.7 If, in the making of any test of any material or equipment, it is ascertained by the CONSULTANT that the material or equipment does not comply with the Contract Documents, the CONTRACTOR will be notified thereof and it will be directed to refrain from delivering such material or equipment, or to remove it promptly from the Site or from the Work and replace it with acceptable material, without cost to the CITY.

13.4.8 Tests of electrical and mechanical equipment and appliances shall be conducted in accordance with the recognized test codes.

13.4.9 Costs. All inspection and testing or materials furnished under this Contract will be provided by the CONTRACTOR, unless otherwise expressly specified.

13.4.10 Materials and equipment submitted by the CONTRACTOR as the equivalent of those specifically named in the Contract may be tested by the CITY for compliance. The CONTRACTOR shall reimburse the CITY for the expenditures incurred in making such tests of materials and equipment which are rejected for non-compliance.

13.4.11 Certificate of Manufacture: CONTRACTOR shall furnish CONSULTANT authoritative evidence in the form of Certificate of Manufacture that the materials to be used in the Work have been manufactured and tested in conformity with the Contract Documents.

13.4.12 These Certificates of Manufacture shall be notarized and include copies of the results of physical tests and chemical analyses, where necessary, that have been made directly on the product or on similar products of the manufacturer.

13.4.13 Start-up Tests: As soon as conditions permit, the CONTRACTOR shall furnish all labor, materials and instruments and shall make start-up tests of equipment.

13.4.14 If the start-up tests disclose any equipment furnished under the Contract which does not comply with the requirements of the Contract Documents, the CONTRACTOR shall, prior to demonstration tests, make all changes, adjustments and replacements required. The CONTRACTOR shall assist in the start-up tests as applicable.

13.5 UNCOVERING WORK:

13.5.1 If any Work is covered contrary to the request of CONSULTANT, it must, if requested by CONSULTANT, be uncovered for CONSULTANT's observation and replaced at CONTRACTOR's expense.

13.5.2 If CONSULTANT requests that covered Work be observed by CONSULTANT or inspected or tested by others, CONTRACTOR, at CONSULTANT's request shall uncover, expose or otherwise make available for observation, inspection or testing as CONSULTANT may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is *defective*, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and the CITY shall be entitled to an appropriate decrease in the Contract Price, and if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Article 11. If however, such Work is found to be *defective*, CONTRACTOR shall be allowed an increase in Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Article 11 – Change in Contract Price and Article 12 – Change in Contract Time in the General Conditions.

13.6 CITY MAY STOP THE WORK:

13.6.1 If the Work is *defective*, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work shall conform to the Contract Documents, the CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the CITY to stop the Work shall not give rise to any duty on the part of the CITY to exercise this right for the benefit of CONTRACTOR or any other party.

13.7 CORRECTION OR REMOVAL OF DEFECTIVE WORK:

13.7.1 If required by CONSULTANT, CONTRACTOR shall promptly, as directed, either correct all *defective* Work, whether or not fabricated,

installed or completed, or if the Work has been rejected by CONSULTANT, remove it from the Site and replace with non-*defective* Work. CONTRACTOR shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

13.7.2 If the CONTRACTOR refuses to comply, the CITY may do of the following:

13.7.2.1 The CITY shall correct any work so performed by the CONTRACTOR and deduct the expenses for doing so from the final payment due to the CONTRACTOR, or

13.7.2.2 The CITY shall hold back final payment due CONTRACTOR until such time as the Work is completed to the satisfaction of the CITY's Project Manager and in compliance with the CITY's specifications. The CITY's Project Manager shall have the discretion to determine if the Work is satisfactory and in compliance with the specifications.

13.7.3 The remedies contained herein are not exclusive and the CITY/OWNER reserves the right to pursue any and all other remedies it deems applicable.

13.8 ONE-YEAR CORRECTION PERIOD:

13.8.1 If within one (1) year after the date of Acceptance of Work or such longer period of time as may be prescribed by federal, state or local laws and regulations, or by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents; any Work is found to be *defective*, CONTRACTOR shall promptly, without cost to the CITY and in accordance with the CITY's written instructions, either correct such *defective* Work, or if it has been rejected by the CITY, remove it from the Site and replace it with non-*defective* Work.

13.8.2 If CONTRACTOR does not promptly comply with the terms of such instructions or incase of an emergency where delay would cause serious risk of loss or damage; the CITY may have the *defective* Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) shall be paid by CONTRACTOR.

13.8.3 In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

13.8.4 Nothing herein shall be deemed a waiver of the statute of limitations as provided in Florida Law.

13.8.5 Where *defective* Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this Paragraph 13.7 – "One Year Correction Period", the correction period hereunder with respect to such Work shall be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.

13.9 ACCEPTANCE OF DEFECTIVE WORK:

13.9.1 Instead of requiring correction or removal and replacement of *defective* Work, CITY (prior to CONSULTANT's recommendation of final payment), if CONSULTANT prefers to accept *defective* Work CITY may accept *defective* Work. If CITY accepts *defective* Work pursuant to this Paragraph 13.8. CONTRACTOR shall pay all claims, costs, losses and damages attributable to CITY's evaluation of and determination to accept such *defective* Work (such costs to be approved by CONSULTANT as to reasonableness and to include but not limited to fees and charges of engineers, architects, attorneys and other professionals).

13.9.2 If any such acceptance of *defective* work occurs prior to CONSULTANT's recommendation of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefor as provided in Article 11 – Change of Contract Price. If acceptance occurs after such recommendation, CONTRACTOR shall pay an appropriate amount to the CITY.

13.10 CITY MAY CORRECT DEFECTIVE WORK:

13.10.1 If CONTRACTOR fails within thirty (30) days after written notice of CONSULTANT to proceed to correct *defective* Work, or remove and replace rejected Work as required by CONSULTANT in accordance with paragraph 13.7.1, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, the CITY may, after seven (7) days written notice to CONTRACTOR correct and remedy any such deficiency.

13.10.2 To the extent necessary to complete corrective and remedial action, the CITY may exclude CONTRACTOR from all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site and incorporate in the Work, all materials and equipment stored at the Site or for which the CITY has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow the CITY, the CONSULTANT, the CITY's Representative agents and employees, such access to the Site as may be necessary to enable the CITY to exercise the rights and remedies under this Paragraph.

13.10.3 All direct, indirect and consequential costs of the CITY in exercising such rights and remedies under this Paragraph shall be charged against CONTRACTOR by CITY, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents with respect to the Work. The CITY shall be entitled to an appropriate decrease in the Contract Price, and if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefore as provided in Article 11 – Change of Contract Price. Such direct, indirect and inconsequential costs shall include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs, and all costs of repair and/or replacement of Work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's *defective* work. CONTRACTOR shall also be responsible for restoring any other sites affected by such repairs or remedial work at no cost to the CITY. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the CITY of the CITY's rights pursuant to Paragraph 13.9 of the General Conditions.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION:

14.2 SCHEDULE OF VALUES

14.2.1 The schedule of values established as provided in Paragraph 2.9 – Finalizing Schedules, shall serve as the basis for progress payments and shall be incorporated into a form of Application for Payment acceptable to CITY and CONSULTANT.

14.3 UNIT PRICE BID SCHEDULE

14.3.1 Progress payments on account of Unit Price Work shall be based on the number of units completed.

14.3.2 The quantities for payment under this Contract shall be determined by actual measurement of the completed items in place, ready for service and accepted by the CITY, in accordance with the applicable method of measurement therefore contained pursuant to these General Conditions.

14.3.3 The CONTRACTOR shall receive and accept the compensation provided in the Bid and the Contract documents as full payment for furnishing all materials, labor, tools and equipment for performing all operations necessary to complete the Work under the Contract and also in full payment for all loss or damages arising from the nature of the Work or from any discrepancy between the actual quantities of Work and quantities herein estimated by the CONSULTANT, or from the action of the elements or from any unforeseen difficulties which may be encountered during the prosecution of the Work until final acceptance by the CITY.

14.3.4 The prices stated in the Bid include all costs and expenses for taxes, labor, equipment, materials, commissions, transportation charges and expenses, patent fees and royalties, labor for handling materials during inspection, together with any and all other costs and expenses for performing and completing the Work as shown on the Drawings and specified herein. The basis of payment for an item at the unit price stated in the Bid shall be in accordance with the description of that item.

14.4 APPLICATION FOR PAYMENTS:

14.4.1 Unless otherwise prescribed by federal, state or local law, at the end of each calendar month, the CONTRACTOR shall submit to the CONSULTANT for review, an Application for Payment (AFP) filled out and signed by the CONTRACTOR, covering the Work completed as of the date of the Application and accomplished by such supporting documentation pursuant to the Contract Documents.

14.4.2 The Net Payment Due to the CONTRACTOR shall be the above-mentioned subtotal from which shall be deducted from the amount of retainage specified in the Contract, and the total amount of all previous approved Applications for Progress Payment submitted by CONTRACTOR. Retainage shall be calculated based upon the above-mentioned sub-total.

14.4.3 The CONTRACTOR shall list each Change Order executed prior to date of submission, at the end of the continuation sheets and shall list by Change Order Number, and description, as for an original component item of work.

14.4.4 As provided for in the Application for Payment (AFP) form, the CONTRACTOR shall certify for each current pay request that all previous progress payments received from the CITY, under this Contract have been applied by the CONTRACTOR to discharge in full all obligations of the CONTRACTOR in connection with Work covered by prior Application for Payment (AFP), and all materials and equipment incorporated into the Work are free and clear of all liens, claims, security interest and encumbrances. CONTRACTOR shall attach to each Application for Payment (AFP) like obligation discharge affidavits by all subcontractors.

14.5 CONTRACTOR'S WARRANTY OF TITLE:

14.5.1 The CONTRACTOR warrants and guarantees that title to all Work and equipment covered by an Application for Payment, whether incorporated in the Project or not, shall have passed to the CITY prior to the making of an Application for Payment, free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "Liens"), and that no work or equipment covered by an Application for Payment shall have been acquired by the CONTRACTOR or by any other party performing the Work at the Site or furnishing equipment for the Project, subject to an agreement under which an interest therein or encumbrances thereon is retained by the seller of such products or otherwise imposed by the CONTRACTOR or such other person.

14.6 REVIEW OF APPLICATIONS FOR PAYMENT:

14.6.1 CONSULTANT shall, within ten (10) days after receipt of each Application for Payment, either indicate in writing, a recommendation of payment and present the Application to the CITY, or return the Application to CONTRACTOR indicating in writing CONSULTANT's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make necessary corrections and resubmit the Application. Thirty (30) days after receipt of the Application for Payment by the CITY with CONSULTANT's recommendation, the amount recommended shall (subject to the provisions of the last sentence of paragraph 14.5.4) become due and when due shall be timely paid by the CITY to CONTRACTOR.

14.6.2 CONSULTANT's recommendation of any payment requested in the Application for Payment shall not prohibit the CITY from withholding payment or prohibit the CITY from paying additional sums regarding other matters or issues between the parties.

14.6.3 CONSULTANT's recommendation of final payment shall constitute a representation by CONSULTANT to the CITY that the conditions precedent to CONTRACTOR's being entitled to final payment as set forth in Paragraph 14.10, Final Payment and Acceptance, have been fulfilled.

14.6.4 CONSULTANT may refuse to recommend in whole or any part of any payment if, in CONSULTANT's opinion, it would be incorrect to make such representations to the CITY. The CONSULTANT may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in CONSULTANT's opinion to protect the CITY from loss, including but not limited to:

14.6.4.1 The Work is *defective* or completed Work has been damaged requiring correction or replacement.

14.6.4.2 The Contract Price has been reduced by a Written Amendment or Change Order.

14.6.4.3 The CITY has been required to correct *defective* Work or complete Work pursuant to Paragraph 13.9, or

14.6.4.4 The CONSULTANT's actual knowledge of the occurrence of any of the events enumerated in Paragraphs 15.2.1 through 15.2.1.9 inclusive (CITY May Terminate).

14.6.5 The CITY may refuse to make payment of the full amount recommended by the CONSULTANT because claims have been made against the CITY on account of CONTRACTOR's performance or furnishing of the Work, or there are other items entitling the CITY to credit against the amount recommended but the CITY must give CONTRACTOR written notice (with a copy to CONSULTANT) stating the reasons for such action. Reasons the CITY may refuse to make payment include but are not limited to:

14.6.6 The Work for which payment is requested cannot be verified by the CITY.

14.6.7 Claims or Liens have been filed against the CITY relating to the Project or there is reasonable evidence indicating the probable filing thereof.

14.6.8 Upon unsatisfactory obligation of the Work, including failure to clean up as required.

14.6.9 Upon CONTRACTOR's persistent failure to cooperate with other contractors on the Project and persistent failure to carry out the Work in accordance with the Contract Documents.

14.6.10 Upon liquidated damages payable by the CONTRACTOR, or

14.6.11 Upon any other violation of, or failure of CONTRACTOR to comply with, the provisions of the Contract Documents.

14.7 SUBSTANTIAL COMPLETION:

14.7.1 When the CONTRACTOR considers the entire Work ready for its intended use, the CONTRACTOR shall notify the CITY and the CONSULTANT in writing that the Work is substantially complete and request that the CONSULTANT prepare a Certificate of Substantial Completion.

14.7.2 The CITY, the CONSULTANT and the CONTRACTOR shall make an inspection of the Work within fifteen (15) calendar days after notice from the CONTRACTOR that the Work is substantially complete to determine the status of completion. If the CONSULTANT does not consider the Work substantially complete, the CONSULTANT shall notify the CONTRACTOR in writing giving the reasons therefor. If the CONSULTANT considers the Work to be substantially complete, the CONSULTANT shall prepare and deliver to the CITY for its execution and recordation, the Certificate of Substantial Completion, signed by the CONSULTANT and CONTRACTOR, which shall affix the Date of Substantial Completion.

14.7.3 The CITY shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but the CITY shall allow CONTRACTOR reasonable access to complete or correct items on the "punch list", pursuant to Paragraph 14.12 of the General Conditions.

14.8 PARTIAL UTILIZATION:

14.8.1 The CITY shall have the right to enter the premises for the purpose of doing work not covered by the Contract Documents. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the Work, or the restoration of any damaged work except such as may be caused by agent or employees of the CITY.

14.8.2 Prior to Substantial Completion, the CITY, with the approval of the CONSULTANT and with written notice to the CONTRACTOR, may use any completed or substantially completed portion of the Work. Such use shall not constitute an acceptance of such portions of the Work.

14.8.3 Use by the CITY of any finished part of the Work, which has specifically been identified in the Contract Documents, or which the CITY, CONSULTANT, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by the CITY without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all Work subject to the following:

14.8.3.1 The CITY at any time may request CONTRACTOR in writing to permit the CITY to use any such part of the Work which the CITY believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR shall certify to the CITY and CONSULTANT that said part of the Work is substantially complete and request CONSULTANT to issue a Certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify the CITY and CONSULTANT in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request CONSULTANT to issue a Certificate of Substantial Completion for that part of the Work. Within fifteen (15) days after either such request, the CITY, CONTRACTOR and CONSULTANT shall make an inspection of that part of Work to determine its status of completion. If CONSULTANT does not consider that part of the Work to be substantially complete, CONSULTANT shall notify the CITY and CONTRACTOR in writing giving the reasons therefore. If CONSULTANT considers that part of the Work to be substantially complete, the provisions of Paragraphs 14.6.1 and 14.6.2 shall apply with respect to Certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.8.3.2 The CITY may at any time, request CONTRACTOR in writing to permit the CITY to take over operation of any such part of the Work although it is not substantially complete. A copy of such request shall be sent to CONSULTANT and within fifteen (15) days thereafter, the CITY, CONTRACTOR and CONSULTANT shall make an inspection of that part of the Work to determine its status of completion and shall prepare a list of items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to the CITY and CONSULTANT that such part of the Work is not ready for separate operation by the CITY; CONSULTANT shall finalize the list of items to be completed or corrected and shall deliver such list to the CITY and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final judgment between the CITY and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Work which shall become binding upon the CITY and CONTRACTOR at the time when the CITY takes over such operation (unless CONTRACTOR shall have otherwise agreed in writing and so informed CONSULTANT). During such operation and prior to Substantial Completion of such part of the Work, the CITY shall allow CONTRACTOR reasonable access to complete or correct items on such list and to complete other related Work.

14.9 FINAL INSPECTION:

14.9.1 Upon written notice from the CONTRACTOR that the entire Work or an agreed upon portion thereof is complete, CONSULTANT shall make a final inspection with the CITY and CONTRACTOR and shall notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete, *defective*, or not in accordance with the Contract Documents. CONTRACTOR shall immediately take such measures as necessary to remedy such deficiencies.

14.10 FINAL APPLICATION FOR PAYMENT:

14.10.1 After CONTRACTOR has completed in writing all such corrections to the satisfaction of CONSULTANT and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in Paragraph 14.6, Substantial Completion) and other documents- all as required by the Contract Documents, and after CONSULTANT has indicated in writing that the Work is acceptable and has been completed in conformance with the drawings and specifications and any approved changes thereto, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to CITY) of all Liens arising out of or filed in connection with the Work.

14.11 FINAL PAYMENT AND ACCEPTANCE:

14.11.1 Upon receipt of written notice from the CONTRACTOR that the Work has been completed in conformity with the Drawings and Specifications and any approved changes thereto, and receipt of the Final Application for Payment with the Warranty of Title and accompanying documentation; the CITY's CONSULTANT shall promptly examine the Work and making such tests as he/she may deem proper, and using all of the care and judgment normally exercised in the examination of completed Work by a properly qualified and experienced professional Consultant, shall satisfy themselves that the CONTRACTOR's statement appears to be correct and the CONTRACTOR's other obligations under the Contract Documents have been fulfilled. The CONSULTANT shall then inform the CITY in writing that CONSULTANT have examined the Work and that it appears, to the best of the CONSULTANT's knowledge and belief, to conform to the Contract Drawings, Specifications and any approved Change Orders that the CONTRACTOR's other obligations under the Contract Documents have been fulfilled, and that CONSULTANT therefore recommend acceptance of the Work for ownership and Final Payment to the CONTRACTOR. However, it is agreed by the CITY and the CONTRACTOR that such statement by the CITY's CONSULTANT does not in any way relieve the CONTRACTOR from their responsibility to deliver a fully completed job in a good and workmanlike condition, and does not render the CONSULTANT or the CITY liable for any faulty Work done or defective materials or equipment used by the CONTRACTOR.

14.11.2 The CONSULTANT shall then make a final estimate of the value of all Work done and shall deduct all previous payments which have been made. The CONSULTANT shall report such estimate to the CITY together with his/her recommendation as to the acceptance of the Work or his/her findings as to any deficiencies therein. After receipt and acceptance by the CITY of the properly executed Final Warranty of Title and after approval of the CONSULTANT's estimate and recommendation to the CITY, the CITY shall make final payment to the CONTRACTOR of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, or as may be lawfully retained, including but not limited to, Liquidated Damages, as applicable. Title passes and warranty begins at final acceptance.

14.11.3 All prior estimates are subject to correction in the final estimate. Thirty (30) days after approval by the CITY of the Application for Final Payment, the amount recommended by CONSULTANT shall become due and shall be paid to the CONTRACTOR.

14.12 WAIVER OF CLAIMS:

14.12.1 The making and acceptance of Final Payment shall constitute:

14.12.1.1 Waiver of all claims by CITY against CONTRACTOR, except claims arising from unsettled Liens from *defective* Work appearing after final inspection, pursuant to Paragraph 14.8, Final Inspection, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents or the Performance and Payment Bonds; and

14.12.1.2 Waiver of all claims by CONTRACTOR against CITY other than those previously made in writing and still unsettled at the time of making an acceptance of Final Payment.

14.13 PUNCHLIST PROCEDURES:

As per Florida Statutes § 218.735(7)(a)(ii), punchlist procedures to render the Work complete, satisfactory and acceptable are established as follows:

14.13.1 Within fifteen (15) days of Substantial Completion of the construction services purchased as defined in the Contract, CONTRACTOR shall schedule a Substantial Completion Walkthrough with CITY and CONSULTANT. The purpose of the Substantial Completion Walkthrough is to develop a preliminary punchlist ("Punchlist") of items to be performed by the CONTRACTOR, based upon observations made jointly between the CONTRACTOR, CONSULTANT and CITY during the Substantial Completion Walkthrough. Completion of the Work as defined by the Contract, again predicated upon the CONTRACTOR's timely initiation of a request for the Substantial Completion Walkthrough. At its option, CITY may conduct Substantial Completion Walkthrough with its Field Inspector and CONSULTANT.

14.13.2 CONTRACTOR shall endeavor to address and complete as many items as possible noted on the Punchlist either during the Substantial Completion Walkthrough itself, or thereafter for a period of thirty (30) days from the date of the Substantial Completion Walkthrough.

14.13.3 No later than thirty (30) days following the scheduled Substantial Completion Walkthrough, CONTRACTOR shall again initiate and request a second walkthrough of the Project with CITY. The purpose of this second walkthrough is to identify which items remain to be performed from the Substantial Completion Walkthrough Checklist and to supplement that list as necessary (based, for example, upon work which may have been damaged as a result of the CONTRACTOR's performance of completion of items contained on the Substantial Completion Walkthrough Punchlist) and for the purpose of developing a joint Final Punchlist.

14.13.4 The intent of this section is for the CITY and the CONTRACTOR to cooperate to develop a Final Punchlist to be completed no later than thirty (30) days from the date of reaching Substantial Completion of the construction services or as defined in the Contract Documents.

14.13.5 In no event may the CONTRACTOR request payment of final retainage under Florida Statutes § 218.735(7)(d) until the CONTRACTOR considers the Final Punchlist to be 100% complete.

14.13.6 CONTRACTOR agrees to complete the Final Punchlist items within thirty (30) days of the date of its issuance by CITY.

14.13.7 CONTRACTOR acknowledges and agrees that no item contained on the Final Punchlist shall be considered a warranty item until such time as the Final Punchlist is 100% complete.

14.13.8 CONTRACTOR acknowledges and agrees that CITY may, at its option, during performance of the Work and prior to Substantial Completion, issue lists of identified non-conforming or corrective work for the CONTRACTOR to address. The intent of any such CITY generated lists prior to Substantial Completion is to attempt to streamline the Punchlist process upon achieving Substantial Completion, and to allow for the CONTRACTOR to address needed areas of corrective work as they may be observed by CITY during performance of the Work.

14.13.9 CONTRACTOR acknowledges and agrees that in calculating 150% of the amount which may be withheld by CITY as to any Final Punchlist item for which a good faith basis exists as to it being complete, as provided for by Florida Statutes § 218.735(7)(d), CITY 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 Punchlist item. Such percentage shall in no event relate to the Schedule of Value 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 Punchlist completion.

14.14 RETAINAGE PROCEDURES:

14.14.1 Pursuant to Florida Statutes § 218.735(8)(a). The CITY may withhold retainage of five (5%) percent of all monies earned by the CONTRACTOR and shall be retained by the CITY until Final Completion of the construction services purchased (defined as that point at which 100% of the constriction of the work as defined in the Contract Schedule of Values has been performed under the contract by the CONTRACTOR) has been reached and acceptance by the CITY as defined in Florida Statutes § 218.735(7)(d).

14.14.2 This section does not prohibit the CITY from withholding retainage at a rate less than five (5%) percent of each progress payment, from incrementally reducing the rate of retainage pursuant to a schedule provided for in the Contract, or from releasing at any point all or a portion of any retainage withheld by the CITY which is attributable to the labor, services, or materials supplied by the CONTRACTOR or by one or more subcontractors or suppliers. If the CITY makes any payment of retainage to the CONTRACTOR which is attributable to the labor, services, or materials supplies by one or more subcontractors or suppliers, the CONTRACTOR shall timely remit payment of such retainage to those subcontractors and suppliers.

14.14.3 This section does not require the CITY to pay or release any amounts that are subject of a good faith dispute, the subject of a claim brought pursuant to Florida Statutes § 255.05 or otherwise the subject of a claim or demand by the CITY or CONTRACTOR.

14.14.4 The time limitations set forth in this section for payment requests, apply to any payment request for retainage made pursuant to this section.

14.14.5 Paragraph 14.13.2 do not apply to construction services purchased by the CITY which are paid for, in whole or in part, with federal funds and are subject to federal grantor laws and regulations or requirements that are contrary to any provision of the Local Government Prompt Payment Act.

14.14.6 This subsection does not apply to any construction services purchased by the CITY if the total cost of the construction services as identified in the contract is $200,000 or less.

14.14.7 All payments dues under this section and not made within the time periods specified by this section shall bear interest at the rate of one (1%) percent per month, or the rate specified by contract, whichever is greater.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION:

15.1 CITY MAY SUSPEND/STOP WORK:

15.1.1 THE CITY MAY SUSPEND WORK: The CITY may, at any time and without cause, suspend the Work or any portion thereof for period of not more than ninety (90) days by notice in writing to CONTRACTOR and CONSULTANT which shall affix the date on which Work shall be resumed. CONTRACTOR shall resume the Work on the date so affixed. If CONTRACTOR claims an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension, CONTRACTOR may make a claim as provided in Articles 11 (Change of Contract Price) and Article 12 (Change of Contract Time) of the General Conditions.

15.1.2 THE CITY MAY STOP WORK: The CITY or CITY's Representative may stop the Work or any portion thereof when it has been determined that the CONTRACTOR is not complying with the Drawings or Specifications or the intent thereof. The Stop Work order may be verbal and the CONTRACTOR shall cease work immediately except for leaving the Work area in a safe and acceptable condition. A verbal Stop Work order shall be followed by a confirmation in writing. The CONTRACTOR shall not be allowed an increase in the Contract Price or an extension of the Contract Time during the Stop Work period. A Start Work order may be verbal and shall be followed by a confirmation in writing.

15.2 CITY MAY TERMINATE FOR CAUSE:

15.2.1 Upon the occurrence of any one or more of the following events:

15.2.1.1 If CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such timing relating to CONTRACTOR's bankruptcy or insolvency;

15.2.1.2 If a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code (Title 11, United States Code) as now

or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to CONTRACTOR's bankruptcy or insolvency;

15.2.1.3 If CONTRACTOR makes a general assignment for the benefit of creditors;

15.2.1.4 If a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under Contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors;

15.2.1.5 If CONTRACTOR admits in writing an inability to pay the debts generally as they become due;

15.2.1.6 If CONTRACTOR fails to perform the Work in accordance with the Contract Documents (including but not limited to, failure to supply sufficient skilled workers suitable materials or equipment or failure to adhere to the progress schedule established under Paragraph 2.6 as revised from time to time);

15.2.1.7 If CONTRACTOR disregards any federal, state or local laws and or regulations of any Local Public Agency regulations that apply.

15.2.1.8 If CONTRACTOR disregards the authority of CONSULTANT; or

15.2.1.9 If CONTRACTOR otherwise violates any provisions of the Contract Documents;

15.2.1.10 In the event of termination; the CITY may take possession of the premises and all materials, tools, and appliances, thereon and finish the Work by whatever method it may deem expedient. In such cases, the CONTRACTOR shall only be entitled to receive payment for Work satisfactorily completed prior to the termination date, subject to any setoffs due the CITY in completing the Project and for reimbursement for damages incurred. The CITY may take possession of and use any materials, plant, tools, equipment, and property of any kind furnished by CONTRACTOR to complete the Work. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the expense incurred by the CITY to finish the Work (including additional managerial and administrative services, plus the CITY's direct, indirect and consequential losses), exceeds the unpaid balance on the Contract, the CONTRACTOR or Surety shall pay the difference to the CITY promptly upon demand. The expense incurred through the CONTRACTOR's default, shall be certified by the CITY's Project Manager. The CONTRACTOR shall be responsible for both liquidated damages attributable to delay and for excess completion costs. The liability of the CONTRACTOR and its surety or sureties for such damages and costs is joint and several. The obligations of the CONTRACTOR and their surety with respect to the warranty and maintenance shall remain in full force and effect for the portion of the Work completed by the CONTRACTOR and shall not expire until the expiration of the prescribed time period measured from the final acceptance of the Project in its entirety. These clauses shall survive the termination of this CONTRACT. If the CITY makes a determination pursuant to this Contract to hold the CONTRACTOR in default and terminate the Contract for cause and it is subsequently determined that any such determination was improper, unwarranted, or wrongful, then any such termination shall be deemed for all purposes as a termination without cause as described below. The CONTRACTOR agrees that it shall be entitled to no damages, allowances or expenses of any kind other than as provided in this Agreement in connection with such termination, any and all claims for consequential damages, loss of bonding capability, destruction of business, unabsorbed home office overhead, lost profit and related claims.

15.2.2 Where CONTRACTOR's services have been terminated by the CITY, the termination shall not affect any rights or remedies of the CITY against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies due CONTRACTOR by the CITY shall not release CONTRACTOR from liability.

15.3 CITY MAY TERMINATE WITHOUT CAUSE:

15.3.1 The CITY may terminate this Contract without cause by giving seven (7) days prior written notice to the CONTRACTOR, and in such event, the CITY shall pay the CONTRACTOR for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the Work completed as of the Date of Termination, plus reasonable termination expenses. The CITY also shall reimburse the CONTRACTOR for all costs necessarily incurred for organizing and carrying out the stoppage of Work paid directly to the CONTRACTOR, not including overhead, general expenses or profit. The CITY shall not be responsible to reimburse the CONTRACTOR for any continuing contractual commitments to subcontractors or material men or for penalties or damages for canceling such contractual commitments, (with the exception that the CITY shall reimburse the CONTRACTOR for major materials or equipment purchased before termination, if the CONTRACTOR can show proof of such purchases prior to notice of termination) inasmuch as the CONTRACTOR shall make all subcontracts and other commitments subject to this provision. In the event of termination by the CITY, the CITY may require the CONTRACTOR promptly to assign to it, all or some subcontracts, construction, plants, materials tools, equipment, appliances, rental agreements, and other commitments which the CITY, in its sole discretion, chooses to take by assignment, and in such event the CONTRACTOR shall promptly execute and deliver to the CITY written assignments of the same.

15.4 REMOVAL OF EQUIPMENT DUE TO TERMINATION:

15.4.1 Removal of Equipment: In the case of termination of this Contract before completion, for any cause whatever, the CONTRACTOR, if notified to do so by the CITY or CITY's Project Manager, shall promptly remove any part of all of this equipment and supplies from the property of the CITY. Should the CONTRACTOR not remove such equipment and supplies, the CITY shall have the right to remove them at the expense of the CONTRACTOR. Equipment and supplies shall not be construed to include such items for which the CONTRACTOR has been paid in whole or in part.

15.5 CONTRACTOR MAY STOP WORK OR TERMINATE:

15.5.1 If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety (90) days by the CITY, or under an order of court or other public authority, or CONSULTANT fails to act on any Application of Payment within thirty (30) days after it is submitted, or the CITY fails to pay any sum finally determined to be due within sixty (60) days to CONTRACTOR, CONTRACTOR may upon CITY's and CONSULTANT's receipt of seven (7) days written notice to the CITY and CONSULTANT, terminate the Contract and the CITY shall pay the CONTRACTOR for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the Work completed as of the Date of Termination. The CITY shall not be responsible to reimburse the CONTRACTOR for any continuing contractual commitments for canceling such contractual commitments inasmuch as the CONTRACTOR shall make all subcontracts and other commitments subject to this provision. The CITY may require the CONTRACTOR to promptly assign CITY all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and any other commitments which the CITY, in its sole discretion, chooses to take by assignment, and in such event, the CONTRACTOR shall promptly execute and deliver to the CITY written assignments of the same. In addition and in lieu of terminating the Contract, if CONSULTANT has failed to act on an Application for Payment or the CITY has failed to make any payment as aforesaid, CONTRACTOR may upon seven (7) days written notice to the CITY

and CONSULTANT, stop the Work until payment of all amount becomes due. The provisions of this paragraph shall not relieve the CONTRACTOR of the obligations under Paragraph 6.24 – Continuing the Work, to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with the CITY or CONSULTANT.

ARTICLE 16 -DISPUTE RESOLUTION

16.1 GOOD FAITH EFFORT:

16.1.1 Any disputes relating to interpretation of the terms of this Contract or a question or fact arising under this Contract, shall be resolved through good faith efforts upon the part of the CONTRACTOR and the CITY or CITY's Project Manager. At all times, the CONTRACTOR shall carry on the Work and maintain its progress schedule in accordance with the requirements of the Contract and the determination of the CITY or its representatives, pending a final resolution of the dispute, including, if necessary, any determination by a Court of competent jurisdiction. Any dispute which is not resolved by mutual agreement of CONTRACTOR and CITY's or CITY's Project Manager shall be decided by the CITY MANAGER or CITY MANAGER's designee who shall reduce the decision to writing. The decision of the CITY MANAGER or CITY MANAGER's designee shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not be supported by substantial evidence.

16.2 MEDIATION:

16.2.1 Prior to initialing any litigation concerning this Contract, the CITY reserves the right to submit the disputed issue or issues to a mediator for non-binding mediation. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for Palm Beach County. The fee of the mediator shall be shared equally by the parties. To the extent allowed by law, the mediation process shall be confidential and the results of the mediation or any testimony or argument introduced at the mediation shall not be admissible as evidence in any subsequent proceeding concerning the disputed issue.

ARTICLE 17 – MISCELLANEOUS:

17.1 GIVING NOTICE:

17.1.1 All notices, requests, consents and other communications required or permitted under this Contract shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, or mailed by registered or certified mail (postage prepaid) return receipt requested, addressed to :

To CITY:
User Department
100 E. Ocean Avenue
Boynton Beach, Florida 33435

WITH A COPY TO:
Director of Financial Services
Procurement Services Division
100 E. Ocean Avenue
Boynton Beach, Florida 33435

CONTRACTOR:
Individual or to a member of the firm or to an officer of the
corporation for whom it is intended.

17.2 COMPUTATION OF TIME:

17.2.1 When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a federal or state legal holiday, such day shall be omitted from the computation.

17.3 NOTICE OF CLAIM:

17.3.1 Should CITY or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim shall be made in writing to the other party within seven (7) calendar days of the first observance of such injury or damage. The provisions of this Paragraph 17.3 shall not be construed as a substitute for a waiver of the provisions of any applicable statute of limitations or repose or an actual waiver of the provisions.

17.4 CULMULATIVE REMEDIES:

17.4.1 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by Sections 6 – Contractor's Responsibilities, Section 13 – Test and Inspections, Correction, Removal or Acceptance of Defective Work, Section 14 – Payments to Contractor and Completion, and Section 15 – Suspension of Work and Termination, and all of the rights and remedies available to the CITY and CONSULTANT thereunder, are in addition to and are not to be construed in any way as a limitation of, any rights and remedies available to any or all duties and obligations which are otherwise imposed or available by federal, state and local laws or regulations, by special warranty or guarantee or by any other provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents, and the provisions of this paragraph shall be as effective as if stated specifically in the Contract Documents in connection with each particular duty obligation, right and remedy. All representations warranties and guarantees made in the Contract Documents shall survive final payment and termination of completion of the Contract.

17.5 ACCIDENT AND PREVENTION:

17.5.1 The safety provisions of applicable laws and building and construction codes shall be observed and the CONTRACTOR shall take or cause to be taken such additional safety and health measures as the Local Public Agency involved may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" as published by the Associated General Contractors of America, Inc. to the extent that such provisions are not in conflict with applicable laws. The CONTRACTOR shall maintain an accurate record of all cases of death, occupational diseases, or injury requiring medical attention or causing loss of time from Work, arising out of and in the course of employment on Work under the Contract. The CONTRACTOR shall promptly furnish the local public agency with reports concerning these matters.

17.6 FLORIDA PRODUCTS AND LABOR:

17.6.1 The CONTRACTOR shall comply with Florida Statutes § 255.04, which requires that on public building contracts, Florida products and labor shall be used whenever price and quality are equal.

17.7 EMPLOYEES:

17.7.1 All labor described in these specifications or indicated on the Drawings and the Work specified or indicated shall be executed in a thoroughly substantial and workmanlike manner by mechanics skilled in the applicable trades.

17.7.2 Any person employed on the Project who fails, refuses, or neglects to obey the instructions of the CONTRACTOR in anything relating to this Project, or who appears to the CITY or CITY's Representative to be disorderly, intoxicated, insubordinate, or incompetent, shall upon the order of the CITY, be discharged at once and will no longer be employed in any part of the Work. Any interference with, or abuse or threatening conduct toward the CITY, CONSULTANT, or their inspectors by the CONTRACTOR or its employees or agents, shall be authority for the CITY to annul the Contract and re-let the Project. No intoxicating substance shall be allowed at the Project Site.

17.8 NON-DISCRIMINATION:

17.8.1 The CONTRACTOR shall not discriminate against employees or applicants for employment because of race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination, rates of pay or other form of compensation; and selection for training including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. These provisions apply to all subcontractors and CONTRACTOR is responsible for the subcontractor compliance.

17.9 DRUG-FEE WORKPLACE:

17.9.1 The CITY requires all prospective CONTRACTORS to maintain a Drug-Free Workplace and have their Drug-Free Workplace policy posted in their offices and available for inspection by the CITY.

17.10 PUBLIC ENTITY CRIMES:

17.10.1 Pursuant to Florida Statutes § 287.133, as amended; a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a Bid on a contract to provide any goods or services to a public entity, may not submit a Bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit Bids on leases of real property to a public entity, may not be awarded to perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in Florida Statutes § 287.017 for CATEGORY TWO or higher for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

17.11 ASSIGNMENT:

17.11.1 This Contract nor any monies due hereunder, or any part thereof; shall not be assigned or transferred by CONTRACTOR without written consent of the party sought to be bound. The CITY shall not be liable to any assignee or transferee of the Contract or any monies due hereunder without the previous written consent of the CITY, to the assignment or transfer. The CITY shall not release or discharge CONTRACTOR from any obligation hereunder. The CITY shall not approve an assignment or transfer unless the Surety on the Contract Performance and Payment Bonds has informed the CITY in writing that it consents to the assignment or transfer.

17.12 VENUE:

17.12.1 This Contract shall be interpreted as a whole unit and section headings are for convenience only. All interpretations shall be governed by the laws of the State of Florida with venue lying in Palm Beach County, Florida.

17.13 FUNDING OUT:

17.13.1 It is necessary that fiscal funding out provisions be included in all Bids in which the terms are for periods longer than one year. Therefore, the following funding out provisions are an integral part of this Invitation to Bid and CONTRACTOR agrees that:

17.13.2 The CITY during the contract period may terminate or discontinue the items covered in this Bid for lack of appropriated funds upon the same terms and conditions.

17.13.3 Such prior written notice shall state that the lack of appropriated funds is the reason for termination.

17.14 CITY's PURCHASING CARD:

17.14.1 The CITY has authorized use of a Purchasing Card to expedite small dollar purchases for materials, supplies and other items needed for

daily operations. CONTRACTOR may be presented these Purchasing cards by authorized CITY personnel for the above mentioned purchases.

17.14.2 The CITY reserves the right to use the Purchasing Cards as an optional payment method to pay invoices for the project Work submitted by the CONTRACTOR.

17.15 DEBARMENT:

17.15.1 The CITY shall have the authority to debar a person/corporation/contractor for cause for consideration of award of future contacts. The debarment shall be for a period commensurate with the seriousness of the causes, generally not to exceed three (3) years. When the offense is willful or blatant, a longer term of debarment may be imposed, up to an indefinite period.

17.16 REQUIREMENTS FOR PERSONNEL ENTERING CITY PROPERTY:

17.16.1 Possession of firearms shall not be tolerated in or near CITY buildings. Nor shall violation of Federal, State and local laws and policies regarding Drug-Free Workplace be tolerated. Violators shall be subject to immediate termination.

17.16.2 "Firearm" means any weapon (including a starter gun or antique firearm) which is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame of receiver of any such weapon; any destructive device; or any machine gun.

17.16.3 No person who has a firearm in their vehicle may park their vehicle on CITY premises.

17.16.4 If any employee of CONTRACTOR or Sub-Contractor is found to have brought a firearm on CITY property, such employee must be terminated from the Project by the CONTRACTOR or Sub-Contractor. If the Sub-Contractor fails to terminate such employee, the Sub-Contractor's agreement with the CONTRACTOR for the CITY project shall be terminated. If the CONTRACTOR fails to terminate such employee or fails to terminate the agreement with the Sub-Contractor who fails to terminate such employee, the CONTRACTOR's agreement with the CITY shall be terminated.

17.17 PRODUCT RECALL:

17.17.1 In the event the CONTRACTOR receives notice that a product delivered by the CONTRACTOR to the CITY has been recalled, seized, or embargoed, and/or has been determined misbranded, adulterated, or found to be unfit for human consumption by a packer, processor, subcontractor, retailer, manufacturer, or by any state or federal regulatory agency, the CONTRACTOR shall notify the CITY's Procurement Services Division within two (2) business days of receiving such notice. The CITY's acceptance or failure to reject the affected product as non-conforming shall not in any way impact, negate, or diminish the CONTRACTOR's duty to notify the CITY, CONSULTANT and CITY's Procurement Services Division that the affected product has been recalled, seized or embargoed, and/or has been determined to be misbranded, adulterated, or found to be unfit for human consumption. The form and content of such notice to the CITY shall include the name and description of the affected product; the approximate date the affected product was delivered to the CITY; the bid number; and relevant information relating to the proper handling of the affected product and/or proper disposition of the affected product by the CITY, if necessary to protect the health, welfare, and safety of CITY employees, and any health hazards known to the CONTRACTOR which may be caused or created by the affected product.

17.17.2 The CONTRACTOR shall, at the option of the CITY's Procurement Services Division, either reimburse the purchase price or provide an equivalent replacement product at no additional cost to the CITY. The CONTRACTOR shall be responsible for removal and/or replacement of the affected product within the time specified by the CITY, without causing significant inconvenience to the CITY.

17.17.3 At the option of the CITY, the CONTRACTOR may be required to reimburse storage, disposal and/or handling fees to be calculated from time of delivery and acceptance to actual removal or disposal. The CONTRACTOR shall bear all costs associated with the removal and proper disposal of the affected product. The failure to reimburse the purchase price and storage and/or handling fees or to removal and/or replace the affected product with an equivalent replacement within the time specified by the CITY, without causing significant inconvenience to the CITY shall be considered a default of the Contract.

17.18 RIGHTS TO BID DOCUMENTS:

17.18.1 All copies and contents of any proposal, attachment, and explanation thereof submitted in response to this Invitation to Bid (except copyright material), shall become the property of the CITY of Boynton Beach. The CITY reserves the right to use, at its discretion, and in any manner it deems appropriate, any concept, idea, technique or suggestion contained therein. All copyright and industrial/commercial proprietary, confidential and/or privileged information such as financial records, must be clearly identified, as such confidentiality is protected until award of contract, in accordance with Florida Statutes, Chapter 119. Such material shall be returned to the Bidders prior to award of contract so as to preserve the proprietary and confidential nature of its contents.

17.19 SEVERABILITY:

17.19.1 Indulgence by the CITY on any non-compliance by the CONTRACTOR does not constitute a waiver of any rights under this Invitation to Bid. If any term or provision of this Bid or resulting Contract, or the application thereof to any person or circumstances shall to any extent be held invalid or unenforceable, the remainder of this Bid or Contract, or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term provision of this Bid/Contract shall be deemed valid and enforceable to the extent permitted by law.

17.20 VERIFICATION OF EMPLOYMENT STATUS:

17.20.1 The CITY shall not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized immigrant workers, constituting a violation of the employment provisions contained in U.S. C. Section l324a(e) (Section274A9e) of the Immigration and Nationality Act (INA). The CITY shall consider the employment by any contractor of unauthorized aliens a violation by the recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the CITY.

17.21 ABBREVIATIONS AND SYMBOLS:

17.21.1 Referenced Standards: Any reference to published specifications or standards of any organization or association shall comply with the requirements of the specifications or standards which is current on the date of Advertisement of Bids. In case of a conflict between the referenced specifications or standards, the one having the more stringent requirement shall govern.

17.21.2 In case of conflict between the referenced specifications or standards and the Contract Documents, the Contract Documents shall govern.

17.21.3 ABBREVIATIONS:

AA	Aluminum Association
AAA	American Arbitration Association
AABC	Associated Air Balance Council
AAMA	Architectural Aluminum Manufacturer's Assoc.
AASHO	The American Association of State Highway Officials
ABA	American Bar Association
ABMA	American Boiler Manufacturer's Association
ABPA	Acoustical and Board Products Association
ACI	American Concrete Institute
ACPA	American Concrete Pipe Association
AEIC	Association of Edison Illuminating Companies
AFBMA	Anti-Friction Bearing Manufacturer's Assoc.
AGA	American Gas Association
AGC	Associated General Contractors of America
AGMA	American Gear Manufacturer's Association
AHA	American Hardboard Association
AI	The Asphalt Institute
AIA	American Institute of Architects
AIA	American Insurance Association
AIEE	American Institute of Electrical Engineers (Now IEEE)
AIMA	Acoustical and Insulating Materials Association
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
AMCA	Air Moving and Condition Association
ANSI	American National Standard Institute
APA	American Plywood Association
API	American Petroleum Institute
APWA	American Public Works Association
AREA	American Railway Engineering Association
ARI	American Refrigeration Institution
ASA	American Standards Association (Now ANSI)
ASAHC	American Society of Architectural Hardware Consultants
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASSCBC	American Standard Safety Code for Building Construction
ASSHTO	American Association of State Highway Transportation Officials
ASTM	American Society for Testing and Materials
AWG	American Wire Gauge
AWI	Architectural Woodwork Institute
AWPA	American Wood Preserver's Association
AWPB	American Wood Preserver's Bureau
AWS	American Welding Society
AWWA	American Water Works Association
BHMA	Builders Hardware Manufacturer's Association
BIA	Brick Institute of America (Formerly, SCPI)
CDA	Copper Development Association
CFS	Cubic Feet Per Second
CMAA	Crane Manufacturers Association of America
CRSI	Concrete Reinforcement Steel Institute
CS	Commercial Standard
DHI	Door and Hardware Institute
DIPRA	Ductile Iron Pipe Association
DOT Spec	Standard Specification for Road and Bridge Construction, Florida Department of Transportation
E/A	Engineer and/or Architect
EDA	Economic Development Association
EEI	Edison Electric Institute
EPA	Environmental Protection Agency
FCI	Fluid Control Institute
FEC	Florida East-Coast Railway
FDER	Florida Department of Environmental Regulation
FDOT	Florida Department of Transportation
Fed Spec	Federal Specification

FPL	Florida Power and Light
FPS	Feet Per Second
FS	Federal Standards
GA	Gypsum Association
GPM	Gallons Per Minute
HMI	Hoist Manufacturer's Institute
HP	Horsepower
HSBII	Hartford Steam Boiler Inspection and Insurance Co.
ID	Inside Diameter
IEEE	Institute of Electrical and Electronic Engineers
IFI	Industrial Fasteners Institute
IPCEA	Insulated Power Cable Engineers Association
IPS	Iron Pipe Size
LWDD	Lake Worth Drainage District
MF	Factory Mutual System
MGD	Million Gallons Per Day
MHI	Materials Handling Institute
MIL	Military Specifications
MMA	Monorail Manufacturer's Association
NBFU	National Board of Fire Underwriters
NBHA	National Builders' Hardware Association
NBS	National Bureau of Standards
NCSA	National Crushed Stone Association
NCSPA	National Corrugated Steel Pipe Association
NEC	National Electrical Code
NECA	National Electrical Contractors' Association
NEMA	National Electrical Manufacturer's Association
NFPA	National Fire Protection Association
NLA	National Lime Association
NPC	National Plumbing Code
NPT	National Pipe Threads
NSC	National Safety Council
NSF	National Sanitation Foundation
OD	Outside Diameter
OSHA	U.S. Department of Labor, Occupational Safety and Health Administration
PCA	Portland Cement Association
PCI	Pre-stressed Concrete Institute
PS	United States Products Standards
PSI	Pounds per Square Inch
PSIA	Pounds per Square Inch Atmosphere
PSIG	Pounds per Square Inch Gauge
SAE	Society of Automotive Engineers
SDI	Steel Decks Institute
SFWMD	South Florida Water Management District
SIGMA	Sealed Insulating Glass Manufacturer's Association
SJI	Steel Joists Institute
SMACNA	Sheet Metal and Air Conditioning Contractor's National Association
SSI	Scaffolding and Shoring Institute
SSPC	Steel Structures Painting Council
SSPC	Structural Steel Painting Council
STA	Station (100 feet)
TAS	Technical Aid Series
TCA	The Council America
TDH	Total Dynamic Head
TH	Total Head
UBC	Uniform Building Code
UL	Underwriter's Laboratories, Inc.
USACE	United States Army Corps of Engineers
USASI	United States of American Standards Institute

17.21.4 GENERAL ABBREVIATIONS AND ACRONYMS

ACR	Attenuation-to-Crosstalk Ration
ADA	Americans with Disabilities Act
AFF	Above finished floor
ANSI	American National Standards Institute
ASTM	American Society for Testing and Materials (ASTM International)
AWG	American Wire Gauge
BD	Building distributor (replacing main-cross connect and MDF as "building service" (room identifiers)
BICSI®	Building Industry Consulting Service International, Inc.
BTU	British Thermal Unit
CATV	Community Antenna Television (Cable Television)
CD	Campus distributor (replacing main-cross connect and MDF as "campus-wide service" room identifiers). Also, compact disk for storage of audio or video information.

dB	Decibel
EMT	Electrical metallic tubing
ENT	Electrical non-metallic tubing
EDPM	Ethylene-polypropylene-diene membrane
EF	Entrance facility
EIA	Electronic Industries Alliance
ELFEXT	Equal Level Far End Crosswalk
EMC	Electromagnetic Compatibility
EMI	Electromagnetic Inference
ER	Equipment Room, Replacing "TR"
FMC	Flexible metallic conduit
FCC	Federal Communications Commission
FD	Floor Distributor (replacing network room, intermediate and horizontal cross-connect, and telecommunications as "building service" room identifiers). Also, Floor Drain as part of building plumbing system.
FDDI	Fiber Distribution Data Interface
FEXT	Far-End Crosstalk
FOTP	Fiber Optic Test Procedure
Freq	Frequency
GE	Ground equalizer (replacing TBBIBC)
Gnd	Ground
HB	Handbox, also hose bibb for water supply part of plumbing system
HC	Horizontal Cross-Connect (replaced by floor distributor "FD")
HH	Handhole
HVAC	Heating, Ventilation, and Air-Conditioning
Hz	Hertz
IC	Intermediate Cross-Connect (replaced by "BD" or "FD"
IEEE	Institute of Electrical and Electronics Engineers
IMC	Intermediate metal conduit
ISO	International Organization for Standardization
ISP	Inside Cable Plant
LFMC	Liquidtight flexible metal conduit
LFNC	Liquidtight flexible non-metallic conduit
Mbps	Megabits per second
MC	Main Cross-Connect (replaced by campus distributor "CD")
MDF	Main Distributor Frame (replaced by "CD" or "BD")
MER	Main Equipment Room
MH	Maintenance Hole
MHz	Megahertz
NBR	Acrylonitrile-butadiene rubber
NEC	National Electric Safety Code, C2-1997
NFPA	National Fire Protection Association
NDPES	National Pollutant Discharge Elimination Systems
NR	Network Room
OSHA	Occupational Safety and Health Administration
OCP	Outside Cable Plant
OTDR	Optical Time Domain Reflectometer
PR	Pair
RCDD®	Registered Communications Distribution Designer
RFI	Radio Frequency Interference
RH	Relative Humidity
RNC	Rigid nonmetallic conduit
SM	Single Mode
TBB	Telecommunication Bonding Backbone
TBBIBC	Telecommunication Bonding Backbone Interconnecting Bonding Conductor (replaced by ground equalizer "GE")
TE	Telephone Equipment (Wall Mounted Equipment Rack)
TGB	Telecommunications Grounding Buss Bar
TIA	Telecommunications Industry Association
TMGB	Telecommunications Main Grounding Buss Bar
TR	Telecommunications Room (being replaced with "ER")
UL	Underwriters Laboratory
UPS	Uninterruptible Power Supply
WAO	Work Area Outlet

17.21.5 UNITS OF MEASURE

Weights and Measures shall be identified by Weights and Measures Division, NIST., U.S. Department of Commerce, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899-26.

END OF SECTION

Gaithersburg, MD 20899-26.

END OF SECTION

INVITATION TO BID
FOR
FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

BID No. PWE24-024

SPECIFICATIONS & TECHNICAL REQUIREMENTS

SC01010	Summary of Project
SC01025	Measurement and Payment
SC01027	Applications for Payments
SC01091	Reference Specifications
SC01153	Change Order Procedures
SC01500	Construction Facilities and Temporary Controls
SC01505	Mobilization
SC01530	Barriers
SC01570	Maintenance of Traffic
SC01600	Material and Equipment
SC01650	Start Up
SC01700	Contract Closeout
SC01710	Cleaning
SC01800	Miscellaneous Work and Clean up

SECTION 01010 - SUMMARY OF PROJECT

PART 1 - GENERAL

1.01 WORK COVERED BY CONTRACT DOCUMENTS/REQUIREMENTS INCLUDED

A. The work under this project consists of:

installation of a new emergency generator as designated in the plans. Work to include the selective demolition of the existing generator enclosure, removal of the existing generator, the installation a new generator and associated infrastructure. The Contractor/Vendor shall furnish, install, and provide all labor and materials to complete installation of the new generator. The scope of work will be performed to completion based on the established bid pricing. Individual purchase orders will be issued by the City as required.

B. Omission of a specific item or component of a system obviously necessary for the proper functioning of the equipment or system shall not relieve the Contractor of the responsibility of furnishing the item as part of the work at no additional expense to the Owner.

C. Except as specifically noted elsewhere, Contractor(s) shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, water, heat, utilities, and temporary facilities necessary for the proper execution and completion of work.

D. Concurrent with the installation of the water main, drainage or sanitary sewer improvements and when shown on the project construction drawings, the work includes swale development and improvements on both sides of the streets in the project area. Work includes re-grading, driveway apron reconstruction and all surface restoration.

E. Restoration shall immediately follow the acceptance of required system testing and be performed as required by Section 02960 RESTORATION OF SURFACE IMPROVEMENTS.

1.02 RELATED REQUIREMENTS

A. Section SC01025: Measurement and Payment

B. Construction Facilities and Temporary Controls: Section SC01500

C. Restoration of Surface Improvements: Section SC02960

1.03 CONTRACTS

A. Construct the Work in accordance with Section SC01025: Measurement and Payment Procedures.

1.04 CONTRACTOR'S USE OF SITE/PREMISES

A. Contractor shall limit their use of the premises for Work and storage, to the areas designated.

B. Coordinate use of premise under direction of CITY and/or Consultant.

C. Assume full responsibility for the protection and safekeeping of Products under this Contract, stored on the site.

D. Move any stored Products, under Contractor's control, which interfere with operations of the CITY, other contractors or the general public.

1.05 SAFETY AND OSHA COMPLIANCE

A. The Contractor shall comply in all respects with all Federal, State and Local safety and health regulations. Copies of the Federal regulations may be obtained from the U.S. Department of Labor, Occupation Safety and Health Administration (OSHA), Washington, DC 20210 or their regional offices.

B. The Contractor shall comply in all respects with the applicable Workman's Compensation Laws.

PART 2 – PRODUCTS

2.1 All materials are to be ***MADE IN THE UNITED STATES OF AMERICA***. Allowable exceptions are ductile iron fittings supplied by American Cast Iron Pipe Company from Brazil, Sigma Corporation from China, and Star-Pipe Products from the United States and China, and Tyler Union from the United States and China; and Electronic Marking System (EMS) full-range makers by 3M from Mexico.

2.2 SALVAGED MATERIALS

In the absence of special provisions to the Contract, salvaged materials, equipment or supplies that occur are the property of the CITY and shall be cleaned, stored and delivered to the CITY as directed by the CITY's Project Manager.

2.3 CERTIFIED CHEMICALS

The Contractor shall use U.S. Department of Agriculture certified chemicals only during performance of all work under this contract. All chemicals used during project construction or furnished for project whether herbicide, pesticide,

disinfectant, polymer, reactant or other classification, must show approval of either EPA or USDA and be accompanied by an MSDS. Use of all such chemicals and disposal of residue shall be

in strict conformance with manufacturer's instructions.

PART 3 – EXECUTION

3.1 CONTRACTOR SUPERVISION

A. As required by the Contract Documents, the Contractor's Project Representative (Superintendent) shall be on site at all times and actively engaged in controlling and coordinating all on site project activities including direction and oversight of self-performed and subcontractor work activities.

B. The Superintendent/Contractor's Project Representative shall have the full authority to receive instructions to execute the orders or directions of the CITY and Consultant.

3.2 GENERAL

A. The Contractor shall, prior to entering any section, prepare Pre Construction video and digital photographs, in accordance with Section 01390 VIDEO SITE SURVEY, of each property and Right-of-Way (ROW) areas to determine existing site conditions. Together the video and photographs will provide the basis for the condition of restoration required in Section 02960 RESTORATION OF SURFACE IMPROVEMENTS.

B. The Contractor shall notify all property owners / residents forty-eight (48) hours prior to working in public Rights-of-Way or easements affecting or adjoining their properties. Notification shall be by hand-delivered flyer that shall contain the following information:

1. Project Name
2. Date of Commencement
3. Description of Work
4. Name of Contractor
5. Name of Contractor's Representative
6. Local Phone Number of Contractor's Representative

The CITY must approve the Contractor's notification prior to issuance. Contractor must submit Contractor's Notification to CITY and CONSULTANT in writing within one (1) week prior to working in public Right-Of-Ways (ROW) or easements affecting for adjoining property owner's property.

C. The Contractor shall, prior to the removal of any fences, erect temporary fences to secure the owner's property. These temporary fences shall be of 4' high woven wire (2" x 4" grid), on the T line post 10' on centers. These fences shall run along the easement line and will remain in place until the permanent fence is re-erected.

D. The Contractor shall not start major construction activities, such as pipeline and structure excavations, or preparation for major activities, such as setting wellpoints and header pipe, just prior to extended holiday periods such as the typical week taken off at the end of each year.

3.3 NPDES COMPLIANCE

A. Prior to the commencement of work, the Contractor must obtain the permit coverage for stormwater discharge from large and small construction activities and must implement appropriate pollution prevention techniques and SWPPP to minimize erosion and sedimentation to properly manage the stormwater runoff. The Contractor shall prepare a NPDES Site Plan including sketches and Best Management Practice procedures for review and comment from the Project Manager. The NPDES Site Plan shall include the control of stormwater, ground water and subsurface water during dewatering operations.

(DEP adopted Rule 62-621.300 (4), F.A.C., with specific provisions for requesting permit coverage for the management of stormwater discharge from large and small construction activities.)

B. The permit coverage for construction activities is to be obtained by submitting DEP form 62-621.300 (4) (b) Notice of Intent (NOI) to Use Generic Permit for Stormwater Discharge from Large and Small Construction Activities and by preparing and implementing a Stormwater Pollution Prevention Plan (SWPPP). After construction is complete, Notice of Termination (NOT) to discontinue the permit coverage is to be submitted by utilizing form 62-621.300 (6).

C. For additional information contact NPDES Stormwater Section at:

Florida Department of Environmental Protection
Tallahassee, FL 32399-2400
(850) 921-9904

3.4 PROTECTION OR REMOVAL OF UTILITY LINES

A. Prior to construction the Contractor shall locate for physical location, elevation and dimensions and adequately uncover existing utilities, (within the path of its proposed work), to determine possible conflicts. By starting underground constructions, the Contractor has agreed that it is fully responsible for any and all damages and/or delays that may arise from not having adequately locating the underground utilities. This applies to underground utilities that are shown on the project construction drawings and those that

have been physically marked in the field by the various locating organizations or agencies.

B. Information provided on the plans may be used as an approximate guide to assist the Contractor, however, the Contractor shall rely on actual field investigation to assure that all of the existing utilities are accurately located prior to commencement of its work.

C. Existing structures reflect the best available information, but it shall be the Contractor's responsibility to acquaint itself with all information and to avoid conflict with existing conditions. Contractor shall protect all existing utility lines that are to be retained, or utility line constructed during excavation operations, from damage during excavation and backfilling; if damaged, repair at Contractor's expense.

D. Existing Utility Lines to be Retained: Contractor shall repair damaged lines that are not shown on drawings, or locations of which are not known to Contractor in sufficient time to avoid further damage.

E. Uncharted or incorrectly charted underground utilities that are discovered during construction shall be incorporated into the project As-Builts with vertical and horizontal coordinates.

F. Prior to commencement of any excavation, the Contractor shall comply with Florida Statute 553.851 for the protection of underground gas lines and underground telecommunication lines.

END OF SECTION

SECTION 01025 - MEASUREMENT AND PAYMENT PROCEDURES

PART 1 GENERAL

1.01 GENERAL

The Contractor shall receive and accept the compensation provided in the Bid and the Contract as full payment for furnishing all materials, labor, tools and equipment, for performing all operations necessary to complete the work under the Contract, and also in full payment for all loss or damages arising from the nature of the work, or from any discrepancy between the actual quantities of work and quantities herein estimated by the CONSULTANT, or from the action of the elements or from any unforeseen difficulties which may be encountered during the prosecution of the work until the final acceptance by the CITY.

The prices stated in the Bid include all costs and expenses for taxes, labor, equipment, materials, commissions, transportation charges and expenses, patent fees and royalties, labor for handling materials during inspection, together with any and all other costs and expenses for performing and completing the work as shown on the Drawings and specified herein. The basis of payment for an item at the unit price shown in the proposal shall be in accordance with the description of that item in this Section.

The Contractor's attention is again called to the fact that the quotations for the various items of work are intended to establish a total price for completing the work in its entirety. Should the Contractor feel that the cost for any item of work has not been established by the Bid Form or Payment Items, he shall include the cost for that work in some other applicable bid item, so that his proposal for the project does reflect his total price for completing the work in its entirety.

1.02 MEASUREMENT

A. The quantities for payment under this Contract shall be determined by actual measurement of the completed items, in place, ready for service and accepted by the CITY, in accordance with the applicable method of measurement therefore contained herein.

1.03 AUTHORITY

A. Measurement methods delineated in the FDOT Standard Specifications for Road and Bridge Construction, latest Edition, or the individual specification sections complement the criteria of this section. In the event of conflict, the Contractor shall notify the CITY in writing. In determining the resolution, the CITY shall consider the requirement of the individual specification section, FDOT requirements and this Section.

B. Any requirements of the Contract Documents, i.e., technical specifications or project construction drawings for which the method of payment is not explicitly defined are considered to be incidental costs and should be included in other pay items as appropriate.

1.04 RELATED SECTIONS:

A. Applications for Payments: Section SC01027

B. Shop Drawings, Working Drawings, and Samples – Section SC01340

C. Schedule of Values: Section SC01370

D. Change Order Procedures: Section SC01153

E. Field Engineering: Section SC01050

F. Quality Requirements: Section SC01400

G. Record Drawing Requirements – Section SC01705

H. Testing Specific Utility Systems

1. Refer to Section 02513 POTABLE WATER AND RECLAIMED WATER DISTRIBUTION SYSTEMS, 02536 FORCE MAINS and Section 02538 SANITARY SEWER SYSTEMS for applicable and specific requirements. Contractor is responsible for all testing costs associated with these systems.

1.05 ALLOWANCES – N/A

1.06 SCHEDULE OF VALUES

A. Submit Schedule of Values at the Pre-Construction Meeting.

B. The Schedule of Values shall be a computer generated original. When the Contractor's proposed Schedule of Values is accepted by the CITY, it shall become the basis for the Application for Payment.

C. Contractor shall only revise the accepted Schedule of Values to identify, as separate line items approved on a Field Order or Change Order. The CITY may issue a Field Order substituting or modifying Schedule of Value items.

1.07 APPLICATIONS FOR PAYMENT

A. Refer to Section SC01027 – APPLICATIONS FOR PAYMENT

B. Submit one (1) original Application for Payment (AFP) for review, authorization and processing.

I. Content and Format: Utilize Schedule of Values for listing items in Application for Payment outlining the following:

Provide a column for each of the following:

a. Item Number

b. Item Description

c. Quantity

d. Unit of measurement

e. Scheduled Value

f. Change Orders

g. Work Completed:
   1. Previous Period (Quantity and Value)
   2. This Period (Quantity and Value)

h. To Date (Quantity and Value)

i. Percentage of Completion

j. Balance to Finish

k.. Retainage

NOTE: There is no column for “Materials Stored”, the CITY does not pay for items ordered and/or stored on site. As defined later in this Section, payment for pay items are paid for once the item is installed, measured in place, completed and accepted.

J. Include one (1) set of progress photographs with each Application for Payment. Refer to the Contract Documents, specifically Section SC01380 CONSTRUCTION PHOTOGRAPHS for specific details and requirements.

K. Application for Final Payment must be marked FINAL. Contractor must include in the FINAL AFP package, proof of payment and final settlement with the CITY with regards to any temporary and/or construction water meters used during the course of the project.

L. When existing Right-Of-Way (ROW) irrigation must be disturbed due to pipeline installation, any existing irrigation lines shall be marked on the Contractors drawings prior to or at the time of temporary cutting-&-capping. The replacement of existing irrigation in the Public Right-Of-Way as the result of pipeline installation or swale development is NOT a pay item. Replacement of existing ROW irrigation shall be incidental to the Unit Price of the pipeline.

1.08 MEASUREMENT OF AND PAYMENT FOR WORK

A. **Monthly Payments to the Contractor.** The Contractor shall plan its work for construction on the basis of twelve (12) monthly pay periods per year. So long as the work is prosecuted in compliance with the provisions of the Contract, the Contractor will, on or about the last day of the pay period, make an approximate estimate, in writing on a form approved by the CITY of the proportionate value of the work done, items, and locations of the work performed up to and including the last day of the period then ending. The CONSULTANT will then review such estimate and make the necessary recommendations to the Contractor for revision. The Contractor shall revise the Application for Payment and resubmit to the CONSULTANT for review and Certification. **Redlined Applications for Payment will not be accepted by the CITY.** If the Contractor and the CONSULTANT do not agree on the approximate estimate of the proportionate value of the work done for any pay period, the determination of the CONSULTANT shall be binding. The amount of such estimate after deducting ten percent (10%) and all previous payments, shall be due and payable to the Contractor in accordance with the Florida Prompt Payment Act, §218.70 Florida Statutes, as may be amended from time to time.

B. Substantiating Data: When the CONSULTANT requires substantiating information, Contractor shall submit data justifying quantities and dollar amounts in question. Contractor shall provide three (3) copies of data with cover letter for each copy of submittal showing application number and date, and line item by number and description.

1.09 MEASUREMENT AND PAYMENT - UNIT PRICES

A. Measurement methods delineated in individual specification sections complement criteria of this section. In event of conflict, requirements of individual specification section govern.

B. Contractor shall take daily and weekly measurements and compute quantities. The Contractor shall review and sign these daily and weekly measurements with the CONSULTANT. The CONSULTANT shall also sign-off on the weekly measurement sheets indicating the CONSULTANT’s progressive concurrence with the quantities. The Contractor shall transmit the signed-off weekly measurement sheets to the CONSULTANT. These measurement sheets shall be used to form the basis of the quantities claimed on the Application For Payment.

C. Unit Quantities

1. Quantities indicated in the Schedule of Bid Items are for bidding and contract purposes only. Quantities and measurements supplied or placed in the Work and verified by the Consultant and CITY determine payment.

2. If the actual Work requires more or fewer quantities than those quantities indicated in the bid items, Contractor shall provide the required quantities at the unit sum/prices contracted.

D. Payment Includes: Full compensation for required labor, products, tools, equipment, facilities, transportation, services and incidentals; erection; application or installation of an item of the Work; and overhead and profit.

E. Final payment for Work governed by unit prices will be made on the basis of the actual measurements and quantities accepted by the CONSULTANT and CITY, multiplied by the unit sum/price for Work, which is incorporated in or made necessary by the Work.

1.10 Measurement of Quantities:

A. Weigh Scales: Inspected, tested and certified by the applicable State of Florida Weights and Measures department within the past year.

B. Platform Scales: Of sufficient size and capacity to accommodate the conveying vehicle.

C. Metering Devices: Inspected, tested and certified by the applicable State of Florida Weights and Measures Department within the past year.

D. Measurement by Weight: Concrete reinforcing steel rolled or formed steel or other metal shapes will be measured by handbook weights. Welded assemblies will be measured by handbook or scale weight.

E. Measurement by Volume: Measured by cubic dimension using mean length, width and height or thickness**.**

F. Measurement by Area: Measured by square dimension using mean length and width or radius.

G. Linear Measurement: Measured by linear dimension, at the item centerline. Minor offsets (less than a total of five (5) feet) will not be measured for payment. Measurement shall be along the horizontal axis at finished grade.

H. Stipulated Sum/Price Measurement: Items measured by weight, volume, area, or linear means or combination, as appropriate, as a completed and accepted item or unit of the Work.

I. Payment for Work does not indicate acceptance. Work items previously paid for may require additional work effort to bring them into compliance with the requirements of the specific technical specifications and/or project drawings.

1.11 UNIT OF MEASURE – SCHEDULE OF BID PRICES

Payment for furnishing and installing those items cited in the Schedule of Bid Items and subsequent Schedule of Values is noted herein. If “remove and replace” is indicated on the project construction drawings (by either annotation or line weight), then the item descriptions below include the removal and proper disposal of the existing items.

Bid Item No

Bid Item No

General

Mobilization/Demobilization, Bonds & Insurance – Bid Item No

1. Payment for the General Conditions shall be made on the basis of percentage of the Lump Sum Price and shall be full compensation for preparatory work and operations in mobilizing and demobilizing for the project including but not limited to, those operations necessary for the movement of personnel, equipment, supplies and incidentals to and from the project site, for establishment of temporary offices/field trailer, buildings, safety equipment, sanitary and other facilities and compliance with permit conditions for permits secured by either the Owner or Contractor. This pay item shall include all General Requirements not listed as separate items. The cost of bonds, required insurance,

permits and any other pre-construction expense necessary for the start of the work shall also be included in the General Conditions.

Maintenance of Traffic – Bid Item No

1. The quantity of traffic control to be considered for payment shall be equivalent to the percentage of the project determined by the Engineer to be complete as of the date of the pay request submitted. The percent completion of the project shall be based on the percent of the total project actually constructed and not on the percent of the Contract price completed.

2. Payment for traffic control shall be made on the basis of a percentage (as determined in '1' above) of the Lump Sum (LS) Price. The contract unit price shall include compensation for required labor, materials, and equipment necessary to keep roadways and property accesses in service during construction activities in accordance with the Contract Documents.

3. A detailed MOT plan will need to be provided by the Contractor and approved by City and Palm Beach County when applicable.

4. This item includes maintenance of traffic plan, traffic control, flagman, detour signs, barricades, advance warning arrow panels, temporary signage, construction and removal of temporary access driveways to residential homes, commercial material for driveway maintenance, etc. in order to provide safety and traffic access in accordance with local and state requirements.

5. This item also includes furnishing and installing material (temporary pavement or asphalt millings) for temporary roadways for local resident access and emergency vehicle access during the duration of the construction, and for providing all restoration due to the construction temporary roadways.

6. Refer to Specification Section SC01570 Maintenance of Traffic.

As-Built Record Drawings – Bid Item No

2. Payment for Record Drawings shall be made at the Contract Lump Sum Price and shall be full compensation for preparation and maintenance of the Record Drawings as specified in technical specification SC01340 SHOP DRAWINGS, WORK DRAWINGS AND SAMPLES and the requirements of this Special Conditions.

Partial payments for the Record Drawings shall be made in accordance with the following schedule:

Percent of Original Contract Amount Earned	Allowable percent of Lump Sum Price For Record Drawings
10	10
25	25
50	50
75	75
Final Payment	100

2. Contractor shall submit updated As-Built Drawings (1 hard copy set and 1 electronic copy in PDF with each Pay Application Request.

Professional Audio/Video of Construction Site – Bid Item No

3. Payment for Audio Video Documentation shall be made at the Contract lump sum price and shall be full compensation for Audio Video Documentation as specified in technical specification 01390 VIDEO AND PHOTOGRAPHIC SITE SURVEY and the requirements of this technical specification.

Indemnification – Bid Item No

4. Consideration for Indemnification – Payment under this item is in accordance with the Front-End Contract Documents.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

* SPECIAL NOTE:

The CITY retains the option to utilize up to 20% of the excess material from excavation and trenching operations. If the CITY exercises this option, Contractor shall stockpile the excess material and deliver to the CITY's facility as directed by the CITY's Representative.

END OF SECTION

SECTION 01027 - APPLICATIONS FOR PAYMENTS

PART 1 - GENERAL

1.01 DESCRIPTION

A. Scope of Work: Submit Applications for Payment to the CONSULTANT in accordance with schedule established by Conditions of the Contract and Agreement between CITY and Contractor.

B. Related requirements described elsewhere:

1. Agreement:

2. Application for Payment Form.

3. Progress Schedules: Section SC01310.

4. Schedule of Values: Section SC01370

5. Construction Photographs: Section SC01380.

6. Contract Closeout: Section SC01700.

7. Project Record Documents: Section SC01720.

1.02 FORMAT REQUIRED

A. Submit applications typed on form acceptable to CITY, Documents (Application for Payment Form), with itemized data typed on 8-1/2 inch x 11 inch or 8-1/2 inch x 14-inch white paper continuation sheets.

1.03 PREPARATION OF APPLICATION FOR EACH PROGRESS PAYMENT

A. Application Form:

1. Fill in required information, including that for Change Orders executed prior to date of submittal of application.

2. Fill in percent complete for each activity and dollar value to agree with respective percents.

3. Execute certification with signature of a responsible officer of Contract firm.

B. Continuation Sheets:

1. Fill in total list of all scheduled component items of work, with item number and scheduled dollar value for each item.

2. Fill in dollar value in each column for each scheduled line item when work has been performed. Round off values to nearest dollar, or as specified for Schedule of Values.

3. List each Change Order executed prior to date of submission, at the end of the continuation sheets. List by Change Order Number, and description, as for an original component item of work.

4. As provided for in the "Application for Payment" form, the Contractor shall certify, for each current pay request, that all previous progress payments received from the CITY, under this Contract, have been applied by the Contractor to discharge in full all obligations of the Contractor in connection with Work covered by prior Applications for Payment, and all materials and equipment incorporated into the Work are free and clear of all liens, claims, security interest and encumbrances. Contractor shall attach to each Application for Payment like affidavits by all subcontractors.

1.04 SUBSTANTIATING DATA FOR PROGRESS PAYMENTS

A. Contractor shall submit suitable

information, with a cover letter identifying:

1. Project.
2. Application number and date.
3. Detailed list of enclosures.

B. Submit one (1) copy of data and cover letter for each copy of application.

C. The Contractor is to maintain an updated set of drawings to be used as record drawings in accordance with Section SC01720: Project Record Documents. As a prerequisite for monthly progress payments, the Contractor is to submit the updated record drawings for review by the CITY and the CONSULTANT.

D. Each monthly application for payment shall incorporate the corresponding "monthly progress status report" prepared per the requirements of Section SC01310: Progress Schedules.

E. Contractor shall submit a duly executed letter from surety consenting to payment due and progress to date.

F. Provide construction photographs in accordance with Section SC01380: Construction Photographs.

1.05 PROGRESS PAYMENT PROCEDURES

A. The Contractor will prepare and submit one (1) original monthly invoice for work completed during the one-month period. Application for Payment shall be submitted in the format of the sample form provided by the CITY. All information must be completed for the pay application to be accepted. CITY's purchase order number for the project must be placed on each application. The Application for Payment must be submitted at least three (3) days in advance in an electronic format for review by the CITY and CONSULTANT for approval. **Redlined Applications for Payment will not be accepted by the CITY.**

B. If the Application for Payment and support data are not approved, the Contractor is required to submit new, revised or missing information according to the CONSULTANT's instructions. Otherwise, the Contractor shall prepare and submit to the CITY or CONSULTANT an invoice in accordance with the estimate as approved. CITY will pay Contractor, in accordance with Florida Prompt Payment Act, §218.70, Florida Statutes, as may be amended from time to time.

C. Each Application For Payment shall be accompanied by an updated project schedule (three-week ahead schedule) along with the Construction/Progress photographs and Project Record Drawings in accordance with Section SC01720: PROJECT RECORD DOCUMENTS and SC01380: CONSTRUCTION PHOTOGRAPHS or as directed by the CITY. Any Application For Payment that is received without these items will be returned to the Contractor without review.

D. The Contractor shall prepare a schedule of values by phases of work to show a breakdown of the Contract Sum corresponding to the payment request breakdown and progress schedule line items. The schedule of values must also show dollar value for each unit of work scheduled. Approved Change Order items shall be added as separate line items.

E. Prior to initial payment request, the Contractor shall submit the following documents to the CITY and Consultant for their review and approval:

1. List of principle subcontractors and suppliers.

2. Schedule of values.

3. Shop drawing log.

4. Project schedule.

1.06 PREPARATION OF APPLICATION FOR FINAL PAYMENT

A. Fill in Application form as specified for progress payments. Provide information as required by the General Conditions and Section

SC01700: Contract Closeout.

B. Furnish evidence of completed operations insurance in accordance with the General Conditions.

C. Provide Final Release of Lien and other closeout submittals as required by the General Conditions.

1.07 SUBMITTAL PROCEDURES

A. Submit Applications for Payment to the CITY at the time stipulated in the Agreement. Review the percents complete with the CONSULTANT and resolve any conflicts or discrepancies.

B. Number of copies for each Final Application for Payment:

1. CITY: One (1) copy.

2. CONSULTANT: One (1) copy

C. When the CONSULTANT finds Application properly completed and correct, it will transmit the certificate for payment to the CITY, with copy for the Contractor.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION

3.01 Upon receipt by CONSULTANT and CITY of Contractor's written Notice of Final Completion of its work under this Contract, CONSULTANT and CITY shall verify all work has been completed on the project. When all work has been verified as complete, and the Contractor submits the items listed below, the Contractor may submit a final Application for Payment:

A. Complete work listed as incomplete at the time of Substantial Completion and obtain CONSULTANT certification of completed Work.

B. Provide copy of records indicating notification to all subcontractors and material suppliers of Contractor's Performance and Payment Bonds.

C. Transfer operational, access, security and similar provisions to CITY; remove temporary facilities, tools and similar items.

END OF SECTION

SECTION 01091 - REFERENCE SPECIFICATIONS

PART 1 - GENERAL

1.01 GENERAL

A. Applicable Publications. Whenever in these Specifications references are made to published specifications, codes, standards, or other requirements, it shall be understood that wherever no date is specified, only the latest specifications, standards, or requirements of the respective issuing agencies which have been published as of the date that the Work is advertised for bids, shall apply; except to the extent that such standards or requirements may be in conflict with applicable federal, state and local laws, ordinances, or governing codes. No requirements set forth herein or shown on the Drawings shall be waived because of any provision of or omission from such standards or requirements.

B. Assignment of Specialists. In certain instances, the Specifications require (or imply) that specific Work is to be assigned to specialist or expert entities who must be engaged for the performance of the Work. Such assignments shall be recognized as special requirements over which the Contractor has no choice or option. These requirements shall not be interpreted so as to conflict with the enforcement of building codes and similar regulations governing the Work. These requirements are not intended to interfere with local union jurisdiction settlements and similar conventions. Such assignments are intended to establish which party or entity involved in a specific unit of Work is recognized as "expert" for the indicated construction processes or operations. Nevertheless, the final responsibility for fulfillment of the entire set of contract requirements remains with the Contractor.

1.02 REFERENCE SPECIFICATIONS, CODES AND STANDARDS

A. Without limiting the generality of other requirements of the Specifications, all Work specified herein shall conform to, or exceed, the requirements of such documents and are not in conflict with the requirements of these Specifications or applicable codes.

B. References herein to "Building Code" shall mean the Florida Building Code, or the approved building code which replaces it. The latest edition of the code as adopted by the CITY as of the date of award as adopted by the Local Public Agency having jurisdiction shall apply to the Work herein, including all addenda, modifications, amendments, or other lawful changes thereto.

C. In case of conflict between codes, reference standards, drawings, and the other Contract Documents, the most stringent requirements shall govern. All conflicts shall be brought to the attention of the CONSULTANT for clarification and directions prior to ordering or providing any materials or labor. The Contractor shall bid the most stringent requirements.

D. Applicable Standard Specifications. The Contractor shall construct the Work specified herein in accordance with the requirements of the Contract Documents and the referenced portions of those referenced codes, standards, and Specifications listed.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

SECTION 01153 - CHANGE ORDER PROCEDURES

PART 1 – GENERAL

1.01 SCOPE:

A. The CITY, without invalidating the Contract, may make adjustments to bid item quantities by adding to or deducting from the quantities on the Schedule of Bid Items, as the Work progresses. These adjustments shall be in accordance with the unit or line item price set forth on the Schedule of Bid Items and are tracked as Work progresses, and approved on the monthly Application for Payment form.

1.02 REQUIREMENTS INCLUDED

A. Promptly implement Change Order procedures.

1. Provide full written data required to evaluate change.

2. Maintain detailed records of work done on a time and material/force account basis.

3. Provide full documentation to CONSULTANT on request.

B. Designate in writing the member of Contractor's organization.

1. Who is authorized to accept changes in the Work.

2. Who is responsible for informing others in the Contractor's employ the authorization of changes in the Work.

C. CITY will designate in writing the person who is authorized to execute Change Orders.

1.03 RELATED REQUIREMENTS

A. Bid Form.

B. Agreement.

C. General Conditions.

D. Supplementary Conditions.

E. Section SC01027: Applications for Payments.

F. Section SC01310: Progress Schedules.

G. Section SC01370: Schedule of Values.

H. Section SC01630: Substitutions and Product Options.

I. Section SC01700: Contract Closeout.

1.04 DEFINITIONS

A. Change Order: See General Conditions.

B. Construction Change Authorization: A written order to the Contractor, signed by CITY and CONSULTANT, which amends the Contract Documents as described, and authorizes Contractor to proceed with a change that affects the Contract Sum or the Contract Time, for inclusion in a subsequent Change Order.

C. Field Order: A written order, instructions, or interpretations, signed by CONSULTANT making minor changes in the Work not involving a change in Contract Sum or Contract Time.

1.05 PRELIMINARY PROCEDURES

A. CONSULTANT may initiate changes by submitting a Proposal Request to Contractor. Request will include:

1. Detailed description of the change, products, and location of the change in the Project.

2. Supplementary or revised Drawings and Specifications.

3. The projected time span for making the change, and a specific statement as to

whether overtime work is, or is not, authorized.

4. A specific period of time during which the requested price will be considered valid.

5. Such request is for information only, and is not an instruction to execute the changes, nor to stop work in progress.

B. Contractor may initiate changes by submitting a written notice to Consultant containing:

1. Description of the proposed changes.

2. Statement of the reason for making the changes.

3. Statement of the effect on the Contract Sum and the Contract Time.

4. Statement of the effect on the Work of separate contractors.

5. Documentation supporting any change in Contract Sum or Contract Time, as appropriate.

1.06 CONSTRUCTION-CHANGE AUTHORIZATION

A. In lieu of Proposal Request, CONSULTANT may issue a construction change authorization for Contractor to proceed with a change for subsequent inclusion in a Change Order.

B. Authorization will describe changes in the Work, both additions and deletions, with attachments of revised Contract Documents to define details of the change, and will designate the method of determining any change in the Contract Sum and any change in Contract Time.

C. CITY and CONSULTANT will sign and date the Construction Change Authorization as authorization for the Contractor to proceed with the changes.

D. Contractor shall sign and date the Construction Change Authorization to indicate agreement with the terms therein.

1.07 DOCUMENTATION OF PROPOSALS AND CLAIMS

A. Support each quotation for a lump-sum proposal, and for each unit price which has not previously been established, with sufficient substantiating data to allow CONSULTANT to evaluate the quotation.

B. On request provide additional data to support time and cost computations:

1. Labor required.

2. Equipment required.

3. Products required.

a. Recommended sources of purchase and unit cost.

b. Quantities required.

4. Taxes, insurance, and bonds.

5. Credit for work deleted from Contract, similarly documented.

6. Overhead and profit.

7. Justification for any change in Contract Time.

C. Support each claim for additional costs, and for work done on a time-and-material/force account basis, with documentation as required for a lump-sum proposal, plus additional information:

1. Name of CITY's authorized agent who ordered the work, and the date of the order.

2. Dates and times work was performed, and by whom.

3. Time record, summary of hours worked, and hourly rates paid.

4. Receipts and invoices for:

a. Equipment used, listing dates and times of use.

b. Products used, listing of quantities.

c. Subcontractors.

D. Document requests for substitutions for products as specified in Section SC01630.

1.08 PREPARATION OF CHANGE ORDERS

A. CONSULTANT will initiate each Change Order.

B. Change Order will describe changes in the Work, both additions and deletions, with attachments of revised Contract Documents to define details of the change.

C. Change Order will provide an accounting of the adjustment in the Contract Sum and in the Contract Time.

1.09 LUMP-SUM/FIXED PRICE CHANGE ORDER

A. Content of Change Orders will be based on, either:

1. CONSULTANT's Proposal Request and Contractor's Responsive Proposal as mutually agreed between CITY and Contractor; or

2. Contractor's Proposal for a change, as recommended by the CONSULTANT.

B. CITY and CONSULTANT will sign and date the Change Order as authorization for the Contractor to proceed with the changes.

C. Contractor shall sign and date the Change Order to indicate agreement with the terms therein.

1.10 UNIT PRICE CHANGE ORDER

A. Content of Change Orders will be based on, either:

1. CONSULTANT's definition of the scope of the required changes; or

2. Contractor's Proposal for a change, as recommended by CONSULTANT; or

3. Survey of completed work.

B. The amounts of the unit prices to be:

1. Those stated in the Agreement.

2. Those mutually agreed upon between CITY and Contractor.

C. When quantities of each of the items affected by the Change Order can be determined prior to start of the work:

1. CITY and CONSULTANT will sign and date the Change Order as authorization for Contractor to proceed with the changes.

2. Contractor shall sign and date the Change Order to indicate agreement with the terms herein.

D. When quantities of the items cannot be determined prior to start of the work:

1. CONSULTANT will issue a construction change authorization-directing Contractor to proceed with the change on the basis of unit prices.

2. At completion of the change, CONSULTANT will determine the cost of such work based on the unit prices and quantities used.

a. Contractor shall submit documentation to establish the number of units of each item and any claims for change in Contract Time.

3. CONSULTANT will sign and date the Change Order to establish the change in Contract Sum and in Contract Time.

4. CITY and Contractor will sign and date the Change Order to indicate their agreement with the terms therein.

1.11 TIME AND MATERIAL/FORCE ACCOUNT CHANGE ORDER/ CONSTRUCTION CHANGE AUTHORIZATION

A. CONSULTANT will issue a Construction Change Authorization directing Contractor to proceed with the changes.

B. At completion of the change, Contractor shall submit itemized accounting and supporting data as provided in the Article "Documentation of Proposals and Claims" of this Section.

C. CONSULTANT will determine the allowable cost of such work, as provided in General Conditions and Supplementary Conditions.

D. CONSULTANT will sign and date the Change Order to establish the change in Contract Sum and in Contract Time.

E. CITY and Contractor will sign and date the Change Order to indicate their agreement therewith.

1.12 CORRELATION WITH CONTRACTOR'S SUBMITTALS

A. Contractor shall periodically revise Schedule of Values and Request for Payment forms to record each change as a separate item of work, and to record the adjusted Contract Sum.

B. Contractor shall periodically revise the Construction Schedule to reflect each change in Contract Time.

1. Contractor shall revise sub-schedules to show changes for other items of work affected by the changes.

C. Upon completion of work under a Change Order, Contractor shall enter pertinent changes in Record Documents.

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION (NOT USED)

END OF SECTION

SECTION 01500 - CONSTRUCTION FACILITIES AND TEMPORARY CONTROLS

PART 1 – GENERAL

1.01 REQUIREMENTS INCLUDED

A. Contractor shall furnish, install and maintain temporary utilities required for construction. Remove on completion of work.

1.02 RELATED REQUIRMENTS

A. General Conditions.

B. Section SC01010: Summary of Work

1.03 REQUIREMENTS OF REGULATORY AGENCIES

A. Comply with National Electric Code.

B. Comply with Federal, State, and local codes and regulations and with utility company requirements.

PART 2 – PRODUCTS

2.01 MATERIALS, GENERAL

A. Materials may be new or used, but must be adequate in capability for the required usage of the CITY, must not create unsafe conditions, and must not violate requirements of applicable codes and standards.

2.02 TEMPORARY TELEPHONE SERVICE

A. Superintendent, foreman or other contractor personnel in charge shall be equipped with a functioning cell phone during the term of the contract.

2.03 TEMPORARY WATER

A. Schedule use and provide deposit to the City's Utility Department for a portable hydrant meter. No water shall be taken from the existing water distribution system unless it's through the portable hydrant meter. The Contractor shall install and maintain a certified backflow preventer or check valve on all CITY issued portable hydrant meters; **no exceptions**. Using water from private homes and/or business' is strictly forbidden.

B. Water utilization for concrete plaster and mortar shall meet the respective requirements and standards set forth for water utilized in these construction materials.

2.04 TEMPORARY SANITARY FACILITIES

A. Provide sanitary facilities in compliance with Federal, state and local laws and regulations.

B. Service, clean and maintain facilities and enclosures.

2.05 TEMPORARY CONTROLS

A. Noise Control: See Section SC01100 – Special Project Procedures

B. Dust Control:

1. Provide positive methods and apply dust control materials to minimize raising dust from construction operations, and provide positive means to prevent airborne dust form dispensing into the atmosphere.

C. Pest and Rodent Control:

1. Provide pest and rodent control prior to start of construction to prevent infestation of surrounding neighborhood.

a. Employ methods and use materials that will not adversely affect conditions at the site or on adjoining properties.

b. Should the use of rodenticides be considered necessary, submit an informational copy of the proposed program to the Consultant. Clearly indicate:

1) The area or areas to be treated

2) The rodenticides to be used, with a copy of the manufacturer's printed instructions.

3) The pollution preventative measures to be employed.

2. The use of any rodenticide shall be in full accordance with the Manufacturer's printed instructions and recommendations.

D. Debris Control:

1. Maintain all areas under Contractor's control free of extraneous debris.

2. Initiate and maintain a specific program to prevent accumulation of debris at construction site, storage and parking areas, or along access roads and haul routes.

a. Provide acceptable containers for deposit of debris.

b. Prohibit overloading of trucks to prevent spillages on access and haul routes.
1) Provide periodic inspection of traffic areas to enforce requirements.

3. Schedule periodic collection and disposal of debris.

a. Provide additional collections and disposals of debris whenever the periodic schedule is inadequate to prevent accumulation.

E. Pollution Control:

1. Provide methods, means and facilities required to prevent contamination of soil, water or atmosphere by the discharge of noxious substances from construction operations.

2. Provide equipment and personnel, perform emergency measures required to contain any spillages, and to remove contaminated soils or liquids.

a. Excavate and dispose of any contaminated earth off-site, and replace with suitable compacted fill and topsoil.

3. Take special measure to prevent harmful substances from entering public waters.

a. Prevent disposal of wastes, effluents, chemicals, or other such substances adjacent to streams, or in sanitary or storm sewers.

4. Provide systems for control of atmospheric pollutants

a. Prevent toxic concentrations of chemicals

b. Prevent harmful dispersal of pollutants into the atmosphere

PART 3 – EXECUTION

3.01 GENERAL

A. Maintain and operate systems to assure continuous service.

B. Modify and extend systems, as work progress requires.

3.02 REMOVAL

A. Completely remove temporary materials and equipment when their use is no longer required.

B. Clean and repair damage caused by temporary installations or use of temporary facilities.

END OF SECTION

SECTION 01505 – MOBILIZATION

PART I - GENERAL

1.01 DEFINITION AND SCOPE

A. Mobilization shall include the Contractor obtaining of all permits, insurance, and bonds; moving onto the site of all plant and equipment, temporary buildings and other construction facilities; all as required for the proper performance and completion of the Work. Mobilization shall include, but not be limited to, the following principal items:

1. Move onto the site all Contractor's plan and equipment required for first month operations.

2. Install temporary construction power, wiring, and lighting facilities.

3. Establish fire protection plan and safety program.

4. Secure construction water supply.

5. Provide on-site sanitary facilities and potable water facilities as specified.

6. Arrange for and erect Contractor's work and storage yard and employees' parking facilities.

7. Submit all required insurance certificates and bonds.

8. Obtain all required permits.

9. Post all OSHA, EPA, Department of Labor, and all other required notices.

10. Have Contractor's superintendent at the job site full time.

11. Submit a detailed construction CPM schedule acceptable to the Consultant as specified.

12. Submit a Schedule of Values of the Work.

13. Submit a schedule of submittals.

1.02 DEMOBILIZATION

A. Demobilization is the timely and proper removal of all contractor-owned material, equipment or plant, from the job site and the proper restoration or completion of work necessary to bring the site into full compliance with the Contract Documents.

1.03 PAYMENT FOR MOBILIZATION/DEMOBILIZATION

A. Contractor shall be limited to a maximum of 3.0 percent of the total price bid for mobilization. The cost of mobilization/demobilization shall be shown in the Schedule of Values.

B. Demobilization shall be shown in the schedule of values as a minimum 25 percent of the value for mobilization.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

SECTION 01530 – BARRIERS

PART 1 - GENERAL

1.01 REQUIREMENTS INCLUDED

A. Contractor shall furnish, install and maintain suitable barriers as required to prevent public entry, and to protect the Work, existing facilities, trees and plants from construction operations; remove when no longer needed, or at completion of work.

1.02 RELATED REQUIREMENTS

A. Section SC01010: Summary of Work.

B. Section SC01500: Temporary Facilities.

PART 2 - PRODUCTS

2.01 MATERIALS, GENERAL

A. Materials may be new or used, suitable for the intended purpose, but must not violate requirements of applicable codes and standards.

2.02 FENCING

A. Minimum fence height 6 feet.

B. Open-Mesh Fence:

1. No. 11 gauge, 2-inch mesh, 72 inches high-galvanized chain link fabric, with extension arms and 3 strands of galvanized barbed wire.

2. Galvanized steel posts; 1-1/2 inch line posts and 2-inch corner posts.

2.03 BARRIERS

A. Materials are Contractor's option, as appropriate to serve required purpose.

PART 3 - EXECUTION

3.01 GENERAL

A. Install facilities of a neat and reasonably uniform appearance, structurally adequate for the required purpose.

B. Maintain barriers during entire construction period.

C. Relocate barriers as required by the progress of construction.

3.02 FENCES

A. Provide and maintain fences necessary to assure security of the site during construction to keep unauthorized people and animals from the site when construction is not in progress.

B. Gates shall have locks; and keys shall be furnished to the CITY.

C. Provide additional security measures as deemed necessary and approved by the CONSULTANT.

3.03 TREE AND PLANT PROTECTION

A. Preserve and protect existing trees and plants at site that are designated to remain, and those adjacent to site.

B. Consult with the CONSULTANT, and remove agreed-on roots and branches that interfere with construction.

1. Employ qualified tree surgeon to remove branches and tree cuts.

C. Provide temporary barriers to a height of 6 feet, around each, or around each group, of trees and plants.

D. Protect root zones of trees and plants:

1. Do not allow vehicular traffic or parking.

2. Do not store materials or products.

3. Prevent dumping of refuse or chemically injurious materials or liquids.

4. Prevent puddling or continuous running water.

E. Carefully supervise excavating, grading and filling, and other construction operations to prevent damage.

F. Replace, or suitably repair, trees and plants designated to remain which are damaged or destroyed due to construction operations.

3.04 REMOVAL

A. Completely remove barricades, including foundations, when construction has progressed to the point that they are no longer needed and when approved by CONSULTANT.

B. Repair damage caused by construction. Fill and grade areas of the site to the required elevations, and clean up the area.

END OF SECTION

SECTION 01570 – MAINTENANCE OF TRAFFIC

PART 1 GENERAL

1.01 Contractor shall provide all labor, material and services to perform all operations required for the maintenance and protection of vehicular and pedestrian traffic in conformance to all applicable FDOT laws and regulations and subject to acceptance and permits by Owner, Palm Beach County and FDOT as applicable.

1.02 REFERENCES

A. State of Florida Department of Transportation Standard Specifications for Road and Bridge Construction, Section 102, 2000 Edition (or latest edition)

B. State of Florida Manual of Traffic Control and Safe Practices for Street and Highway Construction, Maintenance and Utility Operations

C. The Manual of Uniform Traffic Control Devices, latest edition

D. CBB ROW Permit

1.03 SUBMITTAL

A. Submit Traffic Control Plans, ROW Permit Applications and Construction Schedule to the Owner, Palm Beach County (if applicable), and the FDOT (if applicable) for review and acceptance 30 days prior to the start of construction.

1.04 SIGNS AND DEVICES

A. Traffic Control and Informational Signs

B. Traffic Cones and Drums, and Lights

C. Traffic Controllers Equipment

1.05 CONSTRUCTION PARKING CONTROL

A. Control vehicular parking to prevent interference with public traffic and parking, access by emergency vehicles and Owner's operations. Contractor's employee's personal vehicles shall NOT be parked "in and around" the project site. Contractor's employee's personal vehicles shall be parked at the storage yard.

1.06 TRAFFIC CONTROLERS

A. Provide trained and equipped traffic controllers to regulate traffic when construction operations encroach on public traffic lanes.

1.07 LIGHTS

A. Use approved barricades with lights during hours of low visibility to delineate traffic lanes and to guide traffic.

1.08 TRAFFIC SIGNS AND DEVICES

A. At approaches to site and on site, install at crossroads, detours, parking areas, and elsewhere as needed, to direct construction and affected public traffic. The Contractor shall submit traffic control through work zone plans based on FDOT Roadway and Traffic Design Standards, 2001 Edition (or latest edition).

B. Relocate as Work progresses, to maintain effective traffic control.

1.09 REMOVAL

A. Remove equipment and devices when no longer required.

B. Repair damage caused by installation.

1.10 SPECIFIC TRAFFIC CONTROL

A. Contractor shall maintain through traffic on all public roads at all times unless stated otherwise herein.

B. Contractor shall maintain access to all vehicular driveways (public or private) at all times. Contractor shall backfill and install temporary rock base as necessary in order to

provide safe and functional access to all driveways.

C. Contractor shall coordinate with the Police and Fire Departments for whom the Contractor will provide satisfactory access at all times.

D. Contractor shall maintain, at the minimum, one travel lane, in each direction, when performing work within the Palm Beach County Right-of-Way.

1.11 EXECUTION

A. The Contractor shall arrange its work to cause minimum disturbance to normal pedestrian and vehicular traffic; and shall be held responsible for providing and maintaining suitable means of access (including emergencies) to all public and private properties during all stages of the construction.

B. If it becomes necessary to block off an entire street to vehicular traffic during construction (other than for an emergency situation), the Contractor must secure the written authorization of the CITY and Palm Beach County or FDOT as acknowledged as a condition of the Right-of-Way (ROW) permit(s) prior to completely blocking off the roadway.

1.12 UNIT PRICE – MEASUREMENT AND PAYMENT

A. Refer to Section 01025 - MEASUREMENT AND PAYMENT PROCEDURES.

END OF SECTION

SECTION 01600 - MATERIAL AND EQUIPMENT

PART 1 - GENERAL

1.01 DESCRIPTION

A. Scope of Work: Material and equipment incorporated into the Work:

1. Manufactured and fabricated products:

a. Design, fabricate and assemble in accord with the best engineering and shop practices.

b. Manufacture like parts of duplicate units to standard sizes and gauges, to be interchangeable.

c. Two (2) or more items of the same kind shall be identical, by the same manufacturer.

d. Products shall be suitable for service conditions.

e. Equipment capacities, sizes and dimensions shown or specified shall be adhered to unless variations are specifically approved in writing.

2. Do not use material or equipment for any purpose other than that for which it is designed or specified.

1.02 MANUFACTURER'S INSTRUCTIONS FOR INSTALLATION

A. When Contract Documents require that installation of Work shall comply with manufacturer's printed instructions. Contractor shall obtain and distribute copies of such instructions to parties involved in the installation, including five (5) copies to the Consultant.

1. Maintain one (1) set of complete instructions at the job site during installation and until completion.

B. Contractor shall handle, install, connect, clean, condition and adjust products in strict accord with such instructions and in conformity with specified requirements.

1. Should job conditions or specified requirements conflict with manufacturer's instructions, consult with Consultant for further instructions.

2. Do not proceed with Work without clear instructions.

C. Contractor shall perform work in accordance with manufacturer's instructions. Do not omit any preparatory step or installation procedure unless specifically modified or exempted by Contract Documents.

1.03 TRANSPORTATION AND HANDLING

A. Contractor shall arrange deliveries of products in accordance with progress schedules, coordinate to avoid conflict with work and conditions at the site.

1. Deliver products in undamaged condition, in manufacturer's original containers or packaging,

with identifying labels intact and legible.

2. Immediately on delivery, inspect shipments to assure compliance with requirements of Contract Documents and approved submittals, and that products are properly protected and undamaged.

B. Contractor shall provide equipment and personnel to handle products by methods to prevent soiling or damage to products or packaging.

1.04 STORAGE AND PROTECTION

A. The Contractor shall furnish a covered, weather-protected storage structure providing a clean, dry, non-corrosive environment for all mechanical equipment, valves, architectural items, electrical and instrumentation equipment, and special equipment to be incorporated into this Project. Storage or equipment shall be in strict accordance with the "instructions for storage" of each equipment supplier and manufacturer including connection of heaters, placing of storage lubricants in equipment, etc. Corroded, damaged or deteriorated equipment and parts shall be replaced before acceptance of the Project. Equipment and materials not properly stored will not be included in a payment estimate.

B. Contractor shall store products in accord with manufacturer's instructions, with seals and labels intact and legible.

1. Store products subject to damage by the elements in weather-tight enclosures.

2. Maintain temperature and humidity within the ranges required by manufacturer's instructions.

3. Store fabricated products above the ground, on blocking or skids, prevent soiling or staining. Cover products which are subject to deterioration with impervious sheet coverings, provide adequate ventilation to avoid condensation.

4. Store loose granular materials in a well-drained area on solid surfaces to prevent mixing with foreign matter.

C. All materials and equipment to be incorporated in the Work shall be handled and stored by the Contractor before, during and after shipment in a manner to prevent warping, twisting, bending, breaking, chipping, rusting, and any injury, theft or damage of any kind whatsoever to the material or equipment.

D. Contractor shall store under a roof or off the ground cement, sand and lime, and shall be kept completely dry at all times. All structural and miscellaneous steel, and reinforcing steel shall be stored off the ground or otherwise to prevent accumulations of dirt or grease, and in a position to prevent accumulations of standing water and to minimize rusting. Beams shall be stored with the webs vertical. Precast concrete beams shall be handled and stored in a manner to prevent accumulations of dirt, standing water, staining, chipping or cracking. Brick, block and similar masonry products shall be handled and stored in a manner to reduce breakage, chipping, cracking and spalling to a minimum.

E. All materials, which, in the

opinion of the Consultant, have become so damaged as to be unfit for the use intended or specified, shall be promptly removed by the Contractor from the site of the Work, and the Contractor shall receive no compensation for the damaged material or its removal.

F. Contractor shall arrange storage in a manner to provide easy access for inspection. Make periodic inspections of stored products to assure that products are maintained under specified conditions, and free from damage or deterioration.

G. Protection After Installation: Contractor shall provide substantial coverings as necessary to protect installed products from damage from traffic and subsequent construction operations. Remove covering when no longer needed.

H. The Contractor shall be responsible for all material, equipment and supplies sold and delivered to the CITY under this Contract until final inspection of the Work and acceptance thereof by the CITY. In the event any such material, equipment and supplies are lost, stolen, damaged or destroyed prior to final inspection and acceptance, the Contractor shall replace same without additional cost to the CITY.

I. Should the Contractor fail to take proper action on storage and handling of equipment supplied under this Contract within seven (7) days after written notice to do so has been given, the CITY retains the right to correct all deficiencies noted in previously transmitted written notice and deduct the cost associated with these corrections from the Contractor's Contract. These costs may be comprised of expenditures for labor, equipment usage, administrative, clerical, engineering and any other costs associated with making the necessary corrections.

1.05 STORAGE AND HANDLING OF EQUIPMENT ON SITE

A. Because of the long period allowed for construction, special attention shall be given to the storage and handling of equipment on site. As a minimum, the procedure outlined below shall be followed by Contractor:

1. All equipment having moving parts such as gears, electric motors, etc. and/or instruments shall be stored in a temperature and humidity controlled building approved by the Consultant, until such time as the equipment is to be installed.

2. All equipment shall be stored fully lubricated with oil, grease, etc. unless otherwise instructed by the manufacturer.

3. Manufacturer's storage instructions shall be carefully studied by the Contractor and reviewed with the Consultant by him. These instructions shall be carefully followed and a written record of this kept by the Contractor.

4. Moving parts shall be rotated a minimum of once weekly to insure proper lubrication and to avoid metal-to-metal "welding". Upon installation of the equipment, the Contractor shall start the equipment, at least half the load, once weekly for an adequate period of time to insure that the equipment does not deteriorate from

lack of use.

5. Lubricants shall be changed upon completion of installation and as frequently as required thereafter during the period between installation and acceptance. Mechanical equipment to be used in the Work, if stored for longer than ninety (90) days, shall have the bearings cleaned, flushed and lubricated prior to testing and startup, at no extra cost to the CITY.

6. Prior to acceptance of the equipment, the Contractor shall have the manufacturer inspect the equipment and certify that its condition has not been detrimentally affected by the long storage period. Such certifications by the manufacturer shall be deemed to mean that the equipment is judged by the manufacturer to be in a condition equal to that of equipment that has been shipped, installed, tested and accepted in a minimum time period. As such, the manufacturer will guarantee the equipment equally in both instances. If such a certification is not given, the equipment shall be judged to be defective. It shall be removed and replaced at the Contractor's expense.

1.06 SPARE PARTS

A. Spare parts for certain equipment provided under Divisions 11: Equipment; 13: Special Construction; 15: Mechanical; and 16: Electrical have been specified in the pertinent sections of the Technical Specifications. The Contractor shall collect and store all spare parts so required in an area to be designated by the Consultant. In addition, the Contractor shall furnish to the Consultant an inventory listing all spare parts, the equipment they are associated with, the name and address of the supplier, and the delivered cost of each item. Copies of actual invoices for each item shall be furnished with the inventory to substantiate the delivered cost.

1.07 GREASE, OIL AND FUEL

A. All grease, oil and fuel required for testing of equipment shall be furnished with the respective equipment. The CITY shall be furnished with a year's supply of required lubricants including grease and oil of the type recommended by the manufacturer with each item of equipment supplied.

B. The Contractor shall be responsible for changing the oil in all drives and intermediate drives of each mechanical equipment after initial break-in of the equipment, which in no event shall be any longer than three (3) weeks of operation.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION

SECTION 01650 - START-UP

PART 1 - GENERAL

1.01 DESCRIPTION

A. Scope of Work: Contractor shall demonstrate to CITY and Consultant that the Work functions as a complete and operable system under normal and emergency operating conditions.

B. Related Work Described Elsewhere:

1. Progress Schedules: Section SC01310.

2. Contract Closeout: Section SC01700.

3. Operating and Maintenance Data: Section SC01730.

PART 2 - PRODUCTS

2.01 START-UP PLAN

A. Submit for Consultant approval a detailed Start-Up Plan outlining the schedule and sequence of all tests and start-up activities, including training and equipment manufacturer representative visits. Start-up and commissioning may not begin until the plan is approved.

PART 3 - EXECUTION

3.01 COMPONENT TEST AND CHECK-OUT

A. Start-up Certification: Prior to system start-up, Contractor shall successfully complete all the testing required of the individual components of the Work. Submit five (5) copies of CHECK-OUT MEMO signed by Contractor or subcontractor and the manufacturer's representative. All copies of the Operation and Maintenance Manuals must be provided before start-up may begin. These forms shall be completed and submitted before Instruction in Operation to CITY or a request for final inspection.

B. Demonstrate to the Consultant that all temporary jumpers and/or bypass have been removed and that all of the components are operating under their own controls as designated.

C. Coordinate start up activities with the CITY's operating personnel and with the Consultant prior to commencing system start-up.

D. Provide seventy-two (72) hour notice of intent to start-up.

3.02 START UP

A. Confirm that all equipment is properly energized, that the valves are set to their normal operating condition and that the flow path through the new work is unobstructed.

B. Slowly fill each hydrostatic structure in the process flow stream with water.

C. Initiate start up in accordance with the plant operation and maintenance manual.

D. Observe the component operation and make adjustments as necessary to optimize the performance of the Work.

E. Coordinate with CITY for any adjustments desired or operational problems requiring debugging.

F. Make adjustments as necessary.

3.03 START-UP DEMONSTRATION AND TESTING

A. After all Work components have been constructed, field tested and started-up in accordance with the individual specifications and manufacturer requirements, perform the Start-Up Demonstration and Testing in the presence of the Consultant and the CITY. The demonstration shall be held upon completion of all systems at a date to be agreed upon in writing by the CITY or his representative.

B. The start-up testing will be conducted for seven (7) consecutive days. The Work must operate successfully during the seven (7) day testing period in the manner intended. If the Work does not operate successfully, or if the start-up is interrupted, the problems will be corrected and the test will start over from day one.

C. During the start-up demonstration period, operate the Work, instruct designated plant operating personnel in the function and operation of the work, and cause various operational circumstances to occur. As a minimum, these circumstances will include average and peak daily flows, random equipment failures, tank overflows, surcharges and bypasses. Demonstrate the essential features of the equipment and its relationship to other equipment. Prior to the substantial completion, the Contractor shall submit a detailed schedule of operational circumstances. Coordination of the various contract schedules will be accomplished through the Consultant.

D. Acceptability of the Work's performance will be based on the Work performing as specified, under these actual and simulated operating conditions as defined in the Contract Documents. The intent of the start-up demonstration and testing is for the Contractor to demonstrate to the CITY and the Consultant that the Work will function as a complete and operable system under normal as well as emergency operating conditions and is ready for acceptance.

E. Demonstrate the essential features of all the mechanical systems including, but not limited to, the following as they apply to the Work. Each system shall be demonstrated once only, after completion of testing.

1. Variable frequency drives
2. Chlorination equipment
3. Recarbonation System
4. Control Systems
5. Relocated Pumping Systems
6. Valves
7. Ventilation system
8. Air conditioning system
9. Security system

F. Demonstrate the essential features of all electrical systems including, but not limited to, the following as they apply to the work:

1. Electrical systems controls and equipment.
    a. Electrical power equipment.

b. Motor control centers.

c. Motor control devices.

d. Relays.

e. Special transformers.

f. Starting devices.

2. Lighting fixtures (including relamping and replacing lenses).

a. Exit and safety fixtures.

b. Fixtures, indoor and outdoor.

c. Floodlighting.

3. Panelboards.

a. Distribution panels.
b. Lighting panels.

c. Main panels, power panels.

d. Switchboard.

4. Transfer switch.

5. Wiring devices.

a. Face plates.
b. Low-voltage controls.
c. Outlets: convenience, special purpose.
d. Switches: regular, time.

G. Certificate of Completed Demonstration Form (Section 00866): Submit five (5) copies of Certificate of Completed Demonstration, signed by the Contractor, Subcontractor and CITY and insert one (1) copy in each Operation and Maintenance Manual.

END OF SECTION

SECTION 01700 - CONTRACT CLOSEOUT

PART 1 - GENERAL

1.01 DESCRIPTION

A. Scope of Work: Contractor shall comply with requirement stated in Conditions of the Contract and in specifications for administrative procedures in closing out the Work.

B. Related Requirements Described Elsewhere:

1. Cleaning: Section SC01710

2. Project Record Documents: Section SC01720

3. Operating and Maintenance Data: Section SC01730

4. Warranties and Bonds: Section SC01740.

1.02 SUBSTANTIAL COMPLETION

A. The Work will not be substantially complete, and Contractor may not request substantial completion inspection unless the following submittals and work is completed:

1. All work specified herein and shown on the drawing is complete.

2. Project Record Documents have been submitted and reviewed to the requirements of Section SC01720.

3. All deficiencies noted on inspection reports or non-conformances are corrected or the correction plan approved.

4. Contractor to submit evidence of compliance with the requirements of governing authorities.

B. When the conditions of paragraph 1.02 A. are met the Contractor shall submit to the Consultant:

1. A written notice that it considers the Work, or portion thereof, is substantially complete, and request an inspection.

C. Within a reasonable time after receipt of such notice, the Consultant will make an inspection to determine the status of completion.

D. When the Consultant finds that the Work is substantially complete, Consultant will:

1. Attend a Substantial Completion walk-through of the facility to include the CITY, Contractor and Consultant and/or Engineer of Record to determine the completeness of the Project and readiness of the facility for occupancy.

2. Prepare and deliver to CITY a Certificate of Substantial Completion with the punchlist of items to be completed or corrected before final inspection.

1.03 FINAL INSPECTION

A. Prior to Contractors request for a final inspection the following submittals and Work must be complete:

1. Project Record Documents

must be approved.

2. Equipment and systems have been tested in the presence of the CITY's representative and are operational and training, when applicable.

3. All punchlist items have been corrected.

B. The Consultant will, within reasonable time, make an inspection to verify the status of completion with reasonable promptness after receipt of Contractor's request.

C. Should the Consultant consider that the Work is incomplete or defective:

1. The Consultant will promptly notify the Contractor in writing, listing the incomplete or defective work.

2. Contractor shall take immediate steps to remedy the stated deficiencies, and send another written certification to the Consultant that the Work is complete.

3. The Consultant will within a reasonable amount of time, reinspect the Work and the Contractor shall be liable for reinspection fees as described in paragraph 1.04.

D. When the Consultant finds that the Work is acceptable under the Contract Documents, the Contractor may make closeout submittals.

1.04 REINSPECTION FEES

A. Should the Consultant perform reinspections due to failure of the Work to comply with the claims of status of completion made by the Contractor:

1. Contractor will compensate the CITY for such additional services.

2. CITY will deduct the amount of such compensation from the final payment to the Contractor.

1.05 CONTRACTOR'S CLOSEOUT SUBMITTALS

A. Warranties and Bonds: To requirements of Section SC01740.

B. Evidence of Payment and Release of Liens: To requirements of General and Supplementary Conditions.

C. Certificate of Insurance for Products and Completed Operations.

D. Final Application for Payment

E. Certificate of Substantial Completion.

F. Certificate of Final Inspection, Testing, and Acceptance

G. Closeout of all applicable permits:
   1. State or other jurisdictional permits (as applicable):
      a. FDOT
      b. LWDD
      c. SFWMD
      d. USACE
      e. FEC
      f. CSX
   2. PBC ROW/MOT
   3. PBC Health Department
   4. PBC Building Department
   5. City of Boynton Beach – Right-of-Way (ROW)
   6. City of Boynton Beach Building Department

1.06 FINAL ADJUSTMENT OF ACCOUNTS

A. Submit a final statement of

accounting to the Consultant.

B. Statement shall reflect all adjustments to the Contract Sum:

1. The original Contract Sum.

2. Additions and deductions resulting from:

a. Previous change orders or written amendment.

b. Allowances.

c. Unit prices.

d. Deductions for uncorrected work.

e. Deductions for liquidated damages.

f. Deductions for reinspection payments.

g. Other adjustments.

3. Total Contract Sum, as adjusted.

4. Previous payments.

5. Sum remaining due.

C. Consultant will prepare a final Change Order, reflecting approved adjustments to the Contract Sum which were not previously made by Change Orders.

1.07 FINAL APPLICATION FOR PAYMENT

A. Contractor shall submit the final Application for Payment in accordance with procedures and requirements stated in the Conditions of the Contract.

1.08 RECORD DOCUMENT SUBMITTAL REQUIREMENTS

A. Submit data on 8 ½ x 11inch pages in three-ring binders with durable covers.

B. Prepare binder cover and binder spine with printed title “RECORD DOCUMENT MANUAL”, title of project, and subject matter of binder when multiple binders are required.

C. Internally subdivide the binder contents with permanent page dividers and tabs.

D. Contents: Prepare a Table of Contents as follows:

1. Part 1: Directory, listing names, addresses, and telephone numbers of Engineer, Contractor, Subcontractors and major equipment suppliers.
2. Part 2: Project documents and certificates, including the following:
   a. Certificate of Substantial Completion with signed-off Substantial Completion punchlist.
   b. Certificate of Final Acceptance.
   c. Warranty of Title, form WT-1
   d. Final Release of Lien
   e. Pre- and Post-construction videos and photographs on DVD or CD.
   f. Certifications of closeout of all applicable permits (NPDES, PBC Health Department, SFWMD, LWDD, PBC or CBB Building Permits, etc.)

E. Submit Operation and Maintenance (O & M) Manuals for all equipment. The O&M Manuals shall include the following information:
   a. Manufacturer’s name, address, and telephone number.
   b. List of equipment
   c. Parts list for each

component
d. Operating instructions
e. Maintenance instructions for equipment and systems.

F. Submit to the CITY, one (1) draft copy of the RECORD DOCUMENT MANUAL fifteen (15) days prior to the request for Final Inspection, Testing and Acceptance. This copy will be reviewed and returned prior to Final Inspection, Testing and Acceptance, with the CITY's comments. Revise content of all document sets as required.

G. Submit one (1) revised FINAL RECORD DOCUMENT MANUAL and six (6) sets for all Operation and Maintenance Manuals, within ten (10) days after Final Inspection, Testing and Acceptance. .

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION

3.1 CLOSEOUT PROCEDURES

A. Submit written certification that the Work has been completed in accordance with Contract Documents and is ready for the Substantial Completion and/or Final Completion walk-throughs.

B. Provide submittals to the Consultant and the CITY that are required by governing or permitting authorities such as Palm Beach County Health Department, Palm Beach County Traffic/Land Development, FDOT, etc. in order to closeout the project.

C. Submit final Application for Payment identifying total adjusted Contract Sum, previous payments, and full release of retainage.

D. Final payment and release of retention with NOT be made until the RECORD DOCUMENT MANUALS, Operation and Maintenance Manuals, and the "AFTER" photographic survey, video, and photographs on DVD/CD have been received and accepted by the CITY.

END OF SECTION

SECTION 01710 – CLEANING

PART 1 - GENERAL

1.01 DESCRIPTION

A. Scope of Work: Contractor shall execute cleaning, during progress of the Work and at completion of the Work.

1.02 DISPOSAL REQUIREMENTS

A. Contractor shall conduct cleaning and disposal operations to comply with codes, ordinances, regulations, and anti-pollution laws.

PART 2 - PRODUCTS

2.01 MATERIALS

A. Use only those cleaning materials which will not create hazards to health or property and which will not damage surfaces.

B. Use only those cleaning materials and methods recommended by manufacturer of the surface material to be cleaned.

C. Use cleaning materials only on surfaces recommended by cleaning material manufacturer.

PART 3 - EXECUTION

3.01 DURING CONSTRUCTION

A. Execute daily cleaning to keep the Work, the site and adjacent properties free from accumulations of waste materials, rubbish and windblown debris, resulting from construction operations or personal activities.

B. Remove waste materials, debris and rubbish from the site as needed and dispose of at legal disposal areas away from the site.

C. Contractor shall coordinate and cooperate with the CITY for the routine collection of garbage, debris and recycle materials by assuring access to oversized vehicles. If access to the property owner pick-up points, Contractor shall gather the collection bins, stage them in a pick-up area and then return to the individual property owners after the garbage and/or recycle has been picked-up.

3.02 DUST CONTROL

A. Clean interior spaces prior to the start of finish painting and continue cleaning on an as-needed basis until paint is finished.

B. Schedule operations so that dust and other contaminants resulting from cleaning process will not fall on wet or newly-coated surfaces.

3.03 FINAL CLEANING

A. Employ skilled workmen for final cleaning.
B. Remove grease, mastic, adhesives, dust, dirt, stains, fingerprints, labels, and other foreign materials from sight-exposed interior and exterior surfaces.
C. Prior to final completion, or Owner occupancy, Contractor shall conduct an inspection of sight-exposed interior and exterior surfaces and all work areas, to verify that the entire Work is clean.

END OF SECTION

SECTION 01800 - MISCELLANEOUS WORK AND CLEANUP

1 PART 1 - GENERAL

1.01 DESCRIPTION

A. Scope of Work:

1. This Section includes operations which cannot be specified in detail as separate items but can be sufficiently described as to the kind and extent to work involved. The Contractor shall furnish all labor, materials, equipment and incidentals to complete the work under this Section.

2. The work of this Section includes, but is not limited to, the following:

a. Restoring of driveways and fences.

b. Cleaning up.

c. Incidental work.

2 PART 2 - PRODUCTS

2.01 MATERIALS

A. Materials required for this Section shall be of the same quality as materials that are to be restored. Where possible, the Contractor shall reuse existing materials that are removed and then replaced.

3 PART 3 - EXECUTION

3.01 RESTORING OF DRIVEWAYS AND FENCES

A. Existing public and private driveways disturbed by the Contractor shall be replaced. Paved drives shall be repaved to the limits and thickness existing prior to construction. Gravel drives shall be replaced and regraded.

B. The Contractor shall remove, store and replace existing fences during construction. Only the sections directed by the Consultant shall be removed. If any section of fence is damaged due to the Contractor's negligence, it shall be replaced with fencing equal to or better than that damaged, and the work shall be satisfactory to the Consultant.

3.02 CLEAN UP

A. The Contractor shall remove all construction material, buildings, equipment and other debris remaining on the job as the result of construction operations and shall render the site of the work in a neat and orderly condition.

3.03 INCIDENTAL WORK

A. Do all incidental work not otherwise specified, but obviously necessary for the proper completion of the contract as specified and as shown on the Drawings.

END OF SECTION

THIS DOCUMENTS

BEHIND THIS PAGE

MUST ACCOMPANY PROPOSAL

IN ORDER FOR SUBMITTAL

TO BE CONSIDERED

COMPLETE AND ACCEPTABLE

BID FORM

FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

BID No.: PWE24-024

TO BE COMPLETED AND UPLOADED ONLINE

The City of Boynton Beach is seeking qualified VENDORS to furnish, install and provide all labor for **FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT** on an 'as needed basis'.

Submitted By: _____ Date: _____
(VENDOR)

To furnish and deliver all materials and to do and perform all WORK in accordance with the Bid Documents, as follows:

1. The undersigned VENDOR proposes and agrees, if this Bid is accepted, to enter into a contract with the CITY to perform and furnish all WORK as specified herein for the Contract Price and within the Contract Period indicated in this Bid.

2. This Bid will remain subject to acceptance for ninety (90) days after the day of Bid opening. VENDOR will sign and submit the necessary documents required by the CITY within ten (10) days after the date of CITY's Award Letter.

3. In submitting this Bid, VENDOR represents, as more fully set forth in the Contract, that

   a. VENDOR has examined the Bid Documents, including all addenda. Receipt of all of which is hereby acknowledged;

   b. VENDOR has familiarized itself with the nature and extent of the Bid Documents, locality, and all local conditions and laws and regulations that in any manner may affect the cost, progress, performance, or furnishing of the WORK.

   c. VENDOR has given the CITY written notice of all conflicts, errors, or discrepancies that it has discovered in the Bid Documents, and the written resolution thereof by the CITY is acceptable to VENDOR.

4. VENDOR proposes to furnish the WORK in conformity with the specifications listed. The Bid Prices quoted have been checked and certified to be correct. Such Bid Prices are fixed and firm and shall be paid to VENDOR for the successful completion of its obligation as specified in the Bid Documents.

THIS PAGE TO BE SUBMITTED ALONG WITH BID FOR
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5. VENDOR agrees that the WORK will be substantially completed within **(90)** consecutive calendar days after the receipt of the Notice to Proceed and final completion will occur within **30** consecutive calendar days after the Notice of Substantial Completion.

6. VENDOR accepts the provisions of the Contract as to liquidated damages in the event of failure to complete the WORK on time.

7. Communications concerning this Bid shall be as follows:

Contact Person _____

Business Address _____

City, State, Zip Code _____

Business Phone Number _____

Email Address _____

Cell Phone Number _____

8. Other pertinent information is as follows:

License Number
(Please Attach Copy) _____

Federal Tax ID# _____

Federal Employment ID # _____

Submitted on this _____ day of _____, 20___.

a. (If an individual, partnership, or non-incorporated organization)

Signature of
VENDOR _____

By _____

b. (If a corporation)

(Affix Seal)

Signature of
VENDOR _____

By _____

Attested by
Secretary _____

Incorporated under the laws of the State of _____.

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BID BOND

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

KNOW ALL MEN BY THESE PRESENTS, that _____

as Principal, and _____, as Surety, authorized to do business in the State of Florida are held and firmly bound unto the Owner, City of Boynton Beach in the penal sum of _____ Dollars ($_____) lawful money of the United States, for the payment of which sum will and truly to be made, we bond ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying bid, dated _____, 20____, for:

(FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT)

NOW THEREFORE,

A. If the principal shall not withdraw such Bid within ninety (90) calendar days after date of opening of the same, and shall within ten (10) business days after the prescribed forms are presented to the principal for signature, enter into a written Contract with the City in accordance with the Bid as accepted, and give bonds with goods and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such Contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and effect.

B. In the event of the withdrawal of such Bid within the period specified, or the failure to enter into such Contract and give such bonds within the time specified, if the principal shall pay the City the difference between the amount specified in such Bid and the amount for which the City may procure the required work and supplies, if the latter amount be in excess of the former then the above obligations shall be void and of no effect, otherwise to remain in full force and effect.

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IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals, this _____ day of _____, 20___, being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of is governing body.

WITNESS: (If Sole Ownership or Partnership, two (2) Witnesses required).

(If Corporation, Secretary only will attest and affix seal).

PRINCIPAL:

_____
Name of Firm

WITNESS:

_____

_____ _____
Signature of Authorized Officer (affixed seal)

_____
Title

_____
Business Address

_____
City and State

SURETY:

_____
Corporate Surety

WITNESS:

_____ _____
Attorney-in-Fact (affix seal)

_____
Business Address

_____
City and State

_____
Name of Local Insurance Agency

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CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the Corporation named as Principal in the within bond; that _____ who signed the such Bid Bond on behalf of the Principal, was then _____ of such Corporation; that I know their signature, and their signature hereto is genuine; and that such bond was duly signed, sealed, and attested for and in behalf of such Corporation by authority of its governing body.

_____
Secretary (corporate seal)

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

Before me, a Notary Public duly commissioned, qualified and acting, personally appeared by means of ___physical presence or ___online notarization _____ to me well known, who being by me first duly sworn upon oath, says that they are the Attorney-in-Fact, for the _____ and that they have been authorized by _____ to execute the foregoing bond on behalf of the VENDOR named therein in favor for the City of Boynton Beach.

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CERTIFICATE AND AFFIDAVIT FOR BONDS

TO: CITY OF BOYNTON BEACH COMMISSIONERS

RE: Bid Number: PWE24-024

Vendor: _____

Name: _____

Address: _____

City/ State: _____ ZIP: _____

Phone: _____

Bond Amount: _____

SURETY BOND COMPANY:

Name: _____

Address: _____

City/ State: _____ ZIP: _____

Phone: _____

This is to certify that in accordance with Chapter 85-104, Laws of Florida (HB 1266) the insurer named above:

1. Holds a certificate of authority authorizing it to write surety bonds in the state of Florida;
2. Has twice the minimum surplus and capital required by the Florida Insurance Code; and
3. Holds a current 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.

_____ _____

Date Agent and Attorney-in-Fact

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BIDDER'S QUALIFICATION STATEMENT

FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

BID No.: PWE24-024

TO BE COMPLETED AND UPLOADED ONLINE

The undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter:

	Check One	
Submitted By:	Corporation	
Name: _____	Partnership	
Address: _____	Individual	
City, State, Zip: _____	Other	
Telephone No.: _____		
Email Address.: _____		

1. State the true, exact, correct, and complete name of the partnership, corporation, trade or fictitious name under which you do business and the address of the place of business.

   The correct name of the Vendor is:

   _____

   The address of the principal place of business is:

   _____

   _____

2. If Vendor is a corporation, answer the following:

   a. Date of Incorporation: _____
   b. State of Incorporation: _____
   c. President's name: _____
   d. Vice President's name: _____
   e. Secretary's name: _____
   f. Treasurer's name: _____
   g. Name and address of Resident Agent: _____

3. If Vendor is an individual or a partnership, answer the following:

   a. Date of organization: _____

   b. Name, address, and ownership units of all partners:

   _____

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_____
_____

c. State whether general or limited partnership: _____

4. What is the last project of this nature that you have completed?
_____
_____
_____

5. If Vendor is other than an individual, corporation, or partnership, describe the organization and give the name and address of principals:
_____
_____
_____

6. If Vendor is operating under a fictitious name, submit evidence of compliance with the Florida Fictitious Name Statute.
_____

7. How many years has your organization been in business under its present business name?
_____

Under what other former names has your organization operated?

_____
_____
_____

8. Have you ever failed to complete work awarded to you. If so, when, where, and why?
_____

9. List the pertinent experience of the key individuals of your organization (continue on insert sheet, if necessary).
_____
_____
_____

10. Indicate registration, License Numbers, or Certificate Numbers for the business or professions, which are the subject of this Bid. Attach Certificate of Competency and or State Registration.
_____

11. Will you sublet any part of this WORK? If so, give details.
_____
_____

12. State the name and address of the Attorney, if any, for the business.
_____
_____

13. State the names and addresses of all businesses and/or individuals who own and interest of more than five percent (5%) of the Vendor's business and indicate the percentage owned of each such business and/or individual:
_____
_____

14. State the names, addresses, and the type of business of all firms that are partially or wholly owned by the Vendor:

_____

_____

15. Has the Vendor or any principals of the Firm failed to qualify as a responsible Vendor, refused to enter into a contract after an award has been made, failed to complete a contract during the past five (5) years, or been declared to be in default in any contract in the last five (5) years? If yes, please explain below:

_____

_____

16. What will be your turnaround time for written responses to the City's inquires?

_____

17. Is the financial statement submitted with your bid (if applicable) for the identical organization name for Question #1?
YES □ NO □

18. If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsidiary).

_____

19. List and describe all bankruptcy petitions (voluntary or involuntary) which have been filed by or against the Vendor, its parent or subsidiaries, or predecessor organizations during the past five (5) years. Include in the description, the disposition of each petition.

_____

20. List all claims, arbitrations, administrative hearings, and lawsuits brought by or against the Vendor or its predecessor organization(s) during the last five (5) years. The list shall include all case names, case arbitration or hearing identification numbers, the name of the project in which the dispute arose, and a description of the subject matter of the dispute.

_____

_____

21. Is the Vendor currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify in detail the circumstances and prospects for resolution.

_____

_____

22. Bank References (include name, job title, address, and telephone number of contact person) – Minimum 1

_____

_____

23. Annual Average Services Revenue of the Vendor for the last three years as follows:

		Revenue Index Number
a.	Government Related Work	
b.	Non-Governmental Related Work	
	Total Work (a +b):	

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FOR
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Services Revenue Index Number

1.	Less than $100,000
2.	$100,000 to less than $250,000
3.	$250,000 to less than $500,000
4.	$500,000 to less than $1 million
5.	$1 million to less than $2 million
6.	$2 million to less than $5 million
7.	$5 million to less than $10 million
8.	$10 million to less than $25 million
9.	$25 million to less than $50 million
10.	$50 million or greater

24. Provide description of policies and methods for project monitoring and budgeting control as well as adherence to project schedule.

_____

_____

25. Provide a description of quality assurance/quality control management methods.

_____

_____

The VENDOR acknowledges and understands that the information contained in response to this Qualification's Statement shall be relied upon by CITY in awarding the contract and such information is warranted by VENDOR to be true. The discovery of any omission or misstatement that materially affects the VENDOR'S qualifications to perform under the contract shall cause the CITY to reject the Bid, and if after the award, to cancel and terminate the award and/or contract.

The VENDOR also acknowledges that all information listed above may be checked by the CITY and authorizes all entities or persons listed above to answer any and all questions. VENDOR hereby indemnifies the CITY and persons or entities listed above and holds them harmless from any claim arising from such authorization or the exercise thereof, including the dissemination of information requested above.

(Signed)_____

(Title)_____

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 20__, by _____, who is personally known to me or who has produced _____ as identification.

Subscribed and sworn to before me

This _____ day of _____, 202__.

_____

Notary Public (Signature)

My Commission Expires: _____

ANTI-KICKBACK AFFIDAVIT

FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

BID No.: PWE24-024

TO BE COMPLETED AND UPLOADED ONLINE

STATE OF FLORIDA)
: SS
COUNTY OF PALM BEACH)

I, the undersigned hereby duly sworn, depose and say that no portion of the sum herein submitted will be paid to any employees of the City of Boynton Beach as a commission, kickback, reward of gift, directly or indirectly by me or any member of my integrator or by an officer of the corporation.

By: _____
NAME - SIGNATURE

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 20__, by _____, who is personally known to me or who has produced _____ as identification.

Sworn and subscribed before me
this _____ day of _____ , 2024

Printed Information:

_____
NAME

_____
TITLE

_____
NOTARY PUBLIC, State of Florida
at Large

_____
COMPANY

_____
"OFFICIAL NOTARY SEAL" STAMP

THIS PAGE TO BE SUBMITTED ALONG WITH BID
FOR
PACKAGE TO BE CONSIDERED COMPLETE AND
ACCEPTABLE

NON-COLLUSION AFFIDAVIT OF PROPOSER

FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

BID No.: PWE24-024

TO BE COMPLETED AND UPLOADED ONLINE

State of _____)
:
County of_____)

_____, being first duly sworn, deposes and says that:

1) He is _____ of _____, the Vendor that
(Title) (Name of Corporation or Integrator)
has submitted the attached Bid:

2) He is fully informed respecting the preparation and contents of the attached submittal and of all pertinent circumstances respecting such submittal;

3) By signing and submitting this bid, the Vendor certifies that this bid is made independently and free from collusion;

4) Further, the said Vendor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Vendor, integrator or person to submit a collusive or sham BID in connection with the Contract for which the attached BID has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communications or conference with any other Vendor, integrator or person to fix the price or prices in the attached Bid or of any other Vendor, or to fix any overhead, profit or cost element of the Bid price or the Bid price of other Vendor or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Boynton Beach or any person interested in the proposed Contract; and

5) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Vendor or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

6) Vendor shall disclose below, to their best knowledge, any City of Boynton Beach officer or employee, or any relative of any such officer or employee as defined in Section 112.3135(1) (c), Florida Statutes, who is an officer of director or, or has a material interest in, the Vendor's business, who is in a position to influence this procurement. Any City of Boynton Beach officer or employee who has any input into the writing of specifications or requirements, solicitation of offers, decision to award, evaluation of offers, or any other activity pertinent to this procurement is presumed, for purposes hereof, to be in a position to indirectly own any of the total assets or capital stock of any business entity owned or operated by the Vendor, or if they otherwise stand to personally gain if the contract is awarded to this Vendor.

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7) Failure to submit this executed statement as part of the bid shall make the bid nonresponsive and not eligible for award consideration. In the event the VENDOR does not indicate any names, the CITY shall interpret this to mean that the VENDOR has indicated that no such relationships exist. Failure of a VENDOR to disclose any relationship described herein shall be reason for termination of bid or award, whichever is applicable, with no time to cure.

NAME	**RELATIONSHIP**
_____	_____
_____	_____

Witnesses:

_____
Typed name:

_____
Typed name:

VENDOR:

Signed: _____

Name: _____

Title: _____

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 20__, by _____, who is personally known to me or who has produced _____ as identification.
Subscribed and sworn to before me

This _____ day of _____, 20 _____

_____
Notary Public (Signature)

My Commission Expires: _____

(Signed)_____

(Title)_____

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CERTIFICATION PURSUANT TO FLORIDA STATUTE § 287.135

FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT

BID No.: PWE24-024

TO BE COMPLETED AND UPLOADED ONLINE

I, _____, on behalf of _____ certify
Print Name and Title Company Name

that _____does not:
Company Name

1. Participate in a boycott of Israel; and
2. Is not on the Scrutinized Companies that Boycott Israel List; and
3. Is not on the Scrutinized Companies with Activities in Sudan List; and
4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
5. Has not engaged in business operations in Syria.

Submitting a false certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to the Vendor of the City's determination concerning the false certification. The Vendor shall have ninety (90) calendar days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Vendor does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute § 287.135.

Section 287.135, Florida Statutes, prohibits the City from:

1) Contracting with companies for goods or services if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel; and

2) Contracting with companies, for goods or services that are on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, or are engaged in business operations in Syria.

As the person authorized to sign on behalf of the Vendor, I hereby certify that the company identified above in the section entitled "Vendor Name" does not participate in any boycott of Israel, is not listed on the Scrutinized Companies that Boycott Israel List, is not listed on either the Scrutinized Companies with activities in the Iran

Petroleum Energy Sector List, and is not engaged in business operations in Syria. I understand that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. I further understand that any contract with the City for goods or services may be terminated at the option of the City if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

_____	_____
COMPANY NAME	SIGNATURE
_____	_____
PRINT NAME	TITLE
_____	
DATE	

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WARRANTIES

In consideration of, and to induce the Award of **THE CITY OF BOYNTON BEACH, FLORIDA,** Construction Contract described in these Bid Documents, the Vendor represents and warrants to the City of Boynton Beach, Florida:

1. The Vendor is financially solvent and sufficiently experienced and competent to perform all of the work required of the Vendor in the Construction Contract; and

2. That the facts stated in the Vendor's Bid and information given the Vendor pursuant to the request or proposal for Bids, instructions to Vendors and Specifications are true and correct in all respects; and

3. That the Vendor has read and complied with all of the requirements set forth in the request for Bids, instructions to Vendors and Specifications; and

4. That the Vendor warrants all materials supplied by it under the terms of the Construction Contract are delivered to the City of Boynton Beach, Florida, free from any security interest, and other lien, and that the Vendor is a lawful owner having the right to sell the same and will defend the conveyance to the City of Boynton Beach, Florida, against all persons claiming the whole or any part thereof; and

5. That the materials supplied to the City of Boynton Beach, Florida, under the Construction Contract are free from the rightful claims of any persons whomsoever, by way of patent or trademark infringement or the like; and

6. That the materials supplied under the Construction Contract are merchantable within the meaning of the Uniform Commercial Code Section 2-314; and

7. That the materials supplied under the Construction Contract are free from defects in materials and workmanship under normal use and service and that any such materials found to be defective shall be replaced by the Vendor as per the attached Warranty.

8. That the materials supplied pursuant to the Construction Contract are fit for the purposes for which they are intended to be used; that under normal use and maintenance the material will continue to be fit for such purposes for the warranty period after delivery, provided that the City shall give the Vendor notice that the materials failed to fulfill the warranty; such notice shall state in what respect the materials have failed to fulfill the warranty, where upon the Vendor shall be allowed a reasonable time after receipt of such notice to correct the defect and the City agrees to cooperate in this regard. If the materials cannot be made to fulfill the Contract within the warranty period the Vendor will either furnish duplicate materials, or at its option refund the amount paid, which shall constitute a settlement in full for all damages occasioned by reason at this warranty of fitness; and

9. That this Warranty is included in exposures for which the Vendor has products liability and completed operations insurance, in minimum amounts of One Million ($1,000,000.00) Dollars for property damage and One Million ($1,000,000.00) Dollars for personal injury as shown on the Certificates of such Insurance attached hereto, and the Vendor agrees to keep such insurance coverage during the period of this Warranty; and

10. That it is an express condition of this Warranty that the item(s) hereby warranted shall be operated and maintained by the City in accordance with the manufacturer's recommendations as to those

portions of the item(s) that are not fabricated by the Vendor, and in accordance with the Vendor's recommendations, a copy of which has either been supplied to the City of Boynton Beach should maintain complete and accurate records made at the time of performance of maintenance showing compliance with such instructions, and by acceptance of this Warranty, the City of Boynton Beach, Florida, agrees to present such records to the Vendor upon request in the event of a claim hereunder by the City;

11. The foregoing Warranties apply as a minimum and are supplemental to other Warranties offered. They are not substituted, but in addition to, any other Warranties offered; and

12. That it is agreed and understood by the Vendor that the City of Boynton Beach, Florida, is induced to enter the Construction Contract in reliance upon this Warranty.

SIGNED, sealed and delivered on this __day of _____, 202__.

(SEAL)

VENDOR:

By _____

ATTEST:

_____
Secretary

CITY OF BOYNTON BEACH
E-VERIFY FORM UNDER SECTION 448.095, FLORIDA STATUTES
TO BE COMPLETED AND UPLOADED ONLINE

Project Name: **FIRE STATION # 5 EMERGENCY GENERATOR REPLACEMENT PROJECT**

Solicitation No.: **PWE24-024**

1. Definitions:

   "CONTRACTOR" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "CONTRACTOR" includes, but is not limited to, a vendor or consultant.
   "SUB-CONTRACTOR" means a person or entity that provides labor, supplies, or services to or for a CONTRACTOR or another SUB-CONTRACTOR in exchange for salary, wages, or other remuneration.
   "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.
2. Effective January 1, 2021, CONTRACTORS, shall register with and use the E-Verify system in order to verify the work authorization status of all newly hired employees. CONTRACTOR shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

   a) All persons employed by a CONTRACTOR to perform employment duties within Florida during the term of the contract; and

   b) All persons (including sub-vendors/sub-consultants/sub-CONTRACTORS) assigned by CONTRACTOR to perform work pursuant to the contract with the City of Boynton Beach. The CONTRACTOR acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Boynton Beach; and

   c) Should vendor become the successful CONTRACTOR awarded for the above-named project, by entering into the contract, the CONTRACTOR shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. CONTRACTOR shall also require all SUB-CONTRACTORS
   to provide an affidavit attesting that the SUB-CONTRACTOR does not employ, contract with, or subcontract with, an unauthorized alien. The CONTRACTOR shall maintain a copy of such affidavit for the duration of the contract.
3. Contract Termination

   a) If the City has a good faith belief that a person or entity with which it is contracting has knowingly violated s. 448.09 (1) Fla. Stat., the contract shall be terminated.

   b) If the City has a good faith belief that a SUB-CONTRACTOR knowingly violated s. 448.095 (2), but the CONTRACTOR otherwise complied with s. 448.095 (2) Fla. Stat., shall promptly notify the CONTRACTOR and order the CONTRACTOR to immediately terminate the contract with the SUB-CONTRACTOR.

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c) A contract terminated under subparagraph a) or b) is not a breach of contract and may not be considered as such.

d) Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination.

e) If the contract is terminated for a violation of the statute by the CONTRACTOR, the CONTRACTOR may not be awarded a public contract for a period of 1 year after the date of termination.

Company Name:
Authorized Signature:
Print Name:
Title
Date:
Phone:

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of □ physical presence or □ online notarization, this ____ day of _____, _____, by _____ on behalf of _____. He/she is personally known to me or has produced _____ as identification.

_____
NOTARY PUBLIC

_____
(Name of Notary Typed, Printed or Stamped)

_____
Title or Rank

_____
Serial number, if any

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Affidavit of Compliance with Foreign Entity Laws

The undersigned, on behalf of the entity listed below ("Entity"), hereby attests under penalty of perjury as follows:

1. Entity is not owned by the government of a foreign country of concern as defined in Section 287.138, Florida Statutes. (Source: § 287.138(2)(a), Florida Statutes)

2. The government of a foreign country of concern does not have a controlling interest in Entity. (Source: § 287.138(2)(b), Florida Statutes)

3. Entity is not organized under the laws of, and does not have a principal place of business in, a foreign country of concern. (Source: § 287.138(2)(c), Florida Statutes)

4. The undersigned is authorized to execute this affidavit on behalf of Entity.

Date: _____, 20___ Signed: _____

Entity: _____ Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by _____, as _____ for _____, who is personally known to me or who has produced _____ as identification.

Notary Public Signature: _____ State of Florida at Large (Seal)

Print Name: _____ My commission expires: _____

Affidavit of Compliance with Anti-Human Trafficking Laws

In accordance with section 787.06 (13), Florida Statutes, the undersigned, on behalf of the entity listed below ("Entity"), hereby attests under penalty of perjury that:

Entity does not use coercion for labor or services as defined in Section 787.06, Florida Statutes, entitled "Human Trafficking."

Date: _____, 20___ Signed: _____

Entity: _____ Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by _____, as _____ for _____, who is personally known to me or who has produced _____ as identification.

Notary Public Signature: _____ State of Florida at Large (Seal)

Print Name: _____ My commission expires: _____

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DRAFT

AGREEMENT BETWEEN THE CITY OF BOYNTON BEACH AND [entity name]

SUBJECT TO REVISIONS PRIOR TO SIGNING

THIS AGREEMENT is entered into by and between the CITY OF BOYNTON BEACH, a municipal corporation organized and existing under the laws of Florida, with a business address of 100 East Ocean Ave., Boynton Beach, FL 33435, hereinafter referred to as **"**CITY", and Vendor Name, authorized to do business in the State of Florida, with a business address of Vendor Address, hereinafter referred to as the "VENDOR," each a "Party" and collectively the "Parties."

WHEREAS, the CITY has selected the VENDOR to perform construction services related to the Fire Station # 5 Emergency Generator Replacement Project; and,

WHEREAS, at its meeting of **XXXX, 2024**, by Resolution No. _____, the CITY Commission approved this award to VENDOR and authorized the proper CITY officials to execute this Agreement hereinafter referred to as Contract No.: **PWE24-024** and used interchangeably with "contract".

NOW, THEREFORE, CITY and VENDOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. SCOPE OF WORK. VENDOR shall furnish all labor, materials, equipment, services, and incidents necessary to perform all "WORK" described in the Contract Documents (as defined in Article 7 below) and related thereto for the Project. The terms and conditions of Bid No. PWE24-024 and VENDOR's bid are expressly incorporated into this Agreement by reference. Any conflict or discrepancy between the terms of this Agreement, Bid No. PWE24-024, and VENDOR's bid, shall be resolved pursuant to the following order of precedence (1) this Agreement, (2) Bid No. PWE24-024; and 3. VENDOR's bid.

Article 2. CONSULTANT. Shall mean the City of Boynton Beach, which has designed the Project and will assume all duties and responsibilities and will have the rights and authority assigned to CONSULTANT in connection with the completion of the WORK in accordance with the Contract Documents.

Article 3. CONTRACT TIME: TERMINATION: LIQUIDATED DAMAGES.

3.1 **Contract Time**. The WORK will be substantially completed within **(Number of days) [written]** calendar days from the effective date of this Agreement, when the Contract Time commences to run as provided in paragraph **2.3** of the General Conditions and completed and ready for final payment in accordance with paragraph **14.9** of the General Conditions within **60** calendar days from the date of Substantial Completion.

3.2 **Termination for Convenience**. This Agreement may be terminated by CITY for convenience, upon providing fourteen (14) business days of written notice to VENDOR for such termination. In the event of termination, VENDOR shall be paid its compensation for services performed until the termination date, including services reasonably related to termination. In the event that VENDOR abandons this Agreement or causes it to be terminated, VENDOR shall indemnify CITY against loss pertaining to this termination.

3.3 **Termination for Cause**. In addition to all other remedies available to CITY, this Agreement shall be subject to cancellation by CITY for cause, should VENDOR neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure

shall continue for a period of thirty (30) days after receipt by VENDOR of written notice of such neglect or failure.

3.4 **Liquidated Damages**. The CITY and VENDOR recognize and acknowledge that time is of the essence of this Contract and that the CITY will suffer financial loss if the WORK is not completed within the times specified in paragraph **3.1** above, plus any extensions thereof allowed in accordance with **Article 12** of the General Conditions. Each of the parties acknowledges that it has attempted to quantify the damages, which would be suffered by the CITY in the event of the failure of VENDOR to perform in a timely manner, but neither one has been capable of ascertaining such damages with certainty. CITY and VENDOR also recognize and acknowledge the delays, expense, and difficulties involved in proving in a legal preceding the actual loss suffered by the CITY if the WORK is not completed on time. Accordingly, instead of requiring any such proof, the CITY and VENDOR agree that as liquidated damages for delay (but not as a penalty) VENDOR shall pay the CITY, **Written ($Number)** for each day of that expires after the time specified in paragraphs **3.1** for substantial completion until the WORK is substantially complete. After Substantial Completion, if VENDOR shall neglect, refuse or fail to complete the remaining WORK within the Contract Time or any proper extension thereof granted by the CITY, VENDOR shall pay CITY **Written [$Number]** for each day that expires after the time specified in paragraph **3.1** for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

CITY shall pay VENDOR, for the faithful performance of the Contract, in lawful money of the United States of America, and subject to the additions and deductions as provided in the Contract Documents, a total sum as follows:

Based on the Contract prices shown in the Bid Form submitted to the CITY as subsequently revised and as stated herein, a copy of such Bid Form being a part of the Contract Documents, the aggregate amount of this Contract (obtained from either the lump sum price, the application of unit prices to the quantities shown in the Bid Form or the combination of both) not to exceed:

(Written) **(Numerical)**

Article 5. PAYMENT PROCEDURES.

VENDOR shall submit Applications for Payment in accordance with **Article 14** of the General Conditions. CITY will process Applications for Payment as provided in the General Conditions.

1.1 Progress Payments. CONTRACT may submit an Application for Payment as recommended by CONSULTANT, for WORK completed during the Project at intervals of not more than once a month. All progress payments will be on the basis of the progress of WORK measured by the schedule of values established in Paragraph **2.9.1** of the General Conditions and in the case of Unit Price Work based on the number of units completed or, in the event there is no schedule of values, as provided in the General Requirements.

1.2 Prior to Substantial Completion progress payments will be made in an amount equal to 90% of WORK completed, but, in each case, less the aggregate of payments previously made and less such amounts as CONSULTANT shall determine, or CITY may withhold, in accordance with paragraph **14.5** of the General Conditions.

1.3 VENDOR shall submit with each Application for Payment, an updated progress schedule acceptable to the CITY and a Warranty of Title/Release of Liens relative to the Work that is the subject of the Application. Each Application for Payment shall be submitted to the CITY for approval. The CITY shall make payment to the VENDOR within thirty (30) calendar days after approval by the CITY of VENDOR'S Application for Payment and submission of an acceptable updated progress schedule.

1.4 Five percent (5) of all monies earned by the VENDOR shall be retained by the CITY until Final

Completion of the construction services purchased (defined as that point at which one hundred (100) percent of the construction of the work as defined in the Contract Schedule of Values has been performed under the contract by the VENDOR) has been reached and acceptance by CITY.

1.5 The CITY may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

a. Defective Work not remedied.
b. Claims filed or reasonable evidence indicating probable filing of claims by other parties against VENDOR.
c. Failure of VENDOR to make payments properly to SUBCONTRACTORS or for material or labor.
d. Damage to another VENDOR not remedied.
e. Liquidated damages and costs incurred by the CITY for extended construction administration.
f. Failure of VENDOR to provide any document(s) required by the Contract Documents.

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

1.6 Final Payment. Upon final completion and acceptance of the WORK in accordance with paragraph **14.10** of the General Conditions, CITY shall pay the remainder of the Contract Price as recommended by CONSULTANT as provided in paragraph **14.10**. VENDOR acknowledges that if final payment shall not be made until consent of surety is received by CITY.

1.7 All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

Article 6. RETAINAGE.

Within 30 calendar days after reaching the earlier of substantial completion or beneficial occupancy, the City/Owner and the Vendor will inspect the work and develop a punch list covering those items required to render complete, satisfactory, and acceptable construction services purchased by the City/Owner. The punch list will include a schedule of values that provides the estimated cost to complete each item on the punch list. If the City/Owner and Vendor are unable to agree on an item or value, the City/Owner has final discretion whether to include an item and the amount for valuation of the cost to complete each item on the punch list. Within 20 business days after the creation of the punch list, the remaining contract balance, including retainage, will be paid to the Vendor less an amount equal to 150 percent of the cost to complete the items on the punch list. Upon reaching final acceptance for an item or all items, the 150 percent withheld for each item will be released with final payment. For projects valued at $10 million or more, the 30-calendar day period may be extended to 45 calendar days.

Article 7. CONTRACTOR GUARANTEE.

VENDOR warrants all work, materials, and equipment shall be free from damages and/or defects owing to faulty materials or workmanship for a period of one (1) year after completion of the WORK covered by this Contract. The VENDOR, free of all costs to the CITY, shall replace any part of the equipment, materials, or work included in this Contract, which proves to be defective by reason of faulty materials, damages, and/or workmanship within twelve (12) month period.

Article 8. CONTRACT DOCUMENTS.

The Documents hereinafter listed shall form the Contract and they are as fully a part of the Contract as if attached hereto:

8.1 Request for Bid
8.2 Instructions to Proposers / Bidders
8.3 Proposal Forms (including the Proposal, Schedule(s), Submission Requirements of

Proposer / Bidder, and all required certificates, affidavits, and other documentation)

8.4 Contract

8.5 VENDOR's Bid Bond, Performance, and Payment Bond

8.6 General Conditions for Construction

8.7 Special Terms and Conditions

8.8 City Construction Standards and Details (available online at: https://www.boynton-beach.org/engineering/new-construction-department- public-works-engineering-division)

8.9 Attachment "A" – Emergency Generator ARCH SS – Bid Set/Drawings

8.10 Attachment "B" – Emergency Generator ELEC SS – Bid Set/Drawings

ARTICLE 9. NOTICE. All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to CITY shall be mailed to:

Daniel Dugger, City Manager
City of Boynton Beach
100 East Ocean Ave,
Boynton Beach, FL 33435
Telephone No. (561) 742-6000

And if sent to the VENDOR shall be mailed to:

Article 10. INDEMNITY.

10.1 The VENDOR shall indemnify and hold harmless the CITY and its officers, employees, agents, instrumentalities, and the State of Florida, Division of Emergency Management from liability, losses or damages, including attorneys' fees and costs of defense through the conclusion of any appeals, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of or resulting from the negligence, recklessness, or intentional wrongful misconduct of VENDOR, its employees, agents, partners, principals or subcontractors during the term of this Agreement or resulting thereafter. The VENDOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. The VENDOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the VENDOR shall in no way limit the responsibility to indemnify, keep, and save harmless and defend the CITY or its officers, employees, agents, and instrumentalities as herein provided.

10.2 VENDOR's aggregate liability pursuant to this indemnification provision shall not exceed one and one-half (1 1/2) times the contract price or One Million Dollars ($1,000,000) per occurrence, whichever is greater.

10.3 Upon completion of all services, obligations, and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

10.4 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of VENDOR.

10.5 Nothing contained herein is intended nor shall be construed as a contractual waiver of the CITY's rights, limits, and immunities under the common law or Section 768.28, Florida Statutes, as may be amended from time to time, 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. VENDOR and CITY agree that any liability of the CITY under this Contract shall be limited to the amounts set forth in Sec. 728.68, Florida Statutes.

Article 11. REIMBURSEMENT OF CONSULTANT EXPENSES.

Should the completion of this Contract be delayed beyond the specified or adjusted time limit, VENDOR shall reimburse the CITY for all expenses of consulting and inspection incurred by the CITY during the period between said specified or adjusted time and the actual date of final completion. All such expenses for consulting and inspection incurred by the CITY will be charged to the VENDOR and be deducted from payments due VENDOR as provided by this Contract. Said expenses shall be further defined as CONSULTANT charges associated with the construction contract administration, including resident project representative costs.

Article 12. FLORIDA'S PUBLIC RECORDS LAW.

The CITY is a public agency subject to Chapter 119, Florida Statutes. The VENDOR shall comply with Florida's Public Records Law. Specifically, the VENDOR shall:

12.1 Keep and maintain public records required by the CITY to perform the service;

12.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statue or as otherwise provided by law;

12.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, VENDOR shall destroy all copies of such confidential and exempt records remaining in its possession once the VENDOR transfers the records in its possession to the CITY; and,

12.4 Upon completion of the contract, VENDOR shall transfer to the CITY, at no cost to the CITY, all public records in VENDOR's possession. All records stored electronically by VENDOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

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

CITY CLERK'S OFFICE

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

Article 13. E-VERIFY.

13.1 CONTRACTOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

13.1.1 Definitions for this Section:

A. "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for a salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.

B. "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for a salary, wages, or other remuneration.

C. "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

13.1.2 Registration Requirement; Termination: Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-Verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E- Verify System to verify the employment eligibility of:

A. All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and

B. All persons (including sub-vendors/sub-consultants/sub-contractors) assigned by Contractor to perform work pursuant to the contract with the City of Boynton Beach. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Boynton Beach; and

C. The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

Article 14. PROHIBITION AGAINST CONSIDERING SOCIAL, POLITICAL OR IDEOLOGICAL INTERESTS IN GOVERNMENT CONTRACTING -- F.S. 287.05701.

VENDOR is hereby notified of the provisions of section 287.05701, Florida Statutes, as amended, that the CITY will not request documentation of or consider VENDOR's social, political, or ideological interests when determining if the VENDOR is a responsible VENDOR. VENDOR is further notified that the CITY's governing body may not give preference to a Vendor based on the VENDOR's social, political, or ideological interests.

Article 15. SCRUTINIZED COMPANIES.

By execution of this Agreement, VENDOR certifies that VENDOR is not participating in a boycott of Israel. VENDOR further certifies that VENDOR is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has VENDOR been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the CITY will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of contract. The CITY shall provide notice, in writing, to the VENDOR of the CITY's determination concerning the false certification. VENDOR shall have five (5) calendar days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, the VENDOR shall have ninety (90) calendar days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the VENDOR does not demonstrate that the CITY's determination of false certification was made in error then the CITY shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

Article 16. COVENANT AGAINST CONTINGENT FEES.

The VENDOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the VENDOR, to solicit or secure this Agreement, and that VENDOR has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the VENDOR any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Article 17. TRUTH IN NEGOTIATION CERTIFICATE.

17.1 Execution of this Agreement by the VENDOR shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement is accurate, complete, and current as of the date of the Agreement and no higher than those charged to the VENDOR's most favored customer for the same or substantially similar service.

17.2 The said rates and cost shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to outside vendors. The CITY shall exercise its rights under this "Certificate" within one (1) year following payment.

Article 18. MISCELLANEOUS.

18.1 Any and all legal action necessary to enforce the terms of this Agreement shall be governed by the laws of the State of Florida. Any legal action arising from the terms of this Agreement shall be submitted to a court of competent jurisdiction located exclusively in

Palm Beach County.

18.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

18.3 City and VENDOR each binds itself, their partners, successors, assigns and legal representatives to the other party hereto, their partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

18.4 In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

18.5 Prior to final payment of the amount due under the terms of this Agreement, to the extent permitted by law, a final waiver of lien shall be required to be submitted by the VENDOR, as well as all suppliers and subcontractors whom worked on the project that is the subject of this Agreement. Payment of the invoice and acceptance of such payment by VENDOR shall release City from all claims of liability by VENDOR in connection with this Agreement.

18.6 At all times during the performance of this Agreement, VENDOR shall protect CITY's property from all damage whatsoever on account of the work being carried on under this Agreement.

18.7 It shall be the VENDOR's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, city, state, and federal agencies as applicable.

18.8 This Agreement represents the entire and integrated agreement between City and VENDOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement is intended by the parties hereto to be final expression of this Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made. In the event of a conflict between this Agreement, the solicitation and the VENDOR's bid proposal, this Agreement shall govern then the solicitation, and then the bid proposal.

18.9 This Agreement will take effect once signed by both parties. This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

Article 19. DEFAULT OF CONTRACT & REMEDIES.

19.1 **Correction of Work**. If, in the judgment of CITY, work provided by VENDOR does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, CITY reserves the right to require that VENDOR correct all deficiencies in the work to bring the work into conformance without additional cost to CITY, and/or replace any personnel who fail to perform in accordance with the requirements of this Agreement. CITY shall be the sole judge of non-conformance and the quality of workmanship.

19.2 **Default of Contract**. The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by VENDOR:

19.2.1 The abandonment of the project by VENDOR for a period of more than seven (7) business days.

19.2.2 The abandonment, unnecessary delay, refusal of, or failure to comply with any of the terms of this Agreement or neglect, or refusal to comply with the instructions of the CITY's designee.

19.2.3 The failure by VENDOR to observe or perform any of the terms, covenants, or conditions of this Agreement to be observed or performed by VENDOR, where such failure shall continue for a period of seven (7) calendar days after written notice thereof by CITY to VENDOR; provided, however, that if the nature of VENDOR's default is such that more than seven (7) calendar days are reasonably required for its cure, then VENDOR shall not be deemed to be in default if VENDOR commences such cure within said seven (7) calendar day period and thereafter diligently prosecutes such cure to completion.

19.2.4 The assignment and/or transfer of this Agreement or execution or attachment thereon by VENDOR or any other party in a manner not expressly permitted hereunder.

19.2.5 The making by VENDOR of any general assignment or general arrangement for the benefit of creditors, or the filing by or against VENDOR of a petition to have VENDOR adjudged a bankruptcy, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against VENDOR, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of VENDOR's assets, or for VENDOR's interest in this Agreement, where possession is not restored to VENDOR within thirty (30) days; for attachment, execution or other judicial seizure of substantially all of VENDOR's assets, or for VENDOR's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

19.3 **Remedies in Default**. In case of default by VENDOR, CITY shall notify VENDOR, in writing, of such abandonment, delay, refusal, failure, neglect, or default and direct VENDOR to comply with all provisions of the Agreement. A copy of such written notice shall be mailed to the Surety on the Performance Bond. If the abandonment, delay, refusal, failure, neglect or default is not cured within seven (7) days of when notice was sent by CITY, CITY may declare a default of the Agreement and notify VENDOR of such declaration of default and terminate the Agreement. The Surety on the Performance Bond shall within ten (10) days of such declaration of default, rectify or cause to be rectified any mismanagement or breach of service in the Agreement and assume the work of VENDOR and proceed to perform services under the Agreement, at its own cost and expense.

19.3.1 Upon such declaration of default, all payments remaining due VENDOR at the time of default, less all sums due CITY for damages suffered, or expenses incurred by reason of default, shall be due and payable to Surety. Thereafter the Surety shall receive monthly payments equal to those that would have been paid by the VENDOR had the VENDOR continued to perform the services under the Agreement.

19.3.2 CITY may complete the Agreement, or any part thereof, either by day labor, use of a subcontractor, or by re-letting a contract for the same, and procure the equipment and the facilities necessary for the completion of the Agreement, and charge the cost of same to VENDOR and/or the Surety together with the costs incident thereto to such default.

19.3.3 In the event CITY completes the Agreement at a lesser cost than would have been payable to VENDOR under this Agreement, if the same had been fulfilled by VENDOR, CITY shall retain such differences. Should such cost to CITY be greater, VENDOR shall pay the amount of such excess to the CITY.

19.3.4 Notwithstanding the other provisions in this Article, CITY reserves the right to terminate the Agreement at any time, whenever the service provided by VENDOR fails to meet reasonable standards of the trade after CITY gives written notice to the VENDOR of the deficiencies as set forth in the written notice within fourteen calendar (14) days of the receipt by VENDOR of such notice from CITY.

Article 20. SOVEREIGN IMMUNITY. Nothing contained herein is intended to serve as a waiver of sovereign immunity by the CITY or as a waiver of limits of liability or rights the CITY may have under the doctrine of sovereign immunity or under Section 768.28, Florida Statutes.

Article 21. UNCONTROLLABLE FORCES.

Neither the CITY nor VENDOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

Neither party shall, however, be excused from performance if non-performance is due to forces which are preventable, removable, or remediable, and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

Article 22. NON-WAIVER. Waiver by the CITY of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

Article 23. INDEPENDENT CONTRACTOR. The VENDOR and the CITY agree that the VENDOR is an independent contractor with respect to the Work provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither VENDOR nor any employee of VENDOR shall be entitled to any benefits accorded CITY employees by virtue of the services provided under this Agreement. The CITY shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to VENDOR, or any employee of VENDOR.

Article 24. INSURANCE. During the performance of the Work under this Agreement, VENDOR shall maintain the insurance policies required by the Insurance Advisory in the Contract Documents, and provide originals or certified copies of all policies to CITY's Risk Management. All policies shall be written by an insurance company authorized to do business in Florida. VENDOR shall be required to obtain all applicable insurance coverage prior to commencing any Work pursuant to this Agreement.

Article 25. **OWNERSHIP AND USE OF DOCUMENTS**. All documents, drawings, specifications and other materials produced by the VENDOR in connection with the services rendered under this Agreement shall be the property of the CITY whether the project for which they are made is executed or not. The VENDOR shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with VENDOR's endeavors.

Article 26. **COMPLIANCE WITH LAWS**. VENDOR shall, in performing the Work contemplated by this Agreement, faithfully observe and comply with all federal, State of Florida, and City of Boynton Beach ordinances and regulations that are applicable to the Work rendered under this Agreement.

This Agreement will take effect once signed by both parties. This Agreement may be signed by the parties in counterparts, whether signed physically or electronically, which together shall constitute one and the same agreement among the parties. A facsimile signature shall constitute an original signature for all purposes.

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year set forth below their respective signatures.

CITY OF BOYNTON BEACH

_____
Ty Penserga, Mayor

Date:_____

Approved as to Form:

_____
Office of the City Attorney

Attested/Authenticated:

_____
Maylee De Jesus, City Clerk

(VENDOR)

_____
(Signature), Company

_____
Print Name of Authorized Official

_____
Title

_____
Date

(Corporate Seal)

Attest/Authenticated:

_____
Witness

_____
Print Name

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that _____
(Insert name of Vendor)

_____as Principal, (Address or legal title of Vendor)

hereinafter called Vendor, and _____
(Name and address of Surety)

_____

as Surety, hereinafter called Surety, are held and firmly bound unto CITY OF BOYNTON BEACH, P.O. BOX 310, BOYNTON BEACH, FLORIDA 33425-0310 as Obligee, hereinafter called Owner, in the amount of _____Dollars ($_____),

for payment whereof Vendor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Vendor has by written agreement dated _____, 20__, entered into a contract with Owner for _____ in accordance with drawings and specifications prepared by _____ which contract is by reference made a part of hereof, and is hereinafter referred to as the Contract.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Vendor shall promptly and faithfully perform such Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Vendor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

1. Arrange for the Vendor, with the consent of the Owner, to perform and complete the Contract in accordance with its terms and conditions, or
2. Undertake to perform and complete the Contract itself, through its agents or independent Vendors; or
3. Obtain a bid or bids from qualified Vendors acceptable to the Owner for completing the Contract in

accordance with its terms and conditions, and upon determination by Surety of the most responsible vendor, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the most responsible vendor, arrange for a contract between such vendor and Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by Owner to Vendor under the contract and any amendments thereto, less the amount properly paid by Vendor to Principal.

If the Surety does not proceed as provided above with reasonable promptness, the Surety shall be deemed to be in default on this bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided above, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

If the Surety elects to act as set forth above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Vendor under the Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Contract. Subject to the commitment by the Owner to pay the balance of the Contract Price, the Surety is obligated, without duplication, for:

1. The responsibilities of the Vendor for correction of defective work and completion of the Contract;
2. Additional legal, design professional and delay costs resulting from the Vendor's default, and resulting from the actions or failure to act of the Surety set forth above; and
3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the Vendor.

If the Surety elects to act in accordance with the requirements of this bond, the Surety's liability is limited to the amount of this bond.

The Surety shall not be liable to the Owner or others for obligations of the Vendor that are unrelated to the Contract, and the balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

Any suit under this bond must be instituted before the expiration of one (1) year from the date on which final payment under the Contract falls due, or within one (1) year after the Vendor ceased working, or within one (1) year after the Surety refuses or fails to perform its obligations under this bond. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties in the jurisdiction of the suit shall be applicable.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

This bond is issued in compliance with Section 255.05, Florida Statutes as may be amended. A claimant, except a laborer, who is not in privity with the Vendor and who has not received payment for its labor, materials, or supplies shall, within 45 days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish the Vendor with a notice that he intends to look to the bond for protection. A claimant who is not in privity with the Vendor and who has not received payment for its labor, materials, or supplies shall, within 90 days after performance of the labor or after complete delivery of the materials or supplies, deliver to the Vendor and to the Surety written notice of the performance of the labor or delivery of the materials or supplies and the nonpayment. No action for the labor, materials, or supplies may be instituted against the Vendor or the Surety unless both notices have been given. No action shall be instituted against the Vendor or the Surety on the bond after one (1) year from the performance of the labor or completion of delivery of the materials or supplies.

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

When this bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this _____day of _____, 2024.

_____
Vendor (Seal)

_____
Witness

_____
Title

_____
Surety

_____
Witness

_____
Attorney-in-Fact

END OF PERFORMANCE BOND

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

THE PROVISIONS AND LIMITATIONS OF SECTION 255.05 FLORIDA STATUTES, INCLUDING BUT NOT LIMITED TO THE NOTICE AND TIME LIMITATIONS IN SECTIONS 255.05(2) AND 255.05(10), ARE INCORPORATED IN THIS BOND BY REFERENCE.

PAYMENT BOND

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENTS: that _____
(Insert name of Vendor)

_____as Principal,
(Address or legal title of Vendor)

hereinafter called Principal, and _____
(Name and address of Surety)

_____

as Surety, hereinafter called Surety, are held and firmly bound unto CITY OF BOYNTON BEACH, P.O. BOX 310, BOYNTON BEACH, FLORIDA 33425-0310 as Obligee, hereinafter called Owner, for the use and benefit of claimants as here below defined, in the amount of

_____ Dollars

($_____), for payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____, 2024, entered into a contract with Owner for _____ in accordance with drawings and specifications prepared by _____ which contract is by reference made a part of hereof, and is hereinafter referred to as the Contract.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90)

days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. If there is no Owner default under the Contract, the Surety's obligation to the Owner under this bond shall arise after the Owner has notified Principal and Surety of claims, demands, liens, or suits against the Owner or Owner's property by any person seeking payment for labor, materials, or equipment furnished for use in the performance of the Contract and tendered defense of such claims, demands, liens, or suits to the Principal and Surety.

4. No suit or action shall be commenced hereunder by any claimant:

   a. Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which such claimant is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for when the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer.

   b. After the expiration of one (1) year following the date on which Principal ceased work on such Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

   c. Other than in a State Court of competent jurisdiction in and for the County or other political subdivision of the State in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

5. When a claimant has satisfied the conditions of section 4, Surety shall promptly and at the Surety's expense take the following actions:

   a. Send an answer to claimant with a copy to the Owner, within sixty (60) days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

   b. Pay or arrange for payment of any undisputed amounts.

   c. The Surety's failure to discharge its obligations under section (a) or (b) shall not be deemed to constitute a waiver of defenses the Surety or Principal may have or acquire as to a claim, except as to undisputed amounts for which the Surety and claimant have reached agreement. If, however, the Surety fails to discharge its obligations under section (a) or (b), the Surety shall indemnify the claimant for the reasonable attorney's fees the claimant incurs thereafter to recover any sums found to be due and owing to the claimant.

6. The amount of this bond shall be reduced by and to the extent of a payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics liens which may be filed of record against such improvements, whether or not claim for the amount of such lien be presented under and against this bond.

7. The Surety shall not be liable to the Owner, claimants or others for obligations of the Principal that are unrelated to the Contract. The Owner shall not be liable for the payment of any costs or expenses of any claimant under this bond, and shall have under this bond no obligation to make payments to, or give notice on behalf of, claimants or otherwise have any obligations to claimants wider this bond.

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

8. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.

9. This bond is issued in compliance with Section 255.05, Florida Statutes, as may be amended, and the provisions and limitations of Section 255.05, Florida Statutes, including, but not limited to the notice and time limitations in Sections 255.05(2) and 255.05(10) are incorporated into this bond by reference. A claimant, except a laborer, who is not in privity with the Principal and who has not received payment for its labor, materials, or supplies shall, within 45 days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish the Principal with a notice that he intends to look to the bond for protection. A claimant who is not in privity with the Principal and who has not received payment for its labor, materials, or supplies shall, within 90 days after performance of the labor or after complete delivery of the materials or supplies, deliver to the Principal and to the Surety written notice of the performance of the labor or delivery of the materials or supplies and the nonpayment. No action for the labor, materials, or supplies may be instituted against the Principal or the Surety unless both notices have been given. No action shall be instituted against the Principal or the Surety on the bond after one (1) year from the performance of the labor or completion of delivery of the materials or supplies.

10. When this bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this bond shall be construed as a statutory bond and not as a common law bond.

11. Upon request by any person or entity appearing to be a potential beneficiary of this bond, the Principal and Owner shall promptly furnish a copy of this bond or shall permit a copy to be made

12. The Principal and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference, subject to the terms set forth above.

Signed and sealed this _____day of _____, 2024.

_____
Principal (Seal)

_____
Witness

_____
Surety

_____
Witness

_____
Attorney-in-Fact

END OF PAYMENT BOND

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

CITY OF BOYNTON BEACH
WARRANTY TITLE

STATE OF FLORIDA

COUNTY OF_____, being first duly sworn, deposes and says as follows:

_____of _____,
(Title) (Name of Corporation or Firm)

a Florida Corporation	(_____)	Check One
a Florida General Partnership	(_____)	
a Florida Limited Partnership	(_____)	
a Sole Proprietor	(_____)	

which is named in Construction Contract dated the _____ day of _____, 20_, between such corporation as the Vendor and the City of Boynton Beach, Florida as the OWNER, for the construction of _____and Affiant is authorized to make this Affidavit as, or on behalf of, the Vendor as named above.

Title to all work, materials and equipment covered by the attached Final Application for Payment dated _____, passes to the Owner at the time of payment free and clear of all liens, and all laborers, material men and subcontractors have been paid for performing or furnishing the work, labor or materials upon such Contract work covered by the aforesaid Final Application for Payment.

This statement under oath is given in compliance with Section 713.06 Florida Statutes.

_____
Affiant

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 20__, by _____, who is personally known to me or who has produced _____ as identification.

Sworn to and subscribed before me this
_____day of _____, 2024.

_____
Notary Public, State of Florida at Large

My Commission
expires:
(SEAL)

END OF WARRANTY OF TITLE

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

City of Boynton Beach
Risk Management Department
INSURANCE ADVISORY FORM

Under the terms and conditions of all contracts, leases, and agreements, the City requires appropriate coverages listing the City of Boynton Beach as Additional Insured. This is done by providing a Certificate of Insurance listing the City as "Certificate Holder" and "The City of Boynton Beach is Additional Insured as respect to coverages noted." Insurance companies providing insurance coverages must have a current rating by A.M. Best Co. of "B+" or higher. *(NOTE: An insurance contract or binder may be accepted as proof of insurance if Certificate is provided upon selection of vendor.)* The following is a list of types of insurance required of contractors, lessees, etc., and the limits required by the City: **(NOTE: This list is not all inclusive, and the City reserves the right to require additional types of insurance, or to raise or lower the stated limits, based upon identified risk.)**

TYPE (Occurrence Based Only)	**MINIMUM LIMITS REQUIRED**	
General Liability	General Aggregate	$ 1,000,000.00
Commercial General Liability	Products-Comp/Op Agg.	$ 1,000,000.00
Owners & Contractor's Protective (OCP)	Personal & Adv. Injury	$ 1,000,000.00
Asbestos Abatement	Each Occurrence	$ 1,000,000.00
Lead Abatement	Fire Damage (any one fire)	$ 50,000.00
Broad Form Vendors	Med. Expense (any one person)	$ 5,000.00
Premises Operations		
Underground Explosion & Collapse		
Products Completed Operations		
Contractual		
Independent Contractors		
Fire Legal Liability		
Professional Liability	Aggregate - $1,000,000.00	
Automobile Liability	Combined Single Limit	$
1,000,000.00 Any Auto		
All Owned		
Autos Hired		
Autos		
Non-Owned Autos		
Excess Liability	Each Occurrence	to be determined
Umbrella Form	Aggregate	to be determined
Worker's Compensation Statutory Limits		
Employer's Liability	Each Accident	$ 1,000,000.00
	Disease, Policy Limit	$ 1,000,000.00
	Disease Each Employee	$ 1,000,000.00
Property:		
Homeowners Revocable Permit		$ 300,000.00
Builder's Risk		Limits based on Project Cost
Installation Floater		Limits based on Project Cost
Other - As Risk Identified	to be determined	

INSURANCEADVISORYFORM Revised 04/2021

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

ATTACHMENTS

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

Exhibit A

Emergency Generator ARCH SS Bid Specs / Drawings

THIS FORM SHALL BE EXECUTED BY CONTRACTOR
AND SUBMITTED AT AWARD.

Exhibit B

Emergency Generator ELEC SS Bid Specs / Drawings

Exhibit C

Schedule of Bids Items

Exhibit D

Performance Evaluation Forms

The City of Boynton Beach

Finance/Procurement Services
100 E. Ocean Avenue
Boynton Beach, FL 33435
P.O. Box 310
Boynton Beach, Florida 33425-0310
Telephone: (561) 742-6310

ADDENDUM No. 1

September 19, 2024

PWE24-024 – Fire Station # 5 Emergency Generator Replacement Project

Closing Date: October 11, 2024, 10 A.M.

Question 1:

A site visit will be performed after the pre mandatory meeting?

Answer 1:

Yes, a site visit will be performed after the mandatory pre-bid meeting. The site will be Fire Station # 5 located at 2080 High Ridge Rd, Boynton Beach, FL 33426.

If you have any further questions or require additional clarification, please submit to the Purchasing representative through the Bidding System only by clicking on the “Submit a Question” button for this specific Solicitation.

The City of Boynton Beach

Finance/Procurement Services
100 E. Ocean Avenue
Boynton Beach, FL 33435
P.O. Box 310
Boynton Beach, Florida 33425-0310
Telephone: (561) 742-6310

ADDENDUM No. 2

September 25, 2024

PWE24-024 – Fire Station # 5 Emergency Generator Replacement Project

Closing Date: October 11, 2024, 10 A.M.

Question 2:
Please confirm Prime Bidder may be a licensed “Sate Electrical Contractor License” and hire a subcontractor for the “general contractor license” to comply as stated on 0016 Div. 0 -required qualifications 9, page 1.?

Answer 2:
Prime bidder must hold a General Contractors License.

Question 3:
Plans do not call for “samples, please confirm samples are not applicable on this project?

Answer 3:
Please clarify what is meant by “samples”

Question 4:
Please advise and specify, what are other approved generator manufacturers equal to the basis of design manufacturer mtu? (Caterpillar, Cummins, Kohler.. etc..)

Answer 4:
Basis of design product and manufacture is the preferred product for the owner. However, other equivalent manufactures and products may be considered provided that the a thorough comparative analysis is completed by the contractor to insure that the proposed alternative is equivalent to the basis of design product.

Question 5:
Generator is a “long lead”, therefore is very likely the material may not be available prior the proposed project completion time. At this time an estimated lead time may exceed + 50 weeks, subject to change without notice.

Question 6:
Can Cummins or Cat be recognized as approved manufacturers of the generator, or could you please share the list of acceptable manufacturers or suppliers?

Answer 6:
Basis of design product and manufacture is the preferred product for the owner. However, other equivalent manufactures and products may be considered provided that the a thorough comparative analysis is completed by the contractor to insure that the proposed alternative is equivalent to the basis of design product.

Question 7:
Could you please confirm that the scope of work only includes the removal, reconditioning, and reinstallation of the steel roof framing and metal screening specifically over the generator area, as indicated in document PWE24-024 on page 20? Additionally, does this mean we do not need to address any other roof components outside of this area?

Answer 7:
The existing steel roofing is to be removed/replaced to the extent necessary to accommodate any new work. Note #6 Sheet A2.02 requiring refurbishing and repainting will be DELETED.

Question 8:
Could you please confirm that the existing wiring will be used for the new generator and that the electrical panels associated with the existing generator do not requires additional services

Answer 8:
Yes, as depicted in the document and field.

Question 9:
On page 113 of the document PWE24-024, it indicates that the VENDOR agrees that the WORK will be substantially completed within 90 consecutive calendar days after receipt of the Notice to Proceed, and final completion will occur within 30 consecutive calendar days after the Notice of Substantial Completion. However, the delivery time for the major generator manufacturers is about 36 to 50 weeks. Could you clarify whether the Notice to Proceed starts from the day the generator is available for installation or if it begins with the approval of the contract notification?

Answer 9:
The notice to proceed will start when project is awarded. However, taking in to consideration the lead time to manufacture and deliver the generator the City expects the following:

A. Within the first 30 days contractor must secure approved shop drawing and order generator
B. Contract duration will be on hold pending a firm delivery date from manufacture.
C. Based on generator delivery date the City expects contractor to provide a schedule for the remainder of the project to be completed with the remaining 90 days of original contract duration.

Note: Each contractor will be required to submit a build time duration for the generator equipment as apart of their submittal.

If you have any further questions or require additional clarification, please submit to the Purchasing representative through the Bidding System only by clicking on the “Submit a Question” button for this specific Solicitation.

The City of Boynton Beach

Finance/Procurement Services
100 E. Ocean Avenue
Boynton Beach, FL 33435
P.O. Box 310
Boynton Beach, Florida 33425-0310
Telephone: (561) 742-6310

ADDENDUM No. 3

September 26, 2024

PWE24-024 – Fire Station # 5 Emergency Generator Replacement Project

Closing Date: October 11, 2024, 10 A.M.

You must upload to Bids and Tenders a signed copy of the Bidder's Site Inspection Form for your proposal to be deemed responsive. The form was given out during the Mandatory meeting on 9-23-24.

If you have any further questions or require additional clarification, please submit to the Purchasing representative through the Bidding System only by clicking on the "Submit a Question" button for this specific Solicitation.

The City of Boynton Beach

Finance/Procurement Services
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Boynton Beach, Florida 33425-0310
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ADDENDUM No. 4

October 11, 2024

PWE24-024 – Fire Station # 5 Emergency Generator Replacement Project

Closing Date: November 1, 2024, 3 P.M.

The City will extend this ITB to close on November 1, 2024. We appreciate all interested parties who will participate in this solicitation and intend to issue another addendum with updated plans.

If you have any further questions or require additional clarification, please submit to the Purchasing representative through the Bidding System only by clicking on the “Submit a Question” button for this specific Solicitation.

The City of Boynton Beach

Finance/Procurement Services
100 E. Ocean Avenue
Boynton Beach, FL 33435
P.O. Box 310
Boynton Beach, Florida 33425-0310
Telephone: (561) 742-6310

ADDENDUM No. 5

October 25, 2024

PWE24-024 – Fire Station # 5 Emergency Generator Replacement Project

Closing Date: November 7, 2024, 3 P.M.

The City will extend this ITB to close on November 7, 2024.

See attached revisions:

- 2024-10-16_ELECTRICAL_223097 AKA Boynton Beach Fire Station
- 23.0022 BOYNTON BEACH EMERGENCY GENERATOR ARCH REV2

If you have any further questions or require additional clarification, please submit to the Purchasing representative through the Bidding System only by clicking on the “Submit a Question” button for this specific Solicitation.

City of Boynton Beach
Agenda Item Request Form

Meeting Date: 01/21/2025

Proposed Resolution No. R25-027- Awarding Request for Qualifications No. UTL24-031 for East and West Water Plant Upgrades and Treatment Options Evaluation, Planning, and Design for Emerging Contaminants Removal- Engineering Services to Jacobs Engineering Group Inc., and approving an Agreement between the City and Jacobs Engineering Group Inc. in the amount not to exceed $5,400,000. Proposed Resolution No. R25-028- Approving an amendment to the Utilities CIP Budget to use Utility Reserve funds for $5,400,000 until the City receives reimbursement from the State Revolving Funded (SRF) Loan for East and West Water Treatment Plant upgrades and treatment Operations Evaluation.

Requested Action: Staff recommends approval of Proposed Resolution No. R25-027 and Resolution No. R25-028.

Explanation of Request: The City received a Florida Department of Environmental Protection State Revolving Fund (FDEP SRF) loan with principal forgiveness for $5,167,179 for East and West Water Treatment Plant upgrades and treatment options evaluation, planning, and design for emerging contaminant removal. The SRF funding will be reimbursed to the City and the Utility CIP budget needs to be amended to include the funding at this time.

On July 3, 2024, a Request for Qualifications ("RFQ") No. UTL24-031 for East and West Water Treatment Plant Upgrades and Treatment Options Evaluation, Planning and Design for Emerging Contaminants Removal-Engineering Services was advertised to select a qualified engineering firm to assist the East and West Water Treatment Plant upgrades and treatment options evaluation, facilities plan for the State Revolving Fund (SRF) Drinking Water Program, including design, bid document preparation, permitting, bidding assistance, and construction management engineering services during construction projects at both plants.

The selection committee held a final meeting on October 28, 2024, to score and rank the qualified firms. Jacobs Engineering Group Inc. ranked the highest, and the Utilities department completed negotiations with Jacobs Engineering Group Inc. for a contract agreement and the initial scope of work and associated costs. Work will include: Conducting a study, preparing a report, and performing engineering services to evaluate the ability of the existing treatment processes at the East Water Treatment Plant to meet the proposed Emerging Contaminants regulations and evaluate alternatives. This study and facilities plan will also evaluate options for the treatment at the West Water Treatment Plant and any upgrades needed to the treatment process, electrical system, instrumentation, and control components for automation of the treatment process to meet regulations for emerging contaminants or other identified

future regulations for potable water.

The study and facilities plan will include short-term and long-term recommendations at both the East and the West Treatment Plants to meet treatment requirements for emerging contaminants and other known future regulations for potable water. The plan will address source water options and the design and permitting of additional potential future groundwater wells or alternative water sources to address emerging contaminants and potential treatment for emerging contaminants at individual source water wells.

Phasing of the treatment plant upgrades during construction shall minimize disruption of operations and plant shutdowns.

Upon completion of the study and facilities plan, the Consultant will design and permit improvements identified in the alternative analysis study and provide construction bidding and construction management services.

How will this affect city programs or services? This will allow the City to upgrade both water treatment plants as needed to meet future drinking water regulations including emerging contaminant treatment in a cost effective manner.

Account Line Item and Description: Budget amendment Utility CIP Account 403-5025-533-65.02 for SRF Loan for East and West Water Treatment Plant upgrades and treatment Operations Evaluation. See attached appendix A.

Fiscal Impact: This is a new project that will be funded from Utility CIP Reserves until we get reimbursements from SRF principal forgiveness loan program.

Attachments:
R25-027 Agenda_Item_2304-2023_Resolution_for_RFQ___UTL24-031_Award_to_Jabobs_Eng..docx
Exhibit A to Resolution - Jacobs Agreement _01162025.pdf
BoyntonTO1_WestEastWTPUpgrades_ScopeFee_01102025.pdf
UTL24-031 EWTP WWTP Upgrades - REVISED 07.18.24.pdf
City of Boynton Beach - DW501300.pdf
R25-028 Agenda_Item_2304-2023_Utilities_Budget_Amd.docx
Exhibit A part 1.pdf
Exhibit A part 2.pdf

RESOLUTION NO. R25-027

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, AWARDING REQUEST FOR QUALIFICATIONS NO. UTL24-031 FOR EAST AND WEST WATER PLANT UPGRADES AND TREATMENT OPTIONS EVALUATION, PLANNING, AND DESIGN FOR EMERGING CONTAMINANTS REMOVAL – ENGINEERING SERVICES TO JACOBS ENGINEERING GROUP INC., AND APPROVING AN AGREEMENT BETWEEN THE CITY AND JACOBS ENGINEERING GROUP INC. IN THE AMOUNT NOT TO EXCEED $5,400,000; AND FOR ALL OTHER PURPOSES.

WHEREAS, the City received a Florida Department of Environmental Protection State Revolving Fund (FDEP SRF) loan with principal forgiveness for $5,167,179 for East and West Water Treatment Plant upgrades and treatment options evaluation, planning, and design for emerging contaminant removal; and

WHEREAS, on July 3, 2024, Request for Qualifications ("RFQ") No. UTL24-031 for East and West Water Treatment Plant Upgrades and Treatment Options Evaluation, Planning and Design for Emerging Contaminants Removal-Engineering Services was advertised to select a qualified engineering firm to assist the East and West Water Treatment Plant upgrades and treatment options evaluation, facilities plan for the State Revolving Fund (SRF) Drinking Water Program, including design, bid document preparation, permitting, bidding assistance, and construction management engineering services during construction projects at both plants; and

WHEREAS, the selection committee held a final meeting on October 28, 2024, to score and rank the qualified firms. Jacobs Engineering Group Inc. ranked the highest. The Utilities department completed negotiations with Jacobs Engineering Group Inc. for a contract agreement, the initial scope of work, and associated costs. Work will include conducting a study, preparing a report, and performing engineering services to evaluate the ability of the existing treatment processes at the East Water Treatment Plant to meet the proposed Emerging Contaminants regulations and consider alternatives. This study and facilities plan will also evaluate options for the treatment at the West Water Treatment Plant and any upgrades needed to the treatment process, electrical system, instrumentation, and control components for automation of the treatment process to meet regulations for emerging contaminants or other identified future

regulations for potable water; and

WHEREAS, the study and facilities plan will include short-term and long-term recommendations at both the East and the West Treatment Plants to meet treatment requirements for emerging contaminants and other known future regulations for potable water. The plan will address source water options and the design and permitting of additional potential future groundwater wells or alternative water sources to address emerging contaminants and potential treatment for emerging contaminants at individual source water wells; and

WHEREAS, phasing of the treatment plant upgrades during construction shall minimize disruption of operations and plant shutdowns; and

WHEREAS, upon completion of the study and facilities plan, the Consultant will design and permit improvements identified in the alternative analysis study and provide construction bidding and construction management services; and

WHEREAS, the City Commission, upon the recommendation of staff, has deemed it in the best interests of the city's citizens and residents to award Request for Qualifications No. UTL24-031 for East and West Water Plant Upgrades and Treatment Options Evaluation, Planning, and Design for Emerging Contaminants Removal – Engineering Services to Jacobs Engineering Group Inc., and approve an Agreement between the City and Jacobs Engineering Group Inc. in the amount not to exceed $5,400,000.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption.

SECTION 2. The City Commission of the City of Boynton Beach, Florida, does hereby award RFQ No. UTL24-031 for East and West Water Plant Upgrades and Treatment Options Evaluation, Planning, and Design for Emerging Contaminants Removal – Engineering Services to Jacobs Engineering Group Inc. (“Vendor”).

SECTION 3. The City Commission of the City of Boynton Beach, Florida, does hereby approve an Agreement between the Vendor and the City for RFQ No. UTL24-031 for East and

West Water Plant Upgrades and Treatment Options Evaluation, Planning, and Design for Emerging Contaminants Removal – Engineering Services in an amount not to exceed $5,400,000 (the "Agreement"), in form and substance similar to that attached as Exhibit A.

SECTION 4. The City Commission of the City of Boynton Beach, Florida, hereby authorizes the Mayor to execute the Agreement. The Mayor is further authorized to execute any ancillary documents required under the Agreement or necessary to accomplish the purposes of the Agreement and this Resolution.

SECTION 5. The City Clerk shall retain the fully executed Agreement as a public record of the City. A copy of the fully executed Agreement shall be provided to Poonam Kalkat to forward to the Vendor.

SECTION 6. This Resolution shall take effect in accordance with law.

[SIGNATURES ON THE FOLLOWING PAGE]

PASSED AND ADOPTED this _____ day of _____ 2025.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Ty Penserga	____	____
Vice Mayor – Aimee Kelley	____	____
Commissioner – Angela Cruz	____	____
Commissioner – Woodrow L. Hay	____	____
Commissioner – Thomas Turkin	____	____
VOTE	_____	

ATTEST:

_____
Maylee De Jesús, MPA, MMC
City Clerk

_____
Ty Penserga
Mayor

APPROVED AS TO FORM:

(Corporate Seal)

_____
Shawna G. Lamb
City Attorney

EAST AND WEST WATER PLANT UPGRADES AND TREATMENT OPTIONS EVALUATION, PLANNING, AND DESIGN FOR EMERGING CONTAMINANTS REMOVAL – ENGINEERING SERVICES (GRANT/LOAN FUNDED)

SUBJECT TO REVISIONS PRIOR TO SIGNING

THIS AGREEMENT ("Agreement"), is entered into between the City of Boynton Beach, a municipal corporation organized and existing under the laws of Florida, with a business address of 100 East Ocean Ave., Boynton Beach, FL 33435, hereinafter referred to as "CITY", and Jacobs Engineering Group Inc., a Delaware corporation authorized to do business in the State of Florida, with a business address of 550 West Cypress Creek Road, Suite 400, Fort Lauderdale, FL 33309, hereinafter referred to as "VENDOR" each a "Party" and collectively the "Parties". In consideration of the mutual benefits, terms, and conditions hereinafter specified, the Parties agree as set forth below.

WHEREAS, the CITY solicited proposals for a contract to perform Engineering Consultant Services, and

WHEREAS, the CITY issued a Request for Qualification for East and West Water Plant Upgrades and Treatment Options Evaluation, Planning, and Design for Emerging Contaminants Removal – Engineering Services (Grant/Loan Funded), RFQ No. UTL24-031 ("RFQ"); and

WHEREAS, the CITY determined that VENDOR was qualified for appointment to perform the scope of services set forth in the RFQ; and

WHEREAS, the CITY Commission on _____, 2025, determined that VENDOR was qualified for appointment to perform the scope of services set forth in the RFQ; and

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, the parties agree as follows:

ARTICLE 1 – SERVICES.

1.1 VENDOR hereby agrees to perform all consulting and engineering services required for the East and West Water Plant Upgrades and Treatment Options Evaluation, Planning, and Design for Emerging Contaminants Removal – Engineering Services – (Grant/Loan Funded), including the facilities plan for State Revolving Fund (SRF) Drinking Water Program, design, bid document preparation, permitting, bidding assistance and construction administration for construction projects at both plants based on the recommended treatment option. The terms and conditions of RFQ No. UTL24-031 and the VENDOR's proposal are expressly incorporated into this Agreement by reference. Any conflict or discrepancy between the terms of this Agreement, RFQ UTL24-031, and VENDOR's proposal, shall be resolved pursuant to the following order of precedence (1) this Agreement (2) RFQ No. UTL24-031; and (3) VENDOR's Proposal.

1.2 VENDOR shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all Services performed under this Agreement shall be done with the level and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locality ("Standard of Care"). IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED.

1.3 VENDOR shall complete all work in accordance with the phases of services described below, as more specifically described in the RFQ. The work will be further defined in a Task Order issued for each phase. Each Task Order will include the specific scope, fees based on established hourly rates, a schedule, and deliverables in accordance with Section 1.11

below.

1.4 **Phases of Professional Services**

The services provided under this Agreement ("**Professional Services**" or "Services") intended to be compensated by the Fees shall be categorized into the following phases of service, as applicable:

1. Pre-Design Analysis (or Planning/Study/Report) Phase (expected to complete within 9-12 months), attached to this agreement
2. Preliminary Design Phase and Estimated Construction Costs
3. Final Design and Construction Documents Phase and Estimated Construction Costs
4. Permitting Phase (expected to complete Phases 2, 3, 4 within 9 months)
5. Bidding and Negotiation Phase (expected to complete in 3-4 months)
6. Construction Administration and SCADA Implementation Phase (To be Determined)
7. Other requested services (To be Determined)

1.5 **Pre-Design Analysis (or Planning/Study/Report) Phase**

1.5.1 Scope. *If the scope of Professional Services includes pre-design analysis or preparation of planning/study/report,* the VENDOR shall: i) Consult with the City regarding the requirements and budget allocations for the scope of services/Project and review available data; ii) Advise the City as to the necessity of any additional services from other technical professionals; iii) Provide analyses of the City's needs, surveys, site evaluations, environmental assessments, utility locations and comparative studies of solutions; and iv) Provide a general economic analysis of the requirements applicable to various alternatives; and identify any areas of the task that can be properly value-engineered to produce a savings in the Project construction cost.

1.5.2 Deliverables:

(a) *If the scope of Professional Services includes design services*:

i. Prepare conceptual design criteria with appropriate sketches or exhibits, and identify in a clear manner the considerations involved and the alternative solutions available, as well as VENDOR's recommendations (the "**Pre-Design Analysis**"). The Pre-Design Analysis may include any pilot or bench scale study, shall be accompanied by VENDOR's preliminary estimate of total construction costs for the Project. Provide short term solutions to meet EPA requirements until recommended alternative treatment process construction is completed.

(b) *If the scope of Professional Services includes a Study or Report*: Prepare a report which report shall identify in a clear manner the issue and considerations involved; VENDOR's findings; the alternative solutions available, estimated costs, as well as VENDOR's recommendations; and shall include appropriate exhibits (the "**Study Report**"). Will require a Facility Plan with the alternative options evaluation to meet DWSRF loan requirements.

1.5.3 Presentations. If requested by City, VENDOR shall attend meeting(s) with City Commissioners and/or City administration and may be asked to prepare and make presentation of the Study Report or Pre-Design Analysis.

1.6 **Preliminary Design Phase**

1.6.1 Scope. *If the scope of Professional Services includes Preliminary Design,* VENDOR shall address City's comments to the Pre-Design Analysis, and shall prepare the preliminary design package. The preliminary design package shall include the following:

(a) preliminary design drawings (20-30%), including design criteria and sketches or exhibits, including elevations, sections, site plan and additional renderings, showing the scale and relationship of project components.
(b) outline of technical specifications.
(c) Estimated Construction Cost, in accordance with Section 5.
(d) Location map exhibits and renderings

(e) Survey and existing utilities as-builts
(f) Utilities coordination documentations
(g) Environmental documents (if applicable)

(the "**Preliminary Design Package**").

1.6.2. Deliverable: The Preliminary Design Package for review and comment by the City.

1.6.3 Outreach. If requested, VENDOR shall assist the City with any public communication/information program during this phase or any other phase of the project, including neighborhood presentations. Such assistance shall include the development of presentation material and attendance at public meetings.

1.6.4. Presentations. If requested by City, VENDOR shall attend meeting(s) with City administration and/or City Commission and may be asked to prepare and make presentation of the Preliminary Design Package and Estimated Construction Cost.

1.6.5 Loan/Grant management and reporting. If requested, VENDOR shall assist the City with managing and reporting requirements for any loan (including State Revolving Fund (SRF)) or grants that may be used for funding the project/study. VENDOR will assist the City in identifying and following any procurement requirements for the particular funding mechanism used.

1.7 **Final Design – Construction Documents Phase**

1.7.1 Scope. *If the scope of Professional Services includes design development of construction documents,* then on the basis of the accepted Preliminary Design Package and Estimated Construction Cost of the project, the VENDOR shall prepare, for attachment to the forthcoming construction contract, final construction drawings identifying and describing the scope, extent and character of the work to be furnished and performed by contractor(s), which comply with all applicable building codes, laws and regulations, including loan/grant/other funding mechanism requirements (the "**Final Drawings**") and technical specifications of design component for construction of the Project (the "**Technical Specifications**") at 60%, 90% and 100% completion. The Specifications are to be prepared in conformance with the sixteen division format provided by the Construction Specifications Institute. The Technical specifications shall include a Measurement section for the bid items.

1.7.2 Schedule of bid items. Prepare, for review and acceptance by the City, a proposed schedule of bid items.

1.7.3 Estimated Construction Cost. In accordance with Article 5, modify the Estimated Construction Cost of the project necessitated by the Construction Drawings and Specifications. In the event that the Estimated Construction Cost of the Project, when combined with the total Professional Services Fee and costs; plus any Construction Contingency or allowances established by the City, exceeds the total amount budgeted for the project as established by the City, then the VENDOR shall revise and/or redesign the documents to bring the designs back within the budgeted amount, unless the City provides written approval that the Estimated Construction Cost exceeds the project budget. If the reason that the Estimated Construction Cost exceeds the budget is reasonably foreseeable at the time of performing the Professional Services, VENDOR shall provide written notification identifying the specific reason to the City immediately upon VENDOR determination that the Estimated Construction Cost may exceed the project budget, and in such case, shall await further direction from the City before proceeding further with the Professional Services. If the reason that the Estimated Construction Cost exceeds the budget was reasonably foreseeable at the time of performing the Professional Services, and the VENDOR does not notify the City and obtain written approval from the City that the Estimated Construction Cost exceeds the project budget, VENDOR shall revise and/or redesign the documents at its own cost and expense to bring the designs back within the budgeted amount.

In providing opinions of cost, financial analyses, economic feasibility projections, for the project, VENDOR has no control over cost or price of labor and materials; unknown or latent conditions

of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, VENDOR makes no warranty that the City's actual project costs, financial aspects, economic feasibility, will not vary from VENDOR'S opinions, analyses, projections, or estimates and VENDOR'S shall have no liability for such variances.

1.7.4 Deliverables:

(a) 60% Construction Drawings, Estimated Construction Cost and draft Technical Specifications in editable electronic format (docx,.xls, dwg, and .pdf) for the review and comments of the City;

(b) 90% Construction Drawings, Estimated Construction Cost and draft Technical Specifications in editable electronic format (docx,.xls, dwg, and .pdf) for the review and comments of the City;

(c) 100% Construction Drawings, Estimated Construction Cost and draft Technical Specifications in editable electronic format (docx,.xls, dwg, and .pdf) for the review and comments of the City;

(d) Final signed and sealed sets of final Construction Drawings, Technical Specifications and Estimated Construction Cost in electronic format (the "**Construction Drawings and Technical Specifications**") along with all supporting calculations; and any associated documents;

(e) Schedule of bid items;

(f) Estimated Construction Costs within project budget, unless otherwise accepted in writing by the City.

(g) In accepting or using any electronic format/files CITY agrees that all such electronic format/files are instruments of professional service and VENDOR shall remain the owner of electronic format/files. Copies of documents that may be relied upon by the CITY are limited to the printed copies or stamped .pdf files (also known as hard copies) provided by VENDOR. Any conclusion or information obtained or derived from such electronic format/files will be at the CITY's sole risk. In the event of a conflict between the hard copies prepared by VENDOR and the electronic format/files, the hard copies shall govern. Except as otherwise required by law, CITY agrees not to transfer these electronic format/files to others without the prior written consent of VENDOR and further agrees to waive all claims against VENDOR resulting in any way from any unauthorized alterations, modifications, and/or additions to the electronic format/files as well as reuse of the electronic format/files for any other project.

1.8 **Permitting Phase**

1.8.1 Scope. *If the scope of Professional Services includes permitting,* then in consultation with the City and on the basis of the Construction Drawings and Technical Specifications and Estimated Construction Cost of the project, VENDOR shall prepare all necessary permit applications for submission with the Construction Drawings and Technical Specifications to the regulatory agencies for appropriate permits or other approvals. VENDOR shall provide technical criteria, written descriptions and design data for the City's and VENDOR's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the project. VENDOR shall respond to any comments or requests for information from permitting authorities and assist the City in consultations with appropriate authorities.

1.8.2 Permits. In the event that the Construction Drawings and Technical Specifications are not granted the necessary or appropriate permits or other approvals from the appropriate regulatory agencies due to design issues, VENDOR shall revise and/or redesign the documents at its own cost and expense to ensure the necessary permits and approvals are granted.

1.8.3 Permit Fees. Permit applications fees shall be determined by VENDOR and paid by the City.

1.9 **Construction Bidding and Negotiation Phase**

1.9.1 Scope. *If the scope of Professional Services includes the Construction Bidding and Negotiation Phase*, then in consultation with City and on the basis of the Construction Drawings and Technical Specifications, VENDOR shall review price tabulation sheets and assist the City in evaluating bids or proposals and consult with and advise the City as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the prime contractor(s) for those portions of the work as to which such acceptability is required by the procurement documents. VENDOR will identify any areas of the Project that may be properly value-engineered to produce a savings in the construction cost. VENDOR may be required to assist the City's Procurement Division in the preparation of addenda or written clarifications of additional instructions, to interpret, clarify or expand the procurement documents.

1.9.2 Bidding assistance, if requested. Only if requested, VENDOR may be required to:

(a) Participate in any pre-bid conferences and/or attend the bid opening;

(b) Assist the City in negotiating proposals for each separate prime contract for construction, materials, equipment, and services.

1.10 **Construction Administration Phase**

1.10.1 Scope. *If the scope of Professional Services includes the Construction Administration Phase,* VENDOR shall consult with and advise the City and act as Owner's representative on the Project. VENDOR may be required to provide full time inspection staff as owner's representative to closely coordinate all activities with Plant operations on a daily to weekly basis. VENDOR will have limited authority to act on behalf of the City as specifically provided in this Agreement.

(a) *Site visits*. VENDOR shall conduct site visits in accordance with Section 1.10.2, herein.

(b) *Meetings.* VENDOR shall conduct weekly meetings with the City and contractor(s). VENDOR shall be responsible for preparing weekly meeting minutes and distributing them to all in attendance.

(c) *Interpretations.* VENDOR shall issue necessary interpretations and clarifications of the Construction Drawings and Technical Specifications and may issue additional instructions, by means of drawings, minor change orders or otherwise, necessary to illustrate changes in the work. Change orders shall comply with Section 1.10.3 below.

(d) *Shop drawings; Samples.* VENDOR shall timely review and approve or take other appropriate action with respect to shop drawings, samples, the acceptability of substitute materials and equipment proposed by contractor(s), and other data that the contractor(s) are required to submit to ascertain conformance to the Construction Drawings and Technical Specifications. VENDOR shall complete its review of submittals, shop drawings, samples and other data shall be completed so as not to delay the progression of the work or within fourteen (14) calendar days of receipt. The City shall be entitled to rely upon the approval of VENDOR that the shop drawings, product data, and samples approved by VENDOR conform with the Technical Specifications and design specified in the Construction Drawings, as may be amended. Such reviews and approvals or other action shall not extend to the means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

(e) *Testing*. VENDOR shall be obliged, in its role as the representative of the City on the project, to require special inspection or testing of the work, and shall receive

and review all certificates of inspections, testing and approvals as required by laws, rules, regulations, ordinances, codes, orders or the contract documents to determine that the work complies with the requirements of, and that the results certified indicate compliance with the Technical Specifications.

(f) *Review of payment applications*. VENDOR shall review applications for payment and the accompanying data and schedules, VENDOR shall determine the amounts owing to contractor(s) and recommend in writing payments to contractor(s) in such amounts. Such recommendations of payment will constitute a representation to the City, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of VENDOR's knowledge, information and belief, the work is in accordance with the Construction Drawings and Technical Specifications. Such recommendations do not represent that continuous or detailed examinations have been made by VENDOR to ascertain that the construction contractor(s) have completed the work in exact accordance with the construction documents; that the final work will be acceptable in all respects; that VENDOR has made an examination to ascertain how or for what purpose the construction contractor(s) have used the moneys paid; that title to any of the work, materials, or equipment has passed to the City free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between the City and the construction contractors that affect the amount that should be paid.

(g) *Documentation review*. VENDOR shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals, which will be assembled by contractor(s) in accordance with the construction contract. Such review shall be limited to a determination by VENDOR that the content of said documents and instruments complies with the design intent of construction contract. In the case of certificates of inspection, tests and approvals, such review shall be limited to a determination that the results certified indicate compliance with, the design intent of construction contract. VENDOR shall thereafter transmit said documents and instruments to the City with written comments and, if applicable, recommendations regarding same, prior to determination of substantial completion.

(h) *Substantial Completion Inspection*. VENDOR shall conduct substantial completion inspection(s) to develop the "punchlist" and to determine if the work is substantially complete; such inspection to be scheduled within three (3) days of notice of substantial completion. Said punch list shall be prepared and signed by VENDOR and the City and delivered to contractor not later than three (3) calendar days after the walkthrough. If necessary, VENDOR shall assist in any mediation between City and contractor to develop an agreed punch list.

(i) *Final Inspection*. VENDOR shall conduct a final inspection to determine if the completed work is in compliance with the punch list, "as-built" drawings" and the Construction Drawings, Technical Specifications, and construction contract documents. Within three (3) business days following such determination of compliance by VENDOR, VENDOR shall recommend in writing final payment to contractor(s) and shall give written notice to City and contractor(s) that the work is acceptable, subject to any conditions expressed in such recommendation.

1.10.2 Site visits. VENDOR shall visit the construction site at intervals appropriate to the various stages of construction as VENDOR deems necessary or as the City requests in order to enable VENDOR to observe as an experienced and qualified design professional the progress and quality of the various aspects of contractor(s)' work is in accordance with Construction Drawings and Technical Specifications. Based on information obtained during such visits and on such observations, VENDOR shall advise City whether (i) the work is proceeding in accordance with the Construction Drawings and Technical Specifications, and (ii) the integrity of the design concepts have been implemented and preserved by the contractor(s). VENDOR shall keep the City informed of the progress of the work in the manner and frequency requested by the City. During such visits and on the basis of such observations, VENDOR may disapprove of or reject contractor(s)' work while it is in progress if VENDOR believes that such work will not

produce a completed project that conforms generally to the design intent of contract documents or that it will prejudice the integrity of the design of the project as reflected in the Construction Drawings and Technical Specifications. VENDOR shall notify the City within twenty-four (24) hours of the discovery of such conditions that stoppage of the work may be necessary to support the proper execution of the Construction Drawings and Technical Specifications or to protect the public and/or property. VENDOR shall sign any Stop Work Notice issued by the City. VENDOR shall also have authority to reject all work, materials and equipment which do not conform to the Construction Drawings and Technical Specifications and to decide questions raised by contractor which arise in the execution of the work.

1.10.3 Change orders. VENDOR shall prepare work change directives and change orders as required or requested by the City. VENDOR will provide a response to the contractor and City 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 VENDOR to formulate a response. VENDOR will have authority to make minor changes in the work which: (1) do not result in extra cost; and (2) do not extend the timeline for completion of the project, and (3) are not inconsistent with the purpose of the work. VENDOR is not authorized to bind the City to changes in contract price or time.

1.10.4 Contractor claims. VENDOR will make decisions in writing on all claims of the contractor(s), and on all other matters relating to the execution and progress of the work or the interpretation of the Construction Drawings and Technical Specifications and contract documents. All such decisions of VENDOR shall be final. In the event of any unresolved dispute between City and its contractor(s), VENDOR may mediate a meeting with City and contractor(s) to resolve the dispute. Notwithstanding the foregoing, VENDOR will not be an arbitrator of disputes between City and its contractor(s).

1.10.5 No contractor supervision. VENDOR will not, either during site visits or as a result of observations of contractor(s)' work in progress, supervise, direct or have control over contractor(s)' work. Nor shall VENDOR have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by contractor(s), for safety precautions incident to the work of contractor(s) or for any failure of contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to contractor(s) furnishing and performing their work. Accordingly, it is understood that VENDOR can neither guarantee the performance of the construction contracts by contractor(s) nor assume responsibility for contractor(s)' failure to furnish and perform their work in accordance with the contract documents. VENDOR shall not be required to make any examination to ascertain how or for what purpose any contractor has used the monies paid on account of the contract price, or to determine that title to any of the work, materials or equipment has passed to City free and clear of any lien, claims, security interests or encumbrances, or that there may not be other matters at issue between City and contractor that might affect the amount that should be paid. The limitations in this section shall not limit the responsibility of VENDOR otherwise set forth in this Agreement.

VENDOR is NOT authorized to do the following:

a. Expedite the work for the contractor(s).
b. Advise the contractor(s) on building techniques or scheduling.
c. Get involved in disputes or problems between contractor(s) and subcontractor(s).

1.10.6 Deliverables.

(a) Weekly project meeting minutes;
(b) Recommendations regarding payment applications;
(c) Transmittal of maintenance and operating instructions, schedules, guarantees, bonds and certificates and inspection, tests and approvals (assembled by contractor(s)) with written comments and, if applicable, recommendations regarding same;
(d) Punch list of items to be completed by contractor after substantial completion;
(e) Recommendation of final payment to the contractor(s) and written notice to City that the work is complete and reasonably conforms with the Construction Drawings and Technical Specifications.

1.10.7 Presentation. If requested by City, VENDOR shall attend additional City meeting(s) and may be asked to make presentation of the project status or any issues or concerns.

1.11 Task Orders. Each Task Order issued pursuant to this Agreement shall include:

(a) a scope of services in accordance with the applicable phases of Professional Services described above.
(b) a detailed estimate of fees and costs based on the hourly rates established in this Agreement;
(c) a task/deliverable schedule; and
(d) a payment schedule based on deliverables

Upon mutual agreement of the scope of services, fees, and costs, task/deliverable schedule, and payment schedule, a written Task Order for the applicable phase, in a form substantially similar to that attached hereto as **Exhibit A**, shall be executed by VENDOR and City.

1.12 Requirement for Drawings and Plans.
Unless otherwise set forth in the scope of services, plans shall be based on the North American Datum of 1983, 1190 Adjustment, and the North American Vertical Datum of 1988. All drawings and plans shall be accurate, legible, complete in design, drawn to scale, and suitable for bidding purposes.

1.13 VENDOR assumes responsibility for performance of its services to be provided hereunder in accordance with the Standard of Care. If within one year following completion of its services, such services fail to meet the Standard of Care (as defined in Article 1.2), and the CITY promptly advises VENDOR thereof in writing, VENDOR agrees to re-perform such deficient services without charge to the CITY.

1.14 The relationship between CITY and VENDOR created hereunder and the services to be provided by VENDOR pursuant to this Agreement are non-exclusive. CITY shall be free to pursue and engage similar relationships with other contractors to perform the same or similar services performed by VENDOR hereunder, so long as no other consultant shall be engaged to perform the specific project(s) assigned to VENDOR while VENDOR is so engaged without first terminating such assignment. VENDOR shall be free to pursue relationships with other parties to perform the same or similar services, whether or not such relationships are for services to be performed within the CITY, so long as no such relationship shall result in a conflict of interest, ethical or otherwise, with the CITY's interests in the services provided by VENDOR hereunder.

1.15 VENDOR shall not utilize the services of any sub-consultant without the prior written approval of CITY.

1.16 The CITY's Representative during the performance of this Agreement shall be Bryan Heller.

1.17 The VENDOR'S Representative during the performance of the Agreement shall be GJ Schers.

ARTICLE 2 - COMPLETION SCHEDULE.

2.1 Term and Time For Performance**.** The Term of this Agreement shall commence upon the complete execution of this Agreement by both parties and the Issuance of a Purchase Order by the CITY to the VENDOR, and continue until completion of the project. VENDOR shall perform all services and provide all work products and deliverables required in accordance with the schedule set forth below and the project schedule established in each specific Task Order, based upon the stipulations of the grant award.

All Planning and Design Activities shall be completed no later than the date set forth below:

a. Invoices submitted for work performed **on or after November 8, 2023**, may be eligible for reimbursement.
b. Completion of all Planning and Design Activities for all Project facilities proposed for loan funding shall be completed **no later than February 15, 2026**.

2.2 Delay.

2.2.1 VENDOR's Professional Services shall be timely performed in compliance with the Project schedule or as amended in a writing executed by both parties. If VENDOR is delayed at any time in the progress of its Professional Services by any act, failure to act or neglect of the City, or any separate consultant or contractor hired directly by the City, or by occurrences beyond the control and without any fault or negligence of VENDOR, VENDOR shall provide to the City, within five (5) working days of the date the delay began, written notice of the delay. Provided VENDOR has timely notified the City of such delay, the City shall amend the schedule in writing, for the time delay actually caused by such occurrence, as determined by the City in its sole discretion. This extension of time shall be VENDOR's sole and exclusive remedy attributed to such delay.

2.2.2 Subject to Article 2.2.1, VENDOR acknowledges responsibility for any delay suffered by the City as a result of VENDOR's negligent, reckless, or intentional wrongful actions or inactions. In the event that the City suffers delay to the extent caused by VENDOR aforesaid actions or inactions, the City, in its sole discretion, said discretion to be exercised reasonably and in good faith, shall have the right and be entitled to terminate this Agreement if VENDOR fails to cure such delay upon five (5) day's written notice and such termination shall not be construed to constitute a breach of this Agreement by the City.

ARTICLE 3 – PROFESSIONAL SERVICES FEE & EXPENSES.

3.1 Compensation.
The professional services Fee and administrative reimbursements to be paid by the City to VENDOR, for all Professional Services of both VENDOR and any of its subcontractors under this Agreement for attached Task Order 1 shall not exceed: seven hundred and seventy thousand dollars ($770,000). This compensation amount shall be the sole amount paid to VENDOR. The compensation may be adjusted, if necessary, by a written amendment, duly approved and executed by VENDOR and City, provided the City's budget includes, or is adjusted to include, the entire Fee.

3.2 Fee Schedule.
A detailed Fee Schedule, tied to the deliverables shall be attached as **Exhibit B**. The Fee Schedule shall detail the hourly rates, number of hours and a payment schedule that shall not be front-loaded.

3.2.1 Rates. VENDOR's hourly rates for every position or level of profession or staff for whom time will be invoiced under this Agreement shall be included in the Fee Schedule attached as **Exhibit B** and incorporated into this Agreement. All such rates shall be effective for the term of this Agreement. The fixed hourly costs for all positions will be applicable to both in-house professional engineering services and professional engineering services at the VENDOR firm's place of business.

3.2.2 Expenses. The Fee Schedule shall include all administrative out-of-pocket expenses to be reimbursed under this Agreement.

3.2.3 Supporting Documents. VENDOR shall maintain complete and orderly documentation underlying all of its invoiced out of pocket expenses, including copies of paid receipts, invoices, or other documentation acceptable to the City. Such documentation shall be sufficient to establish that the expenses were actually incurred and necessary in the performance of the Professional Services.

3.2.4 Mark-Up. Any out-of-pocket costs shall not be marked up more than three percent (3%).

3.2.5 Travel Expenses. Any agreed travel, per diem, mileage, meals, or lodging expenses, the cost of which are subject to the City's prior written approval, shall be paid in accordance with the rates and conditions established by the City's Travel Policy, a copy of which has been provided to VENDOR, or the applicable law or ordinance.

3.3 Subcontracts. VENDOR may invoice for Professional Services related to the sub-contractual services at the established hourly rates in the Fee Schedule.

ARTICLE 4 – INVOICES AND PAYMENT.

The VENDOR shall be paid by the CITY for completed work and for services rendered in accordance with

the Fee Schedule as follows:

a. Payment as provided in this section by the CITY shall be full compensation for work performed, services rendered, and for all materials, supplies, equipment, and incidentals necessary to complete the work.

b. The VENDOR may submit invoices to the CITY a maximum of once per month during the progress of the work for partial payment. Such invoices will be reviewed by the CITY to determine if services have been rendered in conformity with this Agreement, and upon approval thereof, payment will be made to the VENDOR in the amount approved.

c. Invoices must identify the PO number and contract number.

d. Invoices shall be submitted to: Bryan Heller. And shall be concurrently e-mailed to the City's Representative.

e. Invoices requesting reimbursement of expenses shall include copies of all documentation of the expenses, to the satisfaction of the CITY.

f. Final payment of any balance due to the VENDOR of the total contract price earned will be made promptly upon its ascertainment and verification by the CITY after the completion of the work under this Agreement and its acceptance by the CITY.

g. Prior to final payment of the amount due under the terms of this Agreement, to the extent permitted by law, a final waiver of lien shall be required to be submitted by the VENDOR, as well as all suppliers and subcontractors whom worked on the project that is the subject of this Agreement. Payment of the invoice and acceptance of such payment by VENDOR shall release CITY from all claims of liability by VENDOR in connection with this Agreement.

h. Final Invoice: In order for both parties herein to close their books and records, the VENDOR will clearly state "Final Invoice" on the VENDOR's final/last billing to the CITY. The Final Invoice shall be submitted to the CITY no later than four (4) months after completion of all Professional Services. The Final Invoice certifies that all services have been properly performed and all charges and costs owed in connection with this Agreement have been invoiced to the CITY. Since this account will thereupon be closed, any other further charges if not properly included on the Final Invoice are considered waived by the VENDOR.

i. The VENDOR's records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the CITY and State for a period of five (5) years after the termination of the Agreement. Copies shall be made available upon request.

j. All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

ARTICLE 5 – ESTIMATED CONSTRUCTION COSTS

5.1 Included in Estimated Construction Cost

The Estimated Construction Cost of a project shall include the total cost to City of all elements of the entire project designed and specified by VENDOR; including an itemization of each of the following:

a. Cost of construction including all labor, materials and equipment required; including but not limited to, an estimated statement of proposed hourly rates and labor costs by job classification; general conditions, bonds and insurance, etc.;

b. Allowance for construction cost contingencies;

c. Regulatory permit fees;

d. Allowance for other necessary services, such as materials testing, to be provided by others for the City;

e. Traffic Control, when applicable;

f. Sheet and shoring, when applicable;

g. By-pass plumbing, when applicable;

h. Pressure Testing, when applicable;

i. Video Taping Inspections, when applicable;

j. Mobilization and De-mobilizations.

5.2 **Excluded in Estimated Construction Cost**
The Estimated Construction Cost shall exclude VENDOR's Fee.

5.3 **Adjustment to Estimated Construction Cost**
. VENDOR acknowledges that the Estimated Construction Costs shall be prepared by VENDOR in accordance with the Standard of Care. VENDOR further represents that it has the necessary resources and expertise, including a cost analyst for Estimating Construction Costs based on the best information available. In the event that the bidding phase has not commenced within three (3) months after VENDOR submits the Construction Drawings and Technical Specifications and Estimated Construction Cost of the project to the City, the Estimated Construction Cost of the project may be adjusted by VENDOR to reflect any documented change in the general level of prices in the construction industry between the date of submission of the Estimated Construction Costs to the City and the date on which the construction procurement solicitation is ultimately advertised.

5.4 **Bidding Phase and Estimated Construction Cost**
In the event that a least two (2) responsive and responsible bids are received, and the lowest "best value" bid, as such term is used in the City of Boynton Beach Procurement Code, excluding any alternate bid items ("base bid"), exceeds the Estimated Construction Cost for a project by more than ten percent (10%), the VENDOR shall analyze in writing, the reasons why the bids or proposals may have exceeded the ten percent (10%) factor following the analysis of all base bids. In such a circumstance, the City may at its sole discretion, exercise any one or more of the following options: (1) VENDOR shall revise the Construction Drawings and Technical Specifications along with the Estimated Construction Cost, to enable the project to conform to ten percent (10%) above the Estimated Construction Costs of the project and the City's project budget with such amendments subject to the written final acceptance and approval of the City; (2) VENDOR shall assist the City with, re-bidding services and related items (including costs associated with regulatory review and approval of revised documents) as many times as requested by the City until the base bid of at least one "best value" bid falls within the factor of ten percent (10%) of the Estimated Construction Cost of the project; (3) City may grant approval of an increase in the Estimated Construction Cost of project; (4) City may abandon the project and terminate this Agreement; or (5) City may select as many deductive alternatives as may be necessary to bring the award within ten percent (10%) of the Estimated Construction Costs of the project. Notwithstanding the foregoing, VENDOR shall be compensated for any additional effort pursuant to this Section 5.4 except where VENDOR failed to conform to the Standard of Care.

ARTICLE 6 – MODIFICATIONS TO THE SCOPE

Notwithstanding the foregoing provisions, the City reserves the right to make changes to a project or the scope of Professional Services at any time, including alterations, reductions or additions thereto. Upon receipt by VENDOR of City's notification of a contemplated change, VENDOR shall in writing: (i) provide a detailed estimate for the increase or decrease in VENDOR's Fee and other design costs that would result from the contemplated change; (ii) provide a detailed estimate for the increase or decrease in Estimated Construction Costs that would result from the contemplated change; (iii) notify the City of any estimated change in the completion date; and (iv) advise the City how the contemplated change shall affect the VENDOR's ability to meet the completion dates or schedules. If the City so instructs in writing, VENDOR shall suspend work on the portion of the scope of services affected by a contemplated change, pending the City's decision to proceed with the change. If the City elects to make the change, the parties shall execute a written amendment to this Agreement and VENDOR shall not commence work on any such change until such amendment is signed by the parties. It is further acknowledged and agreed that changes to Deliverables, or revisions of studies, that do not increase or change the overall estimate of time under the schedule shall be considered mere substitution of work for scope of work ("**Substituted Services**") already included in the Fee. Substituted Services shall not in any circumstances be considered compensable as

other expenses, and, to the extent that the event of Substituted Services causes an overall reduction in the amount of time for services considered in the Fee Schedule, such shall result in pro-rata reduction of the Fee.

ARTICLE 7 – OWNERSHIP AND USE OF DOCUMENTS.

Excluding VENDOR's pre-existing intellectual property, all plans, drawings, calculation, construction documents, technical specifications, sketches, photographs, videos, illustrations, tracings, PowerPoint presentations, specifications, maps, computer files and/or studies or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, regardless of form or format, will be considered works made for hire and, upon payment by the City of the Fee for same, will become the exclusive property of the City without restriction or limitation on their use and will be made available, upon request, to the City upon request and/or upon completion or termination of this Agreement. City shall not be required to pay any additional charges for the City's documents and records. Documents can be provided to the City electronically. Upon delivery to the City of said document(s), the City will become the custodian thereof in accordance with Chapter 119, Florida Statutes. Vendor will not copyright any material and products or patent any invention developed under this Agreement. Vendor specifically waives and releases all rights which Vendor may have in the materials, products or invention pursuant to 17 U.S.C. §§106A and 113(d). Vendor acknowledges and affirms that pursuant to 17 U.S.C. §106AI such waiver and release shall be effective as to any and all uses foreseeable and unforeseeable for which such materials, products or invention might be subject. Vendor waives and assigns to City all copyrights under 17 U.S.C. §101, et seq., and all other rights in the materials, products, invention and any work produced. Any reuse of Vendor's prepared documents by the City, except for the specific purpose intended under this Agreement, will be at City's sole risk and without liability or legal exposure to Vendor or its sub-consultants.

a. Obligation to Furnish Documents to the City. Vendor shall deliver to the City for approval and acceptance, and before being eligible for final payment of any amounts due under this Agreement, all documents and materials prepared for the City in connection with this Agreement. All such documents and records shall be provided within a reasonable time at no additional cost. Such documents may be provided electronically.

b. Vendor's Records. Notwithstanding any other provision in this Section, Vendor shall be entitled to retain a copy of all plans, drawings, calculation, construction documents, technical specifications, sketches, photographs, videos, illustrations, tracings, PowerPoint presentations, specifications, maps, computer files and/or studies or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, for Vendor's records only as is necessary for VENDOR to document its professional services. Vendor acknowledges that plans, drawings, documents, and records related to the physical security of City facilities or security systems are exempt or confidential records and shall not be disclosed by Vendor, except as authorized by law and specifically authorized by City.

ARTICLE 8 – GENERAL TERMS

a. **Funding**. This Agreement shall remain in full force and effect only as long as the expenditures provided in the Agreement have been appropriated by the CITY in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

b. **Representations.** VENDOR represents to the CITY that it is competent to engage in the scope of services contemplated under this Agreement and that it will retain and assign qualified professionals to all assigned projects during the term of this Agreement. VENDOR's Services shall meet the Standard of Care. In submitting its response to the RFQ, VENDOR has represented to CITY that certain individuals employed by VENDOR shall provide services to CITY pursuant to this Agreement. CITY has relied upon such representations. Therefore, VENDOR shall not change the designated Project Management consultant for any project without the advance written approval of the CITY, which consent will not be unreasonably withheld by the CITY.

c. **Licensed**. VENDOR represents that it is duly licensed in Florida to perform the Professional Services under this Agreement and that it will continue to maintain all licenses and approvals

required to conduct its business.

d. **Design and Constructability**. Subject to Article 1.2, VENDOR hereby represents to City that where Professional Services includes development of Construction Drawings and Technical Specifications, such project: (i) is and shall be designed with no material defects in design, determined in accordance with sound architectural and engineering principles, as applicable, and generally accepted industry standards; (ii) is and shall be designed in accordance with generally accepted architectural and engineering standards, as applicable, and (iii) is constructible. Without waiver of City's other rights and remedies, City may require VENDOR to perform again, at VENDOR's sole cost and expense, any design services which were not performed in accordance with the requirements and standards set forth in this Agreement. VENDOR hereby waives any claims which it may have or assert against the City with respect to this section, except and unless and failure of VENDOR to perform, in whole or in part, is due to the action or inaction of the City. Without limiting any other remedy available to City, the VENDOR shall furnish at its own expense any redesign or revisions to the Construction Documents and Technical Specifications necessary to correct any material errors, omissions, failures or deficiencies in such documents, and shall, at its sole cost and expense, correct any work performed in accordance with deficient documents. The City's review or approval of, or payment for, any Professional Services or deliverables under this Agreement shall not be construed as a waiver of any rights under this Agreement or any cause of action arising out of performance under this Agreement. This section shall survive the expiration or termination of this Agreement.

e. **Indemnification**. The VENDOR shall indemnify and hold harmless the CITY, its officers, employees, and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, through the conclusion of any appeals, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to and resulting from the performance of this Agreement by the VENDOR, its employees, agents, partners, principals or subcontractors but only to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of VENDOR or other persons employed or utilized by VENDOR in the performance of this Agreement. The VENDOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. Neither party to this Agreement shall be liable to any third party claiming directly or through the other respective party, for any special, incidental, indirect, or consequential damages of any kind, including but not limited to lost profits or use that may result from this Agreement or out of the services or goods furnished hereunder. PURSUANT TO F.S. SEC. 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD LIABLE FOR NEGLIGENCE. VENDOR obligations hereunder shall not apply to the extent caused by the negligence of any Indemnities.

To the extent considered necessary by the City, any sums due VENDOR under this Agreement may be retained by City until all of City's claims for indemnification have been resolved, and any amount withheld shall not be subject to the payment of interest by City. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Agreement or otherwise. The parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify. Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or §768.28, Fla. Stat., as may be amended from time to time.

The limitations and exclusions of liability set forth in this subsection shall apply regardless of the type of claim, fault, breach of contract, tort (including negligence), strict liability, or otherwise of either party, its employees, or subconsultants.

f. **Insurance**. During the performance of the services under this Agreement, VENDOR shall maintain the following insurance limits. All policies shall be written by an insurance company authorized to do business in Florida. VENDOR shall be required to obtain all applicable

insurance coverage, as indicated below, prior to commencing any service pursuant to this Agreement:

i. **Worker's Compensation Insurance**: The VENDOR shall procure and maintain for the life of this Agreement, Worker's Compensation Insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability with limits meeting all applicable state and federal laws. This coverage must extend to any subcontractor that does not have their own Worker's Compensation and Employer's Liability Insurance. The policy must contain a waiver of subrogation in favor of the CITY of Boynton Beach, executed by the insurance company.

ii. **Commercial General Liability**: The VENDOR shall procure and maintain for the life of this Agreement, Commercial General Liability Insurance. This coverage shall be on an "Occurrence" basis. Coverage shall include Premises and Operations; Independent consultants, Products-Completed Operations and Contractual Liability. This policy shall provide coverage for death, personal injury, or property damage that could arise directly or indirectly from the performance of this Agreement. VENDOR shall maintain a coverage of $1,000,000 per occurrence and $1,000,000 aggregate for personal injury/ and $1,000.000 per occurrence/aggregate for property damage. The general liability insurance shall include the CITY as an additional insured and shall include a provision prohibiting cancellation of the policy upon thirty (30) days prior written notice to the CITY.

iii. **Business Automobile Liability**: The VENDOR shall procure and maintain, for the life of this Agreement, Business Automobile Liability Insurance. The VENDOR shall maintain an amount of $1,000,000 combined single limit for bodily injury and property damage liability to protect the VENDOR from claims for damage for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use of maintenance of owned and non-owned automobile, included rented automobiles, whether such operations be by the VENDOR or by anyone directly or indirectly employed by the VENDOR.

iv. **Professional Liability (Errors and Omissions) Insurance**: The VENDOR shall procure and maintain for the life of this Agreement in the amount of $4,000,000 per claim and in aggregate.

v. **Umbrella/Excess Liability Insurance**: in the amount of $1,000,000.00 as determined appropriate by the CITY depending on the type of job and exposures contemplated. Coverage must follow the form of the General Liability, Auto Liability and Employer's Liability. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to the Agreement.

VENDOR shall provide the CITY with all Certificates of Insurance required under this section prior to beginning performance under this Agreement. Failure to maintain the required insurance will be considered a default of the Agreement.

The CITY shall be included as an additional insured, except on the Worker's Compensation and Professional Liability policies. The coverage shall contain no limitations on the scope of protection afforded the CITY, its officers, officials, and employees. A current valid insurance policy meeting the requirements herein identified shall be maintained during the duration of this Agreement, and shall be endorsed to state that coverage shall not be suspended, voided or canceled by either party, reduced in coverage in limits except after thirty (30) days prior written notice by either certified mail, return receipt requested, has been given to the CITY.

The CITY reserves the right to reasonably require any additional insurance coverage or increased limits as determined necessary by the Director of Human Resources and Risk Management. The CITY reserves the right to review, modify, reject, or accept any required limits, coverage, or endorsements throughout the term of the Agreement. Increased limits shall be agreed to by both parties.

g. **Independent Contractor.** The VENDOR and the CITY agree that the VENDOR is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither VENDOR nor any employee of VENDOR shall be entitled to any benefits accorded CITY employees by virtue of the services provided under this Agreement. The CITY shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to VENDOR, or any employee of VENDOR.

h. **Covenant Against Contingent Fees**. The VENDOR represents that he has not employed or retained any company or person, other than a *bona fide* employee working solely for the VENDOR, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a *bona fide* employee working solely for the VENDOR any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the CITY shall have the right to annul this contract without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

i. **Consultant's Competitive Negotiation Act.** The parties confirm that the procurement of the professional services under this Agreement was the subject of the competitive selection and negotiation processes mandated by Section 287.055, Florida Statutes, unless specifically exempted therefrom.

j. **Truth-In-Negotiation Certificate.**

a. Execution of this Agreement by the VENDOR shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement is accurate, complete, and current as of the date of the Agreement and no higher than those charged the VENDOR's most favored customer for the same or substantially similar service.

b. The said rates and cost shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to outside VENDORs. The CITY shall exercise its rights under this "Certificate" within one (1) year following payment.

k. **Discrimination Prohibited**. The VENDOR, with regard to the work performed by it under this agreement, will not discriminate on the grounds of race, color, national origin, religion, creed, age, gender, disability, marital status, political affiliation, pregnancy, gender identity, and expression, sex or the presence of any physical or sensory handicap in the selection and retention of employees, procurement of materials, supplies, or in performance of any Work pursuant to this Agreement.

l. **Non-Waiver.** Any waiver by either party of any one or more of the covenants, conditions, or provisions of this Agreement, 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 Agreement. Nothing in this Agreement shall be interpreted to constitute a release of the responsibility and liability of VENDOR, its employees, sub-contractors, agents, and sub-consultants for the accuracy and competency of their designs, working drawings, Construction Documents, Technical Specifications or other documents and works, nor shall any approval by the City be deemed to be an assumption of such responsibility by the City for a defect or omission in designs, Construction Documents, Technical Specifications or other documents prepared by VENDOR, its employees, agents, or subcontractors.

m. **Termination.**

a. **Termination for Convenience**. This Agreement may be terminated by the CITY for convenience, upon fourteen (14) calendar days after written notice by the City to the

VENDOR for such termination in which event the VENDOR shall be paid its compensation for work performed through to the termination date, including services reasonably related to termination. In the event that the VENDOR abandons the Agreement or causes it to be terminated, the VENDOR shall indemnify the CITY against loss pertaining to this termination.

b. **Termination for Cause**. This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within thirty (30) calendar days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may be terminated for cause by CITY for, VENDOR's failure to perform the Services as per the terms of this Agreement, or repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices.

c. In the event of the death of a member, partner, or officer of the VENDOR, or any of its supervisory personnel assigned to the project, the surviving members of the VENDOR hereby agree to complete the work under the terms of this Agreement, if requested to do so by the CITY. This section shall not be a bar to renegotiations of this Agreement between surviving members of the VENDOR and the CITY, if the CITY so chooses.

d. Notice of termination shall be provided in accordance with the "Notices" section of this Agreement.

e. Upon termination, VENDOR shall immediately assemble and deliver all documents, drawings, signed and sealed drawings, Construction Documents, Technical Specifications, CADD files, calculations, specifications, correspondence, testing and materials information, warranties, manuals, written information, electronic data and all other materials in its possession concerning the Professional Services under this Agreement and City projects to the City.

f. In the event of termination, VENDOR, upon receipt of the notice of such termination, shall: (1) stop the performance of the Professional Services on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts except as may be necessary for completion of any portion(s) of the Professional Services not terminated and as authorized by the written notice; (3) terminate all orders and subcontracts to the extent that they relate to the performance of the Professional Services terminated by the notice of termination; (4) transfer title to the City (to the extent that title has not already been transferred) and deliver according to the manner, at the times, and to the extent directed by the City, all property purchased under this Agreement and reimbursed as direct items of cost and not required for completion of the services not terminated; (5) promptly assemble and deliver as provided above all documents related to this Agreement; (6) promptly complete performance of any Professional Services not terminated by the notice of termination and/or cooperate in transition of its consulting duties to appropriate parties at the direction of the City.

g. In the event of termination, the City shall compensate VENDOR for all authorized Professional Services satisfactorily performed through the termination date as per the terms of this Agreement, and for costs incurred, under the payment terms contained in this Agreement. In the event of Termination for Cause, no payments to VENDOR shall be made (1) for Professional Services not satisfactorily performed and cured as per the terms of this Agreement and (2) for assembly of and submittal of documents as required under this Agreement. In no event shall City be obligated to compensate VENDOR for lost profits, or any resulting or consequential damages.

h. In addition to any termination rights stated in this Agreement, CITY shall be entitled to seek any and all available contractual or other remedies available at law or in equity including recovery of actual costs incurred by CITY due to VENDOR's failure to comply with any term(s) of this Agreement.

i. Surviving Provisions. It is agreed that the indemnity provisions, insurance provisions, the right to audit, governing law, and litigation, and all covenants, agreements, and representations made in this Agreement or otherwise made in writing by VENDOR,

including but not limited to any representations made relating to disclosure or ownership of documents, shall survive the expiration or termination of this Agreement.

n. **Default of Contract & Remedies.**

a. Any disputes that arise between the parties with respect to the performance of this Agreement, which cannot be resolved through negotiations, shall be submitted to a court of competent jurisdiction exclusively in Palm Beach County, Florida. This Agreement shall be construed under Florida Law.

b. **Correction of Work.** Subject to Article 1.2, if, in the judgment of CITY, work provided by VENDOR does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, CITY reserves the right to require that VENDOR correct all deficiencies in the work to bring the work into conformance without additional cost to CITY, and/or replace any personnel who fail to perform in accordance with the requirements of this Agreement. CITY shall be the sole judge of non-conformance and the quality of workmanship.

c. **Default of Contract.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by VENDOR :

d. The abandonment of the project by VENDOR for a period of more than seven (7) business days.

e. The abandonment, unnecessary delay, refusal of, or failure to comply with any of the terms of this Agreement or neglect, or refusal to comply with the instructions of the CITY's designee.

f. The failure by VENDOR to observe or perform any of the terms, covenants, or conditions of this Agreement to be observed or performed by VENDOR, where such failure shall continue for a period of seven (7) days after written notice thereof by CITY to VENDOR; provided, however, that if the nature of VENDOR 's default is such that more than seven (7) days are reasonably required for its cure, then VENDOR shall not be deemed to be in default if VENDOR commences such cure within said seven (7) day period and thereafter diligently prosecutes such cure to completion.

g. The assignment and/or transfer of this Agreement or execution or attachment thereon by VENDOR or any other party in a manner not expressly permitted hereunder.

h. The making by VENDOR of any general assignment or general arrangement for the benefit of creditors, or the filing by or against VENDOR of a petition to have VENDOR adjudged a bankruptcy, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against VENDOR, the same is dismissed within sixty (60) calendar days); or the appointment of a trustee or a receiver to take possession of substantially all of VENDOR's assets, or for VENDOR 's interest in this Agreement, where possession is not restored to VENDOR within thirty (30) calendar days; for attachment, execution or other judicial seizure of substantially all of VENDOR 's assets, or for VENDOR 's interest in this Agreement, where such seizure is not discharged within thirty (30) calendar days.

i. **Remedies in Default.** In case of default by VENDOR, CITY shall notify VENDOR, in writing, of such abandonment, delay, refusal, failure, neglect, or default and direct VENDOR to comply with all provisions of the Agreement. If the abandonment, delay, refusal, failure, neglect, or default is not cured within seven (7) business days of when notice was sent by CITY, CITY may declare a default of the Agreement and notify VENDOR of such declaration of default and terminate the Agreement in accordance with the Termination section set forth above.

o. **Uncontrollable Forces.**

a. Neither the CITY nor VENDOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

b. Neither party shall, however, be excused from performance if non-performance is due to forces which are preventable, removable, or remediable, and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

p. **Notices**. All written notices, demands, and other communications required or provided for under this Agreement 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 below.

Notices to the CITY shall be sent to the following address:

Daniel Dugger, City Manager
City of Boynton Beach
100 E. Ocean Avenue
Boynton Beach, FL 33435
Telephone No. (561) 742-6000

Notices to VENDOR shall be sent to the following address:

ATTN:	Didier Menard, GJ Schers, Raul Alfaro
	Jacobs Engineering Group, Inc.
Address:	550 West Cypress Creek Road
	Suite 400
	Fort Lauderdale, FL 33309
Phone:	407-496-1938, 239-404-0245, 786-709-1119
Email:	didier.menard@jacobs.com, gj.schers@jacobs.com,
	raul.alfaro@jacobs.com

q. **Public Records**. The Vendor shall comply with Florida's Public records Law. Specifically, the VENDOR shall:

a. Keep and maintain public records required by the CITY to perform the service;

b. Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Fla.Stat. or as otherwise provided by law;

c. Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, VENDOR shall maintain in a secured manner all copies of such confidential and exempt records remaining in its possession once the VENDOR transfers the records in its possession to the CITY; and

d. Upon completion of the contract, VENDOR shall transfer to the CITY, at no cost to the CITY, all public records in VENDOR'S possession. All records stored electronically by VENDOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS:

CITY CLERK
100 E. OCEAN AVENUE
BOYNTON BEACH, FLORIDA, 33435
TELEPHONE: 561-742-6060
CityClerk@bbfl.us

r. **Time of Essence.** Time shall be of the essence for each and every provision of this Agreement.

s. **E-Verify**. VENDOR is used interchangeably with CONTRACTOR throughout this Section. VENDOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

A. Definitions for this Section:

i. "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.

ii. "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

iii. "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

B. Registration Requirement; Termination. Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-Verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

i. All persons employed by a Contractor to perform employment duties within Florida during the term of the contract;

ii. All persons (including sub-vendors/sub-consultants/sub-contractors) assigned by Contractor to perform work pursuant to the contract with the CITY of Boynton Beach. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the CITY of Boynton Beach; and

iii. The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

t. **Public Entity Crime Act 287.133**. VENDOR represents that the execution of this Agreement will not violate Section 287.133, Florida Statutes and certifies that VENDOR and any parent corporations, affiliates, subsidiaries, members, shareholders, partners, officers, directors or executives, and any sub-consultants have not been placed on the Convicted Vendor List maintained by the State of Florida within 36 months prior to the submittal of the Proposal to under this RFQ. Violation of this section may result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

u. **Scrutinized Companies 287.135 and 215.473**. Vendor certifies that vendor is not participating in a boycott of Israel. Vendor further certifies that vendor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Vendor been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the City will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to Vendor of the City's determination concerning the false certification. Vendor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, Vendor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Vendor does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

v. **Sovereign Immunity.** The CITY is a political subdivision of the State of Florida. Nothing in this Agreement is intended, nor shall be construed or interpreted, to waiver or modify the immunities and limitations on liability provided for in Section 768.28, Florida statute, as may be amended from time to time, or any successor statute thereof. To the contrary, all terms and provisions contained in the Agreement, or any disagreement or dispute concerning it, shall be construed or resolved so as to ensure CITY of the limitation from liability provided to any successor statute thereof.

w. **Assignment**. No assignment by a party hereto of any rights under or interests in this Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in

any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

x. **Binding Authority**. CITY and VENDOR represent that they have the full power and authority to enter into and fully perform their obligations under this Agreement, and each bind itself, their partners, successors, assigns, and legal representatives to the other party hereto, their partners, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in this Agreement.

y. **Attorney's Fees and Costs**. In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

z. **Performance of Government Functions**. Notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement shall in any way stop, limit or impair the City of Boynton Beach from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions with respect to any project.

aa. **Compliance with Laws**. It shall be the VENDOR's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations, and requirements of all local, city, state, and federal agencies as applicable to the Professional Services.

bb. **No Third-Party Beneficiaries**. No provision of this Agreement is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity, not a party to the agreement/contract, including but not limited to any citizen or employees of the City and/or Vendor.

cc. **Severability**. In the event that any term or provision of this Agreement shall to any extent be held invalid or unenforceable, it is agreed that the remainder of this Agreement, 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 Agreement shall be deemed valid and enforceable to the maximum extent permitted by law.

dd. **Litigation; Governing Law; Venue**. This Agreement 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 VENDOR submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit concerning this Agreement shall be exclusively in Palm Beach County, Florida, or the Federal Southern District of Florida. VENDOR agrees to waive all defenses to any suit filed in Florida based upon improper venue or forum nonconveniens.

ee. **Integrated Agreement**. This Agreement represents the entire and integrated agreement between CITY and VENDOR and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement is intended by the parties hereto to be the final expression of this Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made. In the event of a conflict between this Agreement, the solicitation, and the VENDOR's bid proposal, this Agreement shall govern then the solicitation, and then the bid proposal. This Agreement may be amended only by written instrument signed by both CITY and VENDOR.

ff. **Effective Date and Execution**. This Agreement will take effect on the Effective Date. This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding,

valid, and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

gg. **Limitation of Liability.** The total aggregate liability arising out of performance or breach of this Agreement shall not exceed 2 times the compensation paid to VENDOR under each applicable Task Order.

ARTICLE 9 - FEDERAL REQUIREMENTS.

Notwithstanding anything to the contrary set forth herein, VENDOR shall comply with all applicable federally required standard provisions whether set forth herein below, in 2 CFR Part 200, or otherwise. Any reference made to VENDOR in this section shall also apply to any subcontractor under the terms of this Agreement.

9.1 **Equal Employment Opportunity**. During the performance of this contract, VENDOR agrees as follows:

A. VENDOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. VENDOR will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. VENDOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

B. VENDOR will, in all solicitations or advertisements for employees placed by or on behalf of VENDOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

C. VENDOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with VENDOR 's legal duty to furnish information.

D. VENDOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of VENDOR 's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. VENDOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

F. VENDOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

G. In the event of VENDOR 's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this Agreement may be canceled,

terminated or suspended in whole or in part and VENDOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

H. VENDOR will include the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. VENDOR will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided,* however, that in the event VENDOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, VENDOR may request the United States to enter into such litigation to protect the interests of the United States.

The CITY further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the CITY so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The CITY further agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The CITY further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the CITY agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the CITY under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such CITY; and refer the case to the Department of Justice for appropriate legal proceedings.

9.2 **Davis-Bacon Act**. VENDOR shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor Regulations (29 CFR Part 5). In accordance with the statute, VENDOR must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, VENDOR must be required to pay wages not less than once a week.

9.3 **Copeland "Anti-Kickback" Act**. VENDOR shall comply with the Copeland "Anti-Kickback" Act, (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). VENDOR must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. CITY must report all suspected or reported violations to the Federal awarding agency.

9.4 **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701- 3708). Where applicable, pursuant to 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) VENDOR must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

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

B **Violation; liability for unpaid wages; liquidated damages**. In the event of any violation of the clause set forth in paragraph (A) of this section the VENDOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.

C. **Withholding for unpaid wages and liquidated damages**. CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by VENDOR or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (26.4.2) of this section.

D. **Subcontracts**. VENDOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this section.

9.5 VENDOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251- 1387). CITY will report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

A. **Clean Air Act**. VENDOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. VENDOR agrees to report each violation to CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. VENDOR agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part

with Federal assistance.

B. **Federal Water Pollution Control Act**. VENDOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. VENDOR agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. VENDOR agrees to include these requirements in each subcontract exceeding one hundred fifty thousand dollars ($150,000) financed in whole or in part with Federal assistance.

9.6 **Suspension and Debarment**. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000, as such VENDOR is required to verify that none of the Vendor's agents, principals (defined at 2 C.F.R. § 180.995), or affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

A. VENDOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by CITY. If it is later determined that Vendor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to State and CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

B. The Vendor or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Vendor or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9.7 **Byrd Anti-Lobbying Amendment, as amended (31 U.S.C. § 1352)**. VENDOR shall file the required certification pursuant to 31 U.S.C. 1352. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

9.8 **Compliance with State Energy Policy and Conservation Act**. VENDOR shall comply with all mandatory standards and policies relating to energy efficiency contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

9.9 **Procurement of Recovered Materials**. The CITY and VENDOR must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

9.10 **Reporting**. Pursuant to 44 CFR 13.36(i)(7), VENDOR shall comply with federal requirements and regulations pertaining to reporting, including but not limited to those set forth at 44 CFR 40 and 41, if applicable. Furthermore, both parties shall provide the FEMA Administrator, U.S. DOT

Administrator, the Comptroller General of the United States, or any of their authorized representative access to any books, documents, papers, and records of VENDOR which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts, and transcriptions. Also, both Parties agree to provide FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the Agreement.

9.11 **Rights to Inventions**. VENDOR agrees that if this Agreement results in any copyrightable materials or inventions, the Federal Government reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use the copyright of said materials or inventions for Federal Government purposes.

9.12 **No Obligation by the Federal Government**. The federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

9.13 **Department of Homeland Security (DHS) Seal, Logo, and Flags**. VENDOR shall not use DHS(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific federal pre-approval.

9.14 **Compliance with Federal Law, Regulations, and Executive Orders**. This is an acknowledgement that federal financial assistance will be used to fund the Agreement only. VENDOR will comply with all applicable federal law, regulations, executive orders, policies, procedures, and directives.

9.15 **Fraudulent Statements**. VENDOR acknowledges that 31 U.S.C. Chap. 38 applies to VENDOR's actions pertaining to this Agreement.

9.16 **Prohibition on Contracting for Covered Telecommunications Equipment or Services**. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause.

A. **Prohibitions**.

i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

ii. Unless an exception in paragraph (B) of this clause applies, the VENDOR and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential

component of any system, or as critical technology as part of any system; or

d. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

B **Exceptions**.

i. This clause does not prohibit VENDOR from providing: (a) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (b) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

ii. By necessary implication and regulation, the prohibitions also do not apply to: (a) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (b) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

C. **Reporting requirement**.

i. In the event VENDOR identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (ii) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

ii. The VENDOR shall report the following information pursuant to this section: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within ten (10) business days of submitting the information required by this Section: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services. The VENDOR shall insert the substance of this clause, including this in all subcontracts and other contractual instruments.

9.17 **Domestic Preference for Procurements**. As appropriate, and to the extent consistent with law, the VENDOR should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

9.18 **Affirmative Socioeconomic Steps**. If subcontracts are to be let, VENDOR is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

9.19 **License and Delivery of Works Subject to Copyright and Data Rights**. If applicable, the VENDOR grants to CITY, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, VENDOR will identify such data and grant to the CITY or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, VENDOR will deliver to the VENDOR data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by VENDOR.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year set forth below their respective signatures.

DATED this _____ day of _____, 20____.

CITY OF BOYNTON BEACH

_____
Ty Penserga, Mayor

_____
(Authorized Official Name), (Vendor)

David Ashman
Print Name of Authorized Official

Vice President
Title

(Corporate Seal)

Attest/Authenticated:

_____
Witness

_____
Print Name

Approved as to Form:

_____
Shawna G. Lamb, Office of the City Attorney

Attest/Authenticated:

_____
Maylee De Jesus, City Clerk

EXHIBIT A
TASK ORDER TEMPLATE

CITY OF BOYNTON BEACH
_____ *Services Task Order*
Task Order No. _____

Consultant: _____
Contract No. _____

1. **Task/Project Phase**. _____ (*Insert title and brief description)* _____

2. **Detailed Scope of Professional Services**.
A detailed scope of services under this Task Order, in accordance with the phases of service detailed in the Agreement, is attached as **Exhibit ____.**

3. **Deliverables and Schedule**.
Consultant shall deliver to the City the deliverables specified at the time indicated on the attached **Exhibit ____.**

4. **Compensation**.
The total Fee to be paid to Consultant under this Task Order shall not exceed _____, based on the hourly rates currently in effect under the Agreement.

A detailed fee schedule is attached as **Exhibit _____.**
The payment schedule (based on deliverables) is attached as **Exhibit** _____.

5. **Agreement Reference**.
This Task Order shall be performed under the terms and conditions described within the _____ Agreement, dated _____, 20____, by and between the City of Boynton Beach and _____ ("Consultant"), Contract No. _____.

6. **Insurance**.
Consultant shall maintain insurance coverages in accordance with the Agreement and hereby confirms that Certificate(s) of Insurance evidencing *current* policies meeting the requirements of the Agreement are on file with the City as of the date of this Task Order.

7. **Exhibits**.
All attached Exhibits are incorporated fully into this Task Order and the Agreement.

8. **Notice to Proceed**.

☐ If checked, Consultant's receipt of a fully-executed copy of this Task Order shall serve as the Notice to Proceed under this Task Order, effective as of the date the fully-executed Task Order was emailed to the Consultant.

☐ If checked, Consultant shall commence Services under this Task Order as specified in a forthcoming Notice to Proceed.

CONSULTANT:

By: _____

Print Name: _____

Date: _____, 20___

CITY OF BOYNTON BEACH

By: _____
Ty Penserga, Mayor

Date: _____, 20___

Attest: _____
City Clerk

City Attorney's Office
Approved as to form and legality
By: _____

EXHIBIT B
FEE SCHEDULE

PERSONNEL CLASSIFICATIONS	HOURLY RATE
Principal	$290
Senior Project Manager	$265
Project Manager	$225
Senior Engineer	$250
Process Engineer	$150
Sr. Electrical Engineer	$240
Electrical Engineer	$150
Process Control/Inst. Engineer	$150
Sr. Mechanical Engineer	$240
Mechanical Engineer	$150
Engineering Technician	$125
Engineer	$140
Staff Engineer	$130
Architect	$150
Senior Architect	$225
Landscape Architect	$185
Environmental Specialist	$185
Inspector (Zoning & Landscape)	$150
Inspector (Transportation)	$150
Senior Landscape Architect	$195
Senior Surveyor / Mapper	$150
Surveyor /Field Survey Chief	$165
Designer	$130
Senior Designer	$150
Urban Designer	$165
Chief Designer	$185
Hydrogeologist	$140
Principal Hydrogeologist	$225
Planning Technician	$150
GIS Specialist	$130
Senior Structural Engineer	$240
Structural Engineer	$150
CADD / Technician	$130
Architectural CADD / Technician	$130
Planner	$150
Senior Planner	$195
Transportation Planner	$149
Transportation Planning Technician	$130
Public Relations Specialist	$200
Senior Construction Inspector	$175
Construction Inspector	$140
Rate Analyst	$220
Senior Rate Analyst	$250
Grant Analyst	$175
Grant Specialist	$200
Project Assistant	$125
Clerical / Administrative	$95

Reimbursable Expenses:

Direct costs such as postage, prints, and delivery services will be billed at cost.

Mark-up % Sub-Consultants Fee: 0%

City of Boynton Beach
Risk Management Department

INSURANCE ADVISORY FORM

Under the terms and conditions of all contracts, leases, and agreements, the City requires appropriate coverages listing the City of Boynton Beach as Additional Insured. This is done by providing a Certificate of Insurance listing the City as "Certificate Holder" and "The City of Boynton Beach is Additional Insured as respect to coverages noted." Insurance companies providing insurance coverages must have a current rating by A.M. Best Co. of "B+" or higher. *(NOTE: An insurance contract or binder may be accepted as proof of insurance if Certificate is provided upon selection of vendor.)* The following is a list of types of insurance required of contractors, lessees, etc., and the limits required by the City: **(NOTE: This list is not all inclusive, and the City reserves the right to require additional types of insurance, or to raise or lower the stated limits, based upon identified risk.)**

TYPE (Occurrence Based Only)	**LIMITS REQUIRED**	
General Liability	General Aggregate	$ 1,000,000.00
Commercial General Liability	Products-Comp/Op Agg.	$ 1,000,000.00
Owners & Contractor's Protective (OCP)	Personal & Adv. Injury	$ 1,000,000.00
Asbestos Abatement	Each Occurrence	$ 1,000,000.00
Lead Abatement	Fire Damage (any one fire)	$ 50,000.00
Broad Form Vendors	Med. Expense (any one person)	$ 5,000.00
Premises Operations		
Underground Explosion & Collapse Products		
Completed Operations Contractual		
Independent Contractors Fire		
Legal Liability		
Professional Liability	Aggregate	$ 1,000,000.00
Automobile Liability	Combined Single Limit	$ 1,000,000.00
Any Auto		
All Owned Autos		
Hired Autos		
Non-Owned Autos		
Excess Liability	Each Occurrence	to be determined
Umbrella Form	Aggregate	to be determined
Worker's Compensation	Statutory Limits	
Employer's Liability	Each Accident	$ 1,000,000.00
	Disease, Policy Limit	$ 1,000,000.00
	Disease Each Employe	$ 1,000,000.00
Property:		
Homeowners Revocable Permit		$ 300,000.00
Builder's Risk		Limits based on Project Cost
Installation Floater		Limits based on Project Cost
Other - As Risk Identified		to be determined

INSURANCEADVISORYFORM Revised 04/2021

Scope of Engineering Services for
The City of Boynton Beach East and West WTP Upgrades For Emerging Contaminants Removal
Task Order #1: Treatment Options Evaluation and Facilities Plan
January 10, 2025

This Exhibit, when executed, shall be incorporated into and become part of the Agreement for Engineering Services between the City of Boynton Beach (CITY), and Jacobs Engineering Group Inc. (JEG) (CONSULTANT), dated _____ hereafter referred to as the Agreement.

1. INTRODUCTION

Driven by the new Environmental Protection Agency (EPA) regulations, CITY is planning to provide treatment improvements to the East and West Water Treatment Plants (WTPs) to remove emerging contaminants (EC), including per- and polyfluoroalkyl substances (PFAS). Additionally, the project will address increasing potable water demands as the customer base continues to grow and aging plant equipment that have reached the end of their useful life. This 'once-in-a-lifetime' project will address the CITY's water supply system challenges holistically. Treatment solutions will need to be developed for the next 30 years. Solutions need to be sustainable and resilient, anticipate current and future water regulations and improve operations and maintenance of the CITY's water supply system. The solutions should also cover the entire system and not only address specific treatment or asset condition issues at either of the West and East WTP.

The project will be funded by a loan/grant from the Florida Department of Environmental Protection (FDEP) Drinking Water State Revolving Fund (SRF) Program for ECs and therefore the project will adhere to the SRF program requirements. The delivery of this project will be through a design-bid-build implementation, to be completed by EPA's compliance deadline of April 2029. The agreement dictates 'Buy America' and the SRF program requires adherence to other procurement stipulations in the agreement.

In July – November 2024, through a request for qualification (RFQ) selection procedure under the Consultant's Competitive Negotiation Act (CCNA), CITY selected CONSULTANT to provide engineering services for the East and West WTP Upgrades. As part of this agreement, CONSULTANT was requested to provide engineering services to CITY to perform the services as referenced in RFQ UTL24-031. Following the first negotiation meeting on November 20, CONSULTANT was requested to develop a scope of services for Task Order 1: treatment options evaluation and facilities plan report. Future task orders may cover subsequent tasks including planning and alternatives evaluation, treatability testing, corrosion control study, design, permitting and regulatory support, bidding, construction management, SCADA implementation, startup services, operations support and any other services requested by CITY.

The scope of services is described below with the proposed deliverable schedule, compensation and assumptions presented later in the document. The assumptions includes a list of information requested from CITY to perform the services.

2. SCOPE OF SERVICES

The services proposed are listed below and described in detail in the following task descriptions:

- Task 1 – Project management
- Task 2 – Information gathering and review
- Task 3 – Population and water demand projections
- Task 4 – Regulatory review, residuals management and alternative water supply planning
- Task 5 – Facilities assessments, needs prioritization and baseline capital improvement plan
- Task 6 – Alternatives evaluation and capital improvement
- Task 7 – Facilities plan
- Task 8 – Funding support
- Task 9 – Owner allowance

Task 1 – Project management

Project management will be conducted by CONSULTANT and will include coordination with CITY, schedule and budget management, health and safety considerations, monthly progress reports and invoices, project administration and quality control on deliverables. Upon the Notice to Proceed (NTP), CONSULTANT will coordinate with CITY to commence the work, prepare an agenda and hold a project kick off meeting to discuss the project execution plan including; staffing plans, performance schedule, sequence of deliverables and project objectives.

Services under this task will also cover:

- Coordination with third-party engineering firm managing the hydraulic model of the CITY's distribution system, discuss opportunities and limitations of the existing system to meet future potable water demands from the East and West WTP to all locations within the service area. The possibility of purchasing potable water from neighboring utilities through interconnects on a temporary basis will also be reviewed.
- Coordination with CITY's management, utilities and public relation departments to develop public outreach, community impact and project communication materials. Where applicable, CONSULTANT will use best-practices available from the EPA, American Water Works Association (AWWA), FDEP, or Palm Beach County or share best-practices used within CONSULTANT's organization.
- Presentations at CITY's council meetings and to CITY's management to talk about the progress of the work and findings. This may include developing supportive presentation materials for utility leadership or stand-alone presentations and may cover PFAS treatment technologies selected by other utilities in South Florida.

Task 1 deliverables:

- Kickoff, progress meeting and workshop summaries in Adobe PDF electronic format
- Public outreach documents
- Presentations to city council and management
- Monthly invoices and progress reports in Adobe PDF electronic format
- Schedule in Adobe PDF electronic format
- QA/QC sheets of deliverables in Adobe PDF electronic format

Task 2 – Information gathering and review

Following the Notice to Proceed (NTP), CONSULTANT will submit a final list of information to be obtained from CITY at the project kick-off workshop (Task 1). As part of the development of this scope of services, CONSULTANT has developed a preliminary list of information requested to expedite the process, as summarized in previous iterations of the scope of work.

It is anticipated that some requested information is readily available and will be collected at the kickoff meeting, with the rest of the information to be provided by CITY within two weeks after the meeting. CONSULTANT will review the above information, summarize the main findings, define gaps and additional information needs, and develop a plan to collect these, if deemed necessary for executing this scope of services.

CONSULTANT will prepare a data review and gap analysis Technical Memorandum (TM) and discuss the data gap analysis with CITY in a Microsoft Teams call and agree on follow-up actions. The TM will be structured such that it can be inserted in the Facilities Plan Report. If needed, additional services can be provided through an amendment to this task order.

Task 2 deliverables:

- List of requested information in Adobe PDF electronic format, if not already in possession of CONSULTANT from performing previous task orders with CITY
- Gap analysis TM in Adobe PDF electronic format

Task 3 – Population and water demand projections

The goal of developing potable water demand projections is to determine how much water is needed in the future to meet customer usage and where the water is needed within the service area. Based on discussions during the first negotiations meeting, CITY has not performed any recent population and water demand projections. As part of this effort, CONSULTANT will collect and analyze data, and assumptions, collected from CITY. This may include projections done as part of the previous consumptive use permit application or as part of CITY's Comprehensive Plan development.

CONSULTANT will review latest Lower East Coast Water Supply Plan (LECWSP) published by the South Florida Water Management District (SFWMD). The same but updated population data will be used by CONSULTANT as the basis for the projections. This information is expected to be segregated both spatially and over time and will be made available in native file format for use by CONSULTANT. Population projections will be done on the traffic analysis zones (TAZ) basis.

CONSULTANT will organize a workshop with CITY's Planning and Utility staff to discuss existing information, development plans and existing population projections. CONSULTANT will prepare an agenda and workshop summary to document conclusions and action items. CONSULTANT will review CITY's Comprehensive Plan as it relates to the water system service area and required level of service (LOS) (see also Task 4). Any new or future developments and any plans for land annexation or incorporation of unincorporated areas and communities provided by CITY will be included into the population projection effort.

The water demand projections include integrating updated information on population records and projections, non-residential development and potential re-development plans, land use (current and projected), and changes to wholesale or other large water users. CONSULTANT will review existing water conservation, water loss program and demand management measures and predict potential future efficiency gains. CONSULTANT will develop 30 years water projections in 5-year increments starting from 2025.

As part of this task, CONSULTANT will verify water use factors for various water uses within the service area to project water demands during the planning period. Historical records, corrected with conservation and water demand factors, will be analyzed to develop annual average and seasonal water demands and flows and to estimate peaking factors for potable water use.

The findings of this task will be summarized in a TM and discussed at a water demand workshop organized and attended by up to three CONSULTANT team members. Following the workshop, CONSULTANT will finalize the water demand projections TM and issue to CITY. The TM will be structured such that it can be inserted in the Facilities Plan Report.

Task 3 deliverables:

- Population and water demand projections TM in Adobe PDF electronic format

Task 4 – Regulatory review, residuals management and AWS planning

CONSULTANT will use its regulatory knowledge to identify existing and future issues related to the water system that may be relevant to the facilities plan. Information relative to water system acts, rules, or programs in the context of capital planning will be summarized.

The following aspects will be covered:

1. Water Supply
    - Existing/future (alternative) water supply sources, including Biscayne Aquifer, Floridan Aquifer, surface water, stormwater and indirect and direct potable reuse. This will cover the 2023 CITY Reclaimed Water Report. Opportunities will be reviewed to obtain additional groundwater allocations from the regional system.
    - Consumptive use permit, including duration of permit and stipulations regarding split flows between west and east wellfields and timeline of developing the AWS system.

- Schematic level impacts of climate change and reuse, for irrigation or potable consumption, on water source resiliency planning and demand projections. This includes a review of the Climate Adaption plan and other EPA Sustainability tools, CITY may use for CIP projects
- Impacts of economic and re-development plans within CITY boundaries on water demands and water supply

2. Water Treatment Regulations and Guidelines
    - EPA Safe Drinking Water Act (SDWA), including Rules related to ECs, Groundwater, Disinfection, Disinfection Byproducts, Total Coliforms, and Lead and Copper
    - EPA National Primary and Secondary Drinking Water Standards
    - FDEP Regulations and Water Quality Standards
    - Florida Administrative Code (FAC), including references to 10 States Standards
    - Advisory documents, guidelines and manuals of practice
    - Potential future regulations, including candidate contaminant lists (CCLs) and unregulated contaminant monitoring rule (UCMRs)
3. Residuals Management – per CITY's request this subtask will be pulled forward
    - Lime softening (LS) solids residuals
    - Ion exchange (IX) solids and associated liquid residuals covering both backwash and regeneration waters
    - Future dedicated PFAS treatment solids residuals
    - Nanofiltration (NF) and reverse osmosis (RO) concentrate liquid residuals
4. Level of Service (LOS)
    - Regulatory and CITY requirements, identified in Comprehensive Plan, for reliability and redundancy, and indication of the LOS required
    - Agreements with interconnecting utilities and wholesale users
    - Per capita flow and pressure requirements
    - CITY's approach in terms of reuse goals and water conservation fixtures

This task includes initial discussion with regulatory agencies responsible for the aspects mentioned above. The findings of this task will be summarized in a TM and discussed at a regulatory workshop to be organized and attended by up to three CONSULTANT team members. Following the workshop, CONSULTANT will finalize the Regulatory Review TM and issue to CITY. The TM will be structured such that it can be inserted in the Facilities Plan Report.

Task 4 deliverables:

- Regulatory review TM in Adobe PDF electronic format

Task 5 – Facilities assessments, needs prioritization and baseline capital improvement plan

This task will provide a prioritized list of needs at the West and East WTP, either to replace or refurbish existing buildings, structures, materials, and equipment, or to improve operations. This is a high level review and focuses only on highly monetary CIP needs.

Subtask 5.1 – Asset conditions assessment

CONSULTANT will develop a site investigations plan to be discussed in a planning workshop. The plan will show a common approach for the facility condition assessments and define a unified method of documenting results among the different engineering disciplines. In addition to reviewing the plan, CITY will be requested to provide an initial list of major deficiencies, concerns and potential risks based on daily operating and maintaining water system assets and related facilities experience.

As part of this effort, CONSULTANT in consultation with CITY will set up a full asset list, including asset numbering and any gaps, to be used in a new asset management system.

The investigations will be limited to visual inspections. Any subsequent testing, including sound testing, vibration and ultrasonic testing, infrared thermography to measure paint and concrete cover thickness, hydraulic testing to confirm pump performance, and concrete testing to confirm structural integrity can be done as an amendment to this scope of services or performed by a third party.

It is anticipated that following this planning workshop, but on the same day, an initial walkthrough will be held with CITY to cover the initial list of major deficiencies to focus CONSULTANT efforts during the follow-up site visits.

During the planning workshop, CITY and CONSULTANT will also discuss projects currently in design or construction phase at the East WTP:

- Generator and switchgear replacement (construction)
- Clearwell and transfer & high service pump improvements (construction)
- 4-log virus treatment improvements (design)

Per CITY, the projects currently in construction will progress towards completion whereas the 4-log virus treatment improvements may be delayed until after Facilities Plan is completed.

The site investigation plan will be finalized based on CITY feedback. After completing the planning workshop with CITY, discipline site visits and CITY interviews will be organized by CONSULTANT into two discipline groups (1) Architectural and structural and (2) Process mechanical and electrical.

Per CITY request, the following engineering disciplines will not be covered in the assessment:

- Site Civil – CONSULTANT will do a high level review and focus on substantial deficiencies only.
- Instrumentation and Controls (I&C) – most hardware and software components and systems will be replaced anyway.
- Plumbing and HVAC – these are minor engineering disciplines, and any corrective action is expected to have a limited monetary value.

The assessments will cover the following aspects:

- Design configuration compared to industry standards
- Regulatory or code compliance

- Redundancy and reliability
- Condition of facilities and utilities
- Health & safety standards and guidelines
- Environmental standards and guidelines

The assessments will cover the following water system assets:

- Treatment equipment and facilities, including clearwell and transfer pump station
- WTPs site civil structures, buildings and onsite storage tanks
- Underground pipelines and structures within the WTP site
- Electrical infrastructure and standby power facilities

The assessment will not cover the west and east offsite production wells as those were subject to a recent condition and service assessment (Jacobs, City of Boynton Beach Hydrogeological Testing and Evaluation of the Eastern and Western Wellfields – Final Results, April 2024). Results of this assessment however will however be included in the Baseline CIP.

The assessment will also not cover the potable water transmission and distribution pipelines and remote storage, pump and chemical boost facilities.

Assets that are buried or are underwater and cannot be dewatered will be assessed based on CITY's knowledge and written documents, including previous reports, maintenance and repair records, and existing record drawings and databases. CONSULTANT will assess the aboveground assets based on written documents and visual inspection as long as they are accessible.

CONSULTANT will document the findings of the facility assessments and staff interviews in spreadsheets and tables and provide an initial opinion on prioritization. The documentation for each asset will include the name, code, and description, link to pictures, description of asset condition, original service life, expected remaining life, condition ranking (5 scales), and suggested priority of correction. A Class 5 opinion of probable construction cost will also be provided for each need.

The findings of this subtask will be summarized in a TM and discussed at an asset condition workshop. Following the workshop, CONSULTANT will finalize the Asset Condition Assessment TM and issue to CITY. The TM will be structured such that it can be inserted in the Facilities Plan Report.

<u>Subtask 5.2 – Hydraulic/Process review</u>

CONSULTANT will develop a plan for the process/hydraulic assessment of existing facilities to be discussed in a planning workshop with CITY, to be combined with the planning workshop of Subtask 5.1 Asset condition assessment. The plan will propose an approach for the assessment and define a unified method of documenting results by different reviewers.

After completing the planning workshop with CITY, site visits and CITY staff interviews will be organized by CONSULTANT to include the following aspects:

1. Raw, intermediate, and finished water quality records and trends

2. Vulnerability, criticality, and single point of failure
3. Process and design configuration, compared with *Recommended Standards for Water Works* (10 States Standards) and compared with EPA, Florida Administrative Code (FAC), FDEP and CONSULTANT's design guidelines
4. Unit process performance in terms of capacity and water quality, including identification of options for chemical and electrical optimizations
5. Regulatory compliance
6. Integration of existing, ongoing projects as mentioned under Subtask 5.1.

The process evaluation involves the analysis of current performance and identification of options to enhance the treatment, chemical use and/or pumping performance. The process rating per unit process will be presented by CONSULTANT in a table format to provide an overview of treatment unit ability and restriction. The operating costs will be calculated and calibrated with facility historical operational costs obtained from CITY.

CONSULTANT will document the findings of the hydraulic/process assessments in spreadsheets and tables and provide an initial opinion on needs prioritization. The documentation will include description of existing conditions and suggested priority of correction. A Class 5 opinion of probable construction cost will also be provided for each need.

CONSULTANT will issue a draft Hydraulic/Process Assessment TM to CITY for discussion at a same workshop mentioned under Subtask 5.1. Following the workshop, CONSULTANT will finalize the TM and issue to CITY. The TM will be structured such that it can be inserted in the Facilities Plan Report.

Subtask 5.3 – Risk-Based prioritization and asset replacement model

The objective of this task is to provide CITY with the information and methodology necessary to improve the management of its infrastructure assets through a risk-based approach. By applying the methodology along with asset management principles and practices, staff will be able to improve their ability to identify and track needed capital improvements and enhancements to maintenance protocols, as well as making defensible and data driven decisions on prioritizing capital investments and operating expenses. This may result in adjustments to the CITY's CIP.

CONSULTANT will work with CITY on the analysis of the likelihood of failure (LOF) and consequence of failure (COF), including matrices and scoring systems, to calculate risks for significant assets and develop an asset replacement model. The methodology to be used here is based on the Solomon-Oldach Asset Prioritization (SOAP) method which involves the implementation of three steps:

- During the first step, CONSULTANT will conduct a workshop to develop COF and LOF matrices to use for assets in each area starting with matrices used elsewhere and modified based on CITY input. The LOF determinations essentially equate to physical asset condition, however this is not the only factor in determining LOF. A pipe can be brand new, but if it is grossly undersized it will fail to meet the established LOS. COF matrices typically include categories

determined by the utility to be relevant for their assets. The output of this task is a final COF matrix and COF scores for critical assets in each functional area.

- Once COF and LOF scores have been obtained, the second step involves CONSULTANT calculating the risk for linear and vertical assets. The results will be reviewed and validated with CITY. The output of this subtask is a risk score for each significant asset. The assets with an unacceptable risk score can then be evaluated as potential candidates for a future condition assessment program, which would in turn validate or change the initial LOF scores. The condition assessment program and risk scoring is an iterative process whereby the highest risk assets are updated as new information becomes available.
- The third and final step involves developing an asset replacement model based on information developed in previous steps. CONSULTANT will develop a preliminary model in this task. The model will prioritize each condition assessment and hydraulic/process need with a monetary value of $25,000 or greater. Once the relative risk of the assets and asset groups is identified, CONSULTANT will work with CITY to identify an initial list of risk reduction options for those assets having an unacceptable level of risk. The amount of risk reduction will be determined for each of the options resulting in potential capital needs.

Subtask 5.4 – Develop baseline CIP

CONSULTANT will issue a Baseline Capital Improvement Plan (CIP) spreadsheet to CITY for discussion at a prioritization workshop. CONSULTANT will organize the workshop, prepare an agenda and meeting summary. A focus of the workshop is to review the prioritization ranking of the capital (condition assessment, hydraulic and process) and operational needs. During this workshop, the project team will categorize the improvements and upgrades into short-term needs (within first 5 years), mid-term needs (between 5 and 10 years) and long-term needs (between 10 and 30 years) and will group capital needs for individual assets into projects to facilitate efficient contracting and delivery. Following the workshop, CONSULTANT will finalize the Baseline CIP TM and issue to CITY. The TM will be structured such that it can be inserted relatively easy in the Facilities Plan Report.

The Baseline CIP does not address capital improvements for additional treatment capacity or improved water quality, for instance to address ECs, or other major changes but will quantify the costs of maintaining existing infrastructure. This Baseline CIP will be an input in the Alternative Evaluation, to be developed under the next task.

Deliverables task 5:

- Site investigation plan TM in Adobe PDF electronic format
- Asset conditions assessment TM in Adobe PDF electronic format
- Hydraulic/process review TM in Adobe PDF electronic format
- Asset replacement model presented in tables, with a list of prioritized needs at the East and West WTP, in Adobe PDF electronic format
- Baseline CIP TM in Excel spreadsheet and Adobe PDF electronic format

Task 6 – Alternatives evaluation

After completing the previous tasks, establishing the design and operational criteria for the PFAS removal treatment systems and confirming the future WTP capacity, CONSULTANT will finalize a list of up to ten treatment alternatives for the short- and long-term to replace and/or enhance the West and East WTP respectively, that will be evaluated as part of this task.

Considerations and/or design options at the West WTP include:

- Treatment capacity
- Membrane considerations including solids and chemical membrane pre-treatment and membrane configuration with possibly integrated PFAS treatment
- Odor scrubber technology
- Post-membrane conditioning
- Treatment residuals wastewater management

Considerations and/or design options at the East WTP include:

- Treatment capacity
- Organics removal technology, including MIEX considerations, and PFAS removal technologies within the existing LS system
- NF to replace LS and considerations including solids and chemical membrane pre-treatment, membrane selection and odor scrubber technology
- Floridan Aquifer RO to supplement enhanced LS or NF
- Treatment residuals wastewater management

Alternatives may include phasing based on actual capacity needs to minimize high capital expenditure initially and may include trade-offs between performance criteria such as treatment capacity, treated water quality, system recovery, redundancy, chemical use, and power consumption. The performance of treatment technologies will be based on similar experiences elsewhere and will not be based on site-specific treatability testing or corrosion control testing. These tasks will be performed in a follow-up task order after the preferred solutions have been selected by CITY at the East and West WTP.

For each of the alternatives, CONSULTANT will:

- Provide a description and high-level process schematic
- Sizing of new treatment units and conceptual equipment general arrangement and site layout
- Develop preliminary mass balance and high-level design criteria
- List advantages/disadvantages and conduct an initial benefit-cost analysis using CONSULTANT's Multi-Criteria Plus Decision model
- Capital, operating and whole life costs

Estimates of probable construction cost will be at Class 5 level as defined by the Association for the Advancement of Cost Engineering International, AACEI. Estimates of operating cost estimates will cover chemical and energy use, residuals management and O&M labor.

CITY will be involved in the above alternative evaluation process through the following workshops to be attended by different departments from CITY:

1. Preliminary screening and shortlisting workshop. Treatment alternatives evaluation criteria and associated weighting will be discussed and finalized. Treatment technology alternatives will be presented and qualitatively rated. CONSULTANT will eliminate non-viable alternatives including those that do not meet the minimum fatal flaw requirements.
2. Treatment selection workshop. Prior to workshop, CONSULTANT will develop cost estimates and populate and evaluate shortlisted alternatives in a multi-criteria decision model and rank them with respect to cost and benefit/cost ratios. In the workshop, CONSULTANT will perform a sensitivity analyses to demonstrate the ranking robustness.

Task 8 deliverables:

- Screening particulars for first workshop covering process schematics and conceptual layouts
- Selection particulars for second workshop covering cost estimates and qualitative evaluation
- Alternatives evaluation TM in Adobe PDF electronic format

Task 7 – Facilities plan

CONSULTANT will include the TMs from previous tasks into a Facilities Plan Report, which will be issued to CITY. The Report will be reviewed with CITY at a review meeting. CONSULTANT will organize the review meeting, prepare an Agenda and a Meeting Summary. Following the meeting, CONSULTANT will finalize the Master Plan Report, develop an Executive Summary, and issue to CITY.

Task 9 deliverables:

- Facilities Plan Report in Adobe PDF electronic format.

Task 8 – Funding support

This task will cover support for potential funding sources to CITY by developing a funding strategy, engineer's report in support of a revenue bond issue, and support for completing applications for grants and loans.

<u>Subtask 8.1 – Funding strategy</u>

CONSULTANT will meet with CITY to establish financing goals and objectives and identify potential funding strategies. The financing goals and objectives will include discussions of target financial metrics that CITY seeks to maintain or achieve, such as bond coverage ratios, and minimum fund balances. Discussion will also focus on additional capital opportunities that may be available to CITY for funding and financing the planned improvements. These could include:

- Grants
- Pay-as-you-go
- Loan / debt funding, including EPA's WIFIA, FDEP's SRF and/or municipal bonds
- Private money

Potential funding strategies involving combinations of these sources of funding and financing will be considered. CONSULTANT will prepare a financial model to evaluate the impact of the proposed WTPs improvements on the utility's fiscal position, potential impacts on rates, impact fees, and other fees charged by the utility to its customers. The model will project system connections and usage, revenues, and operating expenditures. The model will also allow the analysis of alternative capital improvement schedules and costs, financing assumptions, and growth assumptions on system revenues and costs, fund balances, need for debt financing, and impacts on typical user bills.

Based on prior tasks results, CONSULTANT will develop recommendations and time schedule for major water supply, treatment and residuals disposal implementation. Financial analysis results will determine the need and impact of capital and operating costs on CITY's rates and the water utility's financial position.

CONSULTANT will evaluate alternative financing options relating to specific utility goals. Options include, but are not limited to, spreading required rate adjustments out over a period of years, using pay-as-go funding for some or all planned projects, seeking national or local grants, EPA Water Infrastructure Finance and Innovation Act (WIFIA) and FDEP's State Revolving Fund (SRF) loans, bond funding, and other available options.

Up to three alternative financial plans will be developed for CITY's consideration and review during the financial planning workshop. Based on discussions during the financial planning workshop, CONSULTANT will develop a recommended financing plan that gives due consideration to the service area's physical needs, CITY's goals, rate impacts to users, and the utility's fiscal position.

The findings of this task will be summarized in a TM and discussed at a Financing Options workshop. Following the workshop CONSULTANT will finalize the Financing Options TM and issue to CITY. The TM will be structured such that it can be inserted in the Facilities Report.

Subtask 8.2 – Engineer report

If needed, an Engineers Report will be prepared in support of a proposed revenue bond issue to finance the planned water system improvements. This report will include a review of the Institutional Framework and Staffing: The organizational structure of the CITY's Public Works and Utility Departments, its service contracts with nearby communities, regulatory requirements, and staffing will be reviewed with CITY staff, to confirm that the institutional framework and staffing are in place to manage and plan for ongoing operation, maintenance, and improvement of the system and meet its regulatory requirements.

The report will also characterize Existing and Planned Facilities: Information provided by CITY, including updated water and wastewater master plans, as well as engineering and operations staff discussions; will be used to evaluate the effectiveness with which goals and objectives of the system are being met. Planned facilities verification to accommodate projected water and wastewater demand will also be reviewed. CONSULTANT will characterize the existing water system and wastewater system by evaluating; basic operating conditions, raw water supply, treatment process, distribution facilities, wastewater collection, treatment, disposal facilities, and regulatory

requirements. Water and wastewater system improvements needed in the near future will be identified and design and construction schedules evaluated.

Prepare Draft Bond Engineer's Report: CONSULTANT will prepare up to two draft Bond Engineer's Reports, to be submitted to the CITY electronically (Word and PDF) and will attend up to two meetings with CITY staff, its financial advisors, bond counsel, underwriter, and other members of the bond financing team to review the draft reports and to gather comments. The fee estimate assumes up to three team members will attend each meeting and/or participate by conference call, at the sole discretion of CONSULTANT, with each meeting lasting up to two hours. CONSULTANT will record discussions and decisions.

Prepare Final Bond Engineer's Report and Review Draft Official Statements: A final feasibility report that addresses any CITY or bond financing team comments on the draft Bond Engineers Reports, will be prepared, submitted to the CITY and its underwriters for inclusion in the official statement for the bond issue in electronic format (pdf and word). CONSULTANT will review drafts of the official statement and provide comments relating to the accuracy of information included in the official statement that summarize information in the Feasibility Report.

Subtask 8.3– Funding application support

This task provides support as needed to complete the application forms for grants and loans from national, state-level and local funding agencies. An allowance of 80 hours has been included for assisting the City with grant and loan applications. Additional time may be requested if needed to complete the requested loan and grant applications.

Task 10 deliverables:

- Financing plan TM in Adobe PDF format
- Bond engineer's report – PDF and Word formats via email
- Comments on draft Official Statements
- Application forms for grant or loan applications

Task 9 – Owner allowance

A contingency allowance is set aside for additional engineering and/or professional support that may be needed during the execution of this scope of work. This allowance will only be utilized through mutual agreement and upon receiving written direction and approval from CITY. In general, CONSULTANT may provide services necessary for the development and decision-making of preferred West and East WTP treatment solutions.

3. DELIVERABLE SCHEDULE

The intended submittal time of each deliverable is included in the table below. The anticipated total duration of this task order is 52 weeks. Tasks 1 through 7, including a decision on preferred treatment solutions at the West and East WTPs, will be completed within 30 weeks.

Task	Deliverable [1]	Time from NTP
Task 1 Project Management Services	List of requested information	2 week
	Kickoff meeting summary	3 weeks
	Progress meeting summaries, presentations, schedule, QA/QC sheets of deliverables, monthly progress reports and invoices	As required
Task 2– Information gathering and review	List of requested information	2 week
	Gap analysis TM	4 weeks
Task 3 – Population and water demand projections	Water demand projections TM	12 weeks
Task 4 – Regulatory review, residuals and AWS planning	Regulatory review TM	14 weeks
Task 5 – Facilities assessments, needs prioritization and baseline CIP	Asset conditions assessment TM	20 weeks
	Hydraulic/process review TM	18 weeks
	Asset replacement model TM	22 weeks
	Baseline CIP TM	24 weeks
Task 6 – Alternatives evaluation	Alternatives evaluation TM	28 weeks
Task 7 – Facilities plan	Facilities plan report	30 weeks
Task 8 – Funding Support	Bond engineer's report – PDF and Word format	As required
	Funding application support	As required

[1] The deliverables mentioned in the table are draft deliverables. The final version of the deliverables will be sent 2 weeks after receiving comments from CITY.

4. COMPENSATION

Services proposed by CONSULTANT in this scope of work will be performed in accordance with the Agreement, dated _____. CONSULTANT proposes to perform the work described herein on a lump sum (LS) basis. The total estimated fee including labor and expenses associated with this scope of work is $770,000.

Task/SubTask	Hours	Labor	Subs	Expense	Lump Sum Cost
Task 1 Project management	306	$66,810	$18,900	$1,804	$87,514
Task 2 Information gathering and review	80	$15,610	$6,240	$234	$22,084
Task 3 Population and water demands projections	32	$6,560	$32,940	$368	$39,868
Task 4 Regulatory review	132	$25,420	$31,325	$301	$57,046
Task 5 Condition, process assessments, needs prioritization, and baseline CIP					
SubTask 5.1 Conditions assessment	416	$69,560	$38,465	$3,930	$111,955
SubTask 5.2 Hydraulic/process assessment	254	$44,680	$50,160	$1,657	$96,497
SubTask 5.3 Asset replacement model	106	$17,630	$1,800	$728	$20,158
SubTask 5.4 Baseline CIP	108	$17,440	$1,800	$728	$19,968
Task 6 Alternatives evaluation	438	$77,560	$12,060	$1,948	$91,568
Task 7 Facilities plan	100	$18,000	$0	$1,424	$19,424
Task 8 Funding support					
SubTask 8.1 Funding strategy	164	$31,560	$0	$1,152	$32,712
SubTask 8.2 Engineer's report	414	$78,270	$6,080	$858	$85,208
SubTask 8.3 Funding application	80	$15,520	$0	$477	$15,997
Task 9 Owner Allowance	352	$68,400	$0	$1,600	$70,000
Project Total	**2,982**	**$553,020**	**$199,770**	**$17,210**	**$770,000**

CONSULTANT will provide CITY a monthly invoice for the services provided based upon the schedule values detailed in the compensation table above, along with a summary of activities performed under this contract. An estimated earned value (percent complete) for each project sub-task will be the basis for progress payments.

The proposal is effective for 90 days.

5. ASSUMPTIONS

The following key assumptions were made in the compilation of this scope of work and the estimation of the level of effort:

Project Management:

- CITY will assign a project manager who will be CONSULTANT's main point of contact during the project. This project manager will consolidate CITY's comments to draft deliverables and will respond within two weeks of each submittal date.
- CITY will provide the requested information including operational and water system data and previous reports, plans and specifications as referenced in these assumptions.
- CONSULTANT will reasonably rely upon the accuracy, timeliness, and completeness of the information and data provided by CITY without independent verification. Additional effort by CONSULTANT due to invalid data or information provided by CITY or others, may entitle CONSULTANT to additional compensation.

Information gathering and review

- An initial list of information requested from CITY is provided below:
  - Latest Utilities Master Plan including final versions of technical memoranda
  - Other planning reports, including 2023 Reclaimed Water Plan.
  - Latest 10-Year Water Supply Facilities Plan
  - Population projections, TAZ data, non-residential and downtown (re-)development plans, current and projected land use, and potable water demand projections through 2055, including a description of procedure used
  - Monthly operating reports from the last 10 years, including water quality data, finished water demands and chemical usage data
  - Latest primary and secondary water quality data set of raw and finished water
  - Raw, treated and finished water quality data contained in daily reports from operations
  - Unregulated contaminant monitoring rules sampling/analytical data
  - Membrane normalization data of NF skids, including detail documents of CIPs
  - Detailed operational and maintenance data from MIEX system
  - Historical performance / trend data from SCADA
  - Facilities record drawings and equipment Operation and Maintenance (O&M) manuals, including documents for flow meter calibration and water quality instruments
  - Standard operating procedures (SOPs)
  - Facilities and consumptive use permits, permit reporting, and any permit-related communication between CITY, Palm Beach County and others about backup concentrate and MIEX waste discharge
  - Service contracts related to the treatment processes (including lime solids hauling, chemicals, electricity and water quality analytics)

- Water supply and deep injection well completion and rehabilitation reports, reports from Mechanical Integrity Tests (MIT), and progress reporting to the South Florida Water Management District (SFWMD).

Water Demand Projections:

- Latest population and water demand projections performed by CITY
- The Florida Bureau of Economic and Business Research (BEBR) medium population projections in 5-year increments through 2045 for Southeast Florida will be used as the base projection set and as modified by CITY, Palm Beach County, and large users.

Regulatory review, residuals management and AWS supply planning

- Work will be limited to an initial CUP assessment. Preparing a new CUP application and associated groundwater and surface water modeling can be done as an amendment to this scope of services or performed by a third party.
- Assessment of climate change on water demands and facilities will be high-level.

Facilities Assessments:

- CITY will inform CONSULTANT of any safety rules, personal protective equipment, safety precautions, restricted areas, hazardous chemicals, and emergency procedures prior to commencing any site visits to the WTPs.
- CONSULTANT will be responsible for the health and safety only of its own employees and will develop a Health and Safety Plan for this project.
- Site assessments are limited to visual inspections; any subsequent equipment and materials testing, including sound testing, ultrasonic testing, infrared thermography to measure paint and concrete cover thickness, hydraulic testing to confirm pump performance, and concrete testing to confirm structural integrity can be done as an amendment to this scope of services or performed by a third party.
- Assets that are buried or are underwater and cannot be dewatered will be assessed based on CITY's knowledge and written documents, including previous reports, maintenance and repair records, and existing record drawings and databases.
- The site assessments will be limited to facilities and assets located within the East and West WTP fencing.
- The site assessments are limited to the civil, process-mechanical, structural, architectural and electrical engineering disciplines.

Alternatives Evaluation:

- All intellectual property contained in the elements used to construct Replica™, WaterPro, and Multi-Criteria Plus models will remain the property of CONSULTANT. No access to the structure and code will be provided.

- Design and operational criteria of treatment alternatives will be estimated from CONSULTANT experiences with similar source water quality and treatment technologies elsewhere. Specific criteria may be selected through treatability testing and corrosion control testing in a follow-task order, after CITY has selected a preferred treatment alternative.

Facilities report:

- If requested, CONSULTANT can provide to CITY up to five hard copies of the final facilities report, in addition to the Adobe PDF format deliverable.

Funding support:

- The section on Historical and Projected Financial Performance of the System (see Subtask 10.3 – Utility rate study report) may be developed as a separate report by another Consultant to CITY. Regardless, this task order covers the coordination of work between CITY and this other Consultant.
- The CITY will make available, in hard or electronic copy, existing information from the water and wastewater systems, as communicated in previous scope iterations. A final list of requested information will be developed shortly after the NTP.

APPENDIX A – DETAILED FEE SHEET

Exhibit A – Man Hour and Cost Summary
Boynton Beach East and West WTP Upgrade
Task Order 1: Treatment Options Evaluation and Facilities Plan

	Senior Project Manager	Project Manager	Clerical	Planner	Public Relation Specialist	Principal	Principal	Senior Mechanical Engineer	Process Engineer	Staff Engineer	Principal Hydrogeologist	Hydrogeologist	Grant Specialist	Grant Analyst	Engineer	Architect	Structural Engineer	Senior Electrical Engineer	Planner	Sub McKim & Creed	Sub McKim & Creed	Sub McKim & Creed	Sub McKim & Creed	Sub McKim & Creed	Sub McKim & Creed	Hotel	Meals	Mileage	Parking	Incidentals	Reprographics
Per Diem Rate:	$265	$225	$95	$150	$200	$290	$290	$240	$150	$130	$225	$140	$200	$175	$140	$150	$150	$240	$150	275	260	225	200	175	1	$150	$50	$0.67	$0	$10	$1

Task 1 Project management

SubTask	Hours	Labor	Subs	Expense	Task Total	Duration																										
Project management	184	$40,920	$14,500	$1,402	$56,822	32.0 weeks	96	48	24	16											28		28			500	0	0	600	0	0	1,000
Coordination distribution system	16	$3,920	$0	$134	$4,054	32.0 weeks	8	8																			0	0	200	0	0	
Coordination public relations	32	$7,120	$1,100	$0	$8,220	32.0 weeks	8	8			16										4						0	0	0	0	0	
Presentations at council meetings	32	$7,120	$1,300	$134	$8,554	8.0 weeks	8	8			16										4					200	0	0	200	0	0	
Kickoff meeting/site visit	24	$4,500	$2,000	$134	$6,634	4.0 weeks	4	8							4	8					4		4				0	0	200	0	0	
HSSE	18	$3,230	$0	$0	$3,230	8.0 weeks	2	4							12												0	0	0	0	0	
Subtotal for Task 1	**306**	**$66,810**	**$18,900**	**$1,804**	**$87,514**	*32.0 weeks*	**126**	**84**	**24**	**16**	**32**	**0**	**0**	**0**	**16**	**8**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1,200**	**0**	**0**	**1,000**

Task 2 Information gathering and review

SubTask	Hours	Labor	Subs	Expense	Task Total	Duration																										
Receive, organize and review information	28	$5,780	$2,645	$0	$8,425	2.0 weeks	4	12							4	4	4				1	2	2		8		0	0	0	0	0	
Gap analysis TM	28	$5,330	$2,485	$100	$7,915	2.0 weeks	2	12	4						2	4	4				1	1	2		8	100	0	0	0	0	0	100
Review meeting	24	$4,500	$1,110	$134	$5,744	1 meetings	4	8							4	8					1	1	1		2		0	0	200	0	0	
Subtotal for Task 2	**80**	**$15,610**	**$6,240**	**$234**	**$22,084**	*5.0 weeks*	**10**	**32**	**4**	**0**	**0**	**0**	**0**	**0**	**10**	**16**	**8**	**0**	**0**	**0**	**3**	**4**	**5**	**0**	**18**	**100**	**0**	**0**	**200**	**0**	**0**	**100**

Task 3 Population and water demands projections

SubTask	Hours	Labor	Subs	Expense	Task Total	Duration																										
Review workshop	8	$1,960	$4,580	$134	$6,674	2.0 weeks	4	4													4	8			8		0	0	200	0	0	
Water demand TM	12	$1,740	$22,860	$100	$24,700	6.0 weeks	2	2	8												8	16	40		40	500	0	0	0	0	0	100
Review meeting	12	$2,860	$5,500	$134	$8,494	1 meetings	4	8													8		8		8	100	0	0	200	0	0	
Subtotal for Task 3	**32**	**$6,560**	**$32,940**	**$368**	**$39,868**	*9.0 weeks*	**10**	**14**	**8**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**20**	**24**	**48**	**0**	**56**	**600**	**0**	**0**	**400**	**0**	**0**	**100**

Task 4 Regulatory review

SubTask	Hours	Labor	Subs	Expense	Task Total	Duration																										
Review workshop	10	$2,030	$1,245	$67	$3,342	1 meetings	2								4		4				1	2			2	100	0	0	100	0	0	
Regulatory water, reuse (EPA, FDEP, etc) review	6	$1,410	$10,850	$0	$12,260	2.0 weeks	2				2				2						6	10	16		16	200	0	0	0	0	0	
CUP, AWS and water supply (SFWMD) review	58	$10,490	$2,740	$0	$13,230	3.0 weeks	2								8		24	24			2	4	2		4		0	0	0	0	0	
Residuals mgmt (EPA, FDEP, CERCLA, RCRA)	6	$1,410	$9,230	$0	$10,640	2.0 weeks	2				2				2						2	8	16		16	200	0	0	0	0	0	
Regulatory review TM	32	$6,020	$5,215	$100	$11,335	4.0 weeks	4	8	8						4		8				1	4	8		12		0	0	0	0	0	100
Review meeting	20	$4,060	$2,045	$134	$6,239	1 meetings	4								8		8				1	2	2		4	100	0	0	200	0	0	
Subtotal for Task 4	**132**	**$25,420**	**$31,325**	**$301**	**$57,046**	*13.0 weeks*	**16**	**8**	**8**	**0**	**0**	**4**	**0**	**0**	**28**	**0**	**44**	**24**	**0**	**0**	**13**	**30**	**44**	**0**	**54**	**600**	**0**	**0**	**300**	**0**	**0**	**100**

Task 5 Condition, process assessments, needs prioritization, and baseline CIP

SubTask 5.1 Conditions assessment	Hours	Labor	Subs	Expense	Task Total	Duration																										
Condition assessment plan	26	$3,970	$3,200	$1,000	$8,170	2.0 weeks	2								16					2	2	2	2				0	0	0	0	0	1,000
Field assessments	114	$19,730	$16,380	$2,546	$38,656	3.0 weeks	2								16					16	24	24	32		8	8	6	6	1,920	6	6	
Class 5 estimates	52	$8,100	$6,520	$0	$14,620	4.0 weeks	4								8					40	2	8	24				0	0	0	0	0	
Asset condition TM	208	$35,060	$10,670	$250	$45,980	6.0 weeks	8	4	16					4	24					32	32	40	48		2	2	24		24		0	0	0	0	0	250
Review meeting	16	$2,700	$1,695	$134	$4,529	1 meetings	4							4	8						1	2	2		2	100	0	0	200	0	0	
Subtotal for Subtask 5.1	*416*	*$69,560*	*$38,465*	*$3,930*	*$111,955*	*16.0 weeks*	*20*	*4*	*16*	*0*	*0*	*0*	*0*	*8*	*72*	*0*	*0*	*0*	*0*	*50*	*58*	*66*	*82*	*40*	*11*	*14*	*62*	*0*	*90*	*2,100*	*0*	*6*	*6*	*2,120*	*6*	*6*	*1,250*

SubTask 5.2 Hydraulic/process assessment	Hours	Labor	Subs	Expense	Task Total	Duration																										
Hydraulic/process review plan	24	$3,990	$2,670	$0	$6,660	2.0 weeks	2	4					2		16						2	2	4		4		0	0	0	0	0	
Field assessments	34	$6,450	$0	$1,273	$7,723	3.0 weeks	2						16		16												3	3	960	3	3	
Class 5 estimates	68	$11,020	$11,180	$0	$22,200	4.0 weeks	4						4							60	4	8	16	8	16		0	0	0	0	0	
Hydraulic/process TM	116	$20,600	$36,310	$250	$57,160	6.0 weeks	8	4	12				40	4	48						2	16	75	8	75		0	0	0	0	0	250
Review meeting	12	$2,620	$0	$134	$2,754	1 meetings	4						4	4													0	0	200	0	0	
Subtotal for Subtask 5.2	*254*	*$44,680*	*$50,160*	*$1,657*	*$96,497*	*16.0 weeks*	*20*	*8*	*12*	*0*	*0*	*0*	*0*	*66*	*8*	*80*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*60*	*8*	*26*	*95*	*16*	*95*	*0*	*0*	*3*	*3*	*1,160*	*3*	*3*	*250*

SubTask 5.3 Asset replacement model	Hours	Labor	Subs	Expense	Task Total	Duration																										
LOF and COF matrices development	14	$2,600	$0	$0	$2,600	1.0 weeks	2	2					2		8												0	0	0	0	0	
Review workshop	20	$3,900	$900	$344	$5,144	1 meetings	4	8							8								4				1	1	200	1	1	
Asset replacement model TM	50	$6,950	$0	$250	$7,200	2.0 weeks	2	4	8					4	32												0	0	0	0	0	250
Review meeting TM	22	$4,180	$900	$134	$5,214	1 meetings	4	4					2	4	8								4				0	0	200	0	0	
Subtotal for Subtask 5.3	*106*	*$17,630*	*$1,800*	*$728*	*$20,158*	*5.0 weeks*	*12*	*18*	*8*	*0*	*0*	*0*	*4*	*0*	*8*	*56*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*8*	*0*	*0*	*1*	*1*	*400*	*1*	*1*	*250*

SubTask 5.4 Baseline CIP	Hours	Labor	Subs	Expense	Task Total	Duration																										
CIP spreadsheet	22	$3,890	$0	$0	$3,890	1.0 weeks	2	8							12												0	0	0	0	0	
Review workshop	16	$3,000	$900	$344	$4,244	1 meetings	4	4							8								4				1	1	200	1	1	
Baseline CIP TM	50	$6,950	$0	$250	$7,200	2.0 weeks	2	4	8					4	32												0	0	0	0	0	250
Review meeting TM	20	$3,600	$900	$134	$4,634	1 meetings	4	4						4	8								4				0	0	200	0	0	
Subtotal for Subtask 5.4	*108*	*$17,440*	*$1,800*	*$728*	*$19,968*	*5.0 weeks*	*12*		*8*	*0*	*0*	*0*	*0*	*8*	*60*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*8*	*0*	*0*	*0*	*0*	*1*	*1*	*400*	*1*	*1*	*250*
Subtotal for Task 5	**884**	**$149,310**	**$92,225**	**$7,044**	**$248,579**	**26.0 weeks**	**64**	**30**	**44**	**0**	**0**	**0**	**4**	**66**	**32**	**268**	**0**	**0**	**0**	**0**	**50**	**58**	**66**	**82**	**100**	**19**	**40**	**173**	**16**	**185**	**2,100**	**0**	**11**	**11**	**4,080**	**11**	**11**	**2,000**

Task 6 Alternatives evaluation

SubTask	Hours	Labor	Subs	Expense	Task Total	Duration																										
Development of alternatives	128	$22,780	$0	$0	$22,780	2.0 weeks	24	12					8		24	60											0	0	0	0	0	
Evaluation of alternatives	172	$29,580	$3,220	$1,273	$34,073	4.0 weeks	24	20					8		40	80						2	12				3	3	960	3	3	
Alternatives evaluation TM	114	$20,460	$7,100	$674	$28,234	3.0 weeks	16	16	8			2	8		32	32						10	20				1	1	320	1	1	250
Review meeting	24	$4,740	$1,740	$0	$6,480	1 meetings	8	4							8	4						4	2			250	0	0	0	0	0	
Subtotal for Task 6	**438**	**$77,560**	**$12,060**	**$1,948**	**$91,568**	*10.0 weeks*	**72**	**52**	**8**	**0**	**0**	**2**	**24**	**52**	**104**	**176**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**16**	**34**	**0**	**0**	**250**	**4**	**4**	**1,280**	**4**	**4**	**250**

Exhibit A – Man Hour and Cost Summary
Boynton Beach East and West WTP Upgrade
Task Order 1: Treatment Options Evaluation and Facilities Plan

	Senior Project Manager	Project Manager	Clerical	Planner	Public Relation Specialist	Principal	Principal	Senior Mechanical Engineer	Process Engineer	Staff Engineer	Principal Hydrogeologist	Hydrogeologist	Grant Specialist	Grant Analyst	Engineer	Architect	Structural Engineer	Senior Electrical Engineer	Planner	Sub McKim & Creed	Sub McKim & Creed	Sub McKim & Creed	Sub McKim & Creed	Sub McKim & Creed	Sub McKim & Creed	Hotel	Meals	Mileage	Parking	Incidentals	Reprographics
Per Diem Rate:	$265	$225	$95	$150	$200	$290	$290	$240	$150	$130	$225	$140	$200	$175	$140	$150	$150	$240	$150	275	260	225	200	175	1	$150	$50	$0.67	$0	$10	$1

Task 7 Facilities plan

SubTask	Hours	Labor	Subs	Expense	Task Total	Duration																										
Update Technical Memoranda from Previous Tasks	52	$9,100	$0	$1,000	$10,100	2.0 weeks	8	16	12					8	8												0	0	0	0	0	1,000
Review Meeting	20	$3,980	$0	$424	$4,404	2.0 weeks	4	8						4	4												1	1	320	1	1	
Final Master Plan Report	28	$4,920	$0	$0	$4,920	2.0 weeks	2	12	6					4	4												0	0	0	0	0	
Subtotal for Task 7	**100**	**$18,000**	**$0**	**$1,424**	**$19,424**	*6.0 weeks*	**14**	**36**	**18**	**0**	**0**	**0**	**0**	**16**	**16**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1**	**1**	**320**	**1**	**1**	**1,000**

Task 8 Funding support

SubTask 8.1 Funding strategy	Hours	Labor	Subs	Expense	Task Total	Duration																										
Review workshop	30	$5,830	$0	$67	$5,897	1 meetings	2	4								8	16										0	0	100	0	0	
Review funding strategies	30	$5,830	$0	$277	$6,107	4.0 weeks	2	4								8	16										1	1	100	1	1	
Develop financial model	36	$6,960	$0	$424	$7,384	6.0 weeks	4	4								4	24										1	1	320	1	1	
Develop financing options TM	48	$8,780	$0	$250	$9,030	6.0 weeks	8	4	8							4	24										0	0	0	0	0	250
Review meeting	20	$4,160	$0	$134	$4,294	1 meetings	4	4								4	8										0	0	200	0	0	
Subtotal for Subtask 8.1	*164*	*$31,560*	*$0*	*$1,152*	*$32,712*	*18.0 weeks*	*20*	*20*	*8*	*0*	*0*	*0*	*0*	*0*	*0*	*28*	*88*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*2*	*2*	*720*	*2*	*2*	*250*

SubTask 8.2 Engineer's report	Hours	Labor	Subs	Expense	Task Total	Duration																										
Gather information and analysis	60	$11,260	$0	$0	$11,260	2.0 weeks	4									16	40										0	0	0	0	0	
Review institutional framework and staffing	60	$11,660	$0	$424	$12,084	4.0 weeks	4	8								16	32										1	1	320	1	1	
Characterize existing and planned facilities	124	$23,560	$0	$0	$23,560	4.0 weeks	4	20								20	80										0	0	0	0	0	
Engineer's report	152	$28,080	$6,080	$300	$34,460	6.0 weeks	8	16	8							24	96			8	8	8					0	0	0	0	0	300
Review meeting	18	$3,710	$0	$134	$3,844	1 meetings	4									8	6										0	0	200	0	0	
Subtotal for Subtask 8.2	*414*	*$78,270*	*$6,080*	*$858*	*$85,208*	*17.0 weeks*	*24*	*44*	*8*	*0*	*0*	*0*	*0*	*0*	*0*	*84*	*254*	*0*	*0*	*0*	*0*	*0*	*8*	*8*	*8*	*0*	*0*	*0*	*1*	*1*	*520*	*1*	*1*	*300*

SubTask 8.3 Funding application	Hours	Labor	Subs	Expense	Task Total	Duration																										
Gather information and analysis	80	$15,520	$0	$477	$15,997	12.0 weeks	8	8								16	48										0	0	0	0	0	477
Subtotal for Subtask 8.3	*80*	*15,520*	*0*	*477*	*15,997*	*12.0 weeks*	*8*	*8*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*16*	*48*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*477*
Subtotal for Task 8	**658**	**$125,350**	**$6,080**	**$2,488**	**$133,918**	*29.0 weeks*	**52**	**72**	**16**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**128**	**390**	**0**	**0**	**0**	**0**	**0**	**8**	**8**	**8**	**0**	**0**	**0**	**3**	**3**	**1,240**	**3**	**3**	**1,027**

Task 9 Owner Allowance

SubTask	Hours	Labor	Subs	Expense	Task Total	Duration																										
Owner Allowance	352	$68,400	$0	$1,600	$70,000	32.0 weeks	96	96	48	16				96													0	0	0	0	0	1,600
Subtotal for Task 9	**352**	**$68,400**	**$0**	**$1,600**	**$70,000**	*32.0 weeks*	**96**	**96**	**48**	**16**	**0**	**0**	**0**	**0**	**96**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1,600**
					9.1%																															
Grand Total	**2,982**	**$553,020**	**$199,770**	**$17,210**	**$770,000**	**32.0 weeks**	**364**	**328**	**130**	**16**	**32**	**6**	**28**	**118**	**206**	**484**	**52**	**24**	**128**	**390**	**50**	**58**	**66**	**82**	**100**	**103**	**122**	**344**	**16**	**313**	**4,350**	**#**	**19**	**19**	**9,020**	**19**	**19**	**5,577**

REVISED

REQUEST FOR QUALIFICATIONS (RFQ)
FOR
EAST AND WEST WATER TREATMENT PLANT UPGRADES AND TREATMENT OPTIONS EVALUATION, PLANNING AND DESIGN FOR EMERGING CONTAMINANTS REMOVAL – ENGINEERING SERVICES (GRANT/LOAN FUNDED)

RFQ No. UTL24-031

MANDATORY PRE-PROPOSAL CONFERENCE & SITE VISIT
JULY 11, 2024 AT 1:30 P.M.

LOCATION:
CITY OF BOYNTON BEACH
CITY HALL, ROOM 115
100 E. OCEAN AVENUE
BOYNTON BEACH, FL 33435
(Entrance to Conference Room 115 is on Seacrest Boulevard)

ONLINE SUBMISSION ONLY

Boynton-beach.bidsandtenders.net

RFQ OPENING DATE: AUGUST 2, 2024
RFQ CLOSING TIME: NO LATER THAN 2:30 P.M.

THE DEADLINE FOR QUESTIONS CONCERNING THIS RFQ
JULY 23, 2024 @ 2:30 P.M.

REQUEST FOR QUALIFICATIONS
FOR
EAST AND WEST WATER PLANT UPGRADES AND TREATMENT OPTIONS EVALUATION, PLANNING, AND DESIGN FOR EMERGING CONTAMINANTS REMOVAL – ENGINEERING SERVICES
(GRANT/LOAN FUNDED)

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Attachments

Attachment "A" – Sample Performance Evaluation Questionnaire

Attachment "B" – Florida Department of Environmental Protection (FDEP) Request for Inclusion (RFI) on the Drinking Water priority list

Attachment "C" – 2 CFR Part 200 (up to date as of 06-11-2024)

The City of Boynton Beach

Finance/Procurement Services
100 E. Ocean Avenue
Boynton Beach, FL 33435
P. O. Box 310
Boynton Beach, Florida 33425-0310
Telephone: (561) 742-6310

REQUEST FOR QUALIFICATIONS
FOR
EAST AND WEST WATER PLANT UPGRADES AND TREATMENT OPTIONS EVALUATION, PLANNING, AND DESIGN FOR EMERGING CONTAMINANTS REMOVAL – ENGINEERING SERVICES (GRANT/LOAN FUNDED)

RFQ No. UTL24-031

NOTICE TO PROPOSERS

Electronic Requests for Qualifications (RFQ's) shall be received by the bidding system up until **August 2, 2024; No Later Than 2:30 P.M. (Local Time);** unless specified otherwise and may not be withdrawn within (90) days after such date and time.

All RFQs received will be publicly opened and acknowledged of receipt by the City's e-procurement bidding system electronically. RFQs received after the assigned date and time are not permitted by the bidding system. For the above reasons, it is recommended that the proposer(s) allow sufficient time to complete your online Submission and to resolve any issues that may arise.

ATTENTION, ALL INTERESTED RESPONDENTS:

To obtain documents online please visit Boynton-beach.bidsandtenders.net. Documents are not provided in any other manner.

SCOPE OF SERVICES:

The City of Boynton Beach is seeking the services of a qualified Engineering Consulting firm (Consultant/Vendor) to assist with East and West Water Treatment Plant upgrades and treatment options evaluation, facilities plan for the State Revolving Fund (SRF) Drinking Water Program, including design, bid document preparation, permitting, bidding assistance, and construction management engineering services during construction projects at both plants. Work will include: Conducting a study, preparation of a report, and performing engineering services to evaluate the ability of the existing treatment processes at the 24 million gallon per day (MGD) capacity conventional East Water Treatment Plant (located at 124 E. Woolbright Road) that utilizes lime softening, multi-media gravity filtration, and Magnetic Ion Exchange (MIEX) processes to meet the proposed Emerging Contaminants PFAS regulations, evaluate alternatives as described in the Florida Department of Environmental Protection (FDEP) Request for Inclusion (RFI) document (Attachment "B").

This study and facilities plan will also evaluate options for the treatment at the West WaterTreatment Plant (located at 5469 W. Boynton Beach Blvd.) that utilizes sand or granular filtration for pretreatment followed by nanofiltration (NF) membranes and any upgrades needed to the treatment process, electrical system, including power (13 kV to 480V), Motor Control Center (MCC) equipment, Supervisory Control and Data Acquisition (SCADA), instrumentation, and control components for automation of the treatment process to meet regulations for emerging contaminants or other identified future regulations for potable water.

The study and facilities plan should include short-term and long-term recommendations at both the East and the West Treatment Plants to meet treatment requirements for emerging contaminants and other known future regulations for potable water. The plan needs to address source water options and permitting assistance as needed. Currently, the City has 30 groundwater wells and 2 aquifer storage and recovery (ASR) wells (that could potentially be converted to production wells) as well as design and permitting of additional potential future groundwater wells or alternative sources of water to address emerging contaminants as well as potential treatment for emerging contaminants at individual source water wells.

Phasing of the treatment plant upgrades during construction shall minimize disruption of operations and plant shutdowns.

Upon completion of the study and facilties plan, the Consultant will design and permit improvements identified in the alternative analysis study and provide construction bidding and construction management services. Services and specific schedules will be further defined in detail in Task Orders issued for each phase of work. Work will be categorized into the following phases:

1. Pre-Design Analysis (or Planning/Study/Report) Phase (expected time to complete within 9-12 months)
2. Preliminary Design Phase and Estimated Construction Costs
3. Final Design and Construction Documents Phase and Estimated Construction Costs
4. Permitting Phase (expected time to complete phases 2, 3, and 4 within 9- months)
5. Bidding and Negotiation Phase (expected time to complete in 3-4 months)
6. Construction Administration Phase (schedule to be Determined)

The Consultant shall assist the City to identify and obtain funding opportunities such as grants, SRF loans, as needed for design and construction phases.

ELIGIBILITY:

A. Proposers will be eligible to respond to this Request for Qualifications if the proposing Firm demonstrates that they or the principals assigned to this project have successfully completed services similar to those specified in the Scope of Services of this RFQ.

B. Proposers must include as a part of the RFQ submittal, sufficient documentation, client references, and qualifications to support their ability and experience to perform the services contained in the RFQ.

C. Proposers shall be registered firms licensed with the State of Florida. All professional services shall be performed under the direction of a professional registered with the State of Florida and qualified in the specific field.

PRE-PROPOSAL CONFERENCE:

A **MANDATORY** Pre-Proposal and Site Visit is scheduled for **July 11, 2024, at 1:30 P.M**. to be held at City of Boynton Beach City Hall Room 115, 100 East Ocean Avenue, Boynton Beach, Florida 33435. **Attendance at both the Pre-Proposal Conference & Site Visit** is mandatory and proof of attendance will be evidenced by the Proposer's signature or the signature of the Proposer's designee on the attendance sheet provided **(page 58)**. The purpose of this meeting is to provide a forum for all concerned parties to discuss the proposed project, answer questions on the solicitation document, review the projected schedule, provide instructions for submitting qualifications, and discuss other relevant issues. In the event that any discussions or questions at the pre-proposal meeting require, in the City's opinion, official additions, deletions, or clarifications of the solicitation, or any other document, the City will issue an addendum to this Request for Qualifications, as the City determines is appropriate.

No oral representation or discussion taking place at the pre-proposal meeting will be binding or may be relied upon by any person or entity. All questions prior to the pre-proposal meeting should be submitted in writing through the City's e-procurement bidding system Boynton-beach.bidsandtenders.net by the deadline for questions.

The firm's proposal will be rejected if the proposer does not attend the Pre-Proposal Conference & Site Visit.

LOBBYING / CONE OF SILENCE:

Consistent with the requirements of Chapter 2, Article VIII, Lobbyist Registration, of the Palm Beach County Code of Ordinances, Boynton Beach imposes a Cone of Silence. A cone of silence shall be imposed upon each competitive solicitation as of the deadline to submit the proposal, bid, or other response and shall remain in effect until City Commission awards or approves a contract rejects all bids or responses, or otherwise takes action that ends the solicitation process. While the cone of silence is in effect, no proposer or its agent shall directly or indirectly communicate with any member of City Commission or their staff, the Manager, any employee of Boynton Beach authorized to act on behalf of Boynton Beach in relation to the award of a particular contract or member of the Selection Committee in reference to the solicitation, with the exception of the Purchasing Manager or designee. (Section 2-355 of the Palm Beach County Code of Ordinances.) Failure to abide by this provision may serve as grounds for disqualification for award of contract to the proposer. Further, any contract entered into in violation of the cone of silence shall render the transaction voidable.

The cone of silence shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before Selection Committees, contract negotiations during any public meeting, presentations made to the City Commission, and protest hearings. Further, the cone of silence shall not apply to contract negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence with Boynton Beach as may be permitted by the competitive solicitation. Additionally, the cone of silence shall not apply to any purchases made in an amount less than the competitive solicitation threshold set forth in the Purchasing Manual.

PUBLIC RECORDS DISCLOSURE:

Pursuant to Florida Statutes §119.07, sealed Bids, Proposal or Responses received by the City in response to a Request for Qualification, Request for Proposals, or Invitation to Bid are exempt from public records disclosure requirements until the City provides notice of a decision or **thirty (30) days** after the opening of the Proposals/Bids. If the City rejects all Responses submitted in accordance with a Request for Proposal/Qualification or Invitation to Bid, and the City concurrently provides notice of its intent to reissue the competitive solicitation, the rejected Responses remain exempt from public disclosure until such time as the City provides notice of a decision or intended decision concerning the competitive solicitation or until the City withdraws the reissued competitive solicitation. A Bid, Proposal, Response, or reply is not exempt for longer than twelve (12) months after the initial City notice rejecting all Bids, Proposals, or replies.

Questions related to this RFQ are to be submitted to the Purchasing representative through the Bidding System only by clicking on the "Submit a Question" button for this specific Solicitation.

CITY OF BOYNTON BEACH

EAST AND WEST WATER PLANT UPGRADES AND TREATMENT OPTIONS EVALUATION, PLANNING, AND DESIGN FOR EMERGING CONTAMINANTS REMOVAL – ENGINEERING SERVICES (GRANT/LOAN FUNDED)

RFQ No.: UTL24-031

SECTION 1 - DEFINITIONS

Whenever the following terms appear in the Proposal, the intent and meaning shall be interpreted as follows:

1.1. **City or Owner:** The City of Boynton Beach, Florida

1.2. **Contract/Agreement/Purchase Order:** The written agreement entered into between the City and the awarded Proposer.

1.3. **Evaluation/Selection Committee:** City Staff and /or outside consultants assigned to evaluate the submitted proposals.

1.4. **Procurement Services:** The Procurement Services Division-Department of Finance of the City of Boynton Beach.

1.5. **Proposer/Vendor:** Any individual, firm, or corporation submitting a response for this project, acting directly or through a duly authorized representative.

1.6. **"Provider", "Bidder", "Vendor", "Proposer", "Contractor", "Consultant", "Successful Proposer", or "Firm":** The Proposer(s) awarded as a result of this Request for Qualification (RFQ). Said terms may be used interchangeably while retaining the same meaning.

1.7. **Qualifications, Proposal, Proposals, Responses, or Submissions:** Shall refer to any Offer(s) submitted in response to this Request for Qualification (RFQ).

1.8. **RFQ:** Request for Qualification.

1.9. **"Subcontractor", "Subconsultant":** Any person, firm, entity, or organization, other than the employees of the successful Proposer, who contract with the Successful Proposer to furnish labor, or labor and materials, in connection with the work or services to the City, whether directly or indirectly, on behalf of the Successful Proposer.

1.10. **Task Order, Work Order, Project, Services, or Program:** All matters that will be required to be done by the successful Proposer in accordance with the Scope of Work, and the Terms and Conditions of this RFQ.

EAST AND WEST WATER PLANT UPGRADES AND TREATMENT OPTIONS EVALUATION, PLANNING, AND DESIGN FOR EMERGING CONTAMINANTS REMOVAL– ENGINEERING SERVICES (GRANT/LOAN FUNDED)

RFQ No.: UTL24-031

SECTION 2 – BACKGROUND, PROJECT INFORMATION, AND SCOPE OF SERVICES

2.1 BACKGROUND:

The City of Boynton Beach, Florida (City) owns and operates the East Water Treatment Plant and the West Water Treatment Plant. The East plant is a 24 million gallon per day (MGD) capacity conventional treatment utilizing lime softening, multimedia gravity filtration, and Magnetic Ion Exchange (MIEX) processes. The East Water Treatment Plant was originally constructed in 1963 and multiple subsequent expansions and/or additions were done including addition of MIEX and re-rating of plant capacity to 24 MGD in 2016. The plant receives surficial aquifer water from the east wellfield (19 wells) and the west wellfield (11 wells). The east plant has two (2) aquifer storage and recovery (ASR) wells with 5 MGD total reserve capacity.

The West Water Treatment Plant (West WTP) utilizes low-pressure membrane softening technology with a maximum day operating capacity of 10.4 MGD. The selected Consultant will be responsible for the facilities plan that includes alternative options for the comprehensive system including both East and West Treatment plants–and evaluating whether the alternative treatment using nanofiltration membranes design is the most viable option at the West plant for emerging contaminants and other known future regulations for potable water, including the option evaluation of the expansion of West Nanofiltration Membrane Treatment Plant to meet all the Utility customer demands, complete engineering design, including loan or grant management and reporting during design, bid documents preparation. permitting, bid assistance, and services including managing future grants that the City may receive for the plant construction phase.

The West Water Treatment Plant is served primarily by Florida Power & Light (FPL) at 13KV (13,000 Volts) and has two step-down transformers to reduce the voltage to 480V (480 Volts). The City does not wish to maintain the 13KV equipment on its premises for safety concerns, as well as the difficulty of maintaining specialized equipment. Therefore, the City has decided to transition to 480V service. If as part of the alternative analysis the nanofiltration membranes treatment option is considered a viable option for the future, the Consultant will be required to assist the City in obtaining new service from FPL. In addition, the switchboard, switchgears, main breakers, and Motor Control Center equipment (MCC) have reached their end of life (EOL) and will require replacement or upgrading. The two generators currently serving the West Plant are rated at 13KV and will need to be converted or replaced with 480-Volt generators. Furthermore, the control network is outdated and will need to be upgraded. The SCADA screens and PLC programs shall be redesigned and re-written. The process control loop and control description for each plant process shall be developed by the Consultant. Replacement of older instrumentation and control components such as soft-starters, variable frequency drives (VFDs), flowmeters, etc. will be included in the project as an upgrade to the existing west treatment plant.

2.2 GOAL:

The City of Boynton Beach is issuing this Request for Qualifications (RFQ) for submissions from qualified Engineering Consulting Firms, companies, teams/joint ventures, or other qualified entities to select the most qualified team. Work associated with the project will be performed as outlined within this RFQ.

2.3 SCOPE OF SERVICES TO BE PERFORMED:

The City is seeking the services of a qualified Engineering Consulting firm (Consultant/Vendor) for the facilities plan, evaluation of alternatives as described in the FDEP RFI document in Attachment "B" and below, design, permitting, bidding, services during construction, testing, and start-up of the upgraded or newly installed systems, to include but not limited to all services and requirements:

1. Preparation of a study (including a Facilities Plan and an Environmental Assessment Report in accordance with 62-503.700, F.A.C and 62-503.751, F.A.C. to meet the requirements of the FDEP SRF DW Loan program) to evaluate the ability of the existing treatment processes and alternative treatments to meet the proposed emerging contaminants PFAS removal regulations and to meet any other known potable water regulations for the near future in the most cost-effective manner possible.
2. The study must address recommendations for East and West plants for the short term (until the longer-term treatment systems are in place) as well as longer-term treatment systems to meet the above criteria. The study should recommend and perform bench scale/pilot study for treatment options evaluation and any further evaluation of the recommended treatment option.
3. Engineering design of the improvements identified in the alternative analysis study, coordinating and obtaining permits, preparing bid documents, and construction management services.
4. Hydraulic modeling of the plant process including raw water supply, treatment, and storage.
5. Evaluation and design of electrical power system and redundant backup electrical power system based on the improvements identified in the alternative analysis study.
6. Evaluation and design of switchgear, switchboard, and transfer-switches, and paralleling gear based on the improvements identified in the alternative analysis study.
7. Evaluation and design of automatization control system, SCADA, and instrumentation based on the improvements identified in the alternative analysis study.
8. Evaluation, design, and upgrade of the programmable logic controller (PLC) system and PLC control network based on the improvements identified in the alternative analysis study.
9. Witness equipment start-up, testing (including laboratory testing), and commissioning.
10. Review of final as-built drawings and project close-out.
11. Assistance with procuring external funding resources such as grants and loans and also assistance with managing and reporting for any grants or loans procured.

The selected Consultant will work closely together with the Project Manager to manage the design, permitting, construction management, and implementation of the project. The scope of work is more clearly defined in the Contract Agreement, Attachments and Special Conditions, and Standard Terms and Conditions for Federally Funded Solicitations, which are hereby not listed in any order of precedence.

2.4 EXISTING CONDITIONS:

The Consultant shall be responsible for verification of existing conditions, including research of all existing City records and other information.

2.5 PROJECT MANAGEMENT REQUIREMENTS:

The Consultant shall have the responsibility of maintaining regular communication with City's Project Manager to keep the City staff fully appraised of Project developments, for correspondence, assigned tasks, and other matters that transpire on the site. These may include but are not limited to: Contracts, Contract Exhibits, Contract Amendments, Drawing Issuances, Addenda, Bulletins, Permits, Insurance & Bonds, Safety Program Procedures, Safety Notices, Accident Reports, Personnel Injury Reports, Schedules, Site Logistics, Progress Reports, Daily Logs, Non-Conformance Notices, Quality Control Notices, Punch Lists, Meeting Minutes, Requests for Information, Submittal Packages, Substitution Requests, Monthly Payment Request Applications, Supplemental Instructions, Change Order Requests, Change Orders, and the like. All supporting data including but not limited to shop drawings, product data sheets, manufacturer data sheets and instructions, method statements, safety MSDS sheets, Substitution Requests and the like will be submitted in digital format.

This project will be funded under the Florida Department of Environmental Protection (FDEP) Drinking Water State Revolving Fund (DWSRF) program. Proposer's professional services shall include the preparation of a Facilities Plan and Planning Document and DWSRF funding compliance assistance. All equipment, materials, and construction services shall comply with applicable requirements of the FDEP DWSRF, as specified in the FDEP SRF Supplementary Conditions (https://www.epa.gov/cwsrf/srf-fund-management-handbook), incorporated herein by reference. Assistance with SRF loans is not limited to submitting documentation, responding to inquiries, reporting, and the necessary effort to successfully obtain funding for the project.

Selection of the professional team shall be qualifications-based selection in accordance with Florida Statute §287.055, "Consultants' Competitive Negotiation Act." The scoring criteria included in Section 6 herein will be used in the evaluation and ranking of the Proposer based on the response within this RFQ by the Selection Committee. The City intends to implement the necessary improvements through a negotiated contract with the Awarded Consultant based on the information provided in this RFQ.

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EAST AND WEST WATER PLANT UPGRADES AND TREATMENT OPTIONS EVALUATION, PLANNING, AND DESIGN FOR EMERGING CONTAMINANTS REMOVAL – ENGINEERING SERVICES (GRANT/LOAN FUNDED)

RFQ No.: UTL24-031

SECTION 3 – INSTRUCTION TO PROPOSERS

1. The City of Boynton Beach utilizes an electronic online bidding system service for notification and distribution of its solicitation documents, please visit Boynton-beach.bidsandtenders.net

2. ELECTRONIC BID SUBMISSIONS ONLY shall be received by the City's e-Procurement Bidding System. Hardcopy submissions are not permitted.

3. Electronic Request for Qualification/Request for Proposal/Invitation to Bid Proposals for this solicitation shall be received by the City's e-Procurement bidding system no later than: **AUGUST 2, 2024 No Later Than 2:30 PM (Local Time).**

4. Late responses are not permitted by the bidding system. It shall be the sole responsibility of the Proposer to have their Request for Qualification/Request for Proposal/Invitation to Bid submittal submitted online.

5. Proposer shall acknowledge receipt of any addenda through the Bidding System by checking a box for each addenda and any applicable attachment.

6. It is the responsibility of the Proposer to have received all Addenda that are issued. Proposers should check online at Boynton-beach.bidsandtenders.net prior to submitting their Submittal and up until the Bid closing time and date in the event additional addenda is issued.

7. To obtain documents online please visit Boynton-beach.bidsandtenders.net. You may preview the solicitation documents with a Preview Watermark prior to registering for the opportunity. Documents are not provided in any other manner.

8. Proposers are cautioned that the timing of their Submittal submission is based on when the Submittal is RECEIVED by the Bidding System, not when a Submittal is submitted, as the Submittal transmission can be delayed due to file transfer size, transmission speed, etc.

9. For the above reasons, it is recommended that the Proposer allow sufficient time to complete your Bid Submission and to resolve any issues that may arise.

10. Proposers should contact bids&tenders support listed below, at least twenty-four (24) hours prior to the closing time and date, if they encounter any problems. The Bidding System will send a confirmation email to the Proposer advising that their submittal was submitted successfully. If you do not receive a confirmation email, contact bids&tenders support at support@bidsandtenders.net.

11. To ensure receipt of the latest information and updates via email regarding this Request for Qualification/Request for Proposal/Invitation to Bid, or if a Proposer has obtained this Solicitation from a third party, the responsibility is on the Proposer to create a Bidding System Vendor account and register as a Plan Taker for the Solicitation.

12. All expenses for making SUBMITTAL responses to the City are to be borne by the Proposer.

13. A sample draft agreement that the City intends to execute with the successful firm(s) is contained within this Request for Qualification/Request for Proposal/Invitation to Bid for review. Any exceptions taken to the terms and conditions of the City's agreement shall be considered a part of Vendor's solicitation response and will be considered by the City in its evaluation. Any exception not specifically stated is deemed waived. Submission of any exceptions to the agreement does not denote acceptance by the City. Furthermore, taking exceptions to the City's terms and conditions may be viewed unfavorably by the City/evaluation committee and ultimately may impact the overall evaluation of a vendor's submittal. The City reserves the right to modify the contract language prior to execution.

14. Each Proposer, by submission of a proposal response, acknowledges that in the event of any legal action challenging the award of a Request for Qualification/Request for Proposal/Invitation to Bid; damages, if any, shall be limited to the actual cost of the preparation of the Bid or Proposal.

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EAST AND WEST WATER PLANT UPGRADES AND TREATMENT OPTIONS EVALUATION, PLANNING, AND DESIGN FOR EMERGING CONTAMINANTS REMOVAL – ENGINEERING SERVICES (GRANT/LOAN FUNDED)

RFQ No.: UTL24-031

SECTION 4 – STANDARD TERMS AND CONDITIONS FOR FEDERALLY FUNDED SOLICITATIONS

Unless otherwise agreed to by the City of Boynton Beach ("City"), the following Standard Terms and Conditions are applicable to this solicitation and the resulting agreement/contract which may be paid for or reimbursed with federal funds. The term "vendor" as used below may collectively apply to vendors, bidders, proposers, consultants, contractors, project management consultants, and subcontractor. Notwithstanding anything to the contrary set forth herein, vendor shall comply with all applicable federally required standard provisions whether set forth herein below, in 2 CFR Part 200, or otherwise.

1. FAMILIARITY AND COMPLIANCE WITH LAWS AND CODES: Federal, State, County, and local laws, ordinances, rules, and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the vendor shall in no way be a cause for relief from responsibility. The vendor shall strictly comply with Federal, State, and local building and safety codes. Equipment shall meet all State and Federal Safety regulations. The vendor certifies that all products (materials, equipment, processes, or other items) meet all ANSI, NFPA, and all other Federal and State requirements. The vendor further certifies that the product delivered is subsequently found to be deficient in any of the aforementioned requirements in effect on the date of delivery, all costs necessary to bring the product into compliance shall be borne by the vendor.

   Any toxic substance provided to the City as a result of this solicitation and resulting agreement/contract shall be accompanied by its Safety Data Sheet (SDS).

   Unless otherwise provided by federal law, the Uniform Commercial Code (Florida Statutes, Chapter 672) shall prevail as the basis for contractual obligations between the vendor and the City for any terms and conditions not specifically stated otherwise.

2. RFP/RFQ/BID FORMS: The Vendor will submit an RFP/RFQ/BID on the RFP/RFQ/BID forms provided. All RFQ/RFP/BID descriptive information must be legibly entered. The Vendor is required to be licensed to do business as an individual, partnership, or corporation in the State of Florida. All RFP/RFQ/BID forms must be executed and submitted for easy identification. Responses not submitted on RFP/RFQ/BID forms may be rejected. All RFPs/RFQs/BIDs are subject to the conditions specified within this solicitation document. Submittals which do not comply with these conditions are subject to rejection.

3. EXECUTION OF RFP/RFQ/BID: RFP/RFQ/BID must contain a manual signature of an authorized representative in the space provided on all affidavits and proposal sheets.

4. NO SUBMITTAL: A NO SUBMITTAL response can be submitted online through the e-Procurement bidding system.

5. SOLICITATION DEADLINE: It is the Vendor's responsibility to ensure that the proposal is submitted electronically by or at the proper time and date prior to the solicitation deadline. Late Submittal Responses are not permitted by the e-Procurement bidding system.

6. RIGHT TO REJECT BID: The City reserves the right to reject any or all bids or proposals, waive technical errors, or to accept a portion of any bids that are deemed to be the most responsive, responsible Vendor(s) which represents the most advantageous bid to the City. In determining the "most advantageous bid", price, quantifiable factors, and other factors are considered. Such factors include but are not limited to specifications; delivery requirements; the initial purchase price; life expectancy; cost of maintenance and operation; operating efficiency; training requirements; disposal value; and other factors contributing to the overall acquisition cost of an item. Consideration may be given, but is not necessarily limited to conformity to the specifications; including timely delivery; product warranty; a Vendor's proposed service; ability to supply and provide service; delivery to required schedules, and past performances in other contracts with the City or other government entities.

7. AGREEMENT EXTENSION: The City reserves the right to extend automatically for a period not to exceed an additional one-hundred and eighty (180) calendar days by mutual agreement and by filing written notice signed by the vendor to the City's Purchasing Department without further City Commission action. This extension shall provide the City with continual services for the completion of the project.

8. RIGHTS OF THE CITY: The City expressly reserves the right to:

   A. Waive as an informality, minor deviations from specifications at a lower price than the most responsive, responsible Vendor meeting all aspects of the specifications and consider it, if it is determined that total cost is lower and the overall function is improved or not impaired;
   B. Waive any defect, irregularity, or informality in any BID, RFQ, or RFP procedure;
   C. Reject or cancel any or all RFP,RFQ, or BID;
   D. Reissue a Request for Proposals (RFP), Request for Qualifications (RFQ) or Invitation to Bid (Bid);
   E. Extend the RFP,RFQ, or BID deadline time and date;
   F. Procure any item by other means;
   G. Increase or decrease the quantity specified in the Request for Proposals (RFP), Request for Qualifications (RFQ) or Invitation to Bid (BID);
   H. Consider and accept an alternate RFP/RFQ/BID as provided herein when most advantageous to the City.

9. STANDARDS: Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective Vendor has:

   A. Available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain such, necessary to indicate its capability to meet all agreement/contractual requirements;
   B. A satisfactory record of performance;
   C. A satisfactory record of integrity;
   D. Qualified legally to Agreement/contract within the State of Florida and the City of Boynton Beach;
   E. Supplied all necessary information in connection with the inquiry concerning responsibility.

10. DISQUALIFICATION OF PROPOSER: More than one Proposal from an individual, firm, partnership, corporation, or association under the same or different names shall not be considered. All proposals shall be rejected if there is reason to believe that collusion exists between Vendors. Automatic disqualifiers are as follows:

    A. Not including an executed Vendor signature.
    B. Not being licensed to perform the required work or to provide the required product.
    C. Not being eligible to submit a proposal due to violations listed under Item No.27, "Public Entity Crimes."
    D. Not completing the RFP, RFQ, or BID Submittal Forms as required.

11. DIRECT OWNER PURCHASES: Procedure used by the City to make direct purchases of any materials/equipment and make direct payment to the Vendor. The City reserves the right to issue purchase orders for materials to either the Contractor's / Consultant's / Vendor's or the City's suppliers for construction/public works related materials when deemed in the best interest of the City.

12. INFORMATION AND DESCRIPTIVE LITERATURE: Vendors must furnish all information requested in the spaces provided on the bid form. Further, as may be specified elsewhere, each Vendor must submit for bid evaluation cuts, sketches, and descriptive literature, and technical specifications covering the products offered. Reference to literature submitted with a previous bid or on file with the buyer will not satisfy this provision.

13. SIGNING OF CONTRACT: The Award Letter will be presented to the Successful Vendor. Within ten (10) calendar days after issuance of the award letter, the successful Vendor shall sign and deliver the Contract with the required bonds and insurance certificates to the City. After receipt and approval of such documents, the Contract will be executed. Within thirty (30) calendar days thereafter, the City shall deliver a fully signed and executed Contract to the successful Vendor. At times a purchase order will be issued in lieu of a contract agreement.

14. INTERPRETATIONS: To ensure fair consideration for all Vendors, the City prohibits communication to or with any department, officer, or employee during the solicitation process except as otherwise specified. If the Vendor should be in doubt as to the meaning of any of the RFP, RFQ, or BID documents, or is of the opinion that the plans and/or specifications contain errors, contradictions, or reflect omissions; the Vendor shall direct questions to the Purchasing representative through the Bidding System only by clicking on the "Submit a Question" button for this Bid, no later than ten (10) days prior to the RFP, RFQ, or BID deadline.

15. CONFLICT OF INTEREST: The award hereunder is subject to all conflict of interest provisions of the City of Boynton Beach, Palm Beach County, of the State of Florida.

16. SUBCONTRACTING: If a Vendor subcontracts any portion of a Contract for any reason, the Vendor must state the name and address of the sub-contractor/sub-consultant and the name of the person to be contacted on the online form within the e-bidding system under "Schedule of Subcontractors". The City of Boynton Beach reserves the right to accept or reject any or all proposals wherein a sub-contractor/sub-consultant is named and to make the award to the Vendor, who, in the opinion of the City, will be in the best interest of and/or most advantageous to the City. The City also reserves the right to reject an Bid of any Vendor if the RFP, RFQ, or BID names a sub-contractor/sub-consultant who has previously failed in the proper performance of an award or failed to deliver on time Contracts of a similar nature, or who is not in a position to perform properly under this award. The City reserves the right to inspect all facilities of any sub-contractor/sub-consultant in order to make determination as to the foregoing. The sub-contractor/sub-consultant will be equally responsible for meeting all requirements specified in this Request for Proposals (RFP), Request for Qualifications (RFQ), or BID. Vendors are encouraged to seek minority and women business enterprises for participation in sub-contractor/sub-consultant contracting opportunities. The City reserves all rights in order to make a determination as to the foregoing.

17. ADDENDA: From time to time, the City may issue an addendum to change the intent or to clarify the meaning of the Contract documents. Since all addenda are available to Vendor's through the City's e-Procurement system Boynton-beach.bidsandtenders.net, it is the responsibility of each Vendor to have received ALL addenda that are issued. Vendors should check online at Boynton-beach.bidsandtenders.net prior to submitting their bid and up until the bid closing time and date in the event, additional addenda are issued. If a Vendor submits their bid prior to the BID closing time and date and an addendum has been issued, the Bidding System shall WITHDRAW the Vendor's submission and the submittal status will change to an INCOMPLETE STATUS and Withdraw the Bid Proposal. The Vendor can view this status change in the "MY BIDS" section of the Bidding System.

    The Vendor is solely responsible to:

    - make any required adjustments to their Bid/Proposal; and
    - acknowledge the addenda; and
    - Ensure the re-submitted Bid/Proposal is RECEIVED by the Bidding System no later than the stated Bid/Proposal closing time and date.

18. SAMPLES: Samples of items, when called for, must be furnished free of expense, and if not used, tested, or destroyed, upon request, will be returned at the Vendor's expense. Request for the return of samples may be made within ten (10) calendar days following the RFP, RFQ, or BID deadline. Each individual sample must be labeled with the Vendor's name, manufacturer's brand name and number, and item reference.

19. DEMONSTRATIONS: Performance of the equipment/services upon request can be deemed a part of the evaluation process in determining the award of the Vendor. Demonstrations of the merits of the equipment/services that meet City requirements shall be requested by Procurement Services. Equipment demonstrated shall be a minimum of one (1) year old. All required staff, to be assigned per the individual bid product or service application, will form the Bid Award Committee to evaluate and submit a group award recommendation. The City reserves the right to make separate and independent awards based on its needs and the combined evaluation results.

20. ESCALATOR CLAUSE: Any bid or proposal which is submitted subject to an escalator clause will be rejected.

21. EXCEPTIONS: Incorporation in a proposal of exceptions to any portion(s), of the Contract documents may invalidate the proposal. Exceptions to the Technical and Special Provisions shall be clearly and specifically noted in the Vendor's proposal on a separate sheet marked "EXCEPTIONS TO THE SPECIFICATIONS" and this sheet shall be attached to the proposal. The use of the Vendor's standard forms or the inclusion of the manufacturer's printed documents shall not be construed as constituting an exception within the intent of the Contract documents.

22. NONCONFORMANCE TO AGREEMENT/CONTRACT CONDITIONS: Items may be tested for compliance with specifications under the direction of appropriate testing laboratories. The data derived from any tests for compliance with specifications are public records and open to examination thereto in accordance with Chapter 119, Florida Statutes. Items delivered not conforming to specifications may be rejected and returned at the vendor's expense. These items and items not delivered as per delivery date in the bid and or Purchase Order may result in the Vendor being found in default in which event any and all procurement costs may be charged against the defaulted Vendor. Any violation of these stipulations may also result in the vendor's name being removed from the City of Boynton Beach's vendor mailing list.

23. DISPUTES: In case of any doubt or difference of opinion as to the items to be furnished hereunder, the decision of th City Manager shall be final and binding on both parties.

24. ANTITRUST CAUSE OF ACTION: In submitting a bid/proposal to the City of Boynton Beach, the Vendor offers and agrees that if the bid/proposal is accepted, the Vendor will convey, sell, assign, or transfer to the City of Boynton Beach all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of Florida for price-fixing relating to the particular commodities or services purchased or acquired by the City of Boynton Beach. At the City of Boynton Beach's discretion, such assignment shall be made and become effective at the time the purchasing agency tenders final payment to the Vendor.

25. GOVERNMENTAL RESTRICTIONS: In the event, any governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship, or performance of the items offered on this proposal prior to their delivery, it shall be the responsibility of the successful Vendor to notify the City at once, indicating in a letter the specific regulation which required an alteration. The City reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract at no expense to the City.

26. LEGAL REQUIREMENTS: Federal, State, County, and City laws, ordinances, rules, and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the Vendor will in no way be a cause for relief from responsibility.

27. ON PUBLIC ENTITY CRIMES: All Request for Proposals, Request for Qualifications, and Invitations to Bid as defined by Section 287.012(11), Florida Statutes, requests for proposals as defined by Section

287.012(16), Florida Statutes, and any contract document described by Section 287.058, Florida Statutes, shall contain a statement informing persons of the provisions of paragraph (2)(a) of Section 287.133, Florida Statutes, which reads as follows:

"A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract or provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, vendor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list".

28. NON-COLLUSION: The vendor certifies that it has entered into no agreement to commit a fraudulent, deceitful, unlawful, or wrongful act, or any act that may result in an unfair advantage for one or more vendors over other vendors. A conviction for the commission of any fraud or act of collusion in connection with any sale, quote, quotation, proposal, or another act incident to doing business with the City may result in permanent debarment. No premiums, rebates, or gratuities are permitted; either with, prior to, or after any delivery of material or provision of services. Any such violation may result in award cancellation, return of materials, discontinuation of services, and removal from the vendor list(s), and/ or debarment or suspension from doing business with the City.

    Each Vendor shall complete the Non-Collusion Affidavit Form and shall submit the form with their Proposal. The City considers the failure of the Vendor to submit this document to be a major irregularity and may be cause for rejection of the Proposal.

29. TRADE SECRET: Any language contained in the Vendor's Proposal purporting to require confidentiality of any portion of the Proposal, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Vendor submits any documents or other information to the City which the Vendor claims are Trade Secret information and exempt from Florida Statutes Chapter 119.07 (Public Records Laws), the Vendor shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Vendor must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Vendor's Proposal constitutes a Trade Secret. The City's determination of whether an exemption applies shall be final, and the Vendor agrees to defend, indemnify, and hold harmless the City its officers, employees, volunteers, and agents, against any loss or damages incurred by any person or entity as a result of the City's treatment of records as public records. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

    EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR PROPOSAL AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR PROPOSAL OR ANY PART THEREOF AS COPYRIGHTED.

30. ANTI-KICKBACK AFFIDAVIT: Each Vendor shall complete the Anti-Kickback Affidavit Form and shall submit this form with their Proposal. The City considers the failure of the Vendor to submit this document to be a major irregularity and may be cause for rejection of the Proposal.

31. CONFIRMATION OF MINORITY-OWNED BUSINESS: It is the desire of the City of Boynton Beach to increase the participation of minority-owned businesses in its contracting and procurement programs. While the City does not have any preference or set-aside programs in place, it is committed to a policy of equitable participation for these firms. Therefore, each Vendor shall complete the Confirmation of Minority-Owned Business Form and shall submit the form with its Bid/Proposal.

32. ADVERTISING: In submitting an RFP,RFQ or BID, the Vendor agrees not to use the results as a part of any commercial advertising. Violation of this stipulation may be subject to action covered under "**NONCONFORMANCE WITH CONTRACT CONDITIONS**".

33. ASSIGNMENT: Any Purchase Order issued pursuant to this Request for Proposal, Request for Qualifications, or Invitation to Bid and the funds which may be come due hereunder are not assignable except with the prior written approval of the City.

34. INSURANCE REQUIREMENTS: If a vendor is providing a service under this agreement/contract, then the vendor shall, at its sole expense, maintain in full force and effect at all times during the life of this agreement/contract, insurance coverages, and limits (including endorsements), as required by the City. These requirements shall not in any manner limit or qualify the liabilities and obligations assumed by the vendor under this agreement/contract. All coverages shall be provided on a primary basis with the City endorsed as an Additional Insured as follows: "**The City of Boynton Beach**". The vendor shall provide the City with a Certificate of Insurance evidencing such coverages prior to the commencement of any services and within a time frame specified by the City (normally within 2 working days after request). Failure to maintain the required insurance shall be considered a default of the agreement/contract.

35. INDEMNIFICATION: The selected Vendor(s) shall hold and save harmless the City of Boynton Beach, Florida, its officers, agents, volunteers, and employees from liability of any kind in the performance of this Contract. Further, the selected Vendor(s) shall indemnify, save harmless, and undertake the defense of the City, its City Commissioners, agents, and employees from and against any and all claims, suits, actions, damages, or causes of action arising during the term of this Contract, for any personal or bodily injury, loss of life, or damage to property arising directly or indirectly from Vendor's operation pursuant to this Contract and from and against all costs, counsel fees, expenses and liabilities incurred in an about any such claims, the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders or judgments which may be entered therein. The City shall notify the Vendor within ten (10) business days of receipt by the City of any claim, suit, or action against the City arising directly or indirectly from the operations of the Vendor hereunder, for which the City may be entitled to a claim or indemnity against the Vendor, under the provisions of this contract. Vendor shall have the right to control the defense of any such claim suit or actions. The Vendor shall also be liable to the City for all costs, expenses, attorneys' fees, and damages which may be incurred or sustained by the City by reason of the Vendor's breach of any of the provisions of the contract. PURSUANT TO F.S. SEC. 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD LIABILE FOR NEGLIGENCE. To the extent considered necessary by the City, any sums due Vendor under the Agreement may be retained by City until all of City's claims for indemnification have been resolved, and any amount withheld shall not be subject to the payment of interest by City. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to the Agreement or otherwise. Vendor shall not be responsible for negligent acts of the City or its employees. Further, the vendor shall hold the City harmless and indemnify the City for any funds that the City is obligated to refund the Federal Government arising out of the conduct, activities, or administration of the agreement/contract by the vendor.

36. AWARD OF CONTRACT: Contract will be awarded by the City to the most qualified, responsive, responsible Vendor whose bid or proposal represents the most advantageous bid/proposal to the City, price, and other factors considered. Evaluation of bids or proposals will be made based upon the evaluation factors and standards set forth herein. The City reserves the right to reject any and all bids or proposals and to waive technical errors as set forth herein. In the event of a Court challenge to an award by any Vendor, damages, if any, resulting from an award shall be limited to actual bid or proposal preparation costs incurred by the challenging Vendor. In no case will the award be made until all necessary investigations have been made into the responsibility of the Vendor and the City is satisfied that the most qualified, responsive, responsible Vendor is qualified to do the work and has the necessary organization, licenses, permits, capital, and equipment to carry out the required work within the time specified.

37. CONTRACT AGREEMENT: An Agreement outlining the Scope of Services with the intent of accomplishing a timely, cost-effective completion of a given project will be provided. Specific Task Orders stipulating the Scope of Work to be provided will be issued after the execution of said Agreement. The Agreement will be based on successful negotiation.

38. FUNDING OUT: The resultant Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission for the City

of Boynton Beach in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

39. PURCHASE ORDER REQUIRED: The City will not accept any goods delivered or services performed unless a duly authorized purchase order has been issued for said goods and/or services. The purchase order number must appear on all invoices, packing slips, and all correspondence concerning the order.

40. WARRANTY REQUIREMENTS: Each item, including all components and all installed accessories and equipment, shall be guaranteed by the Vendor to be free of defective parts and workmanship. This warranty shall be for a period of 365 calendar days or the time designated in the standard factory warranty, whichever is longer. The warranty will be the same as that offered to the commercial trade and shall be honored by any of the manufacturer's authorized dealers. Warranty will cover parts, labor, and any necessary shipping. Warranty repairs may be accomplished on City property if space is available; this will be at the sole discretion of the City. Contact Procurement Services for permission to perform warranty service on City property. Warranty to start at the time of acceptance by the City; however, in cases where vehicles or equipment are not immediately placed in service, the Vendor will provide a delay of warranty start-up time. The period of warranty delay will be coordinated by Procurement Services.

41. TIME OF DELIVERY: The Vendor shall state in the bid or proposal the time of delivery of the equipment. Time is of the essence to the City and the Vendor is hereby notified that the date of delivery will be considered as a factor in the evaluation of the bids/proposals.

42. CERTIFICATIONS, LICENSE, AND PERMITS: Unless otherwise directed by the City, the vendor should provide a copy of all applicable certificates of Competency or Licenses issued by the State of Florida or the Palm Beach County Construction Industry Licensing Board in the name of the vendor. If applicable, the vendor shall also maintain a current Local Business Tax Receipt (Occupational License) for the County and all permits required to complete the agreement/contractual service at no additional cost to the City. A County Local Business Tax Receipt (Occupational License) is required unless specifically exempted by law. It shall be the responsibility of the successful vendor to obtain all certifications, licenses, and permits, if required, to complete the services at no additional cost to the City. It is the responsibility of the vendor to ensure all required certifications, licenses, and permits are maintained and are current throughout the term of the agreement/contract, inclusive of any renewals. Licenses and permits shall be readily available for review by the Purchasing Agent and City Inspectors. Failure to meet this requirement shall be considered a default of the agreement/contract.

43. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH: The Vendor certifies that all material, equipment, etc., contained in this bid meets all O.S.H.A. requirements. Vendor further certifies that if awarded as the successful Vendor, and the material equipment, etc. delivered is subsequently found to be deficient in any O.S.H.A. requirement in effect on the date of delivery, all costs necessary to bring the materials, equipment, etc., into compliance with the aforementioned requirements shall be borne by the Vendor.

    Vendor certifies that all employees, subcontractors, agents, etc. shall comply with all O.S.H.A. and State safety regulations and requirements.

44. PALM BEACH COUNTY INSPECTOR GENERAL: The Vendor 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 any agreement/contracts resulting from this solicitation, and in furtherance thereof, may demand and obtain records and testimony from the Vendor and its subcontractors and lower-tier subcontractors. The Vendor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the Vendor or its subcontractors or lower-tier subcontractors to fully cooperate with the Inspector General when requested, may be deemed by the municipality to be a material breach of this agreement/contract justifying its termination.

45. PUBLIC RECORDS: Sealed documents received by the City in response to a Request for Proposals, Request for Qualifications, or Invitation to Bid are exempt from public records disclosure until thirty (30)

calendar days after the opening of the RFP, RFQ, or BID unless the City announces intent to award sooner, in accordance with Florida Statutes 119.07.

The City is a public agency subject to Chapter 119, Florida Statutes. The Vendor shall comply with Florida's Public Records Law. Specifically, the Vendor shall:

A. Keep and maintain public records required by the City to perform the service;

B. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Fla. Stat. or as otherwise provided by law;

C. Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, Vendor shall destroy all copies of such confidential and exempt records remaining in its possession once the Vendor transfers the records in its possession to the City; and

D. Upon completion of the contract, Vendor shall transfer to the City, at no cost to the City, all public records in Vendor's possession. All records stored electronically by Vendor must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Failure of the vendor to comply with the requirements of this Section, and other applicable requirements of state or federal law, shall be a material breach of the resulting agreement/contract. The City shall have the right to exercise any and all remedies available to it for breach of agreement/contract, including but not limited to, the right to terminate for cause.

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

CITY CLERK
100 EAST OCEAN AVENUE
BOYNTON BEACH, FLORIDA, 33435
561-742-6060
CityClerk@bbfl.us

46. VENUE AND GOVERNING LAW: Any and all legal actions arising from or necessary to enforce this solicitation and resulting agreement/contract will be held in exclusively Palm Beach County and shall be interpreted according to the laws of Florida.

47. DISCRIMINATION PROHIBITED: The City is committed to assuring equal opportunity in the award of orders/contracts and complies with all laws prohibiting discrimination. The vendor warrants and represents that throughout the term of the contract, including any renewals thereof, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered a default of the contract. The vendor shall comply with all applicable Federal statutes relating to nondiscrimination as may be applicable. These include but are not limited to:

A. Title VI of the Civil Rights Act of 1964 (P.C. 88-352) which prohibits discrimination on the basis of race, color, or national origin;

B. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and §§1685-1686), which prohibits discrimination on the basis of sex;

C. Section 504 of the Rehabilitation Act of 1973, as amended (29) U.S.C. §794), which prohibits discrimination on the basis of handicaps;

D. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age;

E. The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse;

F. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

G. §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee3), as amended, relating to the confidentiality of alcohol and drug abuse patient records;

H. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;

I. Rehabilitation Act of 1973 any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made;

J. Executive Order 11063, which prohibits discrimination in the sale, easing, rental, or other disposition of properties and facilities owned or operated by the federal government or provided with federal funds;

K. Housing and Community Development Act of 1974, which provides no person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with federal funds;

L. Fair Housing of 1968, which provides participating agencies must affirmatively further fair housing for classes protected under the Fair Housing Act. Participating housing counseling agencies are expected to help remedy discrimination in housing and promote fair housing rights and fair housing choice; and,

M. The requirements of any other nondiscrimination statute(s) which may apply to the application. The vendor shall comply with the Drug-Free Workforce Act of 1988.

The vendor understands and agrees that a material violation of this section shall be considered a material breach of this solicitation and the resulting agreement/contract and may result in termination of the agreement/contract, disqualification, or debarment of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of and creates no obligation to, any third party. The vendor shall include this language in its sub-contracts.

48. INDEPENDENT CONTRACTOR RELATIONSHIP: The vendor is, and shall be, in the performance of all work, services, and activities under this solicitation and the resulting agreement/contract, an independent contractor and not an employee, agent, or servant of the City. All persons engaged in any of the work or services performed pursuant to the agreement/contract shall at all times, and in all places, be subject to the vendor's sole direction, supervision, and control. The vendor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects, the vendor's relationship, and the relationship of its employees, to the City shall be that of an independent contractor and not as employees or agents of the City.

49. LOBBYING:

A. CONE OF SILENCE: Consistent with the requirements of Chapter 2, Article VIII, Lobbyist Registration, of the Palm Beach County Code of Ordinances, Boynton Beach imposes a Cone of Silence. A cone of silence shall be imposed upon each competitive solicitation as of the deadline to submit the proposal, bid, or other response and shall remain in effect until City Commission awards or approves a contract rejects all bids or responses or otherwise takes action that ends the solicitation process. While the cone of silence is in effect, no Vendor or its agent shall directly or indirectly communicate with any member of City Commission or their staff, the Manager, any employee of Boynton Beach authorized to act on behalf of Boynton Beach in relation to the award of a particular contract or member of the Selection Committee in reference to the solicitation, with the exception of the Purchasing Manager or designee. (Section 2-355 of the Palm Beach County Code of Ordinances.) Failure to abide by this provision may serve as grounds for disqualification for the award of contract to the Vendor. Further, any contract entered into in violation of the cone of silence shall render the transaction voidable.

   The cone of silence shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before Selection Committees, contract negotiations during any public meeting, presentations made to the City Commission, and protest hearings. Further, the cone of silence shall not apply to contract negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence with Boynton Beach as may be permitted by the competitive solicitation. Additionally, the cone of silence shall not apply to any purchases made in an amount less than the competitive solicitation threshold set forth in the Purchasing Manual.

B. BYRD ANTI-LOBBYING AMENDMENT FOR PROCUREMENTS VALUED AT OR ABOVE $100,000 (Certification Required): Vendors who apply for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Vendor. Upon request, the Vendor agrees to provide the City with a completed certificate titled Byrd Anti-Lobbying Amendment and subsequent certification(s) for it and/or its suppliers, subcontractors, and sub-vendors after agreement/contract award.

50. CONFLICT OF INTEREST / GIFT POLICY: The vendor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in a manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes. All vendors shall disclose the name of any City employee or relative of a City employee who owns, directly or indirectly, an interest of ten percent (10%) or more in the vendor's firm or any of its branches.

    Additionally, 2 CFR 200.318 (c)(1) requires disclosure of a potential conflict of interest and standards of conduct for "organizational conflicts of interest", which may also apply to non-profit sub-recipients of federal funds; and, gift requirements. As such, the following provisions shall also govern in those instances where federal funds are utilized for purchasing goods or services:

    A. CONFLICT OF INTEREST: No employee, officer, or agent of the City may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, agent, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or may receive a tangible personal benefit from a vendor considered for a City contract.

       In addition, the vendor shall disclose to City in writing all federal criminal law violations involving fraud, bribery, or gratuity that potentially affect the award of this solicitation Failure to make the required disclosures can result in withheld payments, award termination, suspension, or debarment of the vendor.

B. ORGANIZATIONAL CONFLICT OF INTEREST: The vendor shall not have activities or relationships (a) causing the vendor to be unable, or potentially unable, to render impartial assistance or advice to the City; (b) impairing the vendor's objectivity in performing the contract work; or (c) resulting in an unfair competitive advantage.

C. GIFT POLICY: No vendor who is a party to, or receives a benefit from, this agreement/contract shall offer a gratuity, favor, or anything of monetary value to any officer, employee, or agent of the City. Further, no officer, employee, or agent of the City shall solicit or accept a gratuity, favor, or anything of monetary value from a vendor who is a party to, or receives a benefit from, this agreement/contract.

51. SUCCESSORS AND ASSIGNS: The City and the vendor each binds itself and its successors and assigns to the other party in respect to all provisions of the Contract. Neither the City nor the vendor shall assign, sublet, convey or transfer its interest in the Contract without the prior written consent of the other.

52. PUBLIC RECORDS, ACCESS, AUDITS, AND RETENTION: The vendor agrees that copies of any and all property, work product, documentation, reports, computer systems and software, schedules, graphs, outlines, books, manuals, logs, files, deliverables, photographs, videos, tape recordings or data relating to the agreement/contract which have been created as a part of the vendor's services or authorized by the City as a reimbursable expense, whether generated directly by the vendor, or by or in conjunction or consultation with any other party whether or not a party to the agreement/contract, whether or not in privity of contract with the City or the vendor, and wherever located shall be the property of the City.

    Any material submitted in response to this solicitation is considered a public document in accordance with Section 119.07, F.S. All submitted information that the responding vendor believes to be confidential and exempt from disclosure (i.e., a trade secret or as provided for in Section 119.07 and Section 812.081, F.S.) must be specifically identified as such. Upon receipt of a public records request for such information, a determination will be made as to whether the identified information is, in fact, confidential.

    The vendor shall maintain all records pertaining to the procurement of the goods or services paid with federal funds for a period of five (5) years from the date of submission of the final expenditure report for the entire federal allocation or, for federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the federal awarding agency or pass-through entity. The City and the relevant federal agency shall have access to such records as required in this Section for the purpose of inspection or audit during normal business hours, at the vendor's place of business. Exceptions include:

    A. If any litigation, claim, or audit is started before the expiration of the five (5) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action is taken.

    B. When the City has received written notification to extend the records retention period from the federal awarding agency, agency for audit, oversight agency for audit, agency for indirect costs, or pass-through entity.

    C. Records for equipment acquired with federal funds must be retained for five (5) years after final disposition.

    D. When records are transferred to or maintained by the federal awarding agency or pass-through entity, the five (5) year retention requirement is not applicable to the City.

    E. The vendor must comply with all of the provisions of 2 C.F.R. 200 — Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

    F. Vendor shall provide the City with an annual financial audit report that meets the requirements of Sections 11.45 and 216.349, Florida Statutes, and Chapter 10.550 and 10.600, Rules of the Auditor General, and, to the extent applicable, the Single Audit Act of 1984, 31 U.S.C. §§ 7501-7507, and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding sub-recipient monitoring and management, and

subpart F regarding audit requirements. Any party receiving such funds shall comply with said provisions, and shall fully cooperate with any other party's compliance with said provisions.

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the vendor: (i) provides a service; and (ii) acts on behalf of the City as provided under Section 119.01 1 (2), F.S., the vendor shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The vendor is specifically required to:

A. Keep and maintain public records required by the City to perform services provided under the agreement/contract.
B. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Fla. Stat. or as otherwise provided by law;

C. Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the agreement/contract, Vendor shall destroy all copies of such confidential and exempt records remaining in its possession once the Vendor transfers the records in its possession to the City; and

D. Upon completion of the agreement/contract, Vendor shall transfer to the City, at no cost to the City, all public records in Vendor's possession. All records stored electronically by Vendor must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Failure of the vendor to comply with the requirements of this Section, and other applicable requirements of state or federal law, shall be a material breach of the resulting agreement/contract. The City shall have the right to exercise any and all remedies available to it for breach of agreement/contract, including but not limited to, the right to terminate for cause.

53. INCORPORATION PRECEDENCE AND JURISDICTION: This solicitation shall be included and incorporated in the award or resulting agreement/contract resulting here from. Any and all legal action necessary to enforce the award or resulting agreement/contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the award or the resulting agreement/contract shall be in a court of competent jurisdiction located in Palm Beach County.

    The order of legal precedence is as follows: Laws passed by Congress, which are codified in provisions of the United States Code (U.S.C.) applicable to the funding source for this agreement/contract; Rules or regulations adopted by a federal agency, which are codified in the Code of Federal Regulations(CFR) and applicable to the funding source for this agreement/contract; the federal award or funding document for this agreement/contract; the Super Circular, inclusive of 2 CFR Sections 200.317 — 200.326 and, agreement/contract.

54. LEGAL EXPENSES: The City shall not be liable to a vendor for any legal fees, court costs, or other legal expenses arising from the interpretation or enforcement of the agreement/contract, or from any other matter generated by or relating to the agreement/contract.

55. NO THIRD-PARTY BENEFICIARIES: No provision of the agreement/contract is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity, not a party to the agreement/contract, including but not limited to any citizen or employees of the City and/or vendor.

56. NO GOVERNMENT OBLIGATION TO THIRD PARTIES: The vendor agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement/contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement/contract and shall not be subject to any obligations or liabilities to the Recipient, vendor or any other party (whether or not a party to that agreement/contract) pertaining to any matter resulting from the underlying Agreement/contract. The vendor agrees to include the above clause in each subcontract related in whole or in part with this agreement/contract.

57. SCRUTINIZED COMPANIES:

A. SCRUTINIZED COMPANIES (WHEN AGREEMENT/CONTRACT VALUE IS LESS THAN $1 MILLION): As provided in F.S. 287.135, by entering into an agreement/contract or performing any work in furtherance of this agreement/contract, the Vendor certifies that it, its affiliates, suppliers, subcontractors, and vendors who will perform hereunder, have not been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.

If the City determines, using credible information available to the public, that a false certification has been submitted by Vendor, the resulting agreement/contract may be terminated and a civil penalty equal to the greater of $2 million or twice the amount of the agreement/contract shall be imposed, pursuant to F.S. 287.135.

B. SCRUTINIZED COMPANIES (WHEN AGREEMENT/CONTRACT VALUE IS GREATER THAN $1 MILLION): As provided in F.S. 287.135, by entering into an agreement/contract or performing any work in furtherance of this agreement/contract, the Vendor certifies that it, its affiliates, suppliers, subcontractors, and vendors who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473, or is engaged in business operations in Cuba or Syria. If the Vendor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this agreement/contract may be terminated at the option of the City.

If the City determines, using credible information available to the public, that a false certification has been submitted by Vendor, the resulting agreement/contract may be terminated and a civil penalty equal to the greater of $2 million or twice the amount of the agreement/contract shall be imposed, pursuant to F.S. 287.135.

58. DISCRIMINATORY VENDOR LIST: An entity or affiliate who has been placed on the discriminatory vendor list may not: obtain an agreement/contract to provide goods or services to a public entity; construct or repair of a public building or public work; lease real property to a public entity; award or perform work as a vendor, supplier, or vendor under agreement/contract with any public entity; nor transact business with any public entity. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and intends to post the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity at (850) 487-0915.

59. PUBLIC ENTITY CRIMES: F.S. 287.133 requires the City to notify all vendors of the following: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not obtain an agreement/contract for the construction or repair of a public building or public work, may not lease real property to a public entity, may not be awarded or perform work as a vendor, supplier, or vendor under an agreement/contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in F.S. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

60. FEDERAL SYSTEM FOR AWARD MANAGEMENT: A agreement/contract shall not be made to parties listed on the government-wide exclusions set forth in the System for Award Management ("SAM") (found at www.sam.gov), which contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority.

61. DEBARMENT AND SUSPENSION (Certification Required): A completed "Certification Regarding Debarment and Suspension" is required prior to award. Upon request, the vendor agrees to provide the City with subsequent certification(s) for it and/or its suppliers, subcontractors, and sub-vendors after the Agreement/contract award.

A. This agreement/contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the vendor is required to verify that none of the vendor, its principals (defined at 2 C.F.R. § 80.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. § 180.935).

B. The vendor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

C. This certification is a material representation of fact relied upon by the City (subgrantee). If it is later determined that the vendor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Federal Government serving as grantee and City as subgrantee, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

D. The vendor must comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this agreement/contract is valid. The vendor further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

62. SCIENTIFIC RESEARCH AND DEVELOPMENT / COPYRIGHT / PATENT RIGHTS: Those orders/agreement/contracts providing federal funds in support of scientific research and development must comply with the requirements of 37 CFR 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreement/contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

    The City and the applicable federal agencies shall be the exclusive owner of any patent rights arising as a result of any discovery or invention that arises or is developed in the course of or under this agreement/contract. The City and the applicable federal agencies shall hold the copyright to works produced or purchased under this agreement/contract. The Federal Government holds a royalty-free, non-exclusive and irrevocable license to produce, publish, or otherwise authorize others to use, for Federal Government purposes, copyrighted material that was developed under a Federal award or purchased under a Federal award.

63. HIRING OF MECHANICS OR LABORERS: (For orders/agreement/contracts greater than $100,000) Any agreement/contract including the employment of mechanics or laborers must provide for compliance with 40 USC 3702, as supplemented by Department of Labor regulations (29 CFR Part 5). Specifically, each vendor must be required to compute the wages of every mechanic and laborer based on a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than one and a half (1 1/2) times the basic rate of pay for all hours worked in excess of 40 hours in the workweek.

64. CLEAN AIR ACT, BUY AMERICA, AND THE FEDERAL WATER POLLUTION CONTROL ACT AS AMENDED: (For orders/agreement/contracts greater than $150,000)

    A. The vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended (42 U.S.C. § 7401 et seq.), Buy America (23 U.S.C. § 323 et seq.), and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251 et seq.).
    B. The vendor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required by the federal awarding agency and the appropriate Environmental Protection Agency Regional Office.
    C. The vendor agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance money.

65. MANDATORY STANDARDS AND POLICIES RELATING TO ENERGY EFFICIENCY: The vendor is required to comply with mandatory standards and policies related to energy efficiency that are contained in the State energy conservation plan issued in accordance with the Energy Policy and Conservation Act (Pub. L. 94—163, 89 Stat. 871) (42 U.S.C. § 6201).

66. PROGRAM FRAUD AND FALSE OR FRAUDULENT OR RELATED ACTS: (31 U.S.C. Chapter 38). The vendor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the vendor's actions pertaining to this agreement/contract.

67. PROTEST PROCEDURE: Protest procedures are provided in the City of Boynton Beach Purchasing Policy. Protests shall be submitted in writing, addressed to the Purchasing Manager, via hand delivery, or mail, along with a protest cash bond in an amount equal to 5% of the bid or $5,000, whichever is less. The bond will be refunded to a protester if the protest is upheld. The protest must identify the solicitation, specify the basis for the protest, and be received by the Purchasing Department within the deadlines as follows:

    A. If the protest relates to an Invitation to Bid, Request for Proposal or Request for Qualifications, the protest shall be received prior to the bid submittal deadline date.

    B. If the protest relates to any other matter relating to the bid, including, but not limited to, the Award of an Agreement/contract, the protest must be received no later than seven (7) regular business days after the date of notification of award by the Purchasing Staff.

    Failure to file a protest as outlined in the City of Boynton Beach's Purchasing Policy shall constitute a waiver of proceedings.

68. FEDERAL CRIMINAL LAW / FALSE STATEMENTS ACT: The False Statement Act sets forth liability for, among other things, any person who knowingly submits a false claim to the Federal government or causes another to submit a false claim to the government or knowingly makes a false record or statement to get a false claim paid by the government. 31 U.S.C. § 3729. For example, a false claim could include false billing documentation submitted by the City received from a vendor or subcontractor under the agreement/contract.

69. AGREEMENT/CONTRACTING WITH SMALL AND MINORITY BUSINESSES WOMEN'S BUSINESS ENTERPRISES AND LABOR SURPLUS AREA FIRMS (if applicable):

    A. In accordance with the requirements as stated in CFR. 200.321, the City encourages the active participation of minority businesses, women's business enterprises and labor surplus area firms as a part of any subsequent agreement whenever possible. The City has made all necessary affirmative steps to assure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible. The vendor, if prime subcontracts are to be let, shall take the Affirmative Steps listed below in paragraphs a) through e) of this Section to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

    B. AFFIRMATIVE STEPS must include:
        1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
        2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
        3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
        4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
        5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

70. PROCUREMENT OF RECOVERED MATERIALS (FOR GOODS VALUED ABOVE $10,000): Vendor is to provide City with those goods designated by the Environmental Protection Agency "(EPA"), at 40 CFR Part 247 — 247.17, that contain the highest percentage of recovered materials practicable while maintaining a satisfactory level of competition for goods valued above $10,000 or where the value of the goods procured during the preceding fiscal year exceeded $10,000. The vendor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. Categories of goods with the highest percentage of recovered materials include

construction products; landscaping products; miscellaneous products; non-paper office products; paper and paper products; park and recreation products; transportation products; and, vehicular products.

71. AMERICANS WITH DISABILITIES (ADA): The Vendor shall meet all the requirements of the Americans With Disabilities Act (ADA), which shall include, but not be limited to, posting a notice informing service recipients and employees that they can file any complaints of ADA violations directly with the Equal Employment Opportunity Commission (EEOC), One Northeast First Street, Sixth Floor, Miami, Florida 33132.

72. EQUAL EMPLOYMENT OPPORTUNITY: The vendor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), for all construction contracts awarded in excess of $10,000 by grantees and their contractors or sub grantees as may be applicable. All contractors and subcontractors performing work in connection with this solicitation shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The vendor agrees to post in a conspicuous place available for employees and applicants for employment, such notices as may be required by any authority having jurisdiction over the Work setting forth the provisions of the nondiscrimination law.

73. REGULATIONS: The Vendor shall comply with all federal, state, and local laws, ordinances, and regulations, applicable to the services contemplated herein, including those applicable to conflict of interest and collusion. The Vendor is presumed to be familiar with all federal, state, and local laws, ordinances, codes, and regulations that may in any way affect the goods/services offered, and any other applicable federal requirements now in effect or imposed in the future.

74. CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT FUNDS: Reimbursement under this agreement/contract may be from funds distributed from the U.S. Treasury's Coronavirus Relief Fund. If CARES Act Funds are used then, fund payments are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding sub-recipient monitoring and management, and subpart F regarding audit requirements. Any party receiving such funds shall comply with said provisions, and shall fully cooperate with any other party's compliance with said provisions and any other applicable federal requirement(s) now in effect or imposed in the future.

75. E-VERIFY - EMPLOYMENT ELIGIBILITY: Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Vendor, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Vendor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

    A. All persons employed by a Vendor to perform employment duties within Florida during the term of the agreement/contract; and
    B. All persons (including sub-vendors/sub-vendors/sub-agreement/contractors) assigned by the Vendor to perform work pursuant to the agreement/contract with the City of Boynton Beach. The Vendor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the agreement/contract is a condition of the agreement/contract with the City of Boynton Beach; and
    C. The Vendor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. The vendor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Vendor shall maintain a copy of such affidavit for the duration of the agreement/contract. Failure to comply will lead to termination of this Agreement/contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20)

calendar days after the date of termination. Termination of this Agreement/contract under this Section is not a breach of agreement/contract and may not be considered as such. If this agreement/contract is terminated for a violation of the statute by the Vendor, the Vendor may not be awarded a public agreement/contract for a period of one (1) year after the date of termination.

76. NON-EXCLUSIVE: As may be applicable, the City reserves the right to acquire some or all of these goods and services through a State of Florida agreement/contract under the provisions of Section 287.042, Florida Statutes, provided the State of Florida agreement/contract offers a lower price for the same goods and services. This reservation applies both to the initial award of this solicitation and to acquisition after an agreement/contract may be awarded. Additionally, the City reserves the right to award other agreement/contracts for goods and services falling within the scope of this solicitation and resultant agreement/contract when the specifications differ from this solicitation or resultant agreement/contract, or for goods and services specified in this solicitation when the scope substantially differs from this solicitation or resultant agreement/contract.

77. PERFORMANCE DURING EMERGENCY: The vendor agrees and promises that immediately preceding, during, and after a public emergency, disaster, hurricane, flood, or act of God, City shall be given "first priority" for all goods and/or services under the agreement/contract. The vendor agrees to provide all goods and/or services to City immediately preceding, during, and after a public emergency, disaster, hurricane, flood, or act of God, at the terms, conditions, and prices as provided in this solicitation on a "first priority" basis. The vendor shall furnish a 24-hour phone number to the City. Failure to provide the goods and/or services to the City on a first priority basis immediately preceding, during, and after a public emergency, disaster, hurricane, flood, or act of God, shall constitute a breach of agreement/contract and subject the vendor to sanctions from doing further business with the City.

78. SALES PROMOTIONS / PRICE REDUCTIONS / MOST FAVORED CUSTOMER: Should sales promotions occur during the term of the agreement/contract that lower the price of the procured item, the vendor shall extend to the City the lower price offered by the manufacturer on any such promotional item. Additionally, any time after award, the vendor may offer a reduced price, which shall remain in effect for the duration of the agreement/contract. The vendor warrants that the price(s) shall not exceed the vendor's price(s) extended to its most favored customer for the same or similar goods or services in similar quantities, or the current market price, whichever is lower. In the event the vendor offers more favorable pricing to one of its customers, the vendor shall extend to the City the same pricing or the then-current market price, whichever is lower.

79. BUSINESS INFORMATION: If a vendor is a Joint Venture for the goods/services described herein, the Vendor shall, upon request of the City, provide a copy of the Joint Venture Agreement signed by all parties.

80. FEDERAL AND STATE TAX: The City of Boynton Beach is exempt from Federal and state taxes.

81. MISTAKES: Vendors are expected to examine the specifications, delivery schedule, bid prices, extensions, and all instructions pertaining to supplies and services. Failure to do so will be at the Vendor’s risk.

82. DEFAULT AND TERMINATION FOR CAUSE: The City may, by written notice of default to the vendor, terminate the agreement/contract in whole or in part if the vendor fails to satisfactorily perform any provisions of this agreement/contract, or fails to make progress so as to endanger performance under the terms and conditions of this agreement/contract, or provides repeated nonperformance, or does not remedy such failure within a period of 30 calendar days after receipt of notice from the City of Boynton Beach specifying such failure. In the event the City terminates the agreement/contract in whole or in part because of default of the vendor, the City may procure goods and/or services similar to those terminated, and the vendor shall be liable for any excess costs incurred due to this action.

    If it is determined that the vendor was not in default or that the default was excusable (e.g., failure due to causes beyond the control of, or without the fault or negligence of, the vendor), the rights and obligations of the parties shall be those provided in Section "Termination for Convenience".

83. TERMINATION FOR CONVENIENCE: Whenever the interests of the City so require, terminate the agreement/contract, in whole or in part, for the convenience of the City. Purchasing shall give fourteen (14) business days prior written notice of termination to the vendor, specifying the portions of the agreement/contract to be terminated and when the termination is to become effective. If only portions of the agreement/contract are terminated, the vendor has the right to withdraw, without adverse action, from the entire agreement/contract.

    Unless directed differently in the notice of termination, the vendor shall incur no further obligations in connection with the terminated work and shall stop work to the extent specified and on the date given in the notice of termination. Additionally, unless directed differently, the vendor shall terminate outstanding orders and/or subcontracts related to the terminated work.

84. REMEDIES: No remedy herein 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 given hereunder now or hereafter existing at law, or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

85. AGREEMENT/CONTRACT: Vendor agrees that by submitting a bid, which is accepted by the City of Boynton Beach, a binding agreement/contract is formed in accordance with the City's terms, conditions, and specifications as set forth in the purchase order unless otherwise agreed by the City and the vendor. The vendor certifies that the bid has been made by an officer or employee having the authority to bind the vendor.

86. DELIVERIES: Deliveries are to be made Monday through Friday, excluding holidays, unless otherwise stipulated.

87. SAFETY DATA SHEETS (SDS): Any toxic substance provided to the City as a result of this solicitation or resultant agreement/contract shall be accompanied by its SDS.

88. ENDORSEMENTS: No endorsements by the City of the goods and/or services will be used by the vendor in any way, manner or form.

89. DRUG-FREE WORKPLACE: The Vendor shall implement and maintain a drug-free workplace program of at least the following items:

    A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

    B. Inform employees about the dangers of drug abuse in the workplace, the Vendor's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

    C. Give each employee engaged in providing the services that are under agreement/contract a copy of the statement specified in Item Number 1 above.

    D. In the statement specified in Item Number A above, notify the employees that, as a condition of providing the services that are under agreement/contract, the employee will abide by the terms of the statement and will notify the Vendor of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893, Florida Statutes, or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) calendar days after such conviction or plea.

    E. Impose a sanction on, or require satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, for any employee who is so convicted or so pleads.

    F. Make a good faith effort to continue to maintain a drug-free workplace through the implementation of Section 287.087, Florida Statutes.

90. DAVIS-BACON ACT (WHEN CONSTRUCTION AGREEMENT/CONTRACT VALUE IS GREATER THAN $2,000):

A. All transactions regarding the agreement/contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. §§3141-3144, and §§3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The vendor shall comply with 40 U.S.C. §§ 3141-3144, and §§ 3146-3148 and the requirements of 29 C.F.R. pt. 5, as may be applicable.

B. Vendors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

C. Additionally, vendors are required to pay wages not less than once a week.

91. COPELAND "ANTI-KICKBACK" ACT (WHEN CONSTRUCTION AGREEMENT/CONTRACT VALUE IS GREATER THAN $2,000):

A. The vendor shall comply with 18 U.S.C. §874, 40 U.S.C. §3145, and the requirement of 29 C.F.R pt.3 as may be applicable, which are incorporated by reference into this agreement/contract.

B. The vendor or subcontractor shall insert in any subcontracts the clause above and such other clauses as may be appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The prime vendor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with all of these agreement/contract clauses.

C. A breach of the agreement/contract clauses above may be grounds for termination of the agreement/contract, and for debarment as a vendor and subcontractor as provided in 29 C.F.R §5.12.

92. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (WHEN CONSTRUCTION AGREEMENT/CONTRACT VALUE IS GREATER THAN $150,000:

A. Overtime Requirements. No vendor or subcontractor contracting for any part of the agreement/contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (A) of this clause, the vendor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such vendor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this clause, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this clause.

C. Withholding for Unpaid Wages and Liquidated Damages. The City of Boynton Beach shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such agreement/contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or

subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

D. Subcontractors. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower-tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

93. SEISMIC SAFETY: If this solicitation pertains to the construction of new buildings or additions to existing buildings, the vendor agrees that any new building or addition to an existing building will be designed and constructed in accordance with standards outlined in U.S. Department of Transportation Seismic Safety regulations at 49 CFR Part 41 and will certify compliance to the extent required. The vendor also agrees to ensure that all work performed under the contract, including work performed by a subcontractor, and is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project. The vendor agrees to include the above clause in each subcontract related in whole or in part with this contract.

94. SEAL, LOGO, AND FLAGS: The vendor shall not use the seal(s), logos, crests, or reproductions of flags or likenesses of agency officials without specific pre-approval.

95. FORCE MAJEURE: The agreement/contract which is awarded to the successful vendor may provide that the performance of any act by the City or Vendor thereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from the performance by acts of God, pandemic, epidemic, emergency orders, the elements, war rebellion, strikes, lockouts or any cause beyond the reasonable control of such party, provided, however, the City shall have the right to provide substitute service from third parties or City forces and in such event, the City shall withhold payment due to vendor for such period of time. If the condition of force majeure exceeds a period of 14 business days the City may, at its option and discretion, cancel or renegotiate the agreement/contract.

96. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES:

A. Prohibitions. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons. Unless an exception applies, the vendor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to: (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

B. Exceptions. This Section does not prohibit vendor from providing: (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles. By necessary implication and regulation, the prohibitions also do not apply to: (i) Covered telecommunications

equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

C. Reporting requirement. In the event vendor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information required of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information. The vendor shall report the following information: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within ten (10) business days of submitting the information required of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services. The vendor shall insert the substance of this clause, including this in all subcontracts and other contractual instruments.

97. DOMESTIC PREFERENCE FOR PROCUREMENTS: As appropriate, and to the extent consistent with law, the vendor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

98. LICENSE AND DELIVERY OF WORKS SUBJECT TO COPYRIGHT AND DATA RIGHTS: If applicable, the vendor grants to City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, vendor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, vendor will deliver to the vendor data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by vendor.

99. PERSONALLY IDENTIFIBALE INFORMATION: In accordance with 2 C.F.R. §200.303, regarding internal controls of a non-Federal entity, vendor must guarantee the protection of all Personally Identifiable Information (PII) obtained. The program will enact necessary measures to ensure PII of all applicants is safeguarded as to avoid release of private information. If a vendor or employee should experience any loss or potential loss of PII, the City shall be notified immediately of the breach or potential breach.

100. RIGHTS IN DATA: Except if otherwise agreed to in writing, the City shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and

documents discovered or produced by vendor pursuant to the terms of this solicitation, including but not limited to reports, memoranda or letters concerning the research and reporting tasks required.

101. INSPECTION AND ACCEPTANCE: (a) The City has the right to review, require correction, if necessary, and accept the work products produced by the vendor. Such review(s) shall be carried out within thirty (30) calendar days so as to not impede the work of the vendor. Any product of work shall be deemed accepted as submitted if the City does not issue written comments and/or required corrections within thirty (30) calendar days from the date of receipt of such product from the vendor. (b) The vendor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the City within seven (7) business days of notification or a later date if extended by the City. (c) Failure by the vendor to proceed with reasonable promptness to make necessary corrections shall be a default. If the vendor's submission of corrected work remains unacceptable, the City may terminate the resulting contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

102. DOCUMENTATION OF COSTS: All costs shall be supported by properly executed payrolls, time records, invoices, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the resulting contract/agreement, shall be clearly identified and regularly accessible.

103. DISBURSEMENT OF GRANTS AND AIDS APPROPRIATONS FOR LOBBYING PROHIBITED: As provided in F.S. 216.347, a state agency, a water management district, or the judicial branch may not authorize or make any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency. The provisions of this section are supplemental to the provisions of s.11.062 and any other law prohibiting the use of state funds for lobbying purposes. However, for the purposes of this section and s. 11.062, the payment of funds for the purpose of registering as a lobbyist shall not be considered a lobbying purpose.

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SECTION 5 – PROPOSAL SUBMISSION REQUIREMENTS

5.1 SUBMISSION OF PROPOSALS

A. **General Requirements.** The purpose of the Technical Proposal is to demonstrate the qualifications, competence, and capacity of the Firms seeking to undertake the requirements of this Request for Qualifications. As such, the substance of the Proposal will carry more weight than their length, form, or manner of presentation. The Technical Proposal should demonstrate the qualifications of the Firm and the particular staff to be assigned to their engagement. It should also specify an approach that will meet or exceed the Request for Qualifications requirements.

The selected Firms shall provide sufficient organization, personnel, and management to carry out the requirements of this RFQ in an expeditious and economical manner, consistent with the needs of the City. Additionally, the selected Firm will be required to demonstrate recent experience with the successful completion of services similar to those specified within this RFQ.

B. **Certification and Licenses.** Proposers must include with their Proposals, copy(ies) of all applicable certificates and licensing and business permits related to the Work specified herein.

C. **Detailed Proposal.** The detailed Proposal should follow the order set forth in Section 5 of this Request for Qualifications.

1. Letter of Interest

The Letter of Interest shall ~~be a maximum of one (1) page that~~ summarize~~s~~ the Proposer's primary qualifications and a firm commitment to provide the proposed services. The Letter of Interest shall be signed by the Proposer or person authorized to bind the Proposer to the submitted RFQ.

2. Firm's qualification and ability, knowledge of project scope, design criteria, and past performance to satisfy the requirements of the project
   a) Complete and submit Proposer's Qualification Statement, herein.
   b) Describe the knowledge of the project scope, design criteria, and past performance to satisfy the requirements of the project.
   ~~Provide at least three (3) reference projects of a similar size, scope, and complexity that have been completed by your firm within the last five (5) years which demonstrate the experience of the firm and the team that will be assigned to provide the services as required by this Project. A project similar in scope is defined as a project, which includes some or all of the following components: design of~~

~~new or improvements to water treatment plant processes, technologies, and engineering consulting. A project similar in size is defined as a project that was at least $5,000,000 in cost (design and construction).~~

~~For each reference project, provide the following information:~~

1) ~~Client name/Owner's Representative name, address, phone number, and email.~~
2) ~~Name and location of the project. Description of the Scope of Work.~~
3) ~~Role your company provided.~~
4) ~~Date project was completed or is anticipated to be completed.~~
5) ~~Size of project (gross square feet of construction)~~
6) ~~Original Owner Budget vs. Final Cost~~
7) ~~Saving achieved through Value Engineering or other innovative design approaches~~
8) ~~The total amount of approved Change Orders.~~
9) ~~The dollar amount of fees for Pre-Construction Services.~~
10) ~~Present status of the project.~~
    1 ~~If the Proposer is a joint venture or consortium, the qualifications of each firm comprising the joint venture or consortium should be separately identified, and the Firm that is to serve as the principal consulting firm should be noted, if applicable.~~

3. Qualifications of Project Team, (key project members), demonstrated experience with similar project scope and Availability of Specialty Resources.

   Provide an overview of the qualifications of a specific project team to be provided by the Design Team to perform the requested services. Specify and present as a minimum, similar experience in the design and construction of municipal Water Treatment Plant projects. Identify the principal and management staff who would be assigned to the project as follows:

   a) An organizational chart that clearly defines the lines of authority.
   b) The names and roles of each professional to be assigned to this project, including familiarity with projects of a similar nature.
   c) The estimated amount of involvement expressed as a percentage of time, of each of the staff members.
   d) Brief resumes of academic training and employment in the applicable fields.
   e) Experience of identified staff members with differing regulatory agencies that may be associated with these services.
   f) Availability location and workload of the proposed team including:
      1) Current project work listing and remaining labor commitments.
      2) Historically, describe the typical number of projects handled by the Proposer's key project managers at given time.
      3) Projected workload of project management activities as defined in the scope of services.
      4) Identification of any Subconsultant - firms providing significant services that may be assigned more than five (5%) of the work.

4. Approach and understanding of the project, Demonstrated Skill Set, Innovation in Project Approach, and Solution, quality of written response including meeting schedule requirements:

a) Narrative of Project and Understanding of the Project Issues: Provide a narrative demonstrating the Proposer's understanding of the project goals, requirements, objectives, challenges, ~~the project delivery method~~, and how the Proposer intends to ensure that the scope, budget, and schedule will be met.
b) Discuss how the proposer intends to use innovative approaches and/or best practices to achieve results to meet regulatory requirements while providing the City treatment options considering quality, cost and time as they relate to any and all aspects of options evaluations, feasibility plan, recommended design, permitting, pre-construction services as well as construction management.
c) Cost Effectiveness of Proposed Solutions: Provide a description of the Proposer's approach to cost estimating during the various phases of the design (i.e. conceptual, schematic, final, and construction documents). Indicate the methodology and estimating system used in preparation of estimates. Discuss any best practice techniques such as value engineering and constructability reviews if applicable.
d) Discuss the cost effectiveness of the proposed solutions, taking into account expected life of the equipment, capital costs and operating and maintenance costs over the life of the equipment.
e) Explain how Proposer intends to meet the budgetary goals and timetables using the Design and Performance Criteria herein to include the following:
    1) Description of change order controls.
    2) Description of permitting approach.
f) Project Management Reporting: Provide an explanation of how the firm proposes to manage and report each aspect of the Project to realize budgetary goals, timetables, and quality control objectives.
g) Submit a comprehensive Project Management Reporting system to include but not limited to narrative reporting, schedule controls, cost controls and estimating, project accounting, accounting, and payment and action controls. Describe project communication tools to ensure streamlined information to the project team as well as the plan for public relations and conflict resolution if any needed with the community as part of design and construction management, specifically regarding emerging contaminants information.

~~Approach and understanding of the project, Demonstrated Skill Set, Innovation in Project Approach, and Solution, quality of written response including meeting schedule requirements.~~

~~a) Discuss how the Proposer intends to use innovative approaches and/or best practices to achieve results considering safety, quality, cost, and time as they relate to any and all aspects of design, equipment, materials, pre-construction services, and construction.~~
~~b) Discuss how the Proposer will utilize best practice techniques such as value engineering and constructability reviews, and provide evidence of previous experience with any of the methodologies presented.~~
~~c) Discuss in detail, the development of a mitigation strategy covering major events that might impact the Project such as severe weather or protracted loss of treatment capacity caused by work within the Project.~~
~~d) Provide a schedule which details the Proposer's proposed activities and how the Proposer intends to meet the required in-service date.~~
~~e) Provide a strategy the Proposer will employ for subcontracting work to include how local contractors will be utilized. Address the Proposer's approach to implementation of Quality Control/Quality Assurance plan for both self-performing and subcontracted work.~~
~~f) Describe project communication tools to ensure streamlined information to the Project Team.~~
~~g) Describe the plan for public relations and conflict resolution with the community~~

~~during construction.~~

5. References – Past Performance

Provide three (3) reference projects of a similar size, scope, and complexity for which the Proposer has completed or are in progress within the past five (5) years ~~with the following information: 1) Name of Agency, 2) Name of Project, 3) Address and 4) Contact Name, Email Address, and Telephone Number.~~ which demonstrates the experience of the firm and the team that will be assigned to provide the services as required by this Project. At a minimum two (2) references should be of completed projects and one (1) reference can be of an ongoing project. A project similar in scope is defined as a project, which includes some or all of the following components: design of new or improvements to water treatment plant processes, technologies, and engineering consulting. A project similar in size is defined as a project that was at least $5,000,000 in cost (design and construction). The City is interested in learning about other firms' or government agencies' experiences with your firm; as such, **please do not list the City of Boynton as a reference.**

For each reference project, provide the following information:

1) Client name/Owner's Representative name, address, phone number, and email.
2) Name and location of the project. Description of the Scope of Work.
3) Role your company provided.
4) Date project was completed or is anticipated to be completed.
5) Saving achieved through Value Engineering or other innovative design approaches.
6) The total amount of approved Change Orders.
7) Present status of project.
    1. If the Proposer is a joint venture or consortium, the qualifications of each firm comprising the joint venture or consortium should be separately identified, and the Firm that is to serve as the principal consulting firm should be noted, if applicable.

Contact persons must be informed that they are being used as a reference and that the City or their designee will be contacting them for information. Selection Committee Members or designee will **email** and or **call** each reference up to three (3) times. If there is no answer after the third attempt, the City will apply no points toward the evaluation criteria.

***Note the City will not attempt to correct any of the supplied contact information, it is the responsibility of the Proposer to supply correct reference contact information.**

6. Submittal of General Information and Procurement Forms and Documents

Procurement forms must be completed, signed, notarized, uploaded, and or acknowledged when required and submitted. In addition, all other requests and supporting documentation must be included in order for your submittal to be completed and accepted.

1. Online Acknowledgement

☐Proposer Acknowledgement
☐Addenda Acknowledgement
☐Confirmation of Drug-Free Workplace
☐Palm Beach Inspector General

2. Online Forms

- ☐ Letter of Interest
- ☐ Confirmation of Minority-Owned Business
- ☐ Schedule of Sub-Consultants
- ☐ References ~~- Max (4)~~

3. Upload Online

- ☐ Proposers Qualification Statement
- ☐ Anti-Kickback Affidavit
- ☐ Non-Collusion Affidavit of Proposer
- ☐ Certification Pursuant to Florida Statute § 287.135
- ☐ Submit current Florida Professional License, including evidence of possession of required licenses and business permits
- ☐ E-Verify Form Pursuant to Florida Statute § 448.095
- ☐ Affidavit of Compliance with Foreign Entity Laws
- ☐ Affidavit of Compliance with Anti-Human Trafficking Laws
- ☐ Proposer's Site Inspection Confirmation
- ☐ Byrd Anti-Lobbying Certification
- ☐ Resumes
- ☐ Certification Regarding Debarment, Suspension, Ineligibility & Voluntary Exclusion Form
- ☐ Organizational Chart
- ☐ Submit any Supplemental information relative to this RFQ
- ☐ W-9

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SECTION 6 – EVALUATION OF PROPOSALS

6.1 SUBMISSION OF PROPOSALS

A. Request for Qualification Requirements

The Selection Committee will review and evaluate all proposals submitted in response to this solicitation. The Committee shall conduct a preliminary evaluation of all responses based on the information provided and other evaluation criteria as set forth in this solicitation. The selection of the best-qualified Respondent(s) will be based on whether the Respondent(s) are responsible and responsive to this solicitation, and will be evaluated as follows:

The determination shall be based upon the following criteria and respondents shall provide, as a minimum the information listed under each criterion. The Qualification Package is designed to provide information about your firm. Therefore, the said information will be used in evaluating the firm's qualifications to perform the advertised work. Proposals will be evaluated by the Selection Committee in accordance with weighted criteria listed below:

Evaluation Criteria	Point Range
Firm's qualification and ability, knowledge of project scope, design criteria and past performance to satisfy the requirements of the project.	0 – 30
Qualifications of Project Team, (key project members), demonstrated experience with similar project scope and Availability of Specialty Resources	0 – 30
Approach and understanding of the project, Demonstrated Skill Set, Innovation in Project Approach, and Solution, quality of written response including meeting schedule requirements.	0 – 30
References of Past Performance	0 – 10
TOTAL POINTS	**0 – 100**

B. Selection Process

1. A Selection and Evaluation Committee consisting of the City's staff members, and may include outside consultants as deemed necessary, will review each written submission for

compliance with the requirements of the RFQ, including verifying that each Proposal includes all documents required. In addition, the Committee will ascertain whether the provider is qualified to render the required services according to State regulations and the requirements of this RFQ.

2. In the event less than three (3) firms express interest in a solicitation or less than three (3) are deemed qualified by the Selection Committee, the Procurement Services shall make a determination as to whether to proceed with the lesser number of firms. If the decision is to re-advertise, and after a subsequent advertisement, resulting in three (3) firms that still cannot be qualified, then the City shall proceed hereunder with the qualified firms.

3. The Selection Committee will evaluate, score, and rank all responsive and responsible proposals based on the requirements of the RFQ and may create a short list of a minimum of three (3) firms deemed to be the most highly qualified to perform the required services. In the event there are less than three (3) responsive proposals, the committee will give further consideration to all responsive proposals received.

4. The Selection Committee may at its sole discretion, request additional information or clarification of any information submitted by Respondent(s).

5. The Selection Committee will conduct discussions, interviews, or require presentations from the shortlisted firms. Upon completion of the discussions, interviews, or presentations, the Committee will re-evaluate, re-rate, and re-rank the proposals remaining in consideration based upon the evaluation criteria listed above.

6. After the final ranking is completed, the City will present the short-listed firm to the City Commission for approval to negotiate the fees for future projects. The negotiated fees will be included in an agreement based on the attached draft contract found in Appendix “B” and developed from this Request for Qualifications.

7. After the negotiation of the final contract and fees, the committee recommendation for award will be submitted to the City Commission for approval.

8. The City reserves the right to include additional provisions if the inclusion is in the best interest of the City, as determined solely by the City. Assuming the successful negotiation of an agreement, the final contract will be submitted to the City Commission for their consideration and approval.

9. Should the City fail to negotiate a satisfactory contract as determined to be fair and competitive with the highest-ranked firm, negotiations will formally be terminated. The City will then undertake negotiations with the second-ranked firm. Should negotiations fail also with the second-ranked firm, then third-ranked proposer will be notified for negotiations.

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EAST AND WEST WATER PLANT UPGRADES AND TREATMENT OPTIONS EVALUATION, PLANNING, AND DESIGN FOR EMERGING CONTAMINANTS REMOVAL – ENGINEERING SERVICES (GRANT/LOAN FUNDED)

RFQ No.: UTL24-031

SECTION 7 – SPECIAL CONDITIONS

It will be the responsibility of the successful Vendor to supply the necessary labor for the completion of services if requested by the City of Boynton Beach.

The City by written notice may terminate in whole or in part any Contract resulting from this RFQ when such action is in the best interest of the City. If the Contract(s) are so terminated the City shall be liable for only payment for services rendered prior to the effective date of termination. Services rendered will be interpreted to include costs of items already delivered plus reasonable costs of supply actions short of delivery.

It shall be the responsibility of the successful Vendor to maintain workers' compensation insurance, professional liability, property damage liability insurance, and vehicular liability insurance; during the time any of his/her personnel are working on City of Boynton Beach property. Loss by fire or any other cause shall be the responsibility of the vendor until such time as the items and/or work have been accepted by the City. The successful Vendor shall furnish the City with a certificate of insurance after award has been made prior to the start of any work on City property. Said insured companies must be authorized to do business in the State of Florida and the City will not accept any company that has a rating less than B+ in accordance to A.M. Best's Key Rating Guide, latest edition.

The City of Boynton Beach reserves the right, before awarding a Contract to require a Vendor to submit such evidence of qualifications as it may deem necessary, and may consider any evidence available to it of the financial, technical, and other qualifications and abilities of a Vendor, including past performance (experience) with the City in making the award in the best interest of the City.

The successful Vendor shall at all times guard from damage or loss of property of the City or of other Vendors, Contractors, or Consultants and shall replace and/or repair any loss or damage unless such has been proven to have been caused by the City, other vendors, Contractors, or Consultants. The City may withhold payment or make such deductions as it may deem necessary to insure reimbursement for loss or damage to property through negligence of the successful Vendor or his/her agent.

PERFORMANCE EVALUATION:

The awarded Vendor (s) will receive an annual performance evaluation by City Staff during the course of the project term. The City's Project Manager shall complete performance evaluations at the mid-point of the project term or more frequent intervals as required by the Task Order **and** at the time of Contract completion.

The City's Project Manager shall contact a Procurement representative to advise of any performance issues so that Procurement can assist with efforts to bring performance back to acceptable standards. It is equally important to complete the Performance Evaluation Form whenever any of the performance indicators are either "marginal" or "unsatisfactory". In the event the Average Rating Score is "marginal" or "unsatisfactory" even after reasonable efforts have been taken by the City to improve performance, the City's Project

Manager shall coordinate with Procurement to determine what action needs to be taken under the circumstances.

The Contract Performance Evaluation form enclosed within this document illustrates a sample evaluation form to be used by the City for the various types of services provided by the Vendor.

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APPENDIX "A"

THE DOCUMENTS

BEHIND THIS PAGE

MUST ACCOMPANY PROPOSAL

IN ORDER FOR SUBMITTAL

TO BE CONSIDERED

COMPLETE AND ACCEPTABLE

PROPOSER'S QUALIFICATION STATEMENT

TO BE COMPLETED AND UPLOADED ONLINE

The undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter:

Submitted By:

Name: _____

Address: _____

City, State, Zip: _____

Telephone No.: _____

Email Address.: _____

Check One	
Corporation	☐
Partnership	☐
Individual	☐
Other	☐

1. State the true, exact, correct, and complete name of the partnership, corporation, trade, or fictitious name under which you do business and the address of the place of business.

   The correct name of the Proposer is:

   _____

   The address of the principal place of business is:

   _____

   _____

2. If Proposer is a corporation, answer the following:

   a. Date of Incorporation: _____
   b. State of Incorporation: _____
   c. President's name: _____
   d. Vice President's name: _____
   e. Secretary's name: _____
   f. Treasurer's name: _____
   g. Name and address of Resident Agent: _____

3. If Proposer is an individual or a partnership, answer the following:

   a. Date of organization: _____
   b. Name, address, and ownership units of all partners:

   _____

_____

_____

c. State whether general or limited partnership: _____

4. If Proposer is other than an individual, corporation or partnership, describe the organization and give the name and address of principals:

_____

_____

_____

5. If Proposer is operating under a fictitious name, submit evidence of compliance with the Florida Fictitious Name Statute.

_____

6. How many years has your organization been in business under its present business name?

_____

Under what other former names has your organization operated?

_____

_____

_____

7. Indicate registration, license numbers or certificate numbers for the businesses or professions, which are the subject of this RFQ. Please attach certificate of competency and/or state registration.

_____

_____

_____

8. Did you attend the Pre-Proposal Conference if any such conference was held?

YES ☐ NO ☐

9. Have you ever failed to complete any work awarded to you? If so, state when, where and why:

_____

_____

_____

10. List the pertinent experience of the key individuals of your organization (continue on insert sheet, if necessary)

_____

_____

_____

11. State the name of the individual who will have personal supervision of the work:

_____

12. State the name and address of attorney, if any, for the business of the Proposer:

_____

_____

_____

13. State the names and addresses of all businesses and/or individuals who own an interest of more than five percent (5%) of the Proposer's business and indicate the percentage owned of each such business and/or individual:

_____

_____

_____

14. State the names, addresses, and the type of business of all firms that are partially or wholly owned by Proposer:

_____

_____

_____

15. State the name of Surety Company which will be providing the bond (if applicable), and name and address of agent:

_____

_____

_____

18. Annual Average Revenue of the Proposer for the last three years as follows:

		Revenue Index Number
a.	Government Related Work	
b.	Non-Governmental Related Work	
	Total Work (a +b):	

Revenue Index Number

1.	Less than $100,000
2.	$100,000 to less than $250,000
3.	$250,000 to less than $500,000
4.	$500,000 to less than $1 million
5.	$1 million to less than $2 million
6.	$2 million to less than $5 million
7.	$5 million to less than $10 million
8.	$10 million to less than $25 million
9.	$25 million to less than $50 million
10.	$50 million or greater

19. Bank References:

Bank **Address** **Telephone**

_____

_____

_____

_____

THIS PAGE TO BE SUBMITTED IN ORDER FOR PROPOSAL PACKAGE TO BE CONSIDERED COMPLETE AND ACCEPTABLE

20. Provide description of policies and methods for project monitoring and budgeting control as well as adherence to project schedule (continue on insert sheet, if necessary).

_____

_____

_____

_____

_____

_____

21. Provide descriptions of quality assurance/quality control management methods (continue on insert sheet, if necessary):

_____

_____

_____

_____

_____

24. What will be your turnaround time for written responses to City inquires?

_____

25. List and describe all bankruptcy petitions (voluntary or involuntary) which have been filed by or against the Proposer, its parent or subsidiaries or predecessor organizations during the past five (5) years. Include in the description, the disposition of each such petition.

_____

_____

_____

_____

26. List all claims, arbitrations, administrative hearings and lawsuits brought by or against the Proposer or its predecessor organization(s) during the last five (5) years. The list shall include all case names, case arbitration or hearing identification numbers, the name of the project which the dispute arose, and a description of the subject matter of the dispute.

_____

_____

_____

_____

_____

27. List and describe all criminal proceedings or hearings concerning business related offenses to which the Proposer, its principals or officers or predecessors' organization(s) were defendants.

_____

_____

_____

_____

28. Has the Proposer, its principals, officers or predecessors' organization(s) been Convicted of a Public Entity Crime, debarred or suspended from bidding by any government during the last five (5) years? If so, provide details.

_____

_____

_____

_____

The Proposer acknowledges and understands that the information contained in response to this Qualification Statement shall be relied upon by owner in awarding the contract and such information is warranted by Proposer to be true. The discovery of any omission or misstatement that materially affects the Proposer's qualifications to perform under the contract shall cause the owner to reject the proposal, and if after the award, to cancel and terminate the award and/or contract.

(Signed)_____

(Title)_____

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 20__, by _____, who is personally known to me or who has produced _____ as identification.

Subscribed and sworn to before me

This _____day of _____, 202_

_____

Notary Public (Signature)

My Commission Expires:

_____

_____

"OFFICIAL NOTARY SEAL" STAMP

THIS PAGE TO BE SUBMITTED IN ORDER FOR PROPOSAL PACKAGE TO BE CONSIDERED COMPLETE AND ACCEPTABLE

ANTI-KICKBACK AFFIDAVIT

TO BE COMPLETED AND UPLOADED ONLINE

STATE OF FLORIDA)
: SS
COUNTY OF PALM BEACH)

I, the undersigned hereby duly sworn, depose and say that no portion of the sum herein submitted will be paid to any employees of the City of Boynton Beach as a commission, kickback, reward of gift, directly or indirectly by me or any member of my integrator or by an officer of the corporation.

By: _____
NAME - SIGNATURE

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 20__, by _____, who is personally known to me or who has produced _____ as identification.
Sworn and subscribed before me
this _____ day of _____ , 202_

Printed Information:

_____
NAME

_____
TITLE

_____
NOTARY PUBLIC, State of Florida
at Large

_____
COMPANY

_____
"OFFICIAL NOTARY SEAL" STAMP

THIS PAGE TO BE SUBMITTED IN ORDER FOR PROPOSAL PACKAGE TO BE CONSIDERED COMPLETE AND ACCEPTABLE

NON-COLLUSION AFFIDAVIT OF RESPONDENT

TO BE COMPLETED AND UPLOADED ONLINE

State of _____)
:
County of_____)

_____, being first duly sworn, deposes and says that:

1) He/She is _____ of _____, the proposer that
(Title) (Name of Corporation or Integrator)
has submitted the attached RFQ:

2) He/She is fully informed respecting the preparation and contents of the attached submittal and of all pertinent circumstances respecting such submittal;

3) Said RFQ is genuine and is not a collusive or sham RFQ;

4) Further, the said proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other proposer, integrator or person to submit a collusive or sham RFQ in connection with the Contract for which the attached RFQ has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communications or conference with any other proposer, integrator or person to fix the price or prices in the attached RFQ or of any other proposer, or to fix any overhead, profit or cost element of the RFQ price or the RFQ price of any other proposer, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the **City of Boynton Beach** or any person interested in the proposed Contract; and

5) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Signed)_____

(Title)_____

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 20__, by _____, who is personally known to me or who has produced _____ as identification.

_____
Notary Public (Signature)

My Commission Expires: _____

THIS PAGE TO BE SUBMITTED IN ORDER FOR PROPOSAL PACKAGE TO BE CONSIDERED COMPLETE AND ACCEPTABLE

CERTIFICATION PURSUANT TO FLORIDA STATUTE § 287.135
TO BE COMPLETED AND UPLOADED ONLINE

I, _____, on behalf of _____ certify

Print Name and Title Company Name

that _____does not:

Company Name

1. Participate in a boycott of Israel; and
2. Is not on the Scrutinized Companies that Boycott Israel List; and
3. Is not on the Scrutinized Companies with Activities in Sudan List; and
4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
5. Has not engaged in business operations in Syria.

Submitting a false certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to the Vendor of the City's determination concerning the false certification. The Vendor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Vendor does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute § 287.135.

Section 287.135, Florida Statutes, prohibits the City from:

1) Contracting with companies for goods or services if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel; and

2) Contracting with companies, for goods or services that are on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector list, created pursuant to Section 215.473, or are engaged in business operations in Syria.

As the person authorized to sign on behalf of the Vendor, I hereby certify that the company identified above in the section entitled "Vendor Name" does not participate in any boycott of Israel, is not listed on the Scrutinized Companies that Boycott Israel List, is not listed on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, and is not engaged in business operations in Syria. I understand that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. I further understand that any contract with the City for goods or services may be terminated at the option of the City if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan list or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

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_____ _____

COMPANY NAME SIGNATURE

_____ _____

PRINT NAME TITLE

_____

DATE

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 20__, by _____, who is personally known to me or who has produced _____ as identification.

Subscribed and sworn to before me
This _____day of _____, 202_

_____
Notary Public (Signature)

_____
My Commission Expires:

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CITY OF BOYNTON BEACH
E-VERIFY FORM UNDER SECTION 448.095, FLORIDA STATUTES

TO BE COMPLETED AND UPLOADED ONLINE

Project Name: **EAST AND WEST WATER PLANT UPGRADES AND TREATMENT OPTIONS EVALUATION, PLANNING, AND DESIGN FOR EMERGING CONTAMINANTS REMOVAL – ENGINEERING SERVICES (GRANT/LOAN FUNDED)**

Solicitation No.: **UTL24-031**

1. Definitions:
   "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.

   "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

   "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

2. Effective January 1, 2021, Contractors, shall register with and use the E-Verify System in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

   a) All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and
   b) All persons (including sub-vendors/sub-consultants/sub-contractors) assigned by Contractor to perform work pursuant to the contract with the City of Boynton Beach. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Boynton Beach; and
   c) Should contractor become the successful Contractor awarded for the above-named project, by entering into the contract, the Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract.

3. Contract Termination

   a) If the City has a good faith belief that a person or entity with which it is contracting has knowingly violated s. 448.09 (1), Fla. Stat., the contract shall be terminated.

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b) If the City has a good faith belief that a subcontractor knowingly violated s. 448.095 (2), Fla. Stat., but the Contractor otherwise complied with s. 448.095 (2), Fla. Stat., shall promptly notify the Contractor and order the Contractor to immediately terminate the contract with the subcontractor.
c) A contract terminated under subparagraph a) or b) is not a breach of contract and may not be considered as such.
d) Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination.
e) If the contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination.

Company Name:
Authorized Signature:
Print Name:
Title
Date:
Phone:

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of □ physical presence or □ online notarization, this ____ day of _____, _____, by _____ on behalf of _____. He/she is personally known to me or has produced _____ as identification.

_____
NOTARY PUBLIC

_____
(Name of Notary Typed, Printed or Stamped)

_____
Title or Rank

_____

Serial number, if any

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AFFIDAVIT OF COMPLIANCE WITH FOREIGN ENTITY LAWS

TO BE COMPLETED AND UPLOADED ONLINE

The undersigned, on behalf of the entity listed below ("Entity"), hereby attests under penalty of perjury as follows:

1. Entity is not owned by the government of a foreign country of concern as defined in Section 287.138, Florida Statutes. (Source: § 287.138(2)(a), Florida Statutes)

2. The government of a foreign country of concern does not have a controlling interest in Entity. (Source: §287.138(2)(b), Florida Statutes)

3. Entity is not organized under the laws of, and does not have a principal place of business in, a foreign country of concern. (Source: § 287.138(2)(c), Florida Statutes)

4. The undersigned is authorized to execute this affidavit on behalf of Entity.

Date: _____, 20___ Signed: _____

Entity: _____ Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by _____, as _____ for _____, who is personally known to me or who has produced _____ as identification.

Notary Public Signature: _____ State of Florida at Large (Seal)

Print Name: _____

My commission expires: _____

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AFFIDAVIT OF COMPLIANCE WITH ANTI-HUMAN TRAFFICKING LAWS

TO BE COMPLETED AND UPLOADED ONLINE

In accordance with section 787.06 (13), Florida Statutes, the undersigned, on behalf of the entity listed below ("Entity"), hereby attests under penalty of perjury that:

Entity does not use coercion for labor or services as defined in Section 787.06, Florida Statutes, entitled "Human Trafficking."

Date: _____, 20___ Signed: _____

Entity: _____ Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by _____, as _____ for _____, who is personally known to me or who has produced _____ as identification.

Notary Public Signature: _____ State of Florida at Large (Seal)

Print Name: _____

My commission expires: _____

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PROPOSER'S SITE INSPECTION CONFIRMATION
TO BE COMPLETED AND UPLOADED ONLINE

Check One:

☐ NON-MANDATORY ☒ **MANDATORY**

RFQ TITLE: **EAST WATER TREATMENT PLANT AND WEST WATER TREATMENT PLANT UPGRADES AND TREATMENT OPTIONS EVALUATION, PLANNING, AND DESIGN FOR EMERGING CONTAMINANTS REMOVAL – ENGINEERING SERVICES (GRANT/LOAN FUNDED)**

RFQ NO.: **UTL24-031**

_____ as an authorized representative of:
(Name and Title of Representative)

_____ (hereinafter called the Vendor) located at
(Name of Company)

_____ and that said
Company Address

Vendor has visited the site of the work and has carefully examined the plans and specifications for said project and checked them in detail before submitting his bid or proposal.

_____
DATE OF INSPECTION

_____
COMPANY REPRESENTATIVE SIGNATURE

_____
TITLE

_____
OWNER'S REPRESENTATIVE (City) **DATE**

SIGNATURES FOR MANDATORY SITE INSPECTION

Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion

Sub-Proposer Covered Transactions

The prospective Sub-Proposer, _____, of the Sub-Recipient certifies, by submission of this document, that neither it, its principals, nor affiliates are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this transaction by any Federal department or agency.

Sub-Proposer - Company

_____ City of Boynton Beach
Sub-Recipient's Name

By: _____ DW501300
SIGNATURE Florida Department of Environmental Protection

_____
Name and Title

_____
Street Address

_____
City, State, Zip

_____
Date

(Drinking Water SRF Loan)

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BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION

(To be submitted with each proposal or offer exceeding $100,00)

The undersigned, [Company] _____ certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

_____
Signature of Vendor’s Authorized

_____
Official Name Title of Vendor’s

_____
Authorized Official

_____
Date

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks “Subawardee,” then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., “RFP-19-90- 001.”

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

OMB

`Approved by

0348-0046

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	**2. Status of Federal Action:**	**3. Report Type:**
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For material change only:** Year _____ Quarter _____ Date of last report _____

4. Name and Address of Reporting Entity:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:**
☐ **Prime** ☐ **Subawardee** Tier_____, if known: Congressional District, *if known:*_____	 Congressional District, *if known:*_____
6. Federal Department/Agency:	**7. Federal Program Name/Description:**
	CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* $
10. a. Name and Addres of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*
11. Information required through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	**Signature :** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

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APPENDIX "B"

DRAFT

CONTRACT AGREEMENT

DRAFT

EAST AND WEST WATER PLANT UPGRADES AND TREATMENT OPTIONS EVALUATION, PLANNING, AND DESIGN FOR EMERGING CONTAMINANTS REMOVAL – ENGINEERING SERVICES (GRANT/LOAN FUNDED)

SUBJECT TO REVISIONS PRIOR TO SIGNING

THIS AGREEMENT ("Agreement"), is entered into between the City of Boynton Beach, a municipal corporation organized and existing under the laws of Florida, with a business address of 100 East Ocean Ave., Boynton Beach, FL 33435, hereinafter referred to as "CITY", and _____ a [type of entity: corporation/partnership/sole proprietor] authorized to do business in the State of Florida, with a business address of _____, hereinafter referred to as "VENDOR" each a "Party" and collectively the "Parties". In consideration of the mutual benefits, terms, and conditions hereinafter specified the Parties agree as set forth below.

WHEREAS, the CITY solicited proposals for a contract to perform Engineering Consultant Services, and

WHEREAS, the CITY issued a Request for Qualification for East and West Water Plant Upgrades and Treatment Options Evaluation, Planning, and Design for Emerging Contaminants Removal – Engineering Services (Grant/Loan Funded), RFQ No. UTL24-031 ("RFQ"); and

WHEREAS, the CITY determined that VENDOR was qualified for appointment to perform the scope of services set forth in the RFQ; and

WHEREAS, the CITY Commission on [____], determined that VENDOR was qualified for appointment to perform the scope of services set forth in the RFQ; and

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, the parties agree as follows:

ARTICLE 1 – SERVICES.

1.1 VENDOR hereby agrees to perform all consulting and engineering services required for the East and West Water Plant Upgrades and Treatment Options Evaluation, Planning, and Design for Emerging Contaminants Removal – Engineering Services – (Grant/Loan Funded), including the facilities plan for State Revolving Fund (SRF) Drinking Water Program, design, bid document preparation, permitting, bidding assistance and construction management for construction projects at both plants based on the recommended treatment option. The terms and conditions of RFQ No. UTL24-031 and the VENDOR's proposal are expressly incorporated into this Agreement by reference. Any conflict or discrepancy between the terms of this Agreement, RFQ UTL24-031, and VENDOR's proposal, shall be resolved pursuant to the following order of precedence (1) this Agreement (2) RFQ No. UTL24-031; and (3) VENDOR's Proposal.

1.2 VENDOR shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.

1.3 VENDOR shall complete all work in accordance with the phases of services described below, as more specifically described in the RFQ. The work will be further defined in a Task Order issued for each phase. Each Task Order will include the specific scope, fees based

on established hourly rates, a schedule, and deliverables in accordance with Section 1.11 below.

1.4 **Phases of Professional Services**

The services provided under this Agreement ("**Professional Services**") intended to be compensated by the Fees shall be categorized into the following phases of service, as applicable:

1. Pre-Design Analysis (or Planning/Study/Report) Phase (expected to complete within 9-12 months)
2. Preliminary Design Phase and Estimated Construction Costs
3. Final Design and Construction Documents Phase and Estimated Construction Costs
4. Permitting Phase (expected to complete Phases 2, 3, 4 within 9 months)
5. Bidding and Negotiation Phase (expected to complete in 3-4 months)
6. Construction Administration Phase (To be Determined)

1.5 **Pre-Design Analysis (or Planning/Study/Report) Phase**

1.5.1 Scope. *If the scope of Professional Services includes pre-design analysis or preparation of planning/study/report,* the VENDOR shall: i) Consult with the City regarding the requirements and budget allocations for the scope of services/Project and review available data; ii) Advise the City as to the necessity of any additional services from other technical professionals; iii) Provide analyses of the City's needs, surveys, site evaluations, environmental assessments, utility locations and comparative studies of solutions; and iv) Provide a general economic analysis of the requirements applicable to various alternatives; and identify any areas of the task that can be properly value-engineered to produce a savings in the Project construction cost.

1.5.2 Deliverables:

(a) *If the scope of Professional Services includes design services*:

i. Prepare conceptual design criteria with appropriate sketches or exhibits, and identify in a clear manner the considerations involved and the alternative solutions available, as well as VENDOR's recommendations (the "**Pre-Design Analysis**"). The Pre-Design Analysis may include any pilot or bench scale study, shall be accompanied by VENDOR's preliminary estimate of total construction costs for the Project. Provide short term solutions to meet EPA requirements until recommended alternative treatment process construction is completed.

(b) *If the scope of Professional Services includes a Study or Report*: Prepare a report which report shall identify in a clear manner the issue and considerations involved; VENDOR's findings; the alternative solutions available, estimated costs, as well as VENDOR's recommendations; and shall include appropriate exhibits (the "**Study Report**"). Will require a Facility Plan with the alternative options evaluation to meet DWSRF loan requirements.

1.5.3.Presentations. If requested by City, VENDOR shall attend meeting(s) with City Commissioners and/or City administration and may be asked to prepare and make presentation of the Study Report or Pre-Design Analysis.

1.6 **Preliminary Design Phase**

1.6.1 Scope. *If the scope of Professional Services includes Preliminary Design,* VENDOR shall address City's comments to the Pre-Design Analysis, and shall prepare the preliminary design package. The preliminary design package shall include the following:

(a) preliminary design drawings (20-30%), including design criteria and sketches or exhibits, including elevations, sections, site plan and additional renderings, showing the scale and relationship of project components.
(b) outline of technical specifications.

(c) Estimated Construction Cost, in accordance with Section 5.
(d) Location map exhibits and renderings
(e) Survey and existing utilities as-builts
(f) Utilities coordination documentations
(g) Environmental documents (if applicable)

(the "**Preliminary Design Package**").

1.6.2. Deliverable: The Preliminary Design Package for review and comment by the City.

1.6.3 Outreach. If requested, VENDOR shall assist the City with any public communication/information program during this phase or any other phase of the project, including neighborhood presentations. Such assistance shall include the development of presentation material and attendance at public meetings.

1.6.4. Presentations. If requested by City, VENDOR shall attend meeting(s) with City administration and/or City Commission and may be asked to prepare and make presentation of the Preliminary Design Package and Estimated Construction Cost.

1.6.5 Loan/Grant management and reporting. If requested, VENDOR shall assist the City with managing and reporting requirements for any loan (including State Revolving Fund (SRF)) or grants that may be used for funding the project/study. VENDOR will assist the City in identifying and following any procurement requirements for the particular funding mechanism used.

1.7 **Final Design – Construction Documents Phase**

1.7.1 Scope. *If the scope of Professional Services includes design development of construction documents,* then on the basis of the accepted Preliminary Design Package and Estimated Construction Cost of the project, the VENDOR shall prepare, for attachment to the forthcoming construction contract, final construction drawings identifying and describing the scope, extent and character of the work to be furnished and performed by contractor(s), which comply with all applicable building codes, laws and regulations, including loan/grant/other funding mechanism requirements (the "**Final Drawings**") and technical specifications for construction of the Project (the "**Technical Specifications**") at 60%, 90% and 100% completion. The Specifications are to be prepared in conformance with the sixteen division format provided by the Construction Specifications Institute. The Technical specifications shall include a Measurement section for the bid items.

1.7.2 Schedule of bid items. Prepare, for review and acceptance by the City, a proposed schedule of bid items.

1.7.3 Estimated Construction Cost. In accordance with Article 5, modify the Estimated Construction Cost of the project necessitated by the Construction Drawings and Specifications. In the event that the Estimated Construction Cost of the Project, when combined with the total Professional Services Fee and costs; plus any Construction Contingency or allowances established by the City, exceeds the total amount budgeted for the project as established by the City, then the VENDOR shall revise and/or redesign the documents to bring the designs back within the budgeted amount, unless the City provides written approval that the Estimated Construction Cost exceeds the project budget. If the reason that the Estimated Construction Cost exceeds the budget is reasonably foreseeable at the time of performing the Professional Services, VENDOR shall provide written notification identifying the specific reason to the City immediately upon VENDOR determination that the Estimated Construction Cost may exceed the project budget, and in such case, shall await further direction from the City before proceeding further with the Professional Services. If the reason that the Estimated Construction Cost exceeds the budget was reasonably foreseeable at the time of performing the Professional Services, and the VENDOR does not notify the City and obtain written approval from the City that the Estimated Construction Cost exceeds the project budget, VENDOR shall revise and/or redesign the documents at its own cost and expense to bring the designs back

within the budgeted amount.

1.7.4 Deliverables:

(a) 60% Construction Drawings, Estimated Construction Cost and draft Technical Specifications in editable electronic format (docx,.xls, dwg, and .pdf) for the review and comments of the City;

(b) 90% Construction Drawings, Estimated Construction Cost and draft Technical Specifications in editable electronic format (docx,.xls, dwg, and .pdf) for the review and comments of the City;

(c) 100% Construction Drawings, Estimated Construction Cost and draft Technical Specifications in editable electronic format (docx,.xls, dwg, and .pdf) for the review and comments of the City;

(d) Final signed and sealed sets of final Construction Drawings, Technical Specifications and Estimated Construction Cost in electronic format (the "**Construction Drawings and Technical Specifications**") along with all supporting calculations; and any associated documents;

(e) Schedule of bid items;

(f) Estimated Construction Costs within project budget, unless otherwise accepted in writing by the City.

1.8 Permitting Phase

1.8.1 Scope. *If the scope of Professional Services includes permitting,* then in consultation with the City and on the basis of the Construction Drawings and Technical Specifications and Estimated Construction Cost of the project, VENDOR shall prepare all necessary permit applications for submission with the Construction Drawings and Technical Specifications to the regulatory agencies for appropriate permits or other approvals. VENDOR shall provide technical criteria, written descriptions and design data for the City's and VENDOR's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the project. VENDOR shall respond to any comments or requests for information from permitting authorities, and assist the City in consultations with appropriate authorities.

1.8.2 Permits. In the event that the Construction Drawings and Technical Specifications are not granted the necessary or appropriate permits or other approvals from the appropriate regulatory agencies due to design issues, VENDOR shall revise and/or redesign the documents at its own cost and expense to ensure the necessary permits and approvals are granted.

1.8.3 Permit Fees. Permit applications fees shall be determined by VENDOR and paid by the City.

1.9 Construction Bidding and Negotiation Phase

1.9.1 Scope. *If the scope of Professional Services includes the Construction Bidding and Negotiation Phase*, then in consultation with City and on the basis of the Construction Drawings and Technical Specifications, VENDOR shall review price tabulation sheets and assist the City in evaluating bids or proposals and consult with and advise the City as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the prime contractor(s) for those portions of the work as to which such acceptability is required by the procurement documents. VENDOR will identify any areas of the Project that may be properly value-engineered to produce a savings in the construction cost. VENDOR may be required to assist the City's Procurement Division in the preparation of addenda or written clarifications of additional instructions, to interpret, clarify or expand the procurement documents.

1.9.2 Bidding assistance, if requested. Only if requested, VENDOR may be required to:

(a) Participate in any pre-bid conferences and/or attend the bid opening;
(b) Assist the City in negotiating proposals for each separate prime contract for construction, materials, equipment and services.

1.10 **Construction Administration Phase**

1.10.1 Scope. *If the scope of Professional Services includes the Construction Administration Phase,* VENDOR shall consult with and advise the City and act as Owner's representative on the Project. VENDOR may be required to provide full time inspection staff as owner's representative to closely coordinate all activities with Plant operations on a daily to weekly basis. VENDOR will have limited authority to act on behalf of the City as specifically provided in this Agreement.

(a) *Site visits*. VENDOR shall conduct site visits in accordance with Section 1.10.2, herein.

(b) *Meetings.* VENDOR shall conduct weekly meetings with the City and contractor(s). VENDOR shall be responsible for preparing weekly meeting minutes and distributing them to all in attendance.

(c) *Interpretations.* VENDOR shall issue necessary interpretations and clarifications of the Construction Drawings and Technical Specifications and may issue additional instructions, by means of drawings, minor change orders or otherwise, necessary to illustrate changes in the work. Change orders shall comply with Section 1.10.3 below.

(d) *Shop drawings; Samples.* VENDOR shall timely review and approve or take other appropriate action with respect to shop drawings, samples, the acceptability of substitute materials and equipment proposed by contractor(s), and other data that the contractor(s) are required to submit to ascertain conformance to the Construction Drawings and Technical Specifications. VENDOR shall complete its review of submittals, shop drawings, samples and other data shall be completed so as not to delay the progression of the work or within fourteen (14) calendar days of receipt. The City shall be entitled to rely upon the approval of VENDOR that the shop drawings, product data, and samples approved by VENDOR conform with the Technical Specifications and design specified in the Construction Drawings, as may be amended. Such reviews and approvals or other action shall not extend to the means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

(e) *Testing*. VENDOR shall be obliged, in its role as the representative of the City on the project, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testing and approvals as required by laws, rules, regulations, ordinances, codes, orders or the contract documents to determine that the work complies with the requirements of, and that the results certified indicate compliance with the Technical Specifications.

(f) *Review of payment applications*. VENDOR shall review applications for payment and the accompanying data and schedules, VENDOR shall determine the amounts owing to contractor(s) and recommend in writing payments to contractor(s) in such amounts. Such recommendations of payment will constitute a representation to the City, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of VENDOR's knowledge, information and belief, the quality of such work is in accordance with the Construction Drawings and Technical Specifications subject to (1) an evaluation of such work as a functioning whole prior to or upon substantial completion**;** (2) the results of any subsequent tests called for in the contract documents and (3) any other qualification reasonably stated in the recommendation(s). With regard to unit price work, VENDOR's

recommendations of payment shall include final determinations of quantities and classifications of such work subject to any subsequent adjustments allowed by the Construction Drawings and Technical Specifications or terms and conditions of the construction contract for the Project.

(g) *Documentation review*. VENDOR shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals, which will be assembled by contractor(s) in accordance with the construction contract. Such review shall be limited to a determination by VENDOR that the content of said documents and instruments complies with the construction contract. In the case of certificates of inspection, tests and approvals, such review shall be limited to a determination that the results certified indicate compliance with, the construction contract. VENDOR shall thereafter transmit said documents and instruments to the City with written comments and, if applicable, recommendations regarding same, prior to determination of substantial completion.

(h) *Substantial Completion Inspection*. VENDOR shall conduct substantial completion inspection(s) to develop the "punchlist" and to determine if the work is substantially complete; such inspection to be scheduled within three (3) days of notice of substantial completion. Said punch list shall be prepared and signed by VENDOR and the City and delivered to contractor not later than three (3) calendar days after the walkthrough. If necessary, VENDOR shall assist in any mediation between City and contractor to develop an agreed punch list.

(i) *Final Inspection*. VENDOR shall conduct a final inspection to determine if the completed work is in compliance with the punch list, "as-built" drawings" and the Construction Drawings, Technical Specifications, and construction contract documents. Within three (3) business days following such determination of compliance by VENDOR, VENDOR shall recommend in writing final payment to contractor(s) and shall give written notice to City and contractor(s) that the work is acceptable, subject to any conditions expressed in such recommendation.

1.10.2 Site visits. VENDOR shall visit the construction site at intervals appropriate to the various stages of construction as VENDOR deems necessary or as the City requests in order to enable VENDOR to observe as an experienced and qualified design professional the progress and quality of the various aspects of contractor(s)' work. Based on information obtained during such visits and on such observations, VENDOR shall advise City whether (i) the work is proceeding in accordance with the Construction Drawings and Technical Specifications, and (ii) the integrity of the design concepts have been implemented and preserved by the contractor(s). VENDOR shall keep the City informed of the progress of the work in the manner and frequency requested by the City. During such visits and on the basis of such observations, VENDOR may disapprove of or reject contractor(s)' work while it is in progress if VENDOR believes that such work will not produce a completed project that conforms generally to the contract documents or that it will prejudice the integrity of the design of the project as reflected in the Construction Drawings and Technical Specifications. VENDOR shall notify the City within twenty-four (24) hours of the discovery of such conditions that stoppage of the work may be necessary to insure the proper execution of the Construction Drawings and Technical Specifications or to protect the public and/or property. VENDOR shall sign any Stop Work Notice issued by the City. VENDOR shall also have authority to reject all work, materials and equipment which do not conform to the Construction Drawings and Technical Specifications and to decide questions raised by contractor which arise in the execution of the work.

1.10.3 Change orders. VENDOR shall prepare work change directives and change orders as required or requested by the City. VENDOR will provide a response to the contractor and City 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 VENDOR to formulate a response. VENDOR will have authority to make minor changes in the work which: (1) do not result in extra cost; and (2) do not extend the timeline for completion of the project, and (3) are not inconsistent with the purpose of the work. VENDOR is not authorized to bind the City to

changes in contract price or time.

1.10.4 Contractor claims. VENDOR will make decisions in writing on all claims of the contractor(s), and on all other matters relating to the execution and progress of the work or the interpretation of the Construction Drawings and Technical Specifications and contract documents. All such decisions of VENDOR shall be final. In the event of any unresolved dispute between City and its contractor(s), VENDOR may mediate a meeting with City and contractor(s) to resolve the dispute. Notwithstanding the foregoing, VENDOR will not be an arbitrator of disputes between City and its contractor(s).

1.10.5 No contractor supervision. VENDOR will not, either during site visits or as a result of observations of contractor(s)' work in progress, supervise, direct or have control over contractor(s)' work. Nor shall VENDOR have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by contractor(s), for safety precautions incident to the work of contractor(s) or for any failure of contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to contractor(s) furnishing and performing their work. Accordingly, it is understood that VENDOR can neither guarantee the performance of the construction contracts by contractor(s) nor assume responsibility for contractor(s)' failure to furnish and perform their work in accordance with the contract documents. VENDOR shall not be required to make any examination to ascertain how or for what purpose any contractor has used the monies paid on account of the contract price, or to determine that title to any of the work, materials or equipment has passed to City free and clear of any lien, claims, security interests or encumbrances, or that there may not be other matters at issue between City and contractor that might affect the amount that should be paid. The limitations in this section shall not limit the responsibility of VENDOR otherwise set forth in this Agreement.

VENDOR is NOT authorized to do the following:

a. Expedite the work for the contractor(s).
b. Advise the contractor(s) on building techniques or scheduling.
c. Get involved in disputes or problems between contractor(s) and subcontractor(s).

1.10.6 Deliverables.

(a) Weekly project meeting minutes;
(b) Recommendations regarding payment applications;
(c) Transmittal of maintenance and operating instructions, schedules, guarantees, bonds and certificates and inspection, tests and approvals (assembled by contractor(s)) with written comments and, if applicable, recommendations regarding same;
(d) Punch list of items to be completed by contractor after substantial completion;
(e) Recommendation of final payment to the contractor(s) and written notice to City that the work is complete and reasonably conforms with the Construction Drawings and Technical Specifications.

1.10.7 Presentation. If requested by City, VENDOR shall attend additional City meeting(s) and may be asked to make presentation of the project status or any issues or concerns.

1.11 Task Orders. Each Task Order issued pursuant to this Agreement shall include:

(a) a scope of services in accordance with the applicable phases of Professional Services described above.
(b) a detailed estimate of fees and costs based on the hourly rates established in this Agreement;
(c) a task/deliverable schedule; and
(d) a payment schedule based on deliverables

Upon mutual agreement of the scope of services, fees and costs, task/deliverable schedule, and payment schedule, a written Task Order for the applicable phase, in a form substantially similar to that attached hereto as **Exhibit A**, shall be executed by VENDOR and City.

1.12 Requirement for Drawings and Plans.
Unless otherwise set forth in the scope of services, plans shall be based on the North American Datum of 1983, 1190 Adjustment and the North American Vertical Datum of 1988. All drawings and plans shall be accurate, legible, complete in design, drawn to scale, and suitable for bidding purposes

1.13 VENDOR assumes professional and technical responsibility for performance of its services to be provided hereunder in accordance with recognized professional and ethical guidelines established by their profession. If within one year following completion of its services, such services fail to meet the aforesaid standards, and the CITY promptly advises VENDOR thereof in writing, VENDOR agrees to re-perform such deficient services without charge to the CITY.

1.14 The relationship between CITY and VENDOR created hereunder and the services to be provided by VENDOR pursuant to this Agreement are non-exclusive. CITY shall be free to pursue and engage similar relationships with other contractors to perform the same or similar services performed by VENDOR hereunder, so long as no other consultant shall be engaged to perform the specific project(s) assigned to VENDOR while VENDOR is so engaged without first terminating such assignment. VENDOR shall be free to pursue relationships with other parties to perform the same or similar services, whether or not such relationships are for services to be performed within the CITY, so long as no such relationship shall result in a conflict of interest, ethical or otherwise, with the CITY's interests in the services provided by VENDOR hereunder.

1.15 VENDOR shall not utilize the services of any sub-consultant without the prior written approval of CITY.

1.16 The CITY's Representative during the performance of this Agreement shall be ____.

1.17 The VENDOR'S Representative during the performance of the Agreement shall be_____.

ARTICLE 2 - COMPLETION SCHEDULE.

2.1 Term and Time For Performance**.** The Term of this Agreement shall commence upon the complete execution of this Agreement by both parties and the Issuance of a Purchase Order by the CITY to the VENDOR, and continue until completion of the project. VENDOR shall perform all services and provide all work products and deliverables required in accordance with the schedule set forth below and the project schedule established in each specific Task Order, based upon the stipulations of the grant award.

All Planning and Design Activities shall be completed no later than the date set forth below:

a. Invoices submitted for work performed **on or after November 8, 2023**, may be eligible for reimbursement.
b. Completion of all Planning and Design Activities for all Project facilities proposed for loan funding shall be completed **no later than February 15, 2026**.

2.2 Delay.

2.2.1 VENDOR's Professional Services shall be timely performed in compliance with the Project schedule or as amended in a writing executed by both parties. If VENDOR is delayed at any time in the progress of its Professional Services by any act, failure to act or neglect of the City, or any separate consultant or contractor hired directly by the City, or by occurrences beyond the control and without any fault or negligence of VENDOR, VENDOR shall provide to the City, within five (5) working days of the date the delay began, written notice of the delay. Provided VENDOR has timely notified the City of such delay, the City shall amend the schedule in writing, for the time delay actually caused by such occurrence, as determined by the City in its sole discretion. This extension of time shall be VENDOR's sole and exclusive remedy attributed to such delay.

2.2.2 VENDOR acknowledges responsibility for any delay damages suffered by the City as a result of VENDOR's negligent, reckless or intentional wrongful actions or inactions. In the event

that the City suffers or reasonably believes that it will suffer actual delay damages as a result of VENDOR aforesaid actions or inactions, the City, in its sole discretion, said discretion to be exercised reasonably and in good faith, shall have the right and be entitled to terminate this Agreement upon five (5) day's written notice and such termination shall not be construed to constitute a breach of this Agreement by the City.

ARTICLE 3 – PROFESSIONAL SERVICES FEE & EXPENSES.

3.1 Compensation.
The professional services Fee and administrative reimbursements to be paid by the City to VENDOR, for all Professional Services of both VENDOR and any of its subcontractors under this Agreement shall not exceed: _____ ($_____). This compensation amount shall be the sole amount paid to VENDOR. The compensation may be adjusted, if necessary, by a written amendment, duly approved and executed by VENDOR and City, provided the City's budget includes, or is adjusted to include, the entire Fee.

3.2 Fee Schedule.
A detailed Fee Schedule, tied to the deliverables shall be attached as **Exhibit B**. The Fee Schedule shall detail the hourly rates, number of hours and a payment schedule that shall not be front-loaded.

3.2.1 Rates. VENDOR's hourly rates for every position or level of profession or staff for whom time will be invoiced under this Agreement shall be included in the Fee Schedule attached as **Exhibit B** and incorporated into this Agreement. All such rates shall be effective for the term of this Agreement. The fixed hourly costs for all positions will be applicable to both in-house professional engineering services and professional engineering services at the VENDOR firm's place of business.

3.2.2 Expenses. The Fee Schedule shall include all administrative out-of-pocket expenses to be reimbursed under this Agreement.

3.2.3 Supporting Documents. VENDOR shall maintain complete and orderly documentation underlying all of its invoiced out of pocket expenses, including copies of paid receipts, invoices, or other documentation acceptable to the City. Such documentation shall be sufficient to establish that the expenses were actually incurred and necessary in the performance of the Professional Services.

3.2.4 Mark-Up. Any out-of-pocket costs shall not be marked up more than three percent (3%).

3.2.5 Travel Expenses. Any agreed travel, per diem, mileage, meals, or lodging expenses, the cost of which are subject to the City's prior written approval, shall be paid in accordance with the rates and conditions established by the City's Travel Policy, a copy of which has been provided to VENDOR, or the applicable law or ordinance.

3.3 Subcontracts. VENDOR may invoice for Professional Services related to the sub-contractual services at the established hourly rates in the Fee Schedule.

ARTICLE 4 – INVOICES AND PAYMENT.
The VENDOR shall be paid by the CITY for completed work and for services rendered in accordance with the Fee Schedule as follows:

a. Payment as provided in this section by the CITY shall be full compensation for work performed, services rendered, and for all materials, supplies, equipment, and incidentals necessary to complete the work.

b. The VENDOR may submit invoices to the CITY a maximum of once per month during the progress of the work for partial payment. Such invoices will be reviewed by the CITY to determine if services have been rendered in conformity with this Agreement, and upon approval thereof, payment will be made to the VENDOR in the amount approved.

c. Invoices must identify the PO number and contract number.

d. Invoices shall be submitted to:_____. And shall be concurrently e-mailed to the City's Representative.

e. Invoices requesting reimbursement of expenses shall include copies of all documentation of the expenses, to the satisfaction of the CITY.

f. Final payment of any balance due to the VENDOR of the total contract price earned will be made promptly upon its ascertainment and verification by the CITY after the completion of the work under this Agreement and its acceptance by the CITY.

g. Prior to final payment of the amount due under the terms of this Agreement, to the extent permitted by law, a final waiver of lien shall be required to be submitted by the VENDOR, as well as all suppliers and subcontractors whom worked on the project that is the subject of this Agreement. Payment of the invoice and acceptance of such payment by VENDOR shall release CITY from all claims of liability by VENDOR in connection with this Agreement.

h. Final Invoice: In order for both parties herein to close their books and records, the VENDOR will clearly state "Final Invoice" on the VENDOR's final/last billing to the CITY. The Final Invoice shall be submitted to the CITY no later than four (4) months after completion of all Professional Services. The Final Invoice certifies that all services have been properly performed and all charges and costs owed in connection with this Agreement have been invoiced to the CITY. Since this account will thereupon be closed, any other further charges if not properly included on the Final Invoice are considered waived by the VENDOR.

i. The VENDOR's records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the CITY and State for a period of five (5) years after the termination of the Agreement. Copies shall be made available upon request.

j. All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

ARTICLE 5 – ESTIMATED CONSTRUCTION COSTS

5.1 Included in Estimated Construction Cost

The Estimated Construction Cost of a project shall include the total cost to City of all elements of the entire project designed and specified by VENDOR; including an itemization of each of the following:

a. Cost of construction including all labor, materials and equipment required; including but not limited to, an estimated statement of proposed hourly rates and labor costs by job classification; general conditions, bonds and insurance, etc.;

b. Allowance for construction cost contingencies;

c. Regulatory permit fees;

d. Allowance for other necessary services, such as materials testing, to be provided by others for the City;

e. Traffic Control, when applicable;

f. Sheet and shoring, when applicable;

g. By-pass plumbing, when applicable;

h. Pressure Testing, when applicable;

i. Video Taping Inspections, when applicable;

j. Mobilization and De-mobilizations.

5.2 **Excluded in Estimated Construction Cost**
The Estimated Construction Cost shall exclude VENDOR's Fee.

5.3 **City's Reliance; Adjustment to Estimated Construction Cost**
VENDOR hereby represents to the City that VENDOR is aware that City is relying on the Estimated Construction Costs prepared by the VENDOR. VENDOR further represents that it has the necessary resources and expertise, including a cost analyst, to ensure that the bids received for the project will not exceed the Estimated Construction Costs determined by VENDOR in the performance of its Professional Services under this Agreement by a factor of more than ten percent (10%) over and above the Estimated Construction Cost at the time that the construction procurement solicitation is advertised for the project, subject to unforeseeable, documented, changes in markets and costs. In the event that the bidding phase has not commenced within three (3) months after VENDOR submits the Construction Drawings and Technical Specifications and Estimated Construction Cost of the project to the City, the Estimated Construction Cost of the project may be adjusted by VENDOR to reflect any documented change in the general level of prices in the construction industry between the date of submission of the Estimated Construction Costs to the City and the date on which the construction procurement solicitation is ultimately advertised.

5.4 **Inaccurate Estimated Construction Cost**
In the event that a least two (2) responsive and responsible bids are received, and the lowest "best value" bid, as such term is used in the City of Boynton Beach Procurement Code, excluding any alternate bid items ("base bid"), exceeds the Estimated Construction Cost for a project by more than ten percent (10%), the VENDOR shall explain, in writing, the reasons why the bids or proposals exceeded the ten percent (10%) factor following the analysis of all base bids. In such a circumstance, the City may at its sole discretion, exercise any one or more of the following options: (1) VENDOR shall be required to amend, at the sole cost and expense of VENDOR, the Construction Drawings and Technical Specifications along with the Estimated Construction Cost, to enable the project to conform to a maximum of ten percent (10%) above the Estimated Construction Costs of the project and the City's project budget with such amendments subject to the written final acceptance and approval of the City; (2) VENDOR shall be required to provide, at the sole cost and expense of VENDOR, re-bidding services and related items (including costs associated with regulatory review and approval of revised documents) as many times as requested by the City until the base bid of at least one "best value" bid falls within the factor of ten percent (10%) of the Estimated Construction Cost of the project; (3) City may grant approval of an increase in the Estimated Construction Cost of project; (4) City may abandon the project and terminate this Agreement; or (5) City may select as many deductive alternatives as may be necessary to bring the award within ten percent (10%) of the Estimated Construction Costs of the project. Notwithstanding the foregoing and anything to the contrary contained in this Agreement, it is expressly understood and agreed that the redesigning services required to keep a project within 10% of the Estimated Construction Cost shall not be considered additional services and VENDOR agrees that it shall not seek compensation from the City for same.

ARTICLE 6 – MODIFICATIONS TO THE SCOPE

Notwithstanding the foregoing provisions, the City reserves the right to make changes to a project or the scope of Professional Services at any time, including alterations, reductions or additions thereto. Upon receipt by VENDOR of City's notification of a contemplated change, VENDOR shall in writing: (i) provide a detailed estimate for the increase or decrease in VENDOR's Fee and other design costs that would result from the contemplated change; (ii) provide a detailed estimate for the increase or decrease in Estimated Construction Costs that would result from the contemplated change; (iii) notify the City of any estimated change in the completion date; and (iv) advise the City how the contemplated change shall affect the

VENDOR's ability to meet the completion dates or schedules. If the City so instructs in writing, VENDOR shall suspend work on the portion of the scope of services affected by a contemplated change, pending the City's decision to proceed with the change. If the City elects to make the change, the parties shall execute a written amendment to this Agreement and VENDOR shall not commence work on any such change until such amendment is signed by the parties. It is further acknowledged and agreed that changes to Deliverables, or revisions of studies, that do not increase or change the overall estimate of time under the schedule shall be considered mere substitution of work for scope of work ("**Substituted Services**") already included in the Fee. Substituted Services shall not in any circumstances be considered compensable as other expenses, and, to the extent that the event of Substituted Services causes an overall reduction in the amount of time for services considered in the Fee Schedule, such shall result in pro-rata reduction of the Fee.

ARTICLE 7 – OWNERSHIP AND USE OF DOCUMENTS.

All plans, drawings, calculation, construction documents, technical specifications, sketches, photographs, videos, illustrations, tracings, PowerPoint presentations, specifications, maps, computer files and/or studies or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, regardless of form or format, will be considered works made for hire and, upon payment by the City of the Fee for same, will become the exclusive property of the City without restriction or limitation on their use and will be made available, upon request, to the City upon request and/or upon completion or termination of this Agreement. City shall not be required to pay any additional charges for the City's documents and records. Documents can be provided to the City electronically. Upon delivery to the City of said document(s), the City will become the custodian thereof in accordance with Chapter 119, Florida Statutes. Vendor will not copyright any material and products or patent any invention developed under this Agreement. Vendor specifically waives and releases all rights which Vendor may have in the materials, products or invention pursuant to 17 U.S.C. §§106A and 113(d). Vendor acknowledges and affirms that pursuant to 17 U.S.C. §106AI such waiver and release shall be effective as to any and all uses foreseeable and unforeseeable for which such materials, products or invention might be subject. Vendr waives and assigns to City all copyrights under 17 U.S.C. §101, et seq., and all other rights in the materials, products, invention and any work produced. Any reuse of Vendor's prepared documents by the City, except for the specific purpose intended under this Agreement, will be at City's sole risk and without liability or legal exposure to Vendor or its sub-consultants.

a. Obligation to Furnish Documents to the City. Vendor shall deliver to the City for approval and acceptance, and before being eligible for final payment of any amounts due under this Agreement, all documents and materials prepared for the City in connection with this Agreement. All such documents and records shall be provided within a reasonable time at no additional cost. Such documents may be provided electronically.

b. Vendor's Records. Notwithstanding any other provision in this Section, Vendor shall be entitled to retain a copy of all plans, drawings, calculation, construction documents, technical specifications, sketches, photographs, videos, illustrations, tracings, PowerPoint presentations, specifications, maps, computer files and/or studies or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, for Vendor's records only as is necessary for VENDOR to document its professional services. Vendor acknowledges that plans, drawings, documents, and records related to the physical security of City facilities or security systems are exempt or confidential records and shall not be disclosed by Vendor, except as authorized by law and specifically authorized by City.

ARTICLE 8 – GENERAL TERMS

a. **Funding**. This Agreement shall remain in full force and effect only as long as the expenditures provided in the Agreement have been appropriated by the CITY in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

b. **Warranties and Representations.** VENDOR represents and warrants to the CITY that it is competent to engage in the scope of services contemplated under this Agreement and that

it will retain and assign qualified professionals to all assigned projects during the term of this Agreement. VENDOR's services shall meet a standard of care for Project Management Consultant Services and related services equal to or exceeding the standard of care for professionals practicing under similar conditions. In submitting its response to the RFQ, VENDOR has represented to CITY that certain individuals employed by VENDOR shall provide services to CITY pursuant to this Agreement. CITY has relied upon such representations. Therefore, VENDOR shall not change the designated Project Management consultant for any project without the advance written approval of the CITY, which consent may be withheld in the sole and absolute discretion of the CITY.

c. **Licensed**. VENDOR represents that it is duly licensed in Florida to perform the Professional Services under this Agreement and that it will continue to maintain all licenses and approvals required to conduct its business.

d. **Design and Constructability**. VENDOR hereby represents to City that where Professional Services includes development of Construction Drawings and Technical Specifications, such project: (i) is and shall be designed with no material defects in design, determined in accordance with sound architectural and engineering principles, as applicable, and generally accepted industry standards; (ii) is and shall be designed in accordance with generally accepted architectural and engineering standards, as applicable, and (iii) is constructible. Without waiver of City's other rights and remedies, City may require VENDOR to perform again, at VENDOR's sole cost and expense, any design services which were not performed in accordance with the requirements and standards set forth in this Agreement. VENDOR hereby waives any claims which it may have or assert against the City with respect to this section, except and unless and failure of VENDOR to perform, in whole or in part, is due to the action or inaction of the City. Without limiting any other remedy available to City, the VENDOR shall furnish at its own expense any redesign or revisions to the Construction Documents and Technical Specifications necessary to correct any material errors, omissions, failures or deficiencies in such documents, and shall, at its sole cost and expense, correct any work performed in accordance with deficient documents. The City's review or approval of, or payment for, any Professional Services or deliverables under this Agreement shall not be construed as a waiver of any rights under this Agreement or any cause of action arising out of performance under this Agreement. This section shall survive the expiration or termination of this Agreement.

e. **Indemnification**. The VENDOR shall indemnify and hold harmless the CITY, its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, through the conclusion of any appeals, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to and resulting from the performance of this Agreement by the VENDOR, its employees, agents, partners, principals or subcontractors. The VENDOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. Neither party to this Agreement shall be liable to any third party claiming directly or through the other respective party, for any special, incidental, indirect, or consequential damages of any kind, including but not limited to lost profits or use that may result from this Agreement or out of the services or goods furnished hereunder. PURSUANT TO F.S. SEC. 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD LIABILE FOR NEGLIGENCE. To the extent considered necessary by the City, any sums due VENDOR under this Agreement may be retained by City until all of City's claims for indemnification have been resolved, and any amount withheld shall not be subject to the payment of interest by City. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Agreement or otherwise.The parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify. Nothing contained herein is intended nor shall be construed to waive CITY's rights and

immunities under the common law or §768.28, Fla. Stat., as may be amended from time to time.

f. **Insurance**. During the performance of the services under this Agreement, VENDOR shall maintain the following insurance policies, and provide originals or certified copies of all policies to CITY's Director of Human Resources and Risk Management. All policies shall be written by an insurance company authorized to do business in Florida. VENDOR shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any service pursuant to this Agreement:

i. **Worker's Compensation Insurance**: The VENDOR shall procure and maintain for the life of this Agreement, Worker's Compensation Insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability with limits meeting all applicable state and federal laws. This coverage must extend to any subcontractor that does not have their own Worker's Compensation and Employer's Liability Insurance. The policy must contain a waiver of subrogation in favor of the CITY of Boynton Beach, executed by the insurance company.

ii. **Comprehensive General Liability**: The VENDOR shall procure and maintain for the life of this Agreement, Comprehensive General Liability Insurance. This coverage shall be on an "Occurrence" basis. Coverage shall include Premises and Operations; Independent consultants, Products-Completed Operations and Contractual Liability with specific reference to Article 10, "Indemnification" of this Agreement. This policy shall provide coverage for death, personal injury, or property damage that could arise directly or indirectly from the performance of this Agreement. VENDOR shall maintain a minimum coverage of $1,000,000 per occurrence and $1,000,000 aggregate for personal injury/ and $1,000.000 per occurrence/aggregate for property damage. The general liability insurance shall include the CITY as an additional insured and shall include a provision prohibiting cancellation of the policy upon thirty (30) days prior written notice to the CITY.

iii. **Business Automobile Liability**: The VENDOR shall procure and maintain, for the life of this Agreement, Business Automobile Liability Insurance. The VENDOR shall maintain a minimum amount of $1,000,000 combined single limit for bodily injury and property damage liability to protect the VENDOR from claims for damage for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use of maintenance of owned and non-owned automobile, included rented automobiles, whether such operations be by the VENDOR or by anyone directly or indirectly employed by the VENDOR.

iv. **Professional Liability (Errors and Omissions) Insurance**: The VENDOR shall procure and maintain for the life of this Agreement in the minimum amount of $1,000,000 per occurrence.

v. **Umbrella/Excess Liability Insurance**: in the amount of $1,000,000.00 as determined appropriate by the CITY depending on the type of job and exposures contemplated. Coverage must follow the form of the General Liability, Auto Liability and Employer's Liability. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to the Agreement.

VENDOR shall provide the CITY with all Certificates of Insurance required under this section prior to beginning performance under this Agreement. Failure to maintain the required insurance will be considered a default of the Agreement.

The CITY shall be named as an additional insured. The coverage shall contain no limitations on the scope of protection afforded the CITY, its officers, officials, employees or volunteers. A current valid insurance policy meeting the requirements herein identified shall be maintained during the duration of this Agreement, and shall be endorsed to state that coverage shall not be suspended, voided or canceled by either party, reduced in coverage in limits except after thirty (30) days prior written notice by either certified mail, return receipt requested, has been given to the CITY.

The CITY reserves the right to reasonably require any additional insurance coverage or increased limits as determined necessary by the Director of Human Resources and Risk Management. The CITY reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements throughout the term of the Agreement.

g. **Independent Contractor.** The VENDOR and the CITY agree that the VENDOR is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither VENDOR nor any employee of VENDOR shall be entitled to any benefits accorded CITY employees by virtue of the services provided under this Agreement. The CITY shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to VENDOR, or any employee of VENDOR.

h. **Covenant Against Contingent Fees**. The VENDOR warrants that he has not employed or retained any company or person, other than a *bona fide* employee working solely for the VENDOR, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a *bona fide* employee working solely for the VENDOR any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the CITY shall have the right to annul this contract without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

i. **Consultant's Competitive Negotiation Act.** The parties confirm that the procurement of the professional services under this Agreement was the subject of the competitive selection and negotiation processes mandated by Section 287.055, Florida Statutes, unless specifically exempted therefrom.

j. **Truth-In-Negotiation Certificate.**

a. Execution of this Agreement by the VENDOR shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement is accurate, complete, and current as of the date of the Agreement and no higher than those charged the VENDOR's most favored customer for the same or substantially similar service.

b. The said rates and cost shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to outside VENDORs. The CITY shall exercise its rights under this "Certificate" within one (1) year following payment.

k. **Discrimination Prohibited**. The VENDOR, with regard to the work performed by it under this agreement, will not discriminate on the grounds of race, color, national origin, religion, creed, age, gender, disability, marital status, political affiliation, pregnancy, gender identity, and expression, sex or the presence of any physical or sensory handicap in the selection and

retention of employees, procurement of materials, supplies, or in performance of any Work pursuant to this Agreement.

l. **Non-Waiver.** Any waiver by either party of any one or more of the covenants, conditions, or provisions of this Agreement, 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 Agreement. Nothing in this Agreement shall be interpreted to constitute a release of the responsibility and liability of VENDOR, its employees, sub-contractors, agents, and sub-consultants for the accuracy and competency of their designs, working drawings, Construction Documents, Technical Specifications or other documents and works, nor shall any approval by the City be deemed to be an assumption of such responsibility by the City for a defect or omission in designs, Construction Documents, Technical Specifications or other documents prepared by VENDOR, its employees, agents, or subcontractors. .

m. **Termination.**

a. **Termination for Convenience**. This Agreement may be terminated by the CITY for convenience, upon fourteen (14) calendar days after written notice by the City to the VENDOR for such termination in which event the VENDOR shall be paid its compensation for work performed through to the termination date, including services reasonably related to termination. In the event that the VENDOR abandons the Agreement or causes it to be terminated, the VENDOR shall indemnify the CITY against loss pertaining to this termination.

b. **Termination for Cause**. This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within thirty (30) calendar days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may be terminated for cause by CITY for reasons including, but not limited to, VENDOR's failure to suitably or continuously perform the services in a manner calculated to meet or accomplish the objectives in this Agreement, or repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices.

c. In the event of the death of a member, partner, or officer of the VENDOR, or any of its supervisory personnel assigned to the project, the surviving members of the VENDOR hereby agree to complete the work under the terms of this Agreement, if requested to do so by the CITY. This section shall not be a bar to renegotiations of this Agreement between surviving members of the VENDOR and the CITY, if the CITY so chooses.

d. Notice of termination shall be provided in accordance with the "Notices" section of this Agreement.

e. Upon termination, VENDOR shall immediately assemble and deliver all documents, drawings, signed and sealed drawings, Construction Documents, Technical Specifications, CADD files, calculations, specifications, correspondence, testing and materials information, warranties, manuals, written information, electronic data and all other materials in its possession concerning the Professional Services under this Agreement and City projects to the City.

f. In the event of termination, VENDOR, upon receipt of the notice of such termination, shall: (1) stop the performance of the Professional Services on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts except as may be necessary for completion of any portion(s) of the Professional Services not terminated and as authorized by the written notice; (3) terminate all orders and subcontracts to the extent that they relate to the performance of the Professional Services terminated by the notice of termination; (4) transfer title to the City (to the extent that title has not already been transferred) and deliver according to the manner, at the times, and to the extent directed by the City, all property purchased under this Agreement and reimbursed as direct items of cost and not required for completion of

the services not terminated; (5) promptly assemble and deliver as provided above all documents related to this Agreement; (6) promptly complete performance of any Professional Services not terminated by the notice of termination and/or cooperate in transition of its consulting duties to appropriate parties at the direction of the City.

g. In the event of termination, the City shall compensate VENDOR for all authorized Professional Services satisfactorily performed through the termination date, and for costs incurred, under the payment terms contained in this Agreement. In the event of Termination for Cause, no payments to VENDOR shall be made (1) for Professional Services not satisfactorily performed and (2) for assembly of and submittal of documents as required under this Agreement. In no event shall City be obligated to compensate VENDOR for lost profits, or any resulting or consequential damages

h. In addition to any termination rights stated in this Agreement, CITY shall be entitled to seek any and all available contractual or other remedies available at law or in equity including recovery of costs incurred by CITY due to VENDOR's failure to comply with any term(s) of this Agreement.

i. Surviving Provisions. It is agreed that the indemnity provisions, insurance provisions, the right to audit, governing law, and litigation, and all covenants, agreements, and representations made in this Agreement or otherwise made in writing by VENDOR, including but not limited to any representations made relating to disclosure or ownership of documents, shall survive the expiration or termination of this Agreement.

n. **Default of Contract & Remedies.**

a. Any disputes that arise between the parties with respect to the performance of this Agreement, which cannot be resolved through negotiations, shall be submitted to a court of competent jurisdiction exclusively in Palm Beach County, Florida. This Agreement shall be construed under Florida Law.

b. **Correction of Work.** If, in the judgment of CITY, work provided by VENDOR does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, CITY reserves the right to require that VENDOR correct all deficiencies in the work to bring the work into conformance without additional cost to CITY, and/or replace any personnel who fail to perform in accordance with the requirements of this Agreement. CITY shall be the sole judge of non-conformance and the quality of workmanship.

c. **Default of Contract.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by VENDOR :

I. The abandonment of the project by VENDOR for a period of more than seven (7) business days.

II. The abandonment, unnecessary delay, refusal of, or failure to comply with any of the terms of this Agreement or neglect, or refusal to comply with the instructions of the CITY's designee.

III. The failure by VENDOR to observe or perform any of the terms, covenants, or conditions of this Agreement to be observed or performed by VENDOR, where such failure shall continue for a period of seven (7) days after written notice thereof by CITY to VENDOR; provided, however, that if the nature of VENDOR 's default is such that more than seven (7) days are reasonably required for its cure, then VENDOR shall not be deemed to be in default if VENDOR commences such cure within said seven (7) day period and thereafter diligently prosecutes such cure to completion.

IV. The assignment and/or transfer of this Agreement or execution or attachment

thereon by VENDOR or any other party in a manner not expressly permitted hereunder.

V. The making by VENDOR of any general assignment or general arrangement for the benefit of creditors, or the filing by or against VENDOR of a petition to have VENDOR adjudged a bankruptcy, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against VENDOR, the same is dismissed within sixty (60) calendar days); or the appointment of a trustee or a receiver to take possession of substantially all of VENDOR's assets, or for VENDOR 's interest in this Agreement, where possession is not restored to VENDOR within thirty (30) calendar days; for attachment, execution or other judicial seizure of substantially all of VENDOR 's assets, or for VENDOR 's interest in this Agreement, where such seizure is not discharged within thirty (30) calendar days.

d. **Remedies in Default.** In case of default by VENDOR, CITY shall notify VENDOR, in writing, of such abandonment, delay, refusal, failure, neglect, or default and direct VENDOR to comply with all provisions of the Agreement. If the abandonment, delay, refusal, failure, neglect, or default is not cured within seven (7) business days of when notice was sent by CITY, CITY may declare a default of the Agreement and notify VENDOR of such declaration of default and terminate the Agreement in accordance with the Termination section set forth above.

o. **Uncontrollable Forces.**

a. Neither the CITY nor VENDOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term “Uncontrollable Forces” shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

b. Neither party shall, however, be excused from performance if non-performance is due to forces which are preventable, removable, or remediable, and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

p. **Notices**. All written notices, demands, and other communications required or provided for under this Agreement 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 below.

Notices to the CITY shall be sent to the following address:

Daniel Dugger, City Manager
City of Boynton Beach
100 E. Ocean Avenue
Boynton Beach, FL 33435
Telephone No. (561) 742-6000

Notices to VENDOR shall be sent to the following address:

ATTN:
Address:
Phone:
Email:

q. **Public Records**. The Vendor shall comply with Florida's Public records Law. Specifically, the VENDOR shall:

a. Keep and maintain public records required by the CITY to perform the service;

b. Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Fla. Stat. or as otherwise provided by law;

c. Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, VENDOR shall maintain in a secured manner all copies of such confidential and exempt records remaining in its possession once the VENDOR transfers the records in its possession to the CITY; and

d. Upon completion of the contract, VENDOR shall transfer to the CITY, at no cost to the CITY, all public records in VENDOR'S possession. All records stored electronically by VENDOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS:

CITY CLERK
100 E. OCEAN AVENUE
BOYNTON BEACH, FLORIDA, 33435
TELEPHONE: 561-742-6060
CityClerk@bbfl.us

r. **Time of Essence.** Time shall be of the essence for each and every provision of this Agreement.

s. **E-Verify**. VENDOR is used interchangeably with CONTRACTOR throughout this Section. VENDOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

A. Definitions for this Section:

i. "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.

ii. "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

iii. "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

B. Registration Requirement; Termination. Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-Verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

i. All persons employed by a Contractor to perform employment duties within Florida during the term of the contract;

ii. All persons (including sub-vendors/sub-consultants/sub-contractors) assigned by Contractor to perform work pursuant to the contract with the CITY of Boynton Beach. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the CITY of Boynton Beach; and

iii. The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

t. **Public Entity Crime Act 287.133**. VENDOR represents that the execution of this Agreement will not violate Section 287.133, Florida Statutes and certifies that VENDOR and any parent corporations, affiliates, subsidiaries, members, shareholders, partners, officers, directors or executives, and any sub-consultants have not been placed on the Convicted Vendor List maintained by the State of Florida within 36 months prior to the submittal of the Proposal to under this RFQ. Violation of this section may result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

u. **Scrutinized Companies 287.135 and 215.473**. Vendor certifies that vendor is not participating in a boycott of Israel. Vendor further certifies that vendor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Vendor been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the City will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to Vendor of the City's determination concerning the false certification. Vendor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, Vendor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the

determination of false certification was made in error. If Vendor does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

v. **Sovereign Immunity.** The CITY is a political subdivision of the State of Florida. Nothing in this Agreement is intended, nor shall be construed or interpreted, to waiver or modify the immunities and limitations on liability provided for in Section 768.28, Florida statute, as may be amended from time to time, or any successor statute thereof. To the contrary, all terms and provisions contained in the Agreement, or any disagreement or dispute concerning it, shall be construed or resolved so as to ensure CITY of the limitation from liability provided to any successor statute thereof.

w. **Assignment**. No assignment by a party hereto of any rights under or interests in this Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

x. **Binding Authority**. CITY and VENDOR represent that they have the full power and authority to enter into and fully perform their obligations under this Agreement, and each bind itself, their partners, successors, assigns, and legal representatives to the other party hereto, their partners, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in this Agreement.

y. **Attorney's Fees and Costs**. In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

z. **Protection of City Property**. At all times during the performance of this Agreement, VENDOR shall protect CITY's property from all damage whatsoever on account of the work being carried on under this Agreement.

aa. **Performance of Government Functions**. Notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement shall in any way stop, limit or impair the City of Boynton Beach from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions with respect to any project.

bb. **Compliance with Laws**. It shall be the VENDOR's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations, and requirements of all local, city, state, and federal agencies as applicable to the Professional Services.

cc. **No Third-Party Beneficiaries**. No provision of this Agreement is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity, not a party to the agreement/contract, including but not limited to any citizen or employees of the City and/or Vendor.

dd. **Severability**. In the event that any term or provision of this Agreement shall to any extent be held invalid or unenforceable, it is agreed that the remainder of this Agreement, 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 Agreement shall be deemed valid and enforceable to the maximum extent permitted by law.

ee. **Litigation; Governing Law; Venue**. This Agreement 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 VENDOR submit to the jurisdiction of Florida courts

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

ff. **Integrated Agreement**. This Agreement represents the entire and integrated agreement between CITY and VENDOR and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement is intended by the parties hereto to be the final expression of this Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made. In the event of a conflict between this Agreement, the solicitation, and the VENDOR's bid proposal, this Agreement shall govern then the solicitation, and then the bid proposal. This Agreement may be amended only by written instrument signed by both CITY and VENDOR.

gg. **Effective Date and Execution**. This Agreement will take effect on the Effective Date. This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid, and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

ARTICLE 9 - FEDERAL REQUIREMENTS.

Notwithstanding anything to the contrary set forth herein, VENDOR shall comply with all applicable federally required standard provisions whether set forth herein below, in 2 CFR Part 200, or otherwise. Any reference made to VENDOR in this section shall also apply to any subcontractor under the terms of this Agreement.

9.1 **Equal Employment Opportunity**. During the performance of this contract, VENDOR agrees as follows:

A. VENDOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. VENDOR will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. VENDOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

B. VENDOR will, in all solicitations or advertisements for employees placed by or on behalf of VENDOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

C. VENDOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with VENDOR 's legal duty to furnish information.

D. VENDOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of VENDOR 's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. VENDOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

F. VENDOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

G. In the event of VENDOR 's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and VENDOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

H. VENDOR will include the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. VENDOR will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided,* however, that in the event VENDOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, VENDOR may request the United States to enter into such litigation to protect the interests of the United States.

The CITY further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the CITY so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The CITY further agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The CITY further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the CITY agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole

or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the CITY under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such CITY; and refer the case to the Department of Justice for appropriate legal proceedings.

9.2 **Davis-Bacon Act**. VENDOR shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor Regulations (29 CFR Part 5). In accordance with the statute, VENDOR must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, VENDOR must be required to pay wages not less than once a week.

9.3 **Copeland "Anti-Kickback" Act**. VENDOR shall comply with the Copeland "Anti-Kickback" Act, (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). VENDOR must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. CITY must report all suspected or reported violations to the Federal awarding agency.

9.4 **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701- 3708). Where applicable, pursuant to 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) VENDOR must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

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

B **Violation; liability for unpaid wages; liquidated damages**. In the event of any violation of the clause set forth in paragraph (A) of this section the VENDOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.

C. **Withholding for unpaid wages and liquidated damages**. CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by VENDOR or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (26.4.2) of this

section.

D. **Subcontracts**. VENDOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this section.

9.5 VENDOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251- 1387). CITY will report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

A. **Clean Air Act**. VENDOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. VENDOR agrees to report each violation to CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. VENDOR agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance.

B. **Federal Water Pollution Control Act**. VENDOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. VENDOR agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. VENDOR agrees to include these requirements in each subcontract exceeding one hundred fifty thousand dollars ($150,000) financed in whole or in part with Federal assistance.

9.6 **Suspension and Debarment**. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000, as such VENDOR is required to verify that none of the Vendor's agents, principals (defined at 2 C.F.R. § 180.995), or affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

A. VENDOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by CITY. If it is later determined that Vendor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to State and CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

B. The Vendor or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Vendor or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9.7 **Byrd Anti-Lobbying Amendment, as amended (31 U.S.C. § 1352)**. VENDOR shall file the required certification pursuant to 31 U.S.C. 1352. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also

disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

9.8 **Compliance with State Energy Policy and Conservation Act**. VENDOR shall comply with all mandatory standards and policies relating to energy efficiency contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

9.9 **Procurement of Recovered Materials**. The CITY and VENDOR must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

9.10 **Reporting**. Pursuant to 44 CFR 13.36(i)(7), VENDOR shall comply with federal requirements and regulations pertaining to reporting, including but not limited to those set forth at 44 CFR 40 and 41, if applicable. Furthermore, both parties shall provide the FEMA Administrator, U.S. DOT Administrator, the Comptroller General of the United States, or any of their authorized representative access to any books, documents, papers, and records of VENDOR which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts, and transcriptions. Also, both Parties agree to provide FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the Agreement.

9.11 **Rights to Inventions**. VENDOR agrees that if this Agreement results in any copyrightable materials or inventions, the Federal Government reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use the copyright of said materials or inventions for Federal Government purposes.

9.12 **No Obligation by the Federal Government**. The federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

9.13 **Department of Homeland Security (DHS) Seal, Logo, and Flags**. VENDOR shall not use DHS(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific federal pre-approval.

9.14 **Compliance with Federal Law, Regulations, and Executive Orders**. This is an acknowledgement that federal financial assistance will be used to fund the Agreement only. VENDOR will comply with all applicable federal law, regulations, executive orders, policies, procedures, and directives.

9.15 **Fraudulent Statements**. VENDOR acknowledges that 31 U.S.C. Chap. 38 applies to VENDOR's actions pertaining to this Agreement.

9.16 **Prohibition on Contracting for Covered Telecommunications Equipment or Services**. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause.

A. **Prohibitions**.

i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

ii. Unless an exception in paragraph (B) of this clause applies, the VENDOR and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

d. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

B **Exceptions**.

i. This clause does not prohibit VENDOR from providing: (a) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (b) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

ii. By necessary implication and regulation, the prohibitions also do not apply to: (a) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (b) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

C. **Reporting requirement**.

i. In the event VENDOR identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (ii) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

ii. The VENDOR shall report the following information pursuant to this section: (i) Within one business day from the date of such identification or notification:

The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within ten (10) business days of submitting the information required by this Section: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services. The VENDOR shall insert the substance of this clause, including this in all subcontracts and other contractual instruments.

9.17 **Domestic Preference for Procurements**. As appropriate, and to the extent consistent with law, the VENDOR should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

9.18 **Affirmative Socioeconomic Steps**. If subcontracts are to be let, VENDOR is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

9.19 **License and Delivery of Works Subject to Copyright and Data Rights**. If applicable, the VENDOR grants to CITY, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, VENDOR will identify such data and grant to the CITY or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, VENDOR will deliver to the VENDOR data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by VENDOR.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year set forth below their respective signatures.

DATED this _____ day of _____, 20____.

CITY OF BOYNTON BEACH

_____
Daniel Dugger, City Manager

_____
(Authorized Official Name), (Vendor)

_____
Print Name of Authorized Official

_____
Title

(Corporate Seal)

Attest/Authenticated:

_____
Witness

_____
Print Name

Approved as to Form:

_____
Shawna G. Lamb, Office of the City Attorney

Attest/Authenticated:

_____
Maylee De Jesus, City Clerk

EXHIBIT A
TASK ORDER TEMPLATE

CITY OF BOYNTON BEACH
_____ *Services Task Order*
Task Order No. _____

Consultant: _____
Contract No. _____

1. **Task/Project Phase**. _____(*Insert title and brief description)*_____

2. **Detailed Scope of Professional Services**.
A detailed scope of services under this Task Order, in accordance with the phases of service detailed in the Agreement, is attached as **Exhibit ____.**

3. **Deliverables and Schedule**.
Consultant shall deliver to the City the deliverables specified at the time indicated on the attached **Exhibit ____.**

4. **Compensation**.
The total Fee to be paid to Consultant under this Task Order shall not exceed _____, based on the hourly rates currently in effect under the Agreement.

A detailed fee schedule is attached as **Exhibit _____.**
The payment schedule (based on deliverables) is attached as **Exhibit _____**.

5. **Agreement Reference**.
This Task Order shall be performed under the terms and conditions described within the _____ Agreement, dated _____, 20____, by and between the City of Boynton Beach and _____ ("Consultant"), Contract No. _____.

6. **Insurance**.
Consultant shall maintain insurance coverages in accordance with the Agreement and hereby confirms that Certificate(s) of Insurance evidencing *current* policies meeting the requirements of the Agreement are on file with the City as of the date of this Task Order.

7. **Exhibits**.
All attached Exhibits are incorporated fully into this Task Order and the Agreement.

8. **Notice to Proceed**.

☐ If checked, Consultant's receipt of a fully-executed copy of this Task Order shall serve as the Notice to Proceed under this Task Order, effective as of the date the fully-executed Task Order was emailed to the Consultant.

☐ If checked, Consultant shall commence Services under this Task Order as specified in a forthcoming Notice to Proceed.

CONSULTANT:

By: _____

Print Name: _____

Date: _____, 20___

CITY OF BOYNTON BEACH

By: _____
Daniel Dugger, City Manager

Date: _____, 20___

Attest: _____
City Clerk

City Attorney's Office
Approved as to form and legality
By: _____

EXHIBIT B
FEE SCHEDULE

City of Boynton Beach
Risk Management Department

INSURANCE ADVISORY FORM

Under the terms and conditions of all contracts, leases, and agreements, the City requires appropriate coverages listing the City of Boynton Beach as Additional Insured. This is done by providing a Certificate of Insurance listing the City as "Certificate Holder" and "The City of Boynton Beach is Additional Insured as respect to coverages noted." Insurance companies providing insurance coverages must have a current rating by A.M. Best Co. of "B+" or higher. *(NOTE: An insurance contract or binder may be accepted as proof of insurance if Certificate is provided upon selection of vendor.)* Thefollowing is a list of types of insurance required of contractors, lessees, etc., and the limits required by the City: **(NOTE: This list is not all inclusive, and the City reserves the right to require additional types of insurance, or to raise orlower the stated limits, based upon identified risk.)**

TYPE (Occurrence Based Only)	**MINIMUM LIMITS REQUIRED**	
General Liability	General Aggregate	$ 1,000,000.00
Commercial General Liability	Products-Comp/Op Agg.	$ 1,000,000.00
Owners & Contractor's Protective (OCP)	Personal & Adv. Injury	$ 1,000,000.00
Asbestos Abatement	Each Occurrence	$ 1,000,000.00
Lead Abatement	Fire Damage (any one fire)	$ 50,000.00
Broad Form Vendors	Med. Expense (any one person)	$ 5,000.00
Premises Operations		
Underground Explosion & Collapse Products		
Completed Operations Contractual		
Independent Contractors Fire		
Legal Liability		
Professional Liability	Aggregate	$ 1,000,000.00
Automobile Liability	Combined Single Limit	$ 1,000,000.00
Any Auto		
All Owned Autos		
Hired Autos		
Non-Owned Autos		
Excess Liability	Each Occurrence	to be determined
Umbrella Form	Aggregate	to be determined
Worker's Compensation Statutory Limits		
Employer's Liability	Each Accident	$ 1,000,000.00
	Disease, Policy Limit	$ 1,000,000.00
	Disease Each Employe	$ 1,000,000.00
Property:		
Homeowners Revocable Permit		$ 300,000.00
Builder's Risk		Limits based on Project Cost
Installation Floater		Limits based on Project Cost
Other - As Risk Identified		to be determined

INSURANCEADVISORYFORM Revised 04/2021

ATTACHMENTS

ATTACHMENT "A"

SAMPLE PERFORMANCE EVALUATION QUESTIONNAIRE
(FOR INFORMATIONAL PURPOSES ONLY)

Instructions: Performance evaluations shall be completed by the Project Manager for the following: (1) all Contracts; (2) all individual Task Orders/Work Orders. Task Orders/Work Orders with a term of six (6) months or more at a minimum, the Project Manager shall complete performance evaluations at the mid-point of the project term or at more frequent intervals as required by the Task Order/Work Order **and** at the time of Task Order/Work Order or Contract completion.

It is especially important for the Project Manager to contact a Procurement representative to advise of any performance issues so that Procurement can assist with efforts to bring performance back to acceptable standards. It is equally important to complete this form whenever any of the performance indicators are either "marginal" or "unsatisfactory" even when this is not within the normal review cycle. In the event the Average Rating Score is "marginal" or "unsatisfactory" even after reasonable efforts have been taken by the City to improve performance, the Project Manager shall coordinate with Procurement to determine what action needs to be taken under the circumstances.

When completed, forward the evaluation form to Procurement. Procurement will keep track of the Average Rating Scores (Line 11) for all evaluations completed for the entire term of the Contract, Task Order, and Work Order. The completed Performance Evaluation form will be retained in Procurement and will be available as a record of current performance for use in the evaluation process of future solicitations released by the District. The completed evaluation is available to the contractor upon a Public Records request pursuant to Chapter 119, F.S.

Contract/Work Order No.	Consultant	Evaluation Period ☐ Interim ☐ Final
Project Title		If evaluating under a work order contract, specify type

Check the appropriate ratings for Lines 1 through 8.
Sum the individual ratings, by column, to produce the Individual Column Ratings on Line 9.
Sum the Individual Column Ratings in Line 9 to produce the Total Rating Score on Line 10.
Divide the Total Rating Score in Line 10 by the number 8 (the number of performance indicators in Lines 1-8) to produce the Average Rating Score in Line 11.

	Performance Indicators	**Rating** Unsatisfactory	Marginal	Satisfactory	Very Good	Exceptional
1.	Planning & Approach	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
2.	Staff Capability	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
3.	Staff Effectiveness	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
4.	Flexibility in Meeting City's Goals	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
5.	Promptness of Deliverables/Milestones/Reports	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
6.	Report and Drawings Quality	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
7.	Quality of Work Completed	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
8.	Contract Under or at Budgeted Cost and Invoicing Procedures	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
9.	Individual Column Rating (Total lines 1-8.)					
10.	Total Rating Score (Total row 9.)					
11.	Average Rating Score (Divide line 10 by the number 8.)					

In Lines 12 through 21, provide any additional detail, as deemed necessary, to support the ratings given in Lines 1 through 8 as well as any additional comments regarding Sub-consultant, sub-contractor utilization on Line 20. Additional space is available on Line 22 if needed.

1. Current tasks completed and/or deliverables received? If no, reason:	☐ Yes ☐ No
2. Current work completed ahead/on schedule? If no, number of days late: _____ and reason:	☐ Yes ☐ No
3. Contract currently under/at budgeted cost? If not at budget, specify amount over $ _____ and reason:	☐ Yes ☐ No
4. Contractor strengths:	
5. Contractor weaknesses:	
6. Specific problems incurred:	
7. How may these have been prevented?	
8. Additional comments/recommendations:	
9. Comments on sub-contractor utilization:	
10. **Currently recommend firm for future contracts, task orders, and/or work orders of this type? If "No" or "Possibly", an explanation must be provided in**	☐ **Yes** ☐ **No** ☐ **Possibly**

Project Manager (sign)	Date	Section Administrator (sign)	Date

11. Please indicate any additional comments corresponding to Performance Indicators (Lines 1-8) on Page 1 – explain marginal/unsatisfactory performance; **if either "No" or "Possibly" apply to Question 21, an explanation must be provided here.** Additional sheets may be attached if necessary.

Number	Remarks
#	
#	

CONTRACT MANAGEMENT/PROCUREMENT USE ONLY

Please indicate any additional comments corresponding to the numbered question on Page 1 and/or Page 2:

Number	Remarks
#	
#	

Evaluation Number/Score:	Comments:
Running Average Score:	

Procurement Representative (sign)	Date	Other Required Approval (sign)	Date

Florida Department of Environmental Protection

REQUEST FOR INCLUSION ON THE DRINKING WATER PRIORITY LIST

Drinking Water State Revolving Fund Program
Douglas Building, 3900 Commonwealth Blvd, Tallahassee, Florida 32399-3000

The information in this Request for Inclusion (RFI) application is used to determine project eligibility and priority scoring. The priority score is used to rank projects for placement on the State Revolving Fund (SRF) priority list. Only projects placed on the fundable portion of the priority list receive consideration for a loan. Please note that costs incurred before the adoption of the project on the fundable or waiting portion of the priority list are not eligible for reimbursement.

1. Applicant's Name and Address.

Project Sponsor: City of Boynton Beach | Contact Person: Poonam Kalkat, PhD | Title: Utilities Director

124 E Woolbright Rd
(street address)

Boynton Beach | Palm Beach | 33435
(city) | (county) | (zip code)

(561) 742 -6403 | | KalkatP@bbfl.us
(telephone) | (ext.) | (e-mail)

Contact Person Address (if different): _____
(street address) (city) (state) (zip code)

2. Name and Address of Applicant's Consultant (if any).

Firm: McCafferty Brinson Consulting, LLC | Contact Person: Audra McCafferty, P.E. | Title: Principal Engineer

633 South Andrews Avenue, Suite 402
(street address)

Fort Lauderdale | 33301
(city) | (zip code)

(954) 797-7100 | | am@mccaffertybrinson.com
(telephone) | (ext.) | (e-mail)

3. Type of Loan Requested in this Application. (select only one loan category and project type)

Planning Loan ☐	Design Loan ☐	Planning and Design Loan ☒	Construction Loan ☐

Project Type: Design/Bid/Build ☒ Design/Build (D/B) ☐ Construction Manager at Risk (CMR) ☐

Note: Procurement of professional services must meet the requirements of the Consultants' Competitive Negotiation Act, Section 287.055, F.S.

Eligibility for a Loan. In order to be considered for a priority listing, the following conditions must be met:

- The respondent to this solicitation must qualify as a "project sponsor" as defined in subsection 62-552.200(27), F.A.C.
- The minimum construction loan amount is $75,000.
- The project sponsor must agree to submit biddable plans and specifications within 1-year after execution of the loan agreement to qualify for a combined planning and design loan.

- The project is part of a public water system as defined in subsection 62-552.200(28), F.A.C., and may include drinking water supply, storage, transmission, treatment, disinfection, distribution, residuals management, and appurtenant facilities.

4. Median Household Income, Population and Principal Forgiveness Percentage (PF%). (complete a. through e. below)

a. Median household income (MHI): $60,980 (current U.S. Census data or verifiable estimates)

b. State median household income (SMHI): $61,777 (current U.S. Census data)

c. Population (P) served 112,000 = number of service connections _____ times 2.5 persons per connection to include proposed connections. **This RFI is to secure funding under the BIL for emerging contaminants. Items d. and e. are not applicable.**

d. Is the project sponsor applying for a planning and/or design loan with principal forgiveness? Yes ☐ No ☐. If yes, then PF is 50%. *Only a sponsor that qualifies as a financially disadvantaged small community is eligible for a planning/ design loan with PF.*

e. Is the project sponsor applying for a construction loan with principal forgiveness? Yes ☐ No ☐. If yes, then PF% is calculated using the formula: *PF% = 1760/9 – 160 x (MHI/SMHI) – 7/4500 x P.*

Calculate PF% for a construction loan using the above formula: _____ (minimum 20% and maximum 90%).
If the sponsor is connecting a financially disadvantaged small community as defined below, a maximum 50% PF is available.

Please note that the calculated PF% is an estimate and the actual percentage will be determined by the Department. The amount of loan available with principal forgiveness for a project is dependent upon the amount of funds allocated for the fiscal year.

Eligibility for a loan with principal forgiveness. In order to be considered for a loan with principal forgiveness, the following conditions must be met:

- The project sponsor must qualify as a financially disadvantaged small community public water system as defined in Rule 62-552.200, F.A.C., unless the sponsor is specifically exempted from this requirement.
- The median household income (MHI) of the sponsor's service area must be less than the state median household income (SMHI) as reported from the current U.S. Census data or from verifiable estimates, unless the sponsor is specifically exempted from this requirement.
- The population (P) of the sponsor's service area must be less than 10,000 (to include the population from the project's proposed future connections), unless the sponsor is specifically exempted from this requirement.
- The project sponsor is allowed only one open loan with principal forgiveness. A loan is deemed open until the final disbursement of the project has been paid by the department.
- A project sponsor is eligible for a construction loan with principal forgiveness (maximum 50%) if connecting a community with less than 250 residential wells; an existing public water system with less than 250 service connections; or a separate, non-interconnected public water system owned by the sponsor. The project area must qualify as a financially disadvantaged small community.
- A financially disadvantaged community with a population of 10,000 or more is eligible for a construction loan with 20% principal forgiveness if dollars are available after funding all eligible financially disadvantaged small communities.
- A project sponsor that is a for-profit entity is not eligible for principal forgiveness.
- A construction project for a financially disadvantaged small community that uses a Construction Manager at Risk delivery method is ineligible for principal forgiveness.

5. Interest Rate Percentage. **This RFI is to secure funding under the BIL for emerging contaminants. Item 5 is not applicable.**

The interest rate for a loan with the Department is determined using the following formula:

% of MR = 40 x (MHI/SMHI) + 15 % of MR = Percentage of Market Rate.

Calculate and enter the % of MR below:

% of MR for a loan: _____ (35% ≤ % of MR ≤ 75%)

Please note that the calculated % of MR is an estimate and the actual interest rate will be determined by the Department. The interest rate for a loan shall not be less than 0.2 percent.

6. Base Priority Score. Each project shall receive a base priority score (BPS) dependent on the weighted average of its components. The BPS shall be determined using the below formula where CPS means the component priority score and CCC means component construction cost.

$$BPS = [CPS_1 \times CCC_1 + \ldots + CPS_n \times CCC_n]/\text{Total Construction Cost}$$

Select each component and component score in Table 1 below that apply to the project, enter the estimated construction costs, and calculate the base priority score.

- Component priority scores that are based on contaminant levels must be justified by sample analytical data (see exception in notes at bottom of Table 1). The date of sample collection must be less than 24-months from the submittal date of the Request for Inclusion.

REQUEST FOR INCLUSION ON THE DRINKING WATER PRIORITY LIST

- The project sponsor must provide documentation demonstrating that contaminant levels (e.g. disinfection byproducts) cannot be reduced by adjusting system operations, if applicable.
- A compliance-1 category component score of 400 points, if selected in Table 1, must be supported by documentation demonstrating the need for the project; otherwise, a component score of 300 points shall be assigned.

Table 1

Project Component (***select all components that apply***)	**Component Priority Score**	**Component Construction Cost**
Acute Public Health Risk ☐ **1a.** E-Coli or Fecal Coliform Exceed MCL (62-550.310(5), F.A.C.) ☐ **1b.** Nitrate, Nitrite, or Total Nitrogen Exceed MCL (62-550.310(1), F.A.C., Table 1) ☐ **1c.** Lead or Copper Exceed Action Level (62-550.800, F.A.C) ☐ **1d.** Surface Water Filtration/Disinfection Noncompliance (62-550.817(2), F.A.C.)	800 points ☐	$0
Potential Acute Public Health Risk ☐ **2a.** Nitrate, Nitrite, or Total Nitrogen 50% of MCL (62-550.310(1), F.A.C., Table 1) ☐ **2b.** Microbiologicals Exceed MCL (62-550.310(5), F.A.C.) ☐ **2c.** Surface Water Enhanced Filtration/Disinfection Noncompliance (62-550.817(3), F.A.C.) ☐ **2d.** State Health Certification of Acute Health Risk, Unregulated Microbiological Contaminant ☐ **2e.** Violation of Disinfection Requirements (62-555.320(12), F.A.C.)	700 points ☐	$0
Chronic Public Health Risk ☐ **3a.** Inorganic/Organic Contaminant Exceed MCL (62-550.310(1) & (4), F.A.C., Tables 1,4,5) ☐ **3b.** Disinfection Byproducts Exceed MCL (62-550.310(3), F.A.C., Table 3) ☐ **3c.** Radionuclides Exceed MCL (62-550.310(6), F.A.C)	600 points ☐	$0
Potential Chronic Public Health Risk ☐ **4a.** Inorganic/Organic Contaminant 50% of MCL (62-550.310(1) & (4), F.A.C., Tables 1,4,5) ☐ **4b.** Disinfection Byproducts 80% of MCL (62-550.310(3), F.A.C., Table 3) ☒ **4c.** State Health Certification of Chronic Health Risk, Unregulated Chemical Contaminant	500 points ☒	$5,400,000
Compliance-1 Projects ***(documentation must be attached or default to Compliance-2 score)*** ☐ **5a.** Infrastructure upgrades to facilities undersized, exceed useful life, or with equipment failures ☐ **5b.** Insufficient water supply source, treatment capacity, or storage ☐ **5c.** Water distribution system pressure less than 20 psi ☐ **5d.** Eliminate dead ends and provide adequate looping in a distribution system ☐ **5e.** Replace distribution mains to correct continual leaks, pipe breaks, and water outages ☒ **5f.** New water system or extension of existing system to replace contaminated or low yield wells ☐ **5g.** Lack of significant safety measures (e.g. chemical containment) ☐ **5h.** Secondary Contaminant MCL Exceedance (62-550.320, F.A.C.) ☐ **5i.** Drinking water supply project as defined in 403.8532(9)(a), F.S.	400 points ☒	$0
Compliance-2 Projects ☒ **6a.** Treatment, Storage, Power, and Distribution Requirements (62-555.320, F.A.C) ☐ **6b.** Minimum Required Number of Wells (62-555.315(2), F.A.C) ☐ **6c.** Well Set-back and Construction Requirements (62-555.312 and 62-555.315, F.A.C) ☐ **6d.** Cross-Connection Control Requirements (62-555.360, F.A.C) ☐ **6e.** Physical Security Project Documented in a Vulnerability Analysis ☐ **6f.** Consolidation or regionalization of public water systems ☐ **6g.** Water or Energy Conservation Project	300 points ☒	$0
☐ **7. All Other Projects** ***(including land or public water system acquisition projects)***	100 points ☐	$0

Note: Item 2d. and 4c. of Table 1 requires a State Health Officer to complete the form "Certification of a Public Health Risk". If 50% or more of wells meet contaminant levels from Table 1 above, then select the appropriate health risk category in Table 1. Flooded wells and wells under the direct influence of surface water are considered an unregulated microbiological potential acute public health risk and require documentation of occurrence in lieu of sampling data.

7. Affordability Score. The extent of affordability existing in a small community to be served by the project shall be reflected in the priority score. Points shall be awarded based upon two affordability criteria: median household income (MHI) and population (P) served. These points are to be added to the base priority score. Calculate the affordability score using the following formulas:

Affordability Score = (MHI Score + Population Score)

*MHI Score = 100 x (1.00 – MHI/SMHI), z*ero ≤ MHI score ≤ 75, rounded to nearest whole number

REQUEST FOR INCLUSION ON THE DRINKING WATER PRIORITY LIST

*Population Score = 50.0 - (P/200), p*opulation score ≥ zero, rounded to nearest whole number

8. Water Conservation Score. A project sponsor with a qualifying water conservation project is eligible to receive an additional 100 points added to their base priority score if the sponsor provides a water conservation plan in accordance with EPA's Water Conservation Plan Guidelines document number EPA-832-D-98-001, August 6, 1998.

9. Total Priority Score. Total priority score equals the base priority score plus the affordability score. (complete a. through d. below)

a. Base priority score: 500 points.
b. Affordability score: 1 points (> zero).
c. Water Conservation score: 0 points.
d. Total priority score: 501 points (sum of items a. and c.)

10. Estimated Project Cost. (complete a. through i. below)
(enter $0 if activity is not applicable)

Project Activity	*Cost*
a. Planning.	$400,000
b. Design (not applicable if a D/B project).	$5,000,000
c. Eligible land (necessary land divided by total land times purchase price).	$0
d. Constr., equip., material, demo. & related procurement (include design if D/B project).	$0
e. Construction contingency (10% of 'd', only applicable for Design/Bid/Build projects).	$0
f. Technical services during construction and after bid opening.	$0
g. Asset management plan per 62-552.700(7), F.A.C.	$0
h. *Total project costs* (sum of a. through g.).	$5,400,000
i. *Loan amount requested* by the sponsor in this RFI (assume no principal forgiveness).	$5,400,000

List all funding sources (including grants for this project): N/A

11. Project Schedule. (complete a. through d. below)

Project Activity	*(M/D/YY)*
a. Submit planning documents.	6/1/24
b. Submit design/bid documents or RFQ/RFP for CMR & D/B projects.	12/1/25
c. Start construction.	N/A
d. Complete construction.	N/A

12. Project Information. Provide the following information, if applicable.
(select all items below that are attached to this RFI)

☒ Project description, location with lat/long (degrees), water system PWS ID, and project need *(this is a required attachment)*.
☒ Map of city and county limits, existing and proposed service area, and project area *(this is a required attachment)*.
☒ Lab data, lab data with operational records, or substantiated documentation in lieu of lab data for public health risk projects.
☐ Certification of a Public Health Risk form completed by a State Health Officer.
☐ Supporting documentation for projects identified under the Compliance-1 project categories from Table 1 above.
☐ Project schedule showing plans and specs completion within 1-year of the execution date of a planning/design loan.
☐ Supporting documentation if MHI not taken from current U.S. Census data.
☐ Water Conservation Plan in accordance with EPA guidelines.

13. Certification by an Authorized Representative. I certify that this form and attachments have been completed by me or at my direction and that the information presented herein is, to the best of my knowledge, accurate and true.

(signature)	10/27/23 (date)	KalkatP@bbfl.us (e-mail)
Poonam Kalkat, PhD	Utilities Director	
(print name)	(print title)	

REQUEST FOR INCLUSION ON THE DRINKING WATER PRIORITY LIST

Email the completed RFI form with attachments to SRF_Reporting@dep.state.fl.us *or mail to the Florida Department of Environmental Protection, State Revolving Fund Program,* 3900 Commonwealth Blvd, Tallahassee, Florida 32399-3000.

City of Boynton Beach - Project Description and Need
Water Treatment Plant Emerging Contaminants Upgrades

The City of Boynton Beach (City) owns and operates two water treatment facilities: the East Water Treatment Plant (WTP) (PWS ID No. 4500145-01(E)), which is a 24 million gallon per day (mgd) capacity conventional treatment plant that utilizes lime softening, multi-media gravity filtration, and Magnetic Ion Exchange (Miex®) processes, and the West WTP (PWS ID No. 4500145-02(W)), which is a 10 mgd capacity nanofiltration (NF) plant. Both WTPs utilize raw water from the surficial Biscayne Aquifer. The City's water treatment facilities serve a population of 112,000. The City is considered a financially disadvantaged community because it has a median household income (MHI) of $60,980, which is less than the State of Florida's MHI ($61,777).

The City's water sampling program has identified the presence of emerging contaminants (PFAS) (**Table 1**), that are listed on the United States Environmental Protection Agency's Fifth Unregulated Contaminant Monitoring Rule (USEPA's UCMR5), in the raw water that supplies the East WTP. Under recent USEPA action, proposed maximum contaminant levels (MCLs) have been established for certain PFAS constituents (PFOS and PFOA), together with a compliance deadline of December 2026. Based on data from other NF facilities in South Florida, it is expected that the West WTP NF process is capable of meeting the proposed PFAS regulations, while upgrades may be necessary for the East WTP to comply with the proposed PFAS regulations. The City is preparing to evaluate alternatives for improvements to the East WTP to comply with proposed PFAS regulations, evaluating the existing treatment processes as well as other treatment technologies that may be incorporated into the process that may cost-effectively maintain compliance with the subject regulations.

This application is for funding of the planning and design phase of a program that is intended to address the public health and welfare of the City's drinking water customers by providing compliance with the proposed PFAS regulations for the long term, in the most cost-effective manner possible. The proposed program consists of:

1. Preparation of a study to evaluate the ability of the existing treatment processes to meet the subject regulations. Based on data available to date, it appears that the existing East WTP treatment process will require upgrades to meet the proposed maximum contaminant levels (MCLs) for PFAS constituents. This study will evaluate the following alternatives for the subject upgrades:
    a. Upgrading the existing process with granular activated carbon (GAC) as necessary to comply with the subject regulations.
    b. Upgrading the existing process with anion exchange (e.g., expanding the existing Miex® anion exchange process if it is found to remove PFAS constituents, or adding a new PFAS-specific anion exchange treatment step to the existing process), as necessary to comply with the subject regulations.
    c. Decommissioning the existing conventional treatment process and replacing it with an equal-capacity membrane process (nanofiltration, NF, or reverse osmosis, RO) to replace the lost conventional treatment capacity, as necessary to meet demands.
    d. The alternative analysis will also consider a variation of the membrane alternative under "c" above as follows: because the West WTP NF process currently has a Class I concentrate disposal well, it may be more cost-effective to construct the additional (PFAS-compliant) membrane treatment capacity at the West WTP (to utilize the existing well), rather than at the East WTP, to replace the (non-PFAS-compliant) conventional treatment capacity at the East WTP.
2. Design of the improvements identified in the above alternative analysis study.

In summary, upon completion of the alternative evaluation described herein (i.e., preparation of a Facilities Plan with an Environmental Assessment Report in accordance with 62-503.700, F.A.C. and 62-503.751, F.A.C.) the City intends to proceed with the design phase to prepare for implementing the recommended treatment alternative. This project will be located at the City's existing utility services sites located at 124 East Woolbright Road (Easte WTP) and 5469 West Boynton Beach Boulevard (West WTP), Boynton Beach, Florida, as presented in **Figure 1**.

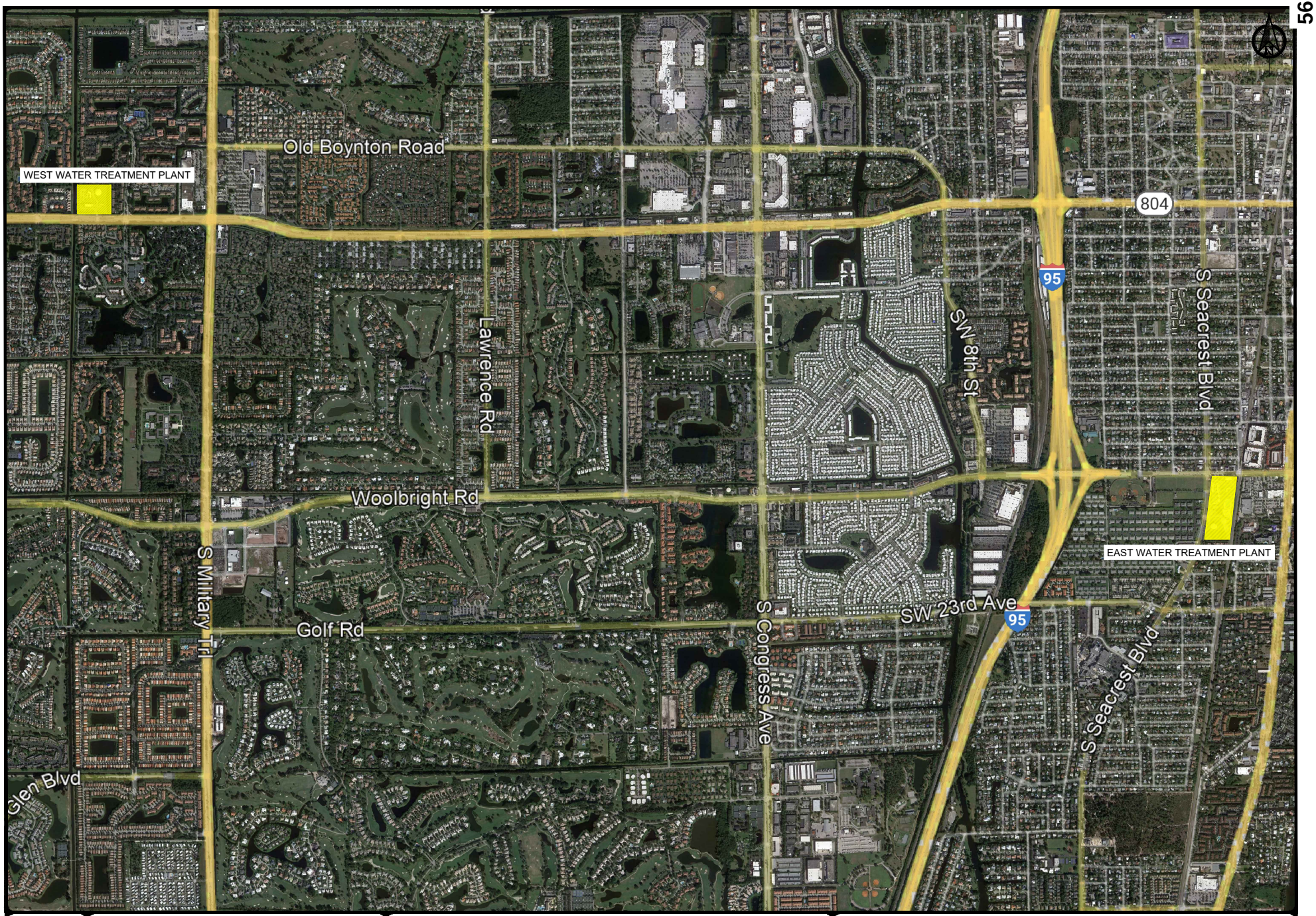

FIGURE 1

McCafferty Brinson consulting
633 S. Andrews Avenue. Suite 402
Fort Lauderdale, FL 33301
Telephone: 954.797.7100
www.mccaffertybrinson.com
Registry No. 26952

City of Boynton Beach
Water Treatment Plant
Emerging Contaminants Upgrades

WATER TREATMENT PLANTS

Table 1

City of Boynton Beach
Water Treatment Plant Emerging Contaminants Upgrades

East Water Treatment Plant Raw Water PFAS Sampling Results

PFAS Constituent (EPA Method 537.1)	MCL (ppt)	HBWC (ppt)	Sample Results (ppt)
Perfluorooctanoic acid (PFOA)	4.0	N/A	**8.1**
Perfluorooctanesulfonic acid (PFOS)	4.0	N/A	**24**
Perfluorononanoic acid (PFNA)		10	< 1.7
Perfluorohexanesulfonic acid (PFHxS)		9.0	7.7
Perfluorobutanesulfonic acid (PFBS)		2,000	10
HFPO-DA (GenX Chemicals)		10	< 1.4
		HI < 1.0	**1.17**

Notes:
Sample date October 3, 2023.
MCL - USEPA-proposed Maximum Contaminant Level.
HBWC - Health-Based Water Concentration.
HI - Hazard Index
Bolded sampling results values exceed USEPA-proposed MCL.
ppt - parts per trillion.

Pace Analytical Services, LLC
3610 Park Central Blvd N
Pompano Beach, FL 33064
(954)582-4300

October 26, 2023

Denise Ramos
City of Boynton Beach
5469 W. Boynton Beach Blvd.
Boynton Beach, FL 33437

RE: Project: PFAS Raw Water
Pace Project No.: 35831813

Dear Denise Ramos:

Enclosed are the analytical results for sample(s) received by the laboratory on October 03, 2023. The results relate only to the samples included in this report. Results reported herein conform to the applicable TNI/NELAC Standards and the laboratory's Quality Manual, where applicable, unless otherwise noted in the body of the report.

The test results provided in this final report were generated by each of the following laboratories within the Pace Network:

- Pace Analytical Services - Ormond Beach

If you have any questions concerning this report, please feel free to contact me.

Sincerely,

Cameron Meynardie for
Martha Montero
martha.montero@pacelabs.com
(386)672-5668
Project Manager

Enclosures

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Pace Analytical Services, LLC
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Pompano Beach, FL 33064
(954)582-4300

CERTIFICATIONS

Project: PFAS Raw Water
Pace Project No.: 35831813

Pace Analytical Services Ormond Beach
8 East Tower Circle, Ormond Beach, FL 32174
Alaska DEC- CS/UST/LUST
Alabama Certification #: 41320
Colorado Certification: FL NELAC Reciprocity
Connecticut Certification #: PH-0216
Delaware Certification: FL NELAC Reciprocity
DoD-ANAB #:ADE-3199
Florida Certification #: E83079
Georgia Certification #: 955
Guam Certification: FL NELAC Reciprocity
Hawaii Certification: FL NELAC Reciprocity
Illinois Certification #: 200068
Indiana Certification: FL NELAC Reciprocity
Kansas Certification #: E-10383
Kentucky Certification #: 90050
Louisiana Certification #: FL NELAC Reciprocity
Louisiana Environmental Certificate #: 05007
Maine Certification #: FL01264
Maryland Certification: #346
Massachusetts Certification #: M-FL1264
Michigan Certification #: 9911
Mississippi Certification: FL NELAC Reciprocity
Missouri Certification #: 236
Montana Certification #: Cert 0074
Nebraska Certification: NE-OS-28-14
New Hampshire Certification #: 2958
New Jersey Certification #: FL022
New York Certification #: 11608
North Carolina Environmental Certificate #: 667
North Carolina Certification #: 12710
North Dakota Certification #: R-216
Ohio DEP 87780
Oklahoma Certification #: D9947
Pennsylvania Certification #: 68-00547
Puerto Rico Certification #: FL01264
South Carolina Certification: #96042001
Tennessee Certification #: TN02974
Texas Certification: FL NELAC Reciprocity
US Virgin Islands Certification: FL NELAC Reciprocity
Virginia Environmental Certification #: 460165
West Virginia Certification #: 9962C
Wisconsin Certification #: 399079670
Wyoming (EPA Region 8): FL NELAC Reciprocity

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Pompano Beach, FL 33064
(954)582-4300

SAMPLE SUMMARY

Project: PFAS Raw Water
Pace Project No.: 35831813

Lab ID	Sample ID	Matrix	Date Collected	Date Received
35831813001	**Raw E**	Drinking Water	10/03/23 09:00	10/03/23 22:22
35831813002	**Raw E-FB**	Drinking Water	10/03/23 09:00	10/03/23 22:22
35831813003	**Raw W**	Drinking Water	10/03/23 07:35	10/03/23 22:22
35831813004	**Raw W-FB**	Drinking Water	10/03/23 07:35	10/03/23 22:22

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Pompano Beach, FL 33064
(954)582-4300

SAMPLE ANALYTE COUNT

Project: PFAS Raw Water
Pace Project No.: 35831813

Lab ID	Sample ID	Method	Analysts	Analytes Reported	Laboratory
35831813001	**Raw E**	EPA 533	TSW	41	PASI-O
		EPA 537.1	TMM1	22	PASI-O
35831813002	**Raw E-FB**	EPA 533	TMM1	41	PASI-O
		EPA 537.1	TMM1	22	PASI-O
35831813004	**Raw W-FB**	EPA 533	TMM1	41	PASI-O
		EPA 537.1	TMM1	22	PASI-O

PASI-O = Pace Analytical Services - Ormond Beach

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Pompano Beach, FL 33064
(954)582-4300

ANALYTICAL RESULTS

Project: PFAS Raw Water
Pace Project No.: 35831813

Sample: Raw E **Lab ID: 35831813001** Collected: 10/03/23 09:00 Received: 10/03/23 22:22 Matrix: Drinking Water

Parameters	Results	Units	PQL	MDL	Reg. Limit	DF	Prepared	Analyzed	CAS No.	Qual
533 PFAS Compounds, Water	Analytical Method: EPA 533 Preparation Method: EPA 533 Pace Analytical Services - Ormond Beach									
11Cl-PF3OUdS	**0.00038 U**	ug/L	0.0017	0.00038		1	10/16/23 23:07	10/17/23 19:14	763051-92-9	
4:2 FTS	**0.00049 U**	ug/L	0.0017	0.00049		1	10/16/23 23:07	10/17/23 19:14	757124-72-4	
6:2 FTS	**0.0031 U**	ug/L	0.0034	0.0031		1	10/16/23 23:07	10/17/23 19:14	27619-97-2	
8:2 FTS	**0.00042 U**	ug/L	0.0017	0.00042		1	10/16/23 23:07	10/17/23 19:14	39108-34-4	
9Cl-PF3ONS	**0.00043 U**	ug/L	0.0017	0.00043		1	10/16/23 23:07	10/17/23 19:14	756426-58-1	
ADONA	**0.00038 U**	ug/L	0.0017	0.00038		1	10/16/23 23:07	10/17/23 19:14	919005-14-4	
HFPO-DA	**0.00064 U**	ug/L	0.0017	0.00064		1	10/16/23 23:07	10/17/23 19:14	13252-13-6	
NFDHA	**0.00026 U**	ug/L	0.0017	0.00026		1	10/16/23 23:07	10/17/23 19:14	151772-58-6	
Perfluorobutanesulfonic acid	**0.0069**	ug/L	0.0017	0.00038		1	10/16/23 23:07	10/17/23 19:14	375-73-5	
Perfluorodecanoic acid	**0.00027 U**	ug/L	0.0017	0.00027		1	10/16/23 23:07	10/17/23 19:14	335-76-2	
Perfluorohexanoic acid	**0.0050**	ug/L	0.0017	0.00027		1	10/16/23 23:07	10/17/23 19:14	307-24-4	
PFBA	**0.0067**	ug/L	0.0017	0.00054		1	10/16/23 23:07	10/17/23 19:14	375-22-4	
PFEESA	**0.00031 U**	ug/L	0.0017	0.00031		1	10/16/23 23:07	10/17/23 19:14	113507-82-7	
PFHpS	**0.00035 I**	ug/L	0.0017	0.00035		1	10/16/23 23:07	10/17/23 19:14	375-92-8	
PFMBA	**0.00023 U**	ug/L	0.0017	0.00023		1	10/16/23 23:07	10/17/23 19:14	863090-89-5	
PFMPA	**0.00029 U**	ug/L	0.0017	0.00029		1	10/16/23 23:07	10/17/23 19:14	377-73-1	
PFPeA	**0.0075**	ug/L	0.0017	0.00027		1	10/16/23 23:07	10/17/23 19:14	2706-90-3	
PFPeS	**0.00034 I**	ug/L	0.0017	0.00031		1	10/16/23 23:07	10/17/23 19:14	2706-91-4	
Perfluorododecanoic acid	**0.00047 U**	ug/L	0.0017	0.00047		1	10/16/23 23:07	10/17/23 19:14	307-55-1	
Perfluoroheptanoic acid	**0.0020**	ug/L	0.0017	0.00038		1	10/16/23 23:07	10/17/23 19:14	375-85-9	
Perfluorohexanesulfonic acid	**0.0048**	ug/L	0.0017	0.00032		1	10/16/23 23:07	10/17/23 19:14	355-46-4	
Perfluorononanoic acid	**0.0011 I**	ug/L	0.0017	0.00029		1	10/16/23 23:07	10/17/23 19:14	375-95-1	
Perfluorooctanesulfonic acid	**0.019**	ug/L	0.0017	0.00031		1	10/16/23 23:07	10/17/23 19:14	1763-23-1	
Perfluorooctanoic acid	**0.0067**	ug/L	0.0017	0.00027		1	10/16/23 23:07	10/17/23 19:14	335-67-1	
Perfluoroundecanoic acid	**0.00037 U**	ug/L	0.0017	0.00037		1	10/16/23 23:07	10/17/23 19:14	2058-94-8	
Surrogates										
13C24:2FTS (S)	263	%	50-200			1	10/16/23 23:07	10/17/23 19:14		J(S0)
13C26:2FTS (S)	161	%	50-200			1	10/16/23 23:07	10/17/23 19:14		
13C28:2FTS (S)	139	%	50-200			1	10/16/23 23:07	10/17/23 19:14		
13C2-PFDoA (S)	102	%	50-200			1	10/16/23 23:07	10/17/23 19:14		
13C3HFPO-DA(S)	89	%	50-200			1	10/16/23 23:07	10/17/23 19:14		
13C3-PFBS (S)	93	%	50-200			1	10/16/23 23:07	10/17/23 19:14		
13C3-PFHxS (S)	106	%	50-200			1	10/16/23 23:07	10/17/23 19:14		
13C4-PFBA (S)	114	%	50-200			1	10/16/23 23:07	10/17/23 19:14		
13C4-PFHpA (S)	104	%	50-200			1	10/16/23 23:07	10/17/23 19:14		
13C5-PFHxA (S)	96	%	50-200			1	10/16/23 23:07	10/17/23 19:14		
13C5-PFPeA (S)	90	%	50-200			1	10/16/23 23:07	10/17/23 19:14		
13C6-PFDA (S)	107	%	50-200			1	10/16/23 23:07	10/17/23 19:14		
13C7-PFUdA (S)	106	%	50-200			1	10/16/23 23:07	10/17/23 19:14		
13C8-PFOA (S)	105	%	50-200			1	10/16/23 23:07	10/17/23 19:14		
13C8-PFOS (S)	117	%	50-200			1	10/16/23 23:07	10/17/23 19:14		
13C9-PFNA (S)	105	%	50-200			1	10/16/23 23:07	10/17/23 19:14		

REPORT OF LABORATORY ANALYSIS

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3610 Park Central Blvd N
Pompano Beach, FL 33064
(954)582-4300

ANALYTICAL RESULTS

Project: PFAS Raw Water
Pace Project No.: 35831813

Sample: Raw E **Lab ID: 35831813001** Collected: 10/03/23 09:00 Received: 10/03/23 22:22 Matrix: Drinking Water

Parameters	Results	Units	PQL	MDL	Reg. Limit	DF	Prepared	Analyzed	CAS No.	Qual
537.1 PFAS Compounds, Water	Analytical Method: EPA 537.1 Preparation Method: EPA 537.1 Pace Analytical Services - Ormond Beach									
11Cl-PF3OUdS	**0.0014 U**	ug/L	0.0017	0.0014		1	10/16/23 05:55	10/17/23 23:52	763051-92-9	
9Cl-PF3ONS	**0.00099 U**	ug/L	0.0017	0.00099		1	10/16/23 05:55	10/17/23 23:52	756426-58-1	
ADONA	**0.00063 U**	ug/L	0.0017	0.00063		1	10/16/23 05:55	10/17/23 23:52	919005-14-4	
HFPO-DA	**0.0014 U**	ug/L	0.0017	0.0014		1	10/16/23 05:55	10/17/23 23:52	13252-13-6	
NEtFOSAA	**0.00081 U**	ug/L	0.0017	0.00081		1	10/16/23 05:55	10/17/23 23:52	2991-50-6	
NMeFOSAA	**0.0014 U**	ug/L	0.0017	0.0014		1	10/16/23 05:55	10/17/23 23:52	2355-31-9	
Perfluorobutanesulfonic acid	**0.010**	ug/L	0.0017	0.00058		1	10/16/23 05:55	10/17/23 23:52	375-73-5	J(L1),V
Perfluorodecanoic acid	**0.00084 U**	ug/L	0.0017	0.00084		1	10/16/23 05:55	10/17/23 23:52	335-76-2	
Perfluorohexanoic acid	**0.0057**	ug/L	0.0017	0.0011		1	10/16/23 05:55	10/17/23 23:52	307-24-4	
Perfluorododecanoic acid	**0.0013 U**	ug/L	0.0017	0.0013		1	10/16/23 05:55	10/17/23 23:52	307-55-1	
Perfluoroheptanoic acid	**0.0025**	ug/L	0.0017	0.00088		1	10/16/23 05:55	10/17/23 23:52	375-85-9	
Perfluorohexanesulfonic acid	**0.0077**	ug/L	0.0017	0.00064		1	10/16/23 05:55	10/17/23 23:52	355-46-4	
Perfluorononanoic acid	**0.0017 U**	ug/L	0.0017	0.0017		1	10/16/23 05:55	10/17/23 23:52	375-95-1	
Perfluorooctanesulfonic acid	**0.024**	ug/L	0.0017	0.0010		1	10/16/23 05:55	10/17/23 23:52	1763-23-1	
Perfluorooctanoic acid	**0.0081**	ug/L	0.0017	0.00076		1	10/16/23 05:55	10/17/23 23:52	335-67-1	
Perfluorotetradecanoic acid	**0.0016 U**	ug/L	0.0017	0.0016		1	10/16/23 05:55	10/17/23 23:52	376-06-7	
Perfluorotridecanoic acid	**0.0015 U**	ug/L	0.0017	0.0015		1	10/16/23 05:55	10/17/23 23:52	72629-94-8	
Perfluoroundecanoic acid	**0.0017 U**	ug/L	0.0017	0.0017		1	10/16/23 05:55	10/17/23 23:52	2058-94-8	
Surrogates										
13C2-PFDA (S)	86	%	70-130			1	10/16/23 05:55	10/17/23 23:52		
13C2-PFHxA (S)	92	%	70-130			1	10/16/23 05:55	10/17/23 23:52		
NEtFOSAA-d5 (S)	87	%	70-130			1	10/16/23 05:55	10/17/23 23:52		
HFPO-DAS (S)	84	%	70-130			1	10/16/23 05:55	10/17/23 23:52		

Sample: Raw E-FB **Lab ID: 35831813002** Collected: 10/03/23 09:00 Received: 10/03/23 22:22 Matrix: Drinking Water

Parameters	Results	Units	PQL	MDL	Reg. Limit	DF	Prepared	Analyzed	CAS No.	Qual
533 PFAS Compounds, Water	Analytical Method: EPA 533 Preparation Method: EPA 533 Pace Analytical Services - Ormond Beach									
11Cl-PF3OUdS	**0.00042 U**	ug/L	0.0019	0.00042		1	10/09/23 21:32	10/11/23 15:08	763051-92-9	
4:2 FTS	**0.00054 U**	ug/L	0.0019	0.00054		1	10/09/23 21:32	10/11/23 15:08	757124-72-4	
6:2 FTS	**0.0034 U**	ug/L	0.0037	0.0034		1	10/09/23 21:32	10/11/23 15:08	27619-97-2	
8:2 FTS	**0.00046 U**	ug/L	0.0019	0.00046		1	10/09/23 21:32	10/11/23 15:08	39108-34-4	
9Cl-PF3ONS	**0.00048 U**	ug/L	0.0019	0.00048		1	10/09/23 21:32	10/11/23 15:08	756426-58-1	
ADONA	**0.00041 U**	ug/L	0.0019	0.00041		1	10/09/23 21:32	10/11/23 15:08	919005-14-4	
HFPO-DA	**0.00070 U**	ug/L	0.0019	0.00070		1	10/09/23 21:32	10/11/23 15:08	13252-13-6	
NFDHA	**0.00028 U**	ug/L	0.0019	0.00028		1	10/09/23 21:32	10/11/23 15:08	151772-58-6	
Perfluorobutanesulfonic acid	**0.00041 U**	ug/L	0.0019	0.00041		1	10/09/23 21:32	10/11/23 15:08	375-73-5	
Perfluorodecanoic acid	**0.00030 U**	ug/L	0.0019	0.00030		1	10/09/23 21:32	10/11/23 15:08	335-76-2	

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Pace Analytical Services, LLC
3610 Park Central Blvd N
Pompano Beach, FL 33064
(954)582-4300

ANALYTICAL RESULTS

Project: PFAS Raw Water
Pace Project No.: 35831813

Sample: Raw E-FB **Lab ID: 35831813002** Collected: 10/03/23 09:00 Received: 10/03/23 22:22 Matrix: Drinking Water

Parameters	Results	Units	PQL	MDL	Reg. Limit	DF	Prepared	Analyzed	CAS No.	Qual
533 PFAS Compounds, Water	Analytical Method: EPA 533 Preparation Method: EPA 533 Pace Analytical Services - Ormond Beach									
Perfluorohexanoic acid	**0.00030 U**	ug/L	0.0019	0.00030		1	10/09/23 21:32	10/11/23 15:08	307-24-4	
PFBA	**0.00059 U**	ug/L	0.0019	0.00059		1	10/09/23 21:32	10/11/23 15:08	375-22-4	
PFEESA	**0.00034 U**	ug/L	0.0019	0.00034		1	10/09/23 21:32	10/11/23 15:08	113507-82-7	
PFHpS	**0.00038 U**	ug/L	0.0019	0.00038		1	10/09/23 21:32	10/11/23 15:08	375-92-8	
PFMBA	**0.00025 U**	ug/L	0.0019	0.00025		1	10/09/23 21:32	10/11/23 15:08	863090-89-5	
PFMPA	**0.00032 U**	ug/L	0.0019	0.00032		1	10/09/23 21:32	10/11/23 15:08	377-73-1	
PFPeA	**0.00030 U**	ug/L	0.0019	0.00030		1	10/09/23 21:32	10/11/23 15:08	2706-90-3	
PFPeS	**0.00034 U**	ug/L	0.0019	0.00034		1	10/09/23 21:32	10/11/23 15:08	2706-91-4	
Perfluorododecanoic acid	**0.00051 U**	ug/L	0.0019	0.00051		1	10/09/23 21:32	10/11/23 15:08	307-55-1	
Perfluoroheptanoic acid	**0.00042 U**	ug/L	0.0019	0.00042		1	10/09/23 21:32	10/11/23 15:08	375-85-9	
Perfluorohexanesulfonic acid	**0.00035 U**	ug/L	0.0019	0.00035		1	10/09/23 21:32	10/11/23 15:08	355-46-4	
Perfluorononanoic acid	**0.00032 U**	ug/L	0.0019	0.00032		1	10/09/23 21:32	10/11/23 15:08	375-95-1	
Perfluorooctanesulfonic acid	**0.00034 U**	ug/L	0.0019	0.00034		1	10/09/23 21:32	10/11/23 15:08	1763-23-1	
Perfluorooctanoic acid	**0.00030 U**	ug/L	0.0019	0.00030		1	10/09/23 21:32	10/11/23 15:08	335-67-1	
Perfluoroundecanoic acid	**0.00040 U**	ug/L	0.0019	0.00040		1	10/09/23 21:32	10/11/23 15:08	2058-94-8	
Surrogates										
13C24:2FTS (S)	116	%	50-200			1	10/09/23 21:32	10/11/23 15:08		
13C26:2FTS (S)	110	%	50-200			1	10/09/23 21:32	10/11/23 15:08		
13C28:2FTS (S)	110	%	50-200			1	10/09/23 21:32	10/11/23 15:08		
13C2-PFDoA (S)	91	%	50-200			1	10/09/23 21:32	10/11/23 15:08		
13C3HFPO-DA(S)	57	%	50-200			1	10/09/23 21:32	10/11/23 15:08		
13C3-PFBS (S)	117	%	50-200			1	10/09/23 21:32	10/11/23 15:08		
13C3-PFHxS (S)	115	%	50-200			1	10/09/23 21:32	10/11/23 15:08		
13C4-PFBA (S)	63	%	50-200			1	10/09/23 21:32	10/11/23 15:08		
13C4-PFHpA (S)	59	%	50-200			1	10/09/23 21:32	10/11/23 15:08		
13C5-PFHxA (S)	63	%	50-200			1	10/09/23 21:32	10/11/23 15:08		
13C5-PFPeA (S)	62	%	50-200			1	10/09/23 21:32	10/11/23 15:08		
13C6-PFDA (S)	80	%	50-200			1	10/09/23 21:32	10/11/23 15:08		
13C7-PFUdA (S)	88	%	50-200			1	10/09/23 21:32	10/11/23 15:08		
13C8-PFOA (S)	59	%	50-200			1	10/09/23 21:32	10/11/23 15:08		
13C8-PFOS (S)	110	%	50-200			1	10/09/23 21:32	10/11/23 15:08		
13C9-PFNA (S)	74	%	50-200			1	10/09/23 21:32	10/11/23 15:08		
537.1 PFAS Compounds, Water	Analytical Method: EPA 537.1 Preparation Method: EPA 537.1 Pace Analytical Services - Ormond Beach									
11Cl-PF3OUdS	**0.0015 U**	ug/L	0.0018	0.0015		1	10/09/23 21:21	10/13/23 02:14	763051-92-9	
9Cl-PF3ONS	**0.0011 U**	ug/L	0.0018	0.0011		1	10/09/23 21:21	10/13/23 02:14	756426-58-1	
ADONA	**0.00067 U**	ug/L	0.0018	0.00067		1	10/09/23 21:21	10/13/23 02:14	919005-14-4	
HFPO-DA	**0.0015 U**	ug/L	0.0018	0.0015		1	10/09/23 21:21	10/13/23 02:14	13252-13-6	
NEtFOSAA	**0.00086 U**	ug/L	0.0018	0.00086		1	10/09/23 21:21	10/13/23 02:14	2991-50-6	
NMeFOSAA	**0.0015 U**	ug/L	0.0018	0.0015		1	10/09/23 21:21	10/13/23 02:14	2355-31-9	
Perfluorobutanesulfonic acid	**0.0010 I**	ug/L	0.0018	0.00062		1	10/09/23 21:21	10/13/23 02:14	375-73-5	V
Perfluorodecanoic acid	**0.00090 U**	ug/L	0.0018	0.00090		1	10/09/23 21:21	10/13/23 02:14	335-76-2	

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Pompano Beach, FL 33064
(954)582-4300

ANALYTICAL RESULTS

Project: PFAS Raw Water
Pace Project No.: 35831813

Sample: Raw E-FB **Lab ID: 35831813002** Collected: 10/03/23 09:00 Received: 10/03/23 22:22 Matrix: Drinking Water

Parameters	Results	Units	PQL	MDL	Reg. Limit	DF	Prepared	Analyzed	CAS No.	Qual
537.1 PFAS Compounds, Water	Analytical Method: EPA 537.1 Preparation Method: EPA 537.1 Pace Analytical Services - Ormond Beach									
Perfluorohexanoic acid	**0.0012 U**	ug/L	0.0018	0.0012		1	10/09/23 21:21	10/13/23 02:14	307-24-4	
Perfluorododecanoic acid	**0.0014 U**	ug/L	0.0018	0.0014		1	10/09/23 21:21	10/13/23 02:14	307-55-1	
Perfluoroheptanoic acid	**0.00094 U**	ug/L	0.0018	0.00094		1	10/09/23 21:21	10/13/23 02:14	375-85-9	
Perfluorohexanesulfonic acid	**0.00068 U**	ug/L	0.0018	0.00068		1	10/09/23 21:21	10/13/23 02:14	355-46-4	
Perfluorononanoic acid	**0.0018 U**	ug/L	0.0018	0.0018		1	10/09/23 21:21	10/13/23 02:14	375-95-1	
Perfluorooctanesulfonic acid	**0.0011 U**	ug/L	0.0018	0.0011		1	10/09/23 21:21	10/13/23 02:14	1763-23-1	
Perfluorooctanoic acid	**0.00081 U**	ug/L	0.0018	0.00081		1	10/09/23 21:21	10/13/23 02:14	335-67-1	J(L1)
Perfluorotetradecanoic acid	**0.0017 U**	ug/L	0.0018	0.0017		1	10/09/23 21:21	10/13/23 02:14	376-06-7	
Perfluorotridecanoic acid	**0.0016 U**	ug/L	0.0018	0.0016		1	10/09/23 21:21	10/13/23 02:14	72629-94-8	
Perfluoroundecanoic acid	**0.0018 U**	ug/L	0.0018	0.0018		1	10/09/23 21:21	10/13/23 02:14	2058-94-8	
Surrogates										
13C2-PFDA (S)	94	%	70-130			1	10/09/23 21:21	10/13/23 02:14		
13C2-PFHxA (S)	101	%	70-130			1	10/09/23 21:21	10/13/23 02:14		
NEtFOSAA-d5 (S)	96	%	70-130			1	10/09/23 21:21	10/13/23 02:14		
HFPO-DAS (S)	101	%	70-130			1	10/09/23 21:21	10/13/23 02:14		

Sample: Raw W-FB **Lab ID: 35831813004** Collected: 10/03/23 07:35 Received: 10/03/23 22:22 Matrix: Drinking Water

Parameters	Results	Units	PQL	MDL	Reg. Limit	DF	Prepared	Analyzed	CAS No.	Qual
533 PFAS Compounds, Water	Analytical Method: EPA 533 Preparation Method: EPA 533 Pace Analytical Services - Ormond Beach									
11Cl-PF3OUdS	**0.00042 U**	ug/L	0.0019	0.00042		1	10/09/23 21:32	10/11/23 16:16	763051-92-9	
4:2 FTS	**0.00054 U**	ug/L	0.0019	0.00054		1	10/09/23 21:32	10/11/23 16:16	757124-72-4	
6:2 FTS	**0.0034 U**	ug/L	0.0037	0.0034		1	10/09/23 21:32	10/11/23 16:16	27619-97-2	
8:2 FTS	**0.00046 U**	ug/L	0.0019	0.00046		1	10/09/23 21:32	10/11/23 16:16	39108-34-4	
9Cl-PF3ONS	**0.00048 U**	ug/L	0.0019	0.00048		1	10/09/23 21:32	10/11/23 16:16	756426-58-1	
ADONA	**0.00041 U**	ug/L	0.0019	0.00041		1	10/09/23 21:32	10/11/23 16:16	919005-14-4	
HFPO-DA	**0.00070 U**	ug/L	0.0019	0.00070		1	10/09/23 21:32	10/11/23 16:16	13252-13-6	
NFDHA	**0.00028 U**	ug/L	0.0019	0.00028		1	10/09/23 21:32	10/11/23 16:16	151772-58-6	
Perfluorobutanesulfonic acid	**0.00041 U**	ug/L	0.0019	0.00041		1	10/09/23 21:32	10/11/23 16:16	375-73-5	
Perfluorodecanoic acid	**0.00030 U**	ug/L	0.0019	0.00030		1	10/09/23 21:32	10/11/23 16:16	335-76-2	
Perfluorohexanoic acid	**0.00030 U**	ug/L	0.0019	0.00030		1	10/09/23 21:32	10/11/23 16:16	307-24-4	
PFBA	**0.00059 U**	ug/L	0.0019	0.00059		1	10/09/23 21:32	10/11/23 16:16	375-22-4	
PFEESA	**0.00034 U**	ug/L	0.0019	0.00034		1	10/09/23 21:32	10/11/23 16:16	113507-82-7	
PFHpS	**0.00038 U**	ug/L	0.0019	0.00038		1	10/09/23 21:32	10/11/23 16:16	375-92-8	
PFMBA	**0.00025 U**	ug/L	0.0019	0.00025		1	10/09/23 21:32	10/11/23 16:16	863090-89-5	
PFMPA	**0.00032 U**	ug/L	0.0019	0.00032		1	10/09/23 21:32	10/11/23 16:16	377-73-1	
PFPeA	**0.00030 U**	ug/L	0.0019	0.00030		1	10/09/23 21:32	10/11/23 16:16	2706-90-3	
PFPeS	**0.00034 U**	ug/L	0.0019	0.00034		1	10/09/23 21:32	10/11/23 16:16	2706-91-4	
Perfluorododecanoic acid	**0.00051 U**	ug/L	0.0019	0.00051		1	10/09/23 21:32	10/11/23 16:16	307-55-1	

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Pompano Beach, FL 33064
(954)582-4300

ANALYTICAL RESULTS

Project: PFAS Raw Water
Pace Project No.: 35831813

Sample: Raw W-FB **Lab ID: 35831813004** Collected: 10/03/23 07:35 Received: 10/03/23 22:22 Matrix: Drinking Water

Parameters	Results	Units	PQL	MDL	Reg. Limit	DF	Prepared	Analyzed	CAS No.	Qual
533 PFAS Compounds, Water	Analytical Method: EPA 533 Preparation Method: EPA 533 Pace Analytical Services - Ormond Beach									
Perfluoroheptanoic acid	**0.00042 U**	ug/L	0.0019	0.00042		1	10/09/23 21:32	10/11/23 16:16	375-85-9	
Perfluorohexanesulfonic acid	**0.00036 U**	ug/L	0.0019	0.00036		1	10/09/23 21:32	10/11/23 16:16	355-46-4	
Perfluorononanoic acid	**0.00032 U**	ug/L	0.0019	0.00032		1	10/09/23 21:32	10/11/23 16:16	375-95-1	
Perfluorooctanesulfonic acid	**0.00034 U**	ug/L	0.0019	0.00034		1	10/09/23 21:32	10/11/23 16:16	1763-23-1	
Perfluorooctanoic acid	**0.00030 U**	ug/L	0.0019	0.00030		1	10/09/23 21:32	10/11/23 16:16	335-67-1	
Perfluoroundecanoic acid	**0.00040 U**	ug/L	0.0019	0.00040		1	10/09/23 21:32	10/11/23 16:16	2058-94-8	
Surrogates										
13C24:2FTS (S)	116	%	50-200			1	10/09/23 21:32	10/11/23 16:16		
13C26:2FTS (S)	114	%	50-200			1	10/09/23 21:32	10/11/23 16:16		
13C28:2FTS (S)	113	%	50-200			1	10/09/23 21:32	10/11/23 16:16		
13C2-PFDoA (S)	102	%	50-200			1	10/09/23 21:32	10/11/23 16:16		
13C3HFPO-DA(S)	80	%	50-200			1	10/09/23 21:32	10/11/23 16:16		
13C3-PFBS (S)	116	%	50-200			1	10/09/23 21:32	10/11/23 16:16		
13C3-PFHxS (S)	113	%	50-200			1	10/09/23 21:32	10/11/23 16:16		
13C4-PFBA (S)	83	%	50-200			1	10/09/23 21:32	10/11/23 16:16		
13C4-PFHpA (S)	94	%	50-200			1	10/09/23 21:32	10/11/23 16:16		
13C5-PFHxA (S)	91	%	50-200			1	10/09/23 21:32	10/11/23 16:16		
13C5-PFPeA (S)	85	%	50-200			1	10/09/23 21:32	10/11/23 16:16		
13C6-PFDA (S)	101	%	50-200			1	10/09/23 21:32	10/11/23 16:16		
13C7-PFUdA (S)	101	%	50-200			1	10/09/23 21:32	10/11/23 16:16		
13C8-PFOA (S)	96	%	50-200			1	10/09/23 21:32	10/11/23 16:16		
13C8-PFOS (S)	115	%	50-200			1	10/09/23 21:32	10/11/23 16:16		
13C9-PFNA (S)	103	%	50-200			1	10/09/23 21:32	10/11/23 16:16		
537.1 PFAS Compounds, Water	Analytical Method: EPA 537.1 Preparation Method: EPA 537.1 Pace Analytical Services - Ormond Beach									
11Cl-PF3OUdS	**0.0015 U**	ug/L	0.0018	0.0015		1	10/09/23 21:21	10/13/23 01:58	763051-92-9	
9Cl-PF3ONS	**0.0011 U**	ug/L	0.0018	0.0011		1	10/09/23 21:21	10/13/23 01:58	756426-58-1	
ADONA	**0.00068 U**	ug/L	0.0018	0.00068		1	10/09/23 21:21	10/13/23 01:58	919005-14-4	
HFPO-DA	**0.0015 U**	ug/L	0.0018	0.0015		1	10/09/23 21:21	10/13/23 01:58	13252-13-6	
NEtFOSAA	**0.00088 U**	ug/L	0.0018	0.00088		1	10/09/23 21:21	10/13/23 01:58	2991-50-6	
NMeFOSAA	**0.0015 U**	ug/L	0.0018	0.0015		1	10/09/23 21:21	10/13/23 01:58	2355-31-9	
Perfluorobutanesulfonic acid	**0.0012 I**	ug/L	0.0018	0.00063		1	10/09/23 21:21	10/13/23 01:58	375-73-5	V
Perfluorodecanoic acid	**0.00091 U**	ug/L	0.0018	0.00091		1	10/09/23 21:21	10/13/23 01:58	335-76-2	
Perfluorohexanoic acid	**0.0012 U**	ug/L	0.0018	0.0012		1	10/09/23 21:21	10/13/23 01:58	307-24-4	
Perfluorododecanoic acid	**0.0014 U**	ug/L	0.0018	0.0014		1	10/09/23 21:21	10/13/23 01:58	307-55-1	
Perfluoroheptanoic acid	**0.00095 U**	ug/L	0.0018	0.00095		1	10/09/23 21:21	10/13/23 01:58	375-85-9	
Perfluorohexanesulfonic acid	**0.00069 U**	ug/L	0.0018	0.00069		1	10/09/23 21:21	10/13/23 01:58	355-46-4	
Perfluorononanoic acid	**0.0018 U**	ug/L	0.0018	0.0018		1	10/09/23 21:21	10/13/23 01:58	375-95-1	
Perfluorooctanesulfonic acid	**0.0011 U**	ug/L	0.0018	0.0011		1	10/09/23 21:21	10/13/23 01:58	1763-23-1	
Perfluorooctanoic acid	**0.00083 U**	ug/L	0.0018	0.00083		1	10/09/23 21:21	10/13/23 01:58	335-67-1	J(L1)

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ANALYTICAL RESULTS

Project: PFAS Raw Water
Pace Project No.: 35831813

Sample: Raw W-FB **Lab ID: 35831813004** Collected: 10/03/23 07:35 Received: 10/03/23 22:22 Matrix: Drinking Water

Parameters	Results	Units	PQL	MDL	Reg. Limit	DF	Prepared	Analyzed	CAS No.	Qual
537.1 PFAS Compounds, Water	Analytical Method: EPA 537.1 Preparation Method: EPA 537.1 Pace Analytical Services - Ormond Beach									
Perfluorotetradecanoic acid	**0.0018 U**	ug/L	0.0018	0.0018		1	10/09/23 21:21	10/13/23 01:58	376-06-7	
Perfluorotridecanoic acid	**0.0016 U**	ug/L	0.0018	0.0016		1	10/09/23 21:21	10/13/23 01:58	72629-94-8	
Perfluoroundecanoic acid	**0.0018 U**	ug/L	0.0018	0.0018		1	10/09/23 21:21	10/13/23 01:58	2058-94-8	
Surrogates										
13C2-PFDA (S)	98	%	70-130			1	10/09/23 21:21	10/13/23 01:58		
13C2-PFHxA (S)	99	%	70-130			1	10/09/23 21:21	10/13/23 01:58		
NEtFOSAA-d5 (S)	96	%	70-130			1	10/09/23 21:21	10/13/23 01:58		
HFPO-DAS (S)	91	%	70-130			1	10/09/23 21:21	10/13/23 01:58		

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(954)582-4300

QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

QC Batch: 956517
QC Batch Method: EPA 533
Analysis Method: EPA 533
Analysis Description: 533 PFAS Compounds, Water
Laboratory: Pace Analytical Services - Ormond Beach
Associated Lab Samples: 35831813002, 35831813004

METHOD BLANK: 5260220 Matrix: Drinking Water
Associated Lab Samples: 35831813002, 35831813003, 35831813004

Parameter	Units	Blank Result	Reporting Limit	MDL	Analyzed	Qualifiers
11Cl-PF3OUdS	ug/L	0.00045 U	0.0020	0.00045	10/11/23 14:00	
4:2 FTS	ug/L	0.00058 U	0.0020	0.00058	10/11/23 14:00	
6:2 FTS	ug/L	0.0036 U	0.0040	0.0036	10/11/23 14:00	
8:2 FTS	ug/L	0.00049 U	0.0020	0.00049	10/11/23 14:00	
9Cl-PF3ONS	ug/L	0.00051 U	0.0020	0.00051	10/11/23 14:00	
ADONA	ug/L	0.00044 U	0.0020	0.00044	10/11/23 14:00	
HFPO-DA	ug/L	0.00075 U	0.0020	0.00075	10/11/23 14:00	
NFDHA	ug/L	0.00030 U	0.0020	0.00030	10/11/23 14:00	
Perfluorobutanesulfonic acid	ug/L	0.00044 U	0.0020	0.00044	10/11/23 14:00	
Perfluorodecanoic acid	ug/L	0.00032 U	0.0020	0.00032	10/11/23 14:00	
Perfluorododecanoic acid	ug/L	0.00055 U	0.0020	0.00055	10/11/23 14:00	
Perfluoroheptanoic acid	ug/L	0.00045 U	0.0020	0.00045	10/11/23 14:00	
Perfluorohexanesulfonic acid	ug/L	0.00038 U	0.0020	0.00038	10/11/23 14:00	
Perfluorohexanoic acid	ug/L	0.00032 U	0.0020	0.00032	10/11/23 14:00	
Perfluorononanoic acid	ug/L	0.00034 U	0.0020	0.00034	10/11/23 14:00	
Perfluorooctanesulfonic acid	ug/L	0.00036 U	0.0020	0.00036	10/11/23 14:00	
Perfluorooctanoic acid	ug/L	0.00032 U	0.0020	0.00032	10/11/23 14:00	
Perfluoroundecanoic acid	ug/L	0.00043 U	0.0020	0.00043	10/11/23 14:00	
PFBA	ug/L	0.00063 U	0.0020	0.00063	10/11/23 14:00	
PFEESA	ug/L	0.00036 U	0.0020	0.00036	10/11/23 14:00	
PFHpS	ug/L	0.00041 U	0.0020	0.00041	10/11/23 14:00	
PFMBA	ug/L	0.00027 U	0.0020	0.00027	10/11/23 14:00	
PFMPA	ug/L	0.00034 U	0.0020	0.00034	10/11/23 14:00	
PFPeA	ug/L	0.00032 U	0.0020	0.00032	10/11/23 14:00	
PFPeS	ug/L	0.00036 U	0.0020	0.00036	10/11/23 14:00	
13C2-PFDoA (S)	%	95	50-200		10/11/23 14:00	
13C24:2FTS (S)	%	108	50-200		10/11/23 14:00	
13C26:2FTS (S)	%	104	50-200		10/11/23 14:00	
13C28:2FTS (S)	%	103	50-200		10/11/23 14:00	
13C3-PFBS (S)	%	109	50-200		10/11/23 14:00	
13C3-PFHxS (S)	%	109	50-200		10/11/23 14:00	
13C3HFPO-DA(S)	%	88	50-200		10/11/23 14:00	
13C4-PFBA (S)	%	97	50-200		10/11/23 14:00	
13C4-PFHpA (S)	%	98	50-200		10/11/23 14:00	
13C5-PFHxA (S)	%	96	50-200		10/11/23 14:00	
13C5-PFPeA (S)	%	95	50-200		10/11/23 14:00	
13C6-PFDA (S)	%	96	50-200		10/11/23 14:00	
13C7-PFUdA (S)	%	97	50-200		10/11/23 14:00	
13C8-PFOA (S)	%	96	50-200		10/11/23 14:00	
13C8-PFOS (S)	%	105	50-200		10/11/23 14:00	

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(954)582-4300

QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

METHOD BLANK: 5260220 Matrix: Drinking Water
Associated Lab Samples: 35831813002, 35831813003, 35831813004

Parameter	Units	Blank Result	Reporting Limit	MDL	Analyzed	Qualifiers
13C9-PFNA (S)	%	95	50-200		10/11/23 14:00	

LABORATORY CONTROL SAMPLE: 5260221

Parameter	Units	Spike Conc.	LCS Result	LCS % Rec	% Rec Limits	Qualifiers
11Cl-PF3OUdS	ug/L	0.0076	0.0071	93	70-130	
4:2 FTS	ug/L	0.0076	0.0072	95	70-130	
6:2 FTS	ug/L	0.0076	0.0079	104	70-130	
8:2 FTS	ug/L	0.0076	0.0072	94	70-130	
9Cl-PF3ONS	ug/L	0.0076	0.0070	92	70-130	
ADONA	ug/L	0.0076	0.0061	81	70-130	
HFPO-DA	ug/L	0.008	0.0067	84	70-130	
NFDHA	ug/L	0.008	0.0071	88	70-130	
Perfluorobutanesulfonic acid	ug/L	0.0072	0.0067	92	70-130	
Perfluorodecanoic acid	ug/L	0.008	0.0074	92	70-130	
Perfluorododecanoic acid	ug/L	0.008	0.0074	93	70-130	
Perfluoroheptanoic acid	ug/L	0.008	0.0078	98	70-130	
Perfluorohexanesulfonic acid	ug/L	0.0072	0.0067	93	70-130	
Perfluorohexanoic acid	ug/L	0.008	0.0077	96	70-130	
Perfluorononanoic acid	ug/L	0.008	0.0091	114	70-130	
Perfluorooctanesulfonic acid	ug/L	0.0076	0.0070	92	70-130	
Perfluorooctanoic acid	ug/L	0.008	0.0099	124	70-130	
Perfluoroundecanoic acid	ug/L	0.008	0.0073	91	70-130	
PFBA	ug/L	0.008	0.0074	92	70-130	
PFEESA	ug/L	0.0072	0.0067	93	70-130	
PFHpS	ug/L	0.0076	0.0070	93	70-130	
PFMBA	ug/L	0.008	0.0073	91	70-130	
PFMPA	ug/L	0.008	0.0073	91	70-130	
PFPeA	ug/L	0.008	0.0075	94	70-130	
PFPeS	ug/L	0.0076	0.0071	93	70-130	
13C2-PFDoA (S)	%			92	50-200	
13C24:2FTS (S)	%			109	50-200	
13C26:2FTS (S)	%			108	50-200	
13C28:2FTS (S)	%			108	50-200	
13C3-PFBS (S)	%			112	50-200	
13C3-PFHxS (S)	%			109	50-200	
13C3HFPO-DA(S)	%			59	50-200	
13C4-PFBA (S)	%			69	50-200	
13C4-PFHpA (S)	%			67	50-200	
13C5-PFHxA (S)	%			68	50-200	
13C5-PFPeA (S)	%			66	50-200	
13C6-PFDA (S)	%			73	50-200	
13C7-PFUdA (S)	%			83	50-200	
13C8-PFOA (S)	%			66	50-200	

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QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

LABORATORY CONTROL SAMPLE: 5260221

Parameter	Units	Spike Conc.	LCS Result	LCS % Rec	% Rec Limits	Qualifiers
13C8-PFOS (S)	%			109	50-200	
13C9-PFNA (S)	%			65	50-200	

LABORATORY CONTROL SAMPLE: 5260222

Parameter	Units	Spike Conc.	LCS Result	LCS % Rec	% Rec Limits	Qualifiers
11Cl-PF3OUdS	ug/L	0.0019	0.0015 I	81	50-150	
4:2 FTS	ug/L	0.0019	0.0015 I	81	50-150	
6:2 FTS	ug/L	0.0019	0.0036 U	92	50-150	
8:2 FTS	ug/L	0.0019	0.0018 I	93	50-150	
9Cl-PF3ONS	ug/L	0.0019	0.0016 I	82	50-150	
ADONA	ug/L	0.0019	0.0015 I	78	50-150	
HFPO-DA	ug/L	0.002	0.0017 I	84	50-150	
NFDHA	ug/L	0.002	0.0018 I	89	50-150	
Perfluorobutanesulfonic acid	ug/L	0.0018	0.0015 I	82	50-150	
Perfluorodecanoic acid	ug/L	0.002	0.0017 I	86	50-150	
Perfluorododecanoic acid	ug/L	0.002	0.0018 I	88	50-150	
Perfluoroheptanoic acid	ug/L	0.002	0.0017 I	84	50-150	
Perfluorohexanesulfonic acid	ug/L	0.0018	0.0014 I	80	50-150	
Perfluorohexanoic acid	ug/L	0.002	0.0018 I	91	50-150	
Perfluorononanoic acid	ug/L	0.002	0.0023	114	50-150	
Perfluorooctanesulfonic acid	ug/L	0.0019	0.0017 I	89	50-150	
Perfluorooctanoic acid	ug/L	0.002	0.0023	114	50-150	
Perfluoroundecanoic acid	ug/L	0.002	0.0017 I	85	50-150	
PFBA	ug/L	0.002	0.0018 I	90	50-150	
PFEESA	ug/L	0.0018	0.0016 I	89	50-150	
PFHpS	ug/L	0.0019	0.0017 I	89	50-150	
PFMBA	ug/L	0.002	0.0018 I	88	50-150	
PFMPA	ug/L	0.002	0.0017 I	85	50-150	
PFPeA	ug/L	0.002	0.0018 I	91	50-150	
PFPeS	ug/L	0.0019	0.0015 I	81	50-150	
13C2-PFDoA (S)	%			100	50-200	
13C24:2FTS (S)	%			112	50-200	
13C26:2FTS (S)	%			108	50-200	
13C28:2FTS (S)	%			107	50-200	
13C3-PFBS (S)	%			113	50-200	
13C3-PFHxS (S)	%			110	50-200	
13C3HFPO-DA(S)	%			97	50-200	
13C4-PFBA (S)	%			102	50-200	
13C4-PFHpA (S)	%			103	50-200	
13C5-PFHxA (S)	%			104	50-200	
13C5-PFPeA (S)	%			100	50-200	
13C6-PFDA (S)	%			101	50-200	
13C7-PFUdA (S)	%			101	50-200	
13C8-PFOA (S)	%			100	50-200	

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QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

LABORATORY CONTROL SAMPLE: 5260222

Parameter	Units	Spike Conc.	LCS Result	LCS % Rec	% Rec Limits	Qualifiers
13C8-PFOS (S)	%			108	50-200	
13C9-PFNA (S)	%			101	50-200	

MATRIX SPIKE & MATRIX SPIKE DUPLICATE: 5260223 5260224

Parameter	Units	35831813003 Result	MS Spike Conc.	MSD Spike Conc.	MS Result	MSD Result	MS % Rec	MSD % Rec	% Rec Limits	RPD	Max RPD	Qual
11Cl-PF3OUdS	ug/L	0.00041 U	0.0018	0.0017	0.0014 I	0.0014 I	79	78	70-130		30	
4:2 FTS	ug/L	0.00052 U	0.0018	0.0017	0.0015 I	0.0015 I	85	86	70-130		30	
6:2 FTS	ug/L	0.0033 U	0.0018	0.0017	0.0033 U	0.0033 U	76	86	70-130		30	
8:2 FTS	ug/L	0.00044 U	0.0018	0.0017	0.0014 I	0.0015 I	79	86	70-130		30	
9Cl-PF3ONS	ug/L	0.00046 U	0.0018	0.0017	0.0015 I	0.0014 I	82	82	70-130		30	
ADONA	ug/L	0.00040 U	0.0018	0.0017	0.0014 I	0.0014 I	76	81	70-130		30	
HFPO-DA	ug/L	0.00068 U	0.0019	0.0018	0.0017 I	0.0019	88	103	70-130		30	
NFDHA	ug/L	0.00027 U	0.0019	0.0018	0.0016 I	0.0015 I	85	79	70-130		30	
Perfluorobutanesulfonic acid	ug/L	0.0042	0.0017	0.0016	0.0053	0.0057	66	90	70-130	7	30	J(M1)
Perfluorodecanoic acid	ug/L	0.00029 U	0.0019	0.0018	0.0018 I	0.0019	86	95	70-130		30	
Perfluorododecanoic acid	ug/L	0.00050 U	0.0019	0.0018	0.0015 I	0.0016 I	82	87	70-130		30	
Perfluoroheptanoic acid	ug/L	0.0023	0.0019	0.0018	0.0043	0.0042	109	103	70-130	3	30	
Perfluorohexanesulfonic acid	ug/L	0.0037	0.0017	0.0016	0.0055	0.0056	108	114	70-130	1	30	
Perfluorohexanoic acid	ug/L	0.0040	0.0019	0.0018	0.0056	0.0058	85	96	70-130	3	30	
Perfluorononanoic acid	ug/L	0.00078 I	0.0019	0.0018	0.0027	0.0029	103	117	70-130	8	30	
Perfluorooctanesulfonic acid	ug/L	0.023	0.0018	0.0017	0.025	0.025	107	116	70-130	0	30	
Perfluorooctanoic acid	ug/L	0.0074	0.0019	0.0018	0.010	0.0097	145	124	70-130	4	30	J(M1)
Perfluoroundecanoic acid	ug/L	0.00039 U	0.0019	0.0018	0.0016 I	0.0017 I	83	89	70-130		30	
PFBA	ug/L	0.0032	0.0019	0.0018	0.0051	0.0051	100	104	70-130	1	30	
PFEESA	ug/L	0.00033 U	0.0017	0.0016	0.0015 I	0.0015 I	91	93	70-130		30	
PFHpS	ug/L	0.00037 U	0.0018	0.0017	0.0019	0.0020	88	94	70-130	4	30	
PFMBA	ug/L	0.00024 U	0.0019	0.0018	0.0018 I	0.0018 I	98	96	70-130		30	
PFMPA	ug/L	0.00031 U	0.0019	0.0018	0.0013 I	0.0013 I	67	69	70-130		30	J(M1)
PFPeA	ug/L	0.0051	0.0019	0.0018	0.0070	0.0069	103	96	70-130	2	30	
PFPeS	ug/L	0.00048 I	0.0018	0.0017	0.0020	0.0019	87	81	70-130	6	30	

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QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

MATRIX SPIKE & MATRIX SPIKE DUPLICATE: 5260223 5260224

Parameter	Units	35831813003 Result	MS Spike Conc.	MSD Spike Conc.	MS Result	MSD Result	MS % Rec	MSD % Rec	% Rec Limits	RPD	Max RPD	Qual
13C2-PFDoA (S)	%						77	68	50-200			
13C24:2FTS (S)	%						273	274	50-200			J(S0)
13C26:2FTS (S)	%						181	190	50-200			
13C28:2FTS (S)	%						132	128	50-200			
13C3-PFBS (S)	%						100	99	50-200			
13C3-PFHxS (S)	%						113	111	50-200			
13C3HFPO-DA(S)	%						83	79	50-200			
13C4-PFBA (S)	%						109	108	50-200			
13C4-PFHpA (S)	%						97	92	50-200			
13C5-PFHxA (S)	%						91	90	50-200			
13C5-PFPeA (S)	%						65	64	50-200			
13C6-PFDA (S)	%						62	52	50-200			
13C7-PFUdA (S)	%						66	57	50-200			
13C8-PFOA (S)	%						90	83	50-200			
13C8-PFOS (S)	%						111	107	50-200			
13C9-PFNA (S)	%						71	61	50-200			

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QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

QC Batch: 958544
QC Batch Method: EPA 533
Analysis Method: EPA 533
Analysis Description: 533 PFAS Compounds, Water
Laboratory: Pace Analytical Services - Ormond Beach

Associated Lab Samples: 35831813001

METHOD BLANK: 5271535 Matrix: Drinking Water
Associated Lab Samples: 35831813001

Parameter	Units	Blank Result	Reporting Limit	MDL	Analyzed	Qualifiers
11Cl-PF3OUdS	ug/L	0.00045 U	0.0020	0.00045	10/17/23 18:25	
4:2 FTS	ug/L	0.00058 U	0.0020	0.00058	10/17/23 18:25	
6:2 FTS	ug/L	0.0036 U	0.0040	0.0036	10/17/23 18:25	
8:2 FTS	ug/L	0.00049 U	0.0020	0.00049	10/17/23 18:25	
9Cl-PF3ONS	ug/L	0.00051 U	0.0020	0.00051	10/17/23 18:25	
ADONA	ug/L	0.00044 U	0.0020	0.00044	10/17/23 18:25	
HFPO-DA	ug/L	0.00075 U	0.0020	0.00075	10/17/23 18:25	
NFDHA	ug/L	0.00030 U	0.0020	0.00030	10/17/23 18:25	
Perfluorobutanesulfonic acid	ug/L	0.00044 I	0.0020	0.00044	10/17/23 18:25	
Perfluorodecanoic acid	ug/L	0.00032 U	0.0020	0.00032	10/17/23 18:25	
Perfluorododecanoic acid	ug/L	0.00055 U	0.0020	0.00055	10/17/23 18:25	
Perfluoroheptanoic acid	ug/L	0.00045 U	0.0020	0.00045	10/17/23 18:25	
Perfluorohexanesulfonic acid	ug/L	0.00038 U	0.0020	0.00038	10/17/23 18:25	
Perfluorohexanoic acid	ug/L	0.00032 U	0.0020	0.00032	10/17/23 18:25	
Perfluorononanoic acid	ug/L	0.00034 U	0.0020	0.00034	10/17/23 18:25	
Perfluorooctanesulfonic acid	ug/L	0.00036 U	0.0020	0.00036	10/17/23 18:25	
Perfluorooctanoic acid	ug/L	0.00032 U	0.0020	0.00032	10/17/23 18:25	
Perfluoroundecanoic acid	ug/L	0.00043 U	0.0020	0.00043	10/17/23 18:25	
PFBA	ug/L	0.00063 U	0.0020	0.00063	10/17/23 18:25	
PFEESA	ug/L	0.00036 U	0.0020	0.00036	10/17/23 18:25	
PFHpS	ug/L	0.00041 U	0.0020	0.00041	10/17/23 18:25	
PFMBA	ug/L	0.00027 U	0.0020	0.00027	10/17/23 18:25	
PFMPA	ug/L	0.00034 U	0.0020	0.00034	10/17/23 18:25	
PFPeA	ug/L	0.00032 U	0.0020	0.00032	10/17/23 18:25	
PFPeS	ug/L	0.00036 U	0.0020	0.00036	10/17/23 18:25	
13C2-PFDoA (S)	%	107	50-200		10/17/23 18:25	
13C24:2FTS (S)	%	125	50-200		10/17/23 18:25	
13C26:2FTS (S)	%	128	50-200		10/17/23 18:25	
13C28:2FTS (S)	%	119	50-200		10/17/23 18:25	
13C3-PFBS (S)	%	125	50-200		10/17/23 18:25	
13C3-PFHxS (S)	%	122	50-200		10/17/23 18:25	
13C3HFPO-DA(S)	%	102	50-200		10/17/23 18:25	
13C4-PFBA (S)	%	103	50-200		10/17/23 18:25	
13C4-PFHpA (S)	%	105	50-200		10/17/23 18:25	
13C5-PFHxA (S)	%	105	50-200		10/17/23 18:25	
13C5-PFPeA (S)	%	107	50-200		10/17/23 18:25	
13C6-PFDA (S)	%	109	50-200		10/17/23 18:25	
13C7-PFUdA (S)	%	109	50-200		10/17/23 18:25	
13C8-PFOA (S)	%	108	50-200		10/17/23 18:25	
13C8-PFOS (S)	%	116	50-200		10/17/23 18:25	

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QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

METHOD BLANK: 5271535 Matrix: Drinking Water
Associated Lab Samples: 35831813001

Parameter	Units	Blank Result	Reporting Limit	MDL	Analyzed	Qualifiers
13C9-PFNA (S)	%	102	50-200		10/17/23 18:25	

LABORATORY CONTROL SAMPLE: 5271536

Parameter	Units	Spike Conc.	LCS Result	LCS % Rec	% Rec Limits	Qualifiers
11Cl-PF3OUdS	ug/L	0.038	0.034	89	70-130	
4:2 FTS	ug/L	0.038	0.032	85	70-130	
6:2 FTS	ug/L	0.038	0.033	88	70-130	
8:2 FTS	ug/L	0.038	0.033	88	70-130	
9Cl-PF3ONS	ug/L	0.038	0.033	88	70-130	
ADONA	ug/L	0.038	0.032	84	70-130	
HFPO-DA	ug/L	0.04	0.033	81	70-130	
NFDHA	ug/L	0.04	0.031	78	70-130	
Perfluorobutanesulfonic acid	ug/L	0.036	0.030	83	70-130	
Perfluorodecanoic acid	ug/L	0.04	0.035	87	70-130	
Perfluorododecanoic acid	ug/L	0.04	0.035	87	70-130	
Perfluoroheptanoic acid	ug/L	0.04	0.034	84	70-130	
Perfluorohexanesulfonic acid	ug/L	0.036	0.032	88	70-130	
Perfluorohexanoic acid	ug/L	0.04	0.034	85	70-130	
Perfluorononanoic acid	ug/L	0.04	0.042	105	70-130	
Perfluorooctanesulfonic acid	ug/L	0.038	0.032	84	70-130	
Perfluorooctanoic acid	ug/L	0.04	0.044	110	70-130	
Perfluoroundecanoic acid	ug/L	0.04	0.036	89	70-130	
PFBA	ug/L	0.04	0.036	90	70-130	
PFEESA	ug/L	0.036	0.031	86	70-130	
PFHpS	ug/L	0.038	0.033	88	70-130	
PFMBA	ug/L	0.04	0.034	85	70-130	
PFMPA	ug/L	0.04	0.034	84	70-130	
PFPeA	ug/L	0.04	0.034	85	70-130	
PFPeS	ug/L	0.038	0.032	85	70-130	
13C2-PFDoA (S)	%			116	50-200	
13C24:2FTS (S)	%			138	50-200	
13C26:2FTS (S)	%			134	50-200	
13C28:2FTS (S)	%			134	50-200	
13C3-PFBS (S)	%			132	50-200	
13C3-PFHxS (S)	%			131	50-200	
13C3HFPO-DA(S)	%			108	50-200	
13C4-PFBA (S)	%			109	50-200	
13C4-PFHpA (S)	%			114	50-200	
13C5-PFHxA (S)	%			113	50-200	
13C5-PFPeA (S)	%			111	50-200	
13C6-PFDA (S)	%			120	50-200	
13C7-PFUdA (S)	%			118	50-200	
13C8-PFOA (S)	%			115	50-200	

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QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

LABORATORY CONTROL SAMPLE: 5271536

Parameter	Units	Spike Conc.	LCS Result	LCS % Rec	% Rec Limits	Qualifiers
13C8-PFOS (S)	%			124	50-200	
13C9-PFNA (S)	%			109	50-200	

LABORATORY CONTROL SAMPLE: 5271537

Parameter	Units	Spike Conc.	LCS Result	LCS % Rec	% Rec Limits	Qualifiers
11Cl-PF3OUdS	ug/L	0.0019	0.0016 I	83	50-150	
4:2 FTS	ug/L	0.0019	0.0016 I	84	50-150	
6:2 FTS	ug/L	0.0019	0.0036 U	127	50-150	
8:2 FTS	ug/L	0.0019	0.0015 I	80	50-150	
9Cl-PF3ONS	ug/L	0.0019	0.0016 I	83	50-150	
ADONA	ug/L	0.0019	0.0016 I	82	50-150	
HFPO-DA	ug/L	0.002	0.0015 I	76	50-150	
NFDHA	ug/L	0.002	0.0020 I	98	50-150	
Perfluorobutanesulfonic acid	ug/L	0.0018	0.0016 I	90	50-150	
Perfluorodecanoic acid	ug/L	0.002	0.0017 I	84	50-150	
Perfluorododecanoic acid	ug/L	0.002	0.0016 I	82	50-150	
Perfluoroheptanoic acid	ug/L	0.002	0.0016 I	82	50-150	
Perfluorohexanesulfonic acid	ug/L	0.0018	0.0015 I	84	50-150	
Perfluorohexanoic acid	ug/L	0.002	0.0017 I	87	50-150	
Perfluorononanoic acid	ug/L	0.002	0.0020 I	99	50-150	
Perfluorooctanesulfonic acid	ug/L	0.0019	0.0015 I	81	50-150	
Perfluorooctanoic acid	ug/L	0.002	0.0021	106	50-150	
Perfluoroundecanoic acid	ug/L	0.002	0.0017 I	83	50-150	
PFBA	ug/L	0.002	0.0017 I	83	50-150	
PFEESA	ug/L	0.0018	0.0015 I	84	50-150	
PFHpS	ug/L	0.0019	0.0016 I	84	50-150	
PFMBA	ug/L	0.002	0.0017 I	83	50-150	
PFMPA	ug/L	0.002	0.0016 I	80	50-150	
PFPeA	ug/L	0.002	0.0016 I	82	50-150	
PFPeS	ug/L	0.0019	0.0015 I	81	50-150	
13C2-PFDoA (S)	%			109	50-200	
13C24:2FTS (S)	%			130	50-200	
13C26:2FTS (S)	%			124	50-200	
13C28:2FTS (S)	%			126	50-200	
13C3-PFBS (S)	%			129	50-200	
13C3-PFHxS (S)	%			125	50-200	
13C3HFPO-DA(S)	%			111	50-200	
13C4-PFBA (S)	%			111	50-200	
13C4-PFHpA (S)	%			113	50-200	
13C5-PFHxA (S)	%			113	50-200	
13C5-PFPeA (S)	%			116	50-200	
13C6-PFDA (S)	%			113	50-200	
13C7-PFUdA (S)	%			111	50-200	
13C8-PFOA (S)	%			115	50-200	

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QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

LABORATORY CONTROL SAMPLE: 5271537

Parameter	Units	Spike Conc.	LCS Result	LCS % Rec	% Rec Limits	Qualifiers
13C8-PFOS (S)	%			118	50-200	
13C9-PFNA (S)	%			107	50-200	

MATRIX SPIKE SAMPLE: 5271547

Parameter	Units	35832202009 Result	Spike Conc.	MS Result	MS % Rec	% Rec Limits	Qualifiers
11Cl-PF3OUdS	ug/L	0.00040 U	0.0017	0.0013 I	79	70-130	
4:2 FTS	ug/L	0.00051 U	0.0017	0.0013 I	76	70-130	
6:2 FTS	ug/L	0.0032 U	0.0017	0.0032 U	72	70-130	
8:2 FTS	ug/L	0.00043 U	0.0017	0.0013 I	79	70-130	
9Cl-PF3ONS	ug/L	0.00045 U	0.0017	0.0013 I	77	70-130	
ADONA	ug/L	0.00039 U	0.0017	0.0013 I	76	70-130	
HFPO-DA	ug/L	0.00066 U	0.0018	0.0013 I	74	70-130	
NFDHA	ug/L	0.00026 U	0.0018	0.0013 I	71	70-130	
Perfluorobutanesulfonic acid	ug/L	0.00042 I	0.0016	0.0017 I	79	70-130	
Perfluorodecanoic acid	ug/L	0.00028 U	0.0018	0.0014 I	77	70-130	
Perfluorododecanoic acid	ug/L	0.00048 U	0.0018	0.0016 I	87	70-130	
Perfluoroheptanoic acid	ug/L	0.00040 U	0.0018	0.0016 I	78	70-130	
Perfluorohexanesulfonic acid	ug/L	0.00033 U	0.0016	0.0012 I	74	70-130	
Perfluorohexanoic acid	ug/L	0.00057 I	0.0018	0.0020	83	70-130	
Perfluorononanoic acid	ug/L	0.00030 U	0.0018	0.0017 I	95	70-130	
Perfluorooctanesulfonic acid	ug/L	0.00032 U	0.0017	0.0014 I	82	70-130	
Perfluorooctanoic acid	ug/L	0.00029 I	0.0018	0.0021	103	70-130	
Perfluoroundecanoic acid	ug/L	0.00038 U	0.0018	0.0014 I	79	70-130	
PFBA	ug/L	0.0018	0.0018	0.0032	79	70-130	
PFEESA	ug/L	0.00032 U	0.0016	0.0012 I	76	70-130	
PFHpS	ug/L	0.00036 U	0.0017	0.0013 I	76	70-130	
PFMBA	ug/L	0.00024 U	0.0018	0.0014 I	77	70-130	
PFMPA	ug/L	0.00030 U	0.0018	0.0013 I	73	70-130	
PFPeA	ug/L	0.00074 I	0.0018	0.0021	79	70-130	
PFPeS	ug/L	0.00032 U	0.0017	0.0011 I	66	70-130	J(M1)
13C2-PFDoA (S)	%				115	50-200	
13C24:2FTS (S)	%				148	50-200	
13C26:2FTS (S)	%				141	50-200	
13C28:2FTS (S)	%				135	50-200	
13C3-PFBS (S)	%				135	50-200	
13C3-PFHxS (S)	%				138	50-200	
13C3HFPO-DA(S)	%				111	50-200	
13C4-PFBA (S)	%				119	50-200	
13C4-PFHpA (S)	%				114	50-200	
13C5-PFHxA (S)	%				117	50-200	
13C5-PFPeA (S)	%				119	50-200	
13C6-PFDA (S)	%				115	50-200	
13C7-PFUdA (S)	%				117	50-200	
13C8-PFOA (S)	%				113	50-200	

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QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

MATRIX SPIKE SAMPLE: 5271547

Parameter	Units	35832202009 Result	Spike Conc.	MS Result	MS % Rec	% Rec Limits	Qualifiers
13C8-PFOS (S)	%				128	50-200	
13C9-PFNA (S)	%				109	50-200	

SAMPLE DUPLICATE: 5271548

Parameter	Units	35832202010 Result	Dup Result	RPD	Max RPD	Qualifiers
11Cl-PF3OUdS	ug/L	0.00039 U	0.00039 U		30	
4:2 FTS	ug/L	0.00051 U	0.00050 U		30	
6:2 FTS	ug/L	0.0031 U	0.0031 U		30	
8:2 FTS	ug/L	0.00043 U	0.00042 U		30	
9Cl-PF3ONS	ug/L	0.00045 U	0.00044 U		30	
ADONA	ug/L	0.00038 U	0.00038 U		30	
HFPO-DA	ug/L	0.00066 U	0.00065 U		30	
NFDHA	ug/L	0.00026 U	0.00026 U		30	
Perfluorobutanesulfonic acid	ug/L	0.00045 I	0.00041 I		30	
Perfluorodecanoic acid	ug/L	0.00028 U	0.00028 U		30	
Perfluorododecanoic acid	ug/L	0.00048 U	0.00048 U		30	
Perfluoroheptanoic acid	ug/L	0.00039 U	0.00039 U		30	
Perfluorohexanesulfonic acid	ug/L	0.00033 U	0.00033 U		30	
Perfluorohexanoic acid	ug/L	0.00050 I	0.00049 I		30	
Perfluorononanoic acid	ug/L	0.00030 U	0.00029 U		30	
Perfluorooctanesulfonic acid	ug/L	0.00037 I	0.00031 U		30	
Perfluorooctanoic acid	ug/L	0.00074 I	0.00067 I		30	
Perfluoroundecanoic acid	ug/L	0.00038 U	0.00037 U		30	
PFBA	ug/L	0.0015 I	0.0015 I		30	
PFEESA	ug/L	0.00031 U	0.00031 U		30	
PFHpS	ug/L	0.00036 U	0.00036 U		30	
PFMBA	ug/L	0.00024 U	0.00023 U		30	
PFMPA	ug/L	0.00030 U	0.00029 U		30	
PFPeA	ug/L	0.00055 I	0.00064 I		30	
PFPeS	ug/L	0.00031 U	0.00031 U		30	
13C2-PFDoA (S)	%	121	121			
13C24:2FTS (S)	%	180	169			
13C26:2FTS (S)	%	141	137			
13C28:2FTS (S)	%	141	136			
13C3-PFBS (S)	%	128	124			
13C3-PFHxS (S)	%	129	130			
13C3HFPO-DA(S)	%	113	115			
13C4-PFBA (S)	%	123	119			
13C4-PFHpA (S)	%	121	115			
13C5-PFHxA (S)	%	123	119			
13C5-PFPeA (S)	%	115	111			
13C6-PFDA (S)	%	124	118			
13C7-PFUdA (S)	%	134	120			
13C8-PFOA (S)	%	119	112			

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QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

SAMPLE DUPLICATE: 5271548

Parameter	Units	35832202010 Result	Dup Result	RPD	Max RPD	Qualifiers
13C8-PFOS (S)	%	129	130			
13C9-PFNA (S)	%	116	109			

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QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

QC Batch: 956483
QC Batch Method: EPA 537.1
Analysis Method: EPA 537.1
Analysis Description: 537.1 PFOA Compounds, Water
Laboratory: Pace Analytical Services - Ormond Beach
Associated Lab Samples: 35831813002, 35831813004

METHOD BLANK: 5260015 Matrix: Water
Associated Lab Samples: 35831813002, 35831813003, 35831813004

Parameter	Units	Blank Result	Reporting Limit	MDL	Analyzed	Qualifiers
11Cl-PF3OUdS	ug/L	0.0016 U	0.0020	0.0016	10/12/23 23:37	
9Cl-PF3ONS	ug/L	0.0012 U	0.0020	0.0012	10/12/23 23:37	
ADONA	ug/L	0.00074 U	0.0020	0.00074	10/12/23 23:37	
HFPO-DA	ug/L	0.0017 U	0.0020	0.0017	10/12/23 23:37	
NEtFOSAA	ug/L	0.00095 U	0.0020	0.00095	10/12/23 23:37	
NMeFOSAA	ug/L	0.0016 U	0.0020	0.0016	10/12/23 23:37	
Perfluorobutanesulfonic acid	ug/L	0.0012 I	0.0020	0.00068	10/12/23 23:37	
Perfluorodecanoic acid	ug/L	0.00099 U	0.0020	0.00099	10/12/23 23:37	
Perfluorododecanoic acid	ug/L	0.0015 U	0.0020	0.0015	10/12/23 23:37	
Perfluoroheptanoic acid	ug/L	0.0010 U	0.0020	0.0010	10/12/23 23:37	
Perfluorohexanesulfonic acid	ug/L	0.00075 U	0.0020	0.00075	10/12/23 23:37	
Perfluorohexanoic acid	ug/L	0.0013 U	0.0020	0.0013	10/12/23 23:37	
Perfluorononanoic acid	ug/L	0.0020 U	0.0020	0.0020	10/12/23 23:37	
Perfluorooctanesulfonic acid	ug/L	0.0012 U	0.0020	0.0012	10/12/23 23:37	
Perfluorooctanoic acid	ug/L	0.00089 U	0.0020	0.00089	10/12/23 23:37	
Perfluorotetradecanoic acid	ug/L	0.0019 U	0.0020	0.0019	10/12/23 23:37	
Perfluorotridecanoic acid	ug/L	0.0018 U	0.0020	0.0018	10/12/23 23:37	
Perfluoroundecanoic acid	ug/L	0.0020 U	0.0020	0.0020	10/12/23 23:37	
13C2-PFDA (S)	%	97	70-130		10/12/23 23:37	
13C2-PFHxA (S)	%	107	70-130		10/12/23 23:37	
HFPO-DAS (S)	%	101	70-130		10/12/23 23:37	
NEtFOSAA-d5 (S)	%	98	70-130		10/12/23 23:37	

LABORATORY CONTROL SAMPLE: 5260016

Parameter	Units	Spike Conc.	LCS Result	LCS % Rec	% Rec Limits	Qualifiers
11Cl-PF3OUdS	ug/L	0.15	0.17	114	70-130	
9Cl-PF3ONS	ug/L	0.15	0.17	116	70-130	
ADONA	ug/L	0.15	0.17	115	70-130	
HFPO-DA	ug/L	0.16	0.19	117	70-130	
NEtFOSAA	ug/L	0.16	0.17	109	70-130	
NMeFOSAA	ug/L	0.16	0.18	115	70-130	
Perfluorobutanesulfonic acid	ug/L	0.14	0.17	120	70-130	
Perfluorodecanoic acid	ug/L	0.16	0.18	114	70-130	
Perfluorododecanoic acid	ug/L	0.16	0.18	112	70-130	
Perfluoroheptanoic acid	ug/L	0.16	0.18	112	70-130	
Perfluorohexanesulfonic acid	ug/L	0.15	0.18	123	70-130	
Perfluorohexanoic acid	ug/L	0.16	0.19	119	70-130	
Perfluorononanoic acid	ug/L	0.16	0.20	123	70-130	

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QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

LABORATORY CONTROL SAMPLE: 5260016

Parameter	Units	Spike Conc.	LCS Result	LCS % Rec	% Rec Limits	Qualifiers
Perfluorooctanesulfonic acid	ug/L	0.15	0.17	116	70-130	
Perfluorooctanoic acid	ug/L	0.16	0.23	142	70-130	J(L1)
Perfluorotetradecanoic acid	ug/L	0.16	0.18	112	70-130	
Perfluorotridecanoic acid	ug/L	0.16	0.18	113	70-130	
Perfluoroundecanoic acid	ug/L	0.16	0.18	111	70-130	
13C2-PFDA (S)	%			108	70-130	
13C2-PFHxA (S)	%			117	70-130	
HFPO-DAS (S)	%			110	70-130	
NEtFOSAA-d5 (S)	%			101	70-130	

LABORATORY CONTROL SAMPLE: 5260017

Parameter	Units	Spike Conc.	LCS Result	LCS % Rec	% Rec Limits	Qualifiers
11Cl-PF3OUdS	ug/L	0.0019	0.0016 U	76	50-150	
9Cl-PF3ONS	ug/L	0.0019	0.0016 I	83	50-150	
ADONA	ug/L	0.0019	0.0017 I	92	50-150	
HFPO-DA	ug/L	0.002	0.0018 I	92	50-150	
NEtFOSAA	ug/L	0.002	0.0017 I	87	50-150	
NMeFOSAA	ug/L	0.002	0.0018 I	90	50-150	
Perfluorobutanesulfonic acid	ug/L	0.0018	0.0022	127	50-150	
Perfluorodecanoic acid	ug/L	0.002	0.0021	105	50-150	
Perfluorododecanoic acid	ug/L	0.002	0.0020	100	50-150	
Perfluoroheptanoic acid	ug/L	0.002	0.0019 I	93	50-150	
Perfluorohexanesulfonic acid	ug/L	0.0018	0.0017 I	93	50-150	
Perfluorohexanoic acid	ug/L	0.002	0.0019 I	95	50-150	
Perfluorononanoic acid	ug/L	0.002	0.0025	126	50-150	
Perfluorooctanesulfonic acid	ug/L	0.0019	0.0018 I	97	50-150	
Perfluorooctanoic acid	ug/L	0.002	0.0023	115	50-150	
Perfluorotetradecanoic acid	ug/L	0.002	0.0019 U	80	50-150	
Perfluorotridecanoic acid	ug/L	0.002	0.0018 U	79	50-150	
Perfluoroundecanoic acid	ug/L	0.002	0.0020 U	99	50-150	
13C2-PFDA (S)	%			107	70-130	
13C2-PFHxA (S)	%			113	70-130	
HFPO-DAS (S)	%			108	70-130	
NEtFOSAA-d5 (S)	%			106	70-130	

MATRIX SPIKE & MATRIX SPIKE DUPLICATE: 5260018 5260019

Parameter	Units	35831813003 Result	MS Spike Conc.	MSD Spike Conc.	MS Result	MSD Result	MS % Rec	MSD % Rec	% Rec Limits	RPD	Max RPD	Qual
11Cl-PF3OUdS	ug/L	0.0014 U	0.0066	0.0067	0.0056	0.0060	85	89	70-130	6	30	
9Cl-PF3ONS	ug/L	0.0010 U	0.0066	0.0066	0.0060	0.0061	91	93	70-130	2	30	
ADONA	ug/L	0.00066 U	0.0066	0.0067	0.0066	0.0067	100	101	70-130	2	30	

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REPORT OF LABORATORY ANALYSIS

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Pompano Beach, FL 33064
(954)582-4300

QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

MATRIX SPIKE & MATRIX SPIKE DUPLICATE: 5260018 5260019

Parameter	Units	35831813003 Result	MS Spike Conc.	MSD Spike Conc.	MS Result	MSD Result	MS % Rec	MSD % Rec	% Rec Limits	RPD	Max RPD	Qual
HFPO-DA	ug/L	0.0015 U	0.007	0.0071	0.0065	0.0066	93	94	70-130	2	30	
NEtFOSAA	ug/L	0.00085 U	0.007	0.0071	0.0061	0.0069	84	96	70-130	13	30	
NMeFOSAA	ug/L	0.0014 U	0.007	0.0071	0.0059	0.0065	84	91	70-130	9	30	
Perfluorobutanesulfonic acid	ug/L	0.0048	0.0062	0.0062	0.0089	0.0089	67	66	70-130	0	30	J(M1)
Perfluorodecanoic acid	ug/L	0.00088 U	0.007	0.0071	0.0069	0.0069	95	93	70-130	1	30	
Perfluorododecanoic acid	ug/L	0.0013 U	0.007	0.0071	0.0062	0.0065	89	92	70-130	4	30	
Perfluoroheptanoic acid	ug/L	0.0024	0.007	0.0071	0.010	0.010	112	107	70-130	3	30	
Perfluorohexanesulfonic acid	ug/L	0.0046	0.0064	0.0064	0.011	0.011	93	97	70-130	3	30	
Perfluorohexanoic acid	ug/L	0.0045	0.007	0.0071	0.012	0.014	113	135	70-130	12	30	J(M1)
Perfluorononanoic acid	ug/L	0.0018 U	0.007	0.0071	0.0087	0.0088	112	112	70-130	1	30	
Perfluorooctanesulfonic acid	ug/L	0.027	0.0065	0.0065	0.033	0.034	95	109	70-130	3	30	
Perfluorooctanoic acid	ug/L	0.0080	0.007	0.0071	0.017	0.016	126	120	70-130	2	30	
Perfluorotetradecanoic acid	ug/L	0.0017 U	0.007	0.0071	0.0062	0.0063	88	89	70-130	2	30	
Perfluorotridecanoic acid	ug/L	0.0016 U	0.007	0.0071	0.0062	0.0066	88	93	70-130	6	30	
Perfluoroundecanoic acid	ug/L	0.0018 U	0.007	0.0071	0.0064	0.0065	84	85	70-130	2	30	
13C2-PFDA (S)	%						107	89	70-130			
13C2-PFHxA (S)	%						126	106	70-130			
HFPO-DAS (S)	%						107	93	70-130			
NEtFOSAA-d5 (S)	%						107	89	70-130			

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QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

QC Batch: 958288
QC Batch Method: EPA 537.1
Analysis Method: EPA 537.1
Analysis Description: 537.1 PFOA Compounds, Water
Laboratory: Pace Analytical Services - Ormond Beach

Associated Lab Samples: 35831813001

METHOD BLANK: 5270558 Matrix: Water
Associated Lab Samples: 35831813001

Parameter	Units	Blank Result	Reporting Limit	MDL	Analyzed	Qualifiers
11Cl-PF3OUdS	ug/L	0.0016 U	0.0020	0.0016	10/17/23 23:04	
9Cl-PF3ONS	ug/L	0.0012 U	0.0020	0.0012	10/17/23 23:04	
ADONA	ug/L	0.00074 U	0.0020	0.00074	10/17/23 23:04	
HFPO-DA	ug/L	0.0017 U	0.0020	0.0017	10/17/23 23:04	
NEtFOSAA	ug/L	0.00095 U	0.0020	0.00095	10/17/23 23:04	
NMeFOSAA	ug/L	0.0016 U	0.0020	0.0016	10/17/23 23:04	
Perfluorobutanesulfonic acid	ug/L	0.0017 I	0.0020	0.00068	10/17/23 23:04	
Perfluorodecanoic acid	ug/L	0.00099 U	0.0020	0.00099	10/17/23 23:04	
Perfluorododecanoic acid	ug/L	0.0015 U	0.0020	0.0015	10/17/23 23:04	
Perfluoroheptanoic acid	ug/L	0.0010 U	0.0020	0.0010	10/17/23 23:04	
Perfluorohexanesulfonic acid	ug/L	0.00075 U	0.0020	0.00075	10/17/23 23:04	
Perfluorohexanoic acid	ug/L	0.0013 U	0.0020	0.0013	10/17/23 23:04	
Perfluorononanoic acid	ug/L	0.0020 U	0.0020	0.0020	10/17/23 23:04	
Perfluorooctanesulfonic acid	ug/L	0.0012 U	0.0020	0.0012	10/17/23 23:04	
Perfluorooctanoic acid	ug/L	0.00089 U	0.0020	0.00089	10/17/23 23:04	
Perfluorotetradecanoic acid	ug/L	0.0019 U	0.0020	0.0019	10/17/23 23:04	
Perfluorotridecanoic acid	ug/L	0.0018 U	0.0020	0.0018	10/17/23 23:04	
Perfluoroundecanoic acid	ug/L	0.0020 U	0.0020	0.0020	10/17/23 23:04	
13C2-PFDA (S)	%	107	70-130		10/17/23 23:04	
13C2-PFHxA (S)	%	122	70-130		10/17/23 23:04	
HFPO-DAS (S)	%	105	70-130		10/17/23 23:04	
NEtFOSAA-d5 (S)	%	107	70-130		10/17/23 23:04	

LABORATORY CONTROL SAMPLE: 5270559

Parameter	Units	Spike Conc.	LCS Result	LCS % Rec	% Rec Limits	Qualifiers
11Cl-PF3OUdS	ug/L	0.15	0.15	97	70-130	
9Cl-PF3ONS	ug/L	0.15	0.15	103	70-130	
ADONA	ug/L	0.15	0.17	116	70-130	
HFPO-DA	ug/L	0.16	0.17	108	70-130	
NEtFOSAA	ug/L	0.16	0.16	101	70-130	
NMeFOSAA	ug/L	0.16	0.17	109	70-130	
Perfluorobutanesulfonic acid	ug/L	0.14	0.16	114	70-130	
Perfluorodecanoic acid	ug/L	0.16	0.17	106	70-130	
Perfluorododecanoic acid	ug/L	0.16	0.16	100	70-130	
Perfluoroheptanoic acid	ug/L	0.16	0.19	116	70-130	
Perfluorohexanesulfonic acid	ug/L	0.15	0.19	128	70-130	
Perfluorohexanoic acid	ug/L	0.16	0.20	123	70-130	
Perfluorononanoic acid	ug/L	0.16	0.20	127	70-130	

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QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

LABORATORY CONTROL SAMPLE: 5270559

Parameter	Units	Spike Conc.	LCS Result	LCS % Rec	% Rec Limits	Qualifiers
Perfluorooctanesulfonic acid	ug/L	0.15	0.16	110	70-130	
Perfluorooctanoic acid	ug/L	0.16	0.21	130	70-130	
Perfluorotetradecanoic acid	ug/L	0.16	0.16	99	70-130	
Perfluorotridecanoic acid	ug/L	0.16	0.15	96	70-130	
Perfluoroundecanoic acid	ug/L	0.16	0.16	102	70-130	
13C2-PFDA (S)	%			103	70-130	
13C2-PFHxA (S)	%			119	70-130	
HFPO-DAS (S)	%			105	70-130	
NEtFOSAA-d5 (S)	%			100	70-130	

LABORATORY CONTROL SAMPLE: 5270560

Parameter	Units	Spike Conc.	LCS Result	LCS % Rec	% Rec Limits	Qualifiers
11Cl-PF3OUdS	ug/L	0.0019	0.0016 U	81	50-150	
9Cl-PF3ONS	ug/L	0.0019	0.0015 I	80	50-150	
ADONA	ug/L	0.0019	0.0017 I	90	50-150	
HFPO-DA	ug/L	0.002	0.0018 I	88	50-150	
NEtFOSAA	ug/L	0.002	0.0017 I	86	50-150	
NMeFOSAA	ug/L	0.002	0.0016 I	80	50-150	
Perfluorobutanesulfonic acid	ug/L	0.0018	0.0034	192	50-150	J(L1)
Perfluorodecanoic acid	ug/L	0.002	0.0016 I	80	50-150	
Perfluorododecanoic acid	ug/L	0.002	0.0015 I	76	50-150	
Perfluoroheptanoic acid	ug/L	0.002	0.0018 I	92	50-150	
Perfluorohexanesulfonic acid	ug/L	0.0018	0.0017 I	94	50-150	
Perfluorohexanoic acid	ug/L	0.002	0.0020	102	50-150	
Perfluorononanoic acid	ug/L	0.002	0.0020 U	97	50-150	
Perfluorooctanesulfonic acid	ug/L	0.0019	0.0017 I	92	50-150	
Perfluorooctanoic acid	ug/L	0.002	0.0023	117	50-150	
Perfluorotetradecanoic acid	ug/L	0.002	0.0019 U	73	50-150	
Perfluorotridecanoic acid	ug/L	0.002	0.0018 U	73	50-150	
Perfluoroundecanoic acid	ug/L	0.002	0.0020 U	77	50-150	
13C2-PFDA (S)	%			106	70-130	
13C2-PFHxA (S)	%			119	70-130	
HFPO-DAS (S)	%			107	70-130	
NEtFOSAA-d5 (S)	%			100	70-130	

MATRIX SPIKE SAMPLE: 5270568

Parameter	Units	70273775001 Result	Spike Conc.	MS Result	MS % Rec	% Rec Limits	Qualifiers
11Cl-PF3OUdS	ug/L	<1.7 ng/L	0.0017	0.0015 U	76	70-130	
9Cl-PF3ONS	ug/L	<1.7 ng/L	0.0017	0.0012 I	69	70-130	J(M1)
ADONA	ug/L	<1.7 ng/L	0.0017	0.0016 I	90	70-130	
HFPO-DA	ug/L	<1.7 ng/L	0.0018	0.0015 U	71	70-130	
NEtFOSAA	ug/L	<1.7 ng/L	0.0018	0.0013 I	70	70-130	

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QUALITY CONTROL DATA

Project: PFAS Raw Water
Pace Project No.: 35831813

MATRIX SPIKE SAMPLE: 5270568

Parameter	Units	70273775001 Result	Spike Conc.	MS Result	MS % Rec	% Rec Limits	Qualifiers
NMeFOSAA	ug/L	<1.7 ng/L	0.0018	0.0015 U	74	70-130	
Perfluorobutanesulfonic acid	ug/L	2.1 ng/L	0.0016	0.0035	90	70-130	
Perfluorodecanoic acid	ug/L	<1.7 ng/L	0.0018	0.0015 I	81	70-130	
Perfluorododecanoic acid	ug/L	<1.7 ng/L	0.0018	0.0014 U	74	70-130	
Perfluoroheptanoic acid	ug/L	<1.7 ng/L	0.0018	0.0020	93	70-130	
Perfluorohexanesulfonic acid	ug/L	<1.7 ng/L	0.0017	0.0019	108	70-130	
Perfluorohexanoic acid	ug/L	<1.7 ng/L	0.0018	0.0020	88	70-130	
Perfluorononanoic acid	ug/L	<1.7 ng/L	0.0018	0.0019	99	70-130	
Perfluorooctanesulfonic acid	ug/L	<1.7 ng/L	0.0017	0.0021	105	70-130	
Perfluorooctanoic acid	ug/L	<1.7 ng/L	0.0018	0.0028	120	70-130	
Perfluorotetradecanoic acid	ug/L	<1.7 ng/L	0.0018	0.0017 U	74	70-130	
Perfluorotridecanoic acid	ug/L	<1.7 ng/L	0.0018	0.0016 U	69	70-130	J(M1)
Perfluoroundecanoic acid	ug/L	<1.7 ng/L	0.0018	0.0018 U	75	70-130	
13C2-PFDA (S)	%				99	70-130	
13C2-PFHxA (S)	%				108	70-130	
HFPO-DAS (S)	%				96	70-130	
NEtFOSAA-d5 (S)	%				98	70-130	

SAMPLE DUPLICATE: 5270569

Parameter	Units	20292929001 Result	Dup Result	RPD	Max RPD	Qualifiers
11Cl-PF3OUdS	ug/L	ND	0.0014 U		30	
9Cl-PF3ONS	ug/L	ND	0.00098 U		30	
ADONA	ug/L	ND	0.00062 U		30	
HFPO-DA	ug/L	ND	0.0014 U		30	
NEtFOSAA	ug/L	ND	0.00080 U		30	
NMeFOSAA	ug/L	ND	0.0014 U		30	
Perfluorobutanesulfonic acid	ug/L	0.0000030 mg/L	0.0030	1	30	
Perfluorodecanoic acid	ug/L	ND	0.00084 U		30	
Perfluorododecanoic acid	ug/L	ND	0.0013 U		30	
Perfluoroheptanoic acid	ug/L	ND	0.00087 U		30	
Perfluorohexanesulfonic acid	ug/L	ND	0.00063 U		30	
Perfluorohexanoic acid	ug/L	ND	0.0012 I		30	
Perfluorononanoic acid	ug/L	ND	0.0017 U		30	
Perfluorooctanesulfonic acid	ug/L	ND	0.0012 I		30	
Perfluorooctanoic acid	ug/L	0.0000023 mg/L	0.0022	4	30	
Perfluorotetradecanoic acid	ug/L	ND	0.0016 U		30	
Perfluorotridecanoic acid	ug/L	ND	0.0015 U		30	
Perfluoroundecanoic acid	ug/L	ND	0.0017 U		30	
13C2-PFDA (S)	%		88			
13C2-PFHxA (S)	%		100			
HFPO-DAS (S)	%		89			
NEtFOSAA-d5 (S)	%		88			

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QUALIFIERS

Project: PFAS Raw Water
Pace Project No.: 35831813

DEFINITIONS

DF - Dilution Factor, if reported, represents the factor applied to the reported data due to dilution of the sample aliquot.

ND - Not Detected at or above adjusted reporting limit.

TNTC - Too Numerous To Count

MDL - Adjusted Method Detection Limit.

PQL - Practical Quantitation Limit.

RL - Reporting Limit - The lowest concentration value that meets project requirements for quantitative data with known precision and bias for a specific analyte in a specific matrix.

S - Surrogate

1,2-Diphenylhydrazine decomposes to and cannot be separated from Azobenzene using Method 8270. The result for each analyte is a combined concentration.

Consistent with EPA guidelines, unrounded data are displayed and have been used to calculate % recovery and RPD values.

LCS(D) - Laboratory Control Sample (Duplicate)

MS(D) - Matrix Spike (Duplicate)

DUP - Sample Duplicate

RPD - Relative Percent Difference

NC - Not Calculable.

SG - Silica Gel - Clean-Up

U - Indicates the compound was analyzed for, but not detected.

N-Nitrosodiphenylamine decomposes and cannot be separated from Diphenylamine using Method 8270. The result reported for each analyte is a combined concentration.

Reported results are not rounded until the final step prior to reporting. Therefore, calculated parameters that are typically reported as "Total" may vary slightly from the sum of the reported component parameters.

Pace Analytical is TNI accredited. Contact your Pace PM for the current list of accredited analytes.

TNI - The NELAC Institute.

ANALYTE QUALIFIERS

I	The reported value is between the laboratory method detection limit and the laboratory practical quantitation limit.
U	Compound was analyzed for but not detected.
J(L1)	Estimated Value. Analyte recovery in the laboratory control sample (LCS) was above QC limits. Results for this analyte in associated samples may be biased high.
J(M1)	Estimated Value. Matrix spike recovery exceeded QC limits. Batch accepted based on laboratory control sample (LCS) recovery.
J(S0)	Estimated Value. Surrogate recovery outside laboratory control limits.
V	Indicates that the analyte was detected in both the sample and the associated method blank.

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QUALITY CONTROL DATA CROSS REFERENCE TABLE

Project: PFAS Raw Water
Pace Project No.: 35831813

Lab ID	Sample ID	QC Batch Method	QC Batch	Analytical Method	Analytical Batch
35831813001	**Raw E**	EPA 533	958544	EPA 533	958611
35831813002	**Raw E-FB**	EPA 533	956517	EPA 533	957107
35831813004	**Raw W-FB**	EPA 533	956517	EPA 533	957107
35831813001	**Raw E**	EPA 537.1	958288	EPA 537.1	958601
35831813002	**Raw E-FB**	EPA 537.1	956483	EPA 537.1	957227
35831813004	**Raw W-FB**	EPA 537.1	956483	EPA 537.1	957227

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Subtitle A —Office of Management and Budget Guidance for Grants and Agreements
Chapter II —Office of Management and Budget Guidance

Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

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PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

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Subpart A—Acronyms and Definitions

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ACRONYMS

§ 200.0 Acronyms.

Acronym Term

CAS Cost Accounting Standards

CFR Code of Federal Regulations

CMIA Cash Management Improvement Act

COG Councils Of Governments

COSO Committee of Sponsoring Organizations of the Treadway Commission

EPA Environmental Protection Agency

ERISA Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301-1461)

EUI Energy Usage Index

F&A Facilities and Administration

FAC Federal Audit Clearinghouse

FAIN Federal Award Identification Number

FAPIIS Federal Awardee Performance and Integrity Information System

FAR Federal Acquisition Regulation

FFATA Federal Funding Accountability and Transparency Act of 2006 or Transparency Act—Public Law 109-282, as amended by section 6202(a) of Public Law 110-252 (31 U.S.C. 6101)

FICA Federal Insurance Contributions Act

FOIA Freedom of Information Act

FR Federal Register

FTE Full-time equivalent

GAAP Generally Accepted Accounting Principles

GAGAS Generally Accepted Government Auditing Standards

GAO Government Accountability Office

GOCO Government owned, contractor operated

GSA General Services Administration

IBS Institutional Base Salary

IHE Institutions of Higher Education

IRC Internal Revenue Code

ISDEAA Indian Self-Determination and Education and Assistance Act

MTC Modified Total Cost

MTDC Modified Total Direct Cost

NFE Non-Federal Entity

OMB Office of Management and Budget

PII Personally Identifiable Information

PMS Payment Management System

PRHP Post-retirement Health Plans

PTE Pass-through Entity

REUI Relative Energy Usage Index

SAM System for Award Management

SFA Student Financial Aid

SNAP Supplemental Nutrition Assistance Program

SPOC Single Point of Contact

TANF Temporary Assistance for Needy Families

TFM Treasury Financial Manual

U.S.C. United States Code

VAT Value Added Tax

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75880, Dec. 19, 2014; 80 FR 43308, July 22, 2015; 85 FR 49529, Aug. 13, 2020]

§ 200.1 Definitions.

These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities. These definitions could be supplemented by additional instructional information provided in governmentwide standard information collections. For purposes of this part, the following definitions apply:

Acquisition cost means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

Advance payment means a payment that a Federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes.

Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

Assistance listings refers to the publicly available listing of Federal assistance programs managed and administered by the General Services Administration, formerly known as the Catalog of Federal Domestic Assistance (CFDA).

Assistance listing number means a unique number assigned to identify a Federal Assistance Listings, formerly known as the CFDA Number.

Assistance listing program title means the title that corresponds to the Federal Assistance Listings Number, formerly known as the CFDA program title.

Audit finding means deficiencies which the auditor is required by § 200.516(a) to report in the schedule of findings and questioned costs.

Auditee means any non-Federal entity that expends Federal awards which must be audited under subpart F of this part.

Auditor means an auditor who is a public accountant or a Federal, State, local government, or Indian tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

Budget means the financial plan for the Federal award that the Federal awarding agency or pass-through entity approves during the Federal award process or in subsequent amendments to the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal awarding agency or pass-through entity.

Budget period means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which recipients are authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.

Capital assets means:

(1) Tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

(i) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and

(ii) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

(2) For purpose of this part, capital assets do not include intangible right-to-use assets (per GASB) and right-to-use operating lease assets (per FASB). For example, assets capitalized that recognize a lessee's right to control the use of property and/or equipment for a period of time under a lease contract. See also § 200.465.

Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

Central service cost allocation plan means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a State or local government or Indian tribe on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

Claim means, depending on the context, either:

(1) A written demand or written assertion by one of the parties to a Federal award seeking as a matter of right:

(i) The payment of money in a sum certain;

(ii) The adjustment or interpretation of the terms and conditions of the Federal award; or

(iii) Other relief arising under or relating to a Federal award.

(2) A request for payment that is not in dispute when submitted.

Class of Federal awards means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of non-Federal entity or group of non-Federal entities to which specific provisions or exceptions may apply.

Closeout means the process by which the Federal awarding agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in § 200.344.

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are as defined by OMB in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an "other cluster," a State must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster,

consistent with § 200.332(a). A cluster of programs must be considered as one program for determining major programs, as described in § 200.518, and, with the exception of R&D as described in § 200.501(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § 200.513(a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit can be found on the Federal Audit Clearinghouse (FAC) website.

Cognizant agency for indirect costs means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this part on behalf of all Federal agencies. The cognizant agency for indirect cost is not necessarily the same as the cognizant agency for audit. For assignments of cognizant agencies see the following:

(1) For Institutions of Higher Education (IHEs): Appendix III to this part, paragraph C.11.

(2) For nonprofit organizations: Appendix IV to this part, paragraph C.2.a.

(3) For State and local governments: Appendix V to this part, paragraph F.1.

(4) For Indian tribes: Appendix VII to this part, paragraph D.1.

Compliance supplement means an annually updated authoritative source for auditors that serves to identify existing important compliance requirements that the Federal Government expects to be considered as part of an audit. Auditors use it to understand the Federal program's objectives, procedures, and compliance requirements, as well as audit objectives and suggested audit procedures for determining compliance with the relevant Federal program.

Computing devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information. See also the definitions of *supplies* and *information technology systems* in this section.

Contract means, for the purpose of Federal financial assistance, a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a Federal award. For additional information on subrecipient and contractor determinations, see § 200.331. See also the definition of *subaward* in this section.

Contractor means an entity that receives a contract as defined in this section.

Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency and a recipient or a pass-through entity and a subrecipient that, consistent with 31 U.S.C. 6302-6305:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;

(2) Is distinguished from a grant in that it provides for substantial involvement of the Federal awarding agency in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

(i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(ii) An agreement that provides only:

(A) Direct United States Government cash assistance to an individual;

(B) A subsidy;

(C) A loan;

(D) A loan guarantee; or

(E) Insurance.

Cooperative audit resolution means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the non-Federal entity. This approach is based upon:

(1) A strong commitment by Federal agency and non-Federal entity leadership to program integrity;

(2) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; and non-Federal entities and their auditors working cooperatively with Federal agencies;

(3) A focus on current conditions and corrective action going forward;

(4) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and

(5) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits which are likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

Corrective action means action taken by the auditee that:

(1) Corrects identified deficiencies;

(2) Produces recommended improvements; or

(3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Cost allocation plan means central service cost allocation plan or public assistance cost allocation plan.

Cost objective means a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc. A cost objective may be a major function of the non-Federal entity, a particular service or project, a Federal award, or an indirect (Facilities & Administrative (F&A)) cost activity, as described in subpart E of this part. See also the definitions of *final cost objective* and *intermediate cost objective* in this section.

Cost sharing or matching means the portion of project costs not paid by Federal funds or contributions (unless otherwise authorized by Federal statute). See also § 200.306.

Cross-cutting audit finding means an audit finding where the same underlying condition or issue affects all Federal awards (including Federal awards of more than one Federal awarding agency or pass-through entity).

Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

Discretionary award means an award in which the Federal awarding agency, in keeping with specific statutory authority that enables the agency to exercise judgment ("discretion"), selects the recipient and/or the amount of Federal funding awarded through a competitive process or based on merit of proposals. A discretionary award may be selected on a non-competitive basis, as appropriate.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000. See also the definitions of *capital assets, computing devices, general purpose equipment, information technology systems, special purpose equipment,* and *supplies* in this section.

Expenditures means charges made by a non-Federal entity to a project or program for which a Federal award was received.

(1) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.

(2) For reports prepared on a cash basis, expenditures are the sum of:

(i) Cash disbursements for direct charges for property and services;

(ii) The amount of indirect expense charged;

(iii) The value of third-party in-kind contributions applied; and

(iv) The amount of cash advance payments and payments made to subrecipients.

(3) For reports prepared on an accrual basis, expenditures are the sum of:

(i) Cash disbursements for direct charges for property and services;

(ii) The amount of indirect expense incurred;

(iii) The value of third-party in-kind contributions applied; and

(iv) The net increase or decrease in the amounts owed by the non-Federal entity for:

(A) Goods and other property received;

(B) Services performed by employees, contractors, subrecipients, and other payees; and

(C) Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

Federal agency means an "agency" as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

Federal Audit Clearinghouse (FAC) means the clearinghouse designated by OMB as the repository of record where non-Federal entities are required to transmit the information required by subpart F of this part.

Federal award has the meaning, depending on the context, in either paragraph (1) or (2) of this definition:

(1)

(i) The Federal financial assistance that a recipient receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101; or

(ii) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101.

(2) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (2) of the definition of *Federal financial assistance* in this section, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(3) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs).

(4) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

Federal award date means the date when the Federal award is signed by the authorized official of the Federal awarding agency.

Federal awarding agency means the Federal agency that provides a Federal award directly to a non-Federal entity.

Federal financial assistance means

(1) Assistance that non-Federal entities receive or administer in the form of:

(i) Grants;

(ii) Cooperative agreements;

(iii) Non-cash contributions or donations of property (including donated surplus property);

(iv) Direct appropriations;

(v) Food commodities; and

(vi) Other financial assistance (except assistance listed in paragraph (2) of this definition).

(2) For § 200.203 and subpart F of this part, *Federal financial assistance* also includes assistance that non-Federal entities receive or administer in the form of:

(i) Loans;

(ii) Loan Guarantees;

(iii) Interest subsidies; and

(iv) Insurance.

(3) For § 200.216, Federal financial assistance includes assistance that non-Federal entities receive or administer in the form of:

(i) Grants;

(ii) Cooperative agreements;

(iii) Loans; and

(iv) Loan Guarantees.

(4) Federal financial assistance does not include amounts received as reimbursement for services rendered to individuals as described in § 200.502(h) and (i).

Federal interest means, for purposes of § 200.330 or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:

(1) The percentage of Federal participation in the total cost of the real property, equipment, or supplies; and

(2) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

Federal program means:

(1) All Federal awards which are assigned a single Assistance Listings Number.

(2) When no Assistance Listings Number is assigned, all Federal awards from the same agency made for the same purpose must be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

(i) Research and development (R&D);

(ii) Student financial aid (SFA); and

(iii) "Other clusters," as described in the definition of *cluster of programs* in this section.

Federal share means the portion of the Federal award costs that are paid using Federal funds.

Final cost objective means a cost objective which has allocated to it both direct and indirect costs and, in the non-Federal entity's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a non-Federal entity. See also the definitions of *cost objective* and *intermediate cost objective* in this section.

Financial obligations, when referencing a recipient's or subrecipient's use of funds under a Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions that require payment.

Fixed amount awards means a type of grant or cooperative agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results. See §§ 200.102(c), 200.201(b), and 200.333.

Foreign organization means an entity that is:

(1) A public or private organization located in a country other than the United States and its territories that is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

(2) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;

(3) A charitable organization located in a country other than the United States that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entities organized primarily for religious purposes; or

(4) An organization located in a country other than the United States not recognized as a foreign public entity.

Foreign public entity means:

(1) A foreign government or foreign governmental entity;

(2) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288-288f);

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

General purpose equipment means equipment which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. See also the definitions of *equipment* and *special purpose equipment* in this section.

Generally accepted accounting principles (GAAP) has the meaning specified in accounting standards issued by the GASB and the FASB.

Generally accepted government auditing standards (GAGAS), also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Grant agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;

(2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement of the Federal awarding agency in carrying out the activity contemplated by the Federal award.

(3) Does not include an agreement that provides only:

(i) Direct United States Government cash assistance to an individual;

(ii) A subsidy;

(iii) A loan;

(vi) A loan guarantee; or

(v) Insurance.

Highest level owner means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest-level owner as defined in the Federal Acquisition Regulations (FAR) (48 CFR 52.204-17).

Hospital means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

Improper payment means:

(1) Any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other *legally applicable* requirements.

(i) Incorrect amounts are overpayments or underpayments that are made to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for an incorrect amount, and duplicate payments). An improper payment also includes any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments authorized by law).

Note 1 to paragraph (1)(i) of this definition. Applicable discounts are only those discounts where it is both advantageous and within the agency's control to claim them.

(ii) When an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment should also be considered an improper payment. When establishing documentation requirements for payments, agencies should ensure that all documentation requirements are necessary and should refrain from imposing additional burdensome documentation requirements.

(iii) Interest or other fees that may result from an underpayment by an agency are not considered an improper payment if the interest was paid correctly. These payments are generally separate transactions and may be necessary under certain statutory, contractual, administrative, or other legally applicable requirements.

(iv) A "questioned cost" (as defined in this section) should not be considered an improper payment until the transaction has been completely reviewed and is confirmed to be improper.

(v) The term "payment" in this definition means any disbursement or transfer of Federal funds (including a commitment for future payment, such as cash, securities, loans, loan guarantees, and insurance subsidies) to any non-Federal person, non-Federal entity, or Federal employee, that is made by a Federal agency, a Federal contractor, a Federal grantee, or a governmental or other organization administering a Federal program or activity.

(vi) The term "payment" includes disbursements made pursuant to prime contracts awarded under the Federal Acquisition Regulation and Federal awards subject to this part that are expended by recipients.

(2) See definition of improper payment in OMB Circular A-123 appendix C, part I A (1) "What is an improper payment?" Questioned costs, including those identified in audits, are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A-123 appendix C.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

Institutions of Higher Education (IHEs) is defined at 20 U.S.C. 1001.

Indirect (facilities & administrative (F&A)) costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

Indirect cost rate proposal means the documentation prepared by a non-Federal entity to substantiate its request for the establishment of an indirect cost rate as described in appendices III through VII and appendix IX to this part.

Information technology systems means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also the definitions of *computing devices* and *equipment* in this section.

Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives. See also the definitions of *cost objective* and *final cost objective* in this section.

Internal controls for non-Federal entities means:

(1) Processes designed and implemented by non-Federal entities to provide reasonable assurance regarding the achievement of objectives in the following categories:

(i) Effectiveness and efficiency of operations;

(ii) Reliability of reporting for internal and external use; and

(iii) Compliance with applicable laws and regulations.

(2) Federal awarding agencies are required to follow internal control compliance requirements in OMB Circular No. A-123, Management's Responsibility for Enterprise Risk Management and Internal Control.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity, except as used in the definition of *program income* in this section.

(1) The term "direct loan" means a disbursement of funds by the Federal Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing

arrangements that defer payment for more than 90 days, including the sale of a Federal Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

(2) The term "direct loan obligation" means a binding agreement by a Federal awarding agency to make a direct loan when specified conditions are fulfilled by the borrower.

(3) The term "loan guarantee" means any Federal Government guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(4) The term "loan guarantee commitment" means a binding agreement by a Federal awarding agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

Local government means any unit of government within a state, including a:

(1) County;

(2) Borough;

(3) Municipality;

(4) City;

(5) Town;

(6) Township;

(7) Parish;

(8) Local public authority, including any public housing agency under the United States Housing Act of 1937;

(9) Special district;

(10) School district;

(11) Intrastate district;

(12) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and

(13) Any other agency or instrumentality of a multi-, regional, or intra-State or local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § 200.518 or a program identified as a major program by a Federal awarding agency or pass-through entity in accordance with § 200.503(e).

Management decision means the Federal awarding agency's or pass-through entity's written determination, provided to the auditee, of the adequacy of the auditee's proposed corrective actions to address the findings, based on its evaluation of the audit findings and proposed corrective actions.

Micro-purchase means a purchase of supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchases comprise a subset of a non-Federal entity's small purchases as defined in § 200.320.

Micro-purchase threshold means the dollar amount at or below which a non-Federal entity may purchase property or services using micro-purchase procedures (see § 200.320). Generally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR part 2, subpart 2.1, unless a higher threshold is requested by the non-Federal entity and approved by the cognizant agency for indirect costs.

Modified Total Direct Cost (MTDC) means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of $25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

Non-discretionary award means an award made by the Federal awarding agency to specific recipients in accordance with statutory, eligibility and compliance requirements, such that in keeping with specific statutory authority the agency has no ability to exercise judgement ("discretion"). A non-discretionary award amount could be determined specifically or by formula.

Non-Federal entity (NFE) means a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit; and

(3) Uses net proceeds to maintain, improve, or expand the operations of the organization.

Notice of funding opportunity means a formal announcement of the availability of Federal funding through a financial assistance program from a Federal awarding agency. The notice of funding opportunity provides information on the award, who is eligible to apply, the evaluation criteria for selection of an awardee, required components of an application, and how to submit the application. The notice of funding opportunity is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a "program announcement," "notice of funding availability," "broad agency announcement," "research announcement," "solicitation," or some other term.

Office of Management and Budget (OMB) means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of funding directly (direct funding) (as listed on the schedule of expenditures of Federal awards, see § 200.510(b)) to a non-Federal entity unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total Federal expenditures (as direct and sub-awards) by the non-Federal entity, then the Federal agency with the predominant amount of total funding is the designated oversight agency for audit. When there is no direct funding, the Federal awarding agency which is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in § 200.513(b).

Participant support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

Pass-through entity (PTE) means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (*e.g.,* discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

Period of performance means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the period of performance in the Federal award per § 200.211(b)(5) does not commit the awarding agency to fund the award beyond the currently approved budget period.

Personal property means property other than real property. It may be tangible, having physical existence, or intangible.

Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public websites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual.

Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307(f). (See the definition of *period of performance* in this section.) Program income includes but is not limited to income from fees for services performed, the use or rental or real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also § 200.407. See also 35 U.S.C. 200-212 "Disposition of Rights in Educational Awards" applies to inventions made under Federal awards.

Project cost means total allowable costs incurred under a Federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.

Property means real property or personal property. See also the definitions of *real property* and *personal property* in this section.

Protected Personally Identifiable Information (Protected PII) means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and

place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed. See also the definition of *Personally Identifiable Information (PII)* in this section.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

(4) Questioned costs are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A-123 appendix C. (See also the definition of *Improper payment* in this section).

Real property means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.

Recipient means an entity, usually but not limited to non-Federal entities that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award.

Renewal award means an award made subsequent to an expiring Federal award for which the start date is contiguous with, or closely follows, the end of the expiring Federal award. A renewal award's start date will begin a distinct period of performance.

Research and Development (R&D) means all research activities, both basic and applied, and all development activities that are performed by non-Federal entities. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods (see § 200.320). Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold for procurement activities administered under Federal awards is set by the FAR at 48 CFR part 2, subpart 2.1. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. However, in no circumstances can this threshold exceed the dollar value established in the FAR (48 CFR part 2, subpart 2.1) for the simplified acquisition threshold. Recipients should determine if local government laws on purchasing apply.

Special purpose equipment means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers. See also the definitions of *equipment* and *general purpose equipment* in this section.

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

Student Financial Aid (SFA) means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070-1099d), which are administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include Federal awards under programs that provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Subsidiary means an entity in which more than 50 percent of the entity is owned or controlled directly by a parent corporation or through another subsidiary of a parent corporation.

Supplies means all tangible personal property other than those described in the definition of *equipment* in this section. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or $5,000, regardless of the length of its useful life. See also the definitions of *computing devices* and *equipment* in this section.

Telecommunications cost means the cost of using communication and telephony technologies such as mobile phones, land lines, and internet.

Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance. A lack of available funds is not a termination.

Third-party in-kind contributions means the value of non-cash contributions (*i.e.,* property or services) that—

(1) Benefit a federally-assisted project or program; and

(2) Are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award.

Unliquidated financial obligations means, for financial reports prepared on a cash basis, financial obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are financial obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

Unobligated balance means the amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated financial obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-through entity authorized the non-Federal entity to obligate.

Voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the proposal's budget on the part of the non-Federal entity and that becomes a binding requirement of Federal award. See also § 200.306.

[85 FR 49529, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

Subpart B—General Provisions

Link to an amendment published at 89 FR 30136, Apr. 22, 2024.

§ 200.100 Purpose.

(a) ***Purpose.***

(1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities, as described in § 200.101. Federal awarding agencies must not impose additional or inconsistent requirements, except as provided in §§ 200.102 and 200.211, or unless specifically required by Federal statute, regulation, or Executive order.

(2) This part provides the basis for a systematic and periodic collection and uniform submission by Federal agencies of information on all Federal financial assistance programs to the Office of Management and Budget (OMB). It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. It prescribes the manner in which General Services Administration (GSA), OMB, and Federal agencies that administer Federal financial assistance programs are to carry out their statutory responsibilities under the Federal Program Information Act (31 U.S.C. 6101-6106).

(b) ***Administrative requirements.*** Subparts B through D of this part set forth the uniform administrative requirements for grant and cooperative agreements, including the requirements for Federal awarding agency management of Federal grant programs before the Federal award has been made, and the requirements Federal awarding agencies may impose on non-Federal entities in the Federal award.

(c) ***Cost principles.*** Subpart E of this part establishes principles for determining the allowable costs incurred by non-Federal entities under Federal awards. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal Government participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by statute.

(d) ***Single Audit Requirements and Audit Follow-up.*** Subpart F of this part is issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards. These provisions also provide the policies and procedures for Federal awarding agencies and pass-through entities when using the results of these audits.

(e) ***Guidance on challenges and prizes.*** For OMB guidance to Federal awarding agencies on challenges and prizes, please see memo M-10-11 Guidance on the Use of Challenges and Prizes to Promote Open Government, issued March 8, 2010, or its successor.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49536, Aug. 13, 2020]

§ 200.101 Applicability.

(a) ***General applicability to Federal agencies.***

(1) The requirements established in this part apply to Federal agencies that make Federal awards to non-Federal entities. These requirements are applicable to all costs related to Federal awards.

(2) Federal awarding agencies may apply subparts A through E of this part to Federal agencies, for-profit entities, foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international responsibilities of the United States or the statutes or regulations of a foreign government.

(b) ***Applicability to different types of Federal awards.***

(1) Throughout this part when the word "must" is used it indicates a requirement. Whereas, use of the word "should" or "may" indicates a best practice or recommended approach rather than a requirement and permits discretion.

(2) The following table describes what portions of this part apply to which types of Federal awards. The terms and conditions of Federal awards (including this part) flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically indicate otherwise. This means that non-Federal entities must comply with requirements in this part regardless of whether the non-Federal entity is a recipient or subrecipient of a Federal award. Pass-through entities must comply with the requirements described in subpart D of this part, §§ 200.331 through 200.333, but not any requirements in this part directed towards Federal awarding agencies unless the requirements of this part or the terms and conditions of the Federal award indicate otherwise.

Table 1 to Paragraph (b)

The following portions of this Part	Are applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts (except as noted in paragraphs (d) and (e) of this section):	Are NOT applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts:
Subpart A—Acronyms and Definitions	—All	
Subpart B—General Provisions, except for §§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures	—All	
§§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures	—Grant Agreements and cooperative agreements	—Agreements for loans, loan guarantees, interest subsidies and insurance. —Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.

The following portions of this Part	Are applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts (except as noted in paragraphs (d) and (e) of this section):	Are NOT applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts:
Subparts C-D, except for §§ 200.203 Requirement to provide public notice of Federal financial assistance programs, 200.303 Internal controls, 200.331-333 Subrecipient Monitoring and Management	—Grant Agreements and cooperative agreements	—Agreements for loans, loan guarantees, interest subsidies and insurance. —Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.
§ 200.203 Requirement to provide public notice of Federal financial assistance programs	—Grant Agreements and cooperative agreements —Agreements for loans, loan guarantees, interest subsidies and insurance	—Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.
§§ 200.303 Internal controls, 200.331-333 Subrecipient Monitoring and Management	—All	
Subpart E—Cost Principles	—Grant Agreements and cooperative agreements, except those providing food commodities —All procurement contracts under the Federal Acquisition Regulations except those that are not negotiated	—Grant agreements and cooperative agreements providing foods commodities. —Fixed amount awards. —Agreements for loans, loans guarantees, interest subsidies and insurance. —Federal awards to hospitals (see Appendix IX Hospital Cost Principles).
Subpart F—Audit Requirements	—Grant Agreements and cooperative agreements —Contracts and subcontracts, except for fixed price contacts and subcontracts, awarded under the Federal Acquisition Regulation —Agreements for loans, loans guarantees, interest subsidies and insurance and other forms of Federal Financial Assistance as defined by the Single Audit Act Amendment of 1996	—Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation.

(c) ***Federal award of cost-reimbursement contract under the FAR to a non-Federal entity.*** When a non-Federal entity is awarded a cost-reimbursement contract, only subpart D, §§ 200.331 through 200.333, and subparts E and F of this part are incorporated by reference into the contract, but the requirements of subparts D, E, and F are supplementary to the FAR and the contract. When the Cost Accounting Standards (CAS) are applicable to the contract, they take precedence over the requirements of this part, including subpart F of this part, which are supplementary to the CAS requirements. In addition, costs that are made unallowable under 10 U.S.C. 2324(e) and 41 U.S.C. 4304(a) as described in the FAR 48 CFR part 31, subpart 31.2, and 48 CFR 31.603 are always unallowable. For requirements other than those covered in subpart D, §§ 200.331 through 200.333, and subparts E and F of this part, the terms of the contract and the FAR apply. Note that when a non-Federal entity is awarded a FAR contract, the FAR applies, and the terms and conditions of the contract shall prevail over the requirements of this part.

(d) ***Governing provisions.*** With the exception of subpart F of this part, which is required by the Single Audit Act, in any circumstances where the provisions of Federal statutes or regulations differ from the provisions of this part, the provision of the Federal statutes or regulations govern. This includes, for agreements with Indian tribes, the provisions of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended, 25 U.S.C 450-458ddd-2.

(e) ***Program applicability.*** Except for §§ 200.203, 200.216, and 200.331 through 200.333, the requirements in subparts C, D, and E of this part do not apply to the following programs:

(1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services), except to the extent that subpart E of this part apply to subrecipients of Community Services Block Grant funds pursuant to 42 U.S.C. 9916(a)(1)(B);

(2) Federal awards to local education agencies under 20 U.S.C. 7702-7703b, (portions of the Impact Aid program);

(3) Payments under the Department of Veterans Affairs' State Home Per Diem Program (38 U.S.C. 1741); and

(4) Federal awards authorized under the Child Care and Development Block Grant Act of 1990, as amended:

(i) Child Care and Development Block Grant (42 U.S.C. 9858).

(ii) Child Care Mandatory and Matching Funds of the Child Care and Development Fund (42 U.S.C. 9858).

(f) ***Additional program applicability.*** Except for §§ 200.203 and 200.216, the guidance in subpart C of this part does not apply to the following programs:

(1) Entitlement Federal awards to carry out the following programs of the Social Security Act:

(i) Temporary Assistance for Needy Families (title IV-A of the Social Security Act, 42 U.S.C. 601-619);

(ii) Child Support Enforcement and Establishment of Paternity (title IV-D of the Social Security Act, 42 U.S.C. 651-669b);

(iii) Foster Care and Adoption Assistance (title IV-E of the Act, 42 U.S.C. 670-679c);

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI-AABD of the Act, as amended);

(v) Medical Assistance (Medicaid) (title XIX of the Act, 42 U.S.C. 1396-1396w-5) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B) of the Social Security Act (42 U.S.C. 1396b(a)(6)(B)); and

(vi) Children's Health Insurance Program (title XXI of the Act, 42 U.S.C. 1397aa-1397mm).

(2) A Federal award for an experimental, pilot, or demonstration project that is also supported by a Federal award listed in paragraph (f)(1) of this section.

(3) Federal awards under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits (8 U.S.C. 1522(e)).

(4) Entitlement awards under the following programs of The National School Lunch Act:

(i) National School Lunch Program (section 4 of the Act, 42 U.S.C. 1753);

(ii) Commodity Assistance (section 6 of the Act, 42 U.S.C. 1755);

(iii) Special Meal Assistance (section 11 of the Act, 42 U.S.C. 1759a);

(iv) Summer Food Service Program for Children (section 13 of the Act, 42 U.S.C. 1761); and

(v) Child and Adult Care Food Program (section 17 of the Act, 42 U.S.C. 1766).

(5) Entitlement awards under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk Program (section 3 of the Act, 42 U.S.C. 1772);

(ii) School Breakfast Program (section 4 of the Act, 42 U.S.C. 1773); and

(iii) State Administrative Expenses (section 7 of the Act, 42 U.S.C. 1776).

(6) Entitlement awards for State Administrative Expenses under The Food and Nutrition Act of 2008 (section 16 of the Act, 7 U.S.C. 2025).

(7) Non-discretionary Federal awards under the following non-entitlement programs:

(i) Special Supplemental Nutrition Program for Women, Infants and Children (section 17 of the Child Nutrition Act of 1966) 42 U.S.C. 1786;

(ii) The Emergency Food Assistance Programs (Emergency Food Assistance Act of 1983) 7 U.S.C. 7501 note; and

(iii) Commodity Supplemental Food Program (section 5 of the Agriculture and Consumer Protection Act of 1973) 7 U.S.C. 612c note.

[85 FR 49536, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

§ 200.102 Exceptions.

(a) With the exception of subpart F of this part, OMB may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this part when exceptions are not prohibited by statute. In the interest of maximum uniformity, exceptions from the requirements of this part will be permitted as described in this section.

(b) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by the Federal awarding agency or cognizant agency for indirect costs, except where otherwise required by law or where OMB or other approval is expressly required by this part.

(c) The Federal awarding agency may adjust requirements to a class of Federal awards or non-Federal entities when approved by OMB, or when required by Federal statutes or regulations, except for the requirements in subpart F of this part. A Federal awarding agency may apply less restrictive requirements when making fixed amount awards as defined in subpart A of this part, except for those requirements imposed by statute or in subpart F of this part.

(d) Federal awarding agencies may request exceptions in support of innovative program designs that apply a risk-based, data-driven framework to alleviate select compliance requirements and hold recipients accountable for good performance. See also § 200.206.

[85 FR 49538, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

§ 200.103 Authorities.

This part is issued under the following authorities.

(a) Subparts B through D of this part are authorized under 31 U.S.C. 503 (the Chief Financial Officers Act, Functions of the Deputy Director for Management), 41 U.S.C. 1101-1131 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and Executive Order 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President"), the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507), as well as The Federal Program Information Act (Pub. L. 95-220 and Pub. L. 98-169, as amended, codified at 31 U.S.C. 6101-6106).

(b) Subpart E of this part is authorized under the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 1101-1125); the Chief Financial Officers Act of 1990 (31 U.S.C. 503-504); Reorganization Plan No. 2 of 1970; and Executive Order 11541, "Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President."

(c) Subpart F of this part is authorized under the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507).

[85 FR 49538, Aug. 13, 2020]

§ 200.104 Supersession.

As described in § 200.110, this part supersedes the following OMB guidance documents and regulations under title 2 of the Code of Federal Regulations:

(a) A-21, "Cost Principles for Educational Institutions" (2 CFR part 220);

(b) A-87, "Cost Principles for State, Local and Indian Tribal Governments" (2 CFR part 225) and also FEDERAL REGISTER notice 51 FR 552 (January 6, 1986);

(c) A-89, "Federal Domestic Assistance Program Information";

(d) A-102, "Grant Awards and Cooperative Agreements with State and Local Governments";

(e) A-110, "Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" (codified at 2 CFR 215);

(f) A-122, "Cost Principles for Non-Profit Organizations" (2 CFR part 230);

(g) A-133, "Audits of States, Local Governments and Non-Profit Organizations"; and

(h) Those sections of A-50 related to audits performed under subpart F of this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75882, Dec. 19, 2014; 85 FR 49538, Aug. 13, 2020]

§ 200.105 Effect on other issuances.

(a) ***Superseding inconsistent requirements.*** For Federal awards subject to this part, all administrative requirements, program manuals, handbooks and other non-regulatory materials that are inconsistent with the requirements of this part must be superseded upon implementation of this part by the Federal agency, except to the extent they are required by statute or authorized in accordance with the provisions in § 200.102.

(b) ***Imposition of requirements on recipients.*** Agencies may impose legally binding requirements on recipients only through the notice and public comment process through an approved agency process, including as authorized by this part, other statutes or regulations, or as incorporated into the terms of a Federal award.

[85 FR 49538, Aug. 13, 2020]

§ 200.106 Agency implementation.

The specific requirements and responsibilities of Federal agencies and non-Federal entities are set forth in this part. Federal agencies making Federal awards to non-Federal entities must implement the language in subparts C through F of this part in codified regulations unless different provisions are required by Federal statute or are approved by OMB.

[85 FR 49538, Aug. 13, 2020]

§ 200.107 OMB responsibilities.

OMB will review Federal agency regulations and implementation of this part, and will provide interpretations of policy requirements and assistance to ensure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

§ 200.108 Inquiries.

Inquiries concerning this part may be directed to the Office of Federal Financial Management Office of Management and Budget, in Washington, DC. Non-Federal entities' inquiries should be addressed to the Federal awarding agency, cognizant agency for indirect costs, cognizant or oversight agency for audit, or pass-through entity as appropriate.

§ 200.109 Review date.

OMB will review this part at least every five years after December 26, 2013.

§ 200.110 Effective/applicability date.

(a) The standards set forth in this part that affect the administration of Federal awards issued by Federal awarding agencies become effective once implemented by Federal awarding agencies or when any future amendment to this part becomes final.

(b) Existing negotiated indirect cost rates (as of the publication date of the revisions to the guidance) will remain in place until they expire. The effective date of changes to indirect cost rates must be based upon the date that a newly re-negotiated rate goes into effect for a specific non-Federal entity's fiscal year. Therefore, for indirect cost rates and cost allocation plans, the revised Uniform Guidance (as of the publication date for revisions to the guidance) become effective in generating proposals and negotiating a new rate (when the rate is re-negotiated).

[85 FR 49538, Aug. 13, 2020]

§ 200.111 English language.

(a) All Federal financial assistance announcements and Federal award information must be in the English language. Applications must be submitted in the English language and must be in the terms of U.S. dollars. If the Federal awarding agency receives applications in another currency, the Federal awarding agency will evaluate the application by converting the foreign currency to United States currency using the date specified for receipt of the application.

(b) Non-Federal entities may translate the Federal award and other documents into another language. In the event of inconsistency between any terms and conditions of the Federal award and any translation into another language, the English language meaning will control. Where a significant portion of the non-Federal entity's employees who are working on the Federal award are not fluent in English, the non-Federal entity must provide the Federal award in English and the language(s) with which employees are more familiar.

§ 200.112 Conflict of interest.

The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

§ 200.113 Mandatory disclosures.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII to this part are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

[85 FR 49539, Aug. 13, 2020]

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

Link to an amendment published at 89 FR 30136, Apr. 22, 2024.

Source: 85 FR 49539, Aug. 13, 2020, unless otherwise noted.

§ 200.200 Purpose.

Sections 200.201 through 200.216 prescribe instructions and other pre-award matters to be used by Federal awarding agencies in the program planning, announcement, application and award processes.

§ 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(a) ***Federal award instrument.*** The Federal awarding agency or pass-through entity must decide on the appropriate instrument for the Federal award (*i.e.,* grant agreement, cooperative agreement, or contract) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08).

(b) ***Fixed amount awards.*** In addition to the options described in paragraph (a) of this section, Federal awarding agencies, or pass-through entities as permitted in § 200.333, may use fixed amount awards (see *Fixed amount awards* in § 200.1) to which the following conditions apply:

(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The Federal awarding agency or pass-through entity may use fixed amount awards if the project scope has measurable goals and objectives and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Some of the ways in which the Federal award may be paid include, but are not limited to:

(i) In several partial payments, the amount of each agreed upon in advance, and the "milestone" or event triggering the payment also agreed upon in advance, and set forth in the Federal award;

(ii) On a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the Federal award and set forth in the Federal award; or,

(iii) In one payment at Federal award completion.

(2) A fixed amount award cannot be used in programs which require mandatory cost sharing or match.

(3) The non-Federal entity must certify in writing to the Federal awarding agency or pass-through entity at the end of the Federal award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Federal award must be adjusted.

(4) Periodic reports may be established for each Federal award.

(5) Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the Federal awarding agency or pass-through entity.

§ 200.202 Program planning and design.

The Federal awarding agency must design a program and create an Assistance Listing before announcing the Notice of Funding Opportunity. The program must be designed with clear goals and objectives that facilitate the delivery of meaningful results consistent with the Federal authorizing legislation of the program. Program performance shall be measured based on the goals and objectives developed during program planning and design. See § 200.301 for more information on performance measurement. Performance measures may differ depending on the type of program. The program must align with the strategic goals and objectives within the Federal awarding agency's performance plan and should support the Federal awarding agency's performance measurement, management, and reporting as required by Part 6 of OMB Circular A-11 (Preparation, Submission, and Execution of the Budget). The program must also be designed to align with the Program Management Improvement Accountability Act (Pub. L. 114-264).

§ 200.203 Requirement to provide public notice of Federal financial assistance programs.

(a) The Federal awarding agency must notify the public of Federal programs in the Federal Assistance Listings maintained by the General Services Administration (GSA).

(1) The Federal Assistance Listings is the single, authoritative, governmentwide comprehensive source of Federal financial assistance program information produced by the executive branch of the Federal Government.

(2) The information that the Federal awarding agency must submit to GSA for approval by OMB is listed in paragraph (b) of this section. GSA must prescribe the format for the submission in coordination with OMB.

(3) The Federal awarding agency may not award Federal financial assistance without assigning it to a program that has been included in the Federal Assistance Listings as required in this section unless there are exigent circumstances requiring otherwise, such as timing requirements imposed by statute.

(b) For each program that awards discretionary Federal awards, non-discretionary Federal awards, loans, insurance, or any other type of Federal financial assistance, the Federal awarding agency must, to the extent practicable, create, update, and manage Assistance Listings entries based on the authorizing statute for the program and comply with additional guidance provided by GSA in consultation with OMB to ensure consistent, accurate information is available to prospective applicants. Accordingly, Federal awarding agencies must submit the following information to GSA:

(1) ***Program Description, Purpose, Goals, and Measurement.*** A brief summary of the statutory or regulatory requirements of the program and its intended outcome. Where appropriate, the Program Description, Purpose, Goals, and Measurement should align with the strategic goals and objectives within the Federal awarding agency's performance plan and should support the Federal awarding agency's performance measurement, management, and reporting as required by Part 6 of OMB Circular A-11;

(2) ***Identification.*** Identification of whether the program makes Federal awards on a discretionary basis or the Federal awards are prescribed by Federal statute, such as in the case of formula grants.

(3) ***Projected total amount of funds available for the program.*** Estimates based on previous year funding are acceptable if current appropriations are not available at the time of the submission;

(4) ***Anticipated source of available funds.*** The statutory authority for funding the program and, to the extent possible, agency, sub-agency, or, if known, the specific program unit that will issue the Federal awards, and associated funding identifier (*e.g.,* Treasury Account Symbol(s));

(5) ***General eligibility requirements.*** The statutory, regulatory or other eligibility factors or considerations that determine the applicant's qualification for Federal awards under the program (*e.g.,* type of non-Federal entity); and

(6) ***Applicability of Single Audit Requirements.*** Applicability of Single Audit Requirements as required by subpart F of this part.

§ 200.204 Notices of funding opportunities.

For discretionary grants and cooperative agreements that are competed, the Federal awarding agency must announce specific funding opportunities by providing the following information in a public notice:

(a) ***Summary information in notices of funding opportunities.*** The Federal awarding agency must display the following information posted on the OMB-designated governmentwide website for funding and applying for Federal financial assistance, in a location preceding the full text of the announcement:

(1) Federal Awarding Agency Name;

(2) Funding Opportunity Title;

(3) Announcement Type (whether the funding opportunity is the initial announcement of this funding opportunity or a modification of a previously announced opportunity);

(4) Funding Opportunity Number (required, if applicable). If the Federal awarding agency has assigned or will assign a number to the funding opportunity announcement, this number must be provided;

(5) Assistance Listings Number(s);

(6) Key Dates. Key dates include due dates for applications or Executive Order 12372 submissions, as well as for any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the relevant Federal awarding agency.

(b) ***Availability period.*** The Federal awarding agency must generally make all funding opportunities available for application for at least 60 calendar days. The Federal awarding agency may make a determination to have a less than 60 calendar day availability period but no funding opportunity should be available for less than 30 calendar days unless exigent circumstances require as determined by the Federal awarding agency head or delegate.

(c) ***Full text of funding opportunities.*** The Federal awarding agency must include the following information in the full text of each funding opportunity. For specific instructions on the content required in this section, refer to appendix I to this part.

(1) Full programmatic description of the funding opportunity.

(2) Federal award information, including sufficient information to help an applicant make an informed decision about whether to submit an application. (See also § 200.414(c)(4)).

(3) Specific eligibility information, including any factors or priorities that affect an applicant's or its application's eligibility for selection.

(4) Application Preparation and Submission Information, including the applicable submission dates and time.

(5) Application Review Information including the criteria and process to be used to evaluate applications. See also §§ 200.205 and 200.206.

(6) Federal Award Administration Information. See also § 200.211.

(7) Applicable terms and conditions for resulting awards, including any exceptions from these standard terms.

§ 200.205 Federal awarding agency review of merit of proposals.

For discretionary Federal awards, unless prohibited by Federal statute, the Federal awarding agency must design and execute a merit review process for applications, with the objective of selecting recipients most likely to be successful in delivering results based on the program objectives outlined in section § 200.202. A merit review is an objective process of evaluating Federal award applications in accordance with written standards set forth by the Federal awarding agency. This process must be described or incorporated by reference in the applicable funding opportunity (see appendix I to this part.). See also § 200.204. The Federal awarding agency must also periodically review its merit review process.

§ 200.206 Federal awarding agency review of risk posed by applicants.

(a) ***Review of OMB-designated repositories of governmentwide data.***

(1) Prior to making a Federal award, the Federal awarding agency is required by the Payment Integrity Information Act of 2019, 31 U.S.C. 3301 note, and 41 U.S.C. 2313 to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information as appropriate. See also suspension and debarment requirements at 2 CFR part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations.

(2) In accordance 41 U.S.C. 2313, the Federal awarding agency is required to review the non-public segment of the OMB-designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) prior to making a Federal award where the Federal share is expected to exceed the simplified acquisition threshold, defined in 41 U.S.C. 134, over the period of performance. As required by Public Law 112-239, National Defense Authorization Act for Fiscal Year 2013, prior to making a Federal award, the Federal awarding agency must consider all of the information available through FAPIIS with regard to the applicant and any immediate highest level owner, predecessor (*i.e.;* a non-Federal entity that is replaced by a successor), or subsidiary, identified for that applicant in FAPIIS, if applicable. At a minimum, the information in the system for a prior Federal award recipient must demonstrate a satisfactory record of executing programs or activities under Federal grants, cooperative agreements, or procurement awards; and integrity and business ethics. The Federal awarding agency may make a Federal award to a recipient who does not fully meet these standards, if it is determined that the information is not relevant to the current Federal award under consideration or there are specific conditions that can appropriately mitigate the effects of the non-Federal entity's risk in accordance with § 200.208.

(b) ***Risk evaluation.***

(1) The Federal awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application. If the Federal awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in § 200.204.

(2) In evaluating risks posed by applicants, the Federal awarding agency may use a risk-based approach and may consider any items such as the following:

(i) ***Financial stability.*** Financial stability;

(ii) ***Management systems and standards.*** Quality of management systems and ability to meet the management standards prescribed in this part;

(iii) ***History of performance.*** The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;

(iv) ***Audit reports and findings.*** Reports and findings from audits performed under subpart F of this part or the reports and findings of any other available audits; and

(v) ***Ability to effectively implement requirements.*** The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.

(c) ***Risk-based requirements adjustment.*** The Federal awarding agency may adjust requirements when a risk-evaluation indicates that it may be merited either pre-award or post-award.

(d) ***Suspension and debarment compliance.***

(1) The Federal awarding agency must comply with the guidelines on governmentwide suspension and debarment in 2 CFR part 180, and must require non-Federal entities to comply with these provisions. These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

[85 FR 49539, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

§ 200.207 Standard application requirements.

(a) ***Paperwork clearances.*** The Federal awarding agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR part 1320 and in alignment with OMB-approved, governmentwide data elements available from the OMB-designated standards lead. Consistent with these requirements, OMB will authorize additional information collections only on a limited basis.

(b) ***Information collection.*** If applicable, the Federal awarding agency may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection.

§ 200.208 Specific conditions.

(a) Federal awarding agencies are responsible for ensuring that specific Federal award conditions are consistent with the program design reflected in § 200.202 and include clear performance expectations of recipients as required in § 200.301.

(b) The Federal awarding agency or pass-through entity may adjust specific Federal award conditions as needed, in accordance with this section, based on an analysis of the following factors:

(1) Based on the criteria set forth in § 200.206;

(2) The applicant or recipient's history of compliance with the general or specific terms and conditions of a Federal award;

(3) The applicant or recipient's ability to meet expected performance goals as described in § 200.211; or

(4) A responsibility determination of an applicant or recipient.

(c) Additional Federal award conditions may include items such as the following:

(1) Requiring payments as reimbursements rather than advance payments;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given performance period;

(3) Requiring additional, more detailed financial reports;

(4) Requiring additional project monitoring;

(5) Requiring the non-Federal entity to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(d) If the Federal awarding agency or pass-through entity is imposing additional requirements, they must notify the applicant or non-Federal entity as to:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the action needed to remove the additional requirement, if applicable;

(4) The time allowed for completing the actions if applicable; and

(5) The method for requesting reconsideration of the additional requirements imposed.

(e) Any additional requirements must be promptly removed once the conditions that prompted them have been satisfied.

§ 200.209 Certifications and representations.

Unless prohibited by the U.S. Constitution, Federal statutes or regulations, each Federal awarding agency or pass-through entity is authorized to require the non-Federal entity to submit certifications and representations required by Federal statutes, or regulations on an annual basis. Submission may be required more frequently if the non-Federal entity fails to meet a requirement of a Federal award.

§ 200.210 Pre-award costs.

For requirements on costs incurred by the applicant prior to the start date of the period of performance of the Federal award, see § 200.458.

§ 200.211 Information contained in a Federal award.

A Federal award must include the following information:

(a) ***Federal award performance goals.*** Performance goals, indicators, targets, and baseline data must be included in the Federal award, where applicable. The Federal awarding agency must also specify how performance will be assessed in the terms and conditions of the Federal award, including the timing and scope of expected performance. See §§ 200.202 and 200.301 for more information on Federal award performance goals.

(b) ***General Federal award information.*** The Federal awarding agency must include the following general Federal award information in each Federal award:

(1) Recipient name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.315);

(2) Recipient's unique entity identifier;

(3) Unique Federal Award Identification Number (FAIN);

(4) Federal Award Date (see Federal award date in § 200.201);

(5) Period of Performance Start and End Date;

(6) Budget Period Start and End Date;

(7) Amount of Federal Funds Obligated by this action;

(8) Total Amount of Federal Funds Obligated;

(9) Total Approved Cost Sharing or Matching, where applicable;

(10) Total Amount of the Federal Award including approved Cost Sharing or Matching;

(11) Budget Approved by the Federal Awarding Agency;

(11) Federal award description, (to comply with statutory requirements (*e.g.,* FFATA));

(12) Name of Federal awarding agency and contact information for awarding official,

(13) Assistance Listings Number and Title;

(14) Identification of whether the award is R&D; and

(15) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 200.414).

(c) ***General terms and conditions.***

(1) Federal awarding agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:

(i) ***Administrative requirements.*** Administrative requirements implemented by the Federal awarding agency as specified in this part.

(ii) ***National policy requirements.*** These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See § 200.300 Statutory and national policy requirements.

(iii) ***Recipient integrity and performance matters.*** If the total Federal share of the Federal award may include more than $500,000 over the period of performance, the Federal awarding agency must include the term and condition available in appendix XII of this part. See also § 200.113.

(iv) ***Future budget periods.*** If it is anticipated that the period of performance will include multiple budget periods, the Federal awarding agency must indicate that subsequent budget periods are subject to the availability of funds, program authority, satisfactory performance, and compliance with the terms and conditions of the Federal award.

(v) ***Termination provisions.*** Federal awarding agencies must make recipients aware, in a clear and unambiguous manner, of the termination provisions in § 200.340, including the applicable termination provisions in the Federal awarding agency's regulations or in each Federal award.

(2) The Federal award must incorporate, by reference, all general terms and conditions of the award, which must be maintained on the agency's website.

(3) If a non-Federal entity requests a copy of the full text of the general terms and conditions, the Federal awarding agency must provide it.

(4) Wherever the general terms and conditions are publicly available, the Federal awarding agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by the non-Federal entity, auditors, or others.

(d) ***Federal awarding agency, program, or Federal award specific terms and conditions.*** The Federal awarding agency must include with each Federal award any terms and conditions necessary to communicate requirements that are in addition to the requirements outlined in the Federal awarding agency's general terms and conditions. See also § 200.208. Whenever practicable, these specific terms and conditions also should be shared on the agency's website and in notices of funding opportunities (as outlined in § 200.204) in addition to being included in a Federal award. See also § 200.207.

(e) ***Federal awarding agency requirements.*** Any other information required by the Federal awarding agency.

§ 200.212 Public access to Federal award information.

(a) In accordance with statutory requirements for Federal spending transparency (*e.g.,* FFATA), except as noted in this section, for applicable Federal awards the Federal awarding agency must announce all Federal awards publicly and publish the required information on a publicly available OMB-designated governmentwide website.

(b) All information posted in the designated integrity and performance system accessible through SAM (currently FAPIIS) on or after April 15, 2011 will be publicly available after a waiting period of 14 calendar days, except for:

(1) Past performance reviews required by Federal Government contractors in accordance with the Federal Acquisition Regulation (FAR) 48 CFR part 42, subpart 42.15;

(2) Information that was entered prior to April 15, 2011; or

(3) Information that is withdrawn during the 14-calendar day waiting period by the Federal Government official.

(c) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C 552), or controlled unclassified information pursuant to Executive Order 13556.

§ 200.213 Reporting a determination that a non-Federal entity is not qualified for a Federal award.

(a) If a Federal awarding agency does not make a Federal award to a non-Federal entity because the official determines that the non-Federal entity does not meet either or both of the minimum qualification standards as described in § 200.206(a)(2), the Federal awarding agency must report that determination to the designated integrity and performance system accessible through SAM (currently FAPIIS), only if all of the following apply:

(1) The only basis for the determination described in this paragraph (a) is the non-Federal entity's prior record of executing programs or activities under Federal awards or its record of integrity and business ethics, as described in § 200.206(a)(2) (*i.e.,* the entity was determined to be qualified based on all factors other than those two standards); and

(2) The total Federal share of the Federal award that otherwise would be made to the non-Federal entity is expected to exceed the simplified acquisition threshold over the period of performance.

(b) The Federal awarding agency is not required to report a determination that a non-Federal entity is not qualified for a Federal award if they make the Federal award to the non-Federal entity and include specific award terms and conditions, as described in § 200.208.

(c) If a Federal awarding agency reports a determination that a non-Federal entity is not qualified for a Federal award, as described in paragraph (a) of this section, the Federal awarding agency also must notify the non-Federal entity that—

(1) The determination was made and reported to the designated integrity and performance system accessible through SAM, and include with the notification an explanation of the basis for the determination;

(2) The information will be kept in the system for a period of five years from the date of the determination, as required by section 872 of Public Law 110-417, as amended (41 U.S.C. 2313), then archived;

(3) Each Federal awarding agency that considers making a Federal award to the non-Federal entity during that five year period must consider that information in judging whether the non-Federal entity is qualified to receive the Federal award when the total Federal share of the Federal award is expected to include an amount of Federal funding in excess of the simplified acquisition threshold over the period of performance;

(4) The non-Federal entity may go to the awardee integrity and performance portal accessible through SAM (currently the Contractor Performance Assessment Reporting System (CPARS)) and comment on any information the system contains about the non-Federal entity itself; and

(5) Federal awarding agencies will consider that non-Federal entity's comments in determining whether the non-Federal entity is qualified for a future Federal award.

(d) If a Federal awarding agency enters information into the designated integrity and performance system accessible through SAM about a determination that a non-Federal entity is not qualified for a Federal award and subsequently:

(1) Learns that any of that information is erroneous, the Federal awarding agency must correct the information in the system within three business days; and

(2) Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(e) Federal awarding agencies must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the recipient asserts within seven calendar days to the Federal awarding agency that posted the information that some or all of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal awarding agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

§ 200.214 Suspension and debarment.

Non-Federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. The regulations in 2 CFR part 180 restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 200.215 Never contract with the enemy.

Federal awarding agencies and recipients are subject to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed $50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

§ 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also § 200.471.

Subpart D—Post Federal Award Requirements

Link to an amendment published at 89 FR 30136, Apr. 22, 2024.

Source: 85 FR 49543, Aug. 13, 2020, unless otherwise noted.

§ 200.300 Statutory and national policy requirements.

(a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, and public policy requirements: Including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.

(b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR parts 25 and 170. See also statutory requirements for whistleblower protections at 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. 4304 and 4310.

§ 200.301 Performance measurement.

(a) The Federal awarding agency must measure the recipient's performance to show achievement of program goals and objectives, share lessons learned, improve program outcomes, and foster adoption of promising practices. Program goals and objectives should be derived from program planning and design. See § 200.202 for more information. Where appropriate, the Federal award may include specific program goals, indicators, targets, baseline data, data collection, or expected outcomes (such as outputs, or

services performance or public impacts of any of these) with an expected timeline for accomplishment. Where applicable, this should also include any performance measures or independent sources of data that may be used to measure progress. The Federal awarding agency will determine how performance progress is measured, which may differ by program. Performance measurement progress must be both measured and reported. See § 200.329 for more information on monitoring program performance. The Federal awarding agency may include program-specific requirements, as applicable. These requirements must be aligned, to the extent permitted by law, with the Federal awarding agency strategic goals, strategic objectives or performance goals that are relevant to the program. See also OMB Circular A-11, Preparation, Submission, and Execution of the Budget Part 6.

(b) The Federal awarding agency should provide recipients with clear performance goals, indicators, targets, and baseline data as described in § 200.211. Performance reporting frequency and content should be established to not only allow the Federal awarding agency to understand the recipient progress but also to facilitate identification of promising practices among recipients and build the evidence upon which the Federal awarding agency's program and performance decisions are made. See § 200.328 for more information on reporting program performance.

(c) This provision is designed to operate in tandem with evidence-related statutes (*e.g.;* The Foundations for Evidence-Based Policymaking Act of 2018, which emphasizes collaboration and coordination to advance data and evidence-building functions in the Federal government). The Federal awarding agency should also specify any requirements of award recipients' participation in a federally funded evaluation, and any evaluation activities required to be conducted by the Federal award.

§ 200.302 Financial management.

(a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also § 200.450.

(b) The financial management system of each non-Federal entity must provide for the following (see also §§ 200.334, 200.335, 200.336, and 200.337):

(1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the Assistance Listings title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.

(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §§ 200.328 and 200.329. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.

(3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, financial obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

(4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See § 200.303.

(5) Comparison of expenditures with budget amounts for each Federal award.

(6) Written procedures to implement the requirements of § 200.305.

(7) Written procedures for determining the allowability of costs in accordance with subpart E of this part and the terms and conditions of the Federal award.

§ 200.303 Internal controls.

The non-Federal entity must:

(a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal awards.

(c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

(e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

§ 200.304 Bonds.

The Federal awarding agency may include a provision on bonding, insurance, or both in the following circumstances:

(a) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the non-Federal entity are not deemed adequate to protect the interest of the Federal Government.

(b) The Federal awarding agency may require adequate fidelity bond coverage where the non-Federal entity lacks sufficient coverage to protect the Federal Government's interest.

(c) Where bonds are required in the situations described above, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223.

§ 200.305 Federal payment.

(a) For states, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A-2000, "Overall Disbursing Rules for All Federal Agencies".

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also § 200.302(b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved, governmentwide information collection requests to request payment.

(1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.

(i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.

(ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

(3) Reimbursement is the preferred method when the requirements in this paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per § 200.208, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.

(4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding

agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

(5) To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of § 200.208, subpart D of this part, including § 200.339, or one or more of the following applies:

(i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.

(ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Circular A-129, “Policies for Federal Credit Programs and Non-Tax Receivables.” Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for financial obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with § 200.343.

(iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.

(i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for funds received, obligated, and expended.

(ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:

(i) The non-Federal entity receives less than $250,000 in Federal awards per year.

(ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of $500 per year on Federal cash balances.

(iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(iv) A foreign government or banking system prohibits or precludes interest-bearing accounts.

(9) Interest earned amounts up to $500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.

(i) For returning interest on Federal awards paid through PMS, the refund should:

(A) Provide an explanation stating that the refund is for interest;

(B) List the PMS Payee Account Number(s) (PANs);

(C) List the Federal award number(s) for which the interest was earned; and

(D) Make returns payable to: Department of Health and Human Services.

(ii) For returning interest on Federal awards not paid through PMS, the refund should:

(A) Provide an explanation stating that the refund is for interest;

(B) Include the name of the awarding agency;

(C) List the Federal award number(s) for which the interest was earned; and

(D) Make returns payable to: Department of Health and Human Services.

(10) Funds, principal, and excess cash returns must be directed to the original Federal agency payment system. The non-Federal entity should review instructions from the original Federal agency payment system. Returns should include the following information:

(i) Payee Account Number (PAN), if the payment originated from PMS, or Agency information to indicate whom to credit the funding if the payment originated from ASAP, NSF, or another Federal agency payment system.

(ii) PMS document number and subaccount(s), if the payment originated from PMS, or relevant account numbers if the payment originated from another Federal agency payment system.

(iii) The reason for the return (*e.g.,* excess cash, funds not spent, interest, part interest part other, etc.)

(11) When returning funds or interest to PMS you must include the following as applicable:

(i) For ACH Returns:

Routing Number: 051036706

Account number: 303000

Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN

(ii) For Fedwire Returns[1]:

Routing Number: 021030004

Account number: 75010501

Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY

[1] Please note that the organization initiating payment is likely to incur a charge from their Financial Institution for this type of payment.

(iii) For International ACH Returns:

Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)

Bank: Citibank N.A. (New York)

Swift Code: CITIUS33

Account Number: 36838868

Bank Address: 388 Greenwich Street, New York, NY 10013 USA

Payment Details (Line 70): Agency Locator Code (ALC): 75010501

Name (abbreviated when possible) and ALC Agency POC

(iv) For recipients that do not have electronic remittance capability, please make check[2] payable to: "The Department of Health and Human Services."

Mail Check to Treasury approved lockbox:

HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231

[2] Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account.

(v) Questions can be directed to PMS at 877-614-5533 or *PMSSupport@psc.hhs.gov*.

§ 200.306 Cost sharing or matching.

(a) Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with Federal awarding agency regulations and specified in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity. See also §§ 200.414 and 200.204 and appendix I to this part.

(b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third-party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:

(1) Are verifiable from the non-Federal entity's records;

(2) Are not included as contributions for any other Federal award;

(3) Are necessary and reasonable for accomplishment of project or program objectives;

(4) Are allowable under subpart E of this part;

(5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;

(6) Are provided for in the approved budget when required by the Federal awarding agency; and

(7) Conform to other provisions of this part, as applicable.

(c) Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.

(d) Values for non-Federal entity contributions of services and property must be established in accordance with the cost principles in subpart E of this part. If a Federal awarding agency authorizes the non-Federal entity to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching must be the lesser of paragraph (d)(1) or (2) of this section.

(1) The value of the remaining life of the property recorded in the non-Federal entity's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the value described in paragraph (d)(1) of this section at the time of donation.

(e) Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for third-party volunteer services must be consistent with those paid for similar work by the non-Federal entity. In those instances in which the required skills are not found in the non-Federal entity, rates must be consistent with those paid for similar work in the labor market in which the non-Federal entity competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, necessary, allocable, and otherwise allowable may be included in the valuation.

(f) When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable, and indirect costs at either the third-party organization's approved federally-negotiated indirect cost rate or, a rate in accordance with § 200.414(d) provided these services

employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

(g) Donated property from third parties may include such items as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated property included in the cost sharing or matching share must not exceed the fair market value of the property at the time of the donation.

(h) The method used for determining cost sharing or matching for third-party-donated equipment, buildings and land for which title passes to the non-Federal entity may differ according to the purpose of the Federal award, if paragraph (h)(1) or (2) of this section applies.

(1) If the purpose of the Federal award is to assist the non-Federal entity in the acquisition of equipment, buildings or land, the aggregate value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings or land, normally only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges. See also § 200.420.

(i) The value of donated property must be determined in accordance with the usual accounting policies of the non-Federal entity, with the following qualifications:

(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the non-Federal entity as established by an independent appraiser (*e.g.,* certified real property appraiser or General Services Administration representative) and certified by a responsible official of the non-Federal entity as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601-4655) (Uniform Act) except as provided in the implementing regulations at 49 CFR part 24, "Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs".

(2) The value of donated equipment must not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment must not exceed its fair rental value.

(j) For third-party in-kind contributions, the fair market value of goods and services must be documented and to the extent feasible supported by the same methods used internally by the non-Federal entity.

(k) For IHEs, see also OMB memorandum M-01-06, dated January 5, 2001, Clarification of OMB A-21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

§ 200.307 Program income.

(a) ***General.*** Non-Federal entities are encouraged to earn income to defray program costs where appropriate.

(b) ***Cost of generating program income.*** If authorized by Federal regulations or the Federal award, costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.

(c) ***Governmental revenues.*** Taxes, special assessments, levies, fines, and other such revenues raised by a non-Federal entity are not program income unless the revenues are specifically identified in the Federal award or Federal awarding agency regulations as program income.

(d) ***Property.*** Proceeds from the sale of real property, equipment, or supplies are not program income; such proceeds will be handled in accordance with the requirements of the Property Standards §§ 200.311, 200.313, and 200.314, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

(e) ***Use of program income.*** If the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award, or give prior approval for how program income is to be used, paragraph (e)(1) of this section must apply. For Federal awards made to IHEs and nonprofit research institutions, if the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award how program income is to be used, paragraph (e)(2) of this section must apply. In specifying alternatives to paragraphs (e)(1) and (2) of this section, the Federal awarding agency may distinguish between income earned by the recipient and income earned by subrecipients and between the sources, kinds, or amounts of income. When the Federal awarding agency authorizes the approaches in paragraphs (e)(2) and (3) of this section, program income in excess of any amounts specified must also be deducted from expenditures.

(1) ***Deduction.*** Ordinarily program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs unless the Federal awarding agency authorizes otherwise. Program income that the non-Federal entity did not anticipate at the time of the Federal award must be used to reduce the Federal award and non-Federal entity contributions rather than to increase the funds committed to the project.

(2) ***Addition.*** With prior approval of the Federal awarding agency (except for IHEs and nonprofit research institutions, as described in this paragraph (e)) program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes and under the conditions of the Federal award.

(3) ***Cost sharing or matching.*** With prior approval of the Federal awarding agency, program income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award remains the same.

(f) ***Income after the period of performance.*** There are no Federal requirements governing the disposition of income earned after the end of the period of performance for the Federal award, unless the Federal awarding agency regulations or the terms and conditions of the Federal award provide otherwise. The Federal awarding agency may negotiate agreements with recipients regarding appropriate uses of income earned after the period of performance as part of the grant closeout process. See also § 200.344.

(g) ***License fees and royalties.*** Unless the Federal statute, regulations, or terms and conditions for the Federal award provide otherwise, the non-Federal entity is not accountable to the Federal awarding agency with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award to which 37 CFR part 401 is applicable.

§ 200.308 Revision of budget and program plans.

(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include either the Federal and non-Federal share (see definition for *Federal share* in § 200.1) or only the Federal share, depending upon Federal awarding agency requirements. The budget and program plans include considerations for performance and program evaluation purposes whenever required in accordance with the terms and conditions of the award.

(b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with this section.

(c) For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for the following program or budget-related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or the Federal award.

(3) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with subpart E of this part as applicable.

(5) The transfer of funds budgeted for participant support costs to other categories of expense.

(6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in § 200.333. This provision does not apply to the acquisition of supplies, material, equipment or general support services.

(7) Changes in the approved cost-sharing or matching provided by the non-Federal entity.

(8) The need arises for additional Federal funds to complete the project.

(d) No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§ 200.102 and 200.407.

(e) Except for requirements listed in paragraphs (c)(1) through (8) of this section, the Federal awarding agency is authorized, at its option, to waive other cost-related and administrative prior written approvals contained in subparts D and E of this part. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of the Federal awarding agency. All costs incurred before the Federal awarding agency makes the Federal award are at the recipient's risk (*i.e.,* the Federal awarding agency is not required to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). See also § 200.458.

(2) Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (e)(2)(i) through (iii) of this section apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting

reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension must not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior Federal awarding agency approval when:

(i) The terms and conditions of the Federal award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent budget periods.

(4) For Federal awards that support research, unless the Federal awarding agency provides otherwise in the Federal award or in the Federal awarding agency's regulations, the prior approval requirements described in this paragraph (e) are automatically waived (*i.e.,* recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for Federal awards in which the Federal share of the project exceeds the simplified acquisition threshold and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. The Federal awarding agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation.

(g) All other changes to non-construction budgets, except for the changes described in paragraph (c) of this section, do not require prior approval (see also § 200.407).

(h) For construction Federal awards, the recipient must request prior written approval promptly from the Federal awarding agency for budget revisions whenever paragraph (h)(1), (2), or (3) of this section applies:

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in subpart E.

(4) No other prior approval requirements for budget revisions may be imposed unless an exception has been approved by OMB.

(5) When a Federal awarding agency makes a Federal award that provides support for construction and non-construction work, the Federal awarding agency may require the recipient to obtain prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(i) When requesting approval for budget revisions, the recipient must use the same format for budget information that was used in the application, unless the Federal awarding agency indicates a letter of request suffices.

(j) Within 30 calendar days from the date of receipt of the request for budget revisions, the Federal awarding agency must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency must inform the recipient in writing of the date when the recipient may expect the decision.

§ 200.309 Modifications to Period of Performance.

If a Federal awarding agency or pass-through entity approves an extension, or if a recipient extends under § 200.308(e)(2), the Period of Performance will be amended to end at the completion of the extension. If a termination occurs, the Period of Performance will be amended to end upon the effective date of termination. If a renewal award is issued, a distinct Period of Performance will begin.

PROPERTY STANDARDS

§ 200.310 Insurance coverage.

The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.

§ 200.311 Real property.

(a) ***Title.*** Subject to the requirements and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.

(b) ***Use.*** Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.

(c) ***Disposition.*** When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:

(1) Retain title after compensating the Federal awarding agency. The amount paid to the Federal awarding agency will be computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the non-Federal entity is disposing of real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sell the property and compensate the Federal awarding agency. The amount due to the Federal awarding agency will be calculated by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer title to the Federal awarding agency or to a third party designated/approved by the Federal awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.

§ 200.312 Federally-owned and exempt property.

(a) Title to federally-owned property remains vested in the Federal Government. The non-Federal entity must submit annually an inventory listing of federally-owned property in its custody to the Federal awarding agency. Upon completion of the Federal award or when the property is no longer needed, the non-Federal entity must report the property to the Federal awarding agency for further Federal agency utilization.

(b) If the Federal awarding agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (*e.g.,* the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (i)) to donate research equipment to educational and nonprofit organizations in accordance with Executive Order 12999, "Educational Technology: Ensuring Opportunity for All Children in the Next Century."). The Federal awarding agency must issue appropriate instructions to the non-Federal entity.

(c) Exempt property means property acquired under a Federal award where the Federal awarding agency has chosen to vest title to the property to the non-Federal entity without further responsibility to the Federal Government, based upon the explicit terms and conditions of the Federal award. The Federal awarding agency may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt property acquired under the Federal award remains with the Federal Government.

§ 200.313 Equipment.

See also § 200.439.

(a) ***Title.*** Subject to the requirements and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further responsibility to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:

(1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.

(2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.

(3) Use and dispose of the property in accordance with paragraphs (b), (c), and (e) of this section.

(b) ***General.*** A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(c) ***Use.***

(1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. The Federal awarding agency may require the submission of the applicable common form for equipment. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

(i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then

(ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 200.307 to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.

(4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

(d) ***Management requirements.*** Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) ***Disposition.*** When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

(1) Items of equipment with a current per unit fair market value of $5,000 or less may be retained, sold or otherwise disposed of with no further responsibility to the Federal awarding agency.

(2) Except as provided in § 200.312(b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair market value in excess of $5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

(3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

§ 200.314 Supplies.

See also § 200.453.

(a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See § 200.313 (e)(2) for the calculation methodology.

(b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

§ 200.315 Intangible property.

(a) Title to intangible property (see definition for *Intangible property* in § 200.1) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in § 200.313(e).

(b) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements.”

(d) The Federal Government has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(e)

(1) In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the Federal awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Federal agency and the non-Federal entity. This fee is in addition to any fees the Federal awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) Published research findings means when:

(i) Research findings are published in a peer-reviewed scientific or technical journal; or

(ii) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. "Used by the Federal Government in developing an agency action that has the force and effect of law" is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (*e.g.,* laboratory samples). Research data also do not include:

(i) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(ii) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

§ 200.316 Property trust relationship.

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal awarding agency may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

PROCUREMENT STANDARDS

§ 200.317 Procurements by states.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

§ 200.318 General procurement standards.

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or

use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)

(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

§ 200.319 Competition.

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

§ 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) ***Informal procurement methods.*** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT),* as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) ***Micro-purchases*** —

(i) ***Distribution.*** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) ***Micro-purchase awards.*** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) ***Micro-purchase thresholds.*** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) ***Non-Federal entity increase to the micro-purchase threshold up to $50,000.*** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to $50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) ***Non-Federal entity increase to the micro-purchase threshold over $50,000.*** Micro-purchase thresholds higher than $50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) ***Small purchases*** —

(i) ***Small purchase procedures.*** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) ***Simplified acquisition thresholds.*** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) ***Formal procurement methods.*** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) ***Sealed bids.*** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) ***Proposals.*** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(c) ***Noncompetitive procurement.*** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

§ 200.321 Contracting with small and minority businesses, women's business enterprises, and

labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

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

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

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

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

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

§ 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

[85 FR 49543, Aug. 13, 2020, as amended at 88 FR 57790, Aug. 23, 2023]

§ 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable,

consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 200.324 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§ 200.325 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§ 200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

PERFORMANCE AND FINANCIAL MONITORING AND REPORTING

§ 200.328 Financial reporting.

Unless otherwise approved by OMB, the Federal awarding agency must solicit only the OMB-approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future, OMB-approved, governmentwide data elements available from the OMB-designated standards lead. This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting. The Federal awarding agency must use OMB-approved common information collections, as applicable, when providing financial and performance reporting information.

§ 200.329 Monitoring and reporting program performance.

(a) ***Monitoring by the non-Federal entity.*** The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also § 200.332.

(b) ***Reporting program performance.*** The Federal awarding agency must use OMB-approved common information collections, as applicable, when providing financial and performance reporting information. As appropriate and in accordance with above mentioned information collections, the Federal awarding agency must require the recipient to relate financial data and accomplishments to performance goals and objectives of the Federal award. Also, in accordance with above mentioned common information collections, and when required by the terms and conditions of the Federal award, recipients must provide cost information to demonstrate cost effective practices (*e.g.,* through unit cost data). In some instances (*e.g.,* discretionary research awards), this will be limited to the requirement to submit technical performance reports (to be evaluated in accordance with Federal awarding agency policy). Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured.

(c) ***Non-construction performance reports.*** The Federal awarding agency must use standard, governmentwide OMB-approved data elements for collection of performance information including performance progress reports, Research Performance Progress Reports.

(1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Reports submitted annually by the non-Federal entity and/or pass-through entity must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report submitted by the non-Federal entity and/or pass-through entity must be due no later than 120 calendar days after the period of performance end date. A subrecipient must submit to the pass-through entity, no later than 90 calendar days after the

period of performance end date, all final performance reports as required by the terms and conditions of the Federal award. See also § 200.344. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

(2) As appropriate in accordance with above mentioned performance reporting, these reports will contain, for each Federal award, brief information on the following unless other data elements are approved by OMB in the agency information collection request:

(i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

(ii) The reasons why established goals were not met, if appropriate.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(d) ***Construction performance reports.*** For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.

(e) ***Significant developments.*** Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

(f) ***Site visits.*** The Federal awarding agency may make site visits as warranted by program needs.

(g) ***Performance report requirement waiver.*** The Federal awarding agency may waive any performance report required by this part if not needed.

§ 200.330 Reporting on real property.

The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (*e.g.,* every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

SUBRECIPIENT MONITORING AND MANAGEMENT

§ 200.331 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) ***Subrecipients.*** A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See definition for *Subaward* in § 200.1 of this part. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

(1) Determines who is eligible to receive what Federal assistance;

(2) Has its performance measured in relation to whether objectives of a Federal program were met;

(3) Has responsibility for programmatic decision-making;

(4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

(5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) ***Contractors.*** A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See the definition of *contract* in § 200.1 of this part. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) ***Use of judgment in making determination.*** In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

§ 200.332 Requirements for pass-through entities.

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

(1) Federal award identification.

(i) Subrecipient name (which must match the name associated with its unique entity identifier);

(ii) Subrecipient's unique entity identifier;

(iii) Federal Award Identification Number (FAIN);

(iv) Federal Award Date (see the definition of *Federal award date* in § 200.1 of this part) of award to the recipient by the Federal agency;

(v) Subaward Period of Performance Start and End Date;

(vi) Subaward Budget Period Start and End Date;

(vii) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;

(viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation;

(ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;

(x) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);

(xi) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;

(xii) Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement;

(xiii) Identification of whether the award is R&D; and

(xiv) Indirect cost rate for the Federal award (including if the de minimis rate is charged) per § 200.414.

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

(4)

(i) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, the pass-through entity must determine the appropriate rate in collaboration with the subrecipient, which is either:

(A) The negotiated indirect cost rate between the pass-through entity and the subrecipient; which can be based on a prior negotiated rate between a different PTE and the same subrecipient. If basing the rate on a previously negotiated rate, the pass-through entity is not required to collect information justifying this rate, but may elect to do so;

(B) The de minimis indirect cost rate.

(ii) The pass-through entity must not require use of a de minimis indirect cost rate if the subrecipient has a Federally approved rate. Subrecipients can elect to use the cost allocation method to account for indirect costs in accordance with § 200.405(d).

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F of this part, and the extent to which the same or similar subaward has been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of Federal awarding agency monitoring (*e.g.,* if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 200.208.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and written confirmation from the subrecipient, highlighting the status of actions planned or taken to address Single Audit findings related to the particular subaward.

(3) Issuing a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) The pass-through entity is responsible for resolving audit findings specifically related to the subaward and not responsible for resolving crosscutting findings. If a subrecipient has a current Single Audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding (*e.g.,* has been debarred or suspended), the pass-through entity may

rely on the subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with section § 200.513(a)(3)(vii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters; and

(2) Performing on-site reviews of the subrecipient's program operations;

(3) Arranging for agreed-upon-procedures engagements as described in § 200.425.

(f) Verify that every subrecipient is audited as required by Subpart F of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in § 200.339 of this part and in program regulations.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

§ 200.333 Fixed amount subawards.

With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in § 200.201.

Record Retention and Access

§ 200.334 Retention requirements for records.

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) ***If submitted for negotiation.*** If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) ***If not submitted for negotiation.*** If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 200.335 Requests for transfer of records.

The Federal awarding agency must request transfer of certain records to its custody from the non-Federal entity when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, the Federal awarding agency may make arrangements for the non-Federal entity to retain any records that are continuously needed for joint use.

§ 200.336 Methods for collection, transmission, and storage of information.

The Federal awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a web browser or computer system. The Federal awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If paper copies are submitted, the Federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

§ 200.337 Access to records.

(a) ***Records of non-Federal entities.*** The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

(b) ***Extraordinary and rare circumstances.*** Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the Federal awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate.

(c) ***Expiration of right of access.*** The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

§ 200.338 Restrictions on public access to records.

No Federal awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under § 200.315. Unless required by Federal, state, local, and tribal statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

Remedies for Noncompliance

§ 200.339 Remedies for noncompliance.

If a non-Federal entity fails to comply with the U.S. Constitution, Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in § 200.208. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.

(b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(c) Wholly or partly suspend or terminate the Federal award.

(d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).

(e) Withhold further Federal awards for the project or program.

(f) Take other remedies that may be legally available.

§ 200.340 Termination.

(a) The Federal award may be terminated in whole or in part as follows:

(1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;

(2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

(3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;

(4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or

(5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.

(b) A Federal awarding agency should clearly and unambiguously specify termination provisions applicable to each Federal award, in applicable regulations or in the award, consistent with this section.

(c) When a Federal awarding agency terminates a Federal award prior to the end of the period of performance due to the non-Federal entity's material failure to comply with the Federal award terms and conditions, the Federal awarding agency must report the termination to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS).

(1) The information required under paragraph (c) of this section is not to be reported to designated integrity and performance system until the non-Federal entity either—

(i) Has exhausted its opportunities to object or challenge the decision, see § 200.342; or

(ii) Has not, within 30 calendar days after being notified of the termination, informed the Federal awarding agency that it intends to appeal the Federal awarding agency's decision to terminate.

(2) If a Federal awarding agency, after entering information into the designated integrity and performance system about a termination, subsequently:

(i) Learns that any of that information is erroneous, the Federal awarding agency must correct the information in the system within three business days;

(ii) Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(3) Federal awarding agencies, must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the non-Federal entity asserts within seven calendar days to the Federal awarding agency who posted the information, that some of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency who posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

(d) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§ 200.344 and 200.345.

§ 200.341 Notification of termination requirement.

(a) The Federal agency or pass-through entity must provide to the non-Federal entity a notice of termination.

(b) If the Federal award is terminated for the non-Federal entity's material failure to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that—

(1) The termination decision will be reported to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS);

(2) The information will be available in the OMB-designated integrity and performance system for a period of five years from the date of the termination, then archived;

(3) Federal awarding agencies that consider making a Federal award to the non-Federal entity during that five year period must consider that information in judging whether the non-Federal entity is qualified to receive the Federal award, when the Federal share of the Federal award is expected to exceed the simplified acquisition threshold over the period of performance;

(4) The non-Federal entity may comment on any information the OMB-designated integrity and performance system contains about the non-Federal entity for future consideration by Federal awarding agencies. The non-Federal entity may submit comments to the awardee integrity and performance portal accessible through SAM (currently (CPARS).

(5) Federal awarding agencies will consider non-Federal entity comments when determining whether the non-Federal entity is qualified for a future Federal award.

(c) Upon termination of a Federal award, the Federal awarding agency must provide the information required under FFATA to the Federal website established to fulfill the requirements of FFATA, and update or notify any other relevant governmentwide systems or entities of any indications of poor performance as required by 41 U.S.C. 417b and 31 U.S.C. 3321 and implementing guidance at 2 CFR part 77 (forthcoming at time of publication). See also the requirements for Suspension and Debarment at 2 CFR part 180.

§ 200.342 Opportunities to object, hearings, and appeals.

Upon taking any remedy for non-compliance, the Federal awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the Federal awarding agency. The Federal awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings to which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.

§ 200.343 Effects of suspension and termination.

Costs to the non-Federal entity resulting from financial obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not allowable unless the Federal awarding agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

(a) The costs result from financial obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination, are not in anticipation of it; and

(b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

CLOSEOUT

§ 200.344 Closeout.

The Federal awarding agency or pass-through entity will close out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. If the non-Federal entity fails to complete the requirements, the Federal awarding agency or pass-through entity will proceed to close out the Federal award with the information available. This section specifies the actions the non-Federal entity and Federal awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

(a) The recipient must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. A subrecipient must submit to the pass-through entity, no later than 90 calendar days (or an earlier date as agreed upon by the pass-through entity and subrecipient) after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested and justified by the non-Federal entity, as applicable.

(b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(c) The Federal awarding agency or pass-through entity must make prompt payments to the non-Federal entity for costs meeting the requirements in Subpart E of this part under the Federal award being closed out.

(d) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A-129 and see § 200.346, for requirements regarding unreturned amounts that become delinquent debts.

(e) Consistent with the terms and conditions of the Federal award, the Federal awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 200.310 through 200.316 and 200.330.

(g) When a recipient or subrecipient completes all closeout requirements, the Federal awarding agency or pass-through entity must promptly complete all closeout actions for Federal awards. The Federal awarding agency must make every effort to complete closeout actions no later than one year after the end of the period of performance unless otherwise directed by authorizing statutes. Closeout actions include Federal awarding agency actions in the grants management and payment systems.

(h) If the non-Federal entity does not submit all reports in accordance with this section and the terms and conditions of the Federal Award, the Federal awarding agency must proceed to close out with the information available within one year of the period of performance end date.

(i) If the non-Federal entity does not submit all reports in accordance with this section within one year of the period of performance end date, the Federal awarding agency must report the non-Federal entity's material failure to comply with the terms and conditions of the award with the OMB-designated integrity and performance system (currently FAPIIS). Federal awarding agencies may also pursue other enforcement actions per § 200.339.

POST-CLOSEOUT ADJUSTMENTS AND CONTINUING RESPONSIBILITIES

§ 200.345 Post-closeout adjustments and continuing responsibilities.

(a) The closeout of a Federal award does not affect any of the following:

(1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.

(2) The requirement for the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

(3) The ability of the Federal awarding agency to make financial adjustments to a previously closed award such as resolving indirect cost payments and making final payments.

(4) Audit requirements in subpart F of this part.

(5) Property management and disposition requirements in §§ 200.310 through 200.316 of this subpart.

(6) Records retention as required in §§ 200.334 through 200.337 of this subpart.

(b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

COLLECTION OF AMOUNTS DUE

§ 200.346 Collection of amounts due.

(a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal Government. If not paid within 90 calendar days after demand, the Federal awarding agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the non-Federal entity; or

(3) Other action permitted by Federal statute.

(b) Except where otherwise provided by statutes or regulations, the Federal awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Cost Principles

Link to an amendment published at 89 FR 30136, Apr. 22, 2024.

GENERAL PROVISIONS

§ 200.400 Policy guide.

The application of these cost principles is based on the fundamental premises that:

(a) The non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices.

(b) The non-Federal entity assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(c) The non-Federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the Federal award.

(d) The application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-Federal entity. However, the accounting practices of the non-Federal entity must be consistent with these cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the Federal award.

(e) In reviewing, negotiating and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the non-Federal entity is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the non-Federal entity, the reasonableness and equity of such treatments should be fully considered. See the definition of *indirect (facilities & administrative (F&A)) costs* in § 200.1 of this part.

(f) For non-Federal entities that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.

(g) The non-Federal entity may not earn or keep any profit resulting from Federal financial assistance, unless explicitly authorized by the terms and conditions of the Federal award. See also § 200.307.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49561, Aug. 13, 2020]

§ 200.401 Application.

(a) ***General.*** These principles must be used in determining the allowable costs of work performed by the non-Federal entity under Federal awards. These principles also must be used by the non-Federal entity as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:

(1) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees.

(2) For IHEs, capitation awards, which are awards based on case counts or number of beneficiaries according to the terms and conditions of the Federal award.

(3) Fixed amount awards. See also § 200.1 Definitions and 200.201.

(4) Federal awards to hospitals (see appendix IX to this part).

(5) Other awards under which the non-Federal entity is not required to account to the Federal Government for actual costs incurred.

(b) ***Federal contract.*** Where a Federal contract awarded to a non-Federal entity is subject to the Cost Accounting Standards (CAS), it incorporates the applicable CAS clauses, Standards, and CAS administration requirements per the 48 CFR Chapter 99 and 48 CFR part 30 (FAR Part 30). CAS applies directly to the CAS-covered contract and the Cost Accounting Standards at 48 CFR parts 9904 or 9905 takes precedence over the cost principles in this subpart E with respect to the allocation of costs. When a contract with a non-Federal entity is subject to full CAS coverage, the allowability of certain costs under the cost principles will be affected by the allocation provisions of the Cost Accounting Standards (*e.g.*, CAS 414—48 CFR 9904.414, Cost of Money as an Element of the Cost of Facilities Capital, and CAS 417—48 CFR 9904.417, Cost of Money as an Element of the Cost of Capital Assets Under Construction), apply rather the allowability provisions of § 200.449. In complying with those requirements, the non-Federal entity's application of cost accounting practices for estimating, accumulating, and reporting costs for other Federal awards and other cost objectives under the CAS-covered contract still must be consistent with its cost accounting practices for the CAS-covered contracts. In all cases, only one set of accounting records needs to be maintained for the allocation of costs by the non-Federal entity.

(c) ***Exemptions.*** Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit entities for purpose of applicability of cost principles. Such nonprofit organizations must operate under Federal cost principles applicable to for-profit entities located at 48 CFR 31.2. A listing of these organizations is contained in appendix VIII to this part. Other organizations, as approved by the cognizant agency for indirect costs, may be added from time to time.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49562, Aug. 13, 2020]

BASIC CONSIDERATIONS

§ 200.402 Composition of costs.

Total cost. The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

§ 200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

(a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.

(b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.

(c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.

(d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.

(f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also § 200.306(b).

(g) Be adequately documented. See also §§ 200.300 through 200.309 of this part.

(h) Cost must be incurred during the approved budget period. The Federal awarding agency is authorized, at its discretion, to waive prior written approvals to carry forward unobligated balances to subsequent budget periods pursuant to § 200.308(e)(3).

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49562, Aug. 13, 2020]

§ 200.404 Reasonable costs.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.

(b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.

(c) Market prices for comparable goods or services for the geographic area.

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.

(e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.405 Allocable costs.

(a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:

(1) Is incurred specifically for the Federal award;

(2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and

(3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.

(b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.

(c) Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

(d) Direct cost allocation principles: If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be

determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§ 200.310 through 200.316 and 200.439.

(e) If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49562, Aug. 13, 2020]

§ 200.406 Applicable credits.

(a) Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect (F&A) costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non-Federal entity relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the non-Federal entity should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. (See §§ 200.436 and 200.468, for areas of potential application in the matter of Federal financing of activities.)

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49562, Aug. 13, 2020]

§ 200.407 Prior written approval (prior approval).

Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this part:

(a) § 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);

(b) § 200.306 Cost sharing or matching;

(c) § 200.307 Program income;

(d) § 200.308 Revision of budget and program plans;

(e) § 200.311 Real property;

(f) § 200.313 Equipment;

(g) § 200.333 Fixed amount subawards;

(h) § 200.413 Direct costs, paragraph (c);

(i) § 200.430 Compensation—personal services, paragraph (h);

(j) § 200.431 Compensation—fringe benefits;

(k) § 200.438 Entertainment costs;

(l) § 200.439 Equipment and other capital expenditures;

(m) § 200.440 Exchange rates;

(n) § 200.441 Fines, penalties, damages and other settlements;

(o) § 200.442 Fund raising and investment management costs;

(p) § 200.445 Goods or services for personal use;

(q) § 200.447 Insurance and indemnification;

(r) § 200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);

(s) § 200.455 Organization costs;

(t) § 200.456 Participant support costs;

(u) § 200.458 Pre-award costs;

(v) § 200.462 Rearrangement and reconversion costs;

(w) § 200.467 Selling and marketing costs;

(x) § 200.470 Taxes (including Value Added Tax); and

(y) § 200.475 Travel costs.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49562, Aug. 13, 2020]

§ 200.408 Limitation on allowance of costs.

The Federal award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this part, the amount not recoverable under the Federal award may not be charged to the Federal award.

§ 200.409 Special considerations.

In addition to the basic considerations regarding the allowability of costs highlighted in this subtitle, other subtitles in this part describe special considerations and requirements applicable to states, local governments, Indian tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart are only applicable to certain types of non-Federal entities, as specified in the following sections:

(a) Direct and Indirect (F&A) Costs (§§ 200.412-200.415) of this subpart;

(b) Special Considerations for States, Local Governments and Indian Tribes (§§ 200.416 and 200.417) of this subpart; and

(c) Special Considerations for Institutions of Higher Education (§§ 200.418 and 200.419) of this subpart.

[85 FR 49562, Aug. 13, 2020]

§ 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also §§ 200.300 through 200.309 in subpart D of this part.

[85 FR 49562, Aug. 13, 2020]

§ 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.

(a) Negotiated indirect (F&A) cost rates based on a proposal later found to have included costs that:

(1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or

(2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

(b) For rates covering a future fiscal year of the non-Federal entity, the unallowable costs will be removed from the indirect (F&A) cost pools and the rates appropriately adjusted.

(c) For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.

(d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.

(e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

DIRECT AND INDIRECT (F&A) COSTS

§ 200.412 Classification of costs.

There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards are provided in this subpart.

§ 200.413 Direct costs.

(a) ***General.*** Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also § 200.405.

(b) ***Application to Federal awards.*** Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also be considered direct costs. Examples include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities, program evaluation costs, or other institutional service operations.

(c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

(1) Administrative or clerical services are integral to a project or activity;

(2) Individuals involved can be specifically identified with the project or activity;

(3) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and

(4) The costs are not also recovered as indirect costs.

(d) ***Minor items.*** Any direct cost of minor amount may be treated as an indirect (F&A) cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all Federal and non-Federal cost objectives.

(e) The costs of certain activities are not allowable as charges to Federal awards. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect (F&A) cost rates and be allocated their equitable share of the non-Federal entity's indirect costs if they represent activities which:

(1) Include the salaries of personnel,

(2) Occupy space, and

(3) Benefit from the non-Federal entity's indirect (F&A) costs.

(f) For nonprofit organizations, the costs of activities performed by the non-Federal entity primarily as a service to members, clients, or the general public when significant and necessary to the non-Federal entity's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect (F&A) costs. Some examples of these types of activities include:

(1) Maintenance of membership rolls, subscriptions, publications, and related functions. See also § 200.454.

(2) Providing services and information to members, legislative or administrative bodies, or the public. See also §§ 200.454 and 200.450.

(3) Promotion, lobbying, and other forms of public relations. See also §§ 200.421 and 200.450.

(4) Conferences except those held to conduct the general administration of the non-Federal entity. See also § 200.432.

(5) Maintenance, protection, and investment of special funds not used in operation of the non-Federal entity. See also § 200.442.

(6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also § 200.431.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49562, Aug. 13, 2020]

§ 200.414 Indirect (F&A) costs.

(a) ***Facilities and administration classification.*** For major Institutions of Higher Education (IHE) and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: “Facilities” and “Administration.” “Facilities” is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. “Administration” is defined as general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of “Facilities” (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the “Administration” category; for IHEs, they are included in the “Facilities” category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in appendix III to this part, and Rate Determination for Institutions of Higher Education paragraph C. 11. Major nonprofit organizations are those which receive more than $10 million dollars in direct Federal funding.

(b) ***Diversity of nonprofit organizations.*** Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect (F&A) cost in all situations. Identification with a Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. However, typical examples of indirect (F&A) cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) ***Federal Agency Acceptance of Negotiated Indirect Cost Rates.*** (See also § 200.306.)

(1) The negotiated rates must be accepted by all Federal awarding agencies. A Federal awarding agency may use a rate different from the negotiated rate for a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based on documented justification as described in paragraph (c)(3) of this section.

(2) The Federal awarding agency head or delegate must notify OMB of any approved deviations.

(3) The Federal awarding agency must implement, and make publicly available, the policies, procedures and general decision-making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) As required under § 200.204, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As appropriate, the Federal agency should incorporate discussion of these policies into Federal awarding agency outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

(d) Pass-through entities are subject to the requirements in § 200.332(a)(4).

(e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III-VII and Appendix IX as follows:

(1) Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

(2) Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

(3) Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans;

(5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals; and

(6) Appendix IX to Part 200—Hospital Cost Principles.

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that does not have a current negotiated (including provisional) rate, except for those non-Federal entities described in appendix VII to this part, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. No documentation is required to justify the 10% de minimis indirect cost rate. As described in § 200.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

(g) Any non-Federal entity that has a current federally-negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

(h) The federally negotiated indirect rate, distribution base, and rate type for a non-Federal entity (except for the Indian tribes or tribal organizations, as defined in the Indian Self Determination, Education and Assistance Act, 25 U.S.C. 450b(1)) must be available publicly on an OMB-designated Federal website.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49563, Aug. 13, 2020]

§ 200.415 Required certifications.

Required certifications include:

(a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

(b) Certification of cost allocation plan or indirect (F&A) cost rate proposal. Each cost allocation plan or indirect (F&A) cost rate proposal must comply with the following:

(1) A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the non-Federal entity, must be certified by the non-Federal entity using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in appendices III through VII, and IX of this part. The certificate must be signed on behalf of the non-Federal entity by an individual at a level no lower than vice president or chief financial officer of the non-Federal entity that submits the proposal.

(2) Unless the non-Federal entity has elected the option under § 200.414(f), the Federal Government may either disallow all indirect (F&A) costs or unilaterally establish such a plan or rate when the non-Federal entity fails to submit a certified proposal for establishing such a plan or rate in accordance with the requirements. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because the non-Federal entity failed to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

(c) Certifications by nonprofit organizations as appropriate that they did not meet the definition of a major nonprofit organization as defined in § 200.414(a).

(d) See also § 200.450 for another required certification.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49563, Aug. 13, 2020]

SPECIAL CONSIDERATIONS FOR STATES, LOCAL GOVERNMENTS AND INDIAN TRIBES

§ 200.416 Cost allocation plans and indirect cost proposals.

(a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process.

(b) Individual operating agencies (governmental department or agency), normally charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect costs under Federal awards. Indirect costs include:

(1) The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and

(2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

(c) The requirements for development and submission of cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in appendices V, VI and VII to this part.

[78 FR 78608, Dec. 26, 2013, as amended at 86 FR 10440, Feb. 22, 2021]

§ 200.417 Interagency service.

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix V to Part 200.

[85 FR 49564, Aug. 13, 2020]

Special Considerations for Institutions of Higher Education

§ 200.418 Costs incurred by states and local governments.

Costs incurred or paid by a state or local government on behalf of its IHEs for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the IHEs, are allowable costs of such IHEs whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

(a) The costs meet the requirements of § 200.402-411 of this subpart;

(b) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles in this part; and

(c) The costs are not otherwise borne directly or indirectly by the Federal Government.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49564, Aug. 13, 2020]

§ 200.419 Cost accounting standards and disclosure statement.

(a) An IHE that receive an aggregate total $50 million or more in Federal awards and instruments subject to this subpart (as specified in § 200.101) in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts and subcontracts awarded to the IHEs are subject to the broader range of CAS requirements at 48 CFR 9900 through 9999 and 48 CFR part 30 (FAR Part 30).

(b) ***Disclosure statement.*** An IHE that receives an aggregate total $50 million or more in Federal awards and instruments subject to this subpart (as specified in § 200.101) during its most recently completed fiscal year must disclose their cost accounting practices by filing a Disclosure Statement (DS-2), which is reproduced in Appendix III to Part 200. With the approval of the cognizant agency for indirect costs, an IHE may meet the DS-2 submission by submitting the DS-2 for each business unit that received $50 million or more in Federal awards and instruments.

(1) The DS-2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE's cognizant agency for audit. The initial DS-2 and revisions to the DS-2 must be submitted in coordination with the IHE's indirect (F&A) rate proposal, unless an earlier submission is requested by the cognizant agency for indirect costs. IHEs with CAS-covered contracts or subcontracts meeting the dollar threshold in 48 CFR 9903.202-1(f) must submit their initial DS-2 or revisions no later than prior to the award of a CAS-covered contract or subcontract.

(2) An IHE must maintain an accurate DS-2 and comply with disclosed cost accounting practices. An IHE must file amendments to the DS-2 to the cognizant agency for indirect costs in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons. An IHE may proceed with implementing the change after it has notified the Federal cognizant agency for indirect costs. If the change represents a variation from 2 CFR part 200, the change may require approval by the Federal cognizant agency for indirect costs, in accordance with § 200.102(b). Amendments of a DS-2 may be submitted at any time. Resubmission of a complete, updated DS-2 is discouraged except when there are extensive changes to disclosed practices.

(3) ***Cost and funding adjustments.*** Cost adjustments must be made by the cognizant agency for indirect costs if an IHE fails to comply with the cost policies in this part or fails to consistently follow its established or disclosed cost accounting practices when estimating, accumulating or reporting the costs of Federal awards, and the aggregate cost impact on Federal awards is material. The cost adjustment must normally be made on an aggregate basis for all affected Federal awards through an adjustment of the IHE's future F&A costs rates or other means considered appropriate by the cognizant agency for indirect costs. Under the terms of CAS covered contracts, adjustments in the amount of funding provided may also be required when the estimated proposal costs were not determined in accordance with established cost accounting practices.

(4) ***Overpayments.*** Excess amounts paid in the aggregate by the Federal Government under Federal awards due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs must be credited or refunded, as deemed appropriate by the cognizant agency for indirect costs. Interest applicable to the excess amounts paid in the aggregate during the period of noncompliance must also be determined and collected in accordance with applicable Federal agency regulations.

(5) ***Compliant cost accounting practice changes.*** Changes from one compliant cost accounting practice to another compliant practice that are approved by the cognizant agency for indirect costs may require cost adjustments if the change has a material effect on Federal awards and the changes are deemed appropriate by the cognizant agency for indirect costs.

(6) ***Responsibilities.*** The cognizant agency for indirect cost must:

(i) Determine cost adjustments for all Federal awards in the aggregate on behalf of the Federal Government. Actions of the cognizant agency for indirect cost in making cost adjustment determinations must be coordinated with all affected Federal awarding agencies to the extent necessary.

(ii) Prescribe guidelines and establish internal procedures to promptly determine on behalf of the Federal Government that a DS-2 adequately discloses the IHE's cost accounting practices and that the disclosed practices are compliant with applicable CAS and the requirements of this part.

(iii) Distribute to all affected Federal awarding agencies any DS-2 determination of adequacy or noncompliance.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49564, Aug. 13, 2020]

GENERAL PROVISIONS FOR SELECTED ITEMS OF COST

§ 200.420 Considerations for selected items of cost.

This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of Subtitle II of this subpart. These principles apply whether or not a particular item of cost is properly treated as direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost, and based on the principles described in §§ 200.402 through 200.411. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in § 200.403 must be applied in determining allowability. See also § 200.102.

[85 FR 49564, Aug. 13, 2020]

§ 200.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

(b) The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required by the non-Federal entity for performance of a Federal award (See also § 200.463);

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach and other specific purposes necessary to meet the requirements of the Federal award.

(c) The term "public relations" includes community relations and means those activities dedicated to maintaining the image of the non-Federal entity or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities, financial matters, etc.

(e) Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the entity (see also § 200.432), including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the non-Federal entity.

[78 FR 76808, Dec. 26, 2013, as amended at 85 FR 49564, Aug. 13, 2020]

§ 200.422 Advisory councils.

Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the Federal awarding agency or as an indirect cost where allocable to Federal awards. See § 200.444, applicable to States, local governments, and Indian tribes.

[85 FR 49564, Aug. 13, 2020]

§ 200.423 Alcoholic beverages.

Costs of alcoholic beverages are unallowable.

§ 200.424 Alumni/ae activities.

Costs incurred by IHEs for, or in support of, alumni/ae activities are unallowable.

§ 200.425 Audit services.

(a) A reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by requirements of this part, are allowable. However, the following audit costs are unallowable:

(1) Any costs when audits required by the Single Audit Act and subpart F of this part have not been conducted or have been conducted but not in accordance therewith; and

(2) Any costs of auditing a non-Federal entity that is exempted from having an audit conducted under the Single Audit Act and subpart F of this part because its expenditures under Federal awards are less than $750,000 during the non-Federal entity's fiscal year.

(b) The costs of a financial statement audit of a non-Federal entity that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

(c) Pass-through entities may charge Federal awards for the cost of agreed-upon-procedures engagements to monitor subrecipients (in accordance with subpart D, §§ 200.331-333) who are exempted from the requirements of the Single Audit Act and subpart F of this part. This cost is allowable only if the agreed-upon-procedures engagements are:

(1) Conducted in accordance with GAGAS attestation standards;

(2) Paid for and arranged by the pass-through entity; and

(3) Limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49564, Aug. 13, 2020]

§ 200.426 Bad debts.

Bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts after they have been determined to be uncollectable are also unallowable. See also § 200.428.

[85 FR 49565, Aug. 13, 2020]

§ 200.427 Bonding costs.

(a) Bonding costs arise when the Federal awarding agency requires assurance against financial loss to itself or others by reason of the act or default of the non-Federal entity. They arise also in instances where the non-Federal entity requires similar assurance, including: bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

(b) Costs of bonding required pursuant to the terms and conditions of the Federal award are allowable.

(c) Costs of bonding required by the non-Federal entity in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§ 200.428 Collections of improper payments.

The costs incurred by a non-Federal entity to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the non-Federal entity in accordance with cash management standards set forth in § 200.305.

[85 FR 49565, Aug. 13, 2020]

§ 200.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as provided for in (B)(9) Student Administration and Services, in appendix III to this part, as activity costs.

[85 FR 49565, Aug. 13, 2020]

§ 200.430 Compensation—personal services.

(a) ***General.*** Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in § 200.431. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph (i) of this section, when applicable.

(b) ***Reasonableness.*** Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-Federal entity. In cases where the kinds of employees required for Federal awards are not found in the other activities of the non-Federal entity, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the non-Federal entity competes for the kind of employees involved.

(c) ***Professional activities outside the non-Federal entity.*** Unless an arrangement is specifically authorized by a Federal awarding agency, a non-Federal entity must follow its written non-Federal entity-wide policies and practices concerning the permissible extent of professional services that can be provided outside the non-Federal entity for non-organizational compensation. Where such non-Federal entity-wide written policies do not exist or do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require that the effort of professional staff working on Federal awards be allocated between:

(1) Non-Federal entity activities, and

(2) Non-organizational professional activities. If the Federal awarding agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

(d) ***Unallowable costs.***

(1) Costs which are unallowable under other sections of these principles must not be allowable under this section solely on the basis that they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with statute. For the amount of the ceiling for cost-reimbursement contracts, the covered compensation subject to the ceiling, the covered employees, and other relevant provisions, see 10 U.S.C. 2324(e)(1)(P), and 41 U.S.C. 1127 and 4304(a)(16). For other types of Federal awards, other statutory ceilings may apply.

(e) ***Special considerations.*** Special considerations in determining allowability of compensation will be given to any change in a non-Federal entity's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

(f) ***Incentive compensation.*** Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.

(g) ***Nonprofit organizations.*** For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, determination must be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs. This may include director's and executive committee member's fees, incentive awards, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(h) ***Institutions of Higher Education (IHEs).***

(1) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:

(i) Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

(ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under written institutional policy (at a rate not to exceed institutional base salary) need not be included in the records described in paragraph (i) of this section to directly charge payments of incidental activities, such activities must either be specifically provided for in the Federal award budget or receive prior written approval by the Federal awarding agency.

(2) ***Salary basis.*** Charges for work performed on Federal awards by faculty members during the academic year are allowable at the IBS rate. Except as noted in paragraph (h)(1)(ii) of this section, in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of faculty at an institution. IBS is defined as the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal awarding agency, charges of a faculty member's salary to a Federal award must not exceed the proportionate share of the IBS for the period during which the faculty member worked on the award.

(3) ***Intra-Institution of Higher Education (IHE) consulting.*** Intra-IHE consulting by faculty should be undertaken as an IHE responsibility requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the Federal awarding agency.

(4) Extra Service Pay normally represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay is a result of Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:

(i) The non-Federal entity establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.

(ii) The non-Federal entity establishes a consistent written definition of work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentations.

(iii) The supplementation amount paid is commensurate with the IBS rate of pay and the amount of additional work performed. See paragraph (h)(2) of this section.

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the non-Federal entity.

(v) The total salaries charged to Federal awards including extra service pay are subject to the Standards of Documentation as described in paragraph (i) of this section.

(5) ***Periods outside the academic year.***

(i) Except as specified for teaching activity in paragraph (h)(5)(ii) of this section, charges for work performed by faculty members on Federal awards during periods not included in the base salary period will be at a rate not in excess of the IBS.

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period will be based on the normal written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) ***Part-time faculty.*** Charges for work performed on Federal awards by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for part-time assignments.

(7) ***Sabbatical leave costs.*** Rules for sabbatical leave are as follow:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's actual experience under its sabbatical leave policy.

(8) ***Salary rates for non-faculty members.*** Non-faculty full-time professional personnel may also earn "extra service pay" in accordance with the non-Federal entity's written policy and consistent with paragraph (h)(1)(i) of this section.

(i) ***Standards for Documentation of Personnel Expenses***

(1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the non-Federal entity;

(iii) Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated activities (for IHE, this per the IHE's definition of IBS);

(iv) Encompass federally-assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;

(v) Comply with the established accounting policies and practices of the non-Federal entity (See paragraph (h)(1)(ii) above for treatment of incidental work for IHEs.); and

(vi) [Reserved]

(vii) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(viii) Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:

(A) The system for establishing the estimates produces reasonable approximations of the activity actually performed;

(B) Significant changes in the corresponding work activity (as defined by the non-Federal entity's written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The non-Federal entity's system of internal controls includes processes to review after-the-fact interim charges made to a Federal award based on budget estimates. All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

(ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect categories of activities expressed as a percentage distribution of total activities.

(x) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.

(2) For records which meet the standards required in paragraph (i)(1) of this section, the non-Federal entity will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (i)(3) of this section.

(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, “rolling” time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (i)(5)(iii) of this section;

(B) The entire time period involved must be covered by the sample; and

(C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in subsection (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the non-Federal entity will result in lower costs to Federal awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the Federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (i)(1) of this section.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a non-Federal entity may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved Federal awarding agencies. In these instances, the non-Federal entity must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

(8) For a non-Federal entity where the records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records as required in this section.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49565, Aug. 13, 2020]

§ 200.431 Compensation—fringe benefits.

(a) ***General.*** Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.

(b) ***Leave.*** The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

(1) They are provided under established written leave policies;

(2) The costs are equitably allocated to all related activities, including Federal awards; and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

(i) When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-Federal entity uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) ***Fringe benefits.*** The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 200.447); pension plan costs (see paragraph (i) of this section); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs in accordance with the non-Federal entity's accounting practices.

(d) ***Cost objectives.*** Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the non-Federal entity demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) ***Insurance.*** See also § 200.447(d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the non-Federal entity is named as beneficiary are unallowable.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (*e.g.,* post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy.

(f) ***Automobiles.*** That portion of automobile costs furnished by the non-Federal entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.

(g) ***Pension plan costs.*** Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) Except for State and Local Governments, the cost assigned to each fiscal year should be determined in accordance with GAAP.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-Federal entity may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Costs" (48 CFR 9904.412).

(5) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301-1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(6) Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six-month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six-month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the non-Federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the non-Federal entity in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity's contribution in future periods.

(iv) When a non-Federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) The Federal Government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(h) ***Post-retirement health.*** Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six-month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The Federal cognizant agency for indirect costs may agree to an extension of the six-month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the non-Federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity contribution in a future period.

(4) When a non-Federal entity converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums, or

(ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government must receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(i) ***Severance pay.***

(1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by non-Federal entities to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by

(i) Law;

(ii) Employer-employee agreement;

(iii) Established policy that constitutes, in effect, an implied agreement on the non-Federal entity's part; or

(iv) Circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-Federal entity.

(ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its responsibility to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-Federal entity to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the non-Federal entity's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the non-Federal entity outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the non-Federal entity in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(5) Severance payments to foreign nationals employed by the non-Federal entity outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-Federal entity in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(j) ***For IHEs only.***

(1) Fringe benefits in the form of undergraduate and graduate tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition reductions, provided that the benefit does not discriminate in favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy. See § 200.466, for treatment of tuition remission provided to students.

(k) ***Fringe benefit programs and other benefit costs.*** For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the non-Federal entity, are allowable costs of such non-Federal entities whether or not these costs are recorded in the accounting records of the non-Federal entities, subject to the following:

(1) The costs meet the requirements of Basic Considerations in §§ 200.402 through 200.411;

(2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and

(3) The costs are not otherwise borne directly or indirectly by the Federal Government.

[85 FR 49565, Aug. 13, 2020]

§ 200.432 Conferences.

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. The Federal awarding agency may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also §§ 200.438, 200.456, and 200.475.

[85 FR 49567, Aug. 13, 2020]

§ 200.433 Contingency provisions.

(a) Contingency is that part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items as approved by the Federal awarding agency) which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included.

(b) It is permissible for contingency amounts other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal awarding agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements in this part (see also §§ 200.300 and 200.403 of this part); be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the non-Federal entity's records.

(c) Payments made by the Federal awarding agency to the non-Federal entity's “contingency reserve” or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§ 200.431 and 200.447.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49567, Aug. 13, 2020]

§ 200.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the non-Federal entity to other entities, are unallowable.

(b) The value of services and property donated to the non-Federal entity may not be charged to the Federal award either as a direct or indirect (F&A) cost. The value of donated services and property may be used to meet cost sharing or matching requirements (see § 200.306). Depreciation on donated assets is permitted in accordance with § 200.436, as long as the donated property is not counted towards cost sharing or matching requirements.

(c) Services donated or volunteered to the non-Federal entity may be furnished to a non-Federal entity by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of § 200.306.

(d) To the extent feasible, services donated to the non-Federal entity will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to the nonprofit organization utilized in the performance of a direct cost activity must be considered in the determination of the non-Federal entity's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(1) The aggregate value of the services is material;

(2) The services are supported by a significant amount of the indirect costs incurred by the non-Federal entity;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the non-Federal entity and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.

(ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing or matching requirements.

(f) Fair market value of donated services must be computed as described in § 200.306.

(g) Personal Property and Use of Space.

(1) Donated personal property and use of space may be furnished to a non-Federal entity. The value of the personal property and space may not be charged to the Federal award either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in § 200.300 of this part. The value of the donations must be determined in accordance with § 200.300. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49567, Aug. 13, 2020]

§ 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(a) ***Definitions for the purposes of this section.***

(1) ***Conviction*** means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) ***Costs*** include the services of in-house or private counsel, accountants, consultants, or others engaged to assist the non-Federal entity before, during, and after commencement of a judicial or administrative proceeding, that bear a direct relationship to the proceeding.

(3) ***Fraud*** means:

(i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,

(ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and

(iii) Acts which violate the False Claims Act (31 U.S.C. 3729-3732) or the Anti-kickback Act (41 U.S.C. 1320a-7b(b)).

(4) ***Penalty*** does not include restitution, reimbursement, or compensatory damages.

(5) ***Proceeding*** includes an investigation.

(b) ***Costs.***

(1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, a state, local government, or foreign government, or joined by the Federal Government (including a proceeding under the False Claims Act), against the non-Federal entity, (or commenced by third parties or a current or former employee of the non-Federal entity who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 2409 or 41 U.S.C. 4712), are not allowable if the proceeding:

(i) Relates to a violation of, or failure to comply with, a Federal, state, local or foreign statute, regulation or the terms and conditions of the Federal award, by the non-Federal entity (including its agents and employees); and

(ii) Results in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of non-Federal entity liability.

(C) In the case of any civil or administrative proceeding, the disallowance of costs or the imposition of a monetary penalty, or an order issued by the Federal awarding agency head or delegate to the non-Federal entity to take corrective action under 10 U.S.C. 2409 or 41 U.S.C. 4712.

(D) A final decision by an appropriate Federal official to debar or suspend the non-Federal entity, to rescind or void a Federal award, or to terminate a Federal award by reason of a violation or failure to comply with a statute, regulation, or the terms and conditions of the Federal award.

(E) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(ii)(A) through (D) of this section.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.

(c) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement by the non-Federal entity and the Federal Government, then the costs incurred may be allowed to the extent specifically provided in such agreement.

(d) If a proceeding referred to in paragraph (b) of this section is commenced by a state, local or foreign government, the authorized Federal official may allow the costs incurred if such authorized official determines that the costs were incurred as a result of:

(1) A specific term or condition of the Federal award, or

(2) Specific written direction of an authorized official of the Federal awarding agency.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this section, which are not made unallowable by that subsection, may be allowed but only to the extent that:

(1) The costs are reasonable and necessary in relation to the administration of the Federal award and activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the Federal award;

(3) The costs are not recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) An authorized Federal official must determine the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and such other factors as may be appropriate. Such percentage must not exceed 80 percent. However, if an agreement reached under paragraph (c) of this section has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement are allowable.

(f) Costs incurred by the non-Federal entity in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make such employee whole, where the non-Federal entity was found liable or settled, are unallowable.

(g) Costs of prosecution of claims against the Federal Government, including appeals of final Federal agency decisions, are unallowable.

(h) Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the Federal award.

(i) Costs which may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Federal Government must generally withhold payment of such costs. However, if in its best interests, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.436 Depreciation.

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The non-Federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non-Federal entity's activities, and properly allocated to Federal awards. Such compensation must be made by computing depreciation.

(b) The allocation for depreciation must be made in accordance with Appendices III through IX.

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For the computation of depreciation, the acquisition cost will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it is presently located;

(3) Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity that are already claimed as matching or where law or agreement prohibits recovery;

(4) Any asset acquired solely for the performance of a non-Federal award; and

(d) When computing depreciation charges, the following must be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency. The depreciation methods used to calculate the depreciation amounts for indirect (F&A) rate purposes must be the same methods used by the non-Federal entity for its financial statements.

(3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components must be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a cognizant agency may authorize a non-Federal entity to use more than these three groupings. When a non-Federal entity elects to

depreciate its buildings by its components, the same depreciation methods must be used for indirect (F&A) purposes and financial statements purposes, as described in paragraphs (d)(1) and (2) of this section.

(4) No depreciation may be allowed on any assets that have outlived their depreciable lives.

(5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (i.e., from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods prior to the conversion from the use allowance method as well as depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation must be maintained.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

§ 200.437 Employee health and welfare costs.

(a) Costs incurred in accordance with the non-Federal entity's documented policies for the improvement of working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) Such costs will be equitably apportioned to all activities of the non-Federal entity. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.

(c) Losses resulting from operating food services are allowable only if the non-Federal entity's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only:

(1) Where the non-Federal entity can demonstrate unusual circumstances; and

(2) With the approval of the cognizant agency for indirect costs.

§ 200.438 Entertainment costs.

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the Federal awarding agency.

§ 200.439 Equipment and other capital expenditures.

(a) See § 200.1 for the definitions of *capital expenditures, equipment, special purpose equipment, general purpose equipment, acquisition cost,* and *capital assets.*

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal awarding agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5,000 or more have the prior written approval of the Federal awarding agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity. See § 200.436, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also § 200.465.

(4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the Federal awarding agency.

(5) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the Federal cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the non-Federal entity is instructed by the Federal awarding agency to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

§ 200.440 Exchange rates.

(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. The Federal awarding agency must however ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

(b) The non-Federal entity is required to make reviews of local currency gains to determine the need for additional federal funding before the expiration date of the Federal award. Subsequent adjustments for currency increases may be allowable only when the non-Federal entity provides the Federal awarding agency with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient Federal funds are available.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.441 Fines, penalties, damages and other settlements.

Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the Federal awarding agency. See also § 200.435.

[85 FR 49568, Aug. 13, 2020]

§ 200.442 Fund raising and investment management costs.

(a) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency. Proposal costs are covered in § 200.460.

(b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this part.

(c) Costs related to the physical custody and control of monies and securities are allowable.

(d) Both allowable and unallowable fund-raising and investment activities must be allocated as an appropriate share of indirect costs under the conditions described in § 200.413.

[85 FR 49568, Aug. 13, 2020]

§ 200.443 Gains and losses on disposition of depreciable assets.

(a) Gains and losses on the sale, retirement, or other disposition of depreciable property must be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) is the difference between the amount realized on the property and the undepreciated basis of the property.

(b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:

(1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§ 200.436 and 200.439.

(2) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(3) A loss results from the failure to maintain permissible insurance, except as otherwise provided in § 200.447.

(4) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

(5) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions must be considered on a case-by-case basis.

(c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) of this section, e.g., land, must be excluded in computing Federal award costs.

(d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with §§ 200.310 through 200.316 of this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

§ 200.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in § 200.475). Unallowable costs include:

(1) Salaries and expenses of the Office of the Governor of a state or the chief executive of a local government or the chief executive of an Indian tribe;

(2) Salaries and other expenses of a state legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;

(3) Costs of the judicial branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in § 200.435); and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

(b) For Indian tribes and Councils of Governments (COGs) (see definition for *Local government* in § 200.1 of this part), up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

§ 200.445 Goods or services for personal use.

(a) Costs of goods or services for personal use of the non-Federal entity's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

(b) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, to be allowable direct costs must be approved in advance by a Federal awarding agency.

§ 200.446 Idle facilities and idle capacity.

(a) As used in this section the following terms have the meanings set forth in this section:

(1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the non-Federal entity.

(2) Idle facilities means completely unused facilities that are excess to the non-Federal entity's current needs.

(3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:

(i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;

(ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) Cost of idle facilities or idle capacity means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation. These costs could include the costs of idle public safety emergency facilities, telecommunications, or information technology system capacity that is built to withstand major fluctuations in load, e.g., consolidated data centers.

(b) The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet workload requirements which may fluctuate and are allocated appropriately to all benefiting programs; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the Federal award or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

§ 200.447 Insurance and indemnification.

(a) Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the non-Federal entity's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the Federal awarding agency has specifically required or approved such costs.

(3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see § 200.431). The cost of such insurance when the non-Federal entity is identified as the beneficiary is unallowable.

(5) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the non-Federal entity's materials or workmanship are unallowable.

(6) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and must be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

(d) Contributions to a reserve for certain self-insurance programs including workers' compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the non-Federal entity's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3)

(i) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims:

(A) Submitted and adjudicated but not paid;

(B) Submitted but not adjudicated; and

(C) Incurred but not submitted.

(ii) Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the non-Federal entity. If individual departments or agencies of the non-Federal entity experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund or unrestricted account), refunds must be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect cost, claims collection regulations.

(e) Insurance refunds must be credited against insurance costs in the year the refund is received.

(f) Indemnification includes securing the non-Federal entity against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the non-Federal entity only to the extent expressly provided for in the Federal award, except as provided in paragraph (c) of this section.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49568, Aug. 13, 2020]

§ 200.448 Intellectual property.

(a) ***Patent costs.***

(1) The following costs related to securing patents and copyrights are allowable:

(i) Costs of preparing disclosures, reports, and other documents required by the Federal award, and of searching the art to the extent necessary to make such disclosures;

(ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and

(iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also § 200.459).

(2) The following costs related to securing patents and copyrights are unallowable:

(i) Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the Federal award;

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government.

(b) ***Royalties and other costs for use of patents and copyrights.***

(1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:

(i) The Federal Government already has a license or the right to free use of the patent or copyright.

(ii) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(iii) The patent or copyright is considered to be unenforceable.

(iv) The patent or copyright is expired.

(2) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the non-Federal entity.

(ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(iii) Royalties paid under an agreement entered into after a Federal award is made to a non-Federal entity.

(3) In any case involving a patent or copyright formerly owned by the non-Federal entity, the amount of royalty allowed must not exceed the cost which would have been allowed had the non-Federal entity retained title thereto.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49569, Aug. 13, 2020]

§ 200.449 Interest.

(a) ***General.*** Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section.

(b) ***Capital assets.***

(1) Capital assets is defined as noted in § 200.1 of this part. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For non-Federal entity fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.

(c) ***Conditions for all non-Federal entities.***

(1) The non-Federal entity uses the capital assets in support of Federal awards;

(2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the non-Federal entity from an unrelated (arm's length) third party.

(3) The non-Federal entity obtains the financing via an arm's-length transaction (that is, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.

(4) The non-Federal entity limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a lease contract that transfers ownership by the end of the contract may be determined less costly than purchasing through other types of debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

(5) The non-Federal entity expenses or capitalizes allowable interest cost in accordance with GAAP.

(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(7) The following conditions must apply to debt arrangements over $1 million to purchase or construct facilities, unless the non-Federal entity makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, “initial equity contribution” means the amount or value of contributions made by the non-Federal entity for the acquisition of facilities prior to occupancy.

(i) The non-Federal entity must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.

(ii) The non-Federal entity must impute interest on excess cash flow as follows:

(A) Annually, the non-Federal entity must prepare a cumulative (from the inception of the project) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.

(B) To compute monthly cash inflows and outflows, the non-Federal entity must divide the annual amounts determined in step (i) by the number of months in the year (usually 12) that the building is in service.

(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The rate of interest to be used must be the three-month Treasury bill closing rate as of the last business day of that month.

(8) Interest attributable to a fully depreciated asset is unallowable.

(d) Additional conditions for states, local governments and Indian tribes. For costs to be allowable, the non-Federal entity must have incurred the interest costs for buildings after October 1, 1980, or for land and equipment after September 1, 1995.

(1) The requirement to offset interest earned on borrowed funds against current allowable interest cost (paragraph (c)(5), above) also applies to earnings on debt service reserve funds.

(2) The non-Federal entity will negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of $1 million or more, as outlined in paragraph (c)(7) of this section. For this purpose, a non-Federal entity must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.

(e) Additional conditions for IHEs. For costs to be allowable, the IHE must have incurred the interest costs after July 1, 1982, in connection with acquisitions of capital assets that occurred after that date.

(f) Additional condition for nonprofit organizations. For costs to be allowable, the nonprofit organization incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to "full coverage" under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201-2(a). The non-Federal entity's Federal awards are instead subject to CAS 414 (48 CFR 9904.414), "Cost of Money as an Element of the Cost of Facilities Capital", and CAS 417 (48 CFR 9904.417), "Cost of Money as an Element of the Cost of Capital Assets Under Construction".

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54409, Sept. 10, 2015; 85 FR 49569, Aug. 13, 2020]

§ 200.450 Lobbying.

(a) The cost of certain influencing activities associated with obtaining grants, contracts, or cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, "New Restrictions on Lobbying" published on February 26, 1990, including definitions, and the Office of Management and Budget "Governmentwide Guidance for New Restrictions on Lobbying" and notices published on December 20, 1989, June 15, 1990, January 15, 1992, and January 19, 1996.

(b) ***Executive lobbying costs.*** Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter.

(c) In addition to the above, the following restrictions are applicable to nonprofit organizations and IHEs:

(1) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any Federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections in the United States;

(iii) Any attempt to influence:

(A) The introduction of Federal or state legislation;

(B) The enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity);

(C) The enactment or modification of any pending Federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the non-Federal entity's member of congress, legislative body or a subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence state legislation in order to directly reduce the cost, or to avoid material impairment of the non-Federal entity's authority to perform the grant, contract, or other agreement; or

(iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award.

(iv) Any activity excepted from the definitions of “lobbying” or “influencing legislation” by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and “grass roots” lobbying activities in order to retain their charitable deduction status and avoid punitive excise taxes, I.R.C. §§ 501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

(B) Examinations and discussions of broad social, economic, and similar problems; and

(C) Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. § 4911(d)(2) and 26 CFR 56.4911-2(c)(1)-(c)(3).

(v) When a non-Federal entity seeks reimbursement for indirect (F&A) costs, total lobbying costs must be separately identified in the indirect (F&A) cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of § 200.413.

(vi) The non-Federal entity must submit as part of its annual indirect (F&A) cost rate proposal a certification that the requirements and standards of this section have been complied with. (See also § 200.415.)

(vii)

(A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record keeping requirements in § 200.302 with respect to lobbying costs during any particular calendar month when:

(*1*) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(*2*) Within the preceding five-year period, the non-Federal entity has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(B) When conditions in paragraph (c)(2)(vii)(A)(*1*) and (*2*) of this section are met, non-Federal entities are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(*1*) and (*2*) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(viii) The Federal awarding agency must establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or non-Federal entity from contesting the lawfulness of such a determination.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.451 Losses on other awards or contracts.

Any excess of costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the non-Federal entity's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect (F&A) costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect (F&A) costs and are required to be included in the appropriate indirect cost rate base for allocation of indirect costs.

§ 200.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see § 200.439). These costs are only allowable to the extent not paid through rental or other agreements.

[85 FR 49569, Aug. 13, 2020]

§ 200.453 Materials and supplies costs, including costs of computing devices.

(a) Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

(c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. In the specific case of computing devices, charging as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award.

(d) Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.454 Memberships, subscriptions, and professional activity costs.

(a) Costs of the non-Federal entity's membership in business, technical, and professional organizations are allowable.

(b) Costs of the non-Federal entity's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable with prior approval by the Federal awarding agency or pass-through entity.

(d) Costs of membership in any country club or social or dining club or organization are unallowable.

(e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See also § 200.450.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.455 Organization costs.

Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselor, whether or not employees of the non-Federal entity in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the Federal awarding agency.

§ 200.456 Participant support costs.

Participant support costs as defined in § 200.1 are allowable with the prior approval of the Federal awarding agency.

[85 FR 49569, Aug. 13, 2020]

§ 200.457 Plant and security costs.

Necessary and reasonable expenses incurred for protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to § 200.439.

[85 FR 49569, Aug. 13, 2020]

§ 200.458 Pre-award costs.

Pre-award costs are those incurred prior to the effective date of the Federal award or subaward directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency. If charged to the award, these costs must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency or pass-through entity.

[85 FR 49569, Aug. 13, 2020]

§ 200.459 Professional service costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-Federal entity, are allowable, subject to paragraphs (b) and (c) of this section when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under § 200.435.

(b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the non-Federal entity's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the non-Federal entity's business (i.e., what new problems have arisen).

(5) Whether the proportion of Federal work to the non-Federal entity's total business is such as to influence the non-Federal entity in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

(c) In addition to the factors in paragraph (b) of this section, to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.460 Proposal costs.

Proposal costs are the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including the development of data necessary to support the non-Federal entity's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect (F&A) costs and allocated currently to all activities of the non-Federal entity. No proposal costs of past accounting periods will be allocable to the current period.

§ 200.461 Publication and printing costs.

(a) Publication costs for electronic and print media, including distribution, promotion, and general handling are allowable. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the non-Federal entity.

(b) Page charges for professional journal publications are allowable where:

(1) The publications report work supported by the Federal Government; and

(2) The charges are levied impartially on all items published by the journal, whether or not under a Federal award.

(3) The non-Federal entity may charge the Federal award during closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the Federal award. If charged to the award, these costs must be charged to the final budget period of the award, unless otherwise specified by the Federal awarding agency.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.462 Rearrangement and reconversion costs.

(a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations costs incurred specifically for a Federal award are allowable as a direct cost with the prior approval of the Federal awarding agency or pass-through entity.

(b) Costs incurred in the restoration or rehabilitation of the non-Federal entity's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

§ 200.463 Recruiting costs.

(a) Subject to paragraphs (b) and (c) of this section, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of “help wanted” advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the non-Federal entity's standard recruitment program. Where the non-Federal entity uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the non-Federal entity, are unallowable.

(c) Where relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part to a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity will be required to refund or credit the Federal share of such relocation costs to the Federal Government. See also § 200.464.

(d) Short-term, travel visa costs (as opposed to longer-term, immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose, they can be clearly identified as directly connected to work performed on a Federal award. For these costs to be directly charged to a Federal award, they must:

(1) Be critical and necessary for the conduct of the project;

(2) Be allowable under the applicable cost principles;

(3) Be consistent with the non-Federal entity's cost accounting practices and non-Federal entity policy; and

(4) Meet the definition of “direct cost” as described in the applicable cost principles.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49569, Aug. 13, 2020]

§ 200.464 Relocation costs of employees.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

(b) Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his or her immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 calendar days.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4), are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. When relocation costs incurred incident to the recruitment of new employees have been charged to a Federal award and the employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity must refund or credit the Federal Government for its share of the cost. If dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods, the costs of travel to an overseas location must be considered travel costs in accordance with § 200.474 Travel costs, and not this relocations costs of employees (See also § 200.464).

(d) The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49570, Aug. 13, 2020]

§ 200.465 Rental costs of real property and equipment.

(a) Subject to the limitations described in paragraphs (b) through (d) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

(b) Rental costs under “sale and lease back” arrangements are allowable only up to the amount that would be allowed had the non-Federal entity continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

(c) Rental costs under “less-than-arm's-length” leases are allowable only up to the amount (as explained in paragraph (b) of this section). For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:

(1) Divisions of the non-Federal entity;

(2) The non-Federal entity under common control through common officers, directors, or members; and

(3) The non-Federal entity and a director, trustee, officer, or key employee of the non-Federal entity or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the non-Federal entity may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-Federal entity.

(4) Family members include one party with any of the following relationships to another party:

(i) Spouse, and parents thereof;

(ii) Children, and spouses thereof;

(iii) Parents, and spouses thereof;

(iv) Siblings, and spouses thereof;

(v) Grandparents and grandchildren, and spouses thereof;

(vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and

(vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(5) Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in § 200.449 Interest. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(6) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

(d) Rental costs under leases which are required to be accounted for as a financed purchase under GASB standards or a finance lease under FASB standards under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. Interest costs related to these leases are allowable to the extent they meet the criteria in § 200.449. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(e) Rental or lease payments are allowable under lease contracts where the non-Federal entity is required to recognize an intangible right-to-use lease asset (per GASB) or right of use operating lease asset (per FASB) for purposes of financial reporting in accordance with GAAP.

(f) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.466 Scholarships and student aid costs.

(a) Costs of scholarships, fellowships, and other programs of student aid at IHEs are allowable only when the purpose of the Federal award is to provide training to selected participants and the charge is approved by the Federal awarding agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that:

(1) The individual is conducting activities necessary to the Federal award;

(2) Tuition remission and other support are provided in accordance with established policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal awards as well as other activities; and

(3) During the academic period, the student is enrolled in an advanced degree program at a non-Federal entity or affiliated institution and the activities of the student in relation to the Federal award are related to the degree program;

(4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) It is the IHE's practice to similarly compensate students under Federal awards as well as other activities.

(b) Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages must be subject to the reporting requirements in § 200.430, and must be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis. See also § 200.431.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the non-Federal entity (unless allowed under § 200.421) are unallowable, except as direct costs, with prior approval by the Federal awarding agency when necessary for the performance of the Federal award.

[85 FR 49570, Aug. 13, 2020]

§ 200.468 Specialized service facilities.

(a) The costs of services provided by highly complex or specialized facilities operated by the non-Federal entity, such as computing facilities, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraph (b) or (c) of this section, and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under § 200.406.

(b) The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:

(1) Does not discriminate between activities under Federal awards and other activities of the non-Federal entity, including usage by the non-Federal entity for internal purposes, and

(2) Is designed to recover only the aggregate costs of the services. The costs of each service must consist normally of both its direct costs and its allocable share of all indirect (F&A) costs. Rates must be adjusted at least biennially, and must take into consideration over/under-applied costs of the previous period(s).

(c) Where the costs incurred for a service are not material, they may be allocated as indirect (F&A) costs.

(d) Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the non-Federal entity to establish alternative costing arrangements, such arrangements may be worked out with the Federal cognizant agency for indirect costs.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the Federal award.

§ 200.470 Taxes (including Value Added Tax).

(a) For states, local governments and Indian tribes:

(1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.

(2) Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

(3) This provision does not restrict the authority of the Federal awarding agency to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof.

(b) For nonprofit organizations and IHEs:

(1) In general, taxes which the non-Federal entity is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:

(i) Taxes from which exemptions are available to the non-Federal entity directly or which are available to the non-Federal entity based on an exemption afforded the Federal Government and, in the latter case, when the Federal awarding agency makes available the necessary exemption certificates,

(ii) Special assessments on land which represent capital improvements, and

(iii) Federal income taxes.

(2) Any refund of taxes, and any payment to the non-Federal entity of interest thereon, which were allowed as Federal award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government. However, any interest actually paid or credited to an non-Federal entity incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the non-Federal entity has been reimbursed by the Federal Government for the taxes, interest, and penalties.

(c) Value Added Tax (VAT) Foreign taxes charged for the purchase of goods or services that a non-Federal entity is legally required to pay in country is an allowable expense under Federal awards. Foreign tax refunds or applicable credits under Federal awards refer to receipts, or reduction of expenditures, which operate to offset or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the non-Federal entity relate to allowable cost, these costs must be credited to the Federal awarding agency either as costs or cash refunds. If the costs are credited back to the Federal award, the non-Federal entity may reduce the Federal share of costs by

the amount of the foreign tax reimbursement, or where Federal award has not expired, use the foreign government tax refund for approved activities under the Federal award with prior approval of the Federal awarding agency.

§ 200.471 Telecommunication costs and video surveillance costs.

(a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances:

(b) Obligating or expending covered telecommunications and video surveillance services or equipment or services as described in § 200.216 to:

(1) Procure or obtain, extend or renew a contract to procure or obtain;

(2) Enter into a contract (or extend or renew a contract) to procure; or

(3) Obtain the equipment, services, or systems.

[85 FR 49570, Aug. 13, 2020]

§ 200.472 Termination costs.

Termination of a Federal award generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth in this section. They are to be used in conjunction with the other provisions of this part in termination situations.

(a) The cost of items reasonably usable on the non-Federal entity's other work must not be allowable unless the non-Federal entity submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the non-Federal entity, the Federal awarding agency should consider the non-Federal entity's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-Federal entity must be regarded as evidence that such items are reasonably usable on the non-Federal entity's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) If in a particular case, despite all reasonable efforts by the non-Federal entity, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this part, except that any such costs continuing after termination due to the negligent or willful failure of the non-Federal entity to discontinue such costs must be unallowable.

(c) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the non-Federal entity,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the Federal awarding agency (see also § 200.313 (d)), and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

(d) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) The non-Federal entity makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

(e) Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(i) The preparation and presentation to the Federal awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see subpart D, including §§ 200.339-200.343); and

(ii) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award.

(f) Claims under subawards, including the allocable portion of claims which are common to the Federal award and to other work of the non-Federal entity, are generally allowable. An appropriate share of the non-Federal entity's indirect costs may be allocated to the amount of settlements with contractors and/or subrecipients, provided that the amount allocated is otherwise consistent with the basic guidelines contained in § 200.414. The indirect costs so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

[78 FR 78608, Dec. 26, 2013. Redesignated and amended at 85 FR 49570, Aug. 13, 2020]

§ 200.473 Training and education costs.

The cost of training and education provided for employee development is allowable.

[78 FR 78608, Dec. 26, 2013. Redesignated at 85 FR 49570, Aug. 13, 2020]

§ 200.474 Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate indirect (F&A) cost accounts if the non-Federal entity follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms and conditions of the Federal award, should be treated as a direct cost.

[78 FR 78608, Dec. 26, 2013. Redesignated at 85 FR 49570, Aug. 13, 2020]

§ 200.475 Travel costs.

(a) ***General.*** Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies. Notwithstanding the provisions of § 200.444, travel costs of officials covered by that section are allowable with the prior written approval of the Federal awarding agency or pass-through entity when they are specifically related to the Federal award.

(b) ***Lodging and subsistence.*** Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the non-Federal entity in its regular operations as the result of the non-Federal entity's written travel policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:

(1) Participation of the individual is necessary to the Federal award; and

(2) The costs are reasonable and consistent with non-Federal entity's established travel policy.

(c)

(1) Temporary dependent care costs (as dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:

(i) The costs are a direct result of the individual's travel for the Federal award;

(ii) The costs are consistent with the non-Federal entity's documented travel policy for all entity travel; and

(iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the Federal awarding agency. See also § 200.432.

(d) In the absence of an acceptable, written non-Federal entity policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701-11, ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205-46(a)).

(e) ***Commercial air travel.***

(1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

(i) Require circuitous routing;

(ii) Require travel during unreasonable hours;

(iii) Excessively prolong travel;

(iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The non-Federal entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a non-Federal entity's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-Federal entity can demonstrate that such airfare was not available in the specific case.

(f) ***Air travel by other than commercial carrier.*** Costs of travel by non-Federal entity-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014. Redesignated and amended at 85 FR 49570, Aug. 13, 2020]

§ 200.476 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See also § 200.475.

[85 FR 49571, Aug. 13, 2020]

Subpart F—Audit Requirements

Link to an amendment published at 89 FR 30136, Apr. 22, 2024.

GENERAL

§ 200.500 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

AUDITS

§ 200.501 Audit requirements.

(a) ***Audit required.*** A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) ***Single audit.*** A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with § 200.514 except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) ***Program-specific audit election.*** When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a

program-specific audit conducted in accordance with § 200.507. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) ***Exemption when Federal awards expended are less than $750,000.*** A non-Federal entity that expends less than $750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in § 200.503, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) ***Federally Funded Research and Development Centers (FFRDC).*** Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(f) ***Subrecipients and contractors.*** An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section § 200.331 sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) ***Compliance responsibility for contractors.*** In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) ***For-profit subrecipient.*** Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also § 200.332.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49571, Aug. 13, 2020]

§ 200.502 Basis for determining Federal awards expended.

(a) ***Determining Federal awards expended.*** The determination of when a Federal award is expended must be based on when the activity related to the Federal award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of Federal awards, such as: expenditure/expense transactions associated with awards including grants, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, cooperative agreements, and direct appropriations; the disbursement of funds to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or use of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and the period when insurance is in force.

(b) ***Loan and loan guarantees (loans).*** Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines must be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the audit period; plus

(2) Beginning of the audit period balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) ***Loan and loan guarantees (loans) at IHEs.*** When loans are made to students of an IHE but the IHE does not make the loans, then only the value of loans made during the audit period must be considered Federal awards expended in that audit period. The balance of loans for previous audit periods is not included as Federal awards expended because the lender accounts for the prior balances.

(d) ***Prior loan and loan guarantees (loans).*** Loans, the proceeds of which were received and expended in prior years, are not considered Federal awards expended under this part when the Federal statutes, regulations, and the terms and conditions of Federal awards pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) ***Endowment funds.*** The cumulative balance of Federal awards for endowment funds that are federally restricted are considered Federal awards expended in each audit period in which the funds are still restricted.

(f) ***Free rent.*** Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of a Federal award to carry out a Federal program must be included in determining Federal awards expended and subject to audit under this part.

(g) ***Valuing non-cash assistance.*** Federal non-cash assistance, such as free rent, food commodities, donated property, or donated surplus property, must be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) ***Medicare.*** Medicare payments to a non-Federal entity for providing patient care services to Medicare-eligible individuals are not considered Federal awards expended under this part.

(i) ***Medicaid.*** Medicaid payments to a subrecipient for providing patient care services to Medicaid-eligible individuals are not considered Federal awards expended under this part unless a state requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) ***Certain loans provided by the National Credit Union Administration.*** For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured non-Federal entities are not considered Federal awards expended.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.503 Relation to other audit requirements.

(a) An audit conducted in accordance with this part must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation. To the extent that such audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal statute or regulation, a Federal agency must rely upon and use that information.

(b) Notwithstanding subsection (a), a Federal agency, Inspectors General, or GAO may conduct or arrange for additional audits which are necessary to carry out its responsibilities under Federal statute or regulation. The provisions of this part do not authorize any non-Federal entity to constrain, in any manner, such Federal agency from carrying out or arranging for such additional audits, except that the Federal agency must plan such audits to not be duplicative of other audits of Federal awards. Prior to commencing such an audit, the Federal agency or pass-through entity must review the FAC for recent audits submitted by the non-Federal entity, and to the extent such audits meet a Federal agency or pass-through entity's needs, the Federal agency or pass-through entity must rely upon and use such audits. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed, by other auditors.

(c) The provisions of this part do not limit the authority of Federal agencies to conduct, or arrange for the conduct of, audits and evaluations of Federal awards, nor limit the authority of any Federal agency Inspector General or other Federal official. For example, requirements that may be applicable under the FAR or CAS and the terms and conditions of a cost-reimbursement contract may include additional applicable audits to be conducted or arranged for by Federal agencies.

(d) ***Federal agency to pay for additional audits.*** A Federal agency that conducts or arranges for additional audits must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

(e) ***Request for a program to be audited as a major program.*** A Federal awarding agency may request that an auditee have a particular Federal program audited as a major program in lieu of the Federal awarding agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such a request by informing the Federal awarding agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 200.518 and, if not, the estimated incremental cost. The Federal awarding agency must then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal awarding agency request, and the Federal awarding agency agrees to pay the full incremental costs, then the auditee must have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49570, Aug. 13, 2020]

§ 200.504 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part must be performed annually. Any biennial audit must cover both years within the biennial period.

(a) A state, local government, or Indian tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period.

(b) Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

§ 200.505 Sanctions.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities must take appropriate action as provided in § 200.339.

[85 FR 49571, Aug. 13, 2020]

§ 200.506 Audit costs.

See § 200.425.

[85 FR 49571, Aug. 13, 2020]

§ 200.507 Program-specific audits.

(a) ***Program-specific audit guide available.*** In some cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement, Part 8, Appendix VI, Program-Specific Audit Guides, which includes a website where a copy of the guide can be obtained. When a current program-specific audit guide is available, the auditor must follow GAGAS and the guide when performing a program-specific audit.

(b) ***Program-specific audit guide not available.***

(1) When a current program-specific audit guide is not available, the auditee and auditor must have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee must prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 200.511(b), and a corrective action plan consistent with the requirements of § 200.511(c).

(3) The auditor must:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the Federal program consistent with the requirements of § 200.514(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on the Federal program consistent with the requirements of § 200.514(d) for a major program;

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 200.511, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding; and

(v) Report any audit findings consistent with the requirements of § 200.516.

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in accordance with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which must describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § 200.515(d)(1) and findings and questioned costs consistent with the requirements of § 200.515(d)(3).

(c) ***Report submission for program-specific audits.***

(1) The audit must be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide. Unless restricted by Federal law or regulation, the auditee must make report copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(2) When a program-specific audit guide is available, the auditee must electronically submit to the FAC the data collection form prepared in accordance with § 200.512(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit must consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § 200.512(b), as applicable to a program-specific audit, and one copy of this reporting package must be electronically submitted to the FAC.

(d) ***Other sections of this part may apply.*** Program-specific audits are subject to:

(1) 200.500 Purpose through 200.503 Relation to other audit requirements, paragraph (d);

(2) 200.504 Frequency of audits through 200.506 Audit costs;

(3) 200.508 Auditee responsibilities through 200.509 Auditor selection;

(4) 200.511 Audit findings follow-up;

(5) 200.512 Report submission, paragraphs (e) through (h);

(6) 200.513 Responsibilities;

(7) 200.516 Audit findings through 200.517 Audit documentation;

(8) 200.521 Management decision; and

(9) Other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49571, Aug. 13, 2020]

AUDITEES

§ 200.508 Auditee responsibilities.

The auditee must:

(a) Procure or otherwise arrange for the audit required by this part in accordance with § 200.509, and ensure it is properly performed and submitted when due in accordance with § 200.512.

(b) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 200.510.

(c) Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 200.511(b) and (c), respectively.

(d) Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this part.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49572, Aug. 13, 2020]

§ 200.509 Auditor selection.

(a) ***Auditor procurement.*** In procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards in §§ 200.317 through 200.327 of subpart D of this part or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the non-Federal entity must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in § 200.321, or the FAR (48 CFR part 42), as applicable.

(b) ***Restriction on auditor preparing indirect cost proposals.*** An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded $1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

(c) ***Use of Federal auditors.*** Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49572, Aug. 13, 2020; 86 FR 10440, Feb. 22, 2021]

§ 200.510 Financial statements.

(a) ***Financial statements.*** The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, non-Federal entity-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § 200.514(a) and prepare separate financial statements.

(b) ***Schedule of expenditures of Federal awards.*** The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements which must include the total Federal awards expended as determined in accordance with § 200.502. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may list the amount of Federal awards expended for each Federal award year separately. At a minimum, the schedule must:

(1) List individual Federal programs by Federal agency. For a cluster of programs, provide the cluster name, list individual Federal programs within the cluster of programs, and provide the applicable Federal agency name. For R&D, total Federal awards expended must be shown either by individual Federal award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity must be included.

(3) Provide total Federal awards expended for each individual Federal program and the Assistance Listings Number or other identifying number when the Assistance Listings information is not available. For a cluster of programs also provide the total for the cluster.

(4) Include the total amount provided to subrecipients from each Federal program.

(5) For loan or loan guarantee programs described in § 200.502(b), identify in the notes to the schedule the balances outstanding at the end of the audit period. This is in addition to including the total Federal awards expended for loan or loan guarantee programs in the schedule.

(6) Include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the auditee elected to use the 10% de minimis cost rate as covered in § 200.414.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49572, Aug. 13, 2020]

§ 200.511 Audit findings follow-up.

(a) ***General.*** The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under § 200.516(c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(b) ***Summary schedule of prior audit findings.*** The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(3) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule must describe the reasons for the finding's recurrence and planned corrective action, and any partial corrective action taken. When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule must provide an explanation.

(3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the FAC;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) ***Corrective action plan.*** At the completion of the audit, the auditee must prepare, in a document separate from the auditor's findings described in § 200.516, a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49572, Aug. 13, 2020]

§ 200.512 Report submission.

(a) ***General.***

(1) The audit must be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

(2) Unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(b) ***Data collection.*** The FAC is the repository of record for subpart F of this part reporting packages and the data collection form. All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC.

(1) The auditee must submit required data elements described in Appendix X to Part 200, which state whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The data must include information available from the audit required by this part that is necessary for Federal agencies to use the audit to ensure integrity for Federal programs. The data elements and format must be approved by OMB, available from the FAC, and include collections of information from the reporting package described in paragraph (c) of this section. A senior level representative of the auditee (*e.g.,* state controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection that says that the auditee complied with the requirements of this part, the data were prepared in accordance with this part (and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its entirety is accurate and complete, and that the FAC is authorized to make the reporting package and the form publicly available on a website.

(2) ***Exception for Indian Tribes and Tribal Organizations.*** An auditee that is an Indian tribe or a tribal organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C. 450b(l)) may opt not to authorize the FAC to make the reporting package publicly available on a Web site, by excluding the authorization for the FAC publication in the statement described in paragraph (b)(1) of this section. If this option is exercised, the auditee becomes responsible for submitting the reporting package directly to any pass-through entities through which it has received a Federal award and to pass-through entities for which the summary schedule of prior audit findings reported the status of any findings related to Federal awards that the pass-through entity provided. Unless restricted by Federal statute or regulation, if the auditee opts not to authorize publication, it must make copies of the reporting package available for public inspection.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor must complete the applicable data elements of the data collection form. The auditor must sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the collection of information prescribed by OMB.

(c) ***Reporting package.*** The reporting package must include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § 200.510(a) and (b), respectively;

(2) Summary schedule of prior audit findings discussed in § 200.511(b);

(3) Auditor's report(s) discussed in § 200.515; and

(4) Corrective action plan discussed in § 200.511(c).

(d) ***Submission to FAC.*** The auditee must electronically submit to the FAC the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section.

(e) ***Requests for management letters issued by the auditor.*** In response to requests by a Federal agency or pass-through entity, auditees must submit a copy of any management letters issued by the auditor.

(f) ***Report retention requirements.*** Auditees must keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the FAC.

(g) ***FAC responsibilities.*** The FAC must make available the reporting packages received in accordance with paragraph (c) of this section and § 200.507(c) to the public, except for Indian tribes exercising the option in (b)(2) of this section, and maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees that have not submitted the required data collection forms and reporting packages.

(h) ***Electronic filing.*** Nothing in this part must preclude electronic submissions to the FAC in such manner as may be approved by OMB.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49573, Aug. 13, 2020]

FEDERAL AGENCIES

§ 200.513 Responsibilities.

(a)

(1) ***Cognizant agency for audit responsibilities.*** A non-Federal entity expending more than $50 million a year in Federal awards must have a cognizant agency for audit. The designated cognizant agency for audit must be the Federal awarding agency that provides the predominant amount of funding directly (direct funding) (as listed on the Schedule of expenditures of Federal awards, see § 200.510(b)) to a non-Federal entity unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total expenditures (as direct and subawards) by the non-Federal entity, then the Federal agency with the predominant amount of total funding is the designated cognizant agency for audit.

(2) To provide for continuity of cognizance, the determination of the predominant amount of direct funding must be based upon direct Federal awards expended in the non-Federal entity's fiscal years ending in 2019, and every fifth year thereafter.

(3) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency that provides substantial funding and agrees to be the cognizant agency for audit. Within 30 calendar days after any reassignment, both the old and the new cognizant agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The cognizant agency for audit must:

(i) Provide technical audit advice and liaison assistance to auditees and auditors.

(ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors, and provide the results to other interested organizations. Cooperate and provide support to the Federal agency designated by OMB to lead a governmentwide project to determine the quality of single audits by providing a reliable estimate of the extent that single audits conform to applicable requirements, standards, and procedures; and to make recommendations to address noted audit quality issues, including recommendations for any changes to applicable requirements, standards and procedures indicated by the results of the project. The governmentwide project can rely on the current and on-going quality control review work performed by the agencies, State auditors, and professional audit associations. This governmentwide audit quality project must be performed once every 6 years (or at such other interval as determined by OMB), and the results must be public.

(iii) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor required by GAGAS or statutes and regulations.

(iv) Advise the community of independent auditors of any noteworthy or important factual trends related to the quality of audits stemming from quality control reviews. Significant problems or quality issues consistently identified through quality control reviews of audit reports must be referred to appropriate state licensing agencies and professional bodies.

(v) Advise the auditor, Federal awarding agencies, and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee must work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit must notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors must be referred to appropriate state licensing agencies and professional bodies for disciplinary action.

(vi) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon rather than duplicate audits performed in accordance with this part.

(vii) Coordinate a management decision for cross-cutting audit findings (see in § 200.1 of this part) that affect the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee.

(viii) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(ix) Provide advice to auditees as to how to handle changes in fiscal years.

(b) ***Oversight agency for audit responsibilities.*** An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 200.1 *oversight agency for audit.* A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The oversight agency for audit:

(1) Must provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) ***Federal awarding agency responsibilities.*** The Federal awarding agency must perform the following for the Federal awards it makes (See also the requirements of § 200.211):

(1) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.

(2) Provide technical advice and counsel to auditees and auditors as requested.

(3) Follow-up on audit findings to ensure that the recipient takes appropriate and timely corrective action. As part of audit follow-up, the Federal awarding agency must:

(i) Issue a management decision as prescribed in § 200.521;

(ii) Monitor the recipient taking appropriate and timely corrective action;

(iii) Use cooperative audit resolution mechanisms (see the definition of *cooperative audit resolution* in § 200.1 of this part) to improve Federal program outcomes through better audit resolution, follow-up, and corrective action; and

(iv) Develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow-up on audit findings and on the effectiveness of Single Audits in improving non-Federal entity accountability and their use by Federal awarding agencies in making award decisions.

(4) Provide OMB annual updates to the compliance supplement and work with OMB to ensure that the compliance supplement focuses the auditor to test the compliance requirements most likely to cause improper payments, fraud, waste, abuse or generate audit finding for which the Federal awarding agency will take sanctions.

(5) Provide OMB with the name of a single audit accountable official from among the senior policy officials of the Federal awarding agency who must be:

(i) Responsible for ensuring that the agency fulfills all the requirements of paragraph (c) of this section and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes.

(ii) Held accountable to improve the effectiveness of the single audit process based upon metrics as described in paragraph (c)(3)(iv) of this section.

(iii) Responsible for designating the Federal agency's key management single audit liaison.

(6) Provide OMB with the name of a key management single audit liaison who must:

(i) Serve as the Federal awarding agency's management point of contact for the single audit process both within and outside the Federal Government.

(ii) Promote interagency coordination, consistency, and sharing in areas such as coordinating audit follow-up; identifying higher-risk non-Federal entities; providing input on single audit and follow-up policy; enhancing the utility of the FAC; and studying ways to use single audit results to improve Federal award accountability and best practices.

(iii) Oversee training for the Federal awarding agency's program management personnel related to the single audit process.

(iv) Promote the Federal awarding agency's use of cooperative audit resolution mechanisms.

(v) Coordinate the Federal awarding agency's activities to ensure appropriate and timely follow-up and corrective action on audit findings.

(vi) Organize the Federal cognizant agency for audit's follow-up on cross-cutting audit findings that affect the Federal programs of more than one Federal awarding agency.

(vii) Ensure the Federal awarding agency provides annual updates of the compliance supplement to OMB.

(viii) Support the Federal awarding agency's single audit accountable official's mission.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49573, Aug. 13, 2020]

AUDITORS

§ 200.514 Scope of audit.

(a) ***General.*** The audit must be conducted in accordance with GAGAS. The audit must cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered Federal awards during such audit period, provided that each such audit must encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which must be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards must be for the same audit period.

(b) ***Financial statements.*** The auditor must determine whether the financial statements of the auditee are presented fairly in all material respects in accordance with generally accepted accounting principles. The auditor must also determine whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(c) ***Internal control.***

(1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control—Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(2) In addition to the requirements of GAGAS, the auditor must perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.

(3) Except as provided in paragraph (c)(4) of this section, the auditor must:

(i) Plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(3)(i) of this section.

(4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 200.516, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) ***Compliance.***

(1) In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor must follow the compliance supplement's guidance for programs not included in the supplement.

(4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 200.516, assess the related control risk at the

(e) ***Audit follow-up.*** The auditor must follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 200.511(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor must perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) ***Data collection form.*** As required in § 200.512(b)(3), the auditor must complete and sign specified sections of the data collection form.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49574, Aug. 13, 2020; 86 FR 10440, Feb. 22, 2021]

§ 200.515 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(a) ***Financial statements.*** The auditor must determine and provide an opinion (or disclaimer of opinion) whether the financial statements of the auditee are presented fairly in all materials respects in accordance with generally accepted accounting principles (or a special purpose framework such as cash, modified cash, or regulatory as required by state law). The auditor must also decide whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(b) A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of testing of internal control and compliance and the results of the tests, and, where applicable, it will refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance for each major program and a report on internal control over compliance. This report must describe the scope of testing of internal control over compliance, include an opinion or disclaimer of opinion as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on each major program and refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which must include the following three components:

(1) A summary of the auditor's results, which must include:

(i) The type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements;

(iii) A statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the auditee;

(iv) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit;

(v) The type of report the auditor issued on compliance for major programs (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 200.516(a);

(vii) An identification of major programs by listing each individual major program; however, in the case of a cluster of programs, only the cluster name as shown on the Schedule of Expenditures of Federal Awards is required;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 200.518(b)(1) or (3) when a recalculation of the Type A threshold is required for large loan or loan guarantees; and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § 200.520.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which must include audit findings as defined in § 200.516(a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue must be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings that relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, must be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(e) Nothing in this part precludes combining of the audit reporting required by this section with the reporting required by § 200.512(b) when allowed by GAGAS and appendix X to this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49574, Aug. 13, 2020]

§ 200.516 Audit findings.

(a) ***Audit findings reported.*** The auditor must report the following as audit findings in a schedule of findings and questioned costs:

(1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or a material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

(2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(3) Known questioned costs that are greater than $25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than $25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs that are greater than $25,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program that is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than $25,000, then the auditor must report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known or likely fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to report publicly information which could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 200.511(b) materially misrepresents the status of any prior audit finding.

(b) ***Audit finding detail and clarity.*** Audit findings must be presented in sufficient detail and clarity for the auditee to prepare a corrective action plan and take corrective action, and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information must be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the Assistance Listings title and number, Federal award identification number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the Assistance Listings title and number or Federal award identification number, is not available, the auditor must provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including the Federal statutes, regulations, or the terms and conditions of the Federal awards. Criteria generally identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding findings.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) A statement of cause that identifies the reason or explanation for the condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action.

(5) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.

(6) Identification of questioned costs and how they were computed. Known questioned costs must be identified by applicable Assistance Listings number(s) and applicable Federal award identification number(s).

(7) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. The auditor should report whether the sampling was a statistically valid sample.

(8) Identification of whether the audit finding was a repeat of a finding in the immediately prior audit and if so any applicable prior year audit finding numbers.

(9) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(10) Views of responsible officials of the auditee.

(c) ***Reference numbers.*** Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission required by § 200.512(b) to allow for easy referencing of the audit findings during follow-up.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49574, Aug. 13, 2020]

§ 200.517 Audit documentation.

(a) ***Retention of audit documentation.*** The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period. When the auditor is aware that the Federal agency, pass-through entity, or auditee is contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to destruction of the audit documentation and reports.

(b) ***Access to audit documentation.*** Audit documentation must be made available upon request to the cognizant or oversight agency for audit or its designee, cognizant agency for indirect cost, a Federal agency, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation, as is reasonable and necessary.

§ 200.518 Major program determination.

(a) ***General.*** The auditor must use a risk-based approach to determine which Federal programs are major programs. This risk-based approach must include consideration of: current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (h) of this section must be followed.

(b) ***Step one.***

(1) The auditor must identify the larger Federal programs, which must be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the levels outlined in the table in this paragraph (b)(1):

Total Federal awards expended	Type A/B threshold
Equal to or exceed $750,000 but less than or equal to $25 million	$750,000.
Exceed $25 million but less than or equal to $100 million	Total Federal awards expended times .03.
Exceed $100 million but less than or equal to $1 billion	$3 million.
Exceed $1 billion but less than or equal to $10 billion	Total Federal awards expended times .003.
Exceed $10 billion but less than or equal to $20 billion	$30 million.
Exceed $20 billion	Total Federal awards expended times .0015.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section must be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) must not result in the exclusion of other programs as Type A programs. When a Federal program providing loans exceeds four times the largest non-loan program it is considered a large loan program, and the auditor must consider this Federal program as a Type A program and exclude its values in determining other Type A programs. This recalculation of the Type A program is performed after removing the total of all large loan programs. For the purposes of this paragraph a program is only considered to be a Federal program providing loans if the value of Federal awards expended for loans within the program comprises fifty percent or more of the total Federal awards expended for the program. A cluster of programs is treated as one program and the value of Federal awards expended under a loan program is determined as described in § 200.502.

(4) For biennial audits permitted under § 200.504, the determination of Type A and Type B programs must be based upon the Federal awards expended during the two-year period.

(c) ***Step two.***

(1) The auditor must identify Type A programs which are low-risk. In making this determination, the auditor must consider whether the requirements in § 200.519(c), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate significantly increased risk and preclude the program from being low risk. For a Type A program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must have not had:

(i) Internal control deficiencies which were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515(c);

(ii) A modified opinion on the program in the auditor's report on major programs as required under § 200.515(c); or

(iii) Known or likely questioned costs that exceed five percent of the total Federal awards expended for the program.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program may not be considered low risk for a certain recipient. For example, it may be necessary for a large Type A program to be audited as a major program each year at a particular recipient to allow the Federal awarding agency to comply with 31 U.S.C. 3515. The Federal awarding agency must notify the recipient and, if known, the auditor of OMB's approval at least 180 calendar days prior to the end of the fiscal year to be audited.

(d) ***Step three.***

(1) The auditor must identify Type B programs which are high-risk using professional judgment and the criteria in § 200.519. However, the auditor is not required to identify more high-risk Type B programs than at least one fourth the number of low-risk Type A programs identified as low-risk under Step 2 (paragraph (c) of this section). Except for known material weakness in internal control or compliance problems as discussed in § 200.519(b)(1) and (2) and (c)(1), a single criterion in risk would seldom cause a Type B program to be considered high-risk. When identifying which Type B programs to risk assess, the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed twenty-five percent (0.25) of the Type A threshold determined in Step 1 (paragraph (b) of this section).

(e) ***Step four.*** At a minimum, the auditor must audit all of the following as major programs:

(1) All Type A programs not identified as low risk under step two (paragraph (c)(1) of this section).

(2) All Type B programs identified as high-risk under step three (paragraph (d) of this section).

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This may require the auditor to audit more programs as major programs than the number of Type A programs.

(f) ***Percentage of coverage rule.*** If the auditee meets the criteria in § 200.520, the auditor need only audit the major programs identified in Step 4 (paragraphs (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 20 percent (0.20) of total Federal awards expended. Otherwise, the auditor must audit the major programs identified in Step 4 (paragraphs (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 40 percent (0.40) of total Federal awards expended.

(g) ***Documentation of risk.*** The auditor must include in the audit documentation the risk analysis process used in determining major programs.

(h) ***Auditor's judgment.*** When the major program determination was performed and documented in accordance with this Subpart, the auditor's judgment in applying the risk-based approach to determine major programs must be presumed correct. Challenges by Federal agencies and pass-through entities must only be for clearly improper use of the requirements in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor must consider this guidance in determining major programs in audits not yet completed.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49574, Aug. 13, 2020]

§ 200.519 Criteria for Federal program risk.

(a) ***General.*** The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal program. The auditor must consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) ***Current and prior audit experience.***

(1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of Federal awards and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor must consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) ***Oversight exercised by Federal agencies and pass-through entities.***

(1) Oversight exercised by Federal agencies or pass-through entities could be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs that are higher risk. OMB will provide this identification in the compliance supplement.

(d) ***Inherent risk of the Federal program.***

(1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third-party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have high risk for noncompliance with requirements of § 200.430, but otherwise be at low risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49575, Aug. 13, 2020]

§ 200.520 Criteria for a low-risk auditee.

An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 200.518.

(a) Single audits were performed on an annual basis in accordance with the provisions of this Subpart, including submitting the data collection form and the reporting package to the FAC within the timeframe specified in § 200.512. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee.

(b) The auditor's opinion on whether the financial statements were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's in relation to opinion on the schedule of expenditures of Federal awards were unmodified.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.

(e) None of the Federal programs had audit findings from any of the following in either of the preceding two audit periods in which they were classified as Type A programs:

(1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515(c);

(2) A modified opinion on a major program in the auditor's report on major programs as required under § 200.515(c); or

(3) Known or likely questioned costs that exceeded five percent of the total Federal awards expended for a Type A program during the audit period.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49575, Aug. 13, 2020]

MANAGEMENT DECISIONS

§ 200.521 Management decision.

(a) ***General.*** The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The

management decision should describe any appeal process available to the auditee. While not required, the Federal agency or pass-through entity may also issue a management decision on findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(b) ***Federal agency.*** As provided in § 200.513(a)(3)(vii), the cognizant agency for audit must be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § 200.513(c)(3)(i), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to non-Federal entities.

(c) ***Pass-through entity.*** As provided in § 200.332(d), the pass-through entity must be responsible for issuing a management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) ***Time requirements.*** The Federal awarding agency or pass-through entity responsible for issuing a management decision must do so within six months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.

(e) ***Reference numbers.*** Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with § 200.516(c).

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49575, Aug. 13, 2020]

Appendix I to Part 200—Full Text of Notice of Funding Opportunity

Link to an amendment published at 89 FR 30204, Apr. 22, 2024.

The full text of the notice of funding opportunity is organized in sections. The required format outlined in this appendix indicates immediately following the title of each section whether that section is required in every announcement or is a Federal awarding agency option. The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each of the following sections to describe the types of information that a Federal awarding agency would include in that section of an actual announcement.

A Federal awarding agency that wishes to include information that the format does not specifically discuss may address that subject in whatever section(s) is most appropriate. For example, if a Federal awarding agency chooses to address performance goals in the announcement, it might do so in the funding opportunity description, the application content, or the reporting requirements.

Similarly, when this format calls for a type of information to be in a particular section, a Federal awarding agency wishing to address that subject in other sections may elect to repeat the information in those sections or use cross references between the sections (there should be hyperlinks for cross-references in any electronic versions of the announcement). For example, a Federal awarding agency may want to include Section A information about the types of non-Federal entities who are eligible to apply. The format specifies a standard location for that information in Section C.1 but does not preclude repeating the information in Section A or creating a cross reference between Section A and C.1, as long as a potential applicant can find the information quickly and easily from the standard location.

The sections of the full text of the announcement are described in the following paragraphs.

A. Program Description—Required

This section contains the full program description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the Federal awarding agency's funding priorities or the technical or focus areas in which the Federal awarding agency intends to provide assistance. As appropriate, it may include any program history (*e.g.,* whether this is a new program or a new or changed area of program emphasis). This section must include program goals and objectives, a reference to the relevant Assistance Listings, a description of how the award will contribute to the achievement of the program's goals and objectives, and the expected performance goals, indicators, targets, baseline data, data collection, and other outcomes such Federal awarding agency expects to achieve, and may include examples of successful projects that have been funded previously. This section also may include other information the Federal awarding agency deems necessary, and must at a minimum include citations for authorizing statutes and regulations for the funding opportunity.

B. Federal Award Information—Required

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information could include the total amount of funding that the Federal awarding agency expects to award through the announcement; the expected performance indicators, targets, baseline data, and data collection; the anticipated number of Federal awards; the expected amounts of individual Federal awards (which may be a range); the amount of funding per Federal award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new Federal awards. This section also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new Federal awards.

This section also must indicate the type(s) of assistance instrument (*e.g.,* grant, cooperative agreement) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section either should describe the “substantial involvement” that the Federal awarding agency expects to have or should reference where the potential applicant can find that information (*e.g.,* in the funding opportunity description in Section A. or Federal award administration information in Section D. If procurement contracts also may be awarded, this must be stated.

C. Eligibility Information

This section addresses the considerations or factors that determine applicant or application eligibility. This includes the eligibility of particular types of applicant organizations, any factors affecting the eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. Federal agencies should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in the Federal awarding agency returning the application without review or, even though an application may be reviewed, will preclude the Federal awarding agency from making a Federal award. Key elements to be addressed are:

1. ***Eligible Applicants—Required.*** Announcements must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if the program is limited to nonprofit organizations subject to 26 U.S.C. 501(c)(3) of the tax code (26 U.S.C.

501(c)(3)), the announcement should say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that nonprofit organizations may apply. Eligibility also can be expressed by exception, (e.g., open to all types of domestic applicants other than individuals). This section should refer to any portion of Section D specifying documentation that must be submitted to support an eligibility determination (e.g., proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution). To the extent that any funding restriction in Section D.6 could affect the eligibility of an applicant or project, the announcement must either restate that restriction in this section or provide a cross-reference to its description in Section D.6.

2. ***Cost Sharing or Matching—Required.*** Announcements must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, the announcement must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (*e.g.,* provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (*e.g.,* in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as described in § 200.306 of this Part. This section should refer to the appropriate portion(s) of section D. stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.

3. ***Other—Required, if applicable.*** If there are other eligibility criteria (i.e., criteria that have the effect of making an application or project ineligible for Federal awards, whether referred to as "responsiveness" criteria, "go-no go" criteria, "threshold" criteria, or in other ways), must be clearly stated and must include a reference to the regulation of requirement that describes the restriction, as applicable. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. This section must also state any limit on the number of applications an applicant may submit under the announcement and make clear whether the limitation is on the submitting organization, individual investigator/program director, or both. This section should also address any eligibility criteria for beneficiaries or for program participants other than Federal award recipients.

D. Application and Submission Information

1. ***Address to Request Application Package—Required.*** Potential applicants must be told how to get application forms, kits, or other materials needed to apply (if this announcement contains everything needed, this section need only say so). An Internet address where the materials can be accessed is acceptable. However, since high-speed Internet access is not yet universally available for downloading documents, and applicants may have additional accessibility requirements, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or FAX number, Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, and/or Federal Information Relay Service (FIRS) number.

2. ***Content and Form of Application Submission—Required.*** This section must identify the required content of an application and the forms or formats that an applicant must use to submit it. If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this section should refer to where those requirements may be found. This section also should include required forms or formats as part of the announcement or state where the applicant may obtain them.

This section should specifically address content and form or format requirements for:

i. Pre-applications, letters of intent, or white papers required or encouraged (see Section D.4), including any limitations on the number of pages or other formatting requirements similar to those for full applications.

ii. The application as a whole. For all submissions, this would include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required, this could include special requirements for formatting or signatures.

iii. Component pieces of the application (e.g., if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (e.g., references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).

iv. Information that successful applicants must submit after notification of intent to make a Federal award, but prior to a Federal award. This could include evidence of compliance with requirements relating to human subjects or information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4370h).

3. ***Unique entity identifier and System for Award Management (SAM) — Required.*** This paragraph must state clearly that each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the Federal awarding agency under 2 CFR 25.110(d)) is required to:

(i) Be registered in SAM before submitting its application;

(ii) Provide a valid unique entity identifier in its application; and

(iii) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. It also must state that the Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. ***Submission Dates and Times—Required.*** Announcements must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (*e.g.,* letters of intent, white papers, or pre-applications). It also includes any other submissions of information before Federal award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see § 200.204 of this part).

5. ***Intergovernmental Review—Required, if applicable.*** If the funding opportunity is subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," the notice must say so and applicants must contact their state's Single Point of Contact (SPOC) to find out about and comply

with the state's process under Executive Order 12372, it may be useful to inform potential applicants that the names and addresses of the SPOCs are listed in the Office of Management and Budget's website.

6. ***Funding Restrictions—Required.*** Notices must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs (or facilities and administrative costs). Applicants must be advised if Federal awards will not allow reimbursement of pre-Federal award costs.

7. ***Other Submission Requirements— Required.*** This section must address any other submission requirements not included in the other paragraphs of this section. This might include the format of submission, i.e., paper or electronic, for each type of required submission. Applicants should not be required to submit in more than one format and this section should indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically.

   This section also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this must include the name of an office, official, individual or function (e.g., application receipt center) and a complete mailing address. For electronic submission, this must include the URL or email address; whether a password(s) is required; whether particular software or other electronic capabilities are required; what to do in the event of system problems and a point of contact who will be available in the event the applicant experiences technical difficulties.[1]

E. Application Review Information

1. ***Criteria—Required.*** This section must address the criteria that the Federal awarding agency will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (e.g., minority status or Native American tribal preferences) that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize fairness of the process. The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (e.g., whether they result in additional points being assigned).

[1] With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each Federal awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section C.2), the announcement must specifically address how it will be considered (e.g., to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants. It also is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing.

2. ***Review and Selection Process—Required.*** This section may vary in the level of detail provided. The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for Federal award (e.g., geographical dispersion, program balance, or diversity). The Federal awarding agency may also include other appropriate details. For example, this section may indicate who is responsible for evaluation against the merit criteria (e.g., peers external to the Federal awarding agency or Federal awarding agency personnel) and/or who makes the final selections for Federal awards. If there is a multi-phase review process (e.g., an external panel advising internal Federal awarding agency personnel who make final recommendations to the deciding official), the announcement may describe the phases. It also may include: the number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each Federal awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

   In addition, if the Federal awarding agency permits applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in this section.

3. For any Federal award under a notice of funding opportunity, if the Federal awarding agency anticipates that the total Federal share will be greater than the simplified acquisition threshold on any Federal award under a notice of funding opportunity may include, over the period of performance, this section must also inform applicants:

   i. That the Federal awarding agency, prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313);

   ii. That an applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM;

   iii. That the Federal awarding agency will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in § 200.206.

4. ***Anticipated Announcement and Federal Award Dates—Optional.*** This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the Federal awarding agency can include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having Federal awards in place. If applications are received and evaluated on a "rolling" basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the Federal awarding agency's decision.

F. Federal Award Administration Information

1. ***Federal Award Notices—Required.*** This section must address what a successful applicant can expect to receive following selection. If the Federal awarding agency's practice is to provide a separate notice stating that an application has been selected before it actually makes the Federal award, this section would be the place to indicate that the letter is not an authorization to begin performance (to the extent that it allows charging to Federal awards of pre-award costs at the non-Federal entity's own risk). This section should indicate that the notice of Federal award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants. See also § 200.211.

2. ***Administrative and National Policy Requirements—Required.*** This section must identify the usual administrative and national policy requirements the Federal awarding agency's Federal awards may include. Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before receiving the Federal award. The announcement need not include all of the terms and conditions of the Federal award, but may refer to a document (with information about how to obtain it) or Internet site where applicants can see the terms and conditions. If this funding opportunity will lead to Federal awards with some special terms and conditions that differ from the Federal awarding agency's usual (sometimes called "general") terms and conditions, this section should highlight those special terms and conditions. Doing so will alert applicants that have received Federal awards from the Federal awarding agency previously and might not otherwise expect different terms and conditions. For the same reason, the announcement should inform potential applicants about special requirements that could apply to particular Federal awards after the review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).

3. ***Reporting—Required.*** This section must include general information about the type (*e.g.,* financial or performance), frequency, and means of submission (paper or electronic) of post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ (*e.g.,* by report type, frequency, form/format, or circumstances for use) from what the Federal awarding agency's Federal awards usually require. Federal awarding agencies must also describe in this section all relevant requirements such as those at 2 CFR 180.335 and 180.350.

If the Federal share of any Federal award may include more than $500,000 over the period of performance, this section must inform potential applicants about the post award reporting requirements reflected in appendix XII to this part.

G. Federal Awarding Agency Contact(s)—Required

The announcement must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so the Federal awarding agency should consider approaches such as giving:

i. Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or email, as well as regular mail).

ii. A fax or email address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.

iii. Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

H. Other Information—Optional

This section may include any additional information that will assist a potential applicant. For example, the section might:

i. Indicate whether this is a new program or a one-time initiative.

ii. Mention related programs or other upcoming or ongoing Federal awarding agency funding opportunities for similar activities.

iii. Include current Internet addresses for Federal awarding agency Web sites that may be useful to an applicant in understanding the program.

iv. Alert applicants to the need to identify proprietary information and inform them about the way the Federal awarding agency will handle it.

v. Include certain routine notices to applicants (e.g., that the Federal Government is not obligated to make any Federal award as a result of the announcement or that only grants officers can bind the Federal Government to the expenditure of funds).

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 43310, July 22, 2015; 85 FR 49575, Aug. 13, 2020]

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

Link to an amendment published at 89 FR 30206, Apr. 22, 2024.

A. General

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHEs (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1 for a discussion of the components of indirect (F&A) costs.

1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. ***Instruction*** means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) ***Sponsored instruction and training*** means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) ***Departmental research*** means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

(3) Only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. Salary costs above statutory limits are not considered cost sharing.

b. ***Organized research*** means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) ***Sponsored research*** means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) ***University research*** means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

c. ***Other sponsored activities*** means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. ***Other institutional activities*** means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in § 200.468 of this part.

2. Criteria for Distribution

a. ***Base period.*** A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. ***Need for cost groupings.*** The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the indirect (F&A) cost categories referred to in subsection B.1. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in subsection c of this section. Each such pool or cost grouping should then be distributed individually to the related cost objectives, using the distribution base or method most appropriate in light of the guidelines set forth in subsection d of this section.

c. ***General considerations on cost groupings.*** The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groupings (based on account classification or analysis) within an indirect (F&A) cost category include but are not limited to the following:

(1) If certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in subsections b and d.

(2) If any types of expense ordinarily treated as general administration or departmental administration are charged to Federal awards as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like

circumstances must, through separate cost groupings, be excluded from the indirect (F&A) costs allocable to those Federal awards and included in the direct cost of other activities for cost allocation purposes.

(3) If it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.

(4) If activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect (F&A) costs (such as for overall management) which are properly allocable to such activities.

(5) If the institution elects to treat fringe benefits as indirect (F&A) charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.

(6) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. Selection of distribution method.

(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; with a traceable cause-and-effect relationship; or with logic and reason, where neither benefit nor a cause-and-effect relationship is determinable.

(2) If a cost grouping can be identified directly with the cost objective benefitted, it should be assigned to that cost objective.

(3) If the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if appropriate. Cost analysis studies, however, must

(a) be appropriately documented in sufficient detail for subsequent review by the cognizant agency for indirect costs,

(b) distribute the costs to the related cost objectives in accordance with the relative benefits derived,

(c) be statistically sound,

(d) be performed specifically at the institution at which the results are to be used, and

(e) be reviewed periodically, but not less frequently than rate negotiations, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution must be made in accordance with the appropriate base cited in Section B, unless one of the following conditions is met:

(a) It can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards, or

(b) The institution qualifies for, and elects to use, the simplified method for computing indirect (F&A) cost rates described in Section D.

(5) Notwithstanding subsection (3), effective July 1, 1998, a cost analysis or base other than that in Section B must not be used to distribute utility or student services costs. Instead, subsection B.4.c, may be used in the recovery of utility costs.

e. Order of distribution.

(1) Indirect (F&A) costs are the broad categories of costs discussed in Section B.1.

(2) Depreciation, interest expenses, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining indirect (F&A) cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in subsection (3), this order of allocation does not apply.

(3) Normally an indirect (F&A) cost category will be considered closed once it has been allocated to other cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect (F&A) cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect (F&A) cost categories described in Section B is required.

B. Identification and Assignment of Indirect (F&A) Costs

1. Definition of Facilities and Administration

See § 200.414 which provides the basis for these indirect cost requirements.

2. Depreciation

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with § 200.436.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the following manner:

(1) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.

(2) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and rest rooms.

(3) Depreciation on buildings, capital improvements and equipment related to space (e.g., individual rooms, laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to benefitting functions on the basis of:

(a) The employee full-time equivalents (FTEs) or salaries and wages of those individual functions benefitting from the use of that space; or

(b) Institution-wide employee FTEs or salaries and wages applicable to the benefitting major functions (see Section A.1) of the institution.

(4) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category must be assigned to the instruction function of the institution. The amount allocated to the employee category must be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

3. Interest

Interest on debt associated with certain buildings, equipment and capital improvements, as defined in § 200.449, must be classified as an expenditure under the category Facilities. These costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital improvements to which the interest relates.

4. Operation and Maintenance Expenses

a. The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expense category should also include its allocable share of fringe benefit costs, depreciation, and interest costs.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the same manner as described in subsection 2.b for depreciation.

c. A utility cost adjustment of up to 1.3 percentage points may be included in the negotiated indirect cost rate of the IHE for organized research, per the computation alternatives in paragraphs (c)(1) and (2) of this section:

(1) Where space is devoted to a single function and metering allows unambiguous measurement of usage related to that space, costs must be assigned to the function located in that space.

(2) Where space is allocated to different functions and metering does not allow unambiguous measurement of usage by function, costs must be allocated as follows:

(i) Utilities costs should be apportioned to functions in the same manner as depreciation, based on the calculated difference between the site or building actual square footage for monitored research laboratory space (site, building, floor, or room), and a separate calculation prepared by the IHE using the "effective square footage" described in subsection (c)(2)(ii) of this section.

(ii) ***"Effective square footage"*** allocated to research laboratory space must be calculated as the actual square footage times the relative energy utilization index (REUI) posted on the OMB Web site at the time of a rate determination.

A. This index is the ratio of a laboratory energy use index (lab EUI) to the corresponding index for overall average college or university space (college EUI).

B. In July 2012, values for these two indices (taken respectively from the Lawrence Berkeley Laboratory "Labs for the 21st Century" benchmarking tool and the US Department of Energy "Buildings Energy Databook" and were 310 kBtu/sq ft-yr. and 155 kBtu/sq ft-yr., so that the adjustment ratio is 2.0 by this methodology. To retain currency, OMB will adjust the EUI numbers from time to time (no more often than annually nor less often than every 5 years), using reliable and publicly disclosed data. Current values of both the EUIs and the REUI will be posted on the OMB website.

5. General Administration and General Expenses

a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major function of the institution; *i.e.,* solely to

(1) instruction,

(2) organized research,

(3) other sponsored activities, or

(4) other institutional activities. The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of general administration and general expenses include: Those expenses incurred by administrative offices that serve the entire university system of which the institution is a part; central offices of the institution such as the President's or Chancellor's office, the offices for institution-wide financial management, business services, budget and planning, personnel management, and safety and risk management; the office of the General Counsel; and the operations of the central administrative management information

systems. General administration and general expenses must not include expenses incurred within non-university-wide deans' offices, academic departments, organized research units, or similar organizational units. (See subsection 6.)

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be grouped first according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to serviced or benefitted functions on the modified total cost basis. Modified total costs consist of the same elements as those in Section C.2. When an activity included in this indirect (F&A) cost category provides a service or product to another institution or organization, an appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

6. Departmental Administration Expenses

a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research units. Organized research units include such units as institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations.

(1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.

(2) Academic departments:

(a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads) and other professional personnel conducting research and/or instruction, must be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance must be added to the computation of the indirect (F&A) cost rate for major functions in Section C; the expenses covered by the allowance must be excluded from the departmental administration cost pool. No documentation is required to support this allowance.

(b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

(3) Other fringe benefit costs applicable to the salaries and wages included in subsections (1) and (2) are allowable, as well as an appropriate share of general administration and general expenses, operation and maintenance expenses, and depreciation.

(4) Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. The following guidelines apply to the determination of departmental administrative costs as direct or indirect (F&A) costs.

(1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect (F&A) costs. For example, salaries of technical staff, laboratory supplies (*e.g.,* chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs must be treated as direct costs wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefitting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances. See §§ 200.413(c) and 200.468.

(2) Items such as office supplies, postage, local telephone costs, and memberships must normally be treated as indirect (F&A) costs.

c. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school must be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in subsection (1) must be allocated to the appropriate functions of the department on the modified total cost basis.

7. Sponsored Projects Administration

a. The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel, administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, print shops, and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation. Appropriate adjustments will be made for services provided to other functions or organizations.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

c. An appropriate adjustment must be made to eliminate any duplicate charges to Federal awards when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect (F&A) cost items, such as accounting, procurement, or personnel administration.

8. Library Expenses

a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under § 200.406. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate

share of general administration and general expense, operation and maintenance expense, and depreciation. Costs incurred in the purchases of rare books (museum-type books) with no value to Federal awards should not be allocated to them.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category must consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category must consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis. This category may also include post-doctorate fellows and graduate students.

(3) The other users category must consist of a reasonable factor as determined by institutional records to account for all other users of library facilities.

c. Amount allocated in paragraph b of this section must be assigned further as follows:

(1) The amount in the student category must be assigned to the instruction function of the institution.

(2) The amount in the professional employee category must be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.

(3) The amount in the other users category must be assigned to the other institutional activities function of the institution.

9. Student Administration and Services

a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to student administration is determined in accordance with subpart E of this Part. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, interest expense, and depreciation.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses in this category must be allocated to the instruction function, and subsequently to Federal awards in that function.

10. Offset for Indirect (F&A) Expenses Otherwise Provided for by the Federal Government

a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government which are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in subsections 2 through 9.

b. The items in this group must be treated as a credit to the affected individual indirect (F&A) cost category before that category is allocated to benefitting functions.

C. Determination and Application of Indirect (F&A) Cost Rate or Rates

1. Indirect (F&A) Cost Pools

a.

(1) Subject to subsection b, the separate categories of indirect (F&A) costs allocated to each major function of the institution as prescribed in Section B, must be aggregated and treated as a common pool for that function. The amount in each pool must be divided by the distribution base described in subsection 2 to arrive at a single indirect (F&A) cost rate for each function.

(2) The rate for each function is used to distribute indirect (F&A) costs to individual Federal awards of that function. Since a common pool is established for each major function of the institution, a separate indirect (F&A) cost rate would be established for each of the major functions described in Section A.1 under which Federal awards are carried out.

(3) Each institution's indirect (F&A) cost rate process must be appropriately designed to ensure that Federal sponsors do not in any way subsidize the indirect (F&A) costs of other sponsors, specifically activities sponsored by industry and foreign governments. Accordingly, each allocation method used to identify and allocate the indirect (F&A) cost pools, as described in Sections A.2 and B.2 through B.9, must contain the full amount of the institution's modified total costs or other appropriate units of measurement used to make the computations. In addition, the final rate distribution base (as defined in subsection 2) for each major function (organized research, instruction, etc., as described in Section A.1 functions of an institution) must contain all the programs or activities which utilize the indirect (F&A) costs allocated to that major function. At the time an indirect (F&A) cost proposal is submitted to a cognizant agency for indirect costs, each institution must describe the process it uses to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

2. The Distribution Basis

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and up to the first $25,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in § 200.1. For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is of the modified total direct costs identified with such pool.

3. Negotiated Lump Sum for Indirect (F&A) Costs

A negotiated fixed amount in lieu of indirect (F&A) costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's indirect (F&A) services cannot be readily determined. Such negotiated indirect (F&A) costs will be treated as an

offset before allocation to instruction, organized research, other sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. Predetermined Rates for Indirect (F&A) Costs

Public Law 87-638 (76 Stat. 437) as amended (41 U.S.C. 4708) authorizes the use of predetermined rates in determining the "indirect costs" (indirect (F&A) costs) applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect (F&A) costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect (F&A) costs during the ensuing accounting periods.

5. Negotiated Fixed Rates and Carry-Forward Provisions

When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect (F&A) cost for the next rate negotiation. When the rate is negotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect (F&A) costs allocable to Federal awards for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years must not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant agency for indirect costs as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change without prior approval of the cognizant agency for indirect costs. In the event that an institution returns to a post-determined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent post-determined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate.

6. Provisional and Final Rates for Indirect (F&A) Costs

Where the cognizant agency for indirect costs determines that cost experience and other pertinent facts do not justify the use of predetermined rates, or a fixed rate with a carry-forward, or if the parties cannot agree on an equitable rate, a provisional rate must be established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency for indirect costs during the institution's fiscal year. Predetermined or fixed rates may replace provisional rates at any time prior to the

close of the institution's fiscal year. If a provisional rate is not replaced by a predetermined or fixed rate prior to the end of the institution's fiscal year, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

7. Fixed Rates for the Life of the Sponsored Agreement

a. Except as provided in paragraph (c)(1) of § 200.414, Federal agencies must use the negotiated rates in effect at the time of the initial award throughout the life of the Federal award. Award levels for Federal awards may not be adjusted in future years as a result of changes in negotiated rates. “Negotiated rates” per the rate agreement include final, fixed, and predetermined rates and exclude provisional rates. “Life” for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal awarding agency at the time of the Federal award. If negotiated rate agreements do not extend through the life of the Federal award at the time of the initial award, then the negotiated rate for the last year of the Federal award must be extended through the end of the life of the Federal award.

b. Except as provided in § 200.414, when an educational institution does not have a negotiated rate with the Federal Government at the time of an award (because the educational institution is a new recipient or the parties cannot reach agreement on a rate), the provisional rate used at the time of the award must be adjusted once a rate is negotiated and approved by the cognizant agency for indirect costs.

8. Limitation on Reimbursement of Administrative Costs

a. Notwithstanding the provisions of subsection C.1.a, the administrative costs charged to Federal awards awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, must be limited to 26% of modified total direct costs (as defined in subsection 2) for the total of General Administration and General Expenses, Departmental Administration, Sponsored Projects Administration, and Student Administration and Services (including their allocable share of depreciation, interest costs, operation and maintenance expenses, and fringe benefits costs, as provided by Section B, and all other types of expenditures not listed specifically under one of the subcategories of facilities in Section B.

b. Institutions should not change their accounting or cost allocation methods if the effect is to change the charging of a particular type of cost from F&A to direct, or to reclassify costs, or increase allocations from the administrative pools identified in paragraph B.1 of this Appendix to the other F&A cost pools or fringe benefits. Cognizant agencies for indirect cost are authorized to allow changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions.

9. Alternative Method for Administrative Costs

a. Notwithstanding the provisions of subsection C.1.a, an institution may elect to claim a fixed allowance for the “Administration” portion of indirect (F&A) costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under “Administration” as defined in Section B.1, whichever is less. Under this alternative, no cost proposal need be prepared for the “Administration”

portion of the indirect (F&A) cost rate nor is further identification or documentation of these costs required (see subsection c). Where a negotiated indirect (F&A) cost agreement includes this alternative, an institution must make no further charges for the expenditure categories described in Section B.5, Section B.6, Section B.7, and Section B.9.

b. In negotiations of rates for subsequent periods, an institution that has elected the option of subsection a may continue to exercise it at the same rate without further identification or documentation of costs.

c. If an institution elects to accept a threshold rate as defined in subsection a of this section, it is not required to perform a detailed analysis of its administrative costs. However, in order to compute the facilities components of its indirect (F&A) cost rate, the institution must reconcile its indirect (F&A) cost proposal to its financial statements and make appropriate adjustments and reclassifications to identify the costs of each major function as defined in Section A.1, as well as to identify and allocate the facilities components. Administrative costs that are not identified as such by the institution's accounting system (such as those incurred in academic departments) will be classified as instructional costs for purposes of reconciling indirect (F&A) cost proposals to financial statements and allocating facilities costs.

10. Individual Rate Components

In order to provide mutually agreed-upon information for management purposes, each indirect (F&A) cost rate negotiation or determination must include development of a rate for each indirect (F&A) cost pool as well as the overall indirect (F&A) cost rate.

11. Negotiation and Approval of Indirect (F&A) Rate

a. Cognizant agency for indirect costs is defined in Subpart A.

(1) Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds directly to the educational institution for the most recent three years. Information on funding must be derived from relevant data gathered by the National Science Foundation. In cases where neither HHS nor DOD provides Federal funding directly to an educational institution, the cognizant agency for indirect costs assignment must default to HHS. Notwithstanding the method for cognizance determination described in this section, other arrangements for cognizance of a particular educational institution may also be based in part on the types of research performed at the educational institution and must be decided based on mutual agreement between HHS and DOD. Where a non-Federal entity only receives funds as a subrecipient, see § 200.332.

(2) After cognizance is established, it must continue for a five-year period.

b. Acceptance of rates. See § 200.414.

c. Correcting deficiencies. The cognizant agency for indirect costs must negotiate changes needed to correct systems deficiencies relating to accountability for Federal awards. Cognizant agencies for indirect costs must address the concerns of other affected agencies, as appropriate, and must negotiate special rates for Federal agencies that are required to limit recovery of indirect costs by statute.

d. Resolving questioned costs. The cognizant agency for indirect costs must conduct any necessary negotiations with an educational institution regarding amounts questioned by audit that are due the Federal Government related to costs covered by a negotiated agreement.

e. Reimbursement. Reimbursement to cognizant agencies for indirect costs for work performed under this Part may be made by reimbursement billing under the Economy Act, 31 U.S.C. 1535.

f. Procedure for establishing facilities and administrative rates must be established by one of the following methods:

(1) Formal negotiation. The cognizant agency for indirect costs is responsible for negotiating and approving rates for an educational institution on behalf of all Federal agencies. Federal awarding agencies that do not have cognizance for indirect costs must notify the cognizant agency for indirect costs of specific concerns (i.e., a need to establish special cost rates) which could affect the negotiation process. The cognizant agency for indirect costs must address the concerns of all interested agencies, as appropriate. A pre-negotiation conference may be scheduled among all interested agencies, if necessary. The cognizant agency for indirect costs must then arrange a negotiation conference with the educational institution.

(2) Other than formal negotiation. The cognizant agency for indirect costs and educational institution may reach an agreement on rates without a formal negotiation conference; for example, through correspondence or use of the simplified method described in this section D of this Appendix.

g. Formalizing determinations and agreements. The cognizant agency for indirect costs must formalize all determinations or agreements reached with an educational institution and provide copies to other agencies having an interest. Determinations should include a description of any adjustments, the actual amount, both dollar and percentage adjusted, and the reason for making adjustments.

h. Disputes and disagreements. Where the cognizant agency for indirect costs is unable to reach agreement with an educational institution with regard to rates or audit resolution, the appeal system of the cognizant agency for indirect costs must be followed for resolution of the disagreement.

12. Standard Format for Submission

For facilities and administrative (indirect (F&A)) rate proposals, educational institutions must use the standard format, shown in section E of this appendix, to submit their indirect (F&A) rate proposal to the cognizant agency for indirect costs. The cognizant agency for indirect costs may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions that use the simplified method for calculating indirect (F&A) rates, as described in Section D of this Appendix.

As provided in section C.10 of this appendix, each F&A cost rate negotiation or determination must include development of a rate for each F&A cost pool as well as the overall F&A rate.

D. Simplified Method for Small Institutions

1. General

a. Where the total direct cost of work covered by this Part at an institution does not exceed $10 million in a fiscal year, the simplified procedure described in subsections 2 or 3 may be used in determining allowable indirect (F&A) costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information must be utilized as a basis for determining the indirect (F&A) cost rate applicable to all Federal awards. The institution may use either the salaries and wages (see subsection 2) or modified total direct costs (see subsection 3) as the distribution basis.

b. The simplified procedure should not be used where it produces results which appear inequitable to the Federal Government or the institution. In any such case, indirect (F&A) costs should be determined through use of the regular procedure.

2. Simplified Procedure—Salaries and Wages Base

a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The total amount of salaries and wages included in the indirect (F&A) cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in subsection a from the amount of salaries and wages included under subsection b.

d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the indirect (F&A) cost rate to direct salaries and wages for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

3. Simplified Procedure—Modified Total Direct Cost Base

a. Establish the total costs incurred by the institution for the base period.

b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments. In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The modified total direct costs amount included in the indirect (F&A) cost pool must be separately identified.

c. Establish a modified total direct cost distribution base, as defined in Section C.2, The distribution basis, that consists of all institution's direct functions.

d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the indirect (F&A) cost rate to the modified total direct costs for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

E. Documentation Requirements

The standard format for documentation requirements for indirect (indirect (F&A)) rate proposals for claiming costs under the regular method is available on the OMB website.

F. Certification

1. Certification of Charges

To assure that expenditures for Federal awards are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and intent set forth in the award documents. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code, Title 18, Section 1001 and Title 31, Sections 3729-3733 and 3801-3812)”.

2. Certification of Indirect (F&A) Costs

a. ***Policy.*** Cognizant agencies must not accept a proposed indirect cost rate unless such costs have been certified by the educational institution using the Certificate of indirect (F&A) Costs set forth in subsection F.2.c

b. The certificate must be signed on behalf of the institution by the chief financial officer or an individual designated by an individual at a level no lower than vice president or chief financial officer.

An indirect (F&A) cost rate is not binding upon the Federal Government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish indirect (F&A) cost rates, and the institution has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Federal Government must unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When indirect (F&A) cost rates are unilaterally established by the Federal Government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

c. ***Certificate.*** The certificate required by this section must be in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.

(3) This proposal does not include any costs which are unallowable under subpart E of this part such as (without limitation): Public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Institution of Higher Education:

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015; 85 FR 49577, Aug. 13, 2020]

Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations

Link to an amendment published at 89 FR 30206, Apr. 22, 2024.

A. General

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in § 200.413(d). After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefitting cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.
2. ***"Major nonprofit organizations"*** are defined in paragraph (a) of § 200.414. See indirect cost rate reporting requirements in sections B.2.e and B.3.g of this Appendix.

B. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General

a. If a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in section B.2 of this Appendix.

b. If an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fundraising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in section B.2 through B.5 of this Appendix.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year but, in any event, must be so selected as to avoid inequities in the allocation of the costs.

2. Simplified Allocation Method

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by

(i) separating the organization's total costs for the base period as either direct or indirect, and

(ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in § 200.413(e).

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as subawards for $25,000 or more), direct salaries and wages, or other base which results in an equitable distribution. The distribution base must exclude participant support costs as defined in § 200.1.

d. Except where a special rate(s) is required in accordance with section B.5 of this Appendix, the indirect cost rate developed under the above principles is applicable to all Federal awards of the organization. If a special rate(s) is required, appropriate modifications must be made in order to develop the special rate(s).

e. For an organization that receives more than $10 million in direct Federal funding in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in paragraph (a) of § 200.414, is required. The rate in each case must be stated as the percentage which the amount of the particular indirect cost category (*i.e.,* Facilities or Administration) is of the distribution base identified with that category.

3. Multiple Allocation Base Method

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs must be accumulated into separate cost groupings, as described in subparagraph b. Each grouping must then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in section B.3.c of this Appendix.

b. Identification of indirect costs. Cost groupings must be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping must constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: “Facilities” and “Administration,” as described in section A.3 of this Appendix. The indirect cost pools are defined as follows:

(1) Depreciation. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with § 200.436.

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with § 200.449.

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expenses category must also include its allocable share of fringe benefit costs, depreciation, and interest costs.

(4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category must also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs must be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate as described in § 200.413. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation must be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution must be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base

would not increase the costs charged to Federal awards. The results of special cost studies (such as an engineering utility study) must not be used to determine and allocate the indirect costs to Federal awards.

(1) Depreciation. Depreciation expenses must be allocated in the following manner:

(a) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.

(b) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation on buildings, capital improvements and equipment related space (e.g., individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to the benefitting functions on the basis of:

(i) the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefitting from the use of that space; or

(ii) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.

(d) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital equipment to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses must be allocated in the same manner as the depreciation.

(4) General administration and general expenses. General administration and general expenses must be allocated to benefitting functions based on modified total costs (MTC). The MTC is the modified total direct costs (MTDC), as described in § 200.1, plus the allocated indirect cost proportion. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to benefitting functions based on MTC.

d. Order of distribution.

(1) Indirect cost categories consisting of depreciation, interest, operation and maintenance, and general administration and general expenses must be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization.

Other cost categories should be allocated in the order determined to be most appropriate by the organization. This order of allocation does not apply if cross allocation of costs is made as provided in section B.3.d.2 of this Appendix.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs must not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with section B.5 of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs must be distributed to applicable Federal awards and other benefitting activities within each major function on the basis of MTDC (see definition in § 200.1).

g. Individual Rate Components. An indirect cost rate must be determined for each separate indirect cost pool developed. The rate in each case must be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement must include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools must be classified within two broad categories: “Facilities” and “Administration,” as described in § 200.414(a).

4. Direct Allocation Method

a. Some nonprofit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories:

(i) General administration and general expenses,

(ii) fundraising, and

(iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each Federal award or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each Federal award or other activity. The bases must be established in accordance with reasonable criteria and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary

Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates must be computed in the same manner as that described in section B.2 of this Appendix.

5. Special Indirect Cost Rates

In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single Federal award or it may consist of work under a group of Federal awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that (i) the rate differs significantly from that which would have been obtained under sections B.2, B.3, and B.4 of this Appendix, and (ii) the volume of work to which the rate would apply is material.

C. Negotiation and Approval of Indirect Cost Rates

1. Definitions

As used in this section, the following terms have the meanings set forth in this section:

a. ***Cognizant agency for indirect costs*** means the Federal agency responsible for negotiating and approving indirect cost rates for a nonprofit organization on behalf of all Federal agencies.

b. ***Predetermined rate*** means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. ***Fixed rate*** means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

d. ***Final rate*** means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

e. ***Provisional rate or billing rate*** means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a final rate for the period.

f. ***Indirect cost proposal*** means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. ***Cost objective*** means a function, organizational subdivision, contract, Federal award, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. Negotiation and Approval of Rates

a. Unless different arrangements are agreed to by the Federal agencies concerned, the Federal agency with the largest dollar value of Federal awards directly funded to an organization will be designated as the cognizant agency for indirect costs for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a shift in the dollar volume of the Federal awards directly funded to the organization for at least three years. All concerned Federal agencies must be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates in accordance with section B.5 of this Appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs. (See also § 200.414.) If the nonprofit does not receive any funding from any Federal agency, the pass-through entity is responsible for the negotiation of the indirect cost rates in accordance with § 200.332(a)(4).

b. Except as otherwise provided in § 200.414(f), a nonprofit organization which has not previously established an indirect cost rate with a Federal agency must submit its initial indirect cost proposal immediately after the organization is advised that a Federal award will be made and, in no event, later than three months after the effective date of the Federal award.

c. Unless approved by the cognizant agency for indirect costs in accordance with § 200.414(g), organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency for indirect costs within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on Federal awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, must not be negotiated if

(i) all or a substantial portion of the organization's Federal awards are expected to expire before the carry-forward adjustment can be made;

(ii) the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or

(iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates must be negotiated where neither predetermined nor fixed rates are appropriate. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the organization's fiscal year. If that event does not occur, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

g. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the nonprofit organization. The cognizant agency for indirect costs must make available copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency for indirect costs and the nonprofit organization, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

D. Certification of Indirect (F&A) Costs

(1) Required Certification. No proposal to establish indirect (F&A) cost rates must be acceptable unless such costs have been certified by the nonprofit organization using the Certificate of Indirect (F&A) Costs set forth in section j. of this appendix. The certificate must be signed on behalf of the organization by an individual at a level no lower than vice president or chief financial officer for the organization.

(2) Each indirect cost rate proposal must be accompanied by a certification in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal awards to which they apply and with subpart E of this part.

(3) This proposal does not include any costs which are unallowable under subpart E of this part such as (without limitation): Public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Nonprofit Organization: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54410, Sept. 10, 2015; 85 FR 49579, Aug. 13, 2020]

Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans

A. General

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "*A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government.*" A copy of this brochure may be obtained from the HHS Cost Allocation Services or at their website.

B. Definitions

1. ***Agency or operating agency*** means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of Federal awards or activities of the governmental unit.

2. ***Allocated central services*** means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. ***Billed central services*** means central services that are billed to benefitted agencies or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

4. ***Cognizant agency for indirect costs*** is defined in § 200.1. The determination of cognizant agency for indirect costs for states and local governments is described in section F.1.

5. ***Major local government*** means local government that receives more than $100 million in direct Federal awards subject to this Part.

C. Scope of the Central Service Cost Allocation Plans

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. omitted from the plan will not be reimbursed.

D. Submission Requirements

1. Each state will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include
   (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and
   (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.
2. Each major local government is also required to submit a plan to its cognizant agency for indirect costs annually.
3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Part and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a local government only receives funds as a subrecipient, the pass-through entity will be responsible for monitoring the subrecipient's plan.
4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency for indirect costs on a case-by-case basis.

E. Documentation Requirements for Submitted Plans

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency for indirect costs on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General

All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the state/local government whether or not they are shown as benefitting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Part, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. Allocated Central Services

For each allocated central service*, the plan must also include the following: a brief description of the service, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. must also be included.

3. Billed Services

a. ***General.*** The information described in this section must be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. Internal service funds.

(1) For each internal service fund or similar activity with an operating budget of $5 million or more, the plan must include: A brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, *e.g.,* regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by GAAP) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this part, with an explanation of how variances will be handled.

(2) Revenues must consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users must be provided. Expenses must be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. ***Self-insurance funds.*** For each self-insurance fund, the plan must include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial

report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims

(1) submitted and adjudicated but not paid,

(2) submitted but not adjudicated, and

(3) incurred but not submitted must be identified and explained.

d. ***Fringe benefits.*** For fringe benefit costs, the plan must include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information must be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or state-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required Certification

Each central service cost allocation plan will be accompanied by a certification in the following form:

CERTIFICATE OF COST ALLOCATION PLAN

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of this Part and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

F. Negotiation and Approval of Central Service Plans

1. Federal Cognizant Agency for Indirect Costs Assignments for Cost Negotiation

In general, unless different arrangements are agreed to by the concerned Federal agencies, for central service cost allocation plans, the cognizant agency responsible for review and approval is the Federal agency with the largest dollar value of total Federal awards with a governmental unit. For indirect cost rates and departmental indirect cost allocation plans, the cognizant agency is the Federal agency with the largest dollar value of direct Federal awards with a governmental unit or component, as appropriate. Once designated as the cognizant agency for indirect costs, the Federal agency must remain so for a period of five years. In addition, the following Federal agencies continue to be responsible for the indicated governmental entities:

Department of Health and Human Services —Public assistance and state-wide cost allocation plans for all states (including the District of Columbia and Puerto Rico), state and local hospitals, libraries and health districts.

Department of the Interior —Indian tribal governments, territorial governments, and state and local park and recreational districts.

Department of Labor —State and local labor departments.

Department of Education —School districts and state and local education agencies.

Department of Agriculture —State and local agriculture departments.

Department of Transportation —State and local airport and port authorities and transit districts.

Department of Commerce —State and local economic development districts.

Department of Housing and Urban Development —State and local housing and development districts.

Environmental Protection Agency —State and local water and sewer districts.

2. Review

All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the cognizant agency for indirect costs on a timely basis. The cognizant agency for indirect costs will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency for indirect costs.

3. Agreement

The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation must be made available to all Federal agencies for their use.

4. Adjustments

Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in subpart F, General Provisions for selected Items of Cost of this Part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, must be adjusted, or a refund must be made at the option of the cognizant agency for indirect costs, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations. Adjustments or cash refunds may include, at the option of the cognizant agency for indirect costs, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. Other Policies

1. Billed Central Service Activities

Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working Capital Reserves

Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 calendar days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 calendar days may be approved by the cognizant agency for indirect costs in exceptional cases.

3. Carry-Forward Adjustments of Allocated Central Service Costs

Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the

actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of Billed Central Services

Billing rates used to charge Federal awards must be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds $500,000. Adjustment methods may include, at the option of the cognizant agency, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations.

5. Records Retention

All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in subpart D of this part.

6. Appeals

If a dispute arises in the negotiation of a plan between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

7. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54410, Sept. 10, 2015; 85 FR 49581, Aug. 13, 2020]

Appendix VI to Part 200—Public Assistance Cost Allocation Plans

A. General

Federally-financed programs administered by state public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Appendix extends these requirements to all Federal awarding agencies whose programs are administered by a state public assistance agency. Major federally-financed programs typically administered by state public assistance agencies include: Temporary Aid to Needy Families (TANF), Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. Definitions

1. ***State public assistance agency*** means a state agency administering or supervising the administration of one or more public assistance programs operated by the state as identified in Subpart E of 45 CFR Part 95. For the purpose of this Appendix, these programs include all programs administered by the state public assistance agency.
2. ***State public assistance agency costs*** means all costs incurred by, or allocable to, the state public assistance agency, except expenditures for financial assistance, medical contractor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. Policy

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the state public assistance agency. Where a letter of approval or disapproval is transmitted to a state public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Appendix (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.
2. Under the coordination process outlined in section E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the calendar quarter following the event that required the amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency for indirect costs acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the state public assistance agency and will inform the state agency of the action taken on the plan or plan amendment.

E. Review of Implementation of Approved Plans

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the Federal awarding agencies, single audits, or audits conducted by the cognizant agency for indirect costs.
2. Where inappropriate charges affecting more than one Federal awarding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.
3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more Federal awarding agencies, the dispute must be resolved in accordance with the appeals procedures set out in 45 CFR Part 16. Disputes involving only one Federal awarding agency will be resolved in accordance with the Federal awarding agency's appeal process.
4. To the extent that problems are encountered among the Federal awarding agencies or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. Unallowable Costs

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Part. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual Federal awards. Cash refunds, offsets, and credits may include at the option of the cognizant agency for indirect cost, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency for indirect cost claims collection regulations.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49581, Aug. 13, 2020]

Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals

Link to an amendment published at 89 FR 30207, Apr. 22, 2024.

A. General

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include

   (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and

   (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix V to this part) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "*A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.*" A copy of this brochure may be obtained from HHS Cost Allocation Services or at their website.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain state/local-wide central service costs, general administration of the non-Federal entity accounting and personnel services performed within the non-Federal entity, depreciation on buildings and equipment, the costs of operating and maintaining facilities.

5. This Appendix does not apply to state public assistance agencies. These agencies should refer instead to Appendix VI to this part.

B. Definitions

1. ***Base*** means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each Federal award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

2. ***Base period*** for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, must be so selected as to avoid inequities in the allocation of costs.

3. ***Cognizant agency for indirect costs*** means the Federal agency responsible for reviewing and approving the governmental unit's indirect cost rate(s) on the behalf of the Federal Government. The cognizant agency for indirect costs assignment is described in Appendix V, section F.

4. ***Final rate*** means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

5. ***Fixed rate*** means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

6. ***Indirect cost pool*** is the accumulated costs that jointly benefit two or more programs or other cost objectives.

7. ***Indirect cost rate*** is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

8. ***Indirect cost rate proposal*** means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

9. ***Predetermined rate*** means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency for indirect costs. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

10. ***Provisional rate*** means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a “final” rate for that period.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. Simplified Method

a. Where a non-Federal entity's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by

(1) classifying the non-Federal entity's total costs for the base period as either direct or indirect, and

(2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be

(1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, subcontracts in excess of $25,000, participant support costs, etc.),

(2) direct salaries and wages, or

(3) another base which results in an equitable distribution.

3. Multiple Allocation Base Method

a. Where a non-Federal entity's indirect costs benefit its major functions in varying degrees, such costs must be accumulated into separate cost groupings. Each grouping must then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that:

(1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and

(2) it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with paragraph (C)(4) of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be

(1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, subawards in excess of $25,000, participant support costs, etc.),

(2) direct salaries and wages, or

(3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special Indirect Cost Rates

a. In some instances, a single indirect cost rate for all activities of a non-Federal entity or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular Federal award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that Federal award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that:

(1) The rate differs significantly from the rate which would have been developed under paragraphs (C)(2) and (C)(3) of this Appendix, and

(2) the Federal award to which the rate would apply is material in amount.

b. Where Federal statutes restrict the reimbursement of certain indirect costs, it may be necessary to develop a special rate for the affected Federal award. Where a “restricted rate” is required, the same procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals

1. Submission of Indirect Cost Rate Proposals

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in § 200.334.

b. A governmental department or agency unit that receives more than $35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs. Other governmental department or agency must develop an indirect cost proposal in accordance with the requirements of this Part and maintain the proposal and related supporting documentation for audit. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a non-Federal entity only receives funds as a subrecipient, the pass-through entity will be responsible for negotiating and/or monitoring the subrecipient's indirect costs.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant agency for indirect costs).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of Proposals

The following must be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency for indirect costs and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency for indirect costs in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required certification.

Each indirect cost rate proposal must be accompanied by a certification in the following form:

Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and the provisions of this Part. Unallowable costs have been adjusted for in allocating costs as indicated in the indirect cost proposal

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

E. Negotiation and Approval of Rates

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency for indirect costs has reasonable assurance based on past experience and reliable projection of the non-Federal entity's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates must be made available to all Federal agencies for their use.

4. Refunds must be made if proposals are later found to have included costs that

(a) are unallowable

(i) as specified by law or regulation,

(ii) as identified in § 200.420, or

(iii) by the terms and conditions of Federal awards, or

(b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies

1. Fringe Benefit Rates

If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual recipient agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the recipient agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency for indirect costs.

2. Billed Services Provided by the Recipient Agency

In some cases, governmental departments or agencies (components of the governmental unit) provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental departments or agencies (components of the governmental unit)should be guided by the requirements in Appendix V relating to the development of billing rates and documentation requirements, and should advise the cognizant agency for indirect costs of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. Indirect Cost Allocations Not Using Rates

In certain situations, governmental departments or agencies (components of the governmental unit), because of the nature of their Federal awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for indirect costs for review, negotiation, and approval.

4. Appeals

If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

5. Collection of Unallowable Costs and Erroneous Payments

Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations).

6. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75889, Dec. 19, 2014; 85 FR 49581, Aug. 13, 2020]

Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E of Part 200

1. Advance Technology Institute (ATI), Charleston, South Carolina
2. Aerospace Corporation, El Segundo, California
3. American Institutes of Research (AIR), Washington, DC
4. Argonne National Laboratory, Chicago, Illinois
5. Atomic Casualty Commission, Washington, DC
6. Battelle Memorial Institute, Headquartered in Columbus, Ohio
7. Brookhaven National Laboratory, Upton, New York
8. Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
9. CNA Corporation (CNAC), Alexandria, Virginia
10. Environmental Institute of Michigan, Ann Arbor, Michigan
11. Georgia Institute of Technology/Georgia Tech Applied Research Corporation/Georgia Tech Research Institute, Atlanta, Georgia
12. Hanford Environmental Health Foundation, Richland, Washington
13. IIT Research Institute, Chicago, Illinois
14. Institute of Gas Technology, Chicago, Illinois
15. Institute for Defense Analysis, Alexandria, Virginia
16. LMI, McLean, Virginia
17. Mitre Corporation, Bedford, Massachusetts
18. Noblis, Inc., Falls Church, Virginia
19. National Radiological Astronomy Observatory, Green Bank, West Virginia
20. National Renewable Energy Laboratory, Golden, Colorado

21. Oak Ridge Associated Universities, Oak Ridge, Tennessee
22. Rand Corporation, Santa Monica, California
23. Research Triangle Institute, Research Triangle Park, North Carolina
24. Riverside Research Institute, New York, New York
25. South Carolina Research Authority (SCRA), Charleston, South Carolina
26. Southern Research Institute, Birmingham, Alabama
27. Southwest Research Institute, San Antonio, Texas
28. SRI International, Menlo Park, California
29. Syracuse Research Corporation, Syracuse, New York
30. Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois
31. Urban Institute, Washington DC
32. Nonprofit insurance companies, such as Blue Cross and Blue Shield Organizations
33. Other nonprofit organizations as negotiated with Federal awarding agencies

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49582, Aug. 13, 2020]

Appendix IX to Part 200—Hospital Cost Principles

Until such time as revised guidance is proposed and implemented for hospitals, the existing principles located at 45 CFR part 75 Appendix IX, entitled "Principles for Determining Cost Applicable to Research and Development Under Grants and Contracts with Hospitals," remain in effect.

[86 FR 10440, Feb. 22, 2021]

Appendix X to Part 200—Data Collection Form (Form SF-SAC)

Link to an amendment published at 89 FR 30207, Apr. 22, 2024.

The Data Collection Form SF-SAC is available on the FAC Web site.

Appendix XI to Part 200—Compliance Supplement

The compliance supplement is available on the OMB website.

[85 FR 49582, Aug. 13, 2020]

Appendix XII to Part 200—Award Term and Condition for Recipient Integrity and Performance Matters

Link to an amendment published at 89 FR 30207, Apr. 22, 2024.

A. Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached its final disposition during the most recent five-year period; and

c. Is one of the following:

(1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

(2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

(3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or

(4) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.,* Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

(1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

B. [Reserved]

[80 FR 43310, July 22, 2015, as amended at 85 FR 49582, Aug. 13, 2020]

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

CITY OF BOYNTON BEACH, FLORIDA

DRINKING WATER STATE REVOLVING FUND
PLANNING AND DESIGN LOAN AGREEMENT
DW501300

Florida Department of Environmental Protection
State Revolving Fund Program
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard, MS 3505
Tallahassee, Florida 32399-3000

DRINKING WATER STATE REVOLVING FUND PLANNING AND DESIGN LOAN AGREEMENT

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DRINKING WATER STATE REVOLVING FUND

PLANNING AND DESIGN LOAN AGREEMENT

DW501300

THIS AGREEMENT is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the CITY OF BOYNTON BEACH, FLORIDA, (Project Sponsor) existing as a local governmental entity under the laws of the State of Florida. Collectively, the Department and the Project Sponsor shall be referred to as "Parties" or individually as "Party".

RECITALS

Pursuant to Section 403.8532, Florida Statutes and Chapter 62-552, Florida Administrative Code, the Department is authorized to make loans to finance the planning, design and construction of public water systems; and

The Department is authorized to allow Principal Forgiveness on Loans funded by the Federal Drinking Water Act; and

The Project Sponsor applied for the financing of Planning and Design Activities, and the Department has determined that all requirements for a Loan and Principal Forgiveness have been met.

AGREEMENT

In consideration of the Department loaning money to the Project Sponsor, in the principal amount and pursuant to the covenants set forth below, it is agreed as follows:

ARTICLE I - DEFINITIONS

1.01. WORDS AND TERMS.

Words and terms used herein shall have the meanings set forth below:

(1) "Agreement" or "Loan Agreement" shall mean this agreement.

(2) "Authorized Representative" shall mean the official of the Project Sponsor authorized by ordinance or resolution to sign documents associated with the Loan.

(3) "Depository" shall mean a bank or trust company, having a combined capital and unimpaired surplus of not less than $50 million, authorized to transact commercial banking or savings and loan business in the State of Florida and insured by the Federal Deposit Insurance Corporation.

(4) "Design Activities" shall mean the design of work defined in the approved planning document that will result in plans and specifications, ready for permitting and bidding, for an eligible construction project.

(5) "Final Amendment" shall mean the final agreement executed between the parties that establishes the final terms for the Loan such as the final Loan amount.

(6) "Final Unilateral Amendment" shall mean the Loan Agreement unilaterally finalized by the Department after Loan Agreement and Project abandonment under Section 8.06 that establishes the final amortization schedule for the Loan.

(7) "Financial Assistance" shall mean Principal Forgiveness funds or Loan funds.

(8) "Gross Revenues" shall mean all income or earnings received by the Project Sponsor from the ownership or operation of its Utility System, including investment income, all as calculated in accordance with generally accepted accounting principles. Gross Revenues shall not include proceeds from the sale or other disposition of any part of the Utility System, condemnation awards or proceeds of insurance, except use and occupancy or business interruption insurance, received with respect to the Utility System.

(9) "Loan" shall mean the amount of money to be loaned pursuant to this Agreement and subsequent amendments.

(10) "Loan Application" shall mean the completed form which provides all information required to support obtaining loan financial assistance from the Department.

(11) "Local Governmental Entity" means a county, municipality, or special district.

(12) "Operation and Maintenance Expense" shall mean the costs of operating and maintaining the Utility System determined pursuant to generally accepted accounting principles, exclusive of interest on any debt payable from Gross Revenues, depreciation, and any other items not requiring the expenditure of cash.

(13) "Planning Activities" shall mean the planning or administrative work necessary for the Project Sponsor to qualify for Drinking Water State Revolving Fund financing for construction of drinking water facilities.

(14) "Principal Forgiveness" shall mean the amount of money awarded pursuant to this Agreement and subsequent amendments that is not to be repaid.

(15) "Project" shall mean the Planning and Design Activities to address emerging contaminants. This Project is a Capitalization Grant Project as defined in Chapter 62-552, Florida Administrative Code.

(16) "Utility System" shall mean all devices and facilities of the Water System owned by the Project Sponsor.

(17) "Water System" shall mean all facilities owned by the Project Sponsor for supplying and distributing water for residential, commercial, industrial, and governmental use.

1.02. CORRELATIVE WORDS.

Words of the masculine gender shall be understood to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural and the word "person" shall include corporations and associations, including public entities, as well as natural persons.

ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS

2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS.

The Project Sponsor warrants, represents and covenants that:

(1) The Project Sponsor has full power and authority to enter into this Agreement and to comply with the provisions hereof.

(2) The Project Sponsor currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.

(3) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the Project Sponsor's knowledge, threatened, which seeks to restrain or enjoin the Project Sponsor from entering into or complying with this Agreement.

(4) The Project Sponsor shall undertake the Project on its own responsibility, to the extent permitted by law.

(5) To the extent permitted by law, the Project Sponsor shall release and hold harmless the State, its officers, members, and employees from any claim arising in connection with the Project Sponsor's actions or omissions in its Planning and Design Activities financed by this Loan.

(6) All Project Sponsor representations to the Department, pursuant to the Loan Application and Agreement, were true and accurate as of the date such representations were made. The financial information delivered by the Project Sponsor to the Department was current and correct as of the date such information was delivered. The Project Sponsor shall comply with Chapter 62-552, Florida Administrative Code, and all applicable State and Federal laws, rules, and regulations which are identified in the Loan Application or Agreement. To the extent that any assurance, representation, or covenant requires a future action, the Project Sponsor shall take such action to comply with this agreement.

(7) The Project Sponsor shall maintain records using generally accepted accounting principles established by the Governmental Accounting Standards Board. As part of its bookkeeping system, the Project Sponsor shall keep accounts of the Utility System separate from all other accounts and it shall keep accurate records of all revenues, expenses, and expenditures relating to the Utility System, and Loan disbursement receipts.

(8) RESERVED.

(9) Pursuant to Section 216.347 of the Florida Statutes, the Project Sponsor shall not use the Loan proceeds for the purpose of lobbying the Florida Legislature, the Judicial Branch, or a State agency.

(10) The Project Sponsor agrees to complete the Planning and Design Activities in accordance with the schedule set forth in Section 10.07. Delays incident to strikes, riots, acts of God, and other events beyond the reasonable control of the Project Sponsor are excepted.

(11) The Project Sponsor covenants that this Agreement is entered into for the purpose of completing Planning and Design Activities in order to construct facilities which will, in all events, serve a public purpose.

2.02. LEGAL AUTHORIZATION.

Upon signing this Agreement, the Project Sponsor's legal counsel hereby expresses the opinion, subject to laws affecting the rights of creditors generally, that this Agreement has been duly authorized by the Project Sponsor and shall constitute a valid and legal obligation of the Project Sponsor enforceable in accordance with its terms upon execution by both parties; and

2.03. AUDIT AND MONITORING REQUIREMENTS.

The Project Sponsor agrees to the following audit and monitoring requirements.

(1) The financial assistance authorized pursuant to this Loan Agreement consists of the following:

Federal Resources, Including State Match, Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
4E-02D65722-0	EPA	66.468	Capitalization Grants for Drinking Water State Revolving Fund	$5,167,179	140129

(2) Audits.

(a) In the event that the Project Sponsor expends $750,000 or more in Federal awards in its fiscal year, the Project Sponsor must have a Federal single audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. In determining the Federal awards expended in its fiscal year, the Project Sponsor shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F. An audit of the Project Sponsor conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F, will meet the requirements of this part.

(b) In connection with the audit requirements addressed in the preceding paragraph (a), the Project Sponsor shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR Part 200, Subpart F.

(c) If the Project Sponsor expends less than $750,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F, is not required. The Project Sponsor shall inform the Department of findings and recommendations pertaining to the State Revolving Fund in audits conducted by the Project Sponsor. In the event that the Project Sponsor expends less than $750,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from Project Sponsor resources obtained from other than Federal entities).

(d) The Project Sponsor may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at https://sam.gov/.

(3) Report Submission.

(a) Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F, and required by Subsection 2.03(2) of this Agreement shall be submitted, when required by 2 CFR Part 200, Subpart F, by or on behalf of the Project Sponsor directly to each of the following:

(i) The Department at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of the Inspector General, MS40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-30000

Electronically:
FDEPSingleAudit@dep.state.fl.us

(ii) The Federal Audit Clearinghouse designated in 2 CFR Section 200.501(a) at the following address:

https://harvester.census.gov/facweb/

(iii) Other Federal agencies and pass-through entities in accordance with 2 CFR Section 200.512.

(b) Pursuant to 2 CFR Part 200, Subpart F, the Project Sponsor shall submit a copy of the reporting package described in 2 CFR Part 200, Subpart F, and any management letters issued by the auditor, to the Department at the address listed under Subsection 2.03(3)(a)(i) of this Agreement.

(c) Any reports, management letters, or other information required to be submitted to the Department pursuant to this Agreement shall be submitted timely in accordance with 2 CFR Part 200, Subpart F, Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

(d) Project Sponsors, when submitting financial reporting packages to the Department for audits done in accordance with 2 CFR Part 200, Subpart F, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Project Sponsor in correspondence accompanying the reporting package.

(4) Record Retention.

The Project Sponsor shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date of the Final Amendment, and shall allow the Department, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The Project Sponsor shall ensure that working papers are made available to the Department, or its designee, Chief Financial Officer, or Auditor General upon request for a period of five years from the date of the Final Amendment, unless extended in writing by the Department.

(5) Monitoring.

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F, as revised (see audit requirements above), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by 2 CFR Part 200, Subpart F., and/or other procedures. By entering into this Agreement, the Project Sponsor agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Project Sponsor is appropriate, the Project Sponsor agrees to comply with any additional instructions provided by the Department to the Project Sponsor regarding such audit. The Project Sponsor understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. The Project Sponsor will comply with this duty and ensure that any subcontracts issued under this Agreement will impose this requirement, in writing, on its subcontractors.

ARTICLE III – RESERVED

ARTICLE IV - PROJECT INFORMATION

4.01. PROJECT CHANGES.

After the Department's environmental review has been completed, the Project Sponsor shall promptly notify the Department, in writing, of any Project change that would require a modification to the environmental information document.

4.02. CLOSE-OUT.

The Department shall conduct a final inspection of the Planning and Design Activities records. Following the inspection, deadlines for submitting additional disbursement requests, if any, shall be established, along with deadlines for uncompleted Loan or Principal Forgiveness requirements, if any. Deadlines shall be incorporated into the Loan Agreement by amendment. After the Department establishes the final costs to be financed by the Loan, the itemized costs will be adjusted by amendment. The Loan principal shall be reduced by any excess over the amount required to pay all approved costs.

4.03. DISBURSEMENTS.

Disbursements shall be made only by the State Chief Financial Officer and only when the requests for such disbursements are accompanied by a Department certification that such withdrawals are proper expenditures. Disbursements shall be made directly to the Project Sponsor for reimbursement of the incurred planning and design costs and related services. Disbursements for materials, labor, or services shall be made upon receipt of the following:

(1) A completed disbursement request form signed by the Authorized Representative. Such requests must be accompanied by sufficiently itemized summaries of the materials, labor, or services to identify the nature of the work performed; the cost or charges for such work; and the person providing the service or performing the work; and proof of payment.

(2) A certification signed by the Authorized Representative as to the current estimated costs of the Project; that the materials, labor, or services represented by the invoice have been satisfactorily purchased, performed, or received.

(3) Such other certificates or documents by engineers, attorneys, accountants, contractors, or suppliers as may reasonably be required by the Department.

Requests by the Project Sponsor for disbursements of the planning and design funds shall be made using the Department's disbursement request form. The Department reserves the right to retain 25% of the funds until the information necessary for the Department to prepare the Environmental Information Document as described in Rule 62-552.680, Florida Administrative Code, has been provided.

ARTICLE V - RATES AND USE OF THE UTILITY SYSTEM

5.01. RESERVED.

5.02. RESERVED.

5.03. RESERVED.

5.04. NO COMPETING SERVICE.

The Project Sponsor shall not allow any person to provide any services which would compete with the Utility System so as to adversely affect Gross Revenues.

5.05. MAINTENANCE OF THE UTILITY SYSTEM.

The Project Sponsor shall operate and maintain the Utility System in a proper, sound and economical manner and shall make all necessary repairs, renewals and replacements.

5.06. ADDITIONS AND MODIFICATIONS.

The Project Sponsor may make any additions, modifications or improvements to the Utility System which it deems desirable and which do not materially reduce the operational integrity of any part of the Utility System. All such renewals, replacements, additions, modifications and improvements shall become part of the Utility System.

5.07. RESERVED.

ARTICLE VI - DEFAULTS AND REMEDIES

6.01. EVENTS OF DEFAULT.

Upon the occurrence of any of the following events (the Events of Default) all obligations on the part of Department to make any further disbursements hereunder shall, if Department elects, terminate. The Department may, at its option, exercise any of its remedies set forth in this Agreement, but Department may make any disbursements or parts of disbursements after the happening of any Event of Default without thereby waiving the right to exercise such remedies and without becoming liable to make any further disbursement:

(1) RESERVED.

(2) Except as provided in Subsection 6.01(1) failure to comply with the provisions of this Agreement, failure in the performance or observance of any of the covenants or actions required by this Agreement or the Suspension of this Agreement by the Department pursuant to Section 8.11 below, and such failure shall continue for a period of 30 days after written notice thereof to the Project Sponsor by the Department.

(3) Any warranty, representation or other statement by, or on behalf of, the Project Sponsor contained in this Agreement or in any information furnished in compliance with, or in reference to, this Agreement, which is false or misleading, or if Project Sponsor shall fail to keep, observe or perform any of the terms, covenants, representations or warranties contained in this Agreement, the Note, or any other document given in connection with the Loan (provided, that with respect to non-monetary defaults, Department shall give written notice to Project Sponsor, which shall have 30 days to cure any such default), or is unable or unwilling to meet its obligations thereunder.

(4) An order or decree entered, with the acquiescence of the Project Sponsor, appointing a receiver of any part of the Utility System or Gross Revenues thereof; or if such order or decree, having been entered without the consent or acquiescence of the Project Sponsor, shall not be vacated or discharged or stayed on appeal within 60 days after the entry thereof.

(5) Any proceeding instituted, with the acquiescence of the Project Sponsor, for the purpose of effecting a composition between the Project Sponsor and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are payable from Gross Revenues of the Utility System.

(6) Any bankruptcy, insolvency or other similar proceeding instituted by, or against, the Project Sponsor under federal or state bankruptcy or insolvency law now or hereafter in effect and, if instituted against the Project Sponsor, is not dismissed within 60 days after filing.

(7) Any charge is brought alleging violations of any criminal law in the implementation of the Project or the administration of the proceeds from this Loan against one or more officials of the Project Sponsor by a State or Federal law enforcement authority, which charges are not withdrawn or dismissed within 60 days following the filing thereof.

(8) Failure of the Project Sponsor to give immediate written notice of its knowledge of a potential default or an event of default, hereunder, to the Department and such failure shall continue for a period of 30 days.

6.02. REMEDIES.

All rights, remedies, and powers conferred in this Agreement and the transaction documents are cumulative and are not exclusive of any other rights or remedies, and they shall be in addition to every other right, power, and remedy that Department may have, whether specifically granted in this Agreement or any other transaction document, or existing at law, in equity, or by statute. Any and all such rights and remedies may be exercised from time to time and as often and in such order as Department may deem expedient. Upon any of the Events of Default and subject to the rights of others having prior liens, the Department may enforce its rights by, *inter alia*, any of the following remedies:

(1) By mandamus or other proceeding at law or in equity, cause to establish rates and collect fees and charges for use of the Utility System, and to require the Project Sponsor to fulfill this Agreement.

(2) By action or suit in equity, require the Project Sponsor to account for all moneys received from the Department or from the ownership of the Utility System.

(3) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Department.

(4) By applying to a court of competent jurisdiction, cause to appoint a receiver to manage the Utility System, establish and collect fees and charges, and apply the revenues to the reduction of the obligations under this Agreement.

6.03. DELAY AND WAIVER.

No course of dealing between Department and Project Sponsor, or any failure or delay on the part of Department in exercising any rights or remedies hereunder, shall operate as a waiver of

any rights or remedies of Department, and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder. No delay or omission by the Department to exercise any right or power accruing upon Events of Default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient. No waiver or any default under this Agreement shall extend to or affect any subsequent Events of Default, whether of the same or different provision of this Agreement, or shall impair consequent rights or remedies.

ARTICLE VII - RESERVED

ARTICLE VIII - GENERAL PROVISIONS

8.01. RESERVED.

8.02. PROJECT RECORDS AND STATEMENTS.

Books, records, reports, engineering documents, contract documents, and papers shall be available to the authorized representatives of the Department for inspection at any reasonable time after the Project Sponsor has received a disbursement and until five years after the Final Amendment date.

8.03. ACCESS TO PROJECT SITE.

The Project Sponsor shall provide access to offices and other sites where Planning and Design Activities or Project work (if financed by this Loan) is ongoing, or has been performed, to authorized representatives of the Department at any reasonable time. The Project Sponsor shall cause its engineers and contractors to provide copies of relevant records and statements for inspection.

8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.

The Department may assign any part of its rights under this Agreement after notification to the Project Sponsor. The Project Sponsor shall not assign rights created by this Agreement without the written consent of the Department.

8.05. AMENDMENT OF AGREEMENT.

This Agreement may be amended, except that no amendment shall be permitted which is inconsistent with statutes, rules, regulations, executive orders, or written agreements between the Department and the U.S. Environmental Protection Agency (EPA). A Final Amendment establishing the final costs financed by this Loan and the actual Loan Service Fee shall be completed after the Department's final inspection of relevant documents and records.

8.06. ABANDONMENT, TERMINATION OR VOLUNTARY CANCELLATION.

Failure of the Project Sponsor to actively prosecute or avail itself of this Loan (including e.g. described in para 1 and 2 below) shall constitute its abrogation and abandonment of the rights

hereunder, and the Department may then, upon written notification to the Project Sponsor, suspend or terminate this Agreement.

(1) Failure of the Project Sponsor to draw Loan proceeds within eighteen months after the effective date of this Agreement, or by the date set in Section 10.07 to establish the Loan Debt Service Account, whichever date occurs first.

(2) Failure of the Project Sponsor, after the initial Loan draw, to draw any funds under the Loan Agreement for twenty-four months, without approved justification or demonstrable progress on the Project.

Upon a determination of abandonment by the Department, the Loan will be suspended, and the Department will implement administrative close out procedures (in lieu of those in Section 4.02) and provide written notification of Final Unilateral Amendment to the Project Sponsor.

In the event that following the execution of this Agreement, the Project Sponsor decides not to proceed with this Loan, this Agreement can be cancelled by the Project Sponsor, without penalty, if no funds have been disbursed.

8.07. SEVERABILITY CLAUSE.

If any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

8.08. RESERVED.

8.09. PUBLIC RECORDS ACCESS.

(1) The Project Sponsor shall comply with Florida Public Records law under Chapter 119, F.S. Records made or received in conjunction with this Agreement are public records under Florida law, as defined in Section 119.011(12), F.S. The Project Sponsor shall keep and maintain public records required by the Department to perform the services under this Agreement.

(2) This Agreement may be unilaterally canceled by the Department for refusal by the Project Sponsor to either provide to the Department upon request, or to allow inspection and copying of all public records made or received by the Project Sponsor in conjunction with this Agreement and subject to disclosure under Chapter 119, F.S., and Section 24(a), Article I, Florida Constitution.

(3) IF THE PROJECT SPONSOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROJECT SPONSOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT (850)245-2118, by email at public.services@dep.state.fl.us**, or at the mailing address below:**

Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Blvd, MS 49
Tallahassee, FL 32399

8.10. SCRUTINIZED COMPANIES.

(1) The Project Sponsor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Project Sponsor or its subcontractors are found to have submitted a false certification; or if the Project Sponsor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

(2) If this Agreement is for more than one million dollars, the Project Sponsor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Project Sponsor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Project Sponsor, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

(3) The Project Sponsor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(4) As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

8.11. SUSPENSION.

The Department may suspend any or all of its obligations to Loan or provide financial accommodation to the Project Sponsor under this Agreement in the following events, as determined by the Department:

(1) The Project Sponsor abandons or discontinues the Project before its completion,

(2) The commencement, prosecution, or timely completion of the Project by the Project Sponsor is rendered improbable or the Department has reasonable grounds to be insecure in Project Sponsor's ability to perform, or

(3) The implementation of the Project is determined to be illegal, or one or more officials of the Project Sponsor in responsible charge of, or influence over, the Project is charged with violating any criminal law in the implementation of the Project or the administration of the proceeds from this Loan.

The Department shall notify the Project Sponsor of any suspension by the Department of its obligations under this Agreement, which suspension shall continue until such time as the event or condition causing such suspension has ceased or been corrected, or the Department has re-instated the Agreement.

Project Sponsor shall have no more than 30 days following notice of suspension hereunder to remove or correct the condition causing suspension. Failure to do so shall constitute a default under this Agreement.

Following suspension of disbursements under this Agreement, the Department may require reasonable assurance of future performance from Project Sponsor prior to re-instating the Loan. Such reasonable assurance may include, but not be limited to, a payment mechanism using two party checks, escrow or obtaining a Performance Bond for the work remaining.

Following suspension, upon failure to cure, correct or provide reasonable assurance of future performance by Project Sponsor, the Department may exercise any remedy available to it by this Agreement or otherwise and shall have no obligation to fund any remaining Loan balance under this Agreement.

8.12. CIVIL RIGHTS.

The Project Sponsor shall comply with all Title VI requirements of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Equal Employment Opportunity requirements (Executive Order 11246, as amended) which prohibit activities that are intentionally discriminatory and/or have a discriminatory effect based on race, color, national origin (including limited English proficiency), age, disability, or sex.

ARTICLE IX – RESERVED

ARTICLE X - DETAILS OF FINANCING

10.01. PRINCIPAL AMOUNT OF LOAN.

The total amount awarded is $5,167,179. Of that, the estimated amount of Principal Forgiveness is $5,167,179.

10.02. RESERVED.

10.03. RESERVED.

10.04. RESERVED.

10.05. RESERVED.

10.06. PROJECT COSTS.

The Project Sponsor and the Department acknowledge that actual Project costs have not been determined as of the effective date of this Agreement. An adjustment may be made due to a reduction in the scope of work proposed for Loan funding as a result of the planning process. Capitalized Interest will be recalculated based on actual dates and amounts of Loan disbursements. The final costs shall be established in the final amendment. Changes in costs may also occur as a result of the Project Sponsor's audit or the Department's audit.

The Project Sponsor agrees to the following estimates of the Project costs:

CATEGORY	PROJECT COSTS ($)	AUTHORIZED LOAN AMOUNT($) TO DATE
Planning and Design Activities	5,400,000	5,167,179
Less Principal Forgiveness	(5,400,000)	(5,167,179)
TOTAL (Loan Amount)	0	0

10.07. SCHEDULE.

All Planning and Design Activities shall be completed no later than the date set forth below.

(1) Invoices submitted for work performed on or after November 8, 2023 may be eligible for reimbursement.

(2) Completion of all Planning and Design Activities for all Project facilities proposed for loan funding no later than February 15, 2026.

10.08. SPECIAL CONDITIONS.

Prior to execution of this Agreement, the following items must be submitted:

(1) A completed EPA Preaward Compliance Report; and

(2) A signed CCNA certification and a signed contract between the engineering consulting firm and the Project Sponsor with specific details of the planning and design work to be completed.

ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement DW501300 may be executed in two or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Department has caused this Agreement to be executed on its behalf by the Secretary or Designee and the Project Sponsor has caused this Agreement to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this Agreement shall be as set forth below by the Department.

for
CITY OF BOYNTON BEACH

_____
Mayor

Attest:

_____
City Clerk

SEAL

I attest to the opinion expressed in Section 2.02, entitled Legal Authorization.

_____
City Attorney

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

_____ _____
Secretary or Designee Date

RESOLUTION NO. R25-028

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, APPROVING A CAPITAL APPROPRIATION AMENDMENT FOR FISCAL YEAR 2024-2025, UTILITIES CIP BUDGET, TO USE UTILITY RESERVE FUNDS FOR $5,400,000 UNTIL THE CITY RECEIVES REIMBURSEMENT FROM THE STATE REVOLVING FUNDED LOAN FOR EAST AND WEST WATER TREATMENT PLANT UPGRADES AND TREATMENT OPERATIONS EVALUATION; AND FOR ALL OTHER PURPOSES.

WHEREAS, the Fiscal Year 2024-2025 Budget was adopted on September 23, 2024; and

WHEREAS, staff is requesting Commission approval to amend the Fiscal Year 2024-2025 budget as noted specifically on Exhibit A; and

WHEREAS, the City Commission, upon the recommendation of staff, has deemed it in the best interests of the city's citizens and residents to approve a Capital Appropriation Amendment for Fiscal Year 2024-2025, Utilities CIP Budget, to use Utility Reserve funds for $5,400,000 until the City receives reimbursement from the State Revolving Funded Loan for East and West Water Treatment Plant upgrades and treatment Operations Evaluation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption.

SECTION 2. The City Commission of the City of Boynton Beach, Florida, does hereby approve a Capital Appropriation Amendment for Fiscal Year 2024-2025, Utilities CIP Budget, to use Utility Reserve funds for $5,400,000 until the City receives reimbursement from the State Revolving Funded Loan for East and West Water Treatment Plant upgrades and treatment Operations Evaluation as further detailed in Exhibit A, attached hereto.

SECTION 3. This Resolution shall take effect in accordance with law.

[signatures on the following page]

PASSED AND ADOPTED this _____ day of _____ 2024.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Ty Penserga	____	____
Vice Mayor – Aimee Kelley	____	____
Commissioner – Angela Cruz	____	____
Commissioner – Woodrow L. Hay	____	____
Commissioner – Thomas Turkin	____	____
VOTE	_____	

ATTEST:

_____
Maylee De Jesús, MPA, MMC
City Clerk

(Corporate Seal)

_____
Ty Penserga
Mayor

APPROVED AS TO FORM:

_____
Shawna G. Lamb
City Attorney

CITY OF BOYNTON BEACH
CAPITAL APPROPRIATION AMENDMENTS
BUDGET YEAR 2024-25, Commission Meeting 02/04/25

Exhibit A

		2024/25 ADOPTED BUDGET	Amendment Revenue	Amendment Budget	2024/25 AMENDED BUDGET	AMENDMENT related to PROJECT NUMBER	Project Name / Comments/ Vendor
GENERAL FUND							
403-0000-389.92-00	FUND BALANCE APPROPR	$ 20,005,024	5,400,000		$ 25,405,024		
	Adopted Fund Total Revenues	**$ 63,645,702**	**$ 5,400,000**		**$ 69,045,702**		
403-5025-533.65-02	SRF LOAN PPROGRAM	-		5,400,000	5,400,000	WT2501	East & West Water Plant Upgrades
	Adopted Fund Total Expenses	**$ 63,645,702**		**$ 5,400,000**	**$ 69,045,702**		

BUDGET ADJUSTMENT (TRANSFER) REQUEST

To: Finance Department

Fiscal Period: 4 FY 2024-25

From: Finance Department

Date: 01/16/25

Account Number	Description	Project Number	* Budget Data Only			* Expend as of:	
			Present Budget	Adjustment Increase (Decrease)	Adjusted Budget	Expenditures & Encumbrances	Unencumbered Balance
					$ -	$ -	$ -
403-0000-389.92-00	NET ASSETS APPROPR		$ 20,005,024	$ 5,400,000	$ 25,405,024	$ -	$ 25,405,024
411-2910-572.48-24	SPECIAL EVENTS		$ -	$ 5,400,000	$ 5,400,000	$ -	$ 5,400,000
					$ -	$ -	$ -
					$ -	$ -	$ -
					$ -	$ -	$ -
					$ -	$ -	$ -
* Use Whole Dollars Only	TOTALS		$ 20,005,024	$ 10,800,000	$ 30,805,024	$ -	$ 30,805,024

Justification for Adjustment: East & West Water Plant Upgrades

Approvals:

Department Head: _____

Finance Department: _____

City Manager: _____

Budget Office Use Only
Document # _____
Group #
Posted By:

C:\Users\GomezR\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\JGMZFZGT\[FY2425 Fund 403 Budget Amendment for EWTPlant (002).xlsx]Amendment 01162025

City of Boynton Beach
Agenda Item Request Form

Meeting Date: 01/21/2025

Discussion regarding Recreation and Parks fees and approval of Proposed Resolution No. R25-029- Amending the current Recreation and Parks Division fee schedule, specifically the pickleball and pool admittance fees previously approved on November 19, 2024, Resolution No. R24-290.

Requested Action: Staff recommends approval of Proposed Resolution No. R25-029.

Explanation of Request: Based on customer feedback and direction from the City Commission, staff have revised the Recreation & Parks Division fee schedule to implement the requested changes to reduce the pickleball punch pass and pool admittance fees for children.

How will this affect city programs or services? This small change will implement the consensus direction of the City Commission to reverse the fee increases for the pickleball punch pass and pool admittance fee for children.

Account Line Item and Description: NA

Fiscal Impact: There will be minimal change to revenue based on rolling back the suggested fees.

Attachments:
R25-029 Agenda Item 2649-2025 Resolution for 2024-2025 Comprehensive Fee Schedule Rec & Park Amd.docx
Exhibit A Fee Schedule - Recreation - FY 25 (Proposed).pdf
R24-290.pdf

RESOLUTION NO. R25-029

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, REVOKING RESOLUTION NO. R24-290 AND REINSTATING THE FEE SCHEDULE FOR THE RECREATION & PARKS DIVISION AS APPROVED BY RESOLUTION NO. R24-191; AND FOR ALL OTHER PURPOSES.

WHEREAS, on September 3, 2024, the City Commission approved Resolution No. R24-191 adopting the annual Comprehensive Fee Schedule for Fiscal Year 2024-2025; and

WHEREAS, on November 19, 2024, the City Commission approved Resolution No. 24-290 amending the adopted annual Comprehensive Fee Schedule for Fiscal Year 2024-2025; and

WHEREAS, the City Commission, upon the recommendation of staff, has deemed it in the best interests of the city's citizens and residents to revoke Resolution No. R24-290 and reinstate the fee schedule for the Recreation & Parks Division as approved by Resolution No. R24-191.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption.

SECTION 2. The City Commission of the City of Boynton Beach, Florida, does hereby revoke Resolution No. R24-290 and reinstate the fee schedule for the Recreation & Parks Division as approved by Resolution No. R24-191.

SECTION 3. This Resolution shall take effect in accordance with law.

[signatures on the following page]

PASSED AND ADOPTED this _____ day of _____ 2025.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Ty Penserga	____	____
Vice Mayor – Aimee Kelley	____	____
Commissioner – Angela Cruz	____	____
Commissioner – Woodrow L. Hay	____	____
Commissioner – Thomas Turkin	____	____
VOTE	_____	

ATTEST:

_____
Maylee De Jesús, MPA, MMC
City Clerk

_____
Ty Penserga
Mayor

APPROVED AS TO FORM:

(Corporate Seal)

_____
Shawna G. Lamb
City Attorney

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Recreation & Parks	Recreation Rental/Reservation	Resident Rates Nonprofit /Program	Private	Commerical
Indoor Recreational Facility	**Arts and Cultural Center**	Hourly rates		
	Event Hall	$ 200.00	$ 260.00	$ 340.00
	Multi Purpose Room Half	35.00	50.00	65.00
	Multi Purpose Room Full	55.00	75.00	100.00
	Classrooms	35.00	50.00	65.00
	Art Room with Patio	100.00	130.00	170.00
	Kapok Courtyard (Special Event Permit)	115.00	150.00	200.00
	Patio East	35.00	50.00	65.00
	Patio West	35.00	50.00	65.00
	Hester Center			
	Concession Building	$ 90.00	$ 120.00	$ 155.00
	Game Room	55.00	75.00	100.00
	Gymnasium	140.00	180.00	240.00
	Meeting Room	40.00	60.00	80.00
	Intracoastal Park Clubhouse			
	2nd Floor Event Room	$ 150.00	$ 200.00	$ 260.00
	Program Room	35.00	50.00	65.00
	Senior Center			
	Activity Room	$ 35.00	$ 50.00	$ 65.00
	Arts and Crafts Room	35.00	50.00	65.00
	Classroom	35.00	50.00	65.00
	Multi-purpose room	55.00	75.00	100.00
	Sims Center			
	Classroom	$ 35.00	$ 50.00	$ 65.00
	Room A/B	65.00	90.00	120.00
	Room C (Combo A & B)	100.00	145.00	190.00
	Woman's Club	Daily Rates		
	1st Floor East/West (Mon-Thurs)	$ 315.00	$ 450.00	$ 585.00
	1st Floor East/West (Fri-Sun)	472.00	675.00	878.00
	2nd Floor (Mon-Thurs)	945.00	1350.00	1755.00
	2nd Floor (Fri-Sun)	1417.00	2025.00	2633.00
	Entire Building (Mon-Thurs)	1260.00	1800.00	2340.00
	Entire Building (Fri-Sun)	1890.00	2700.00	3510.00
Pavilion (Special Event Permit)	**Sara Sims**			
	Sara Sims Performance Pavilion	$ 75.00	$ 100.00	$ 130.00
	Athletic Fields	Hourly Rates		
Athletic Fields (*2 hour minimum)	Multi-Purpose Fields	$ 20.00	$ 25.00	$ 35.00
	Baseball/Softball Fields	20.00	25.00	35.00
	Turf Fields	60.00	75.00	105.00
	Light Usage Fee	25.00	25.00	25.00

Footnote / Explanation
Non-Profit - an organization operating for charitable or socially beneficial purposes (501c3)
Private - an individual using a facility for a private event
Commerical - business, commerical, or other for-profit organizations

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Recreation & Parks	Recreation Rental/Reservation	Non-Resident Rates Nonprofit /Program	Private	Commerical
Indoor Recreational Facility	**Arts and Cultural Center**	Hourly rates		
	Event Hall	$ 260.00	$ 340.00	$ 445.00
	Multi Purpose Room Half	45.00	65.00	85.00
	Multi Purpose Room Full	75.00	100.00	130.00
	Classrooms	45.00	65.00	85.00
	Art Room with Patio	130.00	170.00	225.00
	Kapok Courtyard (Permit Required)	150.00	200.00	260.00
	Patio East	45.00	65.00	85.00
	Patio West	45.00	65.00	85.00
	Hester Center			
	Concession Building	$ 120.00	$ 155.00	$ 205.00
	Game Room	75.00	100.00	130.00
	Gymnasium	180.00	240.00	315.00
	Meeting Room	55.00	80.00	100.00
	Intracoastal Park Clubhouse			
	2nd Floor Event Room	$ 200.00	$ 260.00	$ 340.00
	Program Room	45.00	65.00	85.00
	Senior Center			
	Activity Room	$ 45.00	$ 65.00	$ 85.00
	Arts and Crafts Room	45.00	65.00	85.00
	Classroom	45.00	65.00	85.00
	Multi-purpose room	75.00	100.00	130.00
	Sims Center			
	Classroom	$ 45.00	$ 65.00	$ 85.00
	Room A/B	90.00	120.00	155.00
	Room C (Combo A & B)	145.00	190.00	250.00
	Woman's Club	Daily Rates		
	1st Floor East/West (Mon-Thurs)	$ 350.00	$ 500.00	$ 650.00
	1st Floor East/West (Fri-Sun)	525.00	750.00	975.00
	2nd Floor (Mon-Thurs)	1050.00	1500.00	1950.00
	2nd Floor (Fri-Sun)	1575.00	2225.00	2925.00
	Entire Building (Mon-Thurs)	1400.00	2000.00	2600.00
	Entire Building (Fri-Sun)	2100.00	3000.00	3900.00
Pavilion (Special Event Permit)	**Sara Sims**			
	Sara Sims Performance Pavilion	$ 100.00	$ 130.00	$ 170.00
	Athletic Fields	Hourly Rates		
Athletic Fields (*2 hour minimum)	Multi-Purpose Fields	$ 25.00	$ 35.00	$ 45.00
	Baseball/Softball Fields	25.00	35.00	45.00
	Turf Field	75.00	105.00	135.00
	Light Usage Fee	25.00	25.00	25.00

Footnote / Explanation

Non-Profit - an organization operating for charitable or socially beneficial purposes (501c3)
Private - An individual using a facility for a private event
Commerical - business, commerical, or other for-profit organizations

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Recreation & Parks	Recreation Rental/Reservation	Resident	Non-Resident
	Barrier Free Park	$ 115.00	$ 145.00
	Hester	75.00	95.00
	Intracoastal		
	IP - 1	250.00	315.00
	IP - 2	80.00	100.00
	IP - 3	80.00	100.00
	IP - 4	115.00	145.00
	Jaycee		
Park Pavilions	Pavilion 1 (Bathroom Bldg)	40.00	50.00
	Pavilion 2 (South)	60.00	75.00
	Pavilion 3 (North / water view)	60.00	75.00
	Meadows		
	North	80.00	100.00
	South	80.00	100.00
	Oceanfront		
	North	115.00	145.00
	South	115.00	145.00
	Sara Sims		
	1 & 2	50.00	65.00
	3 & 4	70.00	85.00
Footnote / Explanation			

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Recreation & Parks	Recreation Daily/Permit/Program Fees	Resident	Non Resident
Tennis & Pickleball Center	**Daily Fees**		
	Har - Tru	$ 12.00	$ 15.00
	Composite	8.00	10.00
	Junior (13 & under)	8.00	10.00
	Pickleball (daily)	5.00	7.00
	Discount Pass (24 visits)	50.00	65.00
	Ball Machine Rental	16.00	20.00
	Light Fee (per court)	12.00	12.00
	Corporate/Organization Court Usage (Per Person: $12 Non-Profit; $15 Corporate)		
	Annual Permit Fees		
	Tennis - Individual	310.00	470.00
	Tennis - Family	465.00	705.00
	Pickleball - Individual	250.00*	375.00*
	Program Fees		
	Adult Leagues	45.00	55.00
John Denson Pool	**Daily Fees**		
	Children 3 & Under (with paid adult admission)	Free	Free
	Youth (4-12) (with paid adult admission)	Free	2.00
	Teens (13-17)	2.00	4.00
	Adults (18+)	3.00	6.00
	Seniors (55+)	2.00	4.00
	Discount Pass (30 Visits)	70.00	90.00
	Exclusive Usage (per hour, 3 hour minimum)	100.00	125.00
	Program Fees		
	Water Aerobics		
	Adults	4.00	5.00
	Teens	2.00	3.00
	Discount Pass (11 Visits)	40.00	50.00
	Boynton Beach Blazers (per session)	60.00	75.00
Senior Center	**Usage Fee**		
	Annual Usage Fee	-	40.00
	Daily Fee	-	2.00
Footnote / Explanation			
	*** Denotes fees will be prorated to $200R/$300NR for FY 24/25**		

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Recreation & Parks

Miscellaneous Fees	Fee
Special Service Fee	
[1] Damage Deposit	$ 500/rental
Game/Tournament Field Prep	35/hr. per staff
Staffing Fee	35/hr. per staff
Custodial Fee	50-300
Permit Fees	
Event Vending / Exhibitors	25 - 1,500 / vendor space
Tournament Services	
Turf Field	500/day
Grass Field	300/day
Baseball	225/day
Baseball Showcase	450/day
Gymnasium	1,000/day
Tennis Courts	120 per court/day

Footnote / Explanation

[1] Excludes athletic fields and pavilions

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Recreation & Parks

Parking Fees and Violations

Parking Annual Passes

Harvey E. Oyer Jr. Park Boat Ramp Annual Parking Permit
FL Residents: $200/year Non-FL Residents: $350/year

Oceanfront Park Annual Parking Permit
Resident: $65/year Non-Resident $200/year Senior Resident (ages 65+): $50/year

Parking Daily Rate

Harvey E. Oyer Jr. Park Boat Ramp Daily Parking Fees
$2.50 per hour Daily Max $25

Oceanfront Park Daily Parking Fees
$2.50 per hour *(Minimum 1 hour)*

Valet Parking License per Space

Valet License Fee
Ocean Avenue from Seacrest Blvd to Federal Hwy: $150 per Month *Requires the execution of a valet parking agreement between the City of Boynton Beach and applicant*

Section 14-14.7 (A)	Overtime Parking	$ 25.00
Section 14-14.7 (B)	Expired Meter	25.00
Section 14-14.7 (C)	Vehicle Parked across line designated parking space	25.00
Section 14-14.7 (G)	Unlawful use of parking permit	25.00
Section 14-14.7 (H)	Unlawful parking without required parking permit	25.00
Section 14-14.7 (I)	License plate not visible from drive lanes (Illegally backed in)	25.00
Section 14-14.11 (G)	Removal of immobilizing device	25.00
	Failure to pay fees within 14 days	25.00
	Failure to pay fees within 90 days ; Amount not to exceed 4% of amount owed	n/a

Footnote / Explanation

RESOLUTION NO. R24-290

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, AMENDING THE ADOPTED COMPREHENSIVE FEE SCHEDULE FOR FISCAL YEAR 2024-2025, AS APPROVED BY RESOLUTION NO. R24-191, BY AMENDING THE FEE SCHEDULE FOR THE RECREATION & PARKS DIVISION; AND FOR ALL OTHER PURPOSES.

WHEREAS, On September 3, 2024, the City Commission approved Resolution No. R24-191 adopting the annual Comprehensive Fee Schedule for Fiscal Year 2024-2025; and

WHEREAS, Recreation and Parks is recommending the adjustment of some fees on the fee schedule to help offset some of the increased equipment, supply, and staffing costs that have taken place over recent years. These adjustments will generate increased revenue and provide funds to offer additional and improved programming and services. These proposed fee adjustments would go into effect on January 1, 2025, giving the department time to add these new fees to upcoming program guide publication and inform the public of these changes through various other channels; and

WHEREAS, the City Commission, upon the recommendation of staff, has deemed it in the best interests of the city's citizens and residents to amend the adopted Comprehensive Fee Schedule for Fiscal Year 2024-2025, as approved by Resolution No. R24-191, by amending the Fee Schedule for the Recreation & Parks Division.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption.

SECTION 2. The City Commission of the City of Boynton Beach, Florida, does hereby amend the adopted Comprehensive Fee Schedule for Fiscal Year 2024-2025, as approved by Resolution No. R24-191, by amending the Fee Schedule for Recreation & Parks Division, as further detailed in **Exhibit A**, attached hereto.

SECTION 3. This Resolution shall take effect in accordance with law.

PASSED AND ADOPTED this 19th day of November 2024.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Ty Penserga	✓	
Vice Mayor – Aimee Kelley	✓	
Commissioner – Angela Cruz	✓	
Commissioner – Woodrow L. Hay	✓	
Commissioner – Thomas Turkin		

VOTE 5-0

ATTEST:

Maylee De Jesús, MPA, MMC
City Clerk

Ty Penserga
Mayor
11/21/2024

(Corporate Seal)

CITY OF BOYNTON BEACH CORPORATE SEAL INCORPORATED 1920 FLORIDA

APPROVED AS TO FORM:

Shawna G. Lamb
City Attorney

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Recreation & Parks	Recreation Rental/Reservation	Resident Rates Nonprofit /Program	Private	Commerical
Indoor Recreational Facility	**Arts and Cultural Center**		Hourly rates	
	Event Hall	$ 200.00	$ 260.00	$ 340.00
	Multi Purpose Room Half	35.00	50.00	65.00
	Multi Purpose Room Full	55.00	75.00	100.00
	Classrooms	35.00	50.00	65.00
	Art Room with Patio	100.00	130.00	170.00
	Kapok Courtyard (Special Event Permit)	115.00	150.00	200.00
	Patio East	35.00	50.00	65.00
	Patio West	35.00	50.00	65.00
	Hester Center			
	Concession Building	$ 90.00	$ 120.00	$ 155.00
	Game Room	55.00	75.00	100.00
	Gymnasium	140.00	180.00	240.00
	Meeting Room	40.00	60.00	80.00
	Intracoastal Park Clubhouse			
	2nd Floor Event Room	$ 150.00	$ 200.00	$ 260.00
	Program Room	35.00	50.00	65.00
	Senior Center			
	Activity Room	$ 35.00	$ 50.00	$ 65.00
	Arts and Crafts Room	35.00	50.00	65.00
	Classroom	35.00	50.00	65.00
	Multi-purpose room	55.00	75.00	100.00
	Sims Center			
	Classroom	$ 35.00	$ 50.00	$ 65.00
	Room A/B	65.00	90.00	120.00
	Room C (Combo A & B)	100.00	145.00	190.00
	Woman's Club		Daily Rates	
	1st Floor East/West (Mon-Thurs)	$ 315.00	$ 450.00	$ 585.00
	1st Floor East/West (Fri-Sun)	472.00	675.00	878.00
	2nd Floor (Mon-Thurs)	945.00	1350.00	1755.00
	2nd Floor (Fri-Sun)	1417.00	2205.00	2633.00
	Entire Building (Mon-Thurs)	1260.00	1800.00	2340.00
	Entire Building (Fri-Sun)	1890.00	2700.00	3510.00
Pavilion (Special Event Permit)	**Sara Sims**			
	Sara Sims Performance Pavilion	$ 75.00	$ 100.00	$ 130.00
	Athletic Fields		Hourly Rates	
Athletic Fields (*2 hour minimum)	Multi-Purpose Fields	$ 20.00	$ 25.00	$ 35.00
	Baseball/Softball Fields	20.00	25.00	35.00
	Turf Fields	60.00	75.00	105.00
	Light Usage Fee	25.00	25.00	25.00

Footnote / Explanation

Non-Profit - an organization operating for charitable or socially beneficial purposes (501c3)
Private - an individual using a facility for a private event
Commerical - business, commerical, or other for-profit organizations

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Recreation & Parks	Recreation Rental/Reservation	Non-Resident Rates Nonprofit /Program	Private	Commerical
Indoor Recreational Facility	**Arts and Cultural Center**	Hourly rates		
	Event Hall	$ 260.00	$ 340.00	$ 445.00
	Multi Purpose Room Half	45.00	65.00	85.00
	Multi Purpose Room Full	75.00	100.00	130.00
	Classrooms	45.00	65.00	85.00
	Art Room with Patio	130.00	170.00	225.00
	Kapok Courtyard (Permit Required)	150.00	200.00	260.00
	Patio East	45.00	65.00	85.00
	Patio West	45.00	65.00	85.00
	Hester Center			
	Concession Building	$ 120.00	$ 155.00	$ 205.00
	Game Room	75.00	100.00	130.00
	Gymnasium	180.00	240.00	315.00
	Meeting Room	55.00	80.00	100.00
	Intracoastal Park Clubhouse			
	2nd Floor Event Room	$ 200.00	$ 260.00	$ 340.00
	Program Room	45.00	65.00	85.00
	Senior Center			
	Activity Room	$ 45.00	$ 65.00	$ 85.00
	Arts and Crafts Room	45.00	65.00	85.00
	Classroom	45.00	65.00	85.00
	Multi-purpose room	75.00	100.00	130.00
	Sims Center			
	Classroom	$ 45.00	$ 65.00	$ 85.00
	Room A/B	90.00	120.00	155.00
	Room C (Combo A & B)	145.00	190.00	250.00
	Woman's Club	Daily Rates		
	1st Floor East/West (Mon-Thurs)	$ 350.00	$ 500.00	$ 650.00
	1st Floor East/West (Fri-Sun)	525.00	750.00	975.00
	2nd Floor (Mon-Thurs)	1050.00	1500.00	1950.00
	2nd Floor (Fri-Sun)	1575.00	2225.00	2925.00
	Entire Building (Mon-Thurs)	1400.00	2000.00	2600.00
	Entire Building (Fri-Sun)	2100.00	3000.00	3900.00
Pavilion (Special Event Permit)	**Sara Sims**			
	Sara Sims Performance Pavilion	$ 100.00	$ 130.00	$ 170.00
	Athletic Fields	Hourly Rates		
Athletic Fields (*2 hour minimum)	Multi-Purpose Fields	$ 25.00	$ 35.00	$ 45.00
	Baseball/Softball Fields	25.00	35.00	45.00
	Turf Field	75.00	105.00	135.00
	Light Usage Fee	25.00	25.00	25.00

Footnote / Explanation

Non-Profit - an organization operating for charitable or socially beneficial purposes (501c3)
Private - An individual using a facility for a private event
Commerical - business, commerical, or other for-profit organizations

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Recreation & Parks	Recreation Rental/Reservation	Resident	Non-Resident
Park Pavilions	**Barrier Free Park**	$ 115.00	$ 145.00
	Hester	75.00	95.00
	Intracoastal		
	IP - 1	250.00	315.00
	IP - 2	80.00	100.00
	IP - 3	80.00	100.00
	IP - 4	115.00	145.00
	Jaycee		
	Pavilion 1 (Bathroom Bldg)	40.00	50.00
	Pavilion 2 (South)	60.00	75.00
	Pavilion 3 (North / water view)	60.00	75.00
	Meadows		
	North	80.00	100.00
	South	80.00	100.00
	Oceanfront		
	North	115.00	145.00
	South	115.00	145.00
	Sara Sims		
	1 & 2	50.00	65.00
	3 & 4	70.00	85.00

Footnote / Explanation

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Recreation & Parks	Recreation Daily/Permit/Program Fees	Resident	Non Resident
Tennis & Pickleball Center	**Daily Fees**		
	Har - Tru	$ 12.00	$ 15.00
	Composite	8.00	10.00
	Junior (13 & under)	8.00	10.00
	Pickleball (daily)	5.00	7.00
	Discount Pass (15 visits)	60.00	85.00
	Ball Machine Rental	16.00	20.00
	Light Fee (per court)	12.00	12.00
	Corporate/Organization Court Usage (Per Person: $12 Non-Profit; $15 Corporate)		
	Annual Permit Fees		
	Tennis - Individual	310.00	470.00
	Tennis - Family	465.00	705.00
	Pickleball - Individual	250.00	375.00
	Program Fees		
	Adult Leagues	45.00	55.00
John Denson Pool	**Daily Fees**		
	Children 3 & Under (with paid adult admission)	Free	Free
	Youth (4-12) (with paid adult admission)	1.00	2.00
	Teens (13-17)	2.00	4.00
	Adults (18+)	3.00	6.00
	Seniors (55+)	2.00	4.00
	Discount Pass (30 Visits)	70.00	90.00
	Exclusive Usage (per hour, 3 hour minimum)	100.00	125.00
	Program Fees		
	Water Aerobics		
	Adults	4.00	5.00
	Teens	2.00	3.00
	Discount Pass (11 Visits)	40.00	50.00
	Boynton Beach Blazers (per session)	60.00	75.00
Senior Center	**Usage Fee**		
	Annual Usage Fee	-	40.00
	Daily Fee	-	2.00
	Footnote / Explanation		

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Recreation & Parks

Miscellaneous Fees	Fee
Special Service Fee	
[1] Damage Deposit	$ 500/rental
Game/Tournament Field Prep	35/hr. per staff
Staffing Fee	35/hr. per staff
Custodial Fee	50-300
Permit Fees	
Event Vending / Exhibitors	25 - 1,500 / vendor space
Tournament Services	
Turf Field	500/day
Grass Field	300/day
Baseball	225/day
Baseball Showcase	450/day
Gymnasium	1,000/day
Tennis Courts	

Footnote / Explanation

[1] Excludes athletic fields and pavilions

SCHEDULE OF FEES AND CHARGES FOR SERVICES

Recreation & Parks

Parking Fees and Violations

Parking Annual Passes	**Harvey E. Oyer Jr. Park Boat Ramp Annual Parking Permit**	
	FL Residents: $200/year Non-FL Residents: $350/year	
	Oceanfront Park Annual Parking Permit	
	Resident: $65/year Non-Resident $200/year Senior Resident (ages 65+): $50/year	
Parking Daily Rate	**Harvey E. Oyer Jr. Park Boat Ramp Daily Parking Fees**	
	$2.50 per hour Daily Max $25	
	Oceanfront Park Daily Parking Fees	
	$2.50 per hour *(Minimum 1 hour)*	
Valet Parking License per Space	**Valet License Fee**	
	Ocean Avenue from Seacrest Blvd to Federal Hwy: $150 per Month *Requires the execution of a valet parking agreement between the City of Boynton Beach and applicant*	
Section 14-14.7 (A)	Overtime Parking	$ 25.00
Section 14-14.7 (B)	Expired Meter	25.00
Section 14-14.7 (C)	Vehicle Parked across line designated parking space	25.00
Section 14-14.7 (G)	Unlawful use of parking permit	25.00
Section 14-14.7 (H)	Unlawful parking without required parking permit	25.00
Section 14-14.7 (I)	License plate not visible from drive lanes (Illegally backed in)	25.00
Section 14-14.11 (G)	Removal of immobilizing device	25.00
	Failure to pay fees within 14 days	25.00
	Failure to pay fees within 90 days ; Amount not to exceed 4% of amount owed	n/a

Footnote / Explanation

City of Boynton Beach
Agenda Item Request Form

Meeting Date: 01/21/2025

Procurement Policy Update and Our Roadmap to Future Codification our City's New Procurement Code.

Requested Action: Presentation by Andrew Rozwadowski

Explanation of Request: Attached are the updates with redlines to the current policy for Commission review, along with all accepted edits. Additionally, staff proposes a future workshop, aimed at bringing forward a future item to eventually codify the procurement code after input from the City Commission and establish separate policies for other organizational functions.

How will this affect city programs or services? The City Commission will be be presented with an updated policy and we will work toward a new procurement code in the spring of 2025.

Account Line Item and Description: N/A

Fiscal Impact: N/A

Attachments:
COBB Purchasing Policy Manual - Dec 2024 with Redline Edits.docx
Purchasing Policy Manual 12-19-2024 - Signed by CM.pdf
Revisions to the Purchasing Policy and Roadmap to New Procurement Code.pptx

City of Boynton Beach
Boynton Beach, Florida

PURCHASING POLICY

MANUAL

REVISED: December 19, 2024

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Attachments

I. INTRODUCTION

PURPOSE:

As approved and codified in **ARTICLE IV. PURCHASING AND CONSULTANTS** Sec. 2-56.1 Exceptions to competitive bidding (b) The City Manager shall establish procurement policies on any purchase of personal property, commodities, services or construction.

The purpose of this Purchasing Manual ("Manual") is to set forth the City of Boynton Beach ("City") policies for the purchase of supplies, equipment, and services and provide for the fair and equitable treatment of all persons and entities involved in Purchasing by the City, to maximize the Purchasing value of public funds in Purchasing, and to provide safeguards for maintaining a Purchasing system of quality and integrity.

This Manual provides the policies and procedures that frame the Purchasing of contractual services and commodities beginning with the Purchasing policy, proceeding through contract document or purchase order preparation, contract administration, and eventually, contract closeout.

The goal of the City is to get the best value for qualitative solicitations or lowest price from a responsive, responsible bidder for the Purchasing of commodities and services conducted by fair and open competition and in accordance with all applicable Federal Statutes, Florida Statutes, Palm Beach County Code, and the City Charter and Code of Ordinances of the City of Boynton Beach.

Processing Requirements and Approval Levels Requirements for approvals of all construction and non-construction purchases are as follows:

Personal Property, Commodities, and Services (Non-Construction) - Bid Threshold $50,000			
Total Purchase Amount	**Requisition Process**	**Approval Level Total Purchase**	
Less than $5,000	One Quotation	Department Head*	
$5,000 to $49,999	Three Written Quotes	City Manager*	
$50,000 & over per annum	Formal Bid	City Commission	
Construction Projects - Bid Threshold $200,000			
Total Purchase Amount	**Requisition Process**	**Approval Level Total Purchase**	
Less than $5,000	One Quotation	Department Director*	
$5,000 to $199,999	Three Written Quotes	City Manager*	
$200,000 or above	Formal Bid Process	City Commission	

*Or Designee—Note: Directors shall not sign any quotes from vendors that bind the City to any terms and conditions.

APPLICABILITY OF FLORIDA LAW. To qualify to do business with the City, vendors, contractors, suppliers, and professions must agree that Florida law governs the provisions of their transactions with the City and that venue, in the event of arbitration or litigation, is Palm Beach County Florida. Vendors must also agree to comply with Florida scrutinized company and public records laws.

II. DUTIES AND RESPONSIBILITIES

Members of the Purchasing Services division ("Purchasing Services") have a special responsibility of trust unique in public service. Purchasing Services is responsible for the Purchasing of commodities and services, which will eventually result in the expenditure of City funds or, more importantly, the taxpayers' money. Purchasing Services has the duty to assist departments with the Purchasing of necessary goods and services. All members of Purchasing Services shall adhere to the following duties and responsibilities:

1. To assure that all Purchasing procedures are consistent with all applicable federal, state, and local laws, and contractual obligations with other governmental entities.

2. To adhere to the Palm Beach County Ethics Code.

3. To regard public service as a trust and support the professional principles of governmental Purchasing.

4. To be guided in their actions by integrity and honor, to merit the respect and inspire the confidence of the City and the public which they serve.

5. To accept full responsibility and accountability for their actions related to the purchase and supply functions undertaken by them for the benefit of the City and the public.

6. To reject all gifts or other items of value from vendors.

7. To be courteous, considerate, and prompt and to conduct themselves professionally in all Purchasing dealings, including with their employers, employees, vendors, the media, and the public.

8. To procure goods and services seeking to obtain the maximum ultimate value for each dollar of expenditure.

9. To fully cooperate with all City departments in obtaining their needs to further the goals and policies set forth by the City in the City Charter and the City's Code of Ordinances.

10. To ensure the awarding of competitively bid purchases to the lowest responsive, responsible bidder.

11. To piggyback on other governmental contracts or join **with** other governmental entities in a cooperative. Purchasing shall determine when this methodology serves the best interests of the City.

12. To sell, trade, or otherwise dispose of surplus and obsolete personal property belonging to the City in accordance with the policy.

13. To strive consistently for knowledge and professionalism that will benefit Purchasing Services and the City as a whole.

14. To avoid unscrupulous practices and misrepresentations; recognizing that mutually profitable business relations are based upon honest and fair dealings.

15. To prohibit political considerations or other outside influences from creating a bias towards their relationships with vendors or employees.

16. To maintain a good relationship with vendors and other governmental agencies in order to promote cooperation and consideration that will result in benefits to the City.

17. To ensure that in any contract entered into between the City and a vendor, minority business enterprises will be afforded full opportunity to submit bids in response to advertisement and that no vendor will be discriminated against on the grounds of race, color, religion, gender, sexual preference, or national origin in consideration for an award.

In addition to the staff of Purchasing Services, each department within

the City has a designated Purchasing Coordinator. This employee performs, or supervises, all related duties and responsibilities of the Purchasing function for their respective department. The Purchasing Division Director or Finance Director is responsible for city staff implementation of and compliance with the procedures set forth in this Manual.

III. DEFINITION OF PURCHASING TERMS

To define words and terms used throughout this Manual with the standardized meanings set forth below unless the context in which a term is used requires a different meaning or a different definition as prescribed for a particular section or portion of this Manual.

Definitions:

1. **Addenda** - Written or graphic media issued prior to the opening of bids or proposals that clarify, correct, or change the solicitation documents or resulting Contract.

2. **Alternates** - Substitutes offered by a vendor when the specifications of materials being bid are different than the specifications set forth in the City's request for quotes, proposals, or bids.

3. **Amendment** - A method of changing the terms, conditions, or requirements of a Contract beyond what is specifically allowed by the Contract. All Amendments must be approved in the same manner as the original Contract and signed by the authorized representatives of the parties to the Contract.

4. **Award** - The acceptance of a Bid, offer, or proposal by the proper authority. The City Commission must approve all non-construction awards of $50,000, or more and all construction awards of $200,000, or more except for those purchases which are exempt from formal bidding procedures pursuant to the City's Code of Ordinances. However, all Contracts which require that the City indemnify another party require approval of the City Commission.

5. **Bid** - Price quoted by a vendor for a commodity or service.

6. **Bid Bond** - A form of bid security executed by the bidding vendor as principal and by a surety to guarantee that the bidding vendor will enter into, and satisfactorily complete the Contract within a specified time and furnish any required performance bond.

7. **Bid Opening** - ~~A formal meeting, open to the public, during which sealed bids submitted by vendors for an advertised project are opened and recorded~~ Bids are electronically opened to the public, during which sealed bids submitted by vendors for an advertised project are opened through the City's e-bidding platform and publicly displayed.

8. **Bid Tabulation Sheet** - A form used to record price quotations from vendors for both sealed and informal bids. The bid tabulation can be electronically produced from the e-bidding platform utilized by the City.

9. **Blanket Purchase Order** - A Purchase Order that covers the non-repetitive purchase of supplies of a like nature in a minor amount for a stipulated period of time within the Fiscal Year (e.g., 12 months). These purchases should be sporadic in nature and not planned.

   A simplified procurement method for fulfilling the anticipated non-recurring needs for supplies or services through the award of competitive line-item contracts or discounts from a supplier's/manufacturer's catalog, usually through competition. BPOs are used to reduce the administrative expenses resulting from small, recurring requirements.

   An agreement to purchase goods from a specific supplier over a defined period, up to a maximum dollar amount. A blanket order generally includes established prices, terms, and conditions for a defined period of time, although without specifying quantities.

10. **Brand Name or Equal Specifications** - A specification limited to one or more items by manufacturers' names or catalog numbers that describe the standard of quality, performance, or other prominent characteristics needed to meet City

requirements.

11. **Brand Name Specification** - A specification limited to one or more items by manufacturers' names or catalogs.

12. **Capital Improvement** - Any project undertaken by the City, including without limitation, construction, repair, or renovation, which involves any building, road, bridge, street, drainage facility, or similar facility or structure.

13. **Capital Purchases** - All tangible personal property having an original acquisition cost of $5000 or more per unit, and a probable useful life expectancy of more than one year. This includes, without limitation, the capitalized purchase of any software.

14. **Change Order** - A written order amending a Purchase Order to correct errors, omissions, discrepancies, acceptable overruns, freight costs, unforeseen conditions, approved changes to the scope of work, or amendments to Contracts that require additional purchases or incur additional costs.

15. **Commodities** - Tangible personal property including, without limitation, economic goods, equipment, material, and printing, purchased, leased, or otherwise contracted for by the City.

16. **Competitive Bids or Competitive Offers** - The receipt of Bids or offers submitted by responsive, responsible, and qualified bidders or offerors.

17. **Competitive Selection and Negotiation** - A method of Purchasing whereby qualified professional firms are invited to submit Letters of Interest, Proposals, or Qualifications and are short-listed by an appropriately appointed review committee for further evaluation prior to recommending an Award.

18. **Confidential Information** - Any information which is available to an employee only because of the employee's status as an employee of the City of Boynton Beach and is not a matter of public knowledge or available to the public upon request.

19. **Construction** - The process of building, installing, removing,

altering, repairing, improving, or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, facilities, or real property.

20. **Change Order** - A written order authorized by the proper City authority in accordance with APM 10.06.01 (Process for Change Orders), directing the Contractor to make changes that the "Change Order" clause of the construction Contract authorizes. **Finance and Purchasing Services must be immediately notified when a Construction Change Order is submitted.**

21. **Consultant's Competitive Negotiations Act (CCNA)** - The common name for Section 287.055 of the Florida Statutes concerning the Purchasing of Architectural, Engineering (including testing), Landscape Architecture, and Registered Land Surveying Services. Purchasing of these services will be initiated by a Request for Qualifications process and Competitive Selection and Negotiation will take place.

22. **Contract** - A binding and written agreement between the City and an outside party for the Purchasing of supplies or services requiring approval by the City Commission.

23. **Contractor** - Any person or business having a Contract with the City of Boynton Beach to perform a service or sell a product.

24. **Consultant** - A type of Contractor.

25. **Cost Reimbursement Contract** - A Contract under which a Contractor is reimbursed for costs which are allowable and allocable in accordance with the Contract terms and the provisions of this Manual and a fee or profit if any.

26. **Contractual Services** - The rendering of time and effort by a Contractor rather than the furnishing of specific commodities, materials, goods, equipment, and/or other personal property. The term applies only to those services rendered by individuals and firms who are independent contractors.

Consultant and Professional Services - Contracts for the service of professionals or consultants requiring specialty training in the arts or sciences and/or requiring holding professional licenses or certificates, including but not limited to the practice of law, certified public accountants, or actuaries, management consulting, medicine, real estate appraisal, or other areas of expertise as determined by the city manager or designee to be in the best interest of the city, and not otherwise subject to the requirements of F.S. § 287.055, as amended, may be entered into without competitive bidding; however, qualifications, work history, and other relevant data shall be reviewed before entering into such contracts.

27. **Cooperative Purchasing** - A Purchasing process conducted by or on behalf of more than one governmental entity.

28. **Debarment** - A disqualification of a business or person from receiving invitations for Bids, Requests for Proposals, or the award of Contracts by the City, because of previous illegal or irresponsible action, for a specific period of time commensurate with the gravity of the offense or the failure or inadequacy of performance.

29. **Declared Emergency** - A declaration of emergency covering an area including the City of Boynton Beach made at the national, state, county, or City level necessary to respond to an Emergency.

30. **Designee** - A duly authorized representative of a person holding a superior, higher-level position.

31. **Discount-From-List Contracts** - Contracts whereby price is determined by applying a percentage discount from an Established Catalog Price. This type of Contract is only to be used when Purchasing Services determines, that this contracting methodology is in the best interest of the City.

32. **Emergency or Urgent Purchase** - A situation where regular procurement methods aren't feasible and immediate attention is required. Formal competitive bidding procedures are waived as reviewed by the Purchasing Division Director and approved by the City Manager.

The City Manager may authorize an emergency or urgent purchase up to $300K for commodities or services including construction where a clear and present threat to public health, property, welfare, safety, or other substantial loss to the city exists. After the emergency or urgent purchase takes place, the respective department shall present the total cost of the emergency or urgent purchase to the City Commission for approval if it exceeds the City Manager approval thresholds.

33. **ePurchasing (Electronic Purchasing)** - Conducting all or some Purchasing functions electronically over the internet. ePurchasing processes require the submission of proposals or pricing for an Invitation to Bid through an electronic platform designated by the City.

34. **Established Catalog Price** - The price included in a catalog, price list, schedule, or other forms that:

    a. Is regularly maintained by a manufacturer or Contractor;
    b. Is either published or otherwise available for inspection by customers; and,
    c. States prices at which sales are currently or were last made to a significant number of any categories of buyers or buyers constituting the buying public for the supplies or services involved.

35. **Evaluation Committee** - A committee established to evaluate proposals, and conduct interviews and negotiations during the process of solicitation for a specific product or service. The Evaluation Committee is typically composed of representatives from the functional areas of expertise identified in the Scope of Work and may include a representative from Purchasing Services.

36. **Firm Fixed-Price Contract** - A Contract whereby the price of the service or good is fixed, not variable, for the entire life of the Contract or until a set quantity of goods or services is delivered.

37. **Firm Pricing** - Prices that do not fluctuate for a set or an indefinite period of time, depending upon the terms of the Contract.

38. **General Services** - Includes support services performed by an independent contractor requiring specialized knowledge, experience, or expertise. The services rendered do not consist primarily of the acquisition of equipment or materials. Examples of General Services include, without limitation, janitorial, pest control, and maintenance of equipment. General Services are normally procured through Requests for Proposals or Invitations to Bid. The Purchasing of General Services may include subjective evaluation factors of the submitting firms.

39. **General Services Administration (GSA) Contracts** - Contracts entered into by the General Services Administration of the Federal Government (also known as GSA Schedules). GSA Contracts contain prices to be utilized by all Federal Government Agencies. GSA Contracts also contain the most preferred customer clause, making the prices contained in the GSA Contracts equivalent with those that are given to the most preferred customer of the vendor.

40. **Governmental Agency** - Any government or agency of the Federal, State, or any local government.

41. **Invitation to Bid (ITB)** - A written solicitation for competitive sealed Bids designating the title, date, and hour of the public Bid opening and specifically defining the Commodities or Contractual Service for which Bids are sought. The Invitation to Bid will be used when the City is capable of specifically defining the scope of work for which a Contractual Service is required or when the City is capable of establishing precise specifications a Purchasing solicitation.

42. **Letter of Interest (Request for)** – A method of selecting a vendor whereby all vendors are invited to submit a summary of their qualifications and state their interest in performing a specific job or service.

43. **Low Bidder** – The vendor who submits the mathematically lowest price for a Purchasing solicitation.

44. **Mandatory Bid Amount** - The dollar threshold at which the formal Bid process is required. The Mandatory Bid Amount is currently $50,000 (non-construction) and $200,000

(construction).

The current known requirement of any commodity or service will not be divided to circumvent the requirement of the Mandatory Bid Amount. Special orders and warehouse-stocked items will continue to be ordered through the warehouse.

45. **Minority Business Enterprises (MBE)** - is a business or person in which more than 50% of the stock of the company is owned by a recognized minority group. Minority Businesses must be qualified through certification.

46. **Multiple-Award Contracts** - Contracts that provide awards to more than one vendor for the same item. The Purchasing staff may use these Contracts when determined that the use of more than one vendor is in the City's best interest.

47. **Negotiations for Professional Services** - The act of determining terms, conditions, and prices for the performance of Professional Services.

48. **Notice of Award** - The written notice by the City to the successful Bidder or offeror stating that upon compliance by the successful Bidder or offeror with the condition's precedent to the Contract within the time specified, the City will sign and deliver the Contract.

49. **Notice of Intent to Award** - The written notice identifying the initial low bidder or the most advantageous proposer issued. The timeline for filing a protest will commence after releasing the notice of intent to award. .

50. **Notice to Proceed** - The written notice issued by an authorized City employee to the successful bidder or proposer to proceed as directed.

Open-end Contract - A Contract where by an indefinite quantity of supplies, services, or construction is to be procured over an identified time span on an as- needed basis.

51. **Owner-Direct Purchase** - A contract may be awarded for supplies or materials without competition where such supplies or materials are being procured by the city as an owner-direct

purchase for incorporation into a public works project, the contract for which was previously awarded by the city, which prior award included the cost of such supplies and materials. In such event, the city shall procure the supplies or materials in accordance with Florida Statutes and regulations related to owner-direct purchases by governmental entities.

52. **Payment/Performance/Construction Bond** - A bond of a Contractor/vendor in which a surety guarantees to the City that the work/services will be performed in accordance with the Contract documents or non-payment to subcontractors and may, at the discretion of the City, include an irrevocable letter of credit issued by a financial institution or cash. If the project has change orders, it will be the departments responsibility to obtain a bond rider.

53. **PRIDE of Florida** - The Prison Rehabilitation Industries and Diversified Enterprises, Inc. ("PRIDE") is a non-profit, self-funded corporation chartered by the State of Florida in 1981 to provide meaningful training and work experience to inmates in Florida's correctional institutions. PRIDE donates 1.5% of all sales to the State of Florida every year from the operation of 49 industries in 20 prisons in the State of Florida A catalog is available in Purchasing Services of all products, prices, and prison inmate contracts.

54. **Purchasing** - The process of buying, renting, leasing, or otherwise obtaining any supplies, services, construction, or any other item(s), including the provision of a description of any and all requirements, the selection and solicitation of sources, preparation, and award of Contracts as well as identifying all phases of Contract administration.

55. **Professional Services** - Any service where the City is obtaining advice, instruction, or specialized work from an individual or firm specifically qualified in a particular area. Professional Services may include a report or written advice that may be lengthy; however, the main thrust of the service is not considered labor but the exercise of intellectual ability. The Purchasing of Professional Services does not lend itself to normal competitive bidding and price competition alone. These services may be procured by Letter of Interest, Request for Qualifications, or Request for Proposals and selected through

Competitive Selection and Negotiation or exemption depending on the total purchase amount.

56. **Purchasing Division Director** - The senior Purchasing official for the City of Boynton Beach or his/her designee. This Purchasing Division Director, , and his/her designee have the authority to solicit Bids and issue Purchase Orders on behalf of the City. All Purchase Orders entered into by the City will require the authorizing signature of the Purchasing Division Director or Finance Director or their respective designee(s).

57. **Purchase Order** - A Purchase Order is a unilateral Contract issued by the City to formalize a purchase transaction with a vendor, conveying acceptance of a vendor's Bid or Proposal. The Purchase Order should contain statements as to the quantity, description, and price of the Commodities, Services, or construction ordered as well as applicable terms regarding payment, discounts. date of performance, transportation, insurance, and other factors.

58. **Purchase Requisition** - A method to communicate to "Purchasing Services" an exact description of the Commodity or Services that the respective department requires.

59. **Purchasing Card (P-Card)** - A commercial VISA or MasterCard which is issued to authorized City employees for making purchases not to exceed $3,000.00 in accordance with procedures set forth in Section XVIII. The City Manager may increase this amount for hurricane or emergency purchases if he deems it is in the best interest of the City.

60. **Quotation** - An informal (verbal) or formal (written) notice by a vendor to the City stating the prices, terms, and conditions under which the vendor will furnish certain Commodities or Services.

61. **Repairs to Vehicles and Equipment for Insurance Settlements** - when such purchases are made pursuant to the requirements of an insurance settlement.

62. **RESPECT of Florida** - A registered service mark of the Florida Association of Rehabilitation Facilities, Inc., the central non-

profit agency of the Commission for Purchase from the blind or other severely handicapped persons.

63. **Request for Proposals** - All documents, whether attached or incorporated by reference, for soliciting sealed proposals. The price of the Commodities or Services may not be utilized as the primary criteria for the award of the Bid or offer.

64. **Responsible Bidder or Responsible Offeror** - The person, Vendor, Contractor, or company who has the capability in all respects to perform fully the Contract requirements and the tenacity, perseverance, integrity, experience, ability, reliability, capacity, facilities, equipment, financial resources and credit which will give a reasonable expectation of good faith performance.

65. **Responsive Bidder or Responsive Offeror** - A person, Vendor, Contractor, or company who has submitted a Bid which conforms in all material respects to the Invitation to Bid or Request for Proposals.

66. **Review and Negotiation Committee** - A group of persons appointed by the City Manager or designee to rank in preferential order those professional firms or individuals interested in providing Services on a particular project and to negotiate a final Contract with the highest-ranked firm.

67. **Services** - The furnishing of labor, time, and effort by a person, Vendor, Contractor, or company, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements but shall include both Professional and General Services.

68. **Single Source** - A Purchasing decision whereby purchases are directed to one source because of standardization, warranty, or other factors, even though other competitive sources may be available.

69. **Specifications** - Any description of the physical or functional

characteristics or the nature of a Commodity, Service, or construction item as drafted by the requesting department. It may include a description of any requirement for inspecting, testing, or preparing a Commodity, Service, or construction item for delivery. Specifications may also contain provisions for the inclusion of factors that will lead to the ultimate calculation of the lowest total cost. All specifications shall seek to promote the overall economy for the purpose intended and encourage competition in satisfying the City's needs and shall not be unduly restrictive.

70. **Sole Brand** - The only known brand or only reasonable brand capable of fulfilling the needs of the City.

71. **Sole Source** - The only known vendor or the only reasonable vendor capable of providing a service or commodity to the City.

72. **State Contract** - The contracts awarded by the State of Florida's Department of Management Services subsequent to a formal bidding process and award of various equipment and services Contracts extended for use by all political subdivisions (entities).

73. **Supplies** - All property, including but not limited to, equipment, material, printing, and leases, but specifically excluding the acquisition of leasehold interests in real property by the City.

74. **Surety** - An individual or organization which, for consideration, promises in writing to make good the debt or default of another. The surety must hold a certificate of authority as an acceptable surety on Federal bonds published in the current Circular 570, United States Department for the Treasury and the Federal Register, effective July 1, annually, as amended.

75. **Surplus Property** - Any property belonging to the City, which is capable of being used, but is obsolete, inefficient, or in excess of the normal operating requirements of the City. This property is disposed of by auction or other means that prove more beneficial to the City as determined by at least two (2) of the following: City Manager, Purchasing Designee, or Finance Director. The City Commission will approve the disposition of the property.

76. **Suspension** - The disqualification of a business or person from receiving Invitations for Bids, Request for Proposals, or the award of a Contract by the City for a given period.

77. **Terms and Conditions** - The provisions of the Contract entered into between the City and any other party. The Terms and Conditions include, without limitation, the price, delivery, discounts, etc., and any contractual clause(s) which both parties have agreed upon.

78. **Tie Bids** - Two or more bids received for the same item that is exactly equal to the price, terms, and other factors upon which an Award is made.

79. **Unit Price** - The price for one unit of a Commodity.

80. **Using Department** - Any department of the City, which utilizes any Commodity, Service, or construction, procured under the policies set forth by this Manual, Florida Statutes, and the City of Boynton Beach's Code of Ordinances.

81. **Warehouse Special Orders** - Represents purchases (no capital outlay items) processed by the warehouse. The warehouse has established Bid discounts for purchased Commodities and the discounts are passed on to the City's departments. The Commodities handled by the warehouse **currently** include vehicle parts, office supplies, janitorial supplies, hardware, irrigation supplies, medical supplies, safety supplies, brass fittings and accessories, sewer pipe, electrical supplies, meters, and uniforms. Although this listing of terms and definitions is comprehensive, it is not considered inclusive of all related terms applied to the Purchasing of Commodities and Services provided to the City.

Written Quote - A written price quotation on either the City's quotation form or vendor's quotation form or stationery for Commodities or Services. A Written Quote shall include the date, quantity of Commodities or term of the Service, and the amount of the quotation. Staff shall ensure all quotes are comparable “apples to apples” in regard to the goods or services requested. All quotations shall be recorded and maintained as a public record in accordance with the State of Florida's retention policies.

82. **Waiver of procurement procedures** – The waiver of procurement procedures exemption can only be approved by the City Commission. Staff will present all relevant information to the Commission, using it to make factual findings supporting its determination. Such contracts or purchases will not be placed on the City Commission consent agenda.

The Commission will evaluate the request, considering factors like time constraints in procuring goods or services, to decide if the exemption is valid and whether granting approval serves the City's best interests. The City Commission may authorize the waiver by a simple majority vote if it is deemed in the City's best interest to obtain goods and services that cannot be acquired through the normal purchasing process due to insufficient time, the nature of the goods or services, or other factors.

Purchases authorized by the waiver process shall be acquired with such competition as is practicable under the circumstances and only after a good faith review of all available sources and negotiation regarding price, delivery, and terms. Procurement procedures may not be waived for procurements subject to the provisions of F.S. § 287.055 or § 255.20 as amended from time to time.

IV. EXEMPTIONS TO COMPETITIVE PROCESS

Certain purchases made by the City are exempt from the competitive processes outlined in the Manual. These exemptions can only be utilized with the pre-approval of the Purchasing Director in conjunction with the City Manager or designee. The current list of purchases exempt from the competitive process is shown below:

1. Legal services
2. Items purchased for re-sale
3. Recreational programs provided by independent contractors
4. Lobbying services
5. Training
6. Entertainment, Entertainment Related Services, Art, talent, and artistic services
7. Medical services
8. Insurance
9. Food and beverage
10. Consultant and Professional Services.
11. Purchase of information technology software applications and

equipment directly from the manufacturer, developer, or producer of the product or service, including annual licenses, maintenance, support, and upgrades to existing information technology software, hardware, or firmware. This includes subscription-based software fees that are unique or preexistent and contain historical knowledge that cannot be easily or without cost moved to another software application.

12. Services or commodities provided by governmental, not-for-profit organizations, or public entities.
13. Specialized staffing services, such as golf course labor services, recreation programmers, day laborers, and similarly situated employment services and contractors.
14. Permit Fees
15. Emergency or Urgent Purchase
16. Repairs to Vehicles and Equipment for Insurance Settlements
17. Utilities including but not limited to electric, water, telecommunications and electric utility services.
18. Purchase of items or personnel critical to the security of city facilities
19. Waiver of Procurement Procedures

V. CONTRACTING UNDER FEDERAL AWARDS

This policy is adopted to ensure that commodities and services procured using federal funds, including but not limited to the Community Development Block Grant Program, are obtained efficiently and effectively in free and open competition and through the use of sound procurement practices. City staff and any grant administrators (sub-grantees or contractors) with designated responsibility for the administration of federally funded grant contracts are responsible for ensuring compliance with all applicable federal and state laws and regulations. These include but are not limited to OMB Circular A-102, attachment O; 2 CFR §§200.318 – 200.327; s. 255.0525 and 287.055, Florida Statutes, and Chapter 73C-23 Florida Administrative Code.

All other Procurement Manual requirements are fully applicable to federally funded projects. It is the intent of the City to promote competitive bidding by way of the following sourcing, an Invitation To Bid, a Request For Proposals, or a Request for Qualifications.

A. **General Federal Procurement Standards**. The City hereby incorporates the following elements into the Purchasing procedures as required by 2 CFR Part 200, which shall apply to federally funded projects as may be applicable.

1. **Applicable Law**: The City shall follow applicable City

procurement procedures, State and local laws and regulations, provided that the procurement procedures conform to applicable Federal law.

2. **Competition**: The City shall document that goods and services are procured in an openly competitive manner. The City shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement as required by CFR 200.318(h). Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

3. **Comparability**: The City recognizes for true competition to take place, the City must maintain reasonable requirements for firms in order for them to qualify to do business; avoid requiring unnecessary experience and excessive bonding; avoid noncompetitive pricing practices between firms or between affiliated companies; avoid utilizing noncompetitive contracts to consultants that are on retainer contracts; avoid organizational conflicts of interest; avoid requiring “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and, avoid any arbitrary action in the procurement process. See 2 CFR 200.319.

4. **Technical Specifications**: When drafting solicitations, we shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. See 2 CFR 200.319.

5. **Unnecessary and Duplicative Items**: The City shall avoid acquisition of unnecessary or duplicative items as provided for in 2 CFR 200.318(d). Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis

to determine the most economical approach.

6. **Documentation**: The City shall maintain for the current year and the preceding five (5) years all records, invitations to bid, bid results, bid tabulations or any other significant materials that will serve to document our policies and procedures and detail the history of procurement as required by 2 CFR 200.318(i). These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

7. **Time-and-Material Contracts**: The City may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk as provided by 2 CFR 200.318(j). Time-and-materials type contract means a contract whose cost to the City is the sum of: (i) The actual cost of materials; and (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the City shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

8. **Settling Disputes**: The City shall be responsible for, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of federal procurements in accordance with 2 CFR 200.318(k). Bid protests shall proceed in accordance with Section XVII of these purchasing procedures.

9. **Contract Administration**: Purchases shall be checked or verified by designated staff to assure that all goods and services are received, and prices verified. All invoices and receipts shall be signed, dated, and maintained in the documentation file.

10. **Small, Minority, Women owned Business and Labor Surplus**: The City shall take steps to assure that minority

businesses, women's business enterprises and labor surplus area firms are used when possible as required in 2 CFR 200.321.

11. **Domestic Preference for Procurements**: As appropriate, and to the extent consistent with law, the City will, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

12. **Procurement of Recovered Materials.** The City and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

13. **Conflict of Interest**: Purchasing agents shall comply with the Palm Beach County Ethics Code and the standard of conduct regarding doing business with one's own agency and conflicting employment or contractual relationships as provided for in Section 112.313, Florida Statutes, as may be amended from time to time. Purchasing agents shall not participate in the selection, award, or administration of a contract funded using federal grant monies if he or she has a real or apparent conflict of interest as required by CFR 200.318(c)(1).

14. **Common or Shared Goods and Services**. As required by CFR 200.318(e), to foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the City shall enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

15. **Surplus Property**. The City shall use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs as required by CFR 200.318(f).

16. **Value Engineering**. The City shall use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions as required by CFR 200.318(g). Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

17. **Independent Cost Estimate**. The City shall perform an independent cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the City must make independent estimates before receiving bids or proposals.

18. **Federal Awarding Agency or Pass-Through Entity Review.** The City must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition

19. **Bonding Requirements**: The City shall require payment and performance bonds for applicable contracts in excess of the

Simplified Acquisition Threshold as required by 2 CFR 200.326, and in compliance with Section 255.05, Florida Statutes.

20. **Contract Provisions**: The City shall include in all contracts utilizing federal funds those applicable requirements as set forth in 2 CFR Part 200, Appendix II, which shall be considered incorporated herein by this reference.

B. Methods of Federal Procurement

The City must use one of the following methods of procurement for these federally funded purchases in accordance with the requirements of this Purchasing manual, including Section VI, Purchase Requisitions:

1. **Micro Purchases:** Micro-purchases may be awarded without soliciting competitive price or rate if the City considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. The City may use such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. To the extent practicable, the City must distribute micro-purchases equitably among qualified suppliers. The Federal micro purchase threshold is $10,000.00, and may be amended from time to time.

2. **Small Purchases:** Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that are in excess of the micro purchase threshold but do not cost more than the Simplified Acquisition Threshold (SAT). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. The Federal SAT is $250,000.00, and may be amended from time to time.

3. **Formal Procurement Methods:** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by the City, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive

procurement can be used in accordance with § 200.319 or §200.320(c). The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the City determines to be appropriate:

Sealed Bids (IFBs): Bids are publicly solicited, with firm fixed pricing is awarded to the lowest responsive and responsible bidder whose bid conforms with all the material terms and conditions of the invitation for bids, is the lowest in price. In order for sealed bidding to be feasible, the following conditions should be present:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; and
- The procurement lends itself to a firm fixed price contract, and the selection of the successful bidder can be made principally on the basis of price.
- The sealed bid method is the preferred method for procuring construction, if the above conditions apply. If sealed bids are used, the following requirements apply:
- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, the invitation for bids must be publicly advertised;
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- All bids will be opened at the date and time prescribed in the invitation for bids, the bids must be opened publicly;
- A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as the following must be considered in determining which bid is lowest: discounts, transportation cost, and life cycle costs. Payment

discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

- Any or all bids may be rejected if there is a sound documented reason.

Competitive Proposals (RFP and RFQs): The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of IFBs. If this method is used, the following requirements apply:

- Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified sources. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- The City must have a written method for conducting technical evaluations of the proposals received and making selections;
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and,
- The City may use competitive proposal procedures for qualifications-based procurement (RFQs) of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The RFQ method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

4. **Non-Competition Proposals:** Procurement by noncompetitive proposals is procurement through solicitation

of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- The aggregate dollar amount does not exceed the micro-purchase threshold;
- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City; or
- After solicitation of a number of sources, competition is determined inadequate.

VI. PURCHASE REQUISITIONS

This policy establishes unified Purchasing procedures to outline the requirements for the City's departments submitting purchase requisitions to Purchasing Services which will be processed into purchase orders and direct payment requisitions.

Purchase Requisitions submitted to Purchasing Services for the Purchasing of all budgeted Commodities and Services below the mandatory bid amount of $50,000 per annum for non-construction, and $200,000 for construction must follow the quotation and approval guidelines stated below.

Purchasing requirements shall not be artificially divided to circumvent the approval process.

Personal Property, Commodities, and Services (Non-Construction) - Bid Threshold $50,000			
Total Purchase Amount	**Requisition Process**	**Approval Level Total Purchase**	
Less than $5,000	One Quotation	Department Head*	
$5,000 to $49,999	Three Written Quotes	City Manager*	
$50,000 & over per annum	Formal Bid	City Commission	
Construction Projects - Bid Threshold $200,000			
Total Purchase Amount	**Requisition Process**	**Approval Level Total Purchase**	**Purchase Type**

Less than $5,000	One Quotation	Department Director*	
$5,000 to $199,999	Three Written Quotes	City Manager*	
$200,000 or above	Formal Bid Process	City Commission	

*Or Designee—Note: Directors shall not sign any quotes from vendors that bind the City to any terms and conditions.

Departments Purchasing items from the same vendor in multiple transactions are subject to Formal Bid Thresholds. Departments will need obtain approval from the City Commission if they exceed the set amounts outlined for the Formal Bid Process.

In lieu of quotations, a requesting department can utilize other government contracts, such as state contracts, RESPECT, PRIDE, piggyback, etc. If another Government Agency Contract is used, it is up to the originating department to obtain a copy of the bid and award documents to support the awarded vendors, award dates, and pricing. The Department submitting the purchase request shall review all pricing submitted on the quote or proposal to ensure it adheres to the pricing outlined in the established piggyback or cooperative contract. This documentation must be submitted to Purchasing Services for compliance check and review to support the electronically processed Purchase Requisition.

Procedure:

Specific Forms for Purchase Requisition and Direct Payment Requisition (Form 121): Departments must use specific forms for a Purchase Requisition or a direct payment requisition. The Purchase Requisition will be electronically processed through the Sunguard H.T.E. Purchasing/Inventory system. The direct payment requisition can be located on the share-drive at: S:\CityTemplates\Finance\Blank121Form.

1. **Direct Payment Requisition (Form 121)**
   Departments must submit all direct payment requests to the Finance Department on Form 121 providing the amount to be paid, the name of the vendor, the allocated fund source, and Form 121 must be signed by the Department Director or his/her designee. All supporting invoices must be attached to the requisition. **Sales tax will not be paid on direct payments.** The City is a tax-exempt entity, and it is up to the department to provide the tax-exempt information to the vendor for direct payment purchases.

A direct payment requisition is used as a check request for a direct payment to a vendor/payee for the following type of purchases (this list is not all-inclusive):

A. Advertising
B. Insurance payment to carriers
C. Memberships
D. Legal fees and settlements
E. Witness & recording fees
F. Petty cash reimbursements
G. Park & Recreation Activities i.e., instructors
H. Travel reimbursement and training advances/reimbursements
I. Tuition Reimbursement
J. Refunds
K. Regulated utility payments: telephone, electricity, natural gas, water, or similar services where rates or prices are fixed by legislation or by federal, state, county, or municipal regulations.
L. Services procured with non-City funds that are a "pass-through" (developer deposits, recreation "all inclusive" trips, etc.)
M. Unemployment compensation
N. Tax withholding payments
O. Retirement plan contributions
P. Investments
Q. Automobile titling, tags, and license plates.
R. Certain payments to the State, County, or other governmental entities.
S. Facility rentals for special events, elections.
T. Medical
U. Grant Disbursements to Residents.
V. Unusual items approved by the Finance Director or designee.

During the course of a normal workweek, direct payment requisitions that are properly completed and processed by departments and delivered to Finance by 4:00 p.m. Tuesday will have a check available weekly on Fridays.

2. Requisition/Purchase Order Process

All purchase requisitions are submitted electronically to Purchasing Services for processing into a purchase order.

A. **Purchase Requisitions less than $5,000.**
All vendor purchase requisitions that total less than $5,000 may be electronically processed directly to Purchasing Services or if total less than $3,000 can be paid for using the City's P-Card. One (1) quote is required for these purchase requisitions.

B. **Purchase Requisitions totaling $5,000 to $49,999 (non-construction).**
These Purchase Requisitions will require **three comparable "apples to apples" written quotes** to be provided to Purchasing Services to support the purchase. If the Purchase Requisition totals $5,000 to $49,999, the purchase requisition along with supporting written quotes will be sent to the City Manager, or his/her designee, for approval prior to the Purchase Order being issued.

C. **Purchase Requisitions $50,000 and over (non-construction) and $200,000 (construction) or above.**
Any Purchase Requisitions equal to or greater than $50,000 (non- construction) and equal to or greater than $200,000 (construction) will require the City to engage in a formal bid process. Further, the City Commission must approve of the award recommendation prior to the issuance of a Purchase Requisition as a Purchase Order. Purchase Requisitions related to a State Contract, cooperative bid, GSA bid, "piggy-back" contract of other Governmental Agencies, or other Purchasing processes (PRIDE, RESPECT, etc.) still require approval by the City Commission before the Purchase Order can be issued. When a Purchase Requisition is submitted, it must include agenda items, resolutions, W-9, Certificate of Insurance (COI), and fully executed agreements.
Exception: If the capital outlay item has been approved by the City Commission as a designated

budget line item, including the specified vendor and contract, it may be procured through an acceptable Governmental Agency Contract without requiring additional action from the City Commission.

After all, procedures have been met the ultimate responsibility for issuing a Purchase Order rests with Purchasing Services. The issuance of the Purchase Order creates a legal obligation between the City and a vendor.

Purchasing Services is responsible for investigating alternate vendors and prices. If another vendor can supply the same or equivalent goods at lower prices, Purchasing Services has the authority to change the vendor in order to secure the best value for the City. Any change in vendor will be communicated to the originating department.

Departments should allow sufficient time for processing all Purchasing Requisitions.

Purchasing Services can process complete and accurate Requisitions under $5,000 within an average of three (3) working days, depending on the time of year, current workload, and the resolution of any questions..

Purchasing Services shall require additional time to process Purchase Requisitions in excess of $5,000 that need additional levels of approval and vendor insurance where necessary. User Departments are encouraged to provide Purchasing with all required information up front to expedite the review process.

VII. BLANKET PURCHASE ORDERS (BPO)

The City may issue Blanket Purchase Orders for a specific dollar amount and a length of time not exceeding the fiscal year. They may be charged to a single budget account or various departmental accounts.

Departments may use most Blanket Purchase Orders to expedite multiple and repetitive small purchases from a single vendor over a given term. Some Blanket Purchase Orders are issued to local vendors for ease and convenience of picking up small purchases that are needed quickly. They are especially useful in cases where required quantities of a variety of items cannot be determined in advance.

Blanket Purchase Orders may not be used for the following purposes:

A. Capital outlay items;
B. Any item stocked in the City warehouse
C. Items requiring Purchasing through the bid process
D. Any one-time purchase.

Procedure:

This procedure addresses:

1. Requesting a Blanket Purchase Order,
2. Restricting use for Blanket Purchase Orders,
3. Providing notice to issue Blanket Purchase Orders,
4. Requesting changes to Blanket Purchase Orders,
5. Processing invoices resulting from Blanket Purchase Orders, and
6. Closing Blanket Purchase Orders at fiscal year-end.

1. <u>Requesting a Blanket Purchase Order</u>

Departments should request annual vendor Blanket Purchase Orders at the beginning of the fiscal year by completing the "Blanket Purchase Order Form" and submitting it to Purchasing Services with the following information:

A. Quotes from the vendor(s) considered for use (Include the vendor # or the use of another contract or piggy-back bid with a copy attached). When using a contract or bid for a Blanket Purchase Order, including the following information on the Form:

   1) Origin of the bid
   2) Contract number
   3) Contract period
   4) Agenda Items
   5) Piggyback Contracts

B. Items planned for purchase
C. Purpose of the product or service
D. Anticipated annual expenditure per budget account(s); and
E. Signature of Department Head or designee.

Prior to the start of the new fiscal year, Purchasing Services will send out written notification of the due date for the annual vendor Blanket Purchase Orders. This listing of Blanket Purchase Orders requested for the next fiscal year will be in August prior to starting the new fiscal year.

Refrain from requesting Blanket Purchase Orders in anticipation that a vendor might be used in the fiscal year. Wait until an actual need exists, then request the Blanket Purchase Order for the remainder of the year.

If additional needs require a Blanket Purchase Order during the course of the fiscal year, use the same process to request the Purchase Order. Purchasing will then process a Blanket Purchase Order for the remainder of the fiscal year.

2. Restricting Use for Blanket Purchase Orders

A Blanket Purchase Order will only be issued to a vendor from whom the department makes regular monthly purchases. As stated in the Policy, Blanket Purchase Orders may not be used for the following purposes:

A. Capital outlay items;
B. Any item stocked in the City warehouse
C. Items requiring Purchasing through the bid process
D. Any one-time purchase.

3. Providing Notice to Issue Blanket Purchase Orders

Once Purchasing Services approves the requests for Blanket Purchase Orders, they will issue a Blanket Purchase Order. If denied, the department will be notified.

If a request for a Blanket Purchase Order is being submitted which exceeds the bid threshold of $50,000, a bid reference number along with commission approval must support it.

4. Requesting Changes to Blanket Purchase Orders

If a department requires a change order to the amount allocated for a Blanket Purchase Order, a written request be sent to Purchasing Services. The request to change the amount allocated for the Blanket Purchase Order should include the purchase order number, account

number, dollar amount of increase or decrease, and justification for the change. Purchasing Services will make the necessary changes to the Blanket Purchase Order after a review of the change request.

The Blanket Purchase Order must be less than $50,000 without a bid reference. If Blanket Purchase Orders are anticipated to exceed the $50,000 bid threshold, it is the department's responsibility to provide a Request for Proposal or a Bid reference to use on the Blanket Purchase Order. If a change order results in an increase over the threshold limit of $50K, the change order must be taken to the Commission for approval.

5. Processing Invoices Resulting from Blanket Purchase Orders

Departments should regularly submit itemized invoices for Blanket Purchase Orders to Accounts Payable in Financial Services, identifying the

A. Purchase Order number
B. The budget account to charge for the expenditure.

The Department Head or designee must sign the invoice indicating the items were received and accepted.

Departments must submit invoices to Accounts Payable within five (5) days of receipt.

6. Closing Blanket Purchase Orders at Fiscal Year-End

All Blanket Purchase Orders will automatically be closed as the fiscal year is closed. It is up to the departments to ensure that all invoices have been submitted to the Financial Services Department **for payment to occur prior to officially closing the fiscal year (generally by October 15).** Invoices not submitted in a timely manner will be paid against the department's subsequent year budget allocation. It is up to the Department Head to request new Blanket Purchase Orders for the new fiscal year.

Remember, although the Blanket Purchase Orders are made available to assist the departments in the Purchasing of goods and services, they are not intended to circumvent normal Purchasing procedures to assure the City is receiving a favorable competitive price.

The end-user department shall monitor the actual spend on BPOs and request commission approval to spend over $50K. Purchasing will closely monitor a department's use of the Blanket Purchase Order process to assure compliance with the Purchasing Policy and may cancel the department's Blanket Purchase Order privilege if purchases are not within the guidelines listed above.

VIII. CHANGE ORDERS

Departments should request Change Orders by completing the "Change Order Form" and submitting it to Purchasing Services with the following information:

When staff estimates that costs may or will exceed the Purchase Order or Contract, Purchasing Services should issue a Change Order prior to approving the increase and making the invoice payment. Change Orders will generally modify the original terms of the Purchase Order to coincide with the actual details of the delivered order, or in the case of construction projects, it will modify the Purchase Order to the proposed revision to the Schedule of Payments. Change Orders are necessitated when unforeseen circumstances arise that were not contemplated at the time of awarding the Purchase Order or Contract.

Vendor invoices will have a tolerance of 10% of the Purchase Order amount up to the aggregate amount of the City Manager’s purchasing authority, $50K for non-construction and $200K for construction. Anything over these amounts shall require City Commission approval.

Departments should not automatically issue a Change Order in order to pay an invoice in excess of the original Purchase Order, which is a unilateral contract to provide commodities or services for a certain price. Any changes should warrant careful scrutiny and approval of the department head, with a full explanation prior to requesting the Change Order.

Appropriate staff persons should review and approve a Change Order prior to incurring the additional change in cost and making invoice payment for the following purposes:

For construction Change Orders, the Department Head, City Engineer, or outside Engineer will initiate the Change Order subject

to the City Commission's approval. Finance and Purchasing must be notified of any construction Change Orders.

Public Works Director and Fleet Manager must approve any estimate or invoice for Fleet Services vehicle repairs that exceed 10% up to the City Manager's purchasing authority of $50K for a Purchase Order before issuing any Change Order.

1. **Construction Projects Initially Approved by Commission:**

   A. Construction Projects Approved with Contingency Funding

   If Commission awards the construction project with a contingency allocation, then no further Commission action is necessary provided the construction project does not exceed the project budget (awarded contract + contingency funding).

   HOWEVER, THE CITY COMMISSION MUST APPROVE CHANGE ORDERS THAT EXCEED THE PROJECT BUDGET BEFORE INCURRING THE ADDITIONAL COST. Departments are encouraged to include contingency into items for commission approval if they believe they will have any unforeseen conditions or minor scope changes.

   The City Manager or designee will administratively review and approve all Change Orders. Upon completion of the construction project, the Project Manager shall reconcile all adjustments to the original contract and shall prepare an administrative Change Order to adjust the final value of the contract and present it to the Commission for approval if the total approval exceeds the contract amount plus the contingency

   Although staff recognizes contingency funding for budgetary purposes, it will not be included in the construction Contract (nor the Purchase Order). It is the project manager's job to ensure that the project stays within the approved amount; the City shall issue the construction contract for the dollar value of the bid award. Therefore, in order to modify the Purchase

Order amount, it is necessary for the Project Manager to request a Change Order. The Change Order request will recap the adjustments and identify the dollar value of the Change Order and should balance to the dollar value of changes shown in the Schedule of Payments.

B. Construction Projects Approved Without Contingency Funding

For all construction projects approved by Commission without contingency funding, the following will apply:

> **(Based upon cumulative Change Orders)**
> Any change order over the original amount shall require the commission's approval if the total amount approved was over $200K.

For construction change orders, the Department Head, City Engineer, or outside Engineer will initiate the change order subject to the City Commission's approval. Finance and Purchasing must be notified of any construction change orders.

Staff will only present Change Orders to the Commission for approval when the original contract price plus cumulative Change Orders reach $50,000 for non-construction and $200K for construction. The request for approval shall include all cumulative Change Orders that make up the cumulative contract price of $50,000 for non-construction and $200K for construction. Staff cannot exceed an aggregate contract price of $50K for non-construction or $200K for construction without a pre-approved contingency built into the agenda item.

Staff shall submit the Change Order request to the Purchasing Division in a memorandum providing:

1) narrative on the Change Orders (with copies of the supporting Change Orders);
2) the dollar value of the requested Change

Order;

3) reference to the purchase order number; and
4) identification of an approved funding source.

Upon review, Purchasing Services will make the necessary change to the Purchase Order; the Purchasing copy of the Change Order will be attached to the front of the original purchase order and filed, and a copy will be provided to the department.

2. **For non-construction purchase orders for goods and services, over $5,000 will have a tolerance of 10% (percent) of the purchase order amount** to a total of $50K. Staff cannot exceed the $50K for the non-construction purchase without commission approval.

   Accounts Payable can process the invoices for these Purchase Orders up to $50K without Purchasing Services preparing a Change Order. Invoices, which exceed the tolerance limit, will require the originating department to review the discrepancy and request a Change Order from Purchasing Services prior to the invoice payment along with commission approval if over $50K. The Change Order request shall justify the cause for variance.

3. **Blanket Purchase Orders** can have an adjustment (increase or decrease) to the Purchase Order amount for a related department and account number by written change order request to the Purchasing Services as long as they do not exceed $50K in the aggregate. This internal process will allow timely invoice payments associated with the blanket Purchase Order.

   Items purchased from a blanket Purchase Order shall be restricted to the account codes identified and allocated on the blanket purchase order. The blanket Purchase Order is for small, non-repetitive purchases against the identified account code and is not for one-time purchases.

   The blanket Purchase Order cannot be $50,000 or over

without bid reference and commission approval. For blanket purchase orders that are anticipated to exceed the bid threshold, it is the responsibility of the department to provide a request for proposal, or a bid reference to be used on the blanket Purchase Order.

Purchasing Services will provide necessary assistance to the department in preparing a sealed bid. Refer to Purchasing APM Chapter 10.4.01 for further details on blanket Purchase Orders.

4. **Professional Services Contracts** are a negotiated contract prior to rendering services to the City.
All change orders are to be forwarded to Purchasing Services for a proper review, and processing to change the Purchase Order amount. Change Orders will be distributed to the holders of the original Purchase Order.

   If there are any questions as to the procedure for processing a particular Change Order contact should be made with Purchasing Services. Any change orders which increase the total contract price to over $50K shall require commission approval.

   The Public Works Director must approve any estimate or invoice for Fleet Services vehicle repairs that exceed 10% up to an aggregate of $50K of a purchase order before issuing any change order.

IX. FORMAL BIDS

Formal sealed bids and proposals are the most effective methods for soliciting competitive prices from vendors in the governmental Purchasing sector. This policy will establish the procedures to use for sealed bids

The City shall award all contracts by competitive sealed bidding except as otherwise provided in Purchasing Policy Section X - Alternatives to Formal Sealed Bids. All Bids, Request for Proposals (RFP's), Request for Qualifications (RFQ's), Letters of Interest (LOI) Contracts, Agreements, Leases, etc., shall meet the insurance requirements as stipulated in the Administrative Policy Manual **(APM)** 12.01.12.

The following process should be used for formal sealed bids of $50,000

or more (non- construction) and $200,000 or more (construction).

1. **Bid Request Form.** A department must complete and submit a Departmental Bid Request form and submit it to Purchasing Services for the preparation of an Invitation for Bids. Departments must submit this form and all information required to complete the package. Incomplete forms will be returned to the requesting Department Head.

2. **Invitation for Bids.** An Invitation for Bids shall be issued for each solicitation for offers equal to or exceeding the mandatory bid amount and shall include a purchase description, and all applicable terms and conditions. The City posts solicitations on the City website, bids&tenders, Demand Star, and by publication in a subscription of https://www.pbcfllegalnotices.com/). . Responses are submitted through bids&tenders. Advertisement in the by publication in a subscription of https://www.pbcfllegalnotices.com/). may be made once.

3. **Bid Specifications.** Except for Citywide and Warehouse requirements, specifications for all other departmental bids should be provided by the requesting department in hard copy and electronically. Reasons for this are:

    A. As the prime user, the department is best aware of any special characteristics or problems associated with the bid.

    B. Because they probably utilize the bid item on a daily basis, the department is best aware of any new developments in that product field.

    C. Scientific, engineering or other technical descriptions must be provided by department staff that is qualified to do so.

    D. Purchasing staff should <u>not</u> be placed in the position of <u>deciding upon</u> and specifying bid items for individual department usage. Purchasing may be called upon to <u>assist</u> in writing specifications and may make needed and necessary changes. However, the user department

must review and approve all changes.

Specifications are the basis for a vendor's bid. Realizing that the bid will be compared primarily based on price, a vendor will seek to offer an item that only meets the specifications. Consequently, it is vital that specifications make no assumptions, but rather detail every important facet of the item in question. Neglecting to do so invites delivery of items that meet **specifications** but fail to meet the department's **expectations.**

4. **Insurance.** Insurance is required to safeguard the City from all claims resulting from damage to property and/or injury to persons caused by the vendor or his actions. The successful bidder shall be required to obtain, at their own expense, all minimum insurance coverage required under the terms and conditions of all Bids, Request for Proposal (RFP), Request for Qualifications (RFQ), Letters of Interest (LOI), Contracts, Leases, and Agreements.

Administrative Policy Manual (APM) 12.01.12, Insurance Requirements for Contracts Agreements and Leases (provided by Risk Management) identifies the insurance requirements. This same policy stipulates that the Department doing the project is responsible to assure that the necessary insurance requirements are in the subject document.

Under the terms and conditions of all contracts, leases, and agreements, the City requires appropriate insurance coverage listing the City of Boynton Beach as Additional Insured. This is accomplished by providing a Certificate of Insurance listing the City as "Certificate Holder" and "The City of Boynton Beach is Additional Insured as respect to liability". (NOTE: The City may accept an insurance contract or binder as proof of insurance if a Certificate is provided upon selection of the vendor).

Risk Management will review the insurance coverage and limits for the Certificate of Insurance to ascertain that the insurance requirements will be met. No Bid, RFP, RFQ, Contract, Agreement, Leases, etc., shall be awarded or purchase order issued until notification is received from Risk Management that

the Certificate of Insurance satisfactory meets the insurance requirements of the City. This includes "piggy- backing" of other governmental entity bids.

Insurance coverage generally required for construction and installation bids are:

A. **Worker's Compensation:** extending coverage for worker's injury on the job.
B. **Liability:** extending coverage for personal injury, accidental death, and property damage.
C. **Builder's Risk:** extending coverage of total value for the duration of the construction project for any loss.

5. **Bonds.** Bonds offer tangible protection in the form of monetary assurances that the bidder will meet its obligations. For projects and sometimes services of budgeted amounts of $50,000 or more, the successful bidder shall furnish a 5% bid bond as security for the faithful performance of the order(s) awarded as a result of the bid, and for the payment of all persons performing labor, and on their furnishing material in connection therewith. The surety of such a bond should be in the amount equal to 5% of the bid.

If applicable, simultaneously with the delivery of the executed contract, the successful bidder shall deliver to the City, an executed bond or a letter of credit for 100 percent of the accepted bid as security for the faithful performance of the contract and payment of all persons performing labor or furnishing materials in connection therewith.

The attorney-in-fact that signs the bond must file with the bond a certificate and an effective copy of the power of attorney. This can also be provided to the City electronically.

Bonds must be secured by the bidder at their own cost and generally may be classified as:

A. **Bid Bond or Bid Security.** This is a document, usually in the amount of 5% (five percent) of the bid, which guarantees that the bidder will enter into a contract with the City, and agrees to hold bid pricing until the award

is made.

Bid bonds protect the City from erroneous or deliberate low bids which the vendor has no intention of honoring. Should the bidder fail to enter into a contract, the bid bond shall be forfeited to the City.

Bid security must be submitted with the bid upon request and can be in the form of a certified check, cash, or bond.

The awarded vendor's Bid Security Bond will be returned after receipt of a Construction Bond or a Letter of Credit for 100% of the project.

B. **Payment/Performance/Construction Bond.** This bond is a surety instrument guaranteeing that the vendor will perform according to the terms of the contract and is generally in an amount of 100% of the bid. This bond affords protection from non-performance or non-payment to subcontractors in the completion of major contracts, the effects of which would result in considerable injury to the City. Should the vendor default, the bond is cashed, and the City may then utilize the funds to complete the contract with another vendor. Vendors are to submit performance bonds upon award of the contract, prior to the City issuing a Notice to Proceed and purchase order.

The successful bidder's Performance Bond will be retained if the Contractor does not conform to specifications, fails to perform as agreed upon in the solicitation. The City shall reach out to the surety company to rectify the problem with the contractor and be entitled to collect or retain part or all of the deposit; whichever is necessary to rectify the bidder's unacceptable performance as to not conforming to specifications or fails to perform as agreed upon in the solicitation and contract.

C. **Cash Bond.** In the amount of the bid or contract award.

D. **Irrevocable Letter of Credit.** Sometimes used in lieu

of a bond in the case of some construction projects or multi-year contracts.

6. **Bid Conditions.** In addition to the general conditions of most formal bids, some bids require special conditions that pertain specifically to the bid in question. Conditions differ from specifications in that conditions refer to requirements, which must be met by the bidder before specifications of his bid are even considered.

7. **Public Notice/Request to Advertise.** Notice shall include publication of https://www.pbcfllegalnotices.com/). . Public notice of the invitation to bids shall be given not less than 14 calendar days prior to the date set forth in the notice for the opening of bids. Such notice may be given by publication in a subscription of https://www.pbcfllegalnotices.com/) in the City and by posting the particulars to the City website or bids&tenders or Demandstar. Responses are submitted through bids&tenders. The notice shall state the bid title, scope of services or reason for the bid, and place, date**, and time of bid opening**. A Request to Advertise (attachment) must be completed with signatures of the Finance Director or Purchasing Director or designeeprior to the City Clerk's process to advertising. The City posts solicitations on the City-website, bids&tenders, Demand Star, and the County's website for public notices (https://www.pbcfllegalnotices.com/). Responses are submitted through bids&tenders. Advertisement on the County's website for public notices may be occur once or multiple times depending on funding requirements.

   Public Notice/Request to Advertise for Construction Projects. Legal ads should briefly state the name of the project, location, nature of work required, bid receiving date and time, , and location where bid specifications may be obtained. Per Florida Statute 255.0525, If construction cost is projected to be under $200,000.00. The ads should be placed a minimum of twenty-one (21) calendar days prior to the bid opening date and at least 5 days prior to any scheduled pre-bid conference if construction cost is projected to be over $200,000.00 but under $500,000.00. The ads should be placed a minimum of thirty (30) calendar days prior to the bid opening date and at least 5 days prior to any scheduled pre-bid conference if construction cost is projected to be *over* $500,000.00.

8. **Bid Opening.**

A. **Time of Bid Receipt.** Purchasing Services must receive bids no later than the time and date identified in the solicitation. Bids must be received within the E-Bidding Platform. The City reserves the right to consider Bids that have been determined by the City to be received late due to mishandling by the City after receipt of the Bid and no award has been made.

B. **Public Bid Opening.** Sealed ITB's shall be opened in accordance with FS 255.0518 as amended from time to time.

. No additional bids, except stated in "Item A" above, will be accepted after the assigned receiving date and time.

C. **All Bids Unopened.** If no bids are opened at the assigned receiving date and time of the bid, for any reason other than the failure of the vendors to present their bids or cause their bid to be presented at the appropriated time, Purchasing may extend the bid opening to the following workday at the same time as originally scheduled.

9. **Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in Purchasing policies. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine suitability for a particular purpose. Those criteria that will affect the bid price and be considered in the evaluation for an award (material defects), excluding cash discounts, shall be objectively measurable, such as trade discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the Invitation for Bids.

10. **Corrections, Cancellation, or Withdrawal of Bids.**

Corrections or withdrawal of inadvertently erroneous bids shall be permitted up to the time of bid opening. After bid opening, no changes in bid prices or other provisions shall be permitted, provided, however, the City Manager or his designee shall have the authority to waive minor irregularities or immaterial defects as provided by law.

11. **Bid Evaluation and Award.** Bids should be evaluated based on the requirements set forth in the Invitation to Bid, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, service, price, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in the evaluation for an award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation to Bid shall set forth the evaluation criteria to be used.

    The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid. In determining "lowest responsive and responsible bidder", in addition to the bid evaluation criteria above, the following may be considered:

    A. The ability and skill of the bidder to perform the contract.

    B. Whether the bidder can perform the contract or provide the supplies/services as required, without delay or interruption within the time specified.

    C. The quality of performances of previous contracts or services.

12. **Tie Bids.** If two or more bidders are tied, the tie may be broken and the successful vendor selected by the following criteria presented in order of importance.

    A. Delivery time if provided in the original bid by the bidders.

    B. Location of the vendor with the shortest distance (in miles) from City of Boynton Beach's City Hall. Distance will be determined by using the vendor's address.

C. If the above criteria are impossible to determine with any reasonableness or do not resolve the issue, the award will be given to that vendor whose bid was received first as indicated by the time stamp on the envelope containing the bid.

1)

13. **Contract Extension.** All invitations for bids for open-end contracts shall, when practical, provide for an extension of the contract for a period up to the amount of the original time, upon mutual consent of the City and Contractor and written analysis by Purchasing Services that renewal is in the best interest of the City. The end-user department should review the total cost of the entire contract and any contract exceeding $50K for non-construction and $200K for construction shall be presented to the City Commission for approval, unless a resolution previously approved by the City Commission authorizes execution of the renewal amendment.

14. **Cancellation of Solicitation.** The City reserves the right to cancel a solicitation at any time prior to the Commission's approval of the recommendation for award.

X. ALTERNATIVES TO FORMAL SEALED BIDS

Formal sealed bids are the most effective method for soliciting competitive prices from vendors in the governmental purchasing sector although there are alternatives to this process for purchases over $50,000.

The City permits alternatives to formal sealed bids under certain conditions. Purchasing Services and other departments may use the following alternatives when the conditions described are present.

1. Multi-Step Competitive Sealed Bid
2. Request for Proposals
3. Request for Qualifications

4. Emergency Purchasing
5. Sole Source Purchasing
6. Single Source Purchasing
7. State Contract (DMS)
8. Piggybacking
9. RESPECT of Florida
10. GSA Contracts
11. Prison Rehabilitation Industries and Diversified Enterprises (PRIDE)
12.
13. Purchasing Co-Operative group contracts
14. Rejection of Bids or Proposals / Direct Negotiation
15. Waiver of Procurement Requirements

The following paragraphs briefly describe each of these alternatives.

1. **Multi-Step Competitive Sealed Bid:** Generally, a step process where the City wants to make an award based on price, but available specifications are inadequate or too general to permit full and free competition without further technical evaluation and discussion:

    A. Issue Request for Information or Qualifications to which interested, potential vendors respond with either necessary information or un- priced technical offers.

    B. Invite vendors who submitted technically acceptable offers or qualifications to submit competitive sealed prices based on their technical offers.

    C. Award contract to the lowest Responsive/Responsible bidder.

2. **Request for Proposals (RFP):** This methodology compares the approach and scope of services proposed that are presented clearly and concisely with the prices of Responsive/Responsible vendors. This allows the City to determine an Award by evaluating the proposal both from a cost as well as a qualitative basis and presents the ability of the vendor to meet the specifications and complete the project as described in the scope of services.

    See Section XI Procedures for Request for Proposals (RFP)

for further guidelines.

The RFP typically includes:

A. A description of the Commodity or Service to be purchased (scope of services).

B. Specific criteria that will be used to evaluate the proposal along with the stated relative order of importance (generally):

    1) Managerial capability.

    2) Technical acceptability and approach in meeting performance requirements.

    3) Reasonableness of price.

    4) As well as other factors outlined in the RFP document.

C. Experience in the line of work being considered including references and past project experience.

D. Staff capabilities along with resumes of key individuals who will work on the project.

E. Cost breakdown of the proposed price.

The City can negotiate with the selected firm after opening their proposal and request a best and final offer.

3. **Request for Qualifications:** Contracts for Designated Professional Services are Services where the City is obtaining advice, instruction, or specialized work from an individual or entity specifically qualified in a particular area. However, this excludes architectural, engineering, and registered land surveying services as described under the Consultants Competitive Negotiation Act (CCNA), Florida Statute 287.055.

4. **Emergency Purchasing:** allows the City Manager or designee to waive competitive bidding and procure Commodities or Services where the cost exceeds $50,000 when there exists a clear and present threat to public health, property, welfare, safety, or other substantial loss to the City. However, Emergency Purchasing shall be made with such competition as is practicable under the circumstances. Refer to Section XV of the Manual for the full details on Emergency Purchasing such as in case of a hurricane where the City Manager or designee

can authorize the Purchasing of Commodities and/or Services up to $300,000. All Emergency Purchases must be presented to the City Commission for ratification at the next possible City Commission meeting. See the “Emergency Purchase” definition outlined above.

5. **Sole Source Purchasing:** allows an award for Commodities, Services, or a construction item without competition when it is determined that there is only one source available. This may include, without limitation: repairs or additions from the original equipment manufacturer; only supplier in the area; franchised or licensed distributor or service; or patented or propriety item. Any vendor identified as a sole source must provide written support of the same to the City. The selection process and determination for use of a sole source exemption rests with the Purchasing Services. The end-user department must provide Purchasing Services with ALL required information in order to make a decision.

   Commodities or Services available only from a sole source vendor may be exempt from the quote or competitive process under the following circumstances:

   A. There is only one source or one reasonable source for the required Commodity, Service, or construction, or;

   B. The parts or accessories being procured are an integral repair accessory compatible with existing equipment and are the only parts that can be reasonably used, or;

   C. The requesting department shall fill out the Purchasing Service's Sole Source Justification Form and attach the form along with the vendor letter as the backup to the Purchase Requisition.

   If the sole source purchase is $50,000 and over, Purchasing Services may solicit a Request for Information (RFI) if it is believed that Commodities or Services are available only from a single source and the City may electronically post a description of the Commodities or Services sought electronically. . The description should include a request that prospective vendors provide information regarding their ability to supply the Commodities or Services described.

6. **Single Source Purchasing** allows an Award for Commodities, Services, or a construction item without competition when it is determined that only one source is available. This may include purchases that are directed to one source because of standardization or warranty, even though other competitive sources may be available. For example, the purchase is needed to ensure consistency in results related to other products or standardization of parts or supplies as required to avoid unreasonable cost, uniformity, or inefficiency. Any vendor identified as a single-source vendor must provide written support as to its single-source identification. The selection process for use of a single source vendor rests with Purchasing Services. All Single Source purchases must still be approved by the City Commission if the single source purchase exceeds $50,000.00.

   The requesting department shall fill out the Purchasing Service's Single Source Justification Form and attach the form as back up to the Purchase Requisition for review and approval.

7. **State Contract** is the State of Florida, Department of Management Services (DMS) Purchasing Division's formal bidding process and the award of various equipment and services contracts extended for use to all political subdivisions (entities). Departments must provide support documents submitted with the Purchase Requisition. All applicable information is available on "My Florida.com". Any purchase that exceeds $50K shall require commission approval.

8. **"Piggy-backing"** onto contracts by other governmental agencies (i.e., state, county, school board, city, etc.) is encouraged when it is determined that this method of Purchasing will provide the best product/service at the best price without compromising any of the specifications or quality desired and the originating entity complied with requirements that are equal to or exceed the City's requirements. It is necessary to provide documents supporting this determination when submitting the Purchasing Requisition and to include a copy of the bid or Request for Proposal and the tab sheet and/or letter of an award that specifies the Contract period, Commodity or Services, prices, entity, and bid or RFP number. If the piggy-backed purchase exceeds $50,000, the department shall

prepare an Agenda Item Request and the City Commission must approve the purchase. .

A. A piggyback contract is a form of cooperative Purchasing through which the City is obtaining the pricing and terms of a contract entered into by a vendor or service provider and any state agency, municipality, county, special district, the Federal Government, or a not for profit Purchasing cooperative.

B. The Purchasing Division Director, with the approval of the Finance Director, may authorize the purchase of personal property, supplies, and services that have been procured through a competitive process equal to or exceeding the process otherwise required by this Purchasing Code up to $50K.

C. A proposed piggyback contract must be submitted to the City Attorney's Office for review and approval prior to contract signature. Vendors must agree that Florida law governs and that venue is Palm Beach County Florida. Vendors must also agree to comply with Florida scrutinized company and public records laws.

D. A City of Boynton Beach piggyback contract should be developed and signed by the vendor and presented in the agenda item if over $50K for commission approval.

E. The scope of work may not be expanded from what was procured in the underlying contract.

F. The price offered to the City of Boynton Beach for the commodity or service exactly equals or is lower than the governmental contract from vendors awarded the governmental contract;

G. A piggyback contract is not permissible when the action would call for an increase in quantities or for products or services that were not originally solicited and not evaluated initially as part of the underlying contract award.

H. The original contracting entity should be contacted and advised of the intended piggyback contract. An inquiry should be made and documented by the requesting department that there are no performance issues under the originating contract and concerning any potential for diminution of supply or lack of vendor capacity to provide the supplies or services.

I. The City shall obtain from the originating state, State agency, public university, purchasing cooperative, or federal government, and include as part of its Purchasing file, the:

1) original solicitation;
2) bid tabulation or evaluation, with the reason for award;
3) copy of the winning bid or proposal; and
4) copy of the contract.
5) Copy of the advertisement

9. **RESPECT of Florida** is a registered service mark of the Florida Association of Rehabilitation Facilities, Inc., the central non-profit agency of the Commission for Purchasing from the blind or other severely handicapped. A catalog is available in Purchasing Services for the Purchasing listings, which include computers, first aid, and safety products, janitorial products, municipal products, office products, promotional products, and Services.

10. **GSA Contracts** are those Contracts entered into by the General Services Administration of the Federal Government (also known as GSA Schedules) that are multiple award contracts containing prices utilized by all Federal Government Agencies. Provide support documents submitted with the requisition to Purchasing. Include the cover page of the contract indicating GSA number, title, beginning and ending dates, and pricing. Commercial products and services are available for purchase by local defined under U.S. Code 40 U.S.C. § 502(c).

What can you buy through GSA Schedules?
Local institutions may utilize the following programs to buy goods and services through GSA.

Cities can buy a wide range of products and services through GSA Schedules, including:

- Vehicles: Specialty motor vehicles and accessories, including fire fighting apparatus, law enforcement vehicles, and snow maintenance equipment
- Office supplies: Office supplies through the OS4 program
- IT and security: IT, security, and law enforcement products, services, and solutions
- Building maintenance: Building maintenance and operations, and maintenance repair facility supplies
- Wireless: Wireless products and services
- Records management: Records management help
- Information technology: Information technology and IT-related services, including hardware, software, and related supplies

11. **Purchasing Co-operative groups**
Comprised of government entities from throughout the region to provide cost savings and cost avoidances to member entities by utilizing the buying power of combined requirements for common basic items.

12. **Rejection of Bids or Proposals / Direct Negotiation**
The City Manager, or designee, may reject all bids or proposals or parts of all bids or proposals when such rejection is in the best interest of the City. A bid or proposal may be rejected if any of the following conditions exist:

A. The bid or proposal does not conform to the technical specifications or the solicitation documents.
B. Insufficient financial resources or lack of technical ability, physical capacity, or skill of the vendor to perform the contract or the service required.
C. Inability of the vendor to perform the contract or provide the services within the time specified without delays or interference.
D. Previous and existing non-compliance by the vendor with laws and ordinance relating to the

contract or services.

E. Inadequate quality or performance on previous contracts for goods or services, at the City or other governmental entity.
F. Vendor has been declared to be in default on any City or public entity contract or debarred or suspended by any public entity.
G. Taking exceptions to the terms, conditions, and specifications of the bid or proposal.
H. Non-conformance with minority business or disadvantaged business enterprise provisions and requirements, where applicable.
I. When the City determines that the price quoted is not fair and/or reasonable.
J. Insufficient competition.
K. The vendor made an error in pricing or other critical element in the bid or proposal that cannot be corrected after the due date for responses without giving that vendor an unfair advantage over other responding vendors.
L. Any other reason that is in the best interest of the City.

When the competitive solicitation process did not result in adequate competition or did not result in a contract that would be in the best interest of the City of Boynton Beach. The City's Purchasing Policy allows the City to directly negotiate with a firm for services.

The Purchasing department shall manage the negotiation process for all City procurement projects, as may be necessary. This shall not preclude the use of consultants or legal assistance in developing negotiation strategy and conducting negotiations with vendors. In general, negotiations shall be conducted under the principle of "win-win", where the City and vendor share benefits from the process and subsequent contract.

All negotiations shall follow the requirement of applicable Florida Statutes, and shall be conducted with the highest ethical standards, fairness, and equity; and with the understanding that the City will not be placed in an unfair or unreasonable position to the vendors. All negotiation meetings

with vendors shall be recorded and conform to the public records requirements of applicable laws.

The City Manager or designee, has the option to appoint a Negotiation Team to assist with various aspects of developing negotiation strategy and conducting negotiations with the vendors. The Team shall comprise stakeholders and individuals who are familiar with the project and can describe full the scope of the project and clearly articulate the City's position. All negotiating team meetings at which negotiation strategies are developed or discussed shall be recorded in accordance with Section 286.0113 Florida Statutes.

13. Waiver of procurement procedures

See the Waiver of procurement procedures outlined above.

XI. REQUEST FOR PROPOSALS (RFP)

When the Purchasing Division Director in conjunction with the Finance Director or Designee determines that the use of competitive sealed bidding is either not practical or not advantageous to the City, a contract may be entered into through receipt of the competitive sealed proposals. Competitive proposals may also be used for the Purchasing of professional services; as allowed by Florida Statute and these policies.

1. **Request for Proposals.** Proposals shall be solicited through a Request for Proposal (RFP). Public notice of the RFP shall be given not less than 14 calendar days prior to the date set forth in the notice for the opening of RFPs. For Construction Projects, per Florida Statute 255.0525, if construction cost is projected to be under $200,000.00. The ads should be placed a minimum of twenty-one (21) calendar days prior to the bid opening date and at least 5 days prior to any scheduled pre-bid conference if construction cost is projected to be over $200,000.00 but under $500,000.00. The ads should be placed a minimum of thirty (30) calendar days prior to the bid opening date and at least 5 days prior to any scheduled pre-bid conference if construction cost is projected to be over $500,000.00.

2. The City shall also follow 255.20 **Local bids and contracts for public construction works; specification of state-produced**

lumber. A county, municipality, special district as defined in Chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated to cost more than $300,000. For electrical work, the local government must competitively award to an appropriately licensed contractor each project that is estimated to cost more than $75,000.

Such notice may be given by publication in a subscription of https://www.pbcfllegalnotices.com/). in the City and by posting the particulars to the City website or bids&tenders or Demandstar. Responses are submitted through bids&tenders. The notice shall state the bid title, scope of services or reason for the bid, and place, date, and time of proposal opening. A Request to Advertise (attachment) must be completed with the signatures of the Finance Director or Purchasing Division Director. The RFP shall be developed by the requesting department with the approval of the Purchasing Division Director or Designee. The request will identify required specifications to determine the parameters for the solicitation of bids. The RFP typically includes:

A. Description of the item or service to be purchased (statement of work).
B. Specific criteria that will be used to evaluate the proposal along with the stated relative order of importance (generally):

    1) Managerial capability.
    2) Technical acceptability and approach in meeting performance requirements.
    3) Reasonableness of price.

C. Experience in the line of work being considered including references.

D. Staff capabilities along with resumes of key individuals who will work on the project.

E. Cost breakdown of the proposed price.

The City can negotiate with the selected firm after opening their proposal.

3. **Public Notice/Request to Advertise.** Public notice of the request for proposals will be given in the same manner as provided for competitive sealed solicitation .

4. **Receipt of Proposals.** No proposals shall be opened until the time designated in the public notice of the request for proposals. A register of proposals in the form of a tabulation sheet shall be prepared to contain the name of each offeror and each solicitation shall be opened publicly.

5. **Proposal Conditions and Specifications.** Conditions and specifications tend to serve more as guidelines than strict standards. The object is to allow the vendor's expertise to design a proposal to fulfill the City's ultimate specified result. Conditions and specifications need not be so broad as to promote uninhibited proposals. By establishing boundaries within which to operate and pointing the vendor toward the direction of the City's goal, the RFP seeks to elicit the best talents in the marketplace to solve its problems.

6. **Inquiries on RFP.** All questions regarding an RFP shall be submitted through bids&tenders. The Purchasing Division will coordinate the responses to the inquiry in the form of an addendum that alters or changes the result of an RFP and forward copies to all known responders to the proposal.

7. **Evaluation Factors.** The RFP shall state the relative importance of price, if appropriate, and other evaluation factors such as quality, delivery, and service, as well as past supplier performance, completion of similar projects or contracts, and conformance to specification and/or quotation requirements. Only criteria disclosed on the solicitation for bid may be used to evaluate the items or services proposed.

8. **Review Committee.** The Committee may be composed of the following representatives to review all responses to the RFP and shall short-list the candidates (three to five candidates) and submit a recommendation to approve and award a contract for the City Commission’s approval. .

A. Representative(s) of the City Manager's Office.

B. Citizens based on their qualifications and experience in the area of discipline.

C. Representative(s) or Consultants from the requesting department.

D. Other representatives that may be deemed appropriate by the City Manager or designee

9. **Discussion with Responsible Offerors and Revisions to Proposals.** As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for an award for clarification to assure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offers (BAFO).

10. **Award.** The award shall be made to the responsible/responsive offeror whose proposal is determined to be the most advantageous to or in the best interest of the City, taking into consideration the evaluation factors set forth in the request for proposal. The contract file shall contain the basis on which the award was made.

    Staff shall present an item to the commission that allows staff to approve, award, and negotiate a contract.

XII. CONTRACTING FOR PROFESSIONAL SERVICES (CCNA)

The City will follow the selection procedures set forth in the

Florida Consultants Competitive Negotiation Act (CCNA) as stipulated in Florida Statutes, Chapter 287.055 as amended from time to time, when seeking professional services. "Professional Services" means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping,

as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

XIII. ERRORS & OMISSIONS POLICY

The purpose of this policy is to set forth consistent procedures to assess:

1. Whether an error and/or omission (sometimes referred to herein as "E&O") has been made by a Design Professional who is performing services for the City,

2. Create a record of error and/or omissions for the purpose of recovery of premium costs,

3. Evaluate whether reimbursement of premium costs is appropriate and,

4. Evaluate Design Professional performance for consideration in future project selection processes.

Authority:

Administrative procedure.

Definitions:

Definitions as used in this Policy, the following terms carry the meaning specified below.

1. Change Order. Any contract amendment, which increases or decreases the value, or duration of a contract, when approved by the City Commission.

2. Consequential Damages. Consequential damages are damages which do not flow directly and immediately from the acts of a party, but only from some of the consequences or results of such acts and may include the City's cost of replacing or completing work resulting from a design error or omission, the cost of providing extended project support and loss of use

damages.

3. Delay Damages. Delay damages include the costs, which the City may have to pay a contractor as the result of Design Professional caused delays. These damages can include increased labor and material costs, extended home and field office overhead lost productivity, and lost opportunity damages.

4. Department Director. The head of any City department or division.

5. Design Professional. Design professionals are any consultants who provide services to the City whether or not they are hired pursuant to the Consultant Competitive Negotiation Act, FSS. 287.055. This policy applies to the entire design team including all sub-consultants hired by a Design Professional who is in direct contract with the City of Boynton Beach.

6. Error. An act that through ignorance, negligence, deficiency, or accident departs from or fails to achieve what should be done. Nothing in this definition modifies the terms of the City's contract with the Design Professional.

7. Insurance Carrier. The provider of the professional liability insurance coverage carried by the design professional.

8. Omission. An item of design or contract work task, which was neglected or left undone. Nothing in this definition modifies the terms of the City's contract with the Design Professional.

9. Premium costs. Premium costs consist of the increased cost to the City of having items of work added to a project after the contract has been bid and awarded and construction started. If work is added because of an error or omission by the Design Professional, and the item is required for the project to function as anticipated, value is added to the project and some portion of the cost of the item may properly be allocable to the City. However, when an error or omission in design is discovered after bid, some portion of the cost of adding the item frequently represents the increased cost that a contractor incurs in constructing the added work out of sequence. In addition, the City loses the benefit of having the work required to overcome the design error or omission competitively bid. These additional

costs resulting from design errors or omissions constitute premium costs. Premium costs include the cost of the consequential and delay damages as a result of the error and/or omission.

10. Professional Liability Insurance. That insurance which indemnifies against damages caused by the errors or omissions of the design professional.

11. Project Manager. The City employee assigned to administer the contract of a Design Professional.

12. Standard of Care. The expected level of professional skill, knowledge, expertise, experience, and performance set forth in the Design Professional's contract. Nothing in this Policy modifies the language or terms of the City or Design Professional, which are contained in their contract.

13. Unforeseen Site Condition. An actual physical characteristic which was not known or is different from the characteristic described in the construction contract documents. Responsibility for unforeseen site conditions are described in the contract documents and may vary from contract to contract.

Policy:

It is the policy of the City of Boynton Beach to fairly and consistently review and evaluate the performance of its Design Professionals against applicable contract and industry standards[1]. In the event that performance meets or exceeds the contract requirements, it is the policy of the City to record the same in an objective manner for use in future selection processes. In the event that performance falls short of the contract requirements, the City policy is to recover the premium costs, consequential damages, and delay damages resulting from the Design Professional's failure to perform to the level required by the contract or by industry standards as well as record same in an objective manner for use in future selection processes.

A Design Professional is obligated to perform services in a manner consistent with the contractually required standard of care as well as industry standards. Neither industry nor contractual standards of care require perfection. Therefore, some level of performance short of perfection is anticipated. In each project where the City has costs associated with

errors and omissions, the City should determine if those costs reflect a level of performance less than that required by the applicable standard of care. If so, then the City should expect to be reimbursed by the Design Professional for those costs.

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[1] Contracts, by their nature, cannot incorporate reference to all standards of care for a design professional. Reference to "industry standard" in this policy imposes on design professionals a duty to perform the requested services in accordance with the standard of care used by similar professionals in the community under similar circumstances.

When the City incurs cost overruns on a project, an assessment should be made by the Project Manager to determine the impact of such factors so that any City claim could be fairly adjusted. Such a determination would be made on a case-by-case basis by the City or consultants engaged for this purpose.

Procedures:

1. General
   Each project must be assessed on its own. No one standard can determine whether the City should expect reimbursement for E&O expenditures. Some errors or omissions may, standing alone, evidence a lack of care sufficient to warrant reimbursement. A series of minor errors or omissions may or may not be indicative of a lack of care. In determining whether to seek compensation from the Design Professional the City should first calculate and total the amount of premium costs. In the event that the standard of care has been exceeded, the Design Professional will be responsible for only the premium value (non-value-added costs).

   Secondly, the premium value needs to be compared to an applicable standard of care to determine if the premium value exceeds the amount normally expected on a project where the Design Professional was conducting itself in accordance with the standard of care contained in its contract.

2. Design Professional's Contract Language
   Each contract with a Design Professional shall contain the

standard of care language. The language shall be consistent with the language which currently represents the City's position as approved by the City Manager. Department Directors may recommend a higher standard of care for contracts that warrant the same. This revised standard of care language must be approved by the City Attorney's Office. In any event, the individual contract language shall take precedence over the terms of this Policy.

The Design Professional's performance will be recorded and in part evaluated according to the provisions of this Policy.

Project Managers shall provide a copy of this Policy to all professionals as part of their proposal or contract.

3. Change Order Administration

A. Construction Administration Services

The Design Professional shall immediately be made aware of any change, which may be considered an error or omission by the City so that the Design Professional can evaluate the condition and participate in mitigating the impact of the error or omission.

1) If construction administration services are included in the Design Professional's contract, the construction contract will include language directing requests for information and change proposals to the Design Professional with a simultaneous copy to the City, or simultaneous notification to both the City and Design Professional.

2) If construction administration services are not included, the Project Manager will notify the Design Professional within 24 hours of being made aware of a condition which may be an error and/or omission. This notification may be verbal or written. If verbal, the notification must be to a person employed by the Design Professional holding a position at least of engineer

B. Change Order Brief

A change order brief is required for all change orders prior to City approval. The change order brief contains a field to identify whether the change order or each change item contained within a change order (if multiple change items within a single change order) was a result of an error/omission. The Project Manager must identify whether the change or individual change item is a result of an error or omission.

This change order brief shall be provided to the Design Professional upon approval of the change order. The change order brief shall not be provided to the Contractor as an attachment to the change order, however, must be provided to the Contractor if requested.

C. Evaluation of the Value of Errors and Omissions

Within 30 days of the approval of a change order, all change items which have been identified as an error/omission will be evaluated to identify the premium costs. The premium costs should include all costs identified in the definition of premium costs above. Independent consultants may be used to assist the Project Manager in determining the premium costs.

D. Contract Payments to the Design Professional

To the extent possible, the Project Manager shall ensure that sufficient funds are available (based on contract balance) from payments to the Design Professional to cover the value of the premium costs identified and transmitted to the Design Professional. This provision of the Policy may be waived with the approval of the Department Director. This provision is not intended to provide for the implementation of a "retainage" provision.

E. File

The Project Manager will maintain a file that contains the change order documents, all related correspondence, and work papers, the evaluation identified in "b" above, the Design Professional's response to the evaluation, and any other materials related to an error/omission.

4. End of Construction Evaluation and Assessment

A. Cumulative Review

Upon completion of construction, the Project Manager will compile the results of all E&O evaluations for the purpose of determining whether the standard of care identified in the contract has been met. This compilation will be referred to as the cumulative review.

If determined to be warranted, the Project Manager can initiate an interim cumulative review at any time during the contract.

B. Assessment Against Standard of Care

The Project Manager will compare the cumulative review to the standard of care in the contract of the Design Professional to determine whether the contract requirements have been met. This comparison is to be performed on a case-by-case basis considering the items set forth earlier in this Policy.

C. Review of Final Evaluation and Recommendation

1) If the Project Manager's evaluation indicates that the standard of care has been met, the Project Manager can recommend final payment. Final payment and recordation of the Design Professional's performance shall be made in accordance with "4d" and "4e" of this Policy.

2) If the Project Manager's evaluation indicates that the standard of care has not been met, a copy of the evaluation shall be sent concurrently to the Division Director as well as the Design Professional. The Division Director shall review the evaluation and schedule a meeting with the Design Professional prior to concurring with the recommendation of the Project Manager and sending same to the Department Director.

   Should the Department Director agree with the evaluation of the Project Manager and Division Director that the standard of care has not been met, the cumulative review, along with the Department Director's recommendation shall be forwarded to the Design Professional. This communication to the Design

Professional shall indicate the monetary penalty if any that the City intends to impose and shall afford the Design Professional the opportunity for a meeting with the City to discuss the City's findings and conclusion.

In the event the Design Professional disputes a monetary penalty imposed by the City pursuant to this policy, the dispute shall be settled by mediation under the Construction Industry Mediation Rules of the American Arbitration Association. A demand for mediation must be in writing and must be made prior to final payment. The acceptance of final payment by the Design Professional constitutes a waiver of the dispute.

If within 45 days after service of a written demand for mediation, the mediation does not result in settlement of the dispute; then, any unresolved dispute shall be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules. Fast track procedures shall be followed when the disputed amount is less than $50,000.00. A single arbitrator shall be used.

An award rendered by the arbitrator shall be enforceable under the provisions of the Florida Arbitration Code, Chapter 682, Florida Statutes.

D. Final Payment of the Design Professional's Contract

1) If the Department Director concurs with the Project Manager that final payment in accordance with the terms of the contract.

2) The Project Manager shall hold the final invoice for services, if a contract balance remains. The amount withheld from final payment will be in an amount equal to or less than the estimated premium value. If there are insufficient funds remaining in the contract balance, the Department Director will determine the most appropriate manner to recover same from the Design Professional and/or their Professional Liability Carrier.

3) If the matter proceeds to negotiations for resolution, the final invoice for services shall be processed upon conclusion of the negotiations and in accordance with the agreements resulting from same.

E. Recordation of Performance Evaluation Form

The information contained in the cumulative review shall be permanently recorded on the Design Professional's Performance Evaluation Form, which is one of the factors considered for future selection.

XIV. CONSTRUCTION CONTRACTS

Due to the complexity of construction projects and the cost involved these contracts warrant special conditions.

In general, contracts for the construction of major City projects are obtained through the Formal (Sealed) Bid process. All procedures as previously noted in Section IX – “Formal Bids" should be followed.

Construction projects under $199,999.99 in cost may be procured by three (3) written “apples to apples” quotations. Sealed bids are required for all construction projects over $200,000 in costs and shall require the City commission's approval.

The following special conditions will apply to all construction contracts over $200K:

1. **Bid Preparation:**

A. **Using/Requesting Department:** The detailed specifications, special conditions that may apply, a suggested vendor list, a file link, and a "Departmental Bid Request" form are to be assembled and provided to the Purchasing Division. It is the responsibility of the using/requesting department to ensure that any special terms or conditions are complete, plans (including blueprints), and specifications are complete and accurate. Purchasing will review, add or delete information, add general and special conditions, necessary forms, proposal sheet, and prepare a "Request to Advertise" approval sheet for the Finance

Director or Purchasing Division Director or Designee prior to selecting a bid receiving date. When a complete bid package is ready to be advertised, the "Request to Advertise" is submitted to the City Clerk. All bids are posted on the City website, bids&tenders, Demand Star, and the County's Public Notice Website (https://www.pbcfllegalnotices.com/). All supplemental vendors from the Purchasing Vendor listing the suggested vendor's list from the Using/Requesting Department are added to the Purchasing software to notify them directly. Any addendum is prepared and uploaded to bids&tendersto be electronically distributed to all plan holders.

B. **Outside Consultant:** The consultant submits a specification package for Purchasing Division review and a "Department Bid Request" form is prepared by the using/requesting department. Any changes, documents needed for the bid package, general and special conditions, and insurance information, "Request to Advertise" is prepared by the Purchasing Division, signed the Finance Director or Purchasing Division Director or Designee. After approval and any suggested changes, a bid-receiving date is selected, and a bid number assigned. The final advertisement provided to the City Clerk's office for advertisement. All bids are uploaded to bids&tenders along with supplemental vendors from the Vendor listing or the using department's suggested vendors.

2. **Announcement of Bids.** Due to the contractor's desire to share in large dollar projects, interest in construction projects is generally high. To assure the greatest degree of competition, all of the following shall be used to announce the bids:

A. **Legal Ads.** Legal ads are an excellent method of attracting interested parties , while also dispelling any criticism of bids only going to favored contractors. Legal ads are generally requested by the Purchasing Division and placed by the City Clerk. Such notice may be given by publication in a subscription of https://www.pbcfllegalnotices.com/). and by posting the particulars to the City website or bids&tenders or Demandstar. Responses are submitted through bids&tenders.

Legal ads should briefly state the project's name, location, nature of work required, bid receiving date and time, cost of plans, and location where bid specifications may be obtained. Per Florida Statute 255.0525, If construction cost is projected to

be under $200,000.00. The ads should be placed a minimum of twenty-one (21) calendar days prior to the bid opening date and at least 5 days prior to any scheduled pre-bid conference if construction cost is projected to be over $200,000.00 but under $500,000.00. The ads should be placed a minimum of thirty (30) calendar days prior to the bid opening date and at least 5 days prior to any scheduled pre-bid conference if construction cost is projected to be over $500,000.00. The solicitations may also be listed in the Dodge Reports and other construction journals.

Per Florida Statute 255.0525, In cases of emergency, the procedures required in this section may be altered in any manner that is reasonable under the emergency circumstances.

1) If the location, date, or time of the bid opening changes, written notice of the change must be given, as soon as practicable after the change is made, to all persons who are registered to receive any addenda to the plans and specifications.

2) A construction project may not be divided into more than one project to evade the requirements in this section.

3) As used in this section, the term "emergency" means an unexpected turn of events that causes:

    a) An immediate danger to the public health or safety;

    b) The immediate danger of loss of public or private property; or

    c) An interruption in the delivery of an essential governmental service.

B. **Interested Contractors (Bidders List).** The primary contracts for construction bids are those firms that have previously done work for the City or expressed a desire to bid. A list of these firms shall be assembled from records from Purchasing Division, bids&tenders, and other City departments involved in the construction project.

Additionally, Purchasing Division may contribute firms that are listed in various reference sources, including Thomas Register,

Municipal Index, Yellow Pages, Contractor's Blue Book, Palm Beach County Minority Business Directory, etc.

C. **Plan Rooms.** Many firms that might not be reached by bids&tenders mailings or legal ads do frequent various "plan rooms" located in the area, such as Dodge Reports. By distributing copies of the bid and plans to these plan rooms, Purchasing Division can reach many firms that might otherwise be overlooked.

Plan rooms or websites also are valuable in that they allow the contractors to preview the bid before committing themselves to Purchase plans. Thus, if a bid is outside their realm of work, a free viewing at the plan room saves them a considerable waste of time and money.

D. **Pre-Bid Conference.** For construction projects, a pre-bid conference may be held. Attendance at this conference is not always mandatory but highly recommended for all bidders.

3. **Bid Opening.** Due to the generally higher dollar cost of construction projects, the bid opening shall be handled very seriously and in a highly professional manner. No bids will be accepted after the receiving date and time (exception; the City reserves the right to consider bids that have been determined by the City to be received late due to mishandling by the City after receipt of the bid and no award has been made).

Designated Purchasing Staff oversees the bid opening and shall fully record the various bids for the construction project per Florida Statute 255.0518 as amended from time to time. Anyone requesting to review bids will be requested to wait until all bids are received and tabulated and a Purchasing staff person is available to monitor the bid package review process.

4. **Bid Review and Award.** To allow a thorough bid review by the originating department, Purchasing Division should email copies of the tabulation sheets for the requesting department and have all bids available for their review (upon request) in bids&tenders. Included would be the Contractor's Bid Form, response page, references, bid bond, and any pages stating substitutions or changes to the bid document.

After the originals are secured in the bid file, the requesting City

department, upon request, should be forwarded the bid copies for their review within bids&tenders.

In some cases, a review of bids may be performed by a contracted Architectural/Engineering firm. Copies of bids must then be provided to both the requesting department and the Architectural/Engineering consultant.

The contract award should generally be made to the lowest most responsive/ responsible bidder meeting specifications as outlined in Section IX - Formal Bids. If this is not the case, a thorough explanation should accompany the department's memo to Purchasing Division for formal evaluation.

The Finance Director or Purchasing Division Director or Designee will then review the award. If in agreement, a recommendation is forwarded to the City Clerk in an Agenda Memo format for Commission approval with an applicable accompanying contract. Assuming City Commission approval, a purchase order will be issued to the successful contractor after agreements are approved and signed, and bonding and insurance requirements have been met. Care must be taken to reference the bid on the purchase order, noting that "all terms, conditions, plans, and specifications" of that bid shall apply.

5. **Formal Construction Contract (Agreement).** Due to the complex nature and duration of construction projects, a formal construction contract shall be prepared and copies are issued to all parties. These contracts are prepared in either Purchasing Division, Engineering, hired Architectural/Engineering firm, or the City Attorney's Office.

   The formal construction contract is based on the bid document and plans. The contractor shall provide all required licensing, insurance, and bond documentation to the City along with the signed contracts. A "Notice to Proceed" is issued upon receipt of all documents.

   All contracts are reviewed and approved by the City Attorney as to form and legality before the contract is presented for signature.

XV. PURCHASES AFTER A DECLARED EMERGENCY

This policy establishes responsibilities and implements procedures to follow when making purchases for the City after a declared emergency.

Definition:

An emergency is defined as a situation brought about by a sudden unexpected turn of events (i.e., Act of God, hurricanes, riots, fires, floods, accidents, etc.) or any circumstances or causes beyond the control of the City in the normal conduct of business. Emergencies could involve health, welfare, injury, or loss to the City and/or City citizens; which may require the immediate purchase of equipment, supplies, materials, or services.

A "Declared Emergency" under this policy is a declaration covering an area including the City of Boynton Beach made at the national, state, county, or city level necessary to respond in the best interest of public health, safety, and welfare.

Policy:

. The City Manager or designee may make purchases necessary in a declared emergency for relief efforts up to $300,000 without the approval of the City Commission, but subject to subsequent ratification when there exists a threat to public health, welfare, or safety; provided that such emergency Purchasing shall be made with such competition as is practicable under the circumstances.

The City Manager's or designee Purchasing authority is for a period of ninety (90) days after a declared emergency.

Procedures:

Notwithstanding any other provisions of these policies, the City Manager or his designee may make or authorize others to make emergency Purchasing of supplies, services, or construction items.

A written determination of the basis for the emergency and the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency Purchasing shall be made and shall set forth the contractor's name, the amount and type of contract, a listing of the item(s) procured under the contract, and the identification number of the contract file.

The requesting department shall present any emergency purchase that exceeds the formal bid amount to the City Commission on the earliest agenda date. The agenda item should provide Information identifying the extent of the emergency and the determination process for vendor selection.

Emergency Purchasing procedures may not be implemented to procure goods

and/or services needed to carry on what should be considered as normal operations. Failure to anticipate normal operating needs is not to be confused with an emergency. Although poor planning, overlooked requirements, inaccurate usage history, or inadequate forecasting may result in the need for expedited Purchasing, these are not bona fide emergencies.

XVI. DEBARMENT & SUSPENSION

This policy will establish the authority for the City to debar or suspend a business or person from consideration for award of contract or bids.

Authority:

The Finance Director or Designee after consulting the City Manager and City Attorney shall have the authority to debar or suspend a business or person from consideration for bid awards. For reasonable cause, the suspension can range from one (1) to three (3) years or indefinitely

Causes for Debarment or Suspension:

The causes for debarment or suspension include, but are not limited to, the following:

1. Conviction or commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract or incident to the performance of such contract or subcontract.

2. Conviction under state or federal statutes of a public entity crime, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving of stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affect responsibility as a contractor.

3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.

4. Violation of materials bid/contract provisions:

A. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the bid/contract or,

B. A recent record of failure to perform of unsatisfactory performance in accordance with the term of one or more bids/contracts; consideration may be given in case of failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor.

5. Any other material factor which adversely affects the responsibility as a City contractor or potential City contractor, including suspension. or debarment by another governmental entity.

6. The reputation of a bid/contract by failure to provide bonds, insurance, or other required certificates prior to award of contract.

7. Expiration or revocation of licenses required or failure to renew licenses required.

8. Refusal to accept an agreement or contract, or to perform an agreement or contract in conformance with the bid requirements.

9. The general performance of a contract is evaluated in writing as "poor" or "unsatisfactory."

10. Presence of principals or corporate officers in the business or concern, who were principals or corporate officers or directors within another business at the time when the other business was suspended or debarred within the last five (5) years under the provisions of this section.

11. Violation of the ethical standards set forth in City, State, and Federal Law or Regulations.

Decision to Debar or Suspend:

A decision to debar or suspend shall be issued in writing to a business or person from the City Manager or his Designee and shall:

1. State the reason(s) for the action taken.

2. State the period of suspension/debarment.

3. Inform the suspended or debarred business or person involved of their right to administrative review as provided in this policy.

Notice of Decision:

A copy of the decision under this section shall be mailed or otherwise furnished to the suspended or debarred business or person and any other affected party.

Finality of Decision:

A decision to debar or suspend shall be final and conclusive, unless the debarred or suspended business or person, within ten (10) business days after receipt of the decision, files a written notice of appeal to the City Manager or designee, in which event the decision shall be deemed final and conclusive if and when the decision is affirmed by the City Manager or designee.

XVII. BID PROTESTS

To establish a procedure for a prospective bidder to protest a bid against the City.

Any actual or prospective bidder, offeror, or contractor with a "substantial interest" who is aggrieved in connection with solicitation or award of Contract may protest in writing to the Finance Director or Purchasing Division Director or his/her designee. A bidder shall be deemed to have a "substantial interest" if the bidder would have been selected as the lowest Responsible and Responsive bidder but for the alleged mistake or irregularity described in the protest. Protesters shall file their written protests along with a bid protest cash bond in an amount equal to 5% of the bid or $5,000, whichever is less, or if the bid amount cannot be determined, with the Purchasing Division Director during normal business hours. The bond will be refunded to a protestor if the protest is upheld. Protests shall specifically describe the subject matter and facts giving rise to the protest. Protests shall be deemed effective on the date they are received by the Purchasing Division Director. The Purchasing Division Director shall immediately deliver the bid protest to the City Attorney with a memorandum setting forth the facts and circumstances surrounding the protest. The deadlines for filing bid protests are as follows:

1. If the protest relates to an Invitation for Bid or Request for Proposal, the protest shall be received prior to the bid submittal deadline date.

2. If the protest relates to any other matter relating to the bid, including, but not limited to, the intent to Award of a Contract, the protest must be received no later than three (3) regular business days after the date of notification of intent to award a solicitation by the Purchasing Staff.

Decision:

If the protest is not resolved by mutual agreement, the City Attorney, upon consultation with the Purchasing Division Director, shall make a recommendation to the City Manager who shall issue a decision in writing, or the City Manager may request for the City Attorney to render a decision in writing to the protesting bidder, offeror, or contractor. The City Manager shall have the authority to settle and resolve a protest of an aggrieved bidder, offeror or contractor, actual or prospective, concerning the solicitation or award of a contract. The decision shall:

1. State the reasons for the action taken; and

2. Inform the protester of its right to appeal as provided in this part.

Notice of Decision:

A copy of the decision under this section shall be emailed or otherwise furnished to the protestor and any other party intervening.

Finality of Decision:

A decision of the City Manager or designee under this section shall be final and conclusive unless the protester files a written appeal with the City Clerk within three business days of the City Manager or designee's decision. The City Commission within thirty (30) days of the City Manager's response shall consider the protest.

Failure to Follow Procedure:

A protestor's failure to follow the protest procedure set forth herein shall render void any protest or claim brought by an aggrieved bidder, offeror, or contractor.

Costs not recoverable:

Costs incurred by a protesting party, including but not limited to attorney fees, are the sole responsibility of the protesting party.

Remedies for Solicitations or Awards in Violation of Law:

1. **Prior to bid opening or closing date of receipt of proposals:**
   If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Division Director, after consultation with the City Attorney determines that a solicitation is in violation of federal, state, or municipal law or ordinance, then the solicitation shall be canceled or revised to comply with applicable law.

2. **Prior to Award:**
   If after bid opening or the closing date for receipt of proposals, but prior to the intent to award of contract, the Purchasing Division Director after consultation with the City Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, or ordinance, then the solicitation or proposal award shall be canceled and re-solicited.

XVIII. TERMINATION FOR CONVENIENCE OR DEFAULT

Termination for Convenience

1. The City may terminate performance of work under a contract in whole or in part, (the "Work Terminated") if the City determines that such termination is in the City's best interest. Termination of a contract will be in accordance with the governing provisions of the contract under which the work or services are being performed. The Purchasing Division will prepare a certified letter notifying the contractor of termination. The Purchasing Division Director shall notify the City Manager and City Attorney prior to the termination of any contract at or above the competitive solicitation threshold ($50,000).

   Contractors and subs working for the contractor shall acknowledge within the solicitation package that the City has the right to terminate for convenience without litigation being pursued against the City. Failure to do so will result in a non-award.

2. After receipt of a Notice of Termination, a Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

   A. Stop work as specified in the notice.

B. Complete performance of the work not terminated.

Termination for Default

The City of Boynton Beach may, subject to paragraphs below, by written notice of default to the Contractor, terminate this contract in whole or in part if the contractor fails to:

1. Perform the services within the time specified;

2. Make progress, so as to endanger performance of this contract;

3. Perform any of the other provisions of this contract.

Contractors and subs working for the contractor shall acknowledge within the solicitation package that the City has the right to terminate for default without litigation being pursued against the City. Failure to do so will result in a non-award.

XIX. PURCHASING CREDIT CARD

PURPOSE:

The City of Boynton Beach Purchasing Card Program is designed to improve efficiency in processing low dollar value purchases from any vendor that accepts the Visa credit card. Many of our current suppliers, currently being paid by the purchase order or blanket purchase order system, will accept the Visa credit card.

This program will allow the cardholder to purchase approved commodities and services directly from our vendors. Each Purchasing credit card is issued to a named individual and the City of Boynton Beach is clearly shown on the card as the Governmental buyer of the goods and services. Also, included on the credit card will be the City's sales tax exemption number.

Financial Services Department will serve as the Purchasing Card Program Administrator and will monitor the performance of the program. All questions or concerns should be directed to:

Materials and Distribution Manager 561-742-6324

The purpose of this policy and procedures is to accomplish the following:

1. To provide an efficient method of Purchasing and paying for goods and services not exceeding $2,000 per purchase (total invoice) unless pre-approved by the Finance Services Department Authorized Staff in writing.

2. To assist departments in the purchasing of small-dollar purchases.

3. To replace requisitions and purchase orders for low dollar value purchases.

4. To ensure Purchasing credit card purchases are in accordance with the City's ordinances, policies, and procedures.

5. To reduce the time spent by Procurement Services and Financial Services to process low dollar value transactions.

6. To ensure that the City bears no legal liability from the inappropriate use of the Purchasing credit cards.

7. To provide for disciplinary action if the Purchasing credit cards are misused.

The policies and procedures provided herein are minimum standards for departments. Departments may establish additional controls as they see fit for their particular operations.

OVERVIEW:

The City of Boynton Beach P-Card is a VISA credit card established as a more efficient, cost-effective method of Purchasing and paying for small dollar transactions. The card is used to procure low-dollar, non-inventory, non-contract goods and services that are business-related purchases. These efficiencies will allow cardholders to be more effective and focus on the value-added aspects of their jobs. The P-Card program is consistent with and implemented as part of the city's Purchasing strategy. The use of P-Cards:

1. Streamlines the Purchasing process.

2. Increases user satisfaction.

3. Reduces transaction costs.

4. Improves delivery times.

The Purchasing Card Program Guide provides guidelines under which you are to utilize your P- Card. Please read it carefully. Your signature on the Cardholder Agreement Form indicates that you understand the intent of the program and agree, and are responsible for, adherence to the guidelines established for the program. The program is not to circumvent Purchasing guidelines or procedures. To maintain the integrity of the program, the Program Administrator shall cancel credit cards that are not used in compliance with established guidelines. In addition, misuse of the P-Card may result in disciplinary action.

Remember that you are spending taxpayer funds each time you use the P-Card. This is a responsibility that cannot be taken lightly. You must treat this program with the same sense of responsibility and security that you would use with your own personal credit cards.

PROCEDURE:

HOW IT WORKS.

The Purchasing Card Program simplifies the Purchasing and disbursement process. Purchasing responsibility is delegated to the Department/Division enabling an authorized Cardholder to place an order directly with the vendor.

When a purchase authorization is requested by the supplier at the point-of-sale, the Bank of America Visa Purchasing Card system validates the transactions against pre- set limits established by the employee's Department/Division Head. All transactions are approved or declined (electronically) based on the Purchasing card authorization criteria established. The authorization criteria may be adjusted periodically as needed and may include, but is not limited to, the following:

1. Single purchase limit as set by the Department/Division (not to exceed $2,000 per invoice)

2. Daily spending limit (normally is $2,000)

3. Monthly spending limit (normally is $5,000 per month)

4. Approved Merchant Category Codes

5. Number of transactions allowed per day (optional)

6. Number of transactions allowed per month (optional)

7. Different limits may be established for specific cardholders but must be approved by the Financial Services Department.

The authorization process occurs through the electronic system that supports the Purchasing card processing services under the City of Boynton Beach's agreement with Bank of America.

WHAT IF THE SUPPLIER DOES NOT ACCEPT CREDIT CARDS

It is important to the success of the Purchasing Card Program that merchants interested in doing business with the City of Boynton Beach have the capability to process VISA credit cards. If merchants currently accept VISA credit cards, they are already equipped to accept the City of Boynton Beach Purchasing Card. A merchant who is not currently accepting VISA credit cards should contact:

Bank of America's merchant service provider at 1-800-847-2911, their own financial institution, or other merchant service provider.

If the supplier does not accept credit cards, the employee can:

1. **Thank the supplier for their time and find one that accepts the credit card,**

2. **Prepare a purchase requisition,**

3. **Use petty cash,**

4. **Direct payment voucher as appropriate.**

Roles and Responsibilities

The following is a summation of the responsibilities of the individuals and departments involved in the Purchasing card system.

Cardholder:

1. Keep your P-Card number confidential and your card in an accessible, but secure location. You are the only person authorized to use the card so the location should only be accessible to you. Lending or sharing your card or card number is prohibited. Do not leave your card in a place that is accessible to others.

2. Read and abide by the policies and procedures found in the Purchasing Card Program Guide. By signing the Cardholder Agreement form, you understand that you are accountable for activity on the card.

3. Purchase materials and services.

4. Always try to obtain the best possible value for the City when using the P-Card.

5. Follow the guidelines and do not split a transaction to circumvent your spending limit. For example, do not purchase products or services greater than the $2,000 or authorized single transaction limit and separate the payment into two or more transactions.

6. Immediately call the bank if cards are lost or stolen and notify your department representative and the Finance Department.

7. Assures receipts identify the detail of items being purchased.

8. Assures no sales taxes are charged to purchase price. It is the responsibility of the cardholder to either reimburse the city for sales tax or get a credit back on their card from the vendor.

9. Identifies account number, associated dollar value, and reason for purchase on the back of each purchase receipt.

10. Collect sales receipts for each transaction.

11. Turns in sales receipts to Department/Division Purchasing Coordinator within one day of purchase.

12. Review monthly statement with Purchasing Coordinator.

13. Assures that budget exists for purchased items.

14. Signs Monthly Purchasing Card Statement.

15. Identify disputed charges.

16. Responsible for all purchase transactions on the assigned Purchasing credit card.

17. Have their supervisor or Department/Division Head sign their monthly credit card statement.

Department/Division Purchasing Coordinator:
(Individual(s) designated by Department/Division Head)

1. The Department/Division Purchasing Coordinator is the liaison between the Purchasing Card Program Administrator and their department's cardholders.

2. The department representative is not expected to be a Purchasing official but should understand the Purchasing process and be able to recognize questionable purchases. Staff in the Purchasing Department are available to answer questions.

3. Review and forward card applications to the Program Administrator.

4. Report any suspected abuse or misuse of Purchasing cards to the Program Administrator.

5. Collect canceled cards and forward them to the Program Administrator with proper documentation.

6. Ensure that purchases do not violate P-Card policies. Notify the cardholder and Program Administrator of any unauthorized purchases.

7. Verify that goods and services have been received.

8. Review monthly statements with the cardholder.

9. Prepares the Monthly Department/Division Approval List Form for

each Cardholder's monthly statement and forwards it to the Finance Department within five workdays of receipt of statement or earlier if notified by the Finance Department.

10. Verify the account numbers and item description/explanation for the individual purchase transactions in the P-Card module.

11. Handle disputed items.

12. Ensure sufficient budget exists to cover all expenditures to date and available balances on all cards. If not sufficient, to provide budget transfer to cover expenditure amount.

Department/Division Head

1. Request Purchasing cards for designated employees.

2. Set spending limits for each Cardholder within established guidelines.

3. Designate Department/Division Purchasing Coordinator.

4. Collect cards from cardholders that terminate employment.

5. Evaluate the need to cancel or reissue cards when employees transfer.

6. Reviews and signs Department/Division Approval List.

7. Notify the Purchasing Card Administrator of terminated cards.

Warehouse Manager (Purchasing Card Program Administrator)

1. The warehouse Manager serves as the Purchasing Card Program Administrator.

2. Approve/disapprove all Purchasing card requests.

3. Maintain a detailed log of all Purchasing credit cards issued.

4. Evaluate Purchasing card feedback from suppliers.

5. Coordinate and maintain internal controls.

6. Coordinate issuance and cancellations of cards.

7. Participate in ongoing program reviews.

8. Participate in resolving billing disputes.

9. Maintain policy and cardholder guides/manuals.

10. Provide orientation for new cardholders to policies and procedures.

Finance

1. Receives and reviews approved Cardholders' monthly statements and consolidated monthly statements.

2. Notify Department/Division Head and Purchasing Coordinator when approved monthly statements are not received in a timely manner.

3. Loads transaction file from Bank of America secure website into PCard module of HTE system for departmental review.

4. Process to default account number any Cardholder monthly statement not received in a timely manner.

5. Notify Department/Division Head and Purchasing Coordinator of any cardholders' non-compliance issues with this policy.

ASSIGNMENT AND CONTROL OF THE PURCHASING CARD

1. <u>REQUEST FOR AND ISSUANCE OF PURCHASING CREDIT CARDS.</u>

   A. Purchasing cards will be issued to individual employees who frequently purchase goods and services. Generally, these are the same employees that were Purchasing low dollar value items through a Blanket Purchase Order prior to the credit card program.

B. The Purchasing Card will have the employee's name, the City name, the tax-exempt number, the Cardholder account number, and an expiration date embossed on the face of the card. The Purchasing card issuing company will not have individual cardholder information other than the cardholder's work address. No credit records, social security numbers, etc. of the cardholder are maintained.

C. All requests for new cardholders or changes to current cardholders must be made by the Department Head by submitting the Purchasing Card Request Form **(Attachment I**). The completed form will be forwarded to the Purchasing Card Program Administrator.

D. All requests for Purchasing cards must be approved by the Department Head and Purchasing Card Program Administrator.

E. When the Purchasing Card Program Administrator receives a Purchasing card from Bank of America, the cardholder will be required to personally take receipt of the card and sign the "Purchasing Card Program Employee Agreement" **(Attachment II**). The Purchasing Card Program Administrator or designee will provide the Cardholder a copy of the Purchasing Card Policy.

2. LOST OR STOLEN PURCHASING CARDS

A. If a Purchasing card is lost or stolen, the Cardholder must immediately notify Bank of America at 1-888-449-2273 and the Purchasing Card Program Administrator of the loss, verbally and in writing.

B. The Cardholder will be responsible for reporting all information necessary to minimize the liability to the City for a lost or stolen card.

3. TERMINATION OR TRANSFER OF CARDHOLDER

A. When an employee ends his or her employment or is transferred to another Department/Division, the Department Head or designee shall immediately collect the Purchasing card and destroy it. Place the destroyed card in an envelope and

send it to the Finance Department.

B. If the Department Head or designee is unable to collect the Purchasing card when an employee terminates or is transferred he/she shall immediately notify the Purchasing Card Program, Administrator. The Purchasing Card Program Administrator will ensure that the card is canceled.

4. PURCHASING CARD INVENTORY

Annually, the Purchasing Card Program Administrator will provide to each approving Director Head a list of all the Purchasing Cards issued to employees within their department. Each Department Head (or designee) will be responsible to conduct a physical inventory of the credit cards and certify the listing and return it to the Purchasing Card Program Administrator.

LIMITATIONS ON USE OF PURCHASING CARD

1. CARDHOLDER USE ONLY

The Purchasing Card may be used **only** by the employee whose name is embossed on the card. No other person is authorized to use the card. The Cardholder is responsible and accountable for all transactions that occur on his/her card.

2. CITY PURCHASES ONLY

The Purchasing Card is to be used for City authorized purchases **only. The Purchasing credit card cannot be used for any personal use and any such use will require immediate reimbursement and will result in disciplinary action which may include dismissal and/or criminal charges.**

3. DOLLAR LIMITATIONS

a. The Department Head approving the assignment of a Purchasing card will establish two (2) dollar limits for each Cardholder. A single purchase limit and a 30-day limit. The

normal maximum limits shall be $2,000 for a single purchase and $5,000 during the 30-day billing cycle. Exceptions will be made to the maximum dollar purchase limit as approved by the Purchasing Card Program Administrator. Requests for spending limit changes must be initiated and authorized by the Department Head. The Department Head may impose additional limitations.

b. A purchase may be made of multiple items, but the total invoice cannot exceed $2,000, or the Cardholder's limit is less than $2,000. **CHARGES FOR PURCHASES SHALL NOT BE SPLIT TO STAY WITHIN THE SINGLE PURCHASE LIMIT.** This will be considered abuse of the Purchasing card program and can result in cancellation of the card and/or disciplinary action.

c. The Purchasing Card Program Administrator has the authority to make purchases that exceed the single purchase limit of $2,000. All such purchases must be initiated by the Purchasing Card Program Administrator and must comply with the Purchasing policies and procedures established by the City. Exceptions have also been established for certain cardholders with the permission of the Director of Financial Services and must also comply with Purchasing policies and procedures.

4. UNAUTHORIZED/PROHIBITED PURCHASES

Following is a list of items that you are NOT authorized to purchase with the P-Card. If you are not sure that a purchase you are planning is an authorized user of the P-Card, contact the Program Administrator before you proceed.

A. Any additional goods or services not authorized by the Department Head or designee;

B. Purchase of food and beverages for non-City business purposes. Refer to section 5 below;

C. Transactions exceeding $2,000 or exceeding the cardholder's authorized transaction limit;

D. Transactions totaling over monthly spending limit of $5,000 or exceeding the cardholder's monthly authorized limit;

E. Personal use (purchases must be official City use only);

F. Cash, cash advances, or extension of credit;

G. Cash back for card purchases;

H. Items stocked at Consolidated Warehouse;

I. Items listed or services within the scope of a Blanket Purchase Agreements;

J. Telephone calls (either personal or business);

K. Fuel - gasoline and oil products (except for authorized travel);

L. Vehicle repairs (except repairs and maintenance to undercover vehicles);

M. Memberships must be used for City purchases only;

N. High-risk services; Onsite services;

O. Consulting or high-risk technical services;

P. Tobacco or alcohol products;

Q. Weapons of any kind, including firearms, ammunitions, and firearm accessories;

R. Explosives;

S. Tuition for employees (except authorized travel or training);

T. Items reimbursed by the City;

U. Transactions split to circumvent the P-Card single transaction limit;

The only person allowed to use a P-Card is the person whose name appears on the face of the P-Card. Do not lend your P-Card to another person for use. Delegation of authority is not permitted. Cardholders

may make purchases for another employee within the same department. Another employee may pick up or receive items for you, but only the cardholder is authorized to sign the credit card receipt. If instructed by a manager or supervisor to make a purchase that you do not think is allowed or appropriate, do not make the purchase without first resolving your concerns. Contact the Program Administrator for guidance.

Misuse or abuse of the P-Card is a violation of the P-Card Program Guide and will result in disciplinary action. The Program Administrator should be notified immediately of all instances of P-Card misuse or abuse.

Unauthorized, prohibited, or improper use of the P-Card may result in disciplinary action, up to and including termination of employment. In addition, consequences may include suspension and/or cancellation of the card and criminal prosecution, depending upon the severity and consequence of the misuse.

5. PURCHASING EXCEPTIONS

A written request for an exception can be considered for unusual circumstances. Unusual circumstantial purchases should not exceed $150. Examples of unusual circumstantial purchases could include but are not limited to Purchasing flowers, food, and other items that express care and gratitude. The requester must obtain approval from the Finance Director or City Manager before making their purchase. Exceptions are approved only in advance of a purchase. Unauthorized purchases without approval will be considered a violation of Purchasing card policy.

6. REBATES

Cardholders should take advantage of rebates when offered by vendors. Rebates must benefit the City, never the individual employee. If the vendor sends a check to the individual cardholder, the check should be endorsed by the individual and deposited to the City's General Fund. The rebate should never go to the individual cardholder. Rebates to the City in the form of a prepaid debit card should be used for City business only and the use must adhere to City policy. Itemized receipts pertaining to the prepaid debit card purchases must be filed with the respective cardholders' file.

7. FOOD AND BEVERAGE PURCHASES

All departments responsible for Purchasing food and beverages for City Programs, events, and activities should attempt to obtain sponsorships through partnering with the local community to lessen the impact on the City's budget.

The purchase of food and/or beverages for City programs, events, activities, workshops or City hosted professional organizational functions are permitted. The items must be pre-approved by the Finance Director.

Food and beverage purchases for City Staff shall only be made for those times when it is necessary for an employee to work through a meal period and requires prior written approval by the Finance Director.

In the case of grant-funded activities, food and beverage purchases are allowed when considered an allowable expense by the granting agency.

In the case of recreational programs, food and beverage purchases are permitted when part of a program that is funded by user fees.

Food and beverage purchases are allowable from funds (691) that have been donated from outside sources for specific department/program use unless noted otherwise when funds were received. The items must be pre-approved by the Finance Director.

All other food and beverage purchases are not authorized by the City including, but not limited to departmental staff meetings, board and committee meetings, promotional exams, per diem meals while traveling, employee birthday/appreciation celebrations, etc. Any exceptions require prior approval written approval by the Finance Director.

8. PURCHASING CARD SECURITY

Your Purchasing card should always be treated with at least the same level of care that you do with your own personal credit cards.

A. STORAGE OF THE PURCHASING CARD

Keep your Purchasing credit card in an accessible but secure location. Since you, as the Cardholder, will be the only one using the Purchasing card, it needs to be accessible only to you.

B. ACCOUNT NUMBER

Guard the Purchasing card account number carefully! Do not post it at your desk or write it in your day planner.

C. SHARING OF CREDIT CARD

The only person entitled to use the Purchasing Card is the person whose name appears on the face of the card. Do not lend your Purchasing card to another person for use.

D. LOST OR STOLEN CARDS

If the Purchasing card is lost or stolen, you must immediately notify the Purchasing Card Program, Administrator.

E. TRAVELING WITH THE P-CARD

Using the P-Card for employee travel requires the submission of a Travel Authorization form. The form must be completed by each traveler and applicable authorizations received prior to travel taking place. Travel expenses include hotel reservations, airline tickets, ground transportation, and meals while traveling on City business. The traveler must adhere to the policies and procedures outline in this Purchasing Card policies herein.

1) Travel privileges must be approved by the department director.

2) Personal expenses may not be charged to the P-Card.

3) The P-Card may not be used for alcohol or excessive meal costs.

4) All itemized receipts must be submitted with the monthly statement.

5) There are various types of meal expenses that can be paid for by the P-Card. Alcohol is not allowed on the P-Card regardless of the situation.

Travel authorization forms are to be included with the reconciled statement when the P- card is used for travel-related expenses.

When traveling internationally, contact the bank or the Program Administrator before travel so international charges do not result in a security check and possible decline of purchases.

PROCEDURES FOR MAKING AND PAYING FOR PURCHASES

1. DOCUMENTATION OF OVER-THE-COUNTER PURCHASES.

   A. When an over-the-counter purchase is made, the Cardholder must obtain the customer's copy of the charge slip.

   B. The charge slip shall be turned in to the Department/Division Purchasing Coordinator **within one business day of the purchase.** Identify on the charge slip the purpose of purchase and account number(s) to be charged at the time of payment. The Purchasing Coordinator will retain the charge slips for matching with the monthly statements and preparing the Monthly Department/Division Approval List.

   C. All items purchased over-the-counter must be immediately available. No back-ordering is allowed.

2. TELEPHONE ORDERS

   Purchases must be described in sufficient detail so that the parties to the transaction have a clear understanding of what is being acquired.

   A. The Cardholder must confirm that the vendor agrees to charge the Purchasing card when the shipment is made so that receipt of the supplies or service may be certified on the monthly Cardholder's monthly statement.

B. Instruct the vendor to include on the shipping document or packing slip: **"Purchasing Card Purchase".** This information will alert the receiving office and the Cardholder that the supplies have been purchased with the Purchasing Card.

C. Instruct the vendor that the purchase is exempt from sales tax and provide sales tax exempt number if necessary.

3. MISSING DOCUMENTATION

If for some reason the Cardholder does not have documentation of the transaction to support the transaction on the monthly statement, the Cardholder must attach a signed certified description of the purchase. Continued incidents of missing documentation may result in the cancellation of the employee's Purchasing card privileges.

4. PAYMENT AND INVOICE PROCEDURES

A. The Purchasing card company, Bank of America, will mail all individual billing statements to the Department/Division Purchasing Coordinator and one consolidated statement for all cardholders to the Purchasing Card Program Administrator, who will forward it to the Finance Department. The individual billing statement will list all transactions processed during the billing cycle. If no purchases were made on the Purchasing card during the billing cycle, no individual monthly statement will be generated unless adjustments for previously billed transactions have been processed during that cycle.

B. The Finance Department will load the monthly transaction file from Bank of America's secure website into the PCard module of **HTE.**

C. The Cardholder must review the individual monthly statement and note any errors or disputes. Charge slips/receipts for all items listed on the statement shall be attached to the statement. These **receipts are to be stapled to the monthly statement in the order as it appears on the statement.** Failure to keep adequate receipts will lead to the loss of Purchasing Card privileges. The Cardholder must sign the individual monthly

statement and return the signed statement and related charge slips/receipts to the Department/Division Designee.

D. The Department/Division Designee will review the individual statements and related charge slips/receipts. They will also verify the information in the PCard module for the correct vendor, charge amount, account number, and description/reason for purchase. The designee will print out Department/Division Approval List from the PCard module and sign it. The Department/Division Approval List form and all statements and charge slips/receipts are forwarded to Department Director for review and signature. The signatures certify that all charges are appropriate. authorized and the charge slips/receipts are attached.

E. The Individual monthly statements are signed by the Cardholder and the Supervisor or Department Director.

F. **The original individual monthly statements (signed). charge slips/receipts and the completed (signed) original of the Department/Division Approval List must be forwarded to the Finance Department within five workdays from receipt of the statements or earlier if notified by the Finance Department.** This will assist in meeting the timely payment to avoid any potential late fees which could be accessed by the issuing credit card company.

G. It is recommended that the Department/Division Purchasing Coordinator continually gather the charges/receipts, account numbers, and reason for purchases during the month. This will expedite the reconciliation process at month-end when the monthly statements are received.

H. The Finance Department will be responsible to receive the consolidated monthly statement, the individual monthly statements, and the Department/Division Approval Lists. Transactions will be reviewed to assure, as best as possible that purchases comply with the Purchasing guidelines and limitations as established in the credit card program. It is the responsibility of the Cardholder and the Department/Division to assure that bid awarded vendors are being used, and to monitor

the pricing in accordance with awarded bids. The Finance Department will forward the individual statements and Department/Division Approval Lists to the consolidated statement to Accounts Payable for payment.

I. Department /Division Heads and Purchasing Coordinators will be notified by the Finance Department when individual statements are not received within the prescribed timeframe (five workdays) or earlier if notified by the Finance Department. Late statements will automatically be charged to the default account number as shown on the Purchasing Credit Card Program Agreement. Continual failure by the Department/Division to process the monthly statement in a timely manner will result in the revocation of the Purchasing Card program.

J. Accounts Payable will ensure that the consolidated statement received is reconciled against the individual cardholder statements, and Purchasing card charges are processed for payment in a timely manner. The distribution of expenditures will be based on the account numbers and amount listed in the PCard module of HTE as printed on the Department/Division Approval Lists.

K. If the individual monthly statement has not been received by the time the payment is due, then Accounts Payable will pay the statement and charge the transactions to the Cardholders default account number within the department budget.

DISPUTED ITEMS

1. WHAT IS A DISPUTE

A dispute occurs when a Cardholder questions a transaction that has been charged to their account. The following steps must be taken to ensure prompt settlement.

A. If items purchased with the Purchasing card are defective, the Cardholder must return the item(s) to the vendor for replacement or credit. If the service paid for with a Purchasing card is faulty, the vendor must be notified and asked to correct the situation or provide a credit. If the vendor refuses to replace

or correct the faulty item or service, the purchase will be considered in dispute.

B. A disputed item must be explained with a note on the Cardholder's monthly statement before the statement is processed to Finance for review.

C. It is essential that the time frames and documentation requirements established by the Purchasing card issuer be followed to protect the cardholder's rights in dispute.

2. PROCEDURE FOR HANDLING DISPUTES

A dispute occurs when a Cardholder questions a transaction that has been charged to his/her account. The following steps must be taken to ensure prompt settlement:

A. The Cardholder contacts the merchant about the transaction and supplies the necessary information to begin the resolution process, and;

B. The Cardholder completes the Statement of Disputed Items Form **(Attachment III**) and faxes to Bank of America 1-888-678-6046 explaining the reason(s) for the dispute as well as a copy of the individual statement if the item has been posted. Bank of America will then place the transaction into a disputed status.

C. If the problem is resolved between the merchant and the Cardholder, the Cardholder should write the solution agreed upon on the bottom of the Statement of Disputed Items Form that was previously faxed to Bank of America, and fax the updated form to Bank of America as soon as possible. If an agreement cannot be reached the following steps will be completed:

1) After the item has been entered as a dispute, Bank of America must determine who is responsible by researching the transaction including requesting a copy of the sales draft when necessary. When responsibility for the transaction is determined, the dispute will be settled.

2) When an account is in a dispute status, the disputed amount is still included in calculating the available balance for authorizations (monthly limit). At the time the item is placed in dispute, it is removed from all finance charges, late charges, over-limit fees, past due amounts, and calculations. Finance charges which accrue from posting until the item is placed in dispute must be handled according to City policy. Any Cardholder statements generated while the account is in dispute will display the following message:

YOUR ACCOUNT IS IN DISPUTE FOR $XXX.XX. THIS AMOUNT HAS NOT BEEN INCLUDED IN THE FINANCE CHARGE OR PAYMENT CALCULATIONS.

3) If the Cardholder is actually responsible for the transaction, the dispute is settled in favor of Bank of America and no further actions are required. If the Cardholder is not responsible for the transaction, the dispute is settled for the Cardholder and the chargeback process may be initiated against the merchant.

4) If problems continue with a particular merchant, the Cardholder should notify the Purchasing Card Program Administrator of the problems.

REVIEW OF PURCHASES BY DEPARTMENT/DIVISIONS

Because of their knowledge of the job responsibilities and requirements, Departments/Division representatives are required to review each Purchasing card expenditure (items purchased, dollar values, and vendors) to ensure the purchased goods or services were necessary, and for official use only.

When purchases are questioned, the Department Head, or their designee, will be responsible for resolving the issue with the Cardholder. If the Department Head cannot be satisfied that the purchase was necessary and for official use, the cardholder must provide either a credit voucher proving the item(s) were returned for credit or a personal check for the full amount of the purchase. Checks must be sent to Finance Department with an explanation and account number.

Serious or repeated misuse of the Purchasing card will result in the revocation of the card. Employees incorrectly using their Purchasing card will be disciplined, up to and including termination.

To help the Departments/Divisions in their reviews, management reports will be available from the Purchasing card company.

DISCIPLINARY ACTION GUIDELINES

IMPROPER OR UNAUTHORIZED USE OF CREDIT CARD

1. Any incident of improper or unauthorized use of the Purchasing Card shall be immediately reported to the Department Head and the Finance Department.

2. The Director of Financial Services may suspend or terminate Cardholder privileges for improper or unauthorized use.

3. Improper or unauthorized use of the Purchasing card will subject the employee to appropriate disciplinary action.

4. In addition to any administrative and disciplinary action that may be taken, the employee may be required to reimburse the City for the total amount of the improper charges through payroll deduction or direct payment.

5. Failure to submit reports related to the individual statement activity within the time periods specified in these policies will result in revocation of the credit card.

QUOTATIONS

Although verbal quotations are not required for credit card purchases it is always good management practice to obtain the best price for the City.

The use of the Purchasing credit card program will allow the individual departments the flexibility to make small-dollar value purchases, and at the same time reduce the paper-intensive and expense associated with the purchase order process. The credit card program will be continually monitored and reviewed by management to determine its success and recommend any necessary changes to the program.

XX. PROCEDURE FOR PETTY CASH

This policy will allow for the procedures to establish and manage a petty cash fund.

Policy:

The departments have the authority to request a petty cash fund to meet small incidental purchases for facilitating the transaction of City business such as small purchases that must be made from vendors that do not offer the City credit, postage for special delivery, toll receipts, parking, etc. Petty cash requests will not be authorized for individual purchases that exceed $25.

Each department assigned a Petty Cash Fund shall designate a custodian to be responsible for the control of these funds. The employee assigned as custodian will be responsible for controlling the flow of cash in and out of the Petty Cash Fund, making sure proper receipts are obtained for each purchase and assuring that proper forms are obtained for each purchase, and assuring the proper forms are filled out completely and authorizing signatures obtained. The custodian will also be responsible for reconciling the Fund as needed and applying for reimbursement.

Each department should also designate one other employee as an alternate custodian. The alternate custodian would assume the custodian responsibilities in the event of the absence of the custodian.

Procedures for a petty cash fund are as follows:

Establishment of a Petty Cash Fund:

A memorandum will be sent to Finance Department requesting a petty cash fund. The memo should be specific providing justification for the fund, the designated custodian of the fund, the alternate custodian, and the dollar amount being requested to establish the fund. Amount established will vary depending on the activity of the department.

Petty Cash Payments:

When an employee requests reimbursement, or receives an advance, from petty cash the Petty Cash Receipt must be used. This form provides for identification of dollar amount of receipt; reason for purchase; expense code; signature of the employee receiving petty cash; signature of department custodian for petty cash;

and signature of department head. Anytime a disbursement is made from petty cash it is required that this form be completed in full.

Petty Cash Reimbursement:

Petty cash funds should be reconciled on a weekly basis, or more frequent if needed. Reimbursement request will be submitted to Finance Department on a Direct Payment Requisition with the description stating "Petty Cash Reimbursement". The account codes from the Petty Cash Receipts will be summarized on the Direct Payment Requisition. The Direct Payment Requisition, Petty Cash Receipts, and supporting invoices will be sent to Finance Department for reimbursement of petty cash. Sales tax will be not be paid on Petty cash invoices. The City is tax-exempt and it is the responsibility of the purchaser to properly notify the vendor of the tax-exempt number.

Discrepancies in Petty Cash:

Any discrepancies in the petty cash fund maintained by the department should be brought to the immediate attention of the Department Head and Director of Finance. If theft is suspected, the Police Department should also be notified.

XXI. DISPOSITION OF SURPLUS AND OBSOLETE PROPERTY

This policy establishes responsibilities and implements procedures to be followed in the disposition of obsolete and surplus City personal property. These same procedures apply to the disposition of lost, stolen, and abandoned property and confiscated property obtained by the Police Department.

Procedure:

Release of Custody/Transfer. When the property is no longer of use to a custodian department, the following procedures shall apply:

1. The custodian department shall complete and sign a "Fixed Asset Transfer/Disposition Request" and submit the form to the Warehouse.

2. Warehouse shall so note the condition and disposition of the property on the "Fixed Asset Transfer/Disposition Request".

3. If the property is in usable condition, it shall be placed on a list of currently available surplus property and circulated to all City departments. This list shall be circulated prior to the sale of surplus equipment.

4. Prior to the actual transfer of any surplus property to storage, the requesting department shall obtain approval from the City Manager or Finance Department.

Removal from City Asset Inventory List of property is to be auctioned, sold by formal bid, sold for scrap, or thrown away, the following will apply:

1. Prior to the disposition of surplus property, a list of all inventoried property shall be submitted to the Department Director, or his designee, for approval. The Materials and Distribution Division will include the recommended method of disposal which is considered to bring the highest return to the City.

2. The City Manager, or his/her designee, shall have the authority to dispose of the following property without City Commission approval:

3 All abandoned or unclaimed property coming into the possession of the City.

4. All vehicles and equipment of the City which are scheduled for replacement in the annual budget.

5. All other tangible personal property other than the above with an original purchase price of less than $1000

Vehicles Disposal:

All surplus City vehicles designated for disposition will be turned into the Vehicle Service Department. Vehicle Service Department will:

1. Verify that the vehicle is no longer in usable condition to the City and should be released.

2. Prepare a list of vehicles which will include the year of vehicle, make, model, vehicle identification number (VIN), and vehicle number (City assigned number).

3. Verify the title work prior to submitting the list to the Materials and Distribution Department.

4. Complete the processing for disposal utilizing one of the approved disposal methods.

5. Send a completed copy of the "Fixed Asset-Transfer/Disposition Request" to the Materials and Distribution Department for removal of the asset from the inventory records.

Approved Disposal Methods:

Public City Auction:

If the public City auction method of disposal is utilized the auction shall comply with Florida State Statute, City Ordinance, Resolution, and/or established City Policies. The selection of an auctioneer shall be accomplished through a competitive bid process.

If titled vehicles are being auctioned, on the day of the auction, an authorized representative from the Vehicle Service Department shall be present to transfer vehicle registration to the new owner. Vehicle transfer can only take place if the buyer has paid in cash, cashier's check, or certified check.

In order to obtain a title for any vehicle that does not have a current valid Emissions Inspection Certificate each bidder/purchaser must:

1. Show positive proof that they reside in a county that does not have a Motor Vehicle Inspection Program (MVIP).

2. Purchase a vehicle without a title as "Parts Only" or "Junk" and perform the necessary repairs to qualify and obtain a "rebuilt' title from the State of Florida.

All property sold shall be properly identified by the City's fixed asset tag number. One copy of the property disposition shall be submitted to the Finance Department for their records.

The City may cooperatively hold auctions with other cities and county governments when such is determined to be in the best interest of the city.

Auction House:

If considered to be in the best interest of the City, the City Manager or designee may choose to have vehicles and other items sold to the highest bidder at an auction house. Vehicle sales must comply with the above.

Sale by Formal Sealed Bid:

If the Purchasing Division utilizes this method, it shall comply with the City's Purchasing policies and with respect to the procedures to be followed.

Sold for Scrap:

If the City Departments utilize this method, it shall be by competitive quotations and in compliance with the City's Purchasing Ordinance with respect to the procedures to be followed.

Thrown Away:

If the City utilizes this method, it shall first be approved by the City Manager or Designee that the property has no recoverable value. The property shall be loaded onto a City truck and taken directly to the County dump.

Other Disposition:
The City Manager or designee has the authority to approve any other method of disposition of surplus property.

XXII. LOCAL BUSINESS PREFERENCE

To provide locally owned and operated companies a competitive advantage when the City is procuring goods and services.

POLICY:

To provide an economic incentive to businesses that maintain a physical location in the City and a valid City business tax receipt.

1. Definition of a Local Business. A "Local Business" is any person, firm, partnership, company, or corporation authorized to do business in Florida that has a valid business tax receipt issued by the City for at least one **(1)** year prior to solicitation and a physical address within the City from which the vendor lawfully performs and operates. Post Office Boxes or locations at a postal service center shall not be used for the purpose of establishing a physical address. Home offices shall be considered as business locations if they otherwise meet all requirements of this Policy.

2. Certification. Any vendor claiming to be a Local Business shall file a Certification Statement with the City's Financial Services Department, Purchasing Services. The certification shall be filed prior to or simultaneous with that vendor's response to a Competitive Bid where local preference is permitted. All solicitations by the City shall indicate if a local preference is available. The Financial Services Department, Purchasing Services shall not have an obligation to verify the accuracy of any such certifications and shall have the sole discretion to determine if a vendor meets the definition of a Local Business as provided herein.

3. Qualification selection pursuant to Sealed Competitive Method.

    A. Competitive Bids. For all acquisitions made pursuant to Sealed Competitive Bid, as provided in Sec. 10.05, the City shall give preference to a Local Business if the Local Business' bid is determined to be within five percent (5%) or five thousand dollars ($5,000.00), whichever is less, of the lowest responsible and responsive bidder. In revenue-generating contracts where award, if any, is to be made to the bidder returning the highest amount to the City, the same preference set forth herein shall be applied with respect to the highest bid.

    B. Requests for Proposals, Requests for Qualifications, Requests for Letters of Interest.

        1) For all acquisitions made pursuant to Requests for Proposals, Requests for Qualifications or Requests for Letters of Interest, as provided in Sec. 10.07, the solicitation shall include a weighted criterion for Local Businesses of five percentage points (5%) of the total

points in the evaluation criteria published in the solicitation.

2) Local Preference shall not be applied when its application would result in an award that exceeds the otherwise lowest responsive, responsible bidder by 5% or $5,000 whichever is lower.

3) For all acquisitions made pursuant to Request for Quotes, Requests for Proposals, Requests for Qualification or Requests for Letters of Interest, as provided in Sec. 10.07, where the solicitation includes a qualitative ranking rather than a quantitative selection, the evaluation criteria shall include a Local Business preference, as reasonably determined by the Financial Services Department, Purchasing Services, consistent with the intent of this Policy. Each such solicitation shall clearly define the application of the Local Business preference.

4. To the extent practicable, for all acquisitions not made pursuant to the Sealed Competitive Method provided in Sec. 10.00, City departments and staff are strongly encouraged to utilize Local Businesses if they otherwise meet Purchasing policy requirements.

5. The City Manager or City Commission may decide to allow a project that would normally be competitively bid as a whole to be broken into segments in order to provide opportunities for local vendors.

6. Exclusions. The preferences established herein in no way limits the rights and discretion of the City to evaluate bids and proposals for responsiveness and responsibility; compare the quality of materials and services proposed, or apply other factors that may be relevant to the award decision. Notwithstanding anything to the contrary set forth in any policy adopted by the City, the local business preference shall not be applied to:

   A. Goods or services provided under a cooperative Purchasing agreement or the utilization of other governmental entities' contracts;

B. Contracts for professional services subject to the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes;

C. Purchases or contracts which are funded, in whole or in part, by a government entity or other entity or grant program in which the laws, regulations, or policies governing such funding prohibit the application of local preference.

D. Purchases under emergency or noncompetitive situations exempt from competition.

E. Purchases of goods and/or services in which such preference is prohibited by law, contract, or other regulation applicable to the City.

F. Competitive solicitations that have been determined by the City Manager or designee to be in the best interest of the City to waive the local business preference prior to the advertisement of the solicitation.

7. Certification Statement

When seeking local business preference status, an applicant must complete and file a written statement as follows:

WRITTEN STATEMENT REQUESTING LOCAL BUSINESS STATUS (OFFICER OF COMPANY) Under penalty of perjury, I certify: I am an authorized representative of (NAME OF BUSINESS) and on behalf of the business request that it be deemed to be a local business for purposes of the City of Boynton Beach Local Preference Program. The following answers accurately reflect the status of the business seeking local preference.

Answering yes to question 1 and question 2 will qualify the business as a local business. In support of this request I certify the following information as being true and correct:

Name of Business

(1) Is the business located within the City limits of Boynton Beach, Florida for at least one (1) year?	Yes	No	Number of Years
(2) Does the business have a business tax receipt issued in the current year?	Yes	No	Business License Number
(3) Is the business registered with the Florida Division of Corporations?	Yes	No	

I understand that misrepresentation of any facts in connection with this request may be cause for removal from the certified local business list. I also agree the business is required to notify the City in writing should it cease to qualify as a local business.

XXIII. CONTRACT ADMINISTRATION

To provide guidelines for contract administration within the City of Boynton Beach.

PROCEDURE:

1. Contracts are to be submitted with bid specifications to Purchasing for approval within the bidding process.

2. Upon award by the City Commission contracts will be forwarded to the Department of Administration and any specific user department if applicable via the Purchasing Division. Contracts assigned involving a specific user department will be administered by that respective department, and they shall be responsible for full coordination. Multi-user departmental contracts will require the designation of the contract administrator by the City Manager. This designation shall be indicated in the bid specifications.

3. Department of Administration will assume the role of contract

administrator for any contracts involving City-wide use unless otherwise designated by the City Manager or designee.

4. The Department of Administration will serve as contract compliance monitor to ensure and assist compliance by both the City and the contractor in all contracts excluding construction, and the Utility Department.

    A. Compliance check sheets will be designed and utilized by the Department of Administration to confirm specific criteria of the contract are being met in accordance with the agreement.

    B. User departments assigned as contract administrators will be responsible for the execution of the provisions of the contract. The compliance monitoring role assumed by the Department of Administration will serve only as an additional check for compliance and will not be considered as the responsibility for any requirements dictated in the delivery of services governed by the contract.

5. The Purchasing notification for renewal or re-bid will remain as it has in the past.

DEVELOPED BY: Purchasing Services

EFFECTIVE DATE: December 20, 2024

Daniel A. Dugger, City Manager

City of Boynton Beach
Boynton Beach, Florida



PURCHASING POLICY

MANUAL

REVISED: December 19, 2024

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I. INTRODUCTION

PURPOSE:

As approved and codified in **ARTICLE IV. PURCHASING AND CONSULTANTS** Sec. 2-56.1 Exceptions to competitive bidding (b) The City Manager shall establish procurement policies on any purchase of personal property, commodities, services, or construction.

The purpose of this Purchasing Manual ("Manual") is to set forth the City of Boynton Beach ("City") policies for the purchase of supplies, equipment, and services and provide for the fair and equitable treatment of all persons and entities involved in Purchasing by the City, to maximize the Purchasing value of public funds in Purchasing, and to provide safeguards for maintaining a Purchasing system of quality and integrity.

This Manual provides the policies and procedures that frame the Purchasing of contractual services and commodities beginning with the Purchasing policy, proceeding through contract document or purchase order preparation, contract administration, and eventually, contract closeout.

The goal of the City is to get the best value for qualitative solicitations or the lowest price from a responsive, responsible bidder for the Purchasing of commodities and services conducted by fair and open competition and in accordance with all applicable Federal Statutes, Florida Statutes, Palm Beach County Code, and the City Charter and Code of Ordinances of the City of Boynton Beach.

Processing Requirements and Approval Levels Requirements for approvals of all construction and non-construction purchases are as follows:

Personal Property, Commodities, and Services (Non-Construction) - Bid Threshold $50,000		
Total Purchase Amount	**Requisition Process**	**Approval Level Total Purchase**
Less than $5,000	One Quotation	Department Head*
$5,000 to $49,999	Three Written Quotes	City Manager*
$50,000 & over per annum	Formal Bid	City Commission
Construction Projects - Bid Threshold $200,000		
Total Purchase Amount	**Requisition Process**	**Approval Level Total Purchase**
Less than $5,000	One Quotation	Department Director*
$5,000 to $199,999	Three Written Quotes	City Manager*
$200,000 or above	Formal Bid Process	City Commission

*Or Designee—Note: Directors shall not sign any quotes from vendors that bind the City to any terms and conditions.

APPLICABILITY OF FLORIDA LAW. To qualify to do business with the City, vendors, contractors, suppliers, and professions must agree that Florida law governs the provisions of their transactions with the City and that venue, in the event of arbitration or litigation, is

Palm Beach County Florida. Vendors must also agree to comply with Florida scrutinized company and public records laws.

II. DUTIES AND RESPONSIBILITIES

Members of the Purchasing Services division ("Purchasing Services") have a special responsibility of trust unique in public service. Purchasing Services is responsible for the Purchasing of commodities and services, which will eventually result in the expenditure of City funds or, more importantly, the taxpayers' money. Purchasing Services has the duty to assist departments with the Purchasing of necessary goods and services. All members of Purchasing Services shall adhere to the following duties and responsibilities:

1. To assure that all Purchasing procedures are consistent with all applicable federal, state, and local laws, and contractual obligations with other governmental entities.

2. To adhere to the Palm Beach County Ethics Code.

3. To regard public service as a trust and support the professional principles of governmental Purchasing.

4. To be guided in their actions by integrity and honor, to merit the respect and inspire the confidence of the City and the public which they serve.

5. To accept full responsibility and accountability for their actions related to the purchase and supply functions undertaken by them for the benefit of the City and the public.

6. To reject all gifts or other items of value from vendors.

7. To be courteous, considerate, and prompt and to conduct themselves professionally in all Purchasing dealings, including with their employers, employees, vendors, the media, and the public.

8. To procure goods and services seeking to obtain the maximum ultimate value for each dollar of expenditure.

9. To fully cooperate with all City departments in obtaining their needs to further the goals and policies set forth by the City in the City Charter and the City's Code of Ordinances.

10. To ensure the awarding of competitively bid purchases to the lowest responsive, responsible bidder.

11. To piggyback on other governmental contracts or join **with** other governmental entities in a cooperative. Purchasing shall determine when this methodology serves the best interests of the City.

12. To sell, trade, or otherwise dispose of surplus and obsolete personal property belonging to the City in accordance with the policy.

13. To strive consistently for knowledge and professionalism that will benefit Purchasing Services and the City as a whole.

14. To avoid unscrupulous practices and misrepresentations; recognizing that mutually profitable business relations are based upon honest and fair dealings.

15. To prohibit political considerations or other outside influences from creating a bias towards their relationships with vendors or employees.

16. To maintain a good relationship with vendors and other governmental agencies in order to promote cooperation and consideration that will result in benefits to the City.

17. To ensure that in any contract entered into between the City and a vendor, minority business enterprises will be afforded full opportunity to submit bids in response to advertisement and that no vendor will be discriminated against on the grounds of race, color, religion, gender, sexual preference, or national origin in consideration for an award.

In addition to the staff of Purchasing Services, each department within the City has a designated Purchasing Coordinator. This employee performs, or supervises, all related duties and responsibilities of the Purchasing function for their respective department. The Purchasing Division Director or Finance Director is responsible for city staff implementation of and compliance with the procedures set forth in this Manual.

III. DEFINITION OF PURCHASING TERMS

To define words and terms used throughout this Manual with the standardized meanings set forth below unless the context in which a term is used requires a different meaning or a different definition as prescribed for a particular section or portion of this Manual.

Definitions:

1. **Addenda** - Written or graphic media issued prior to the opening of bids or proposals that clarify, correct, or change the solicitation documents or resulting Contract.

2. **Alternates** - Substitutes offered by a vendor when the specifications of materials being bid are different than the specifications set forth in the City's request for quotes, proposals, or bids.

3. **Amendment** - A method of changing the terms, conditions, or requirements of a Contract beyond what is specifically allowed by the Contract. All Amendments must be approved in the same manner as the original Contract and signed by the authorized representatives of the parties to the Contract.

4. **Award** - The acceptance of a Bid, offer, or proposal by the proper authority. The City Commission must approve all non-construction awards of $50,000, or more and all construction awards of $200,000, or more except for those purchases which are exempt from formal bidding procedures pursuant to the City's Code of Ordinances. However, all Contracts which require that the City indemnify another party require approval of the City Commission.

5. **Apples to Apples** – is a principle used in procurement to ensure that comparisons between suppliers or proposals are fair and meaningful. It's important to compare

apples to apples because comparing things that are fundamentally different, or "apples to oranges", is not allowed.

6. **Bid** - Price quoted by a vendor for a commodity or service.

7. **Bid Bond** - A form of bid security executed by the bidding vendor as principal and by a surety to guarantee that the bidding vendor will enter into, and satisfactorily complete the Contract within a specified time and furnish any required performance bond.

8. **Bid Opening** - In accordance with FS 255.0518, Bids shall be opened publicly to the public, during which sealed bids submitted by vendors for an advertised project are opened through the City's e-bidding platform and publicly read and displayed.

9. **Bid Tabulation Sheet** - A form used to record price quotations from vendors for both sealed and informal bids. The bid tabulation can be electronically produced from the e-bidding platform utilized by the City.

10. **Blanket Purchase Order** - A Purchase Order that covers the non-repetitive purchase of supplies of a like nature in a minor amount for a stipulated period of time within the Fiscal Year (e.g., 12 months). These purchases should be sporadic in nature and not planned.

    A simplified procurement method for fulfilling the anticipated non-recurring needs for supplies or services through the award of competitive line-item contracts or discounts from a supplier's/manufacturer's catalog, usually through competition. BPOs are used to reduce the administrative expenses resulting from small, recurring requirements.

    An agreement to purchase goods from a specific supplier over a defined period, up to a maximum dollar amount. A blanket order generally includes established prices, terms, and conditions for a defined period of time, although without specifying quantities.

11. **Blanket Purchase Agreement** - A simplified procurement method for fulfilling the anticipated recurring and repetitive needs for supplies or services through the award of competitive line-item contracts or discounts from a supplier's/manufacturer's catalog, usually through competition. BPAs are used to reduce the administrative expenses resulting from small, recurring requirements.

12. **Brand Name or Equal Specifications** - A specification limited to one or more items by manufacturers' names or catalog numbers that describe the standard of quality, performance, or other prominent characteristics needed to meet City requirements.

13. **Brand Name Specification** - A specification limited to one or more items by manufacturers' names or catalogs.

14. **Capital Improvement** - Any project undertaken by the City, including without limitation, construction, repair, or renovation, which involves any building, road, bridge, street, drainage facility, or similar facility or structure.

15. **Capital Purchases** - All tangible personal property having an original acquisition cost

of $5000 or more per unit, and a probable useful life expectancy of more than one year. This includes, without limitation, the capitalized purchase of any software.

16. **Change Order** - A written order amending a Purchase Order to correct errors, omissions, discrepancies, acceptable overruns, freight costs, unforeseen conditions, approved changes to the scope of work, or amendments to Contracts that require additional purchases or incur additional costs.

17. **Commodities** - Tangible personal property including, without limitation, economic goods, equipment, material, and printing, purchased, leased, or otherwise contracted for by the City.

18. **Competitive Bids or Competitive Offers** - The receipt of Bids or offers submitted by responsive, responsible, and qualified bidders or offerors.

19. **Competitive Selection and Negotiation** - A method of Purchasing whereby qualified professional firms are invited to submit Letters of Interest, Proposals, or Qualifications and are short-listed by an appropriately appointed review committee for further evaluation prior to recommending an Award.

20. **Confidential Information** - Any information which is available to an employee only because of the employee's status as an employee of the City of Boynton Beach and is not a matter of public knowledge or available to the public upon request.

21. **Construction** - The process of building, installing, removing, altering, repairing, improving, or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, facilities, or real property.

22. **Change Order** - A written order authorized by the proper City authority in accordance with APM 10.06.01 (Process for Change Orders), directing the Contractor to make changes that the "Change Order" clause of the construction Contract authorizes. **Finance and Purchasing Services must be immediately notified when a Construction Change Order is submitted.**

23. **Consultant's Competitive Negotiations Act (CCNA)** - The common name for Section 287.055 of the Florida Statutes concerning the Purchasing of Architectural, Engineering (including testing), Landscape Architecture, and Registered Land Surveying Services. Purchasing of these services will be initiated by a Request for Qualifications process and Competitive Selection and Negotiation will take place.

24. **Contract** - A binding and written agreement between the City and an outside party for the Purchasing of supplies or services requiring approval by the City Commission.

25. **Contractor** - Any person or business having a Contract with the City of Boynton Beach to perform a service or sell a product.

26. **Consultant** - A type of Contractor.

27. **Cost Reimbursement Contract** - A Contract under which a Contractor is reimbursed for costs which are allowable and allocable in accordance with the Contract terms and the provisions of this Manual and a fee or profit if any.

28. **Contractual Services** - The rendering of time and effort by a Contractor rather than the furnishing of specific commodities, materials, goods, equipment, and/or other personal property. The term applies only to those services rendered by individuals and firms who are independent contractors.

29. **Consultant and Professional Services -** Contracts for the service of professionals or consultants requiring specialty training in the arts or sciences and/or requiring holding professional licenses or certificates, including but not limited to the practice of law, certified public accountants, or actuaries, management consulting, medicine, real estate appraisal, or other areas of expertise as determined by the city manager or designee to be in the best interest of the city, and not otherwise subject to the requirements of F.S. § 287.055, as amended, may be entered into without competitive bidding; however, qualifications, work history, and other relevant data shall be reviewed before entering into such contracts.

30. **Cooperative Purchasing** - A Purchasing process conducted by or on behalf of more than one governmental entity.

31. **Debarment** - A disqualification of a business or person from receiving invitations for Bids, Requests for Proposals, or the award of Contracts by the City, because of previous illegal or irresponsible action, for a specific period of time commensurate with the gravity of the offense or the failure or inadequacy of performance.

32. **Declared Emergency** - A declaration of emergency covering an area including the City of Boynton Beach made at the national, state, county, or City level necessary to respond to an Emergency.

33. **Designee** - A duly authorized representative of a person holding a superior, higher-level position.

34. **Discount-From-List Contracts** - Contracts whereby price is determined by applying a percentage discount from an Established Catalog Price. This type of Contract is only to be used when Purchasing Services determines, that this contracting methodology is in the best interest of the City.

35. **Emergency or Urgent Purchase** - A situation where regular procurement methods aren't feasible and immediate attention is required. Formal competitive bidding procedures are waived as reviewed by the Purchasing Division Director and approved by the City Manager.

    The City Manager may authorize an emergency or urgent purchase of up to $300K for commodities or services, including construction, where a clear and present threat to public health, property, welfare, safety, or other substantial loss to the city exists. After the emergency or urgent purchase takes place, the respective department shall present the total cost of the emergency or urgent purchase to the City Commission for approval if it exceeds the City Manager approval thresholds.

36. **ePurchasing (Electronic Purchasing)** - Conducting all or some Purchasing functions electronically over the internet. ePurchasing processes require the submission of proposals or pricing for an Invitation to Bid through an electronic platform designated by the City.

37. **Established Catalog Price** - The price included in a catalog, price list, schedule, or other forms that:

    a. Is regularly maintained by a manufacturer or Contractor;
    b. Is either published or otherwise available for inspection by customers; and,
    c. States prices at which sales are currently or were last made to a significant number of any categories of buyers or buyers constituting the buying public for the supplies or services involved.

38. **Evaluation Committee** - A committee established to evaluate proposals, and conduct interviews and negotiations during the process of solicitation for a specific product or service. The Evaluation Committee is typically composed of representatives from the functional areas of expertise identified in the Scope of Work and may include a representative from Purchasing Services.

39. **Firm Fixed-Price Contract** - A Contract whereby the price of the service or good is fixed, not variable, for the entire life of the Contract or until a set quantity of goods or services is delivered.

40. **Firm Pricing** - Prices that do not fluctuate for a set or an indefinite period of time, depending upon the terms of the Contract.

41. **General Services** - Includes support services performed by an independent contractor requiring specialized knowledge, experience, or expertise. The services rendered do not consist primarily of the acquisition of equipment or materials. Examples of General Services include, without limitation, janitorial, pest control, and maintenance of equipment. General Services are normally procured through Requests for Proposals or Invitations to Bid. The Purchasing of General Services may include subjective evaluation factors of the submitting firms.

42. **General Services Administration (GSA) Contracts** - Contracts entered into by the General Services Administration of the Federal Government (also known as GSA Schedules). GSA Contracts contain prices to be utilized by all Federal Government Agencies. GSA Contracts also contain the most preferred customer clause, making the prices contained in the GSA Contracts equivalent with those that are given to the most preferred customer of the vendor.

43. **Governmental Agency** - Any government or agency of the Federal, State, or any local government.

44. **Invitation to Bid (ITB)** - A written solicitation for competitive sealed Bids designating the title, date, and hour of the public Bid opening and specifically defining the Commodities or Contractual Service for which Bids are sought. The Invitation to Bid will be used when the City is capable of specifically defining the scope of work for

which a Contractual Service is required or when the City is capable of establishing precise specifications a Purchasing solicitation.

45. **Letter of Interest (Request for)** – A method of selecting a vendor whereby all vendors are invited to submit a summary of their qualifications and state their interest in performing a specific job or service.

46. **Low Bidder** – The vendor who submits the mathematically lowest price for a Purchasing solicitation.

47. **Mandatory Bid Amount** - The dollar threshold at which the formal Bid process is required. The Mandatory Bid Amount is currently $50,000 (non-construction) and $200,000 (construction).

    The current known requirement of any commodity or service will not be divided to circumvent the requirement of the Mandatory Bid Amount. Special orders and warehouse-stocked items will continue to be ordered through the warehouse.

48. **Minority Business Enterprises (MBE)** - is a business or person in which more than 50% of the stock of the company is owned by a recognized minority group. Minority Businesses must be qualified through certification.

49. **Multiple-Award Contracts** - Contracts that provide awards to more than one vendor for the same item. The Purchasing staff may use these Contracts when determined that the use of more than one vendor is in the City's best interest.

50. **Negotiations for Professional Services** - The act of determining terms, conditions, and prices for the performance of Professional Services.

51. **Notice of Award** - The written notice by the City to the successful Bidder or offeror stating that upon compliance by the successful Bidder or offeror with the condition's precedent to the Contract within the time specified, the City will sign and deliver the Contract.

52. **Notice of Intent to Award** - The written notice identifying the initial low bidder or the most advantageous proposer issued. The timeline for filing a protest will commence after releasing the notice of intent to award.

53. **Notice to Proceed** - The written notice issued by an authorized City employee to the successful bidder or proposer to proceed as directed.

54. **Open-end Contract** - A Contract where by an indefinite quantity of supplies, services, or construction is to be procured over an identified time span on an as- needed basis.

55. **Owner-Direct Purchase** - A contract may be awarded for supplies or materials without competition where such supplies or materials are being procured by the city as an owner-direct purchase for incorporation into a public works project, the contract for which was previously awarded by the city, which prior award included the cost of such supplies and materials. In such event, the city shall procure the supplies or materials in accordance with Florida Statutes and regulations related to owner-direct purchases

by governmental entities.

56. **Payment/Performance/Construction Bond** - A bond of a Contractor/vendor in which a surety guarantees to the City that the work/services will be performed in accordance with the Contract documents or non-payment to subcontractors and may, at the discretion of the City, include an irrevocable letter of credit issued by a financial institution or cash. If the project has change orders, it will be the departments responsibility to obtain a bond rider.

57. **PRIDE of Florida** - The Prison Rehabilitation Industries and Diversified Enterprises, Inc. ("PRIDE") is a non-profit, self-funded corporation chartered by the State of Florida in 1981 to provide meaningful training and work experience to inmates in Florida's correctional institutions. PRIDE donates 1.5% of all sales to the State of Florida every year from the operation of 49 industries in 20 prisons in the State of Florida A catalog is available in Purchasing Services of all products, prices, and prison inmate contracts.

58. **Purchasing** - The process of buying, renting, leasing, or otherwise obtaining any supplies, services, construction, or any other item(s), including the provision of a description of any and all requirements, the selection and solicitation of sources, preparation, and award of Contracts as well as identifying all phases of Contract administration.

59. **Professional Services** - Any service where the City is obtaining advice, instruction, or specialized work from an individual or firm specifically qualified in a particular area. Professional Services may include a report or written advice that may be lengthy; however, the main thrust of the service is not considered labor but the exercise of intellectual ability. The Purchasing of Professional Services does not lend itself to normal competitive bidding and price competition alone. These services may be procured by Letter of Interest, Request for Qualifications, or Request for Proposals and selected through Competitive Selection and Negotiation or exemption depending on the total purchase amount.

60. **Purchasing Division Director** - The senior Purchasing official for the City of Boynton Beach or his/her designee. This Purchasing Division Director, and his/her designee have the authority to solicit Bids and issue Purchase Orders on behalf of the City. All Purchase Orders entered into by the City will require the authorizing signature of the Purchasing Division Director or Finance Director or their respective designee(s).

61. **Purchase Order** - A Purchase Order is a unilateral Contract issued by the City to formalize a purchase transaction with a vendor, conveying acceptance of a vendor's Bid or Proposal. The Purchase Order should contain statements as to the quantity, description, and price of the Commodities, Services, or construction ordered as well as applicable terms regarding payment, discounts. date of performance, transportation, insurance, and other factors.

62. **Purchase Requisition** - A method to communicate to "Purchasing Services" an exact description of the Commodity or Services that the respective department requires.

63. **Purchasing Card (P-Card)** - A commercial VISA or MasterCard that is issued to authorized City employees for making purchases not to exceed $3,000.00 in

accordance with procedures set forth in Section XVIII. The City Manager may increase this amount for any time the City Manager deems an emergency purchase if it is in the best interest of the City.

64. **Quotation** - An informal (verbal) or formal (written) notice by a vendor to the City stating the prices, terms, and conditions under which the vendor will furnish certain Commodities or Services.

65. **Repairs to Vehicles and Equipment for Insurance Settlements** - when such purchases are made pursuant to the requirements of an insurance settlement.

66. **RESPECT of Florida** - A registered service mark of the Florida Association of Rehabilitation Facilities, Inc., the central non-profit agency of the Commission for Purchase from the blind or other severely handicapped persons.

67. **Request for Proposals** - All documents, whether attached or incorporated by reference, for soliciting sealed proposals. The price of the Commodities or Services may not be utilized as the primary criteria for the award of the Bid or offer.

68. **Responsible Bidder or Responsible Offeror** - The person, Vendor, Contractor, or company who has the capability in all respects to perform fully the Contract requirements and the tenacity, perseverance, integrity, experience, ability, reliability, capacity, facilities, equipment, financial resources and credit which will give a reasonable expectation of good faith performance.

69. **Responsive Bidder or Responsive Offeror** - A person, Vendor, Contractor, or company who has submitted a Bid which conforms in all material respects to the Invitation to Bid or Request for Proposals.

70. **Review and Negotiation Committee** - A group of persons appointed by the City Manager or designee to rank in preferential order those professional firms or individuals interested in providing Services on a particular project and to negotiate a final Contract with the highest-ranked firm.

71. **Services** - The furnishing of labor, time, and effort by a person, Vendor, Contractor, or company, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements but shall include both Professional and General Services.

72. **Single Source** - A Purchasing decision whereby purchases are directed to one source because of standardization, warranty, or other factors, even though other competitive sources may be available.

73. **Specifications** - Any description of the physical or functional characteristics or the nature of a Commodity, Service, or construction item as drafted by the requesting department. It may include a description of any requirement for inspecting, testing, or preparing a Commodity, Service, or construction item for delivery. Specifications may also contain provisions for the inclusion of factors that will lead to the ultimate calculation of the lowest total cost. All specifications shall seek to promote the overall

economy for the purpose intended and encourage competition in satisfying the City's needs and shall not be unduly restrictive.

74. **Sole Brand** - The only known brand or only reasonable brand capable of fulfilling the needs of the City.

75. **Sole Source** - The only known vendor or the only reasonable vendor capable of providing a service or commodity to the City. Written documentation from the vendor certifying their sole source status is required.

76. **State Contract** - The contracts awarded by the State of Florida's Department of Management Services subsequent to a formal bidding process and award of various equipment and services Contracts extended for use by all political subdivisions (entities).

77. **Supplies** - All property, including but not limited to, equipment, material, printing, and leases, but specifically excluding the acquisition of leasehold interests in real property by the City.

78. **Surety** - An individual or organization which, for consideration, promises in writing to make good the debt or default of another. The surety must hold a certificate of authority as an acceptable surety on Federal bonds published in the current Circular 570, United States Department for the Treasury and the Federal Register, effective July 1, annually, as amended.

79. **Surplus Property** - Any property belonging to the City, which is capable of being used, but is obsolete, inefficient, or in excess of the normal operating requirements of the City. This property is disposed of by auction or other means that prove more beneficial to the City as determined by at least two (2) of the following: City Manager, Purchasing Designee, or Finance Director. The City Commission will approve the disposition of the property.

80. **Suspension** - The disqualification of a business or person from receiving Invitations for Bids, Request for Proposals, or the award of a Contract by the City for a given period.

81. **Terms and Conditions** - The provisions of the Contract entered into between the City and any other party. The Terms and Conditions include, without limitation, the price, delivery, discounts, etc., and any contractual clause(s) which both parties have agreed upon.

82. **Tie Bids** - Two or more bids received for the same item that is exactly equal to the price, terms, and other factors upon which an Award is made.

83. **Unit Price** - The price for one unit of a Commodity.

84. **Using Department** - Any department of the City, which utilizes any Commodity, Service, or construction, procured under the policies set forth by this Manual, Florida Statutes, and the City of Boynton Beach's Code of Ordinances.

85. **Warehouse Special Orders** - Represents purchases (no capital outlay items) processed by the warehouse. The warehouse has established Bid discounts for purchased Commodities and the discounts are passed on to the City's departments. The Commodities handled by the warehouse **currently** include vehicle parts, office supplies, janitorial supplies, hardware, irrigation supplies, medical supplies, safety supplies, brass fittings and accessories, sewer pipe, electrical supplies, meters, and uniforms. Although this listing of terms and definitions is comprehensive, it is not considered inclusive of all related terms applied to the Purchasing of Commodities and Services provided to the City.

Written Quote - A written price quotation on either the City's quotation form or vendor's quotation form or stationery for Commodities or Services. A Written Quote shall include the date, quantity of Commodities or term of the Service, and the amount of the quotation. Staff shall ensure all quotes are comparable “apples to apples” in regard to the goods or services requested. All quotations shall be recorded and maintained as a public record in accordance with the State of Florida's retention policies.

86. **Waiver of procurement procedures** – The waiver of procurement procedures exemption can only be approved by the City Commission. Staff will present all relevant information to the Commission, using it to make factual findings supporting its determination. Such contracts or purchases will not be placed on the City Commission consent agenda.

The Commission will evaluate the request, considering factors like time constraints in procuring goods or services, to decide if the exemption is valid and whether granting approval serves the City's best interests. The City Commission may authorize the waiver by a simple majority vote if it is deemed in the City's best interest to obtain goods and services that cannot be acquired through the normal purchasing process due to insufficient time, the nature of the goods or services, or other factors.

Purchases authorized by the waiver process shall be acquired with such competition as is practicable under the circumstances and only after a good faith review of all available sources and negotiation regarding price, delivery, and terms. Procurement procedures may not be waived for procurements subject to the provisions of F.S. § 287.055 or § 255.20 as amended from time to time.

IV. EXEMPTIONS TO COMPETITIVE PROCESS

Certain purchases made by the City are exempt from the competitive processes outlined in the Manual. These exemptions can only be utilized with the pre-approval of the Purchasing Director in conjunction with the City Manager or designee. The current list of purchases exempt from the competitive process is shown below:

1. Legal services
2. Items purchased for re-sale
3. Recreational programs provided by independent contractors
4. Lobbying services
5. Training
6. Entertainment, Entertainment Related Services, Art, talent, and artistic services
7. Medical services

8. Insurance
9. Food and beverage
10. Consultant and Professional Services.
11. Purchase of information technology software applications and equipment directly from the manufacturer, developer, or producer of the product or service, including annual licenses, maintenance, support, and upgrades to existing information technology software, hardware, or firmware. This includes subscription-based software fees that are unique or preexistent and contain historical knowledge that cannot be easily or without cost moved to another software application.
12. Services or commodities provided by governmental, not-for-profit organizations, or public entities.
13. Specialized staffing services, such as golf course labor services, recreation programmers, day laborers, and similarly situated employment services and contractors.
14. Permit Fees
15. Postage fees
16. Emergency or Urgent Purchase
17. Repairs to Vehicles and Equipment for Insurance Settlements
18. Utilities including but not limited to electric, water, telecommunications and electric utility services.
19. Purchase of items or personnel critical to the security of city facilities
20. Waiver of Procurement Procedures

V. CONTRACTING UNDER FEDERAL AWARDS

This policy is adopted to ensure that commodities and services procured using federal funds, including but not limited to the Community Development Block Grant Program, are obtained efficiently and effectively in free and open competition and through the use of sound procurement practices. City staff and any grant administrators (sub-grantees or contractors) with designated responsibility for the administration of federally funded grant contracts are responsible for ensuring compliance with all applicable federal and state laws and regulations. These include but are not limited to OMB Circular A-102, attachment O; 2 CFR §§200.318 – 200.327; s. 255.0525 and 287.055, Florida Statutes, and Chapter 73C-23 Florida Administrative Code.

All other Procurement Manual requirements are fully applicable to federally funded projects. It is the intent of the City to promote competitive bidding by way of the following sourcing, an Invitation To Bid, a Request For Proposals, or a Request for Qualifications.

A. **General Federal Procurement Standards**. The City hereby incorporates the following elements into the Purchasing procedures as required by 2 CFR Part 200, which shall apply to federally funded projects as may be applicable.

1. **Applicable Law**: The City shall follow applicable City procurement procedures, State and local laws and regulations, provided that the procurement procedures conform to applicable Federal law.

2. **Competition**: The City shall document that goods and services are procured in an openly competitive manner. The City shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement as required by CFR 200.318(h). Consideration

will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

3. **Comparability**: The City recognizes for true competition to take place, the City must maintain reasonable requirements for firms in order for them to qualify to do business; avoid requiring unnecessary experience and excessive bonding; avoid noncompetitive pricing practices between firms or between affiliated companies; avoid utilizing noncompetitive contracts to consultants that are on retainer contracts; avoid organizational conflicts of interest; avoid requiring "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and, avoid any arbitrary action in the procurement process. See 2 CFR 200.319.

4. **Technical Specifications**: When drafting solicitations, we shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. See 2 CFR 200.319.

5. **Unnecessary and Duplicative Items**: The City shall avoid acquisition of unnecessary or duplicative items as provided for in 2 CFR 200.318(d). Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

6. **Documentation**: The City shall maintain for the current year and the preceding five (5) years all records, invitations to bid, bid results, bid tabulations or any other significant materials that will serve to document our policies and procedures and detail the history of procurement as required by 2 CFR 200.318(i). These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

7. **Time-and-Material Contracts**: The City may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk as provided by 2 CFR 200.318(j). Time-and-materials type contract means a contract whose cost to the City is the sum of: (i) The actual cost of materials; and (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the City shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

8. **Settling Disputes**: The City shall be responsible for, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of federal procurements in accordance with 2 CFR 200.318(k). Bid protests shall proceed in accordance with Section XVII of these purchasing procedures.

9. **Contract Administration**: Purchases shall be checked or verified by designated staff to assure that all goods and services are received, and prices verified. All invoices and receipts shall be signed, dated, and maintained in the documentation file.

10. **Small, Minority, Women owned Business and Labor Surplus**: The City shall take steps to assure that minority businesses, women's business enterprises and labor surplus area firms are used when possible as required in 2 CFR 200.321.

11. **Domestic Preference for Procurements**: As appropriate, and to the extent consistent with law, the City will, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

12. **Procurement of Recovered Materials.** The City and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

13. **Conflict of Interest**: Purchasing agents shall comply with the Palm Beach County Ethics Code and the standard of conduct regarding doing business with one's own agency and conflicting employment or contractual relationships as provided for in Section 112.313, Florida Statutes, as may be amended from time to time. Purchasing agents shall not participate in the selection, award, or administration of a contract funded using federal grant monies if he or she has a real or apparent conflict of interest as required by CFR 200.318(c)(1).

14. **Common or Shared Goods and Services**. As required by CFR 200.318(e), to foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the City shall enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

15. **Surplus Property**. The City shall use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces

project costs as required by CFR 200.318(f).

16. **Value Engineering**. The City shall use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions as required by CFR 200.318(g). Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

17. **Independent Cost Estimate**. The City shall perform an independent cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the City must make independent estimates before receiving bids or proposals.

18. **Federal Awarding Agency or Pass-Through Entity Review.** The City must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition

19. **Bonding Requirements**: The City shall require payment and performance bonds for applicable contracts in excess of the Simplified Acquisition Threshold as required by 2 CFR 200.326, and in compliance with Section 255.05, Florida Statutes.

20. **Contract Provisions**: The City shall include in all contracts utilizing federal funds those applicable requirements as set forth in 2 CFR Part 200, Appendix II, which shall be considered incorporated herein by this reference.

B. Methods of Federal Procurement

The City must use one of the following methods of procurement for these federally funded purchases in accordance with the requirements of this Purchasing manual, including Section VI, Purchase Requisitions:

1. **Micro Purchases:** Micro-purchases may be awarded without soliciting competitive price or rate if the City considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. The City may use such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. To the extent practicable, the City must distribute micro-purchases equitably among qualified suppliers. The Federal micro purchase threshold is $10,000.00, and may be amended from time to time.

2. **Small Purchases:** Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that are in excess of the micro purchase threshold but do not cost more than the Simplified Acquisition Threshold (SAT). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. The Federal SAT is $250,000.00, and may be amended from time to time.

3. **Formal Procurement Methods:** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by the City, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or §200.320(c). The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the City determines to be appropriate:

   Sealed Bids (IFBs): Bids are publicly solicited, with firm fixed pricing is awarded to the lowest responsive and responsible bidder whose bid conforms with all the material terms and conditions of the invitation for bids, is the lowest in price. In order for sealed bidding to be feasible, the following conditions should be present:

   - A complete, adequate, and realistic specification or purchase description is available;
   - Two or more responsible bidders are willing and able to compete effectively for the business; and
   - The procurement lends itself to a firm fixed price contract, and the selection of the successful bidder can be made principally on the basis of price.
   - The sealed bid method is the preferred method for procuring construction, if the above conditions apply. If sealed bids are used, the following requirements apply:
   - Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, the invitation for bids must be publicly advertised;
   - The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
   - All bids will be opened at the date and time prescribed in the invitation for bids, the bids must be opened publicly;
   - A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as the following must be considered in determining which bid is lowest: discounts, transportation cost, and life cycle costs. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
   - Any or all bids may be rejected if there is a sound documented reason.
     Competitive Proposals (RFP and RFQs): The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of IFBs. If this method is used, the following requirements apply:
   - Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified sources. Any response to publicized

requests for proposals must be considered to the maximum extent practical;

- The City must have a written method for conducting technical evaluations of the proposals received and making selections;
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and,
- The City may use competitive proposal procedures for qualifications-based procurement (RFQs) of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The RFQ method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

4. **Non-Competition Proposals:** Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
    - The aggregate dollar amount does not exceed the micro-purchase threshold;
    - The item is available only from a single source;
    - The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
    - The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City; or
    - After solicitation of a number of sources, competition is determined inadequate.

VI. PURCHASE REQUISITIONS

This policy establishes unified Purchasing procedures to outline the requirements for the City's departments submitting purchase requisitions to Purchasing Services which will be processed into purchase orders and direct payment requisitions.

Purchase Requisitions submitted to Purchasing Services for the Purchasing of all budgeted Commodities and Services below the mandatory bid amount of $50,000 per annum for non-construction, and $200,000 for construction must follow the quotation and approval guidelines stated below.

Purchasing requirements shall not be artificially divided to circumvent the approval process.

Personal Property, Commodities, and Services (Non-Construction) - Bid Threshold $50,000		
Total Purchase Amount	**Requisition Process**	**Approval Level Total Purchase**
Less than $5,000	One Quotation	Department Head*
$5,000 to $49,999	Three Written Quotes	City Manager*
$50,000 & over per annum	Formal Bid	City Commission

Construction Projects - Bid Threshold $200,000		
Total Purchase Amount	**Requisition Process**	**Approval Level Total Purchase**
Less than $5,000	One Quotation	Department Director*
$5,000 to $199,999	Three Written Quotes	City Manager*
$200,000 or above	Formal Bid Process	City Commission

*Or Designee—Note: Directors shall not sign any quotes from vendors that bind the City to any terms and conditions.

Departments Purchasing items from the same vendor in multiple transactions are subject to Formal Bid Thresholds. Departments will need obtain approval from the City Commission if they exceed the set amounts outlined for the Formal Bid Process.

In lieu of quotations, a requesting department can utilize other government contracts, such as state contracts, RESPECT, PRIDE, piggyback, etc. If another Government Agency Contract is used, it is up to the originating department to obtain a copy of the bid and award documents to support the awarded vendors, award dates, and pricing. The Department submitting the purchase request shall review all pricing submitted on the quote or proposal to ensure it adheres to the pricing outlined in the established piggyback or cooperative contract. This documentation must be submitted to Purchasing Services for compliance check and review to support the electronically processed Purchase Requisition.

Procedure:

Specific Forms for Purchase Requisition and Direct Payment Requisition (Form 121):
Departments must use specific forms for a Purchase Requisition or a direct payment requisition. The Purchase Requisition will be electronically processed through the Sunguard H.T.E. Purchasing/Inventory system. The direct payment requisition can be located on the share-drive at: S:\CityTemplates\Finance\Blank121Form.

1. **Direct Payment Requisition (Form 121)**
   Departments must submit all direct payment requests to the Finance Department on Form 121 providing the amount to be paid, the name of the vendor, the allocated fund source, and Form 121 must be signed by the Department Director or his/her designee. All supporting invoices must be attached to the requisition. **Sales tax will not be paid on direct payments.** The City is a tax-exempt entity, and it is up to the department to provide the tax-exempt information to the vendor for direct payment purchases.

   A direct payment requisition is used as a check request for a direct payment to a vendor/payee for the following type of purchases (this list is not all-inclusive):

   A. Advertising
   B. Insurance payment to carriers
   C. Memberships
   D. Legal fees and settlements
   E. Witness & recording fees
   F. Petty cash reimbursements
   G. Park & Recreation Activities i.e., instructors
   H. Travel reimbursement and training advances/reimbursements

I. Tuition Reimbursement
J. Refunds
K. Regulated utility payments: telephone, electricity, natural gas, water, or similar services where rates or prices are fixed by legislation or by federal, state, county, or municipal regulations.
L. Services procured with non-City funds that are a “pass-through” (developer deposits, recreation “all inclusive” trips, etc.)
M. Unemployment compensation
N. Tax withholding payments
O. Retirement plan contributions
P. Investments
Q. Automobile titling, tags, and license plates.
R. Certain payments to the State, County, or other governmental entities.
S. Facility rentals for special events, elections.
T. Medical
U. Grant Disbursements to Residents.
V. Unusual items approved by the Finance Director or designee.

During the course of a normal workweek, direct payment requisitions that are properly completed and processed by departments and delivered to Finance by 4:00 p.m. Tuesday will have a check available weekly on Fridays.

2. <u>Requisition/Purchase Order Process</u>

All purchase requisitions are submitted electronically to Purchasing Services for processing into a purchase order.

A. **Purchase Requisitions less than $5,000.**
All vendor purchase requisitions that total less than $5,000 may be electronically processed directly to Purchasing Services or if total less than $3,000 can be paid for using the City's P-Card. One (1) quote is required for these purchase requisitions.

B. **Purchase Requisitions totaling $5,000 to $49,999 (non-construction).**
These Purchase Requisitions will require **three comparable “apples to apples” written quotes** to be provided to Purchasing Services to support the purchase. If the Purchase Requisition totals $5,000 to $49,999, the purchase requisition along with supporting written quotes will be sent to the City Manager, or his/her designee, for approval prior to the Purchase Order being issued.

C. **Purchase Requisitions $50,000 and over (non-construction) and $200,000 (construction) or above.**
Any Purchase Requisitions equal to or greater than $50,000 (non-construction) and equal to or greater than $200,000 (construction) will require the City to engage in a formal bid process. Further, the City Commission must approve of the award recommendation prior to the issuance of a Purchase Requisition as a Purchase Order. Purchase Requisitions related to a State Contract, cooperative bid, GSA bid, "piggy-back" contract of other Governmental Agencies, or other Purchasing processes (PRIDE,

RESPECT, etc.) still require approval by the City Commission before the Purchase Order can be issued. When a Purchase Requisition is submitted, it must include agenda items, resolutions, W-9, Certificate of Insurance (COI), and fully executed agreements.

EXCEPTION - if the capital outlay item was approved by the City Commission as an adopted budget line item through the budgetary process and the department has identified a specific contract they would like to piggyback, the capital outlay item can be purchased through an acceptable Governmental Agency Contract without further City Commission action.

After all procedures have been met, the ultimate responsibility for issuing a Purchase Order rests with Purchasing Services. The issuance of the Purchase Order creates a legal obligation between the City and a vendor.

Purchasing Services is responsible for investigating alternate vendors and prices. If another vendor can supply the same or equivalent goods at lower prices, Purchasing Services has the authority to change the vendor in order to secure the best value for the City. Any change in vendor will be communicated to the originating department.

Departments should allow sufficient time for processing all Purchasing Requisitions.

Purchasing Services can process complete and accurate Requisitions under $5,000 within an average of three (3) working days, depending on the time of year, current workload, and the resolution of any questions..

Purchasing Services shall require additional time to process Purchase Requisitions in excess of $5,000 that need additional levels of approval and vendor insurance where necessary. User Departments are encouraged to provide Purchasing with all required information up front to expedite the review process.

VII. BLANKET PURCHASE ORDERS (BPO)

The City may issue Blanket Purchase Orders for a specific dollar amount and a length of time not exceeding the fiscal year. They may be charged to a single budget account or various departmental accounts.

Departments may use most Blanket Purchase Orders to expedite multiple and repetitive small purchases from a single vendor over a given term. Some Blanket Purchase Orders are issued to local vendors for ease and convenience of picking up small purchases that are needed quickly. They are especially useful in cases where required quantities of a variety of items cannot be determined in advance.

Blanket Purchase Orders may not be used for the following purposes:

A. Capital outlay items;
B. Any item stocked in the City warehouse
C. Items requiring Purchasing through the bid process
D. Any one-time purchase.

Procedure:

This procedure addresses:

1. Requesting a Blanket Purchase Order,
2. Restricting use for Blanket Purchase Orders,
3. Providing notice to issue Blanket Purchase Orders,
4. Requesting changes to Blanket Purchase Orders,
5. Processing invoices resulting from Blanket Purchase Orders, and
6. Closing Blanket Purchase Orders at fiscal year-end.

1. <u>Requesting a Blanket Purchase Order</u>

Departments should request annual vendor Blanket Purchase Orders at the beginning of the fiscal year by completing the "Blanket Purchase Order Form" and submitting it to Purchasing Services with the following information:

A. Quotes from the vendor(s) considered for use (Include the vendor # or the use of another contract or piggy-back bid with a copy attached). When using a contract or bid for a Blanket Purchase Order, including the following information on the Form:

   1) Origin of the bid
   2) Contract number
   3) Contract period
   4) Agenda Items
   5) Piggyback Contracts

B. Items planned for purchase
C. Purpose of the product or service
D. Anticipated annual expenditure per budget account(s); and
E. Signature of Department Head or designee.

Prior to the start of the new fiscal year, Purchasing Services will send out written notification of the due date for the annual vendor Blanket Purchase Orders. This listing of Blanket Purchase Orders requested for the next fiscal year will be in August prior to starting the new fiscal year.

Refrain from requesting Blanket Purchase Orders in anticipation that a vendor might be used in the fiscal year. Wait until an actual need exists, then request the Blanket Purchase Order for the remainder of the year.

If additional needs require a Blanket Purchase Order during the course of the fiscal year, use the same process to request the Purchase Order. Purchasing will then process a Blanket Purchase Order for the remainder of the fiscal year.

2. <u>Restricting Use for Blanket Purchase Orders</u>

A Blanket Purchase Order will only be issued to a vendor from whom the department makes regular monthly purchases. As stated in the Policy, Blanket Purchase Orders <u>may not be used</u>

for the following purposes:

A. Capital outlay items;
B. Any item stocked in the City warehouse
C. Items requiring Purchasing through the bid process
D. Any one-time purchase.

3. Providing Notice to Issue Blanket Purchase Orders

Once Purchasing Services approves the requests for Blanket Purchase Orders, they will issue a Blanket Purchase Order. If denied, the department will be notified.

If a request for a Blanket Purchase Order is being submitted which exceeds the bid threshold of $50,000, a bid reference number along with commission approval must support it.

4. Requesting Changes to Blanket Purchase Orders

If a department requires a change order to the amount allocated for a Blanket Purchase Order, a written request be sent to Purchasing Services. The request to change the amount allocated for the Blanket Purchase Order should include the purchase order number, account number, dollar amount of increase or decrease, and justification for the change. Purchasing Services will make the necessary changes to the Blanket Purchase Order after a review of the change request.

The Blanket Purchase Order must be less than $50,000 without a bid reference. If Blanket Purchase Orders are anticipated to exceed the $50,000 bid threshold, it is the department's responsibility to provide a Request for Proposal or a Bid reference to use on the Blanket Purchase Order. If a change order results in an increase over the threshold limit of $50K, the change order must be taken to the Commission for approval.

5. Processing Invoices Resulting from Blanket Purchase Orders

Departments should regularly submit itemized invoices for Blanket Purchase Orders to Accounts Payable in Financial Services, identifying the

A. Purchase Order number
B. The budget account to charge for the expenditure.

The Department Head or designee must sign the invoice indicating the items were received and accepted.

Departments must submit invoices to Accounts Payable within five (5) days of receipt.

6. Closing Blanket Purchase Orders at Fiscal Year-End

All Blanket Purchase Orders will automatically be closed as the fiscal year is closed. It is up to the departments to ensure that all invoices have been submitted to the Financial Services Department **for payment to occur prior to officially closing the fiscal year (generally by October 15).** Invoices not submitted in a timely manner will be paid against the department's subsequent year budget allocation. It is up to the Department Head to request new Blanket Purchase Orders for the new fiscal year.

Remember, although the Blanket Purchase Orders are made available to assist the

departments in the Purchasing of goods and services, they are not intended to circumvent normal Purchasing procedures to assure the City is receiving a favorable competitive price.

The end-user department shall monitor the actual spend on BPOs and request commission approval to spend over $50K. Purchasing will closely monitor a department's use of the Blanket Purchase Order process to assure compliance with the Purchasing Policy and may cancel the department's Blanket Purchase Order privilege if purchases are not within the guidelines listed above.

VIII. CHANGE ORDERS

Departments should request Change Orders by completing the "Change Order Form" and submitting it to Purchasing Services with the following information:

When staff estimates that costs may or will exceed the Purchase Order or Contract, Purchasing Services should issue a Change Order prior to approving the increase and making the invoice payment. Change Orders will generally modify the original terms of the Purchase Order to coincide with the actual details of the delivered order, or in the case of construction projects, it will modify the Purchase Order to the proposed revision to the Schedule of Payments. Change Orders are necessitated when unforeseen circumstances arise that were not contemplated when awarding the Purchase Order or Contract.

Vendor invoices will have a tolerance of 10% of the Purchase Order amount up to the aggregate amount of the City Manager’s purchasing authority, $50K for non-construction and $200K for construction. Anything over these amounts shall require City Commission approval.

Departments should not automatically issue a Change Order in order to pay an invoice in excess of the original Purchase Order, which is a unilateral contract to provide commodities or services for a certain price. Any changes should warrant careful scrutiny and approval of the department head, with a full explanation prior to requesting the Change Order.

Appropriate staff persons should review and approve a Change Order prior to incurring the additional change in cost and making invoice payment for the following purposes:

For construction Change Orders, the Department Head, City Engineer, or outside Engineer will initiate the Change Order subject to the City Commission's approval. Finance and Purchasing must be notified of any construction Change Orders.

Public Works Director and Fleet Manager must approve any estimate or invoice for Fleet Services vehicle repairs that exceed 10% up to the City Manager’s purchasing authority of $50K for a Purchase Order before issuing any Change Order.

1. Construction Projects Initially Approved by Commission:

    A. Construction Projects Approved with Contingency Funding
    If Commission awards the construction project with a contingency allocation, then no further Commission action is necessary provided the construction project does not exceed the project budget (awarded contract + contingency funding).

    HOWEVER, THE CITY COMMISSION MUST APPROVE CHANGE

ORDERS THAT EXCEED THE PROJECT BUDGET BEFORE INCURRING THE ADDITIONAL COST. Departments are encouraged to include contingency into items for commission approval if they believe they will have any unforeseen conditions or minor scope changes.

The City Manager or designee will administratively review and approve all Change Orders. Upon completion of the construction project, the Project Manager shall reconcile all adjustments to the original contract and shall prepare an administrative Change Order to adjust the final value of the contract and present it to the Commission for approval if the total approval exceeds the contract amount plus the contingency.

Although staff recognizes contingency funding for budgetary purposes, it will not be included in the construction Contract (nor the Purchase Order). It is the project manager's job to ensure that the project stays within the approved amount; the City shall issue the construction contract for the dollar value of the bid award. Therefore, in order to modify the Purchase Order amount, it is necessary for the Project Manager to request a Change Order. The Change Order request will recap the adjustments and identify the dollar value of the Change Order and should balance to the dollar value of changes shown in the Schedule of Payments.

B. Projects Approved Without Contingency Funding

For all construction projects approved by Commission without contingency funding, the following will apply:

(Based upon cumulative Change Orders)
Any change order over the original amount shall require the commission's approval if the total amount approved is over $200K.

For construction change orders, the Department Head, City Engineer, or outside Engineer will initiate the change order subject to the City Commission's approval. Finance and Purchasing must be notified of any construction change orders.

Staff will only present Change Orders to the Commission for approval when the original contract price plus cumulative Change Orders reach $50,000 for non-construction and $200K for construction. The request for approval shall include all cumulative Change Orders that make up the cumulative contract price of $50,000 for non-construction and $200K for construction. Staff cannot exceed an aggregate contract price of $50K for non-construction or $200K for construction without a pre-approved contingency built into the agenda item.

Staff shall submit the Change Order request to the Purchasing Division in a memorandum providing:

1) narrative on the Change Orders (with copies of the supporting Change Orders);

2) the dollar value of the requested Change Order;
3) reference to the purchase order number; and
4) identification of an approved funding source.

Upon review, Purchasing Services will make the necessary change to the Purchase Order; the Purchasing copy of the Change Order will be attached to the front of the original purchase order and filed, and a copy will be provided to the department.

1. **For non-construction purchase orders for goods and services under $5,000 can be increased up to $5,000 as this is the single quote threshold.**

2. **Purchases over $5,000 will have a tolerance of 10% (percent) of the purchase order amount** to a total of $50K. Staff cannot exceed $50K for the non-construction purchase without commission approval.

   Accounts Payable can process the invoices for these Purchase Orders up to $50K without Purchasing Services preparing a Change Order. Invoices, which exceed the tolerance limit, will require the originating department to review the discrepancy and request a Change Order from Purchasing Services prior to the invoice payment along with commission approval if over $50K. The Change Order request shall justify the cause for variance.

3. **Blanket Purchase Orders** can have an adjustment (increase or decrease) to the Purchase Order amount for a related department and account number by written change order request to the Purchasing Services as long as they do not exceed $50K in the aggregate. This internal process will allow timely invoice payments associated with the blanket Purchase Order.

   Items purchased from a blanket Purchase Order shall be restricted to the account codes identified and allocated on the blanket purchase order. The blanket Purchase Order is for small, non-repetitive purchases against the identified account code and is not for one-time purchases.

   The blanket Purchase Order cannot be $50,000 or over without bid reference and commission approval. For blanket purchase orders that are anticipated to exceed the bid threshold, it is the responsibility of the department to provide a request for proposal, or a bid reference to be used on the blanket Purchase Order.

   Purchasing Services will provide necessary assistance to the department in preparing a sealed bid. Refer to Purchasing APM Chapter 10.4.01 for further details on blanket Purchase Orders.

4. **Professional Services Contracts** are a negotiated contract prior to rendering services to the City.
   All change orders are to be forwarded to Purchasing Services for a proper review, and processing to change the Purchase Order amount. Change Orders will be distributed to the holders of the original Purchase Order.

If there are any questions as to the procedure for processing a particular Change Order contact should be made with Purchasing Services. Any change orders which increase the total contract price to over $50K shall require commission approval.

The Public Works Director, along with the Purchasing Director, must approve any estimate or invoice for Fleet Services vehicle repairs that exceed 10% up to an aggregate of $50K of a purchase order before issuing any change order.

IX. FORMAL BIDS

Formal sealed bids and proposals are the most effective methods for soliciting competitive prices from vendors in the governmental Purchasing sector. This policy will establish the procedures to use for sealed bids

The City shall award all contracts by competitive sealed bidding except as otherwise provided in Purchasing Policy Section X - Alternatives to Formal Sealed Bids. All Bids, Request for Proposals (RFP's), Request for Qualifications (RFQ's), Letters of Interest (LOI) Contracts, Agreements, Leases, etc., shall meet the insurance requirements as stipulated in the **Administrative Policy Manual (APM) 12.01.12**.

The following process should be used for formal sealed bids of $50,000 or more (non-construction) and $200,000 or more (construction).

1. **Bid Request Form.** A department must complete and submit a Departmental Bid Request form and submit it to Purchasing Services for the preparation of an Invitation for Bids. Departments must submit this form and all information required to complete the package. Incomplete forms will be returned to the requesting Department Head.

2. **Invitation for Bids.** An Invitation for Bids shall be issued for each solicitation for offers equal to or exceeding the mandatory bid amount and shall include a purchase description, and all applicable terms and conditions. The City posts solicitations on the City website, bids&tenders, Demand Star, and by publication in a subscription of https://www.pbcfllegalnotices.com/). . Responses are submitted through bids&tenders. Advertisement in the by publication in a subscription of https://www.pbcfllegalnotices.com/). may be made once.

3. **Bid Specifications.** Except for Citywide and Warehouse requirements, specifications for all other departmental bids should be provided by the requesting department in hard copy and electronically. Reasons for this are:

    A. As the prime user, the department is best aware of any special characteristics or problems associated with the bid.

    B. Because they probably utilize the bid item on a daily basis, the department is best aware of any new developments in that product field.

    C. Scientific, engineering or other technical descriptions must be provided by department staff that is qualified to do so.

    D. Purchasing staff should <u>not</u> be placed in the position of <u>deciding upon</u> and

specifying bid items for individual department usage. Purchasing may be called upon to assist in writing specifications and may make needed and necessary changes. However, the user department must review and approve all changes.

Specifications are the basis for a vendor's bid. Realizing that the bid will be compared primarily based on price, a vendor will seek to offer an item that only meets the specifications. Consequently, it is vital that specifications make no assumptions, but rather detail every important facet of the item in question. Neglecting to do so invites delivery of items that meet **specifications** but fail to meet the department's **expectations.**

4. **Insurance.** Insurance is required to safeguard the City from all claims resulting from damage to property and/or injury to persons caused by the vendor or his actions. The successful bidder shall be required to obtain, at their own expense, all minimum insurance coverage required under the terms and conditions of all Bids, Request for Proposal (RFP), Request for Qualifications (RFQ), Letters of Interest (LOI), Contracts, Leases, and Agreements.

   Administrative Policy Manual (APM) 12.01.12, Insurance Requirements for Contracts Agreements and Leases (provided by Risk Management) identifies the insurance requirements. This same policy stipulates that the Department doing the project is responsible to assure that the necessary insurance requirements are in the subject document.

   Under the terms and conditions of all contracts, leases, and agreements, the City requires appropriate insurance coverage listing the City of Boynton Beach as Additional Insured. This is accomplished by providing a Certificate of Insurance listing the City as "Certificate Holder" and "The City of Boynton Beach is Additional Insured as respect to liability". (NOTE: The City may accept an insurance contract or binder as proof of insurance if a Certificate is provided upon selection of the vendor).

   Risk Management will review the insurance coverage and limits for the Certificate of Insurance to ascertain that the insurance requirements will be met. No Bid, RFP, RFQ, Contract, Agreement, Leases, etc., shall be awarded or purchase order issued until notification is received from Risk Management that the Certificate of Insurance satisfactory meets the insurance requirements of the City. This includes "piggy-backing" of other governmental entity bids.

   Insurance coverage generally required for construction and installation bids are:

   A. **Worker's Compensation:** extending coverage for worker's injury on the job.
   B. **Liability:** extending coverage for personal injury, accidental death, and property damage.
   C. **Builder's Risk:** extending coverage of total value for the duration of the construction project for any loss.

5. **Bonds.** Bonds offer tangible protection in the form of monetary assurances that the bidder will meet its obligations. For projects and sometimes services of budgeted

amounts of $50,000 or more, the successful bidder shall furnish a 5% bid bond as security for the faithful performance of the order(s) awarded as a result of the bid, and for the payment of all persons performing labor, and on their furnishing material in connection therewith. The surety of such a bond should be in the amount equal to 5% of the bid.

If applicable, simultaneously with the delivery of the executed contract, the successful bidder shall deliver to the City, an executed bond or a letter of credit for 100 percent of the accepted bid as security for the faithful performance of the contract and payment of all persons performing labor or furnishing materials in connection therewith.

The attorney-in-fact that signs the bond must file with the bond a certificate and an effective copy of the power of attorney. This can also be provided to the City electronically.

Bonds must be secured by the bidder at their own cost and generally may be classified as:

A. **Bid Bond or Bid Security.** This is a document, usually in the amount of 5% (five percent) of the bid, which guarantees that the bidder will enter into a contract with the City, and agrees to hold bid pricing until the award is made.

   Bid bonds protect the City from erroneous or deliberate low bids which the vendor has no intention of honoring. Should the bidder fail to enter into a contract, the bid bond shall be forfeited to the City.

   Bid security must be submitted with the bid upon request and can be in the form of a certified check, cash, or bond.

   The awarded vendor's Bid Security Bond will be returned after receipt of a Construction Bond or a Letter of Credit for 100% of the project.

B. **Payment/Performance/Construction Bond.** This bond is a surety instrument guaranteeing that the vendor will perform according to the terms of the contract and is generally in an amount of 100% of the bid. This bond affords protection from non-performance or non-payment to subcontractors in the completion of major contracts, the effects of which would result in considerable injury to the City. Should the vendor default, the bond is cashed, and the City may then utilize the funds to complete the contract with another vendor. Vendors are to submit performance bonds upon award of the contract, prior to the City issuing a Notice to Proceed and purchase order.

   The successful bidder's Performance Bond will be retained if the Contractor does not conform to specifications, fails to perform as agreed upon in the solicitation. The City shall reach out to the surety company to rectify the problem with the contractor and be entitled to collect or retain part or all of the deposit; whichever is necessary to rectify the bidder's unacceptable performance as to not conforming to specifications or fails to perform as agreed upon in the solicitation and contract.

C. **Cash Bond.** In the amount of the bid or contract award.

D. **Irrevocable Letter of Credit.** Sometimes used in lieu of a bond in the case of some construction projects or multi-year contracts.

6. **Bid Conditions.** In addition to the general conditions of most formal bids, some bids require special conditions that pertain specifically to the bid in question. Conditions differ from specifications in that conditions refer to requirements, which must be met by the bidder before specifications of his bid are even considered.

7. **Public Notice/Request to Advertise.** Notice shall include publication of https://www.pbcfllegalnotices.com/). . Public notice of the invitation to bids shall be given not less than 14 calendar days prior to the date set forth in the notice for the opening of bids. Such notice may be given by publication in a subscription of https://www.pbcfllegalnotices.com/) in the City and by posting the particulars to the City website or bids&tenders or Demandstar. Responses are submitted through bids&tenders. The notice shall state the bid title, scope of services or reason for the bid, and place, date**, and time of bid opening**. A Request to Advertise (attachment) must be completed with signatures of the Finance Director or Purchasing Director or designee prior to the City Clerk's process to advertising. The City posts solicitations on the City-website, bids&tenders, Demand Star, and the County's website for public notices (https://www.pbcfllegalnotices.com/). Responses are submitted through bids&tenders. Advertisement on the County's website for public notices may be occur once or multiple times depending on funding requirements.

Public Notice/Request to Advertise for Construction Projects. Legal ads should briefly state the name of the project, location, nature of work required, bid receiving date and time, , and location where bid specifications may be obtained. Per Florida Statute 255.0525, If construction cost is projected to be under $200,000.00. The ads should be placed a minimum of twenty-one (21) calendar days prior to the bid opening date and at least 5 days prior to any scheduled pre-bid conference if construction cost is projected to be over $200,000.00 but under $500,000.00. The ads should be placed a minimum of thirty (30) calendar days prior to the bid opening date and at least 5 days prior to any scheduled pre-bid conference if construction cost is projected to be *over* $500,000.00.

8. **Bid Opening.**

A. **Time of Bid Receipt.** Purchasing Services must receive bids no later than the time and date identified in the solicitation. Bids must be received within the E-Bidding Platform. The City reserves the right to consider Bids that have been determined by the City to be received late due to mishandling by the City after receipt of the Bid and no award has been made.

B. **Public Bid Opening.** Sealed ITB's shall be opened in accordance with FS 255.0518 as amended from time to time. No additional bids, except stated in "Item A" above, will be accepted after the assigned receiving date and time.

C. **All Bids Unopened.** If no bids are opened at the assigned receiving date and time of the bid, for any reason other than the failure of the vendors to

present their bids or cause their bid to be presented at the appropriated time, Purchasing may extend the bid opening to the following workday at the same time as originally scheduled.

9. **Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in Purchasing policies. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine suitability for a particular purpose. Those criteria that will affect the bid price and be considered in the evaluation for an award (material defects), excluding cash discounts, shall be objectively measurable, such as trade discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the Invitation for Bids.

10. **Corrections, Cancellation, or Withdrawal of Bids.** Corrections or withdrawal of inadvertently erroneous bids shall be permitted up to the time of bid opening. After bid opening, no changes in bid prices or other provisions shall be permitted, provided, however, the City Manager or his designee shall have the authority to waive minor irregularities or immaterial defects as provided by law.

11. **Bid Evaluation and Award.** Bids should be evaluated based on the requirements set forth in the Invitation to Bid, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, service, price, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in the evaluation for an award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation to Bid shall set forth the evaluation criteria to be used.

    The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid. In determining "lowest responsive and responsible bidder", in addition to the bid evaluation criteria above, the following may be considered:

    A. The ability and skill of the bidder to perform the contract.

    B. Whether the bidder can perform the contract or provide the supplies/services as required, without delay or interruption within the time specified.

    C. The quality of performances of previous contracts or services.

12. **Tie Bids.** If two or more bidders are tied, the tie may be broken and the successful vendor selected by the following criteria presented in order of importance.

    A. Delivery time if provided in the original bid by the bidders.

    B. Location of the vendor with the shortest distance (in miles) from City of Boynton Beach's City Hall. Distance will be determined by using the vendor's address.

    C. If the above criteria are impossible to determine with any reasonableness or

do not resolve the issue, the award will be given to that vendor whose bid was received first as indicated by the time stamp on the envelope containing the bid.

13. **Contract Extension.** All invitations for bids for open-end contracts shall, when practical, provide for an extension of the contract for a period up to the amount of the original time, upon mutual consent of the City and Contractor and written analysis by Purchasing Services that renewal is in the best interest of the City. The end-user department should review the total cost of the entire contract and any contract exceeding $50K for non-construction and $200K for construction shall be presented to the City Commission for approval, unless a resolution previously approved by the City Commission authorizes execution of the renewal amendment.

14. **Cancellation of Solicitation.** The City reserves the right to cancel a solicitation at any time prior to the Commission's approval of the recommendation for award.

X. ALTERNATIVES TO FORMAL SEALED BIDS

Formal sealed bids are the most effective method for soliciting competitive prices from vendors in the governmental purchasing sector although there are alternatives to this process for purchases over $50,000.

The City permits alternatives to formal sealed bids under certain conditions. Purchasing Services and other departments may use the following alternatives when the conditions described are present.

1. Multi-Step Competitive Sealed Bid
2. Request for Proposals
3. Request for Qualifications
4. Emergency or Urgent Purchase
5. Sole Source Purchasing
6. Single Source Purchasing
7. State Contract (DMS)
8. Piggybacking
9. RESPECT of Florida
10. GSA Contracts
11. Prison Rehabilitation Industries and Diversified Enterprises (PRIDE)
12. Purchasing Co-Operative group contracts
13. Rejection of Bids or Proposals / Direct Negotiation
14. Waiver of Procurement Requirements

The following paragraphs briefly describe each of these alternatives.

1. **Multi-Step Competitive Sealed Bid:** Generally, a step process where the City wants to make an award based on price, but available specifications are inadequate or too general to permit full and free competition without further technical evaluation and discussion:

    A. Issue Request for Information or Qualifications to which interested, potential vendors respond with either necessary information or un- priced technical offers.

B. Invite vendors who submitted technically acceptable offers or qualifications to submit competitive sealed prices based on their technical offers.

C. Award contract to the lowest Responsive/Responsible bidder.

2. **Request for Proposals (RFP):** This methodology compares the approach and scope of services proposed that are presented clearly and concisely with the prices of Responsive/Responsible vendors. This allows the City to determine an Award by evaluating the proposal both from a cost as well as a qualitative basis and presents the ability of the vendor to meet the specifications and complete the project as described in the scope of services.

   See Section XI Procedures for Request for Proposals (RFP) for further guidelines.

   The RFP typically includes:

   A. A description of the Commodity or Service to be purchased (scope of services).

   B. Specific criteria that will be used to evaluate the proposal along with the stated relative order of importance (generally):

      1) Managerial capability.
      2) Technical acceptability and approach in meeting performance requirements.
      3) Reasonableness of price.
      4) As well as other factors outlined in the RFP document.

   C. Experience in the line of work being considered including references and past project experience.

   D. Staff capabilities along with resumes of key individuals who will work on the project.

   E. Cost breakdown of the proposed price.

   The City can negotiate with the selected firm after opening their proposal and request a best and final offer.

3. **Request for Qualifications:** Contracts for Designated Professional Services are Services where the City is obtaining advice, instruction, or specialized work from an individual or entity specifically qualified in a particular area. However, this excludes architectural, engineering, and registered land surveying services as described under the Consultants Competitive Negotiation Act (CCNA), Florida Statute 287.055.

4. **Emergency Purchase:** allows the City Manager or designee to waive competitive bidding and procure Commodities or Services where the cost exceeds $50,000 when there exists a clear and present threat to public health, property, welfare, safety, or other substantial loss to the City. However, Emergency Purchasing shall be made with such competition as is practicable under the circumstances. Refer to Section XV of the Manual for the full details on emergency purchasing, such as in case of a hurricane, where the city manager or designee can authorize the Purchase of commodities and/or services up to $300,000. All Emergency Purchases must be presented to the City Commission for ratification at the next possible City Commission

meeting. See the “Emergency Purchase” definition outlined above.

5. **Sole Source Purchase:** Allows an award for Commodities, Services, or a construction item without competition when it is determined that there is only one source available. This may include, without limitation, repairs or additions from the original equipment manufacturer, only supplier in the area, franchised or licensed distributor or service, or patented or propriety item.

   Any vendor identified as a sole source must provide written support certifying their Sole Source to the City. The selection process and determination for use of a sole source exemption rests with the Purchasing Services. The end-user department must provide Purchasing Services with ALL required supporting documentation in order to make a decision.

   Commodities or Services available only from a sole source vendor may be exempt from the quote or competitive process under the following circumstances:

   A. There is only one source or one reasonable source for the required Commodity, Service, or construction, or;

   B. The parts or accessories being procured are an integral repair accessory compatible with existing equipment and are the only parts that can be reasonably used, or;

   C. The requesting department shall fill out the Purchasing Service's Sole Source Justification Form and attach the form along with the vendor letter as the backup to the Purchase Requisition.

   If the sole source purchase is $50,000 and over, Purchasing Services may solicit a Request for Information (RFI) if it is believed that Commodities or Services are available only from a sole source, and the City may electronically post a description of the Commodities or Services sought electronically. The description should include a request for prospective vendors to provide information regarding their ability to supply the Commodities or Services described.

6. **Single Source Purchase -** Allows an Award for Commodities, Services, or a construction item without competition when it is determined that more than one source is available; however, selecting a single vendor for the purchase is most advantageous for the City.

   This may include purchases directed to one source because of standardization or warranty, even though other competitive sources may be available. For example, the purchase is needed to ensure consistency in results related to other products or standardization of parts or supplies as required to avoid unreasonable cost, uniformity, or inefficiency. Any vendor identified as a single-source vendor must provide written support as to its single-source identification. The selection process for using a single source vendor rests with Purchasing Services. The City Commission shall approve all Single Source purchases if the single source purchase exceeds $50,000.00.

   The requesting department shall complete the Purchasing Service's Single Source Justification Form and attach the form as supporting documentation to the Purchase

Requisition for review and approval.

7. **State Contract** is the State of Florida, Department of Management Services (DMS) Purchasing Division's formal bidding process and the award of various equipment and services contracts extended for use to all political subdivisions (entities). Departments must provide support documents submitted with the Purchase Requisition. All applicable information is available on "My Florida.com". Any purchase that exceeds $50K shall require commission approval.

8. **Piggy-backing** onto contracts by other governmental agencies (i.e., state, county, school board, city, etc.) is encouraged when it is determined that this method of Purchasing will provide the best product/service at the best price without compromising any of the specifications or quality desired and the originating entity complied with requirements that are equal to or exceed the City's requirements. It is necessary to provide documents supporting this determination when submitting the Purchasing Requisition and to include a copy of the bid or Request for Proposal and the tab sheet and/or letter of an award that specifies the Contract period, Commodity or Services, prices, entity, and bid or RFP number. If the piggy-backed purchase exceeds $50,000, the department shall prepare an Agenda Item Request and the City Commission must approve the purchase.

    A. A piggyback contract is a form of cooperative Purchasing through which the City obtains the pricing and terms of a contract entered into by a vendor or service provider and any state agency, municipality, county, special district, the Federal Government, or a not-for-profit Purchasing cooperative.

    B. The Purchasing Division Director, with the approval of the Finance Director, may authorize the purchase of personal property, supplies, and services that have been procured through a competitive process equal to or exceeding the process otherwise required by this Purchasing Code up to $50K.

    C. A proposed piggyback contract must be submitted to the City Attorney's Office for review and approval prior to contract signature.

    D. Vendors must agree that Florida law governs and that venue is Palm Beach County Florida. Vendors must also agree to comply with Florida scrutinized company and public records laws.

    E. A City of Boynton Beach piggyback contract should be developed and signed by the vendor and presented in the agenda item if over $50K in aggerate for commission approval.

    F. The scope of work may not be expanded from what was procured in the underlying contract.

    G. The pricing offered to the City of Boynton Beach for the commodity or service exactly equals or is lower than the governmental contract from vendors awarded the governmental contract.

    H. A piggyback contract is not permissible when the action would call for an

increase in quantities or for products or services that were not originally solicited and not evaluated initially as part of the underlying contract award.

I. The original contracting entity should be contacted and advised of the intended piggyback contract. An inquiry should be made and documented by the requesting department that there are no performance issues under the originating contract and concerning any potential for diminution of supply or lack of vendor capacity to provide the supplies or services.

J. The City shall obtain from the originating state, State agency, public university, purchasing cooperative, or federal government, and include as part of its Purchasing file, the:

1) Original solicitation;
2) Tabulation or evaluation, with the reason for award;
3) Copy of the winning bid or proposal; and
4) Copy of the contract.
5) Copy of the advertisement showing complete and open competition

9. **RESPECT of Florida** is a registered service mark of the Florida Association of Rehabilitation Facilities, Inc., the central non-profit agency of the Commission for Purchasing from the blind or other severely handicapped. A catalog is available in Purchasing Services for the Purchasing listings, which include computers, first aid, and safety products, janitorial products, municipal products, office products, promotional products, and Services.

10. **GSA Contracts** are those Contracts entered into by the General Services Administration of the Federal Government (also known as GSA Schedules) that are multiple award contracts containing prices utilized by all Federal Government Agencies. Provide support documents submitted with the requisition to Purchasing. Include the cover page of the contract indicating GSA number, title, beginning and ending dates, and pricing. Commercial products and services are available for purchase by local defined under U.S. Code 40 U.S.C. § 502(c).

What can you buy through GSA Schedules?
Local institutions may utilize the following programs to buy goods and services through GSA.

Cities can buy a wide range of products and services through GSA Schedules, including:

- Vehicles: Specialty motor vehicles and accessories, including fire fighting apparatus, law enforcement vehicles, and snow maintenance equipment
- Office supplies: Office supplies through the OS4 program
- IT and security: IT, security, and law enforcement products, services, and solutions
- Building maintenance: Building maintenance and operations, and maintenance repair facility supplies
- Wireless: Wireless products and services
- Records management: Records management help

- Information technology: Information technology and IT-related services, including hardware, software, and related supplies

11. **Purchasing Co-operative groups**

Comprised of government entities from throughout the region to provide cost savings and cost avoidances to member entities by utilizing the buying power of combined requirements for common basic items.

12. **Rejection of Bids or Proposals / Direct Negotiation**

The City Manager, or designee, may reject all bids or proposals or parts of all bids or proposals when such rejection is in the best interest of the City. A bid or proposal may be rejected if any of the following conditions exist:

A. The bid or proposal does not conform to the technical specifications or the solicitation documents.
B. Insufficient financial resources or lack of technical ability, physical capacity, or skill of the vendor to perform the contract or the service required.
C. Inability of the vendor to perform the contract or provide the services within the time specified without delays or interference.
D. Previous and existing non-compliance by the vendor with laws and ordinance relating to the contract or services.
E. Inadequate quality or performance on previous contracts for goods or services, at the City or other governmental entity.
F. Vendor has been declared to be in default on any City or public entity contract or debarred or suspended by any public entity.
G. Taking exceptions to the terms, conditions, and specifications of the bid or proposal.
H. Non-conformance with minority business or disadvantaged business enterprise provisions and requirements, where applicable.
I. When the City determines that the price quoted is not fair and/or reasonable.
J. Insufficient competition.
K. The vendor made an error in pricing or other critical element in the bid or proposal that cannot be corrected after the due date for responses without giving that vendor an unfair advantage over other responding vendors.
L. Any other reason that is in the best interest of the City.

When the competitive solicitation process did not result in adequate competition or did not result in a contract that would be in the best interest of the City of Boynton Beach. The City's Purchasing Policy allows the City to directly negotiate with a firm for services.

The Purchasing department shall manage the negotiation process for all City procurement projects, as may be necessary. This shall not preclude the use of consultants or legal assistance in developing negotiation strategy and conducting negotiations with vendors. In general, negotiations shall be conducted under the principle of "win-win", where the City and vendor share benefits from the process and subsequent contract.

All negotiations shall follow the requirement of applicable Florida Statutes, and shall be conducted with the highest ethical standards, fairness, and equity; and with the

understanding that the City will not be placed in an unfair or unreasonable position to the vendors. All negotiation meetings with vendors shall be recorded and conform to the public records requirements of applicable laws.

The City Manager or designee, has the option to appoint a Negotiation Team to assist with various aspects of developing negotiation strategy and conducting negotiations with the vendors. The Team shall comprise stakeholders and individuals who are familiar with the project and can describe full the scope of the project and clearly articulate the City's position. All negotiating team meetings at which negotiation strategies are developed or discussed shall be recorded in accordance with Section 286.0113 Florida Statutes.

13. Waiver of procurement procedures
    Can only be approved by the City Commission, See the Waiver of procurement procedures outlined above.

XI. REQUEST FOR PROPOSALS (RFP)

When the Purchasing Division Director in conjunction with the Finance Director or Designee determines that the use of competitive sealed bidding is either not practical or not advantageous to the City, a contract may be entered into through receipt of the competitive sealed proposals. Competitive proposals may also be used for the Purchasing of professional services; as allowed by Florida Statute and these policies.

1. **Request for Proposals.** Proposals shall be solicited through a Request for Proposal (RFP). Public notice of the RFP shall be given not less than 14 calendar days prior to the date set forth in the notice for the opening of RFPs. For Construction Projects, per Florida Statute 255.0525, if construction cost is projected to be under $200,000.00. The ads should be placed a minimum of twenty-one (21) calendar days prior to the bid opening date and at least 5 days prior to any scheduled pre-bid conference if construction cost is projected to be over $200,000.00 but under $500,000.00. The ads should be placed a minimum of thirty (30) calendar days prior to the bid opening date and at least 5 days prior to any scheduled pre-bid conference if construction cost is projected to be over $500,000.00.

2. The City shall follow and comply with 255.20 **Local bids and contracts for public construction works: specification of state-produced lumber.** A county, municipality, special district as defined in Chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated to cost more than $300,000. For electrical work, the local government must competitively award to an appropriately licensed contractor each project that is estimated to cost more than $75,000.

   Such notice may be given by publication in a subscription of https://www.pbcfllegalnotices.com/). in the City and by posting the particulars to the City website or bids&tenders or Demandstar. Responses are submitted through bids&tenders. The notice shall state the bid title, scope of services or reason for the bid, and place, date, and time of proposal opening. A Request to Advertise (attachment) must be completed with the signatures of the Finance Director or

Purchasing Division Director. The RFP shall be developed by the requesting department with the approval of the Purchasing Division Director or Designee. The request will identify required specifications to determine the parameters for the solicitation of bids. The RFP typically includes:

A. Description of the item or service to be purchased (statement of work).
B. Specific criteria that will be used to evaluate the proposal along with the stated relative order of importance (generally):

    1) Managerial capability.
    2) Technical acceptability and approach in meeting performance requirements.
    3) Reasonableness of price.

C. Experience in the line of work being considered including references.

D. Staff capabilities along with resumes of key individuals who will work on the project.

E. Cost breakdown of the proposed price.

The City can negotiate with the selected firm after opening their proposal.

3. **Public Notice/Request to Advertise.** Public notice of the Request for Proposals will be given in the same manner as provided for competitive sealed solicitation.

4. **Receipt of Proposals.** No proposals shall be opened until the time designated in the public notice of the request for proposals. A register of proposals in the form of a tabulation sheet shall be prepared to contain the name of each offeror and each solicitation shall be opened publicly.

5. **Proposal Conditions and Specifications.** Conditions and specifications tend to serve more as guidelines than strict standards. The object is to allow the vendor's expertise to design a proposal to fulfill the City's ultimate specified result. Conditions and specifications need not be so broad as to promote uninhibited proposals. By establishing boundaries within which to operate and pointing the vendor toward the direction of the City's goal, the RFP seeks to elicit the best talents in the marketplace to solve its problems.

6. **Inquiries on RFP.** All questions regarding an RFP shall be submitted through bids&tenders. The Purchasing Division will coordinate the responses to the inquiry in the form of an addendum that alters or changes the result of an RFP and forward copies to all known responders to the proposal.

7. **Evaluation Factors.** The RFP shall state the relative importance of price, if appropriate, and other evaluation factors such as quality, delivery, and service, as well as past supplier performance, completion of similar projects or contracts, and conformance to specification and/or quotation requirements. Only criteria disclosed on the solicitation for bid may be used to evaluate the items or services proposed.

8. **Review Committee.** The Committee may be composed of the following representatives to review all responses to the RFP and shall short-list the candidates (three to five candidates) and submit a recommendation to approve and award a contract for the City Commission's approval. .

    A. Representative(s) of the City Manager's Office.

    B. Citizens based on their qualifications and experience in the area of discipline.

    C. Representative(s) or Consultants from the requesting department.

    D. Other representatives that may be deemed appropriate by the City Manager or designee

9. **Discussion with Responsible Offerors and Revisions to Proposals.** As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for an award for clarification to assure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offers (BAFO).

10. **Award.** The award shall be made to the responsible/responsive offeror whose proposal is determined to be the most advantageous to or in the best interest of the City, taking into consideration the evaluation factors set forth in the request for proposal. The contract file shall contain the basis on which the award was made.

    Staff shall present an item to the commission that allows staff to approve, negotiate, and award a contract.

XII. CONTRACTING FOR PROFESSIONAL SERVICES (CCNA)

The City will follow the selection procedures set forth in the

Florida Consultants Competitive Negotiation Act (CCNA) as stipulated in Florida Statutes, Chapter 287.055 as amended from time to time, when seeking professional services. "Professional Services" means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

XIII. ERRORS & OMISSIONS POLICY

The purpose of this policy is to set forth consistent procedures to assess:

1. Whether an error and/or omission (sometimes referred to herein as "E&O") has been made by a Design Professional who is performing services for the City,

2. Create a record of error and/or omissions for the purpose of recovery of premium costs,

3. Evaluate whether reimbursement of premium costs is appropriate and,

4. Evaluate Design Professional performance for consideration in future project selection processes.

Authority:

Administrative procedure.

Definitions:

Definitions as used in this Policy, the following terms carry the meaning specified below.

1. Change Order. Any contract amendment, which increases or decreases the value, or duration of a contract, when approved by the City Commission.

2. Consequential Damages. Consequential damages are damages which do not flow directly and immediately from the acts of a party, but only from some of the consequences or results of such acts and may include the City's cost of replacing or completing work resulting from a design error or omission, the cost of providing extended project support and loss of use damages.

3. Delay Damages. Delay damages include the costs, which the City may have to pay a contractor as the result of Design Professional caused delays. These damages can include increased labor and material costs, extended home and field office overhead lost productivity, and lost opportunity damages.

4. Department Director. The head of any City department or division.

5. Design Professional. Design professionals are any consultants who provide services to the City whether or not they are hired pursuant to the Consultant Competitive Negotiation Act, FSS. 287.055. This policy applies to the entire design team including all sub-consultants hired by a Design Professional who is in direct contract with the City of Boynton Beach.

6. Error. An act that through ignorance, negligence, deficiency, or accident departs from or fails to achieve what should be done. Nothing in this definition modifies the terms of the City's contract with the Design Professional.

7. Insurance Carrier. The provider of the professional liability insurance coverage carried by the design professional.

8. Omission. An item of design or contract work task, which was neglected or left undone. Nothing in this definition modifies the terms of the City's contract with the Design Professional.

9. Premium costs. Premium costs consist of the increased cost to the City of having

items of work added to a project after the contract has been bid and awarded and construction started. If work is added because of an error or omission by the Design Professional, and the item is required for the project to function as anticipated, value is added to the project and some portion of the cost of the item may properly be allocable to the City. However, when an error or omission in design is discovered after bid, some portion of the cost of adding the item frequently represents the increased cost that a contractor incurs in constructing the added work out of sequence. In addition, the City loses the benefit of having the work required to overcome the design error or omission competitively bid. These additional costs resulting from design errors or omissions constitute premium costs. Premium costs include the cost of the consequential and delay damages as a result of the error and/or omission.

10. Professional Liability Insurance. That insurance which indemnifies against damages caused by the errors or omissions of the design professional.

11. Project Manager. The City employee assigned to administer the contract of a Design Professional.

12. Standard of Care. The expected level of professional skill, knowledge, expertise, experience, and performance set forth in the Design Professional's contract. Nothing in this Policy modifies the language or terms of the City or Design Professional, which are contained in their contract.

13. Unforeseen Site Condition. An actual physical characteristic which was not known or is different from the characteristic described in the construction contract documents. Responsibility for unforeseen site conditions are described in the contract documents and may vary from contract to contract.

Policy:

It is the policy of the City of Boynton Beach to fairly and consistently review and evaluate the performance of its Design Professionals against applicable contract and industry standards[1]. In the event that performance meets or exceeds the contract requirements, it is the policy of the City to record the same in an objective manner for use in future selection processes. In the event that performance falls short of the contract requirements, the City policy is to recover the premium costs, consequential damages, and delay damages resulting from the Design Professional's failure to perform to the level required by the contract or by industry standards as well as record same in an objective manner for use in future selection processes.

A Design Professional is obligated to perform services in a manner consistent with the contractually required standard of care as well as industry standards. Neither industry nor contractual standards of care require perfection. Therefore, some level of performance short of perfection is anticipated. In each project where the City has costs associated with errors and omissions, the City should determine if those costs reflect a level of performance less than that required by the applicable standard of care. If so, then the City should expect to be reimbursed by the Design Professional for those costs.

[1] Contracts, by their nature, cannot incorporate reference to all standards of care for a design professional. Reference to "industry standard" in this policy imposes on design professionals a duty to perform the requested services in accordance with the standard of care used by similar professionals in the community under similar circumstances.

When the City incurs cost overruns on a project, an assessment should be made by the Project Manager to determine the impact of such factors so that any City claim could be fairly adjusted. Such a determination would be made on a case-by-case basis by the City or consultants engaged for this purpose.

Procedures:

1. General

Each project must be assessed on its own. No one standard can determine whether the City should expect reimbursement for E&O expenditures. Some errors or omissions may, standing alone, evidence a lack of care sufficient to warrant reimbursement. A series of minor errors or omissions may or may not be indicative of a lack of care. In determining whether to seek compensation from the Design Professional the City should first calculate and total the amount of premium costs. In the event that the standard of care has been exceeded, the Design Professional will be responsible for only the premium value (non-value-added costs).

Secondly, the premium value needs to be compared to an applicable standard of care to determine if the premium value exceeds the amount normally expected on a project where the Design Professional was conducting itself in accordance with the standard of care contained in its contract.

2. Design Professional's Contract Language

Each contract with a Design Professional shall contain the standard of care language. The language shall be consistent with the language which currently represents the City's position as approved by the City Manager. Department Directors may recommend a higher standard of care for contracts that warrant the same. This revised standard of care language must be approved by the City Attorney's Office. In any event, the individual contract language shall take precedence over the terms of this Policy.

The Design Professional's performance will be recorded and in part evaluated according to the provisions of this Policy.

Project Managers shall provide a copy of this Policy to all professionals as part of their proposal or contract.

3. Change Order Administration

A. Construction Administration Services

The Design Professional shall immediately be made aware of any change, which may be considered an error or omission by the City so that the Design Professional can evaluate the condition and participate in mitigating the impact of the error or omission.

1) If construction administration services are included in the Design Professional's contract, the construction contract will include language directing requests for information and change proposals to the Design Professional with a

simultaneous copy to the City, or simultaneous notification to both the City and Design Professional.

2) If construction administration services are not included, the Project Manager will notify the Design Professional within 24 hours of being made aware of a condition which may be an error and/or omission. This notification may be verbal or written. If verbal, the notification must be to a person employed by the Design Professional holding a position at least of engineer

B. Change Order Brief

A change order brief is required for all change orders prior to City approval. The change order brief contains a field to identify whether the change order or each change item contained within a change order (if multiple change items within a single change order) was a result of an error/omission. The Project Manager must identify whether the change or individual change item is a result of an error or omission.

This change order brief shall be provided to the Design Professional upon approval of the change order. The change order brief shall not be provided to the Contractor as an attachment to the change order, however, must be provided to the Contractor if requested.

C. Evaluation of the Value of Errors and Omissions

Within 30 days of the approval of a change order, all change items which have been identified as an error/omission will be evaluated to identify the premium costs. The premium costs should include all costs identified in the definition of premium costs above. Independent consultants may be used to assist the Project Manager in determining the premium costs.

D. Contract Payments to the Design Professional

To the extent possible, the Project Manager shall ensure that sufficient funds are available (based on contract balance) from payments to the Design Professional to cover the value of the premium costs identified and transmitted to the Design Professional. This provision of the Policy may be waived with the approval of the Department Director. This provision is not intended to provide for the implementation of a "retainage" provision.

E. File

The Project Manager will maintain a file that contains the change order documents, all related correspondence, and work papers, the evaluation identified in "b" above, the Design Professional's response to the evaluation, and any other materials related to an error/omission.

4. End of Construction Evaluation and Assessment

A. Cumulative Review

Upon completion of construction, the Project Manager will compile the results of all E&O evaluations for the purpose of determining whether the standard of care identified in the contract has been met. This compilation will be referred to as the cumulative review.

If determined to be warranted, the Project Manager can initiate an interim cumulative review at any time during the contract.

B. Assessment Against Standard of Care

The Project Manager will compare the cumulative review to the standard of care in the contract of the Design Professional to determine whether the contract requirements have been met. This comparison is to be performed on a case-by-case basis considering the items set forth earlier in this Policy.

C. Review of Final Evaluation and Recommendation

1) If the Project Manager's evaluation indicates that the standard of care has been met, the Project Manager can recommend final payment. Final payment and recordation of the Design Professional's performance shall be made in accordance with "4d" and "4e" of this Policy.

2) If the Project Manager's evaluation indicates that the standard of care has not been met, a copy of the evaluation shall be sent concurrently to the Division Director as well as the Design Professional. The Division Director shall review the evaluation and schedule a meeting with the Design Professional prior to concurring with the recommendation of the Project Manager and sending same to the Department Director.

   Should the Department Director agree with the evaluation of the Project Manager and Division Director that the standard of care has not been met, the cumulative review, along with the Department Director's recommendation shall be forwarded to the Design Professional. This communication to the Design Professional shall indicate the monetary penalty if any that the City intends to impose and shall afford the Design Professional the opportunity for a meeting with the City to discuss the City's findings and conclusion.

   In the event the Design Professional disputes a monetary penalty imposed by the City pursuant to this policy, the dispute shall be settled by mediation under the Construction Industry Mediation Rules of the American Arbitration Association. A demand for mediation must be in writing and must be made prior to final payment. The acceptance of final payment by the Design Professional constitutes a waiver of the dispute.

   If within 45 days after service of a written demand for mediation, the mediation does not result in settlement of the dispute; then, any

unresolved dispute shall be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules. Fast track procedures shall be followed when the disputed amount is less than $50,000.00. A single arbitrator shall be used.

An award rendered by the arbitrator shall be enforceable under the provisions of the Florida Arbitration Code, Chapter 682, Florida Statutes.

D. Final Payment of the Design Professional's Contract

1) If the Department Director concurs with the Project Manager that final payment in accordance with the terms of the contract.

2) The Project Manager shall hold the final invoice for services, if a contract balance remains. The amount withheld from final payment will be in an amount equal to or less than the estimated premium value. If there are insufficient funds remaining in the contract balance, the Department Director will determine the most appropriate manner to recover same from the Design Professional and/or their Professional Liability Carrier.

3) If the matter proceeds to negotiations for resolution, the final invoice for services shall be processed upon conclusion of the negotiations and in accordance with the agreements resulting from same.

E. Recordation of Performance Evaluation Form

The information contained in the cumulative review shall be permanently recorded on the Design Professional's Performance Evaluation Form, which is one of the factors considered for future selection.

XIV. CONSTRUCTION CONTRACTS

Due to the complexity of construction projects and the cost involved, these contracts warrant special conditions.

In general, contracts for the construction of major City projects are obtained through the Formal (Sealed) Bid process. All procedures as previously noted in Section IX – “Formal Bids" should be followed.

Construction projects under $199,999.99 in cost may be procured by three (3) written “apples to apples” quotations. Sealed bids are required for all construction projects with costs over $200,000 and shall require the City Commission's approval.

The following special conditions will apply to all construction contracts over $200,000:

1. Bid Preparation:

A. **Using/Requesting Department:** The detailed specifications, special conditions that may apply, a suggested vendor list, a file link, and a "Departmental Bid Request" form are to be assembled and provided to the Purchasing Division. It is the responsibility of the using/requesting department to ensure that any special terms or conditions are complete, plans (including blueprints), and specifications are complete and accurate. Purchasing will review, add or delete information, add general and special conditions, necessary forms, proposal sheets, and prepare a "Request to Advertise" approval sheet for the Finance Director or Purchasing Division Director or Designee prior to selecting a bid receiving date. When a complete bid package is ready to be advertised, the "Request to Advertise" is submitted to the City Clerk. All bids are posted on the City website, bids&tenders, Demand Star, and the County's Public Notice Website (https://www.pbcfllegalnotices.com/). All supplemental vendors from the Purchasing Vendor listing the suggested vendor's list from the Using/Requesting Department are added to the Purchasing software to notify them directly. Any addendum is prepared and uploaded to bids&tenders to be electronically distributed to all plan holders.

B. **Outside Consultant:** The consultant submits a specification package for Purchasing Division review, and a "Department Bid Request" form is prepared by the using/requesting department. Any changes, documents needed for the bid package, general and special conditions, and insurance information, "Request to Advertise" is prepared by the Purchasing Division, signed the Finance Director or Purchasing Division Director or Designee. After approval and any suggested changes, a bid-receiving date is selected, and a bid number assigned. The final advertisement provided to the City Clerk's office for advertisement. All bids are uploaded to bids&tenders along with supplemental vendors from the Vendor listing or the using department's suggested vendors.

2. **Announcement of Bids.** Due to the contractor's desire to share in large dollar projects, interest in construction projects is generally high. To assure the greatest degree of competition, all of the following shall be used to announce the bids:

A. **Legal Ads.** Legal ads are an excellent method of attracting interested parties , while also dispelling any criticism of bids only going to favored contractors. Legal ads are generally requested by the Purchasing Division and placed by the City Clerk. Such notice may be given by publication in a subscription of https://www.pbcfllegalnotices.com/). and by posting the particulars to the City website or bids&tenders or DemandStar. Responses are submitted through bids&tenders.

Legal ads should briefly state the project's name, location, nature of work required, bid receiving date and time, cost of plans, and location where bid specifications may be obtained. Per Florida Statute 255.0525, If construction cost is projected to be under $200,000.00. The ads should be placed a minimum of twenty-one (21) calendar days prior to the bid opening date and at least 5 days prior to any scheduled pre-bid conference if construction cost is projected to be over $200,000.00 but under

$500,000.00. The ads should be placed a minimum of thirty (30) calendar days prior to the bid opening date and at least 5 days prior to any scheduled pre-bid conference if construction cost is projected to be over $500,000.00. The solicitations may also be listed in the Dodge Reports and other construction journals.

Per Florida Statute 255.0525, In cases of emergency, the procedures required in this section may be altered in any manner that is reasonable under the emergency circumstances.

1) If the location, date, or time of the bid opening changes, written notice of the change must be given, as soon as practicable after the change is made, to all persons who are registered to receive any addenda to the plans and specifications.

2) A construction project may not be divided into more than one project to evade the requirements in this section.

3) As used in this section, the term "emergency" means an unexpected turn of events that causes:

   a) An immediate danger to the public health or safety;

   b) The immediate danger of loss of public or private property; or

   c) An interruption in the delivery of an essential governmental service.

B. **Interested Contractors (Bidders List).** The primary contracts for construction bids are those firms that have previously done work for the City or expressed a desire to bid. A list of these firms shall be assembled from records from Purchasing Division, bids&tenders, and other City departments involved in the construction project.

Additionally, the Purchasing Division may contribute to firms that are listed in various reference sources, including Thomas Register, Municipal Index, Yellow Pages, Contractor's Blue Book, Palm Beach County Minority Business Directory, etc.

C. **Plan Rooms.** Many firms that might not be reached by bids&tenders mailings or legal ads do frequent various "plan rooms" located in the area, such as Dodge Reports. By distributing copies of the bid and plans to these plan rooms, Purchasing Division can reach many firms that might otherwise be overlooked.

D. **Pre-Bid Conference.** For construction projects, a pre-bid conference may be held. Attendance at this conference is not always mandatory but highly recommended for all bidders.

3. **Bid Opening.** Due to the generally higher dollar cost of construction projects, the bid opening shall be handled very seriously and in a highly professional manner. No bids will be accepted after the receiving date and time (exception; the City reserves the right to consider bids that have been determined by the City to be received late due to mishandling by the City after receipt of the bid and no award has been made).

   Designated Purchasing Staff oversees the bid opening and shall fully record the various bids for the construction project per Florida Statute 255.0518 as amended from time to time. Anyone requesting to review bids will be requested to wait until all bids are received and tabulated and a Purchasing staff person is available to monitor the bid package review process.

4. **Bid Review and Award.** To allow a thorough bid review by the originating department, Purchasing Division should email copies of the tabulation sheets for the requesting department and have all bids available for their review (upon request) in bids&tenders. Included would be the Contractor's Bid Form, response page, references, bid bond, and any pages stating substitutions or changes to the bid document.

   After the originals are secured in the bid file, the requesting City department, upon request, should be forwarded the bid copies for their review within bids&tenders.

   In some cases, a review of bids may be performed by a contracted Architectural/Engineering firm. Copies of bids must then be provided to both the requesting department and the Architectural/Engineering consultant.

   The contract award should generally be made to the lowest most responsive/ responsible bidder meeting specifications as outlined in Section IX - Formal Bids. If this is not the case, a thorough explanation should accompany the department's memo to Purchasing Division for formal evaluation.

   The Finance Director or Purchasing Division Director or Designee will then review the award. If in agreement, a recommendation is forwarded to the City Clerk in an Agenda Memo format for Commission approval with an applicable accompanying contract. Assuming City Commission approval, a purchase order will be issued to the successful contractor after agreements are approved and signed, and bonding and insurance requirements have been met. Care must be taken to reference the bid on the purchase order, noting that "all terms, conditions, plans, and specifications" of that bid shall apply.

5. **Formal Construction Contract (Agreement).** Due to the complex nature and duration of construction projects, a formal construction contract shall be prepared, and copies will be issued to all parties. These contracts are prepared in either the Purchasing Division, Engineering, hired Architectural/Engineering firm, or the City Attorney's Office.

   The formal construction contract is based on the bid document and plans. The contractor shall provide all required licensing, insurance, and bond documentation to the City along with the signed contracts. A "Notice to Proceed" is issued upon receipt of all documents.

   All contracts are reviewed and approved by the City Attorney as to form and legality before the contract is presented for signature.

XV. PURCHASES AFTER A DECLARED EMERGENCY

This policy establishes responsibilities and implements procedures to follow when making purchases for the City after a declared emergency.

Definition:

An emergency is defined as a situation brought about by a sudden unexpected turn of events (i.e., Act of God, hurricanes, riots, fires, floods, accidents, etc.) or any circumstances or causes beyond the control of the City in the normal conduct of business. Emergencies could involve health, welfare, injury, or loss to the City and/or City citizens; which may require the immediate purchase of equipment, supplies, materials, or services.

A "Declared Emergency" under this policy is a declaration covering an area including the City of Boynton Beach made at the national, state, county, or city level necessary to respond in the best interest of public health, safety, and welfare.

Policy:

The City Manager or designee may make purchases necessary in a declared emergency for relief efforts up to $300,000 without the approval of the City Commission, but subject to subsequent ratification when there exists a threat to public health, welfare, or safety, provided that such emergency Purchasing shall be made with such competition as is practicable under the circumstances.

The City Manager's or designee Purchasing authority is for a period of ninety (90) days after a declared emergency.

Procedures:

Notwithstanding any other provisions of these policies, the City Manager or his designee may make or authorize others to make emergency Purchasing of supplies, services, or construction items.

A written determination of the basis for the emergency and the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency Purchasing shall be made and shall set forth the contractor's name, the amount and type of contract, a listing of the item(s) procured under the contract, and the identification number of the contract file.

The requesting department shall present any emergency purchase that exceeds the formal bid amount to the City Commission on the earliest agenda date. The agenda item should provide Information identifying the extent of the emergency and the determination process for vendor selection.

Emergency Purchasing procedures may not be implemented to procure goods and/or services needed to carry on what should be considered as normal operations. Failure to anticipate normal operating needs is not to be confused with an emergency. Although poor planning, overlooked requirements, inaccurate usage history, or inadequate forecasting may result in the need for expedited Purchasing, these are not bona fide emergencies.

XVI. DEBARMENT & SUSPENSION

This policy will establish the authority for the City to debar or suspend a business or person from consideration for award of contract or bids.

Authority:

The Finance Director or Designee after consulting the City Manager and City Attorney shall have the authority to debar or suspend a business or person from consideration for bid awards. For reasonable cause, the suspension can range from one (1) to three (3) years or indefinitely

Causes for Debarment or Suspension:

The causes for debarment or suspension include, but are not limited to, the following:

1. Conviction or commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract or incident to the performance of such contract or subcontract.

2. Conviction under state or federal statutes of a public entity crime, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving of stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affect responsibility as a contractor.

3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.

4. Violation of materials bid/contract provisions:

    A. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the bid/contract or,

    B. A recent record of failure to perform of unsatisfactory performance in accordance with the term of one or more bids/contracts; consideration may be given in case of failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor.

5. Any other material factor which adversely affects the responsibility as a City contractor or potential City contractor, including suspension. or debarment by another governmental entity.

6. The reputation of a bid/contract by failure to provide bonds, insurance, or other required certificates prior to award of contract.

7. Expiration or revocation of licenses required or failure to renew licenses required.

8. Refusal to accept an agreement or contract, or to perform an agreement or contract in conformance with the bid requirements.

9. The general performance of a contract is evaluated in writing as "poor" or "unsatisfactory."

10. Presence of principals or corporate officers in the business or concern, who were principals or corporate officers or directors within another business at the time when the other business was suspended or debarred within the last five (5) years under the provisions of this section.

11. Violation of the ethical standards set forth in City, State, and Federal Law or Regulations.

Decision to Debar or Suspend:

A decision to debar or suspend shall be issued in writing to a business or person from the City Manager or his Designee and shall:

1. State the reason(s) for the action taken.

2. State the period of suspension/debarment.

3. Inform the suspended or debarred business or person involved of their right to administrative review as provided in this policy.

Notice of Decision:

A copy of the decision under this section shall be mailed or otherwise furnished to the suspended or debarred business or person and any other affected party.

Finality of Decision:

A decision to debar or suspend shall be final and conclusive, unless the debarred or suspended business or person, within ten (10) business days after receipt of the decision, files a written notice of appeal to the City Manager or designee, in which event the decision shall be deemed final and conclusive if and when the decision is affirmed by the City Manager or designee.

XVII. BID PROTESTS

To establish a procedure for a prospective bidder to protest a bid against the City.

Any actual or prospective bidder, offeror, or contractor with a "substantial interest" who is aggrieved in connection with solicitation or award of Contract may protest in writing to the Finance Director or Purchasing Division Director or his/her designee. A bidder shall be deemed to have a "substantial interest" if the bidder would have been selected as the lowest Responsible and Responsive bidder but for the alleged mistake or irregularity described in the protest. Protesters shall file their written protests along with a bid protest cash bond in an amount equal to 5% of the bid or $5,000, whichever is less, or if the bid amount cannot be determined, with the Purchasing Division Director during normal business hours. The bond will be refunded to a protestor if the protest is upheld. Protests shall specifically describe the subject matter and facts giving rise to the protest. Protests shall be deemed effective on the date they are received by the Purchasing Division Director. The Purchasing Division Director shall immediately deliver the bid protest to the City Attorney with a memorandum setting forth the facts and circumstances surrounding the protest. The deadlines for filing bid protests are as follows:

1. If the protest relates to an Invitation for Bid or Request for Proposal, the protest shall

be received prior to the bid submittal deadline date.

2. If the protest relates to any other matter relating to the bid, including, but not limited to, the intent to Award of a Contract, the protest must be received no later than three (3) regular business days after the date of notification of intent to award a solicitation by the Purchasing Staff.

Decision:

If the protest is not resolved by mutual agreement, the City Attorney, upon consultation with the Purchasing Division Director, shall make a recommendation to the City Manager who shall issue a decision in writing, or the City Manager may request for the City Attorney to render a decision in writing to the protesting bidder, offeror, or contractor. The City Manager shall have the authority to settle and resolve a protest of an aggrieved bidder, offeror or contractor, actual or prospective, concerning the solicitation or award of a contract. The decision shall:

1. State the reasons for the action taken; and

2. Inform the protester of its right to appeal as provided in this part.

Notice of Decision:

A copy of the decision under this section shall be emailed or otherwise furnished to the protestor and any other party intervening.

Finality of Decision:

A decision of the City Manager or designee under this section shall be final and conclusive unless the protester files a written appeal with the City Clerk within three business days of the City Manager or designee's decision. The City Commission within thirty (30) days of the City Manager's response shall consider the protest.

Failure to Follow Procedure:

A protestor's failure to follow the protest procedure set forth herein shall render void any protest or claim brought by an aggrieved bidder, offeror, or contractor.

Costs not recoverable:

Costs incurred by a protesting party, including but not limited to attorney fees, are the sole responsibility of the protesting party.

Remedies for Solicitations or Awards in Violation of Law:

1. **Prior to bid opening or closing date of receipt of proposals:**
   If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Division Director, after consultation with the City Attorney determines that a solicitation is in violation of federal, state, or municipal law or ordinance, then the solicitation shall be canceled or revised to comply with applicable law.

2. **Prior to Award:**
If after bid opening or the closing date for receipt of proposals, but prior to the intent to award of contract, the Purchasing Division Director after consultation with the City Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, or ordinance, then the solicitation or proposal award shall be canceled and re-solicited.

XVIII. TERMINATION FOR CONVENIENCE OR DEFAULT

Termination for Convenience

1. The City may terminate performance of work under a contract in whole or in part, (the "Work Terminated") if the City determines that such termination is in the City's best interest. Termination of a contract will be in accordance with the governing provisions of the contract under which the work or services are being performed. The Purchasing Division will prepare a certified letter notifying the contractor of termination. The Purchasing Division Director shall notify the City Manager and City Attorney prior to the termination of any contract at or above the competitive solicitation threshold ($50,000).

   Contractors and subs working for the contractor shall acknowledge within the solicitation package that the City has the right to terminate for convenience without litigation being pursued against the City. Failure to do so will result in a non-award.

2. After receipt of a Notice of Termination, a Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

   A. Stop work as specified in the notice.

   B. Complete performance of the work not terminated.

Termination for Default

The City of Boynton Beach may, subject to paragraphs below, by written notice of default to the Contractor, terminate this contract in whole or in part if the contractor fails to:

1. Perform the services within the time specified;
2. Make progress, so as to endanger performance of this contract;
3. Perform any of the other provisions of this contract.

Contractors and subs working for the contractor shall acknowledge within the solicitation package that the City has the right to terminate for default without litigation being pursued against the City. Failure to do so will result in a non-award.

XVIII. PURCHASING CREDIT CARD

PURPOSE:

The City of Boynton Beach Purchasing Card Program is designed to improve efficiency in processing low dollar value purchases from any vendor that accepts the Visa credit card. Many of

our current suppliers, currently being paid by the purchase order or blanket purchase order system, will accept the Visa credit card.

This program will allow the cardholder to purchase approved commodities and services directly from our vendors. Each Purchasing credit card is issued to a named individual and the City of Boynton Beach is clearly shown on the card as the Governmental buyer of the goods and services. Also, included on the credit card will be the City's sales tax exemption number.

Financial Services Department will serve as the Purchasing Card Program Administrator and will monitor the performance of the program. All questions or concerns should be directed to:

Materials and Distribution Manager 561-742-6324

The purpose of this policy and procedures is to accomplish the following:

1. To provide an efficient method of Purchasing and paying for goods and services not exceeding $2,000 per purchase (total invoice) unless pre-approved by the Finance Services Department Authorized Staff in writing.

2. To assist departments in the purchasing of small-dollar purchases.

3. To replace requisitions and purchase orders for low dollar value purchases.

4. To ensure Purchasing credit card purchases are in accordance with the City's ordinances, policies, and procedures.

5. To reduce the time spent by Procurement Services and Financial Services to process low dollar value transactions.

6. To ensure that the City bears no legal liability from the inappropriate use of the Purchasing credit cards.

7. To provide for disciplinary action if the Purchasing credit cards are misused.

The policies and procedures provided herein are minimum standards for departments. Departments may establish additional controls as they see fit for their particular operations.

OVERVIEW:

The City of Boynton Beach P-Card is a VISA credit card established as a more efficient, cost-effective method of Purchasing and paying for small dollar transactions. The card is used to procure low-dollar, non-inventory, non-contract goods and services that are business-related purchases. These efficiencies will allow cardholders to be more effective and focus on the value-added aspects of their jobs. The P-Card program is consistent with and implemented as part of the city's Purchasing strategy. The use of P-Cards:

1. Streamlines the Purchasing process.

2. Increases user satisfaction.

3. Reduces transaction costs.

4. Improves delivery times.

The Purchasing Card Program Guide provides guidelines under which you are to utilize your P-Card. Please read it carefully. Your signature on the Cardholder Agreement Form indicates that you understand the intent of the program and agree, and are responsible for, adherence to the guidelines established for the program. The program is not to circumvent Purchasing guidelines or procedures. To maintain the integrity of the program, the Program Administrator shall cancel credit cards that are not used in compliance with established guidelines. In addition, misuse of the P-Card may result in disciplinary action.

Remember that you are spending taxpayer funds each time you use the P-Card. This is a responsibility that cannot be taken lightly. You must treat this program with the same sense of responsibility and security that you would use with your own personal credit cards.

PROCEDURE:

HOW IT WORKS.

The Purchasing Card Program simplifies the Purchasing and disbursement process. Purchasing responsibility is delegated to the Department/Division enabling an authorized Cardholder to place an order directly with the vendor.

When a purchase authorization is requested by the supplier at the point-of-sale, the Bank of America Visa Purchasing Card system validates the transactions against pre- set limits established by the employee's Department/Division Head. All transactions are approved or declined (electronically) based on the Purchasing card authorization criteria established. The authorization criteria may be adjusted periodically as needed and may include, but is not limited to, the following:

1. Single purchase limit as set by the Department/Division (not to exceed $2,000 per invoice)

2. Daily spending limit (normally is $2,000)

3. Monthly spending limit (normally is $5,000 per month)

4. Approved Merchant Category Codes

5. Number of transactions allowed per day (optional)

6. Number of transactions allowed per month (optional)

7. Different limits may be established for specific cardholders but must be approved by the Financial Services Department.

The authorization process occurs through the electronic system that supports the Purchasing card processing services under the City of Boynton Beach's agreement with Bank of America.

WHAT IF THE SUPPLIER DOES NOT ACCEPT CREDIT CARDS

It is important to the success of the Purchasing Card Program that merchants interested in doing business with the City of Boynton Beach have the capability to process VISA credit cards. If merchants currently accept VISA credit cards, they are already equipped to accept the City of Boynton Beach Purchasing Card. A merchant who is not currently accepting VISA credit cards should contact:

Bank of America's merchant service provider at 1-800-847-2911, their own financial institution, or other merchant service provider.

If the supplier does not accept credit cards, the employee can:

1. **Thank the supplier for their time and find one that accepts the credit card,**
2. **Prepare a purchase requisition,**
3. **Use petty cash,**
4. **Direct payment voucher as appropriate.**

Roles and Responsibilities

The following is a summation of the responsibilities of the individuals and departments involved in the Purchasing card system.

Cardholder:

1. Keep your P-Card number confidential and your card in an accessible, but secure location. You are the only person authorized to use the card so the location should only be accessible to you. Lending or sharing your card or card number is prohibited. Do not leave your card in a place that is accessible to others.
2. Read and abide by the policies and procedures found in the Purchasing Card Program Guide. By signing the Cardholder Agreement form, you understand that you are accountable for activity on the card.
3. Purchase materials and services.
4. Always try to obtain the best possible value for the City when using the P-Card.
5. Follow the guidelines and do not split a transaction to circumvent your spending limit. For example, do not purchase products or services greater than the $2,000 or authorized single transaction limit and separate the payment into two or more transactions.

6. Immediately call the bank if cards are lost or stolen and notify your department representative and the Finance Department.

7. Assures receipts identify the detail of items being purchased.

8. Assures no sales taxes are charged to purchase price. It is the responsibility of the cardholder to either reimburse the city for sales tax or get a credit back on their card from the vendor.

9. Identifies account number, associated dollar value, and reason for purchase on the back of each purchase receipt.

10. Collect sales receipts for each transaction.

11. Turns in sales receipts to Department/Division Purchasing Coordinator within one day of purchase.

12. Review monthly statement with Purchasing Coordinator.

13. Assures that budget exists for purchased items.

14. Signs Monthly Purchasing Card Statement.

15. Identify disputed charges.

16. Responsible for all purchase transactions on the assigned Purchasing credit card.

17. Have their supervisor or Department/Division Head sign their monthly credit card statement.

Department/Division Purchasing Coordinator:
(Individual(s) designated by Department/Division Head)

1. The Department/Division Purchasing Coordinator is the liaison between the Purchasing Card Program Administrator and their department's cardholders.

2. The department representative is not expected to be a Purchasing official but should understand the Purchasing process and be able to recognize questionable purchases. Staff in the Purchasing Department are available to answer questions.

3. Review and forward card applications to the Program Administrator.

4. Report any suspected abuse or misuse of Purchasing cards to the Program Administrator.

5. Collect canceled cards and forward them to the Program Administrator with proper documentation.

6. Ensure that purchases do not violate P-Card policies. Notify the cardholder and Program Administrator of any unauthorized purchases.

7. Verify that goods and services have been received.

8. Review monthly statements with the cardholder.

9. Prepares the Monthly Department/Division Approval List Form for each Cardholder's monthly statement and forwards it to the Finance Department within five workdays of receipt of statement or earlier if notified by the Finance Department.

10. Verify the account numbers and item description/explanation for the individual purchase transactions in the P-Card module.

11. Handle disputed items.

12. Ensure sufficient budget exists to cover all expenditures to date and available balances on all cards. If not sufficient, to provide budget transfer to cover expenditure amount.

Department/Division Head

1. Request Purchasing cards for designated employees.

2. Set spending limits for each Cardholder within established guidelines.

3. Designate Department/Division Purchasing Coordinator.

4. Collect cards from cardholders that terminate employment.

5. Evaluate the need to cancel or reissue cards when employees transfer.

6. Reviews and signs Department/Division Approval List.

7. Notify the Purchasing Card Administrator of terminated cards.

Warehouse Manager (Purchasing Card Program Administrator)

1. The warehouse Manager serves as the Purchasing Card Program Administrator.

2. Approve/disapprove all Purchasing card requests.

3. Maintain a detailed log of all Purchasing credit cards issued.

4. Evaluate Purchasing card feedback from suppliers.

5. Coordinate and maintain internal controls.

6. Coordinate issuance and cancellations of cards.

7. Participate in ongoing program reviews.

8. Participate in resolving billing disputes.

9. Maintain policy and cardholder guides/manuals.

10. Provide orientation for new cardholders to policies and procedures.

Finance

1. Receives and reviews approved Cardholders' monthly statements and consolidated monthly statements.

2. Notify Department/Division Head and Purchasing Coordinator when approved monthly statements are not received in a timely manner.

3. Loads transaction file from Bank of America secure website into PCard module of HTE system for departmental review.

4. Process to default account number any Cardholder monthly statement not received in a timely manner.

5. Notify Department/Division Head and Purchasing Coordinator of any cardholders' non-compliance issues with this policy.

ASSIGNMENT AND CONTROL OF THE PURCHASING CARD

1. REQUEST FOR AND ISSUANCE OF PURCHASING CREDIT CARDS.

   A. Purchasing cards will be issued to individual employees who frequently purchase goods and services. Generally, these are the same employees that were Purchasing low dollar value items through a Blanket Purchase Order prior to the credit card program.

   B. The Purchasing Card will have the employee's name, the City name, the tax-exempt number, the Cardholder account number, and an expiration date embossed on the face of the card. The Purchasing card issuing company will not have individual cardholder information other than the cardholder's work address. No credit records, social security numbers, etc. of the cardholder are maintained.

   C. All requests for new cardholders or changes to current cardholders must be made by the Department Head by submitting the Purchasing Card Request Form **(Attachment I**). The completed form will be forwarded to the Purchasing Card Program Administrator.

   D. All requests for Purchasing cards must be approved by the Department

Head and Purchasing Card Program Administrator.

E. When the Purchasing Card Program Administrator receives a Purchasing card from Bank of America, the cardholder will be required to personally take receipt of the card and sign the "Purchasing Card Program Employee Agreement" **(Attachment II**). The Purchasing Card Program Administrator or designee will provide the Cardholder a copy of the Purchasing Card Policy.

2. LOST OR STOLEN PURCHASING CARDS

A. If a Purchasing card is lost or stolen, the Cardholder must immediately notify Bank of America at 1-888-449-2273 and the Purchasing Card Program Administrator of the loss, verbally and in writing.

B. The Cardholder will be responsible for reporting all information necessary to minimize the liability to the City for a lost or stolen card.

3. TERMINATION OR TRANSFER OF CARDHOLDER

A. When an employee ends his or her employment or is transferred to another Department/Division, the Department Head or designee shall immediately collect the Purchasing card and destroy it. Place the destroyed card in an envelope and send it to the Finance Department.

B. If the Department Head or designee is unable to collect the Purchasing card when an employee terminates or is transferred he/she shall immediately notify the Purchasing Card Program, Administrator. The Purchasing Card Program Administrator will ensure that the card is canceled.

4. PURCHASING CARD INVENTORY

Annually, the Purchasing Card Program Administrator will provide to each approving Director Head a list of all the Purchasing Cards issued to employees within their department. Each Department Head (or designee) will be responsible to conduct a physical inventory of the credit cards and certify the listing and return it to the Purchasing Card Program Administrator.

LIMITATIONS ON USE OF PURCHASING CARD

1. CARDHOLDER USE ONLY

The Purchasing Card may be used **only** by the employee whose name is embossed on the card. No other person is authorized to use the card. The Cardholder is responsible and accountable for all transactions that occur on his/her card.

2. CITY PURCHASES ONLY

The Purchasing Card is to be used for City authorized purchases **only. The Purchasing credit card cannot be used for any personal use and any such use will require immediate reimbursement and will result in disciplinary action which may include dismissal and/or criminal charges.**

3. DOLLAR LIMITATIONS

a. The Department Head approving the assignment of a Purchasing card will establish two (2) dollar limits for each Cardholder. A single purchase limit and a 30-day limit. The normal maximum limits shall be $2,000 for a single purchase and $5,000 during the 30-day billing cycle. Exceptions will be made to the maximum dollar purchase limit as approved by the Purchasing Card Program Administrator. Requests for spending limit changes must be initiated and authorized by the Department Head. The Department Head may impose additional limitations.

b. A purchase may be made of multiple items, but the total invoice cannot exceed $2,000, or the Cardholder's limit is less than $2,000. **CHARGES FOR PURCHASES SHALL NOT BE SPLIT TO STAY WITHIN THE SINGLE PURCHASE LIMIT.** This will be considered abuse of the Purchasing card program and can result in cancellation of the card and/or disciplinary action.

c. The Purchasing Card Program Administrator has the authority to make purchases that exceed the single purchase limit of $2,000. All such purchases must be initiated by the Purchasing Card Program Administrator and must comply with the Purchasing policies and procedures established by the City. Exceptions have also been established for certain cardholders with the permission of the Director of Financial Services and must also comply with Purchasing policies and procedures.

4. UNAUTHORIZED/PROHIBITED PURCHASES

Following is a list of items that you are NOT authorized to purchase with the P-Card. If you are not sure that a purchase you are planning is an authorized user of the P-Card, contact the Program Administrator before you proceed.

A. Any additional goods or services not authorized by the Department Head or designee;

B. Purchase of food and beverages for non-City business purposes. Refer to section 5 below;

C. Transactions exceeding $2,000 or exceeding the cardholder's authorized transaction limit;

D. Transactions totaling over monthly spending limit of $5,000 or exceeding the cardholder's monthly authorized limit;

E. Personal use (purchases must be official City use only);

F. Cash, cash advances, or extension of credit;

G. Cash back for card purchases;

H. Items stocked at Consolidated Warehouse;

I. Items listed or services within the scope of a Blanket Purchase Agreements;

J. Telephone calls (either personal or business);

K. Fuel - gasoline and oil products (except for authorized travel);

L. Vehicle repairs (except repairs and maintenance to undercover vehicles);

M. Memberships must be used for City purchases only;

N. High-risk services; Onsite services;

O. Consulting or high-risk technical services;

P. Tobacco or alcohol products;

Q. Weapons of any kind, including firearms, ammunitions, and firearm accessories;

R. Explosives;

S. Tuition for employees (except authorized travel or training);

T. Items reimbursed by the City;

U. Transactions split to circumvent the P-Card single transaction limit;

The only person allowed to use a P-Card is the person whose name appears on the face of the P-Card. Do not lend your P-Card to another person for use. Delegation of authority is not permitted. Cardholders may make purchases for another employee within the same department. Another employee may pick up or receive items for you, but only the cardholder is authorized to sign the credit card receipt. If instructed by a manager or supervisor to make a purchase that you do not think is allowed or appropriate, do not make the purchase without first resolving your concerns. Contact the Program Administrator for guidance.

Misuse or abuse of the P-Card is a violation of the P-Card Program Guide and will result in disciplinary action. The Program Administrator should be notified immediately of all instances of P-Card misuse or abuse.

Unauthorized, prohibited, or improper use of the P-Card may result in disciplinary action, up to and including termination of employment. In addition, consequences may include suspension and/or cancellation of the card and criminal prosecution, depending upon the severity and consequence of the misuse.

5. PURCHASING EXCEPTIONS

A written request for an exception can be considered for unusual circumstances. Unusual circumstantial purchases should not exceed $150. Examples of unusual circumstantial purchases could include but are not limited to Purchasing flowers, food, and other items that express care and gratitude. The requester must obtain approval from the Finance Director or City Manager before making their purchase. Exceptions are approved only in advance of a purchase. Unauthorized purchases without approval will be considered a violation of Purchasing card policy.

6. REBATES

Cardholders should take advantage of rebates when offered by vendors. Rebates must benefit the City, never the individual employee. If the vendor sends a check to the individual cardholder, the check should be endorsed by the individual and deposited to the City's General Fund. The rebate should never go to the individual cardholder. Rebates to the City in the form of a prepaid debit card should be used for City business only and the use must adhere to City policy. Itemized receipts pertaining to the prepaid debit card purchases must be filed with the respective cardholders' file.

7. FOOD AND BEVERAGE PURCHASES

All departments responsible for Purchasing food and beverages for City Programs, events, and activities should attempt to obtain sponsorships through partnering with the local community to lessen the impact on the City's budget.

The purchase of food and/or beverages for City programs, events, activities, workshops or City hosted professional organizational functions are permitted. The items must be pre-approved by the Finance Director.

Food and beverage purchases for City Staff shall only be made for those times when it is necessary for an employee to work through a meal period and requires prior written approval by the Finance Director.

In the case of grant-funded activities, food and beverage purchases are allowed when considered an allowable expense by the granting agency.

In the case of recreational programs, food and beverage purchases are permitted when part of a program that is funded by user fees.

Food and beverage purchases are allowable from funds (691) that have been donated from outside sources for specific department/program use unless noted otherwise when funds were received. The items must be pre-approved by the

Finance Director.

All other food and beverage purchases are not authorized by the City including, but not limited to departmental staff meetings, board and committee meetings, promotional exams, per diem meals while traveling, employee birthday/appreciation celebrations, etc. Any exceptions require prior approval written approval by the Finance Director.

8. PURCHASING CARD SECURITY

Your Purchasing card should always be treated with at least the same level of care that you do with your own personal credit cards.

A. STORAGE OF THE PURCHASING CARD

Keep your Purchasing credit card in an accessible but secure location. Since you, as the Cardholder, will be the only one using the Purchasing card, it needs to be accessible only to you.

B. ACCOUNT NUMBER

Guard the Purchasing card account number carefully! Do not post it at your desk or write it in your day planner.

C. SHARING OF CREDIT CARD

The only person entitled to use the Purchasing Card is the person whose name appears on the face of the card. Do not lend your Purchasing card to another person for use.

D. LOST OR STOLEN CARDS

If the Purchasing card is lost or stolen, you must immediately notify the Purchasing Card Program, Administrator.

E. TRAVELING WITH THE P-CARD

Using the P-Card for employee travel requires the submission of a Travel Authorization form. The form must be completed by each traveler and applicable authorizations received prior to travel taking place. Travel expenses include hotel reservations, airline tickets, ground transportation, and meals while traveling on City business. The traveler must adhere to the policies and procedures outline in this Purchasing Card policies herein.

1) Travel privileges must be approved by the department director.

2) Personal expenses may not be charged to the P-Card.

3) The P-Card may not be used for alcohol or excessive meal costs.

4) All itemized receipts must be submitted with the monthly statement.

5) There are various types of meal expenses that can be paid for by

the P-Card. Alcohol is not allowed on the P-Card regardless of the situation.

Travel authorization forms are to be included with the reconciled statement when the P- card is used for travel-related expenses.

When traveling internationally, contact the bank or the Program Administrator before travel so international charges do not result in a security check and possible decline of purchases.

PROCEDURES FOR MAKING AND PAYING FOR PURCHASES

1. DOCUMENTATION OF OVER-THE-COUNTER PURCHASES.

   A. When an over-the-counter purchase is made, the Cardholder must obtain the customer's copy of the charge slip.

   B. The charge slip shall be turned in to the Department/Division Purchasing Coordinator **within one business day of the purchase.** Identify on the charge slip the purpose of purchase and account number(s) to be charged at the time of payment. The Purchasing Coordinator will retain the charge slips for matching with the monthly statements and preparing the Monthly Department/Division Approval List.

   C. All items purchased over-the-counter must be immediately available. No back-ordering is allowed.

2. TELEPHONE ORDERS

   Purchases must be described in sufficient detail so that the parties to the transaction have a clear understanding of what is being acquired.

   A. The Cardholder must confirm that the vendor agrees to charge the Purchasing card when the shipment is made so that receipt of the supplies or service may be certified on the monthly Cardholder's monthly statement.

   B. Instruct the vendor to include on the shipping document or packing slip: **"Purchasing Card Purchase".** This information will alert the receiving office and the Cardholder that the supplies have been purchased with the Purchasing Card.

   C. Instruct the vendor that the purchase is exempt from sales tax and provide sales tax exempt number if necessary.

3. MISSING DOCUMENTATION

   If for some reason the Cardholder does not have documentation of the transaction to support the transaction on the monthly statement, the Cardholder must attach a signed certified description of the purchase. Continued incidents of missing documentation may result in the cancellation

of the employee's Purchasing card privileges.

4. PAYMENT AND INVOICE PROCEDURES

A. The Purchasing card company, Bank of America, will mail all individual billing statements to the Department/Division Purchasing Coordinator and one consolidated statement for all cardholders to the Purchasing Card Program Administrator, who will forward it to the Finance Department. The individual billing statement will list all transactions processed during the billing cycle. If no purchases were made on the Purchasing card during the billing cycle, no individual monthly statement will be generated unless adjustments for previously billed transactions have been processed during that cycle.

B. The Finance Department will load the monthly transaction file from Bank of America's secure website into the PCard module of **HTE.**

C. The Cardholder must review the individual monthly statement and note any errors or disputes. Charge slips/receipts for all items listed on the statement shall be attached to the statement. These **receipts are to be stapled to the monthly statement in the order as it appears on the statement.** Failure to keep adequate receipts will lead to the loss of Purchasing Card privileges. The Cardholder must sign the individual monthly statement and return the signed statement and related charge slips/receipts to the Department/Division Designee.

D. The Department/Division Designee will review the individual statements and related charge slips/receipts. They will also verify the information in the PCard module for the correct vendor, charge amount, account number, and description/reason for purchase. The designee will print out Department/Division Approval List from the PCard module and sign it. The Department/Division Approval List form and all statements and charge slips/receipts are forwarded to Department Director for review and signature. The signatures certify that all charges are appropriate. authorized and the charge slips/receipts are attached.

E. The Individual monthly statements are signed by the Cardholder and the Supervisor or Department Director.

F. **The original individual monthly statements (signed). charge slips/receipts and the completed (signed) original of the Department/Division Approval List must be forwarded to the Finance Department within five workdays from receipt of the statements or earlier if notified by the Finance Department.** This will assist in meeting the timely payment to avoid any potential late fees which could be accessed by the issuing credit card company.

G. It is recommended that the Department/Division Purchasing Coordinator continually gather the charges/receipts, account numbers, and reason for purchases during the month. This will expedite the reconciliation process at month-end when the monthly statements are received.

H. The Finance Department will be responsible to receive the consolidated monthly statement, the individual monthly statements, and the Department/Division Approval Lists. Transactions will be reviewed to assure, as best as possible that purchases comply with the Purchasing guidelines and limitations as established in the credit card program. It is the responsibility of the Cardholder and the Department/Division to assure that bid awarded vendors are being used, and to monitor the pricing in accordance with awarded bids. The Finance Department will forward the individual statements and Department/Division Approval Lists to the consolidated statement to Accounts Payable for payment.

I. Department /Division Heads and Purchasing Coordinators will be notified by the Finance Department when individual statements are not received within the prescribed timeframe (five workdays) or earlier if notified by the Finance Department. Late statements will automatically be charged to the default account number as shown on the Purchasing Credit Card Program Agreement. Continual failure by the Department/Division to process the monthly statement in a timely manner will result in the revocation of the Purchasing Card program.

J. Accounts Payable will ensure that the consolidated statement received is reconciled against the individual cardholder statements, and Purchasing card charges are processed for payment in a timely manner. The distribution of expenditures will be based on the account numbers and amount listed in the PCard module of HTE as printed on the Department/Division Approval Lists.

K. If the individual monthly statement has not been received by the time the payment is due, then Accounts Payable will pay the statement and charge the transactions to the Cardholders default account number within the department budget.

DISPUTED ITEMS

1. <u>WHAT IS A DISPUTE</u>

A dispute occurs when a Cardholder questions a transaction that has been charged to their account. The following steps must be taken to ensure prompt settlement.

A. If items purchased with the Purchasing card are defective, the Cardholder must return the item(s) to the vendor for replacement or credit. If the service paid for with a Purchasing card is faulty, the vendor must be notified and asked to correct the situation or provide a credit. If the vendor refuses to replace or correct the faulty item or service, the purchase will be considered in dispute.

B. A disputed item must be explained with a note on the Cardholder's monthly statement before the statement is processed to Finance for review.

C. It is essential that the time frames and documentation requirements established by the Purchasing card issuer be followed to protect the cardholder's rights in dispute.

2. PROCEDURE FOR HANDLING DISPUTES

A dispute occurs when a Cardholder questions a transaction that has been charged to his/her account. The following steps must be taken to ensure prompt settlement:

A. The Cardholder contacts the merchant about the transaction and supplies the necessary information to begin the resolution process, and;

B. The Cardholder completes the Statement of Disputed Items Form **(Attachment III**) and faxes to Bank of America 1-888-678-6046 explaining the reason(s) for the dispute as well as a copy of the individual statement if the item has been posted. Bank of America will then place the transaction into a disputed status.

C. If the problem is resolved between the merchant and the Cardholder, the Cardholder should write the solution agreed upon on the bottom of the Statement of Disputed Items Form that was previously faxed to Bank of America, and fax the updated form to Bank of America as soon as possible. If an agreement cannot be reached the following steps will be completed:

1) After the item has been entered as a dispute, Bank of America must determine who is responsible by researching the transaction including requesting a copy of the sales draft when necessary. When responsibility for the transaction is determined, the dispute will be settled.

2) When an account is in a dispute status, the disputed amount is still included in calculating the available balance for authorizations (monthly limit). At the time the item is placed in dispute, it is removed from all finance charges, late charges, over-limit fees, past due amounts, and calculations. Finance charges which accrue from posting until the item is placed in dispute must be handled according to City policy. Any Cardholder statements generated while the account is in dispute will display the following message:

YOUR ACCOUNT IS IN DISPUTE FOR $XXX.XX. THIS AMOUNT HAS NOT BEEN INCLUDED IN THE FINANCE CHARGE OR PAYMENT CALCULATIONS.

3) If the Cardholder is actually responsible for the transaction, the

dispute is settled in favor of Bank of America and no further actions are required. If the Cardholder is not responsible for the transaction, the dispute is settled for the Cardholder and the chargeback process may be initiated against the merchant.

4) If problems continue with a particular merchant, the Cardholder should notify the Purchasing Card Program Administrator of the problems.

REVIEW OF PURCHASES BY DEPARTMENT/DIVISIONS

Because of their knowledge of the job responsibilities and requirements, Departments/Division representatives are required to review each Purchasing card expenditure (items purchased, dollar values, and vendors) to ensure the purchased goods or services were necessary, and for official use only.

When purchases are questioned, the Department Head, or their designee, will be responsible for resolving the issue with the Cardholder. If the Department Head cannot be satisfied that the purchase was necessary and for official use, the cardholder must provide either a credit voucher proving the item(s) were returned for credit or a personal check for the full amount of the purchase. Checks must be sent to Finance Department with an explanation and account number.

Serious or repeated misuse of the Purchasing card will result in the revocation of the card. Employees incorrectly using their Purchasing card will be disciplined, up to and including termination.

To help the Departments/Divisions in their reviews, management reports will be available from the Purchasing card company.

DISCIPLINARY ACTION GUIDELINES

<u>IMPROPER OR UNAUTHORIZED USE OF CREDIT CARD</u>

1. Any incident of improper or unauthorized use of the Purchasing Card shall be immediately reported to the Department Head and the Finance Department.

2. The Director of Financial Services may suspend or terminate Cardholder privileges for improper or unauthorized use.

3. Improper or unauthorized use of the Purchasing card will subject the employee to appropriate disciplinary action.

4. In addition to any administrative and disciplinary action that may be taken, the employee may be required to reimburse the City for the total amount of the improper charges through payroll deduction or direct payment.

5. Failure to submit reports related to the individual statement activity within the time periods specified in these policies will result in revocation of the credit card.

QUOTATIONS

Although verbal quotations are not required for credit card purchases it is always good management practice to obtain the best price for the City.

The use of the Purchasing credit card program will allow the individual departments the flexibility to make small-dollar value purchases, and at the same time reduce the paper-intensive and expense associated with the purchase order process. The credit card program will be continually monitored and reviewed by management to determine its success and recommend any necessary changes to the program.

XIX. PROCEDURE FOR PETTY CASH

This policy will allow for the procedures to establish and manage a petty cash fund.

Policy:

The departments have the authority to request a petty cash fund to meet small incidental purchases for facilitating the transaction of City business such as small purchases that must be made from vendors that do not offer the City credit, postage for special delivery, toll receipts, parking, etc. Petty cash requests will not be authorized for individual purchases that exceed $25.

Each department assigned a Petty Cash Fund shall designate a custodian to be responsible for the control of these funds. The employee assigned as custodian will be responsible for controlling the flow of cash in and out of the Petty Cash Fund, making sure proper receipts are obtained for each purchase and assuring that proper forms are obtained for each purchase, and assuring the proper forms are filled out completely and authorizing signatures obtained. The custodian will also be responsible for reconciling the Fund as needed and applying for reimbursement.

Each department should also designate one other employee as an alternate custodian. The alternate custodian would assume the custodian responsibilities in the event of the absence of the custodian.

Procedures for a petty cash fund are as follows:

Establishment of a Petty Cash Fund:

A memorandum will be sent to Finance Department requesting a petty cash fund. The memo should be specific providing justification for the fund, the designated custodian of the fund, the alternate custodian, and the dollar amount being requested to establish the fund. Amount established will vary depending on the activity of the department.

Petty Cash Payments:

When an employee requests reimbursement, or receives an advance, from petty cash the Petty Cash Receipt must be used. This form provides for identification of dollar amount of receipt; reason for purchase; expense code; signature of the employee receiving petty cash; signature of department custodian for petty cash; and signature of department head. Anytime a disbursement is made from petty cash it is required that this form be completed in full.

Petty Cash Reimbursement:

Petty cash funds should be reconciled on a weekly basis, or more frequent if needed. Reimbursement request will be submitted to Finance Department on a Direct Payment Requisition with the description stating "Petty Cash Reimbursement". The account codes from the Petty Cash Receipts will be summarized on the Direct Payment Requisition. The Direct Payment Requisition, Petty Cash Receipts, and supporting invoices will be sent to Finance Department for reimbursement of petty cash. Sales tax will be not be paid on Petty cash invoices. The City is tax-exempt and it is the responsibility of the purchaser to properly notify the vendor of the tax-exempt number.

Discrepancies in Petty Cash:

Any discrepancies in the petty cash fund maintained by the department should be brought to the immediate attention of the Department Head and Director of Finance. If theft is suspected, the Police Department should also be notified.

XX. DISPOSITION OF SURPLUS AND OBSOLETE PROPERTY

This policy establishes responsibilities and implements procedures to be followed in the disposition of obsolete and surplus City personal property. These same procedures apply to the disposition of lost, stolen, and abandoned property and confiscated property obtained by the Police Department.

Procedure:

Release of Custody/Transfer. When the property is no longer of use to a custodian department, the following procedures shall apply:

1. The custodian department shall complete and sign a "Fixed Asset Transfer/Disposition Request" and submit the form to the Warehouse.

2. Warehouse shall so note the condition and disposition of the property on the "Fixed Asset Transfer/Disposition Request".

3. If the property is in usable condition, it shall be placed on a list of currently available surplus property and circulated to all City departments. This list shall be circulated prior to the sale of surplus equipment.

4. Prior to the actual transfer of any surplus property to storage, the requesting department shall obtain approval from the City Manager or Finance Department.

Removal from City Asset Inventory List of property is to be auctioned, sold by formal bid, sold for scrap, or thrown away, the following will apply:

1. Prior to the disposition of surplus property, a list of all inventoried property shall be submitted to the Department Director, or his designee, for approval. The Materials and Distribution Division will include the recommended method of disposal which is considered to bring the highest return to the City.

2. The City Manager, or his/her designee, shall have the authority to dispose of the

following property without City Commission approval:

3 All abandoned or unclaimed property coming into the possession of the City.

4. All vehicles and equipment of the City which are scheduled for replacement in the annual budget.

5. All other tangible personal property other than the above with an original purchase price of less than $1000

Vehicles Disposal:

All surplus City vehicles designated for disposition will be turned into the Vehicle Service Department. Vehicle Service Department will:

1. Verify that the vehicle is no longer in usable condition to the City and should be released.

2. Prepare a list of vehicles which will include the year of vehicle, make, model, vehicle identification number (VIN), and vehicle number (City assigned number).

3. Verify the title work prior to submitting the list to the Materials and Distribution Department.

4. Complete the processing for disposal utilizing one of the approved disposal methods.

5. Send a completed copy of the "Fixed Asset-Transfer/Disposition Request" to the Materials and Distribution Department for removal of the asset from the inventory records.

Approved Disposal Methods:

Public City Auction:

If the public City auction method of disposal is utilized the auction shall comply with Florida State Statute, City Ordinance, Resolution, and/or established City Policies. The selection of an auctioneer shall be accomplished through a competitive bid process.

If titled vehicles are being auctioned, on the day of the auction, an authorized representative from the Vehicle Service Department shall be present to transfer vehicle registration to the new owner. Vehicle transfer can only take place if the buyer has paid in cash, cashier's check, or certified check.

In order to obtain a title for any vehicle that does not have a current valid Emissions Inspection Certificate each bidder/purchaser must:

1. Show positive proof that they reside in a county that does not have a Motor Vehicle

Inspection Program (MVIP).

2. Purchase a vehicle without a title as "Parts Only" or "Junk" and perform the necessary repairs to qualify and obtain a "rebuilt' title from the State of Florida.

All property sold shall be properly identified by the City's fixed asset tag number. One copy of the property disposition shall be submitted to the Finance Department for their records.

The City may cooperatively hold auctions with other cities and county governments when such is determined to be in the best interest of the city.

Auction House:

If considered to be in the best interest of the City, the City Manager or designee may choose to have vehicles and other items sold to the highest bidder at an auction house. Vehicle sales must comply with the above.

Sale by Formal Sealed Bid:

If the Purchasing Division utilizes this method, it shall comply with the City's Purchasing policies and with respect to the procedures to be followed.

Sold for Scrap:

If the City Departments utilize this method, it shall be by competitive quotations and in compliance with the City's Purchasing Ordinance with respect to the procedures to be followed.

Thrown Away:

If the City utilizes this method, it shall first be approved by the City Manager or Designee that the property has no recoverable value. The property shall be loaded onto a City truck and taken directly to the County dump.

Other Disposition:
The City Manager or designee has the authority to approve any other method of disposition of surplus property.

XXI. LOCAL BUSINESS PREFERENCE

To provide locally owned and operated companies a competitive advantage when the City is procuring goods and services.

POLICY:

To provide an economic incentive to businesses that maintain a physical location in the City and a valid City business tax receipt.

1. Definition of a Local Business. A "Local Business" is any person, firm, partnership,

company, or corporation authorized to do business in Florida that has a valid business tax receipt issued by the City for at least one **(1)** year prior to solicitation and a physical address within the City from which the vendor lawfully performs and operates. Post Office Boxes or locations at a postal service center shall not be used for the purpose of establishing a physical address. Home offices shall be considered as business locations if they otherwise meet all requirements of this Policy.

2. Certification. Any vendor claiming to be a Local Business shall file a Certification Statement with the City's Financial Services Department, Purchasing Services. The certification shall be filed prior to or simultaneous with that vendor's response to a Competitive Bid where local preference is permitted. All solicitations by the City shall indicate if a local preference is available. The Financial Services Department, Purchasing Services shall not have an obligation to verify the accuracy of any such certifications and shall have the sole discretion to determine if a vendor meets the definition of a Local Business as provided herein.

3. Qualification selection pursuant to Sealed Competitive Method.

   A. Competitive Bids. For all acquisitions made pursuant to Sealed Competitive Bid, as provided in Sec. 10.05, the City shall give preference to a Local Business if the Local Business' bid is determined to be within five percent (5%) or five thousand dollars ($5,000.00), whichever is less, of the lowest responsible and responsive bidder. In revenue-generating contracts where award, if any, is to be made to the bidder returning the highest amount to the City, the same preference set forth herein shall be applied with respect to the highest bid.

   B. Requests for Proposals, Requests for Qualifications, Requests for Letters of Interest.

      1) For all acquisitions made pursuant to Requests for Proposals, Requests for Qualifications or Requests for Letters of Interest, as provided in Sec. 10.07, the solicitation shall include a weighted criterion for Local Businesses of five percentage points (5%) of the total points in the evaluation criteria published in the solicitation.

      2) Local Preference shall not be applied when its application would result in an award that exceeds the otherwise lowest responsive, responsible bidder by 5% or $5,000 whichever is lower.

      3) For all acquisitions made pursuant to Request for Quotes, Requests for Proposals, Requests for Qualification or Requests for Letters of Interest, as provided in Sec. 10.07, where the solicitation includes a qualitative ranking rather than a quantitative selection, the evaluation criteria shall include a Local Business preference, as reasonably determined by the Financial Services Department, Purchasing Services, consistent with the intent of this Policy. Each

such solicitation shall clearly define the application of the Local Business preference.

4. To the extent practicable, for all acquisitions not made pursuant to the Sealed Competitive Method provided in Sec. 10.00, City departments and staff are strongly encouraged to utilize Local Businesses if they otherwise meet Purchasing policy requirements.

5. The City Manager or City Commission may decide to allow a project that would normally be competitively bid as a whole to be broken into segments in order to provide opportunities for local vendors.

6. Exclusions. The preferences established herein in no way limits the rights and discretion of the City to evaluate bids and proposals for responsiveness and responsibility; compare the quality of materials and services proposed, or apply other factors that may be relevant to the award decision. Notwithstanding anything to the contrary set forth in any policy adopted by the City, the local business preference shall not be applied to:

   A. Goods or services provided under a cooperative Purchasing agreement or the utilization of other governmental entities' contracts;

   B. Contracts for professional services subject to the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes;

   C. Purchases or contracts which are funded, in whole or in part, by a government entity or other entity or grant program in which the laws, regulations, or policies governing such funding prohibit the application of local preference.

   D. Purchases under emergency or noncompetitive situations exempt from competition.

   E. Purchases of goods and/or services in which such preference is prohibited by law, contract, or other regulation applicable to the City.

   F. Competitive solicitations that have been determined by the City Manager or designee to be in the best interest of the City to waive the local business preference prior to the advertisement of the solicitation.

7. Certification Statement

   When seeking local business preference status, an applicant must complete and file a written statement as follows:

   WRITTEN STATEMENT REQUESTING LOCAL BUSINESS STATUS (OFFICER OF COMPANY) Under penalty of perjury, I certify: I am an authorized

representative of (NAME OF BUSINESS) and on behalf of the business request that it be deemed to be a local business for purposes of the City of Boynton Beach Local Preference Program. The following answers accurately reflect the status of the business seeking local preference.

Answering yes to question 1 and question 2 will qualify the business as a local business. In support of this request I certify the following information as being true and correct:

Name of Business			
(1) Is the business located within the City limits of Boynton Beach, Florida for at least one (1) year?	Yes	No	Number of Years
(2) Does the business have a business tax receipt issued in the current year?	Yes	No	Business License Number
(3) Is the business registered with the Florida Division of Corporations?	Yes	No	

I understand that misrepresentation of any facts in connection with this request may be cause for removal from the certified local business list. I also agree the business is required to notify the City in writing should it cease to qualify as a local business.

B. CONTRACT ADMINISTRATION

To provide guidelines for contract administration within the City of Boynton Beach.

PROCEDURE:

1. Contracts are to be submitted with bid specifications to Purchasing for approval within the bidding process.

2. Upon award by the City Commission contracts will be forwarded to the Department of Administration and any specific user department if applicable via the Purchasing Division. Contracts assigned involving a specific user department will be administered by that respective department, and they shall be responsible for full coordination. Multi-user departmental contracts will require the designation of the contract administrator by the City Manager. This designation shall be indicated in the bid specifications.

3. Department of Administration will assume the role of contract administrator for any contracts involving City-wide use unless otherwise designated by the City Manager or designee.

4. The Department of Administration will serve as contract compliance monitor to

ensure and assist compliance by both the City and the contractor in all contracts excluding construction, and the Utility Department.

A. Compliance check sheets will be designed and utilized by the Department of Administration to confirm specific criteria of the contract are being met in accordance with the agreement.

B. User departments assigned as contract administrators will be responsible for the execution of the provisions of the contract. The compliance monitoring role assumed by the Department of Administration will serve only as an additional check for compliance and will not be considered as the responsibility for any requirements dictated in the delivery of services governed by the contract.

5. The Purchasing notification for renewal or re-bid will remain as it has in the past.

DEVELOPED BY: Purchasing Services

EDITED BY: PURCHASING DIRECTOR – 12/19/1024

EFFECTIVE DATE: December 20, 2024



Daniel D. Dugger, City Manager



Revisions to the Purchasing Policy

Identifying Key Changes in the Policy and Our Next Steps Forward

Andrew Rozwadowski
Purchasing Division Director

Agenda

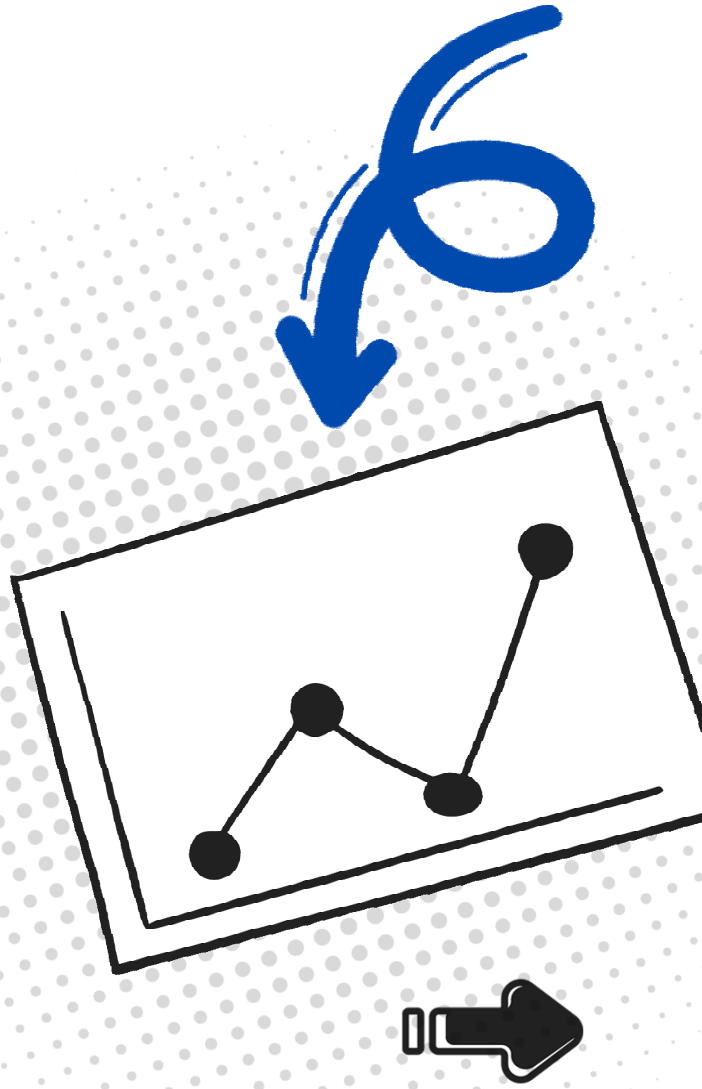


- Overview of Current Procurement Policy
- Updated Policy and Next Steps
- Re-writing the Procurement Code and Policy
- Workshop & Action Plan
- Creative Solutions and Input from Our City Commission
- City Solicitations
- Contact Information
- Q&A

CITY OF BOYNTON BEACH

Overview of Current Procurement Policy

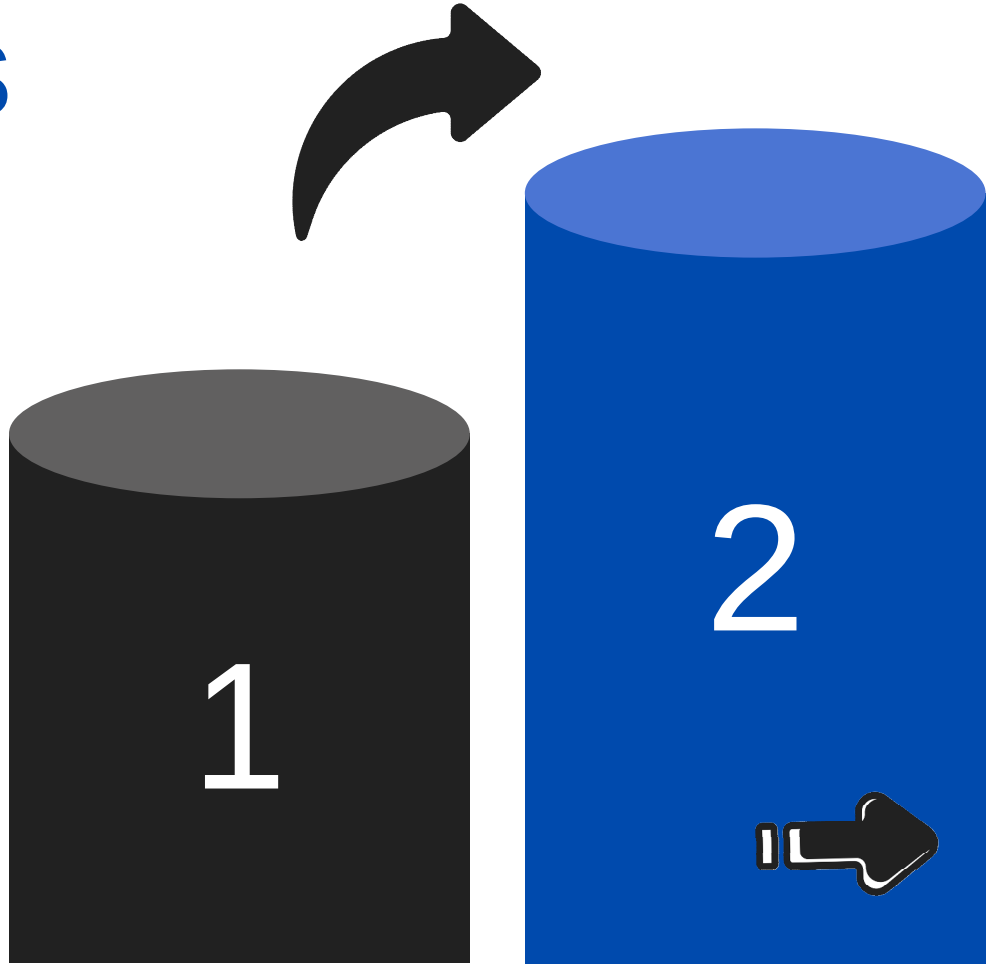
- The current policy was last officially updated on October 1, 2022
- Policy has outdated language and contradictions
- References state statute that are not applicable to the City
- Tolerance levels inconsistent
- Limited exemptions based on best practices
- These issues are causing misunderstanding and non-compliance with Staff and the policy.



CITY OF BOYNTON BEACH

Updated Policy and Next Steps

- The Commission approval limits will NOT change
  - >$50K - Goods/Services Non-Construction
  - >$200K - Construction Services
- Redline edits of existing Procurement Policy attached to the Commission Agenda
- Our Roadmap to the future Procurement Code (codification) and Policies outside the code



CITY OF BOYNTON BEACH



Re-writing the Procurement Code and Policy

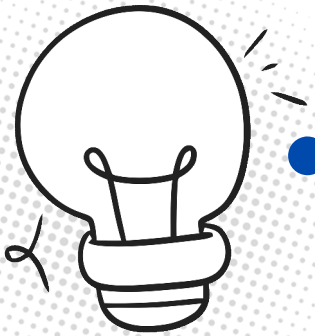
Start with a Workshop with the City Commission to review our Policy and how we can start from scratch to create our new Procurement Code.

- Procurement Code will be codified through a future Ordinance.
- Procurement Code once codified is easily accessible to the public to provide further transparency.

Workshop and Action Plan

City staff recommends holding a workshop to review the Procurement Code, with the goal of presenting a future ordinance for adoption and codification.

Step 1



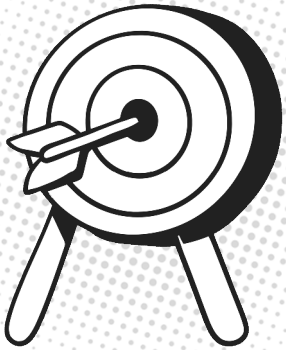
The Ideas

Expected

March 2025

Workshop

Step 2



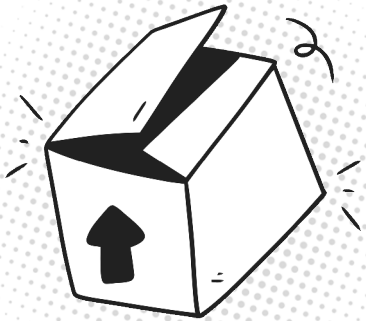
The Execution

Expected

April 2025

Draft Review

Step 3



The Final

Expected

May 2025

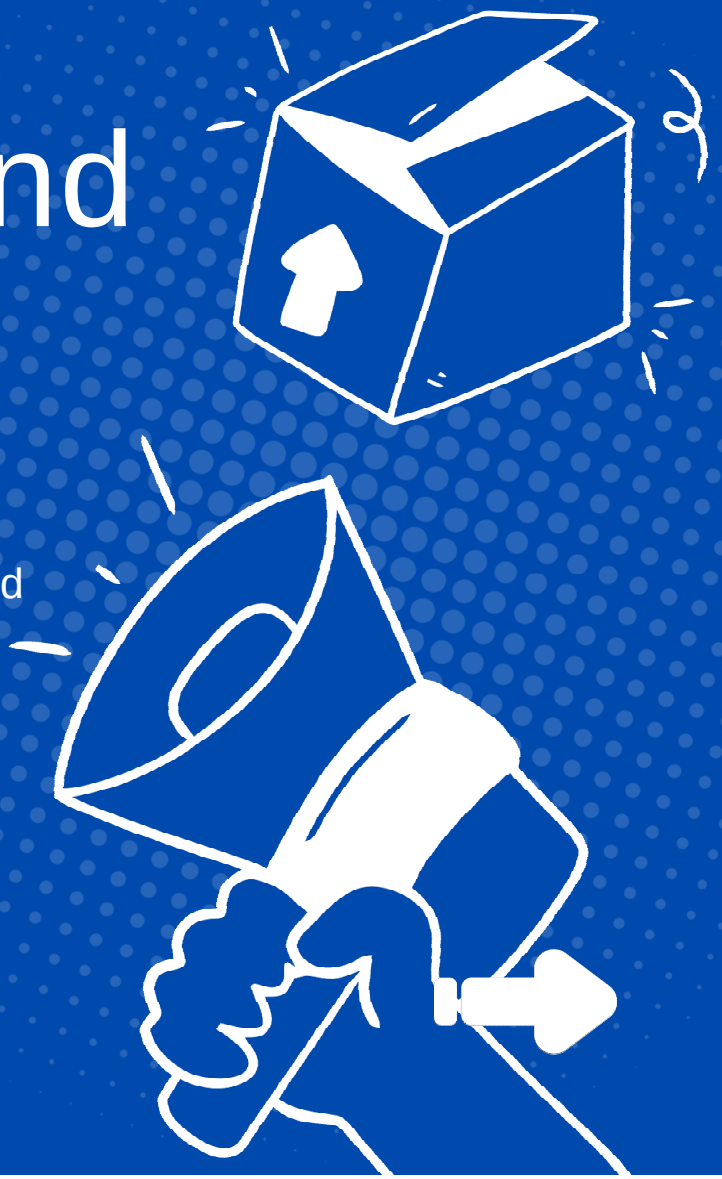
Adoption

CITY OF BOYNTON BEACH

Creative Solutions and Input from our City Commission

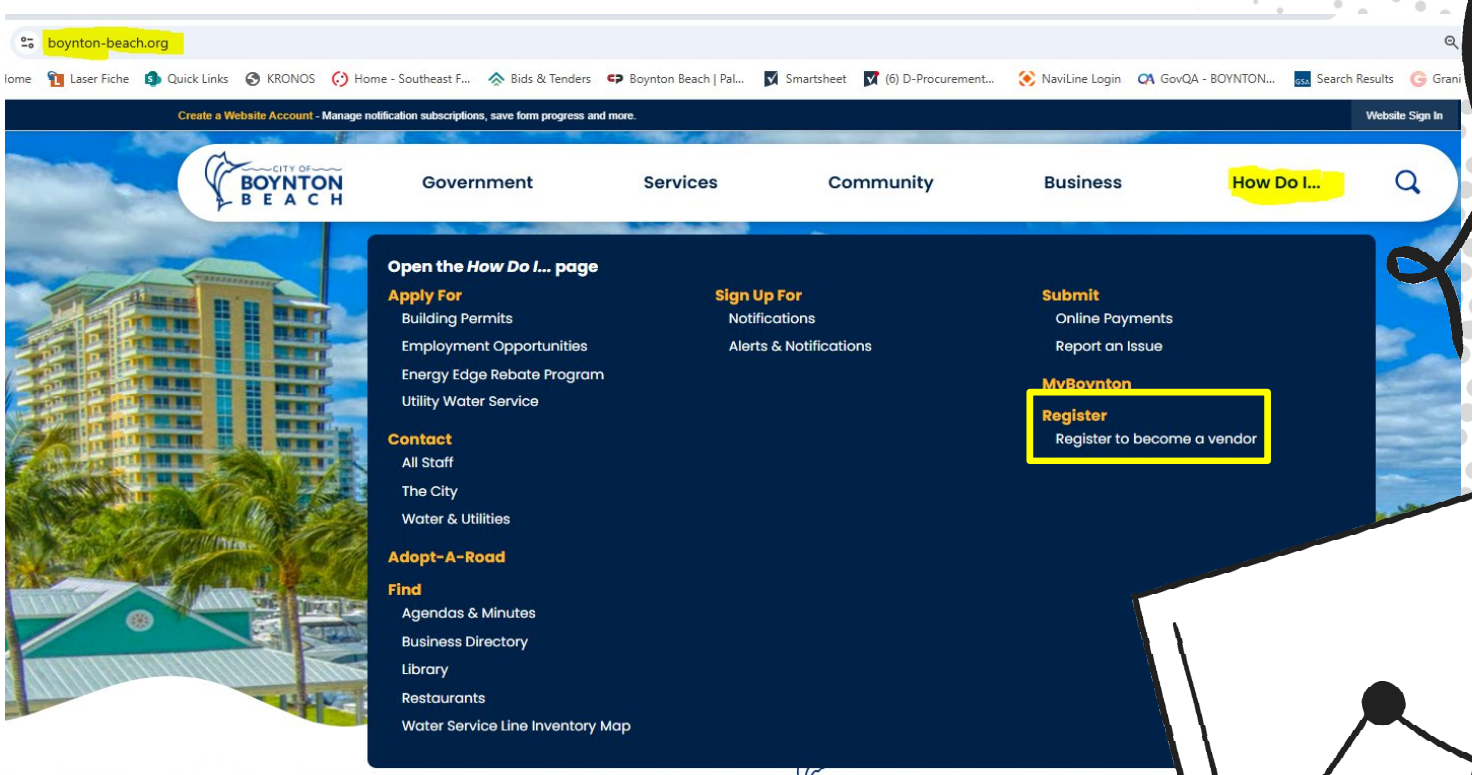
Let's brainstorm ideas to update the procurement code and include these into our code that will be codified by ordinance.

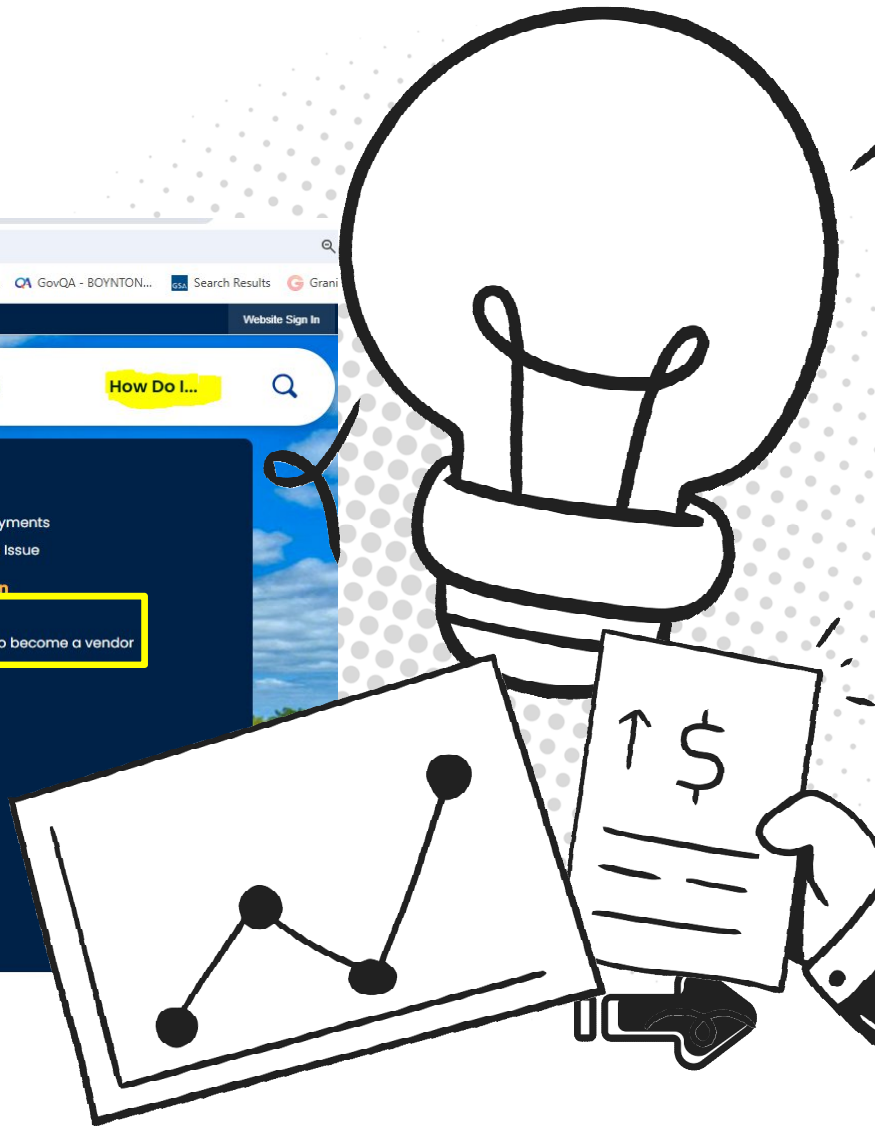
- Review Procurement Codes in Surrounding Cities.
- Review Further Exemptions to Follow Best Practices
- Incorporate P3 into Procurement Code
- Separate Code from Internal Procurement Policies



CITY OF BOYNTON BEACH

City Solicitations





CITY OF BOYNTON BEACH

Contact Information



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561-742-6322

E-mail Address

RozwadowskiA@bbfl.us
or
Procurement@bbfl.us

Website

www.boynton-beach.org
or
boynton-beach.bidsandtenders.net/Module/Tenders/en

CITY OF BOYNTON BEACH

Questions?



CITY OF BOYNTON BEACH

City of Boynton Beach
Agenda Item Request Form

Meeting Date: 01/21/2025

Year-end Red Light Camera Presentation.

Requested Action: Boynton Beach Police Department's Traffic Unit will present year-end Red Light Camera data to the City Commission.

Explanation of Request: Year-end presentation of Red Light Camera data in accordance with section 316.0083, Florida Statutes.

How will this affect city programs or services? N/A - this is informational only.

Account Line Item and Description: N/A

Fiscal Impact: N/A - this is informational only.

Attachments:
10C. RLC Presentation_2024_Commission Presentation Template.pptx



City of Boynton Beach
Red Light Camera Safety Camera Program 2024

Red Light Camera Program

City of Boynton Beach implemented the Red-Light Camera Program in 2011 through Verra Mobility; formerly known as ATS.

Verra Mobility red-light safety camera program provides an EFFECTIVE, EQUITABLE TOOL for communities that are determined to REDUCE RED-LIGHT RUNNING and KEEP PEOPLE SAFE.

Why do we need Red Light cameras?

- Reduce Red-Light Running
- Enhance safety to the public
- Maximize enforcement
- Educate the public
- Violator Funded Safety Solutions



Current RLC Locations

Site	DIR	Street	Cross Street	2021/2022 NOV's	2022/2023 NOV's	2023/2024 NOV's
BB01	NB	S Federal Hwy	SE 23rd Ave	5,623/1,894,300	5,964/4,140,667	5,836/4,305,592
BB02	SB	S Federal Hwy	SE 23rd Ave	4,976/2,168,890	4,841/4,182,330	4,542/4,316,235
BB03	NB	N Congress Ave	W Gateway Blvd	1,358/2,320,060	1,401/4,986,796	1,356/4,947,251
BB04	EB	W Gateway Blvd	N Congress Ave	1,486/1,623,565	1,445/3,108,898	935/3,237,332
BB05	NB	N Congress Ave	W Boynton Beach Blvd	1,920/1,735,771	1,654/3,659,395	1,734/3,601,174
BB07	EB	W Boynton Beach Blvd	N Congress Ave	3,893/2,471,027	3,740/4,979,707	3,619/4,954,042
BB09	NB	S Congress Ave	W Woolbright Rd	918/1,864,667	872/3,921,230	1,016/4,167,761
BB10	SB	S Congress Ave	W Woolbright Rd	1,900/1,804,903	1,816/3,570,613	1,714/3,501,421

- Dates run from July 1st to June 30th the following year.

Current RLC Locations (Continued)

Site	DIR	Street	Cross Street	2021/2022 NOV's	2022/2023 NOV's	2023/2024 NOV's
BB11	EB	W Woolbright Rd	S Congress Ave	1,979/1,679,558	1,989/3,150,821	1,862/3,406,009
BB12	WB	W Woolbright Rd	S Congress Ave	2,089/1,826,667	2,357/3,686,794	2,463/3,970,995
BB13	WB	W Gateway Blvd	S Congress Ave	1,861/1,955,573	1,388/3,617,995	1,295/3,677,358
BB14	SB	NW 8th St	W Boynton Bch Blvd	1,447/843,374	3,854/2,523,751	3,807/2,494,647
BB16	SB	N Congress Ave	W Gateway Blvd	1,113/2,143,618	1,713/4,397,198	2,253/4,357,450
BB17	EB	E Boynton Bch Blvd	N Seacrest Blvd	3,379/1,998,434	1,482/3,095,182	1,601/3,029,168
BB18	EB	W Woolbright Rd	SW 8th St	2,784/2,140,762	2,754/4,670,435	3,532/4,829,934
			Yearly Total -	36,726/28,471,169	37,270/57,691,812	37,565/58,796,369

- Dates run from July 1st to June 30th the following year.

RLC Intersection Crash Data

Intersection	2021 -2022	2022 - 2023	2023 -2024
Gateway Blvd & N Congress Ave	24	22	26
W Boynton Bch Blvd & NW 8th St	29	17	18
W Woolbright Rd & SW 8th St	29	28	20
W Boynton Bch Blvd & N Congress Ave	29	25	28
S Federal Hwy & SE 23rd Ave	15	12	14
W Woolbright Rd & S Congress Ave	17	17	21
E Boynton Bch Blvd & N Seacrest Blvd	7	7	16
Total Crashes:	150	128	143

Data Overview

	2021 – 2022	2022 – 2023	2023 - 2024
Notice of Violations Issued	36,726	37,270	37,565
Number of NOV's Paid	24,263	24,022	24,162
UTC's Issued	11,381	10,992	11,327
Crashes	150	128	143
Traffic Volume	28,471,169	57,691,812	58,796,369

What is the violation process?

- Once an individual runs a red light the image is captured and sent to Vera Mobility for review.
- The violation is reviewed to ensure a violation has occurred and the violation is within the regulations set fourth by the City of Boynton Beach.
- Once the violation is approved by Verra Mobility personnel it is sent to the Boynton Beach Police Departments violation queue to be reviewed by police personnel.
- The officer will review the violation to ensure a violation has occurred within city guidelines, and ensure accuracy of vehicle and registrant information provided by Verra Mobility.
- If the reviewing officer determines a violation has occurred, the officer will approve the violation. The violation will be routed back to Verra Mobility who will mail the violation to the registered owner of the vehicle.

What is the violation process? (Continued)

- If the reviewing officer determines no violation occurred the violation will be rejected, and no further action is taken.

- The Notice of Violation carries a fine of $158.00. The Offender will have 60 day to pay the violation or schedule a local hearing with the City of Boynton Beach.

- If a violation is not paid with the 60 days the citation will be sent to the Palm Beach County Clerk of Courts, and a Uniform Traffic Citation will be issued to the violator. The Uniform Traffic Citation carries a fine of $264.

What are the red light camera funds used for?

- Equipment usage from Verra Mobility
- Magistrate fees from local RLC hearings
- Traffic Unit Officers
- Public Safety Aides
- School Crossing Guards
- Traffic Safety Equipment and Software
- License Plate Readers throughout City

Investigative Uses of RLC Video

- In February of 2023, red light camera footage was used to identify the suspect vehicle used in an armed robbery.
- In March of 2023, camera footage was obtained to identify the suspect vehicle used in a shooting.
- In September 2023, red light camera footage identified the suspect vehicle used in a homicide.
- In July 2024, camera footage identified the suspect vehicle used in a shooting. The camera additionally captured the suspect vehicle chasing the victim prior to the shooting.
- Camera footage has been requested by other agencies to help track and identify suspects in numerous crimes from thefts, robbery, stolen vehicles, and homicides.

Boynton Beach Resident Violator Rate

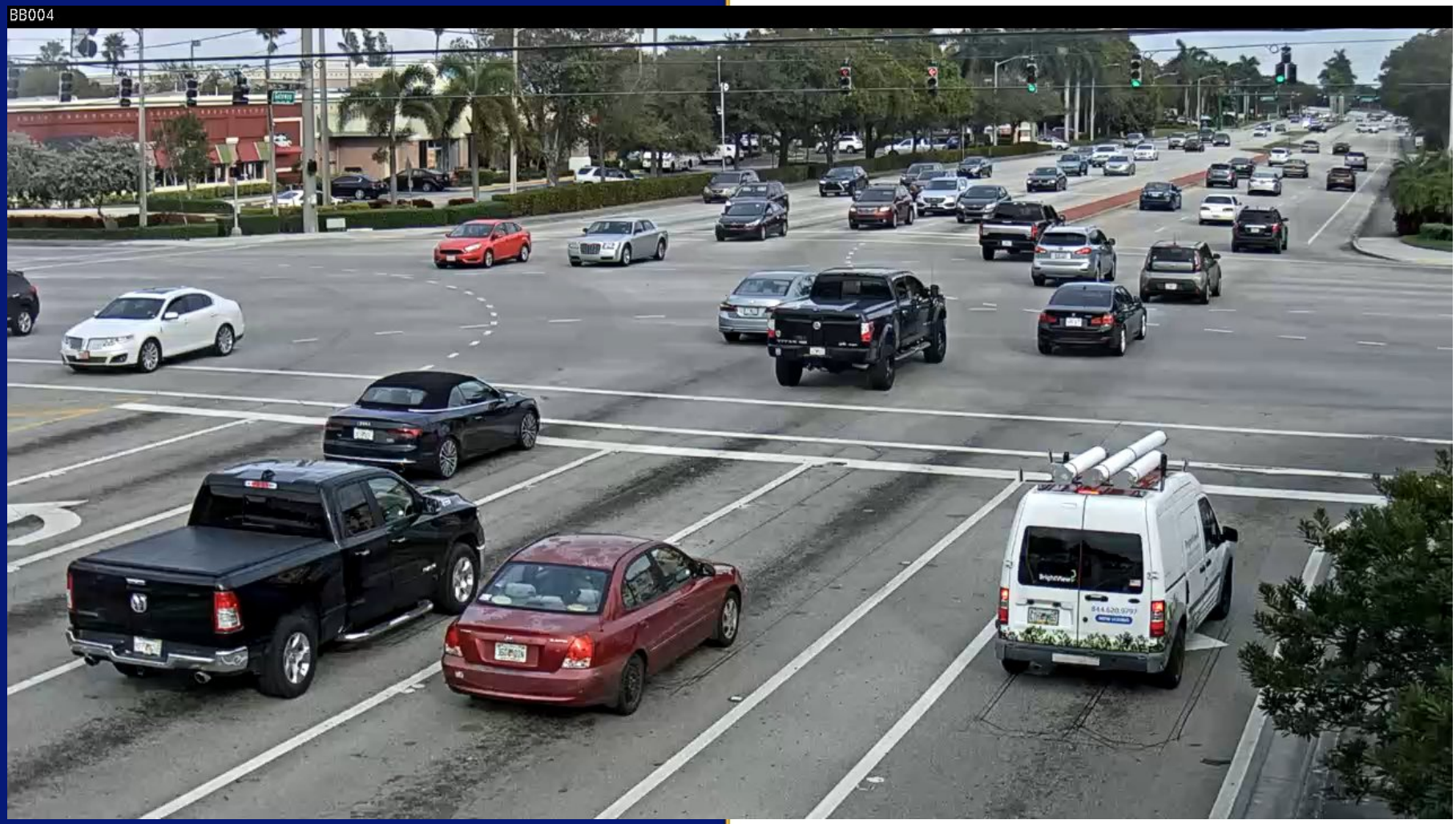
Year	Resident Violator* Rate	Non-Resident Violator Rate
2022	30.3%	69.7%
2023	30.8%	69.2%
2024	30.2%	69.8%

*A resident violator is anyone with a Boynton Beach mailing address. To include those who reside in unincorporated Boynton Beach.

Agencies with Red Light Cameras

- Aventura
- Bal Harbour
- Belle Isle
- Boynton Beach
- Bradenton
- Campbellton
- Casselberry
- Clearwater
- Clewiston
- Cocoa Beach
- Coral Gables
- Cutler Bay
- Davie
- Dunnellon
- Edgewood
- El Portal
- Florida City
- Fort Lauderdale
- Gainesville
- Green Cove Springs
- Groveland
- Gulf Breeze
- Haines City
- Hillsborough County
- Holly Hill
- Hollywood
- Homestead
- Key Biscayne
- Kissimmee
- Lakeland
- Maitland
- Medley
- Miami
- Miami Beach
- Miami Gardens
- Miami Springs
- Midway
- Milton
- New Port Richey
- Oakville
- Ocoee
- Opa Locka
- Orange County
- Orange Park
- Orlando
- Osceola County
- Palatka
- Palm Coast
- Pembroke Pines
- Pensacola
- Pinecrest
- Port Richey
- Sarasota
- Sunrise
- Surfside
- West Miami
- West Park
- Winter Park


BB017


BB004


BB012
Longress Av
Walgreens

City of Boynton Beach
Agenda Item Request Form

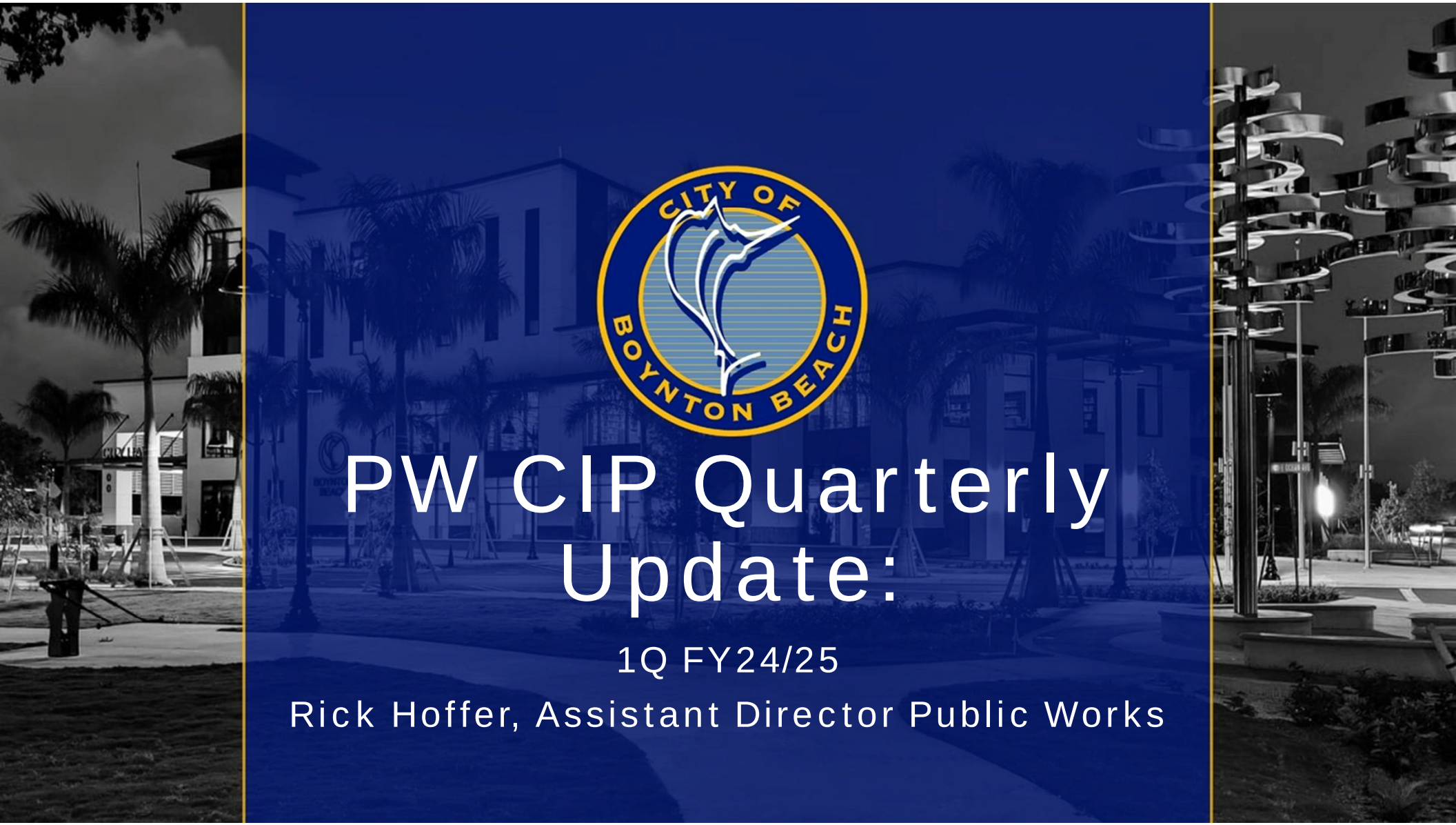
Meeting Date: 01/21/2025

Quarterly CIP Update.

Requested Action: PowerPoint Presentation for CIP Quarterly Update.

Account Line Item and Description: N/A

Attachments:
Quarterly CIP Update 1Q FY24-25 Presentation.for 01-21-24 Commission Meeting.pptx



PW CIP Quarterly Update:

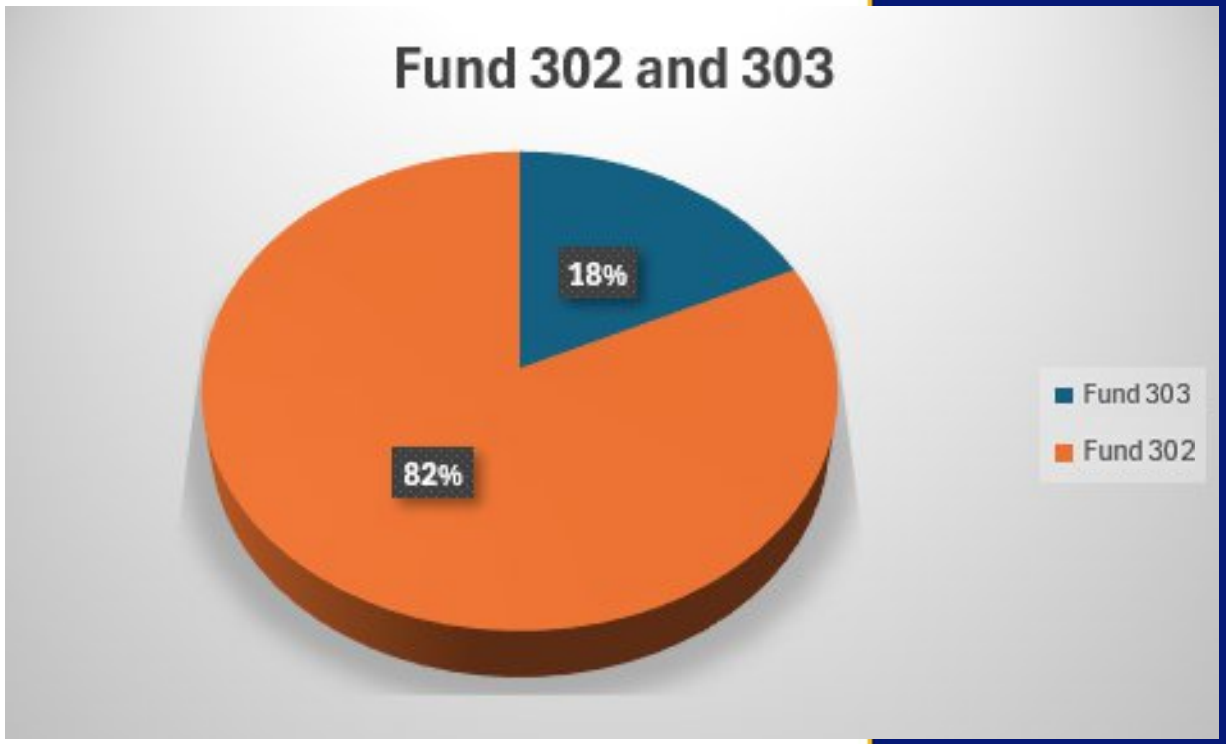
1Q FY24/25

Rick Hoffer, Assistant Director Public Works

CIP 1Q FY24/25 Update: Budget

FY24/25 CIP Amended Budget:

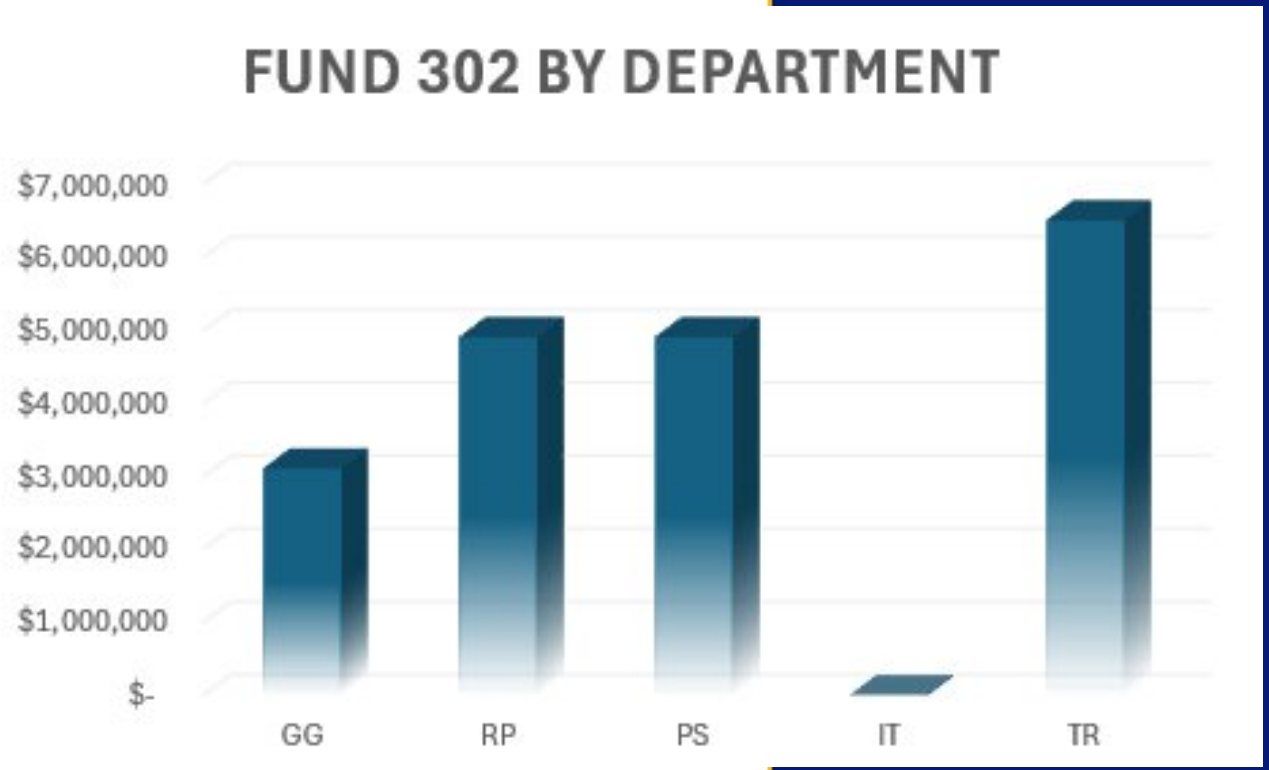
- Fund 302:
  - $19.4M
  - 44 Projects
- Fund 303:
  - $8.9M
  - 74 Projects



CIP 1Q FY24/25 Update: Budget

FY24/25 CIP Amended Budget: Fund 302:

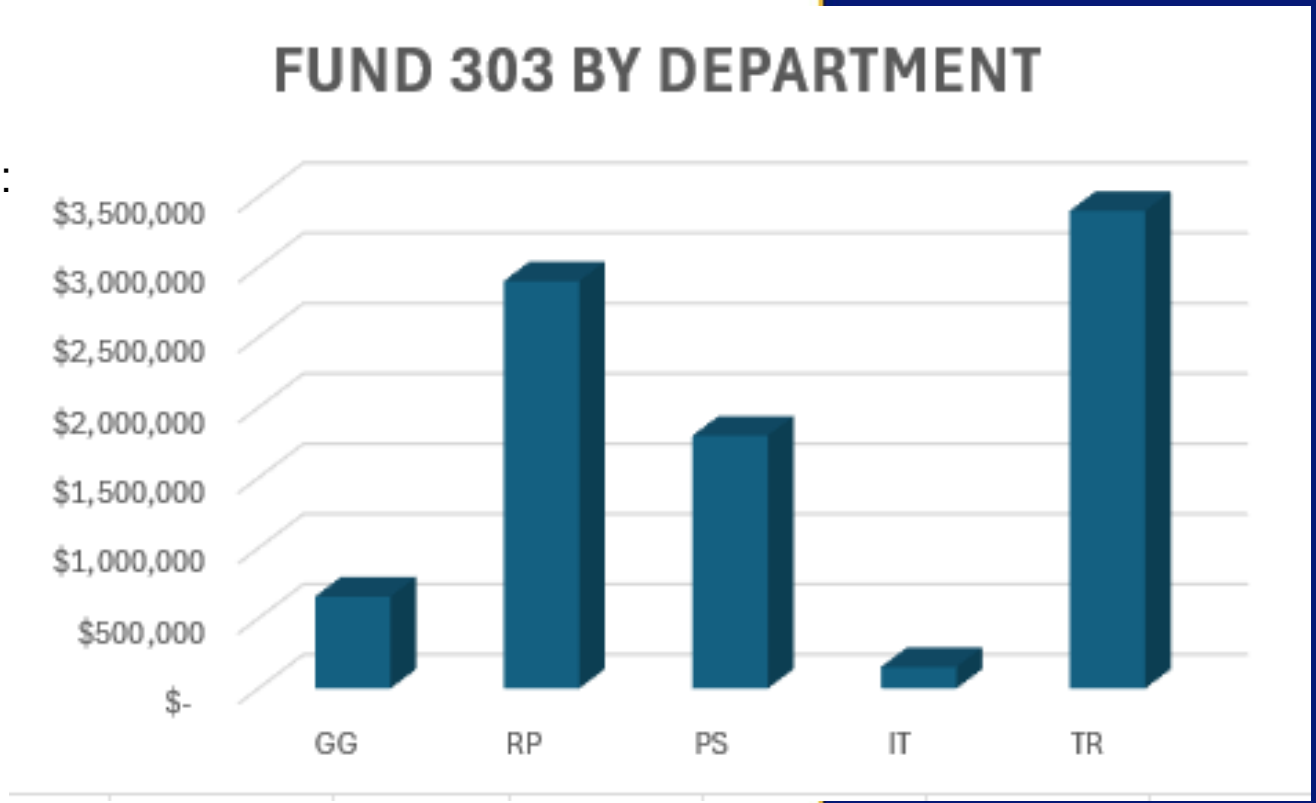
- General Government:
  - 10 projects
  - $3.1M
- Recreation and Parks:
  - 16 projects
  - $4.9M
- Public Safety:
  - 6 projects
  - $4.9M
- Transportation:
  - 12 projects
  - $6.5M



CIP 1Q FY24/25 Update: Budget

FY24/25 CIP Amended Budget: Fund 303:

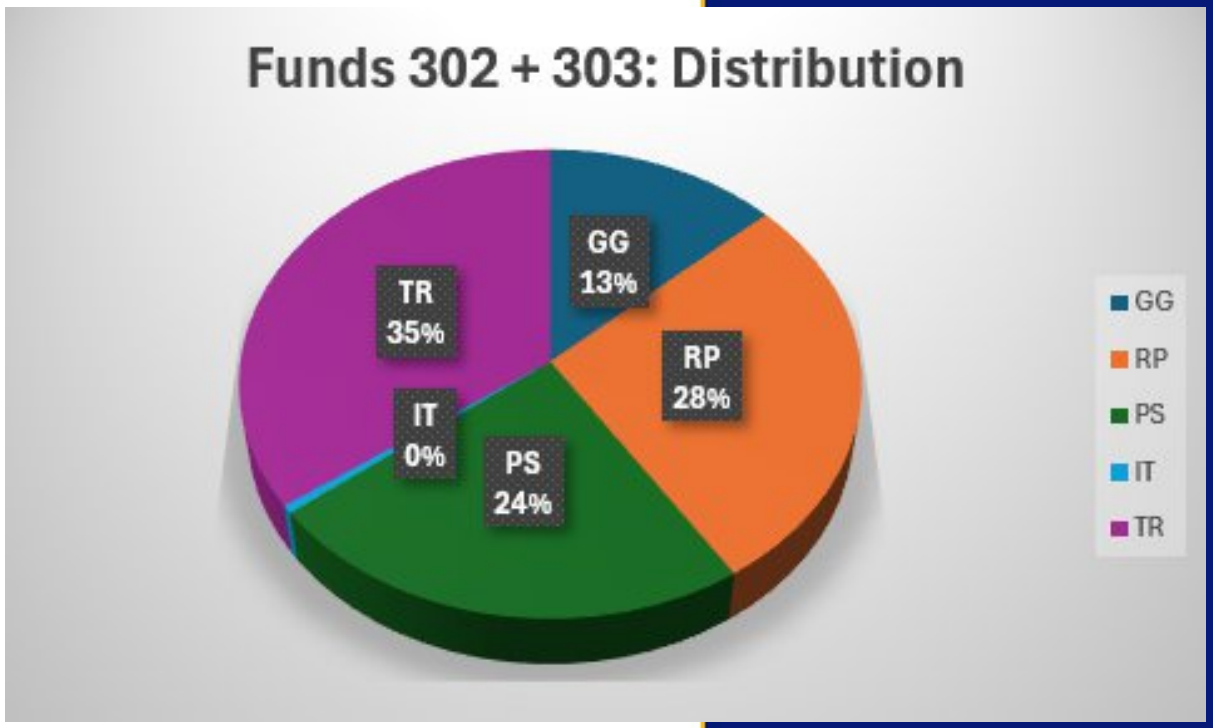
- General Government:
  - 11 projects
  - $655K
- Recreation and Parks:
  - 28 projects
  - $2.9M
- Public Safety:
  - 16 projects
  - $1.8M
- IT:
  - 3 projects
  - $154K
- Transportation:
  - 16 projects
  - $3.4M



CIP 1Q FY24/25 Update: Budget

FY24/25 CIP: Funding by Department:

Department	Fund 302 + 303
GG	$3.8M
RP	$7.8M
PS	$6.7M
IT	$154K
TR	$9.9M
	$28.3M



CIP 1Q FY24/25 Update: Project Updates

Chapel Hill Entrance from SW 23rd Ave.:

Description	Paving and Striping/Traffic Flow Improvements.
AE	N/A
Contractor	Atlantic Southern Paving and Seal Coating
Phase	Complete
Design Cost	N/A
Construction Cost	$87K
Status	Complete





CIP 1Q FY24/25 Update: Project Updates

Golfview Harbor Streets Resurfacing:

Description	Road preservation project using the Reclamite.
AE	N/A
Contractor	Pavement Technology, Inc.
Phase	Complete
Design Cost	N/A
Construction Cost	$24K
Status	Complete





Street	From	To
SW 27th Ave	S Congress Ave	SW 14th St
SW 27th Ave	SW 14th St	SW 10th St
SW 11th St	SW 25th Ave	SW 28th Ave
SW 26th Ave	SW 14th Ct	SW 14th St
SW 14th Ct	SW 25th Ave	SW 26th Ave
SW 25th St	SW 14th Ct	SW 14th St
SW 14th St	SW 25th Ave	SW 25th Ave

CIP 1Q FY24/25 Update: Project Updates

Hester Concession Building:

Description	New concession, storage, and restroom facility.
AE	N/A
Contractor	LTG Sportsturf One
Phase	Complete
Design Cost	N/A
Construction Cost	$414K
Status	Complete

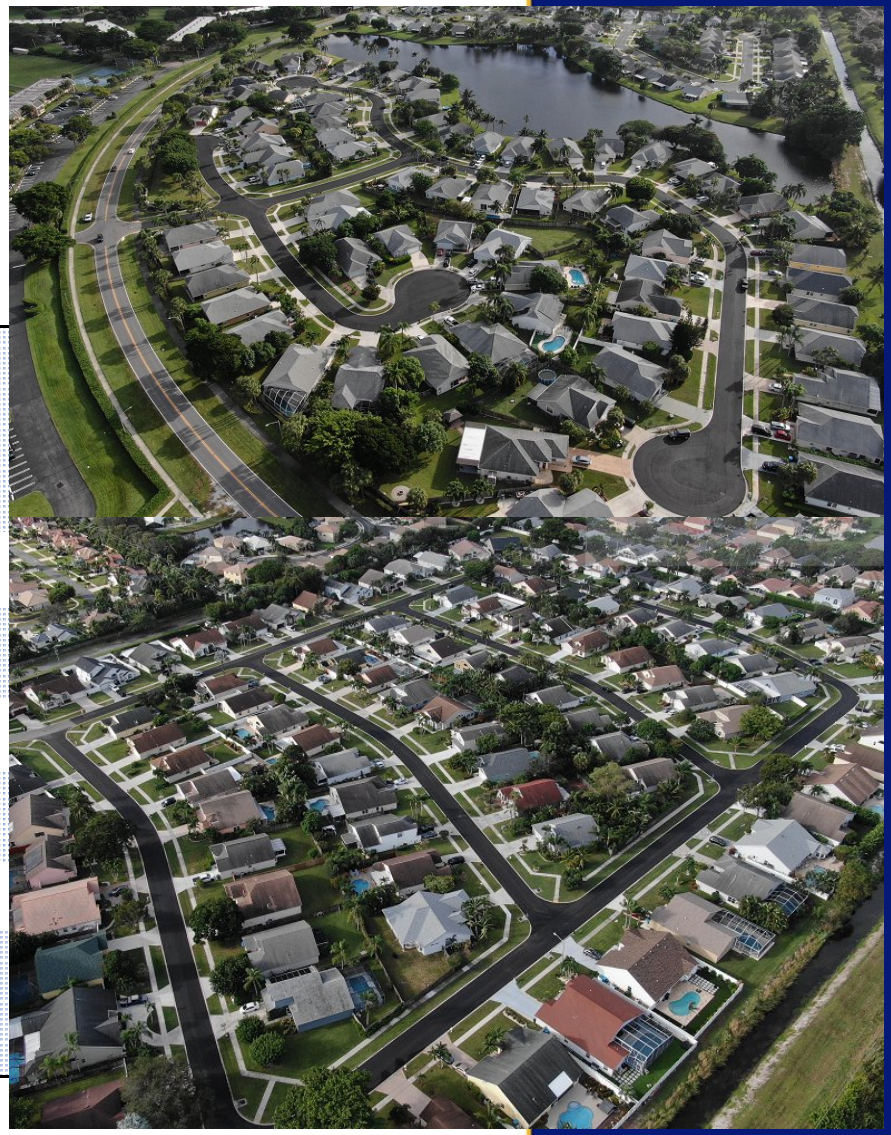




CIP 1Q FY24/25 Update: Project Updates

Neighborhood Road Resurfacing:
Meadows, Golfview Harbor & Citrus Park Lane:

Description	Road base repairs, asphalt resurfacing, pavement markings, and signage.
AE	N/A
Contractor	Atlantic Southern Paving and Seal Coating
Phase	Complete
Design Cost	N/A
Construction Cost	$845K
Status	Complete

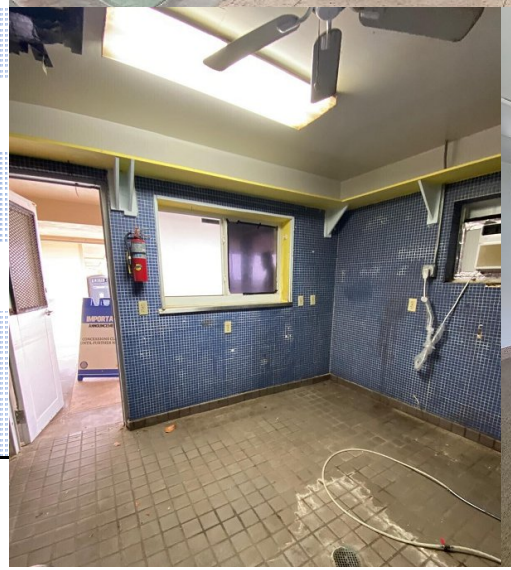


CIP 1Q FY24/25 Update: Project Updates

Oceanfront Concession Building Remodel:

Description	Interior and exterior remodeling of the concession building.
AE	N/A
Contractor	Villas Construction
Phase	Construction
Design Cost	N/A
Construction Cost	$112K
Status	Construction Complete: December 2024







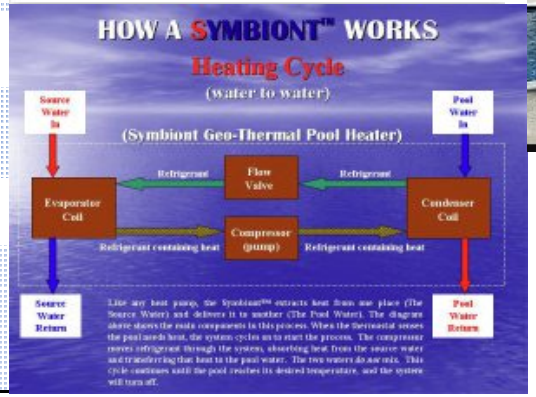
CIP 1Q FY24/25 Update: Project Updates

Denson Pool - Heaters:

Description	Replacement of existing pool heaters
AE	N/A
Contractor	Symbiont Service Corp
Phase	Construction
Design Cost	N/A
Construction Cost	$85K
Status	Start Construction: January 2024 Construction Complete: January 2025 (Est.)



The SYMBIONT™
our own high performance, dedicated water-to-water package heat pump





CIP 1Q FY24/25 Update: Project Updates

Airnasium:

Description	Construction of a new Airnasium for basketball courts.
AE	West Architecture + Design
Contractor	TBD
Phase	Procurement (Construction)
Design Cost	$81K
Construction Cost	$1.8M (Est.)
Status	Advertised for Bid: November 27, 2024A Bid Opening Date: January 15, 2025



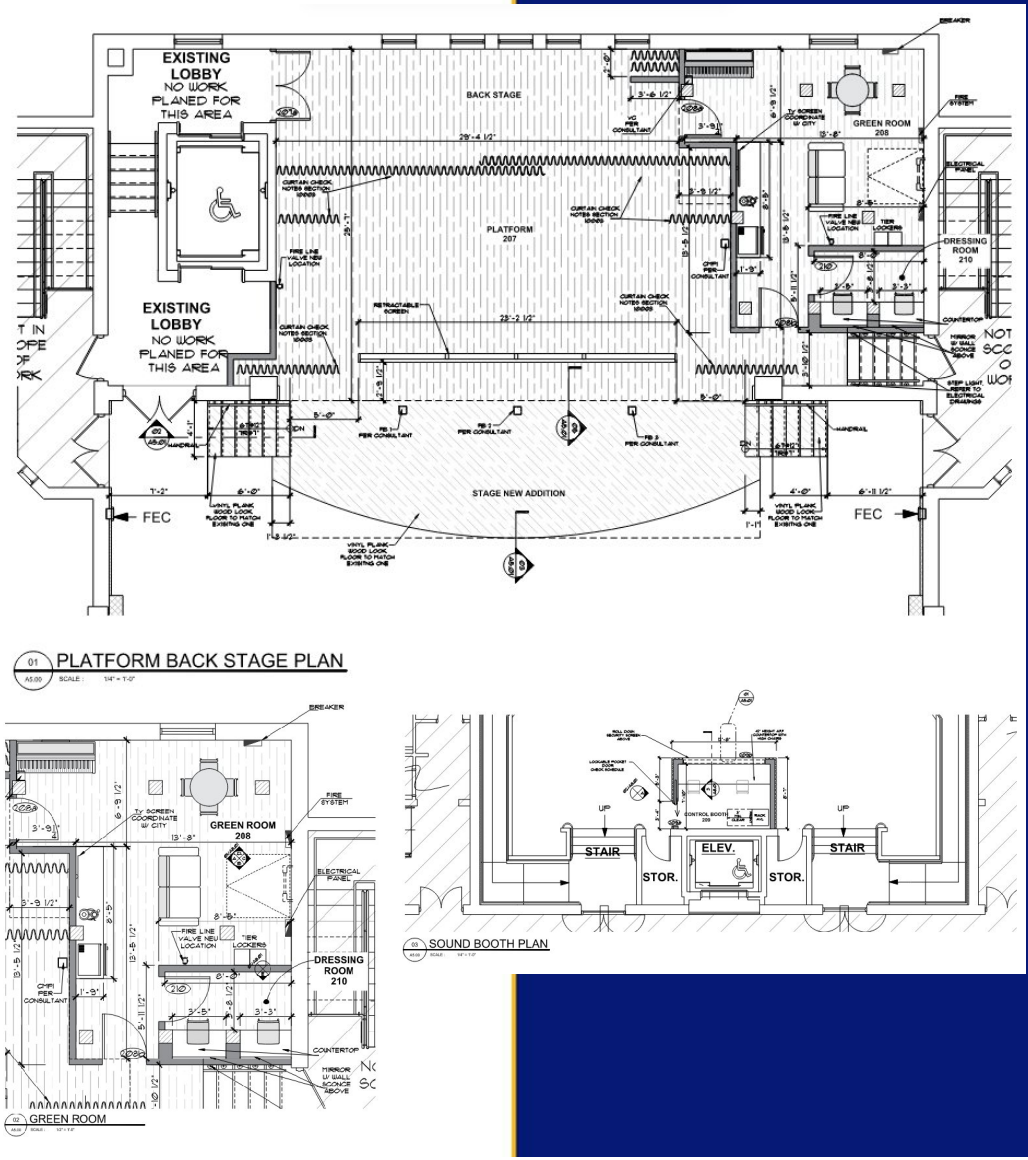
ISOMETRIC VIEW



CIP 1Q FY24/25 Update: Project Updates

Cultural Center Auditorium:

Description	Stage, audio/visual, and lighting Improvements
AE	AKA
Contractor	TBD
Phase	Procurement (Construction)
Design Cost	$119K
Construction Cost	$1.4M (Est.)
Status	Advertise for Bid: January 2025 (Est.)



CIP 1Q FY24/25 Update: Project Updates

Centennial Park – Landscape Replacement:

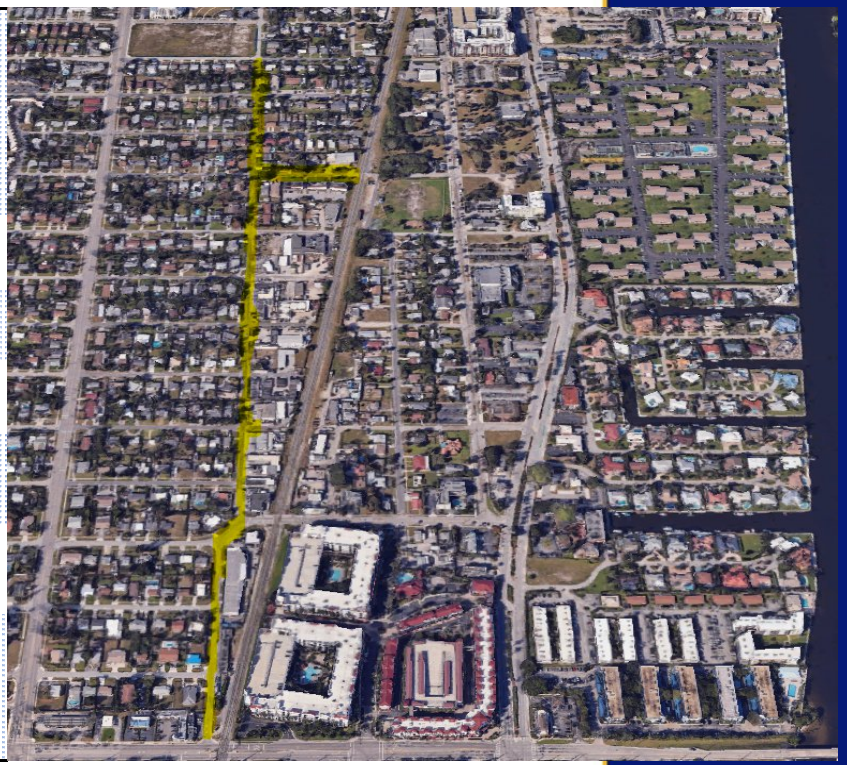
Description	Design/Build for replacement of landscaping
AE	LTG
Contractor	LTG
Phase	Planning
Design Budget	N/A
Construction Cost	$800K (Est.)
Status	NTP Design: February 2025 (Est.) Construction Complete: August 2025 (Est.)



CIP 1Q FY24/25 Update: Project Updates

SE 1st Street:

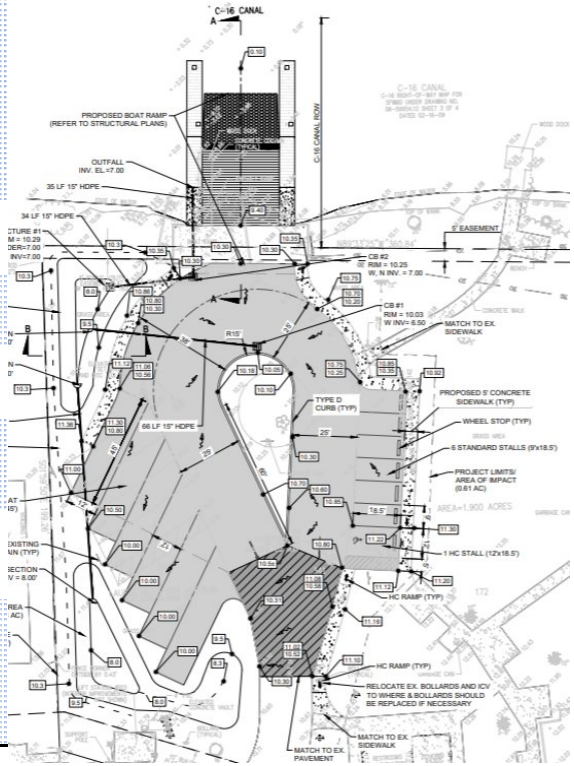
Description	Construction of a shared used path, a sidewalk, roadway, and drainage improvements. LAP Grant: $1.5M
AE	Kimley Horn
Contractor	TBD
Phase	Procurement (Construction)
Design Cost	$333K
Construction Cost	$5.4M (Est.)
Status	Start Construction: April 2025 (Est.) Construction Complete: April 2026 (Est.)



CIP 1Q FY24/25 Update: Project Updates

Pioneer Park – Boat Ramp:

Description	Reconfiguration of the existing boat ramps and docks. FIND Grant: $819K FWC Grant: $109K
AE	AKA
Contractor	TBD
Phase	Procurement (Construction)
Design Cost	$104K
Construction Cost	$ 1M (Est.)
Status	Start Construction: May 2025 (Est.)

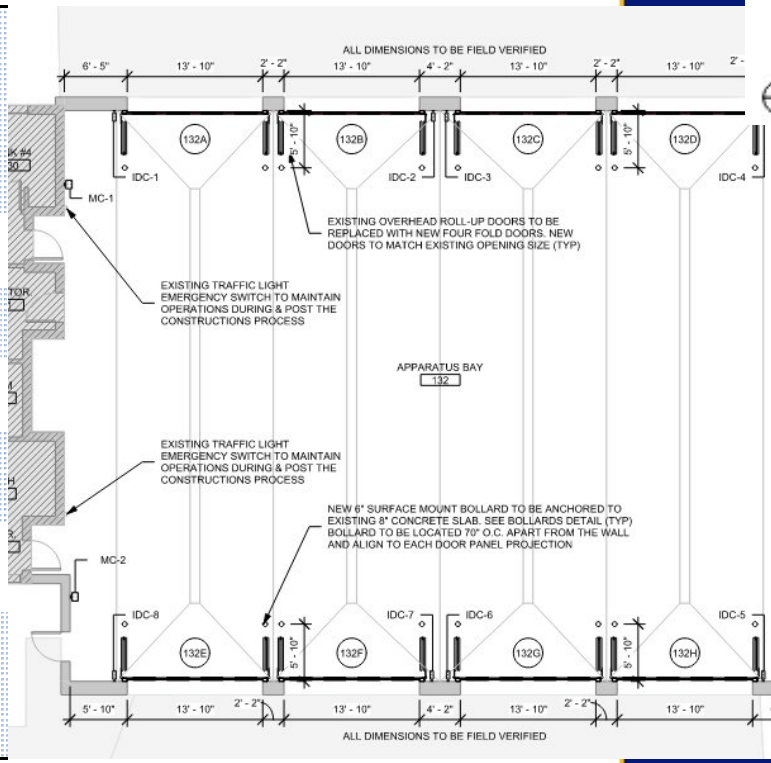


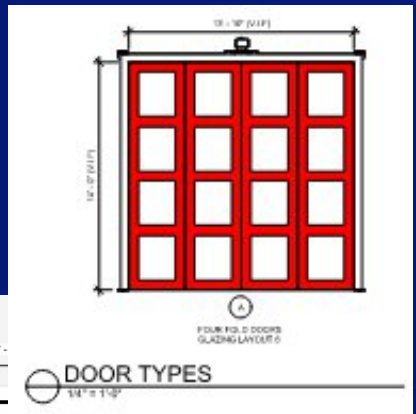


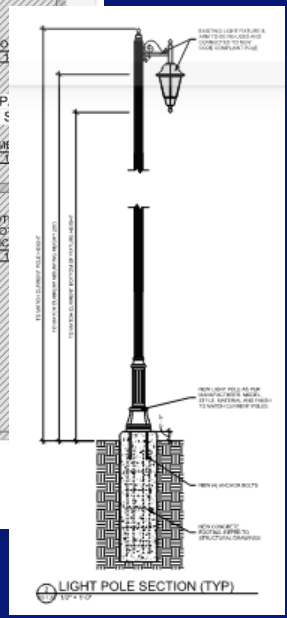
CIP 1Q FY24/25 Update: Project Updates

Fire Station #2 (Hardening):

Description	Hardening of Fire Station #2 to mitigate wind damage. FCOM CDBG-MIT Grant: $572K
AE	2GHO
Contractor	TBD
Phase	Procurement (Construction)
Design Cost	$43K
Construction Cost	$550K (Est.)
Status	Start Construction: May 2025 (Est.) Construction Complete: October 2025 (Est.)



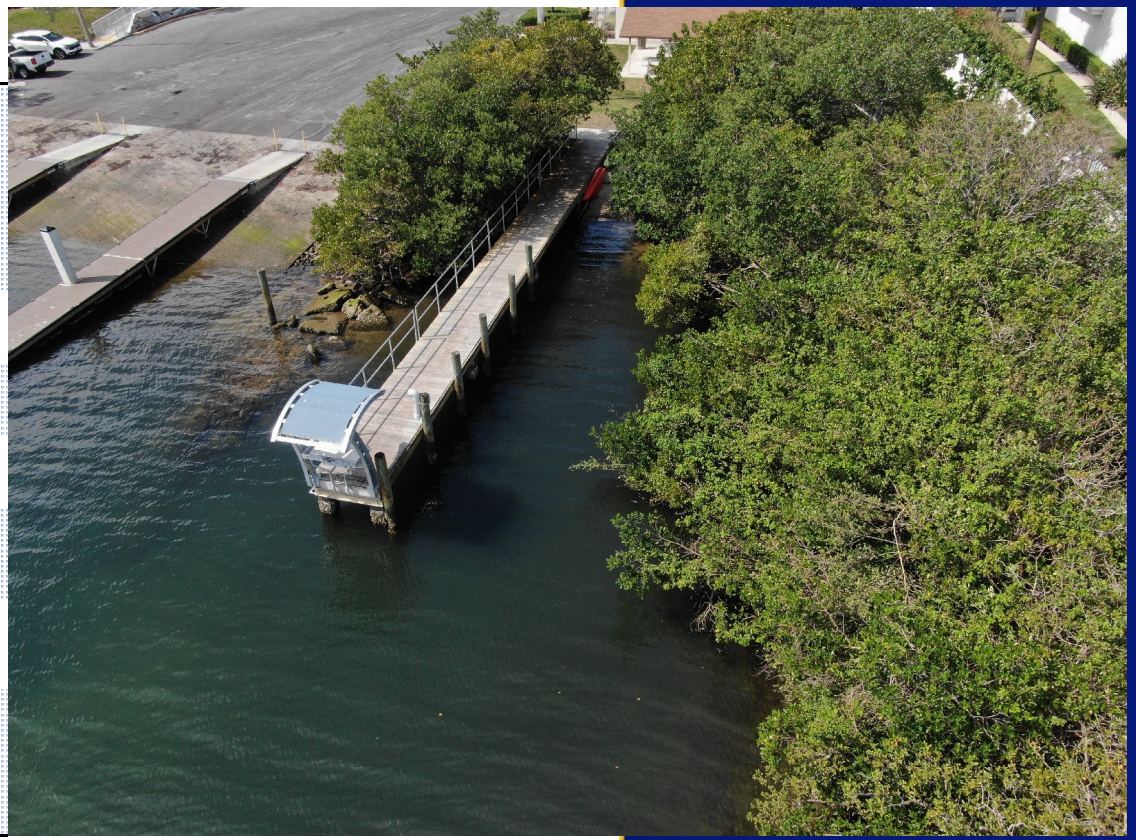




CIP 1Q FY24/25 Update: Project Updates

FD – Boat Dock and Lift:

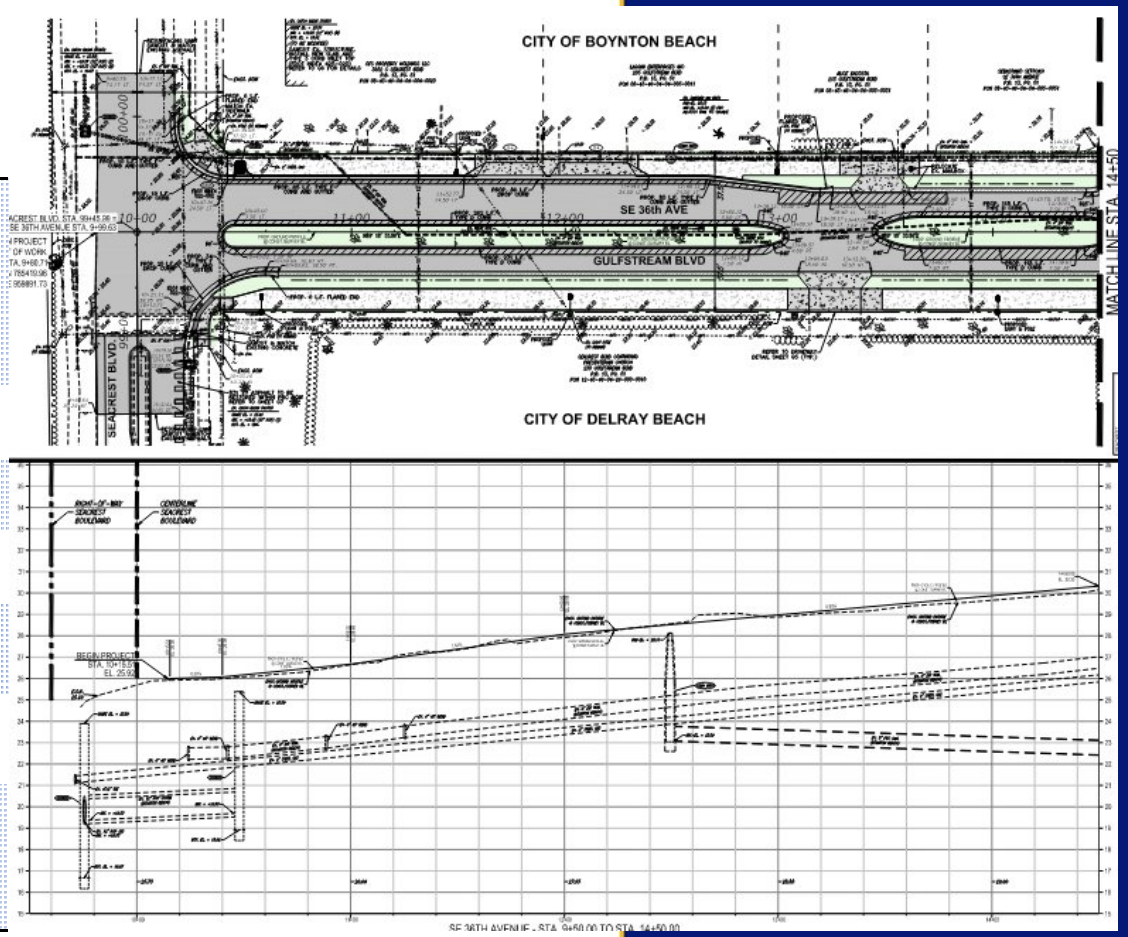
Description	Installation of electric boat lifts for FD/PD
AE	Sea Diversified
Contractor	TBD
Phase	Procurement (Construction)
Design Cost	$35K
Construction Cost	$220K (Est.)
Status	Start Construction: May 2025 (Est.) Construction Complete: October 2025 (Est.)



CIP 1Q FY24/25 Update: Project Updates

SE 36th Ave (Gulfstream Blvd) Road Rehab:

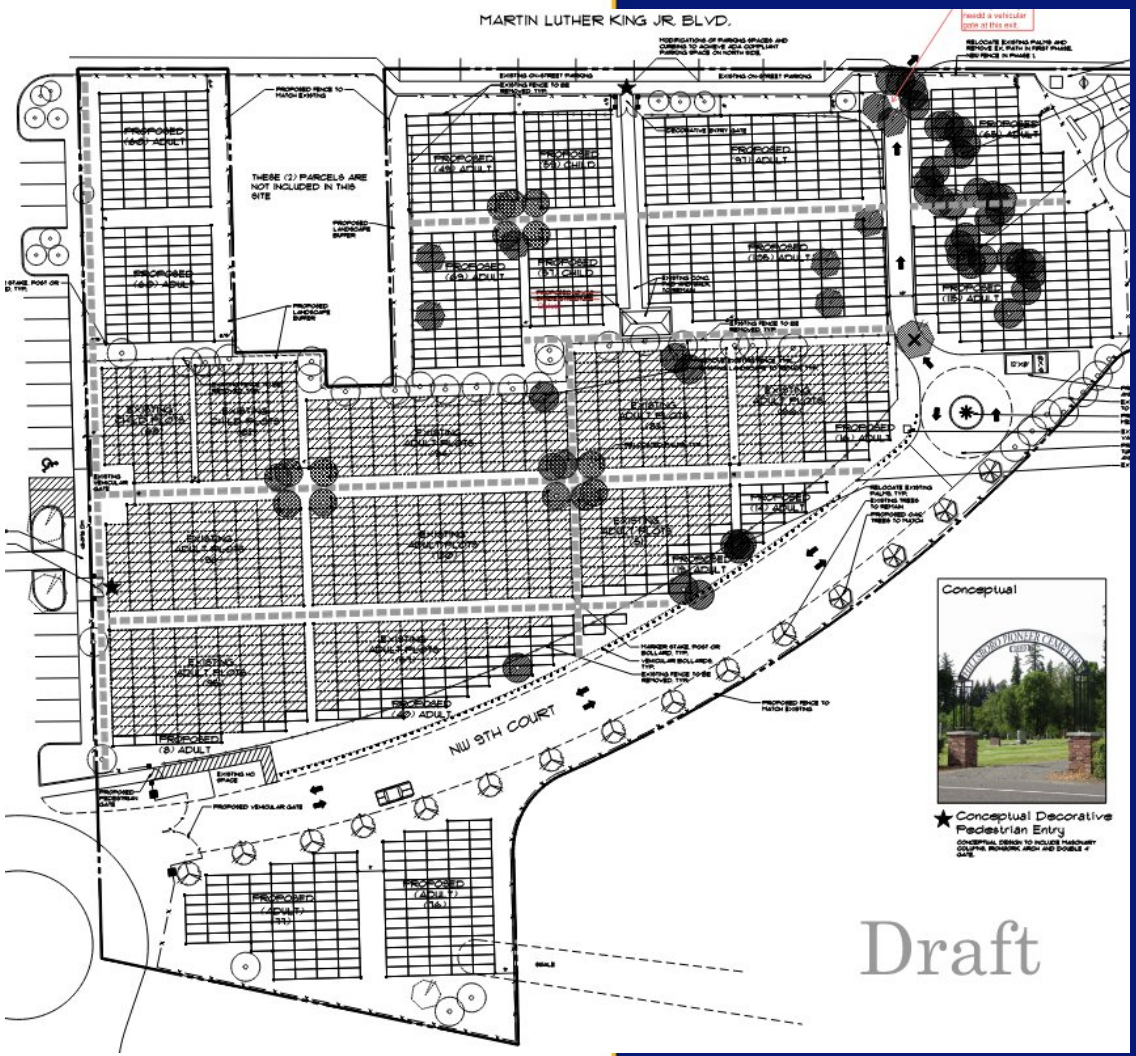
Description	Roadway, landscape, lighting, and drainage improvements. Joint project with Delray Beach
AE	Calvin, Giordano & Assoc
Contractor	TBD
Phase	Procurement (Construction)
Design Cost	$466K
Construction Cost	$3.2M (Est.)
Status	Start Construction: May 2025 (Est.) Construction Complete: November 2025 (Est.)



CIP 1Q FY24/25 Update: Project Updates

Sara Sims Cemetery – Expansion Project:

Description	Cemetery expansion
AE	2GHO
Contractor	TBD
Phase	Design
Design Cost	$60K
Construction Cost	$325K (Est.)
Status	Design Complete: February 2025 (Est.) Start Construction: May 2025 (Est.) Construction Complete: October 2025 (Est.)



CIP 1Q FY24/25 Update: Project Updates

Pence Park - Reconstruction:

Description	New football/soccer fields and basketball courts.
AE	West Architecture + Design
Contractor	TBD
Phase	Design
Design Budget	$125K
Construction Budget	TBD
Status	Design Complete: TBD



CIP 1Q FY24/25 Update: Project Updates

Mangrove Park – Boardwalk Removal:

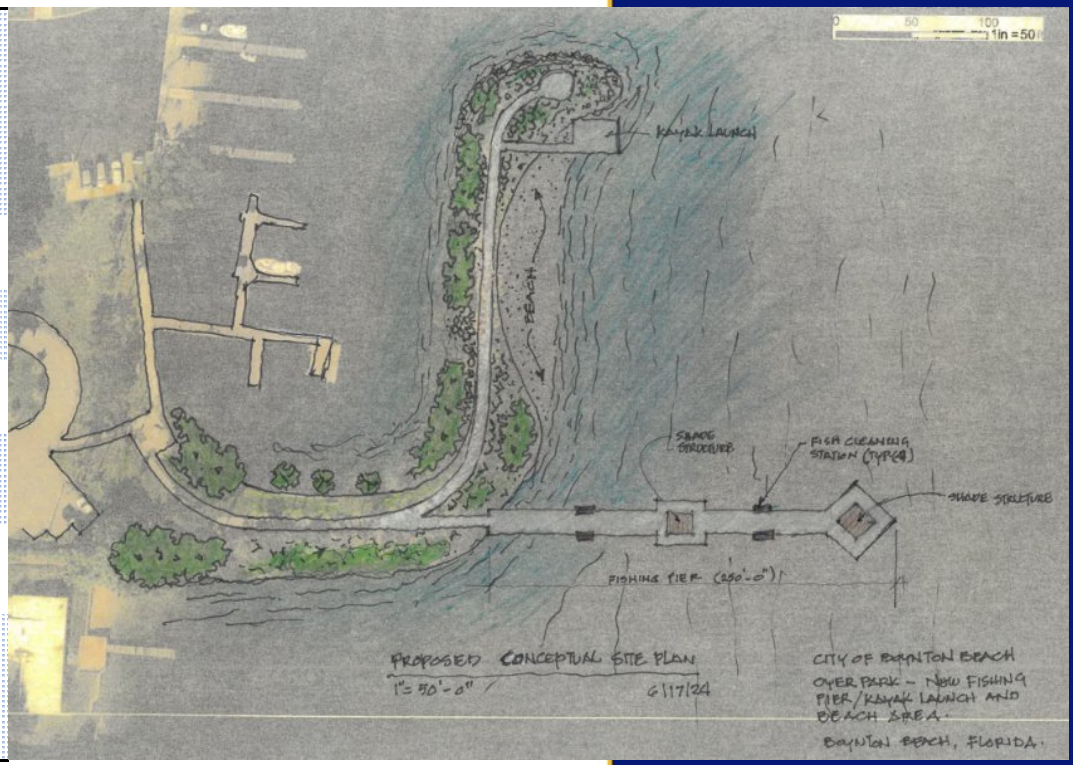
Description	Removal of the Mangrove Park Boardwalk
AE	Keith
Contractor	TBD
Phase	Planning
Design Budget	$70K
Construction Cost	$750K (Est.)
Status	NTP Design: January 2024 (Est.) Construction Complete (Demo): October 2025 (Est.)



CIP 1Q FY24/25 Update: Project Updates

Harvey Oyer Jr. Park – Pier Replacement:

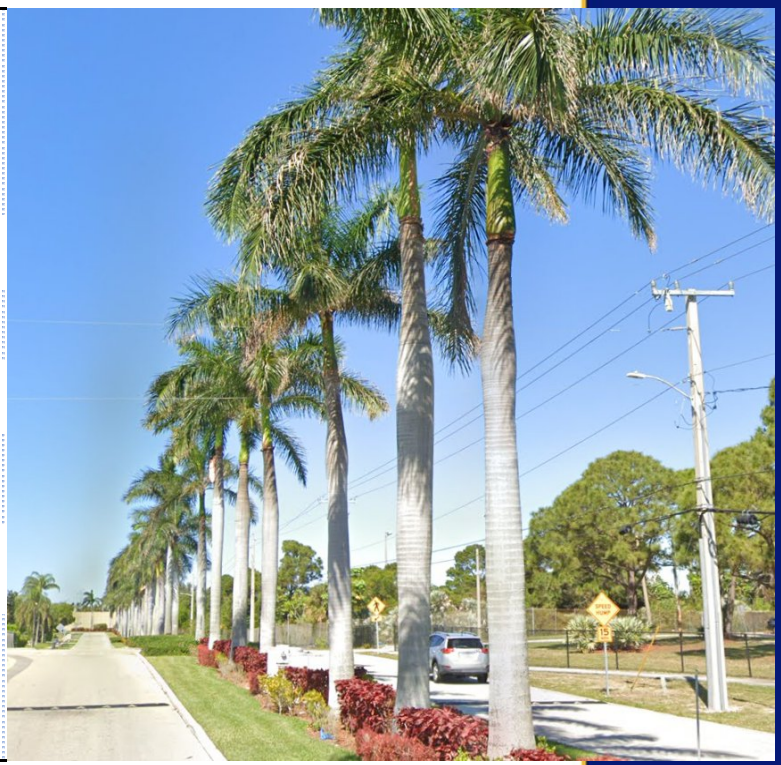
Description	Replacement of pier
AE	AKA
Contractor	TBD
Phase	Design
Design Budget	$100K
Construction Budget	TBD
Status	Complete Concept Design: February 2025



CIP 1Q FY24/25 Update: Project Updates

Lawrence Road Beautification:

Description	Improve landscape islands, add irrigation, and improvements to traffic patterns.
AE	CPZ Architects
Contractor	TBD
Phase	Planning
Design Budget	$135K
Construction Cost	TBD
Status	Start Design: March 2025 (Est.)



CIP 1Q FY24/25 Update: Project Updates

Jaycee Park – Master Plan/New Play Structure:

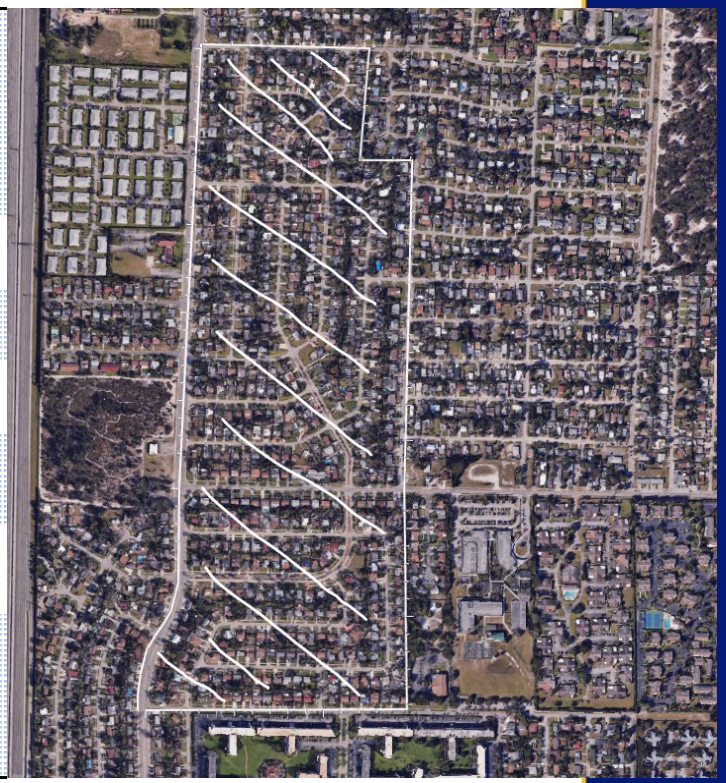
Description	Master plan of park including replacement of play structure.
AE	Miller Legg
Contractor	TBD
Phase	Planning
Design Budget	$100K
Construction Budget	$350K
Status	NTP Design: March 2025 (Est.)



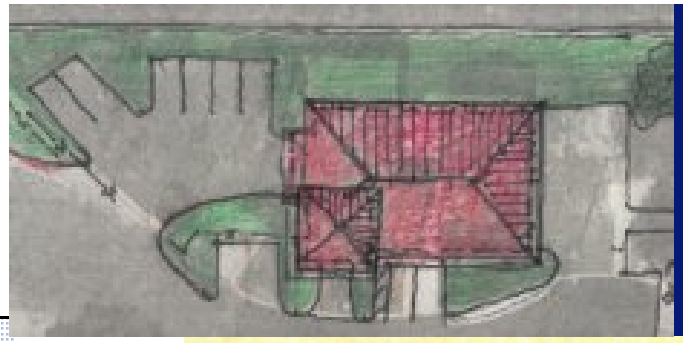
CIP 1Q FY24/25 Update: Project Updates

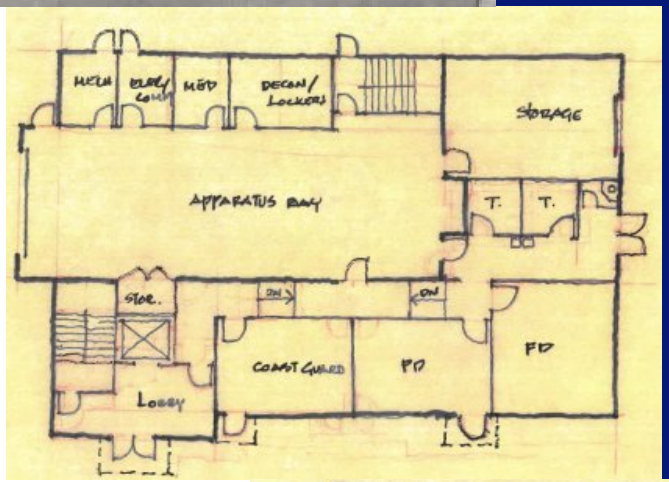
San Castle:

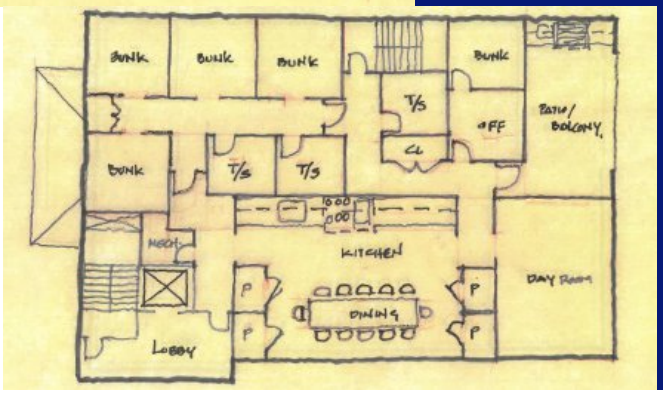
Description	Upgrade drainage, utilities, and roadway improvements. FCOM CDBG-MIT Grant: $16.5M
AE	TBD
Contractor	TBD
Phase	Planning
Design Budget	$1.4M
Construction Budget	$17.6M (Est.)
Status	Start Design: May 2025 (Est.) Start Construction: May 2026 (Est.) Construction Complete: May 2027 (Est.)



CIP 1Q FY24/25 Update: Project Updates







Marine Complex:

Description	New Marine Complex for Fire and Police Department.
AE	TBD
Contractor	TBD
Phase	Planning
Design Budget	TBD
Construction Cost	$4M (Est.)
Status	Start Design: March 2025 (Est.)

CIP 1Q FY24/25 Update: Project Updates

Fire Station 3 – New Fire Station:

Description	New Fire Station No. 3
AE	TBD
Contractor	TBD
Phase	Planning
Design Budget	TBD
Construction Cost	TBD
Status	RFQ Design: May 2025 (Est.) Start Design: September 2025 (Est.)

