

## **SECTION 7 - INSURANCE REQUIREMENTS**

### **7.1 General Indemnification**

The **Consultant** shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, 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 or resulting from the performance of this Agreement by the **Consultant** or its employees, agents, servants, partners, principals or subcontractors. The **Consultant** 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 **Consultant** expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the **Consultant** 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.

### **7.2 Insurance Coverage**

- A. **Consultant** shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the **Consultant** allow any subcontractor to commence work on any subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.
- B. Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.
- C. Certificates of Insurance shall provide for thirty (30) days' prior written notice to the CITY in case of cancellation or material changes in the policy limits or coverage states. If the carrier cannot provide thirty (30) days' notice of cancellation, either the **Consultant** or their Insurance Broker must agree to provide notice.
- D. Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the **Consultant** shall furnish, at least forty-five (45) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of



the Agreement and extension thereunder is in effect. The **Consultant** shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. **Consultant** shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

- E. **Consultant** shall be required to obtain all applicable insurance coverage, as indicated in the sections below, prior to commencing any work pursuant to this Agreement.

### **7.3 Comprehensive General Liability Insurance**

Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

- A. Each Occurrence Limit - \$1,000,000
- B. Fire Damage Limit (Damage to rented premises) - \$100,000
- C. Personal & Advertising Injury Limit - \$1,000,000
- D. General Aggregate Limit - \$2,000,000
- E. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement. *(For Construction projects: Increase to ten (10) years and include a Designated Construction Project(s) General Aggregate Limit)*

**The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

### **7.4 Workers' Compensation and Employers' Liability Insurance**

Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of the **Consultant** engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the **Consultant** shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the **Consultant** Coverage for the **Consultant** and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

- A. Workers' Compensation: Coverage A – Statutory
- B. Employers Liability: Coverage B

\$500,000 Each Accident



\$500,000 Disease – Policy Limit

\$500,000 Disease – Each Employee

If **Consultant** claims to be exempt from this requirement, **Consultant** shall provide CITY proof of such exemption along with a written request for CITY to exempt **Consultant**, written on **Consultant** letterhead.

### **7.5 Comprehensive Auto Liability Insurance**

Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

- A. Any Auto (Symbol 1)  
Combined Single Limit (Each Accident) - \$1,000,000
- B. Hired Autos (Symbol 8)  
Combined Single Limit (Each Accident) - \$1,000,000
- C. Non-Owned Autos (Symbol 9)  
Combined Single Limit (Each Accident) - \$1,000,000

If work under this Agreement includes transportation of hazardous materials, policy shall include pollution liability coverage equivalent to that provided by the latest version of the ISO pollution liability broadened endorsement for auto and the latest version of the ISO Motor Carrier Act endorsement, equivalents or broader language.

If **Consultant** requests reduced limits under a Personal Auto Liability Policy and it is agreed to by the CITY, coverage shall include Bodily Injury limits of \$100,000 per person/\$300,000 per occurrence and Property Damage limits of \$300,000 per occurrence.

### **7.6 Umbrella/Excess Liability Insurance**

Umbrella/Excess Liability Insurance in the amount of **\$2,000,000** as determined appropriate by the CITY depending on the type of job and exposures contemplated. Coverage must be follow 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 this Agreement.

**The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

### **7.7 Environmental/Pollution Liability Insurance**

Environmental/Pollution Liability insurance shall be required with a limit of no less than \$1,000,000 per wrongful act. Coverage shall include: **Consultant's** completed operations, sudden, accidental



and gradual pollution conditions. 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 this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY. *(Limit to align with size and scope of the Agreement and exposure inherent with operation/services being performed. For Construction projects: Increase to ten (10) years)*

**The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

#### **7.8 Required Endorsements**

- A. The City of Pembroke Pines shall be named as an Additional Insured on each of the Liability Policies required herein.
- B. Waiver of all Rights of Subrogation against the CITY.
- C. Thirty (30) Day Notice of Cancellation or Non-Renewal to the CITY.
- D. **Consultant's** policies shall be Primary & Non-Contributory.
- E. All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY.
- F. The City of Pembroke Pines shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

#### **7.9 Additional Requirements**

- A. Any and all insurance required of the **Consultant** pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the **Consultant** and provided proof of such coverage is provided to CITY. The **Consultant** and any subcontractors shall maintain such policies during the term of this Agreement.
- B. The CITY reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Agreement.
- C. The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the **Consultant** has assumed in the indemnification/hold harmless section(s) of this Agreement.

## **SECTION 8 - GENERAL TERMS AND CONDITIONS**

### **8.1 EXAMINATION OF CONTRACT DOCUMENTS**

Before submitting a Proposal, each Proposer should:

- A. consider federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost or performance of the work,
- B. study and carefully correlate the Proposer's observations with the Proposal Documents; and
- C. notify the Purchasing Manager of all conflicts, errors and discrepancies, if any, in the Proposal Documents.

The Proposer, by and through the submission of a Proposal, agrees that Proposer shall be held responsible for having familiarized themselves with the nature and extent of the work and any local conditions that may affect the work to be done and the services, equipment, materials, parts and labor required.

### **8.2 CONFLICT OF INSTRUCTIONS**

If a conflict exists between the General Conditions and Instructions stated herein and specific conditions and instructions contained in specifications, the specifications shall govern.

### **8.3 ADDENDA or ADDENDUM**

A formal solicitation may require an Addendum to be issued. An addendum in some way may clarify, correct or change the original solicitation (i.e. due date/time, specifications, terms, conditions, line item).

Bidders must register for an account on the City's e-Procurement Portal, hosted by OpenGov. Once the bidder has completed registration, they will receive addenda notifications via email by clicking "Follow" on this project. Ultimately, it is the sole responsibility of each bidder to periodically check the site for any addenda at <https://procurement.opengov.com/portal/pembrokepines>.

**Consultants** are cautioned not to consider verbal modifications to the solicitation, as the addendum issued through OpenGov will be the only official method whereby changes will be made.

### **8.4 INTERPRETATIONS AND QUESTIONS**

If the Proposer is in doubt as to the meaning of any of the Proposal Documents, is of the opinion that the Conditions and Specifications contain errors or contradictions or reflect omissions, or has any question concerning the conditions and specifications, the Proposer shall submit a question for interpretation or clarification.

The City requires all questions relating to the solicitation to be submitted through the "Question & Answer" tab, for the specific project, on the City's e-Procurement Portal, located at <https://procurement.opengov.com/portal/pembrokepines>. Questions and inquiries must be received by the "Question Due Date" stated in the solicitation. Questions received after the "Question Due



**Date**” shall not be answered. Interpretations or clarifications in response to such questions will be issued via OpenGov. Bidders may also click “Follow” on this solicitation to receive an e-mail notification(s) when answers are posted. It is the responsibility of the bidder to check the website for answers to inquiries. The issuance of a response via OpenGov is considered an Addendum and shall be the only official method whereby such an interpretation or clarification will be made.

OpenGov Support is also available to assist proposers with submitting their proposal and to ensure that proposers are submitting their proposals correctly. Proposers should ensure that they contact OpenGov support, with ample time before the bid closing date and time, via one of the following methods:

- A. Chat (preferred method): Click the button in the lower right-hand corner of the portal when logged in.
- B. E-mail: [support@opengov.com](mailto:support@opengov.com)
- C. Phone: 1 (605) 336-7167
- D. <https://opengov.my.site.com/support/s/contactsupport>

For all other questions related to this solicitation, please contact the Procurement Department at [purchasing@ppines.com](mailto:purchasing@ppines.com).

## **8.5 RULES, REGULATIONS, LAWS, ORDINANCES and LICENSES**

The awarded **Consultant** shall observe and obey all laws, ordinances, rules, and regulations of the federal, state, and CITY, which may be applicable to the service being provided. The awarded firm shall have or be responsible for obtaining all necessary permits or licenses required, if necessary, in order to provide this service.

Proposer warrants by submittal that prices quoted here are in conformity with the latest federal price guidelines, if any.

## **8.6 WARRANTIES FOR USAGE**

Whenever a bid is sought, seeking a source of supply for a specified time for materials or service, the quantities or usage shown are estimated 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 contracts. These quantities are for proposer’s information only and will be used for tabulation and presentation of bid.

## **8.7 BRAND NAMES**

If and wherever in the specifications a brand name, make, name of manufacturer, trade name, or vendor catalog number is mentioned, it is for the purpose of establishing a grade or quality of material only. Since the City does not wish to rule out other competition and equal brands or makes, the phrase “OR EQUAL” is added. However, if a product other than that specified is bid, Proposers shall indicate on their proposal and clearly state the proposed substitution and deviation. It is the **Consultant’s responsibility** to provide any necessary documentation and samples within their bid submittal to prove that the product is equal to that specified. Such samples are to be furnished before the date of bid opening, unless otherwise specified. Additional evidence in the form of



documentation and samples may be requested if the proposed brand is other than that specified. The City retains the right to determine if the proposed brand shall be considered as an approved equivalent or not.

### **8.8 QUALITY**

All materials used for the manufacture or construction of any supplies, materials, or equipment covered by this bid shall be new, the latest model, of the best quality, and highest grade workmanship, unless otherwise noted.

### **8.9 SAMPLES**

Samples, when requested, must be furnished before, or at the bid opening, unless otherwise specified, and delivered free of expense to the City and if not used in testing or destroyed, will upon request within thirty (30) days of bid award be returned at the proposer's expense.

### **8.10 ESTIMATED QUANTITIES**

No guarantee is expressed or implied as to the total quantity of commodities/services to be purchased pursuant to this solicitation. Estimated quantities will be used for comparison and ranking purposes only. The City is not obligated to contract for a given amount of commodities/services subsequent to the award of this solicitation. The City reserves the right to issue separate purchase orders as needed, issue a blanket purchase order, and release partial quantities, or any combination of the preceding as deemed necessary by the City.

### **8.11 DEVELOPMENT COSTS**

Neither the City nor its representatives shall be liable for any expenses incurred in connection with the preparation, submission or presentation of a Bid in response to this solicitation. All information in the Bid shall be provided at no cost to the City.

### **8.12 PRICING**

Prices should be stated in units of quantity specified in the bidding specifications. In case of discrepancy in computing the amount of the bid, the unit prices quoted will govern.

Proposer warrants by virtue of bidding that prices, terms, and conditions quoted in his bid will be firm for acceptance for a period of ninety (90) days from date of bid opening unless otherwise stated by the City or proposer.

### **8.13 DELIVERY POINT**

All items shall be delivered F.O.B. destination, and delivery cost and charges included in the bid price. Failure to do so may be cause for rejection of bid.

### **8.14 TAX EXEMPT STATUS**

The City is exempt from Florida Sales and Federal Excise taxes on direct purchase of tangible property.

### **8.15 CONTRACT TIME**



By virtue of the submission of the Proposal, Proposer agrees and fully understands that the completion time of the work of the Contract is an essential and material condition of the Contract and that time is of the essence. The Successful Proposer agrees that all work shall be prosecuted regularly, diligently and uninterrupted at such rate of progress as will ensure full completion thereof within the time specified. Failure to complete the work within the time period specified shall be considered a default.

In addition, time will be of the essence for any orders placed as a result of this bid. Purchaser reserves the right to cancel such orders, or part thereof, without obligation if delivery is not made at the time(s) or place(s) specified.

### **8.16 COPYRIGHT OR PATENT RIGHTS**

Proposer warrants that there have been no violations of copyrights or patent rights in manufacturing, producing, or selling other goods shipped or ordered as a result of this bid, and seller agrees to hold the purchaser harmless from any and all liability, loss or expense occasioned by such violation.

### **8.17 ANTI-TRUST VIOLATIONS**

Pursuant to Section 287.137, Florida Statutes, as may be amended, a person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity.

### **8.18 PUBLIC ENTITY CRIMES**

Pursuant to Sec. 287.133(2)(a), Fla. Stat., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime or who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under 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.

Pursuant to Sec. 287.134(2)(b), Fla. Stat., a public entity may not accept any bid, proposals, or replies from, award any contract to, or transact any business with any entity or affiliate on the discriminatory vendor list for a period of 36 months following the date that entity or affiliate was placed on the discriminatory vendor list unless that entity or affiliate has been removed from the list. A public entity that was transacting business with an entity at the time of the discrimination resulting in that entity being placed on the discriminatory vendor list may not accept any bid, proposal, or reply from, award any contract to, or transact any business with any other entity who is under the



same, or substantially the same, control as the entity whose name appears on the discriminatory vendor list so long as that entity's name appears on the discriminatory vendor list.

The Sworn Statement of Public Entity Crime Affidavit Form, in the Submittal Documents section on the OpenGov portal for this solicitation, includes documentation that shall be executed by an individual authorized to bind the Proposer. The Proposer further understands and accepts that any contract issued as a result of this solicitation shall be either voidable or subject to immediate termination by the City. In the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133 or Section 287.134, respectively, Florida Statutes. The City in the event in such termination, shall not incur any liability to the Proposer for any goods, services or materials furnished.

### **8.19 CONFLICT OF INTEREST**

The award of any contract hereunder is subject to the provisions of Chapter 112, Florida Statutes. Proposers must disclose with their Proposal the name of any officer, director, partner, proprietor, associate or agent who is also an officer or employee of CITY or any of its agencies. Further, all Proposers must disclose the name of any officer or employee of CITY who owns, directly or indirectly, an interest of five percent (5%) or more in the Proposer 's firm or any of its branches or affiliate companies.

### **8.20 FACILITIES**

The City reserves the right to inspect the Proposer's facilities at any time with prior notice.

### **8.21 ENVIRONMENTAL REGULATIONS**

CITY reserves the right to consider Proposer's history of citations and/or violations of environmental regulations in determining a Proposer's responsibility, and further reserves the right to declare a Proposer not responsible if the history of violations warrant such determination. Proposer shall submit with the Proposal, a complete history of all citations and/or violations, notices and dispositions thereof. The non-submission of any such documentation shall be deemed to be an affirmation by the Proposer that there are no citations or violations. Proposer shall notify CITY immediately of notice of any citation or violation that Proposer may receive after the Proposal opening date and during the time of performance of any contract awarded to Proposers.

### **8.22 SIGNATURE REQUIRED**

All proposals must be signed with the firm name and by an officer or employee having authority to bind the company or firm by his signature. FAILURE TO PROPERLY SIGN PROPOSAL SHALL INVALIDATE SAME, AND IT MAY NOT BE CONSIDERED FOR AWARD.

The individual executing this Bid on behalf of the Company warrant to the City that the Company is authorized to do business in the State of Florida, is in good standing and that Company possesses all of the required licenses and certificates of competency required by the State of Florida and Broward County to provide the goods or perform the services herein described.



The signed bid shall be considered an offer on the part of the proposer or **Consultant**, which offer shall be deemed accepted upon approval by the City Commission of the City of Pembroke Pines and in case of default on the part of the proposer or **Consultant** after such acceptance, the City of Pembroke Pines may take such action as it deems appropriate including legal action for damages or specific performance.

### **8.23 MANUFACTURER'S CERTIFICATION**

The City of Pembroke Pines reserves the right to request from proposer separate manufacturer certification of all statements made in the proposal.

### **8.24 MODIFICATION OR WITHDRAWAL OF PROPOSAL**

The City recommends for proposers to submit their proposals as soon as they are ready to do so. Please allow ample time to submit your proposals on the OpenGov website. Proposals may be modified or withdrawn prior to the deadline for submitting Proposals.

### **8.25 PUBLIC BID; BID OPENING AND GENERAL EXEMPTIONS**

All submittals received by the deadline will be recorded, and will subsequently be publicly opened on the same business day at 2:30 pm at the office of the City Clerk, 4th Floor, 601 City Center Way, Pembroke Pines, Florida, 33025.

All Proposals received from Proposers in response to the solicitation will become the property of CITY and will not be returned to the Proposers. In the event of Contract award, all documentation produced as part of the Contract shall become the exclusive property of CITY. Proposers are requested to identify specifically any information contained in their Proposals which they consider confidential and/or proprietary and which they believe to be exempt from disclosure, citing specifically the applicable exempting law.

Pursuant to Section 119.071 of the Florida Statutes, sealed bids, proposals, or replies received by a Florida public agency shall remain exempt from disclosure until an intended decision is announced or until 30 days from the opening, whichever is earlier.

Therefore, proposers will not be able to procure a copy of their competitor's bids until an intended decision is reached or 30 days has elapsed since the time of the bid opening.

However, pursuant to Section 255.0518 of the Florida Statutes, when opening sealed bids that are received pursuant to a competitive solicitation for **construction or repairs on a public building or public work**, the entity shall:

- A. Open the sealed bids at a public meeting.
- B. Announce at that meeting the name of each bidder and the price submitted in the bid.
- C. Make available upon request the name of each bidder and the price submitted in the bid.



For solicitations that are **not** for “**construction or repairs on a public building or public work**” the City shall not reveal the prices submitted in the bids until an intended decision is announced or until 30 days from the opening, whichever is earlier.

### **8.26 RESERVATIONS FOR REJECTION AND AWARD**

The City of Pembroke Pines reserves the right to accept or reject any and all bids or parts of bids, to waive irregularities and technicalities, and to request rebids. The City also reserves the right to award a contract on such items(s) or service(s) the City deems will best serve its interests. All bids shall be awarded to the most responsive/responsible proposer, provided the (City) may for good cause reject any bid or part thereof. It further reserves the right to award a contract on a split order basis, or such combinations as shall best serve the interests of the City unless otherwise specified. No premiums, rebates or gratuities permitted, either with, prior to, or after award. This practice shall result in the cancellation of said award and/or return of items (as applicable) and the recommended removal of proposer from bid list(s).

### **8.27 BID PROTEST**

Any protests or challenges to this competitive procurement shall be governed by Section 35.38 of the City’s Code of Ordinances.

### **8.28 INDEMNIFICATION**

The Successful Proposer shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the subsequent indemnifications including, but not limited to, reasonable attorney's fees (including appellate attorney's fees) and costs.

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 Successful Proposer under the indemnification agreement. Nothing contained herein is intended nor shall it be construed to waive City’s rights and immunities under the common law or Florida Statute 768.28 as amended from time to time.

Additional indemnification requirements may be included under Special Terms and Conditions and/or as part of a specimen contract included in the solicitation package.

**General Indemnification:** To the fullest extent permitted by laws and regulations, Successful Proposer shall indemnify, defend, save and hold harmless the CITY, its officers, agents and employees, harmless from any and all claims, damages, losses, liabilities and expenses, direct, indirect or consequential arising out of or in consequential arising out of or alleged to have arisen out of or in consequence of the products, goods or services furnished by or operations of the Successful Proposer or his subcontractors, agents, officers, employees or independent contractors pursuant to or in the performance of the Contract.

**Indemnification for Design Professionals and Construction Contracts:** The Successful Proposer shall indemnify and hold harmless the CITY, its officers and employees, from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which the CITY, its

officers and employees, may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature to the extent such claims are caused by the negligence, recklessness, or intentional wrongful conduct of the Successful Proposer and other persons employed or utilized by the Successful Proposer during performance of the resulting Agreement.

**Patent and Copyright Indemnification:** Successful Proposer agrees to indemnify, defend, save and hold harmless the CITY, its officers, agents and employees, from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any invention, process, material, property or other work manufactured or used in connection with the performance of the Contract, including its use by CITY.

### **8.29 DEFAULT PROVISION**

In the case of default by the proposer or **Consultant**, the City of Pembroke Pines may procure the articles or services from any other sources and hold the proposer or **Consultant** responsible for any excess costs occasioned or incurred thereby.

The City shall be the sole judge of nonperformance, which shall include any failure on the part of the successful Proposer to accept the Award, to furnish required documents, and/or to fulfill any portion of the contract within the time stipulated. Upon default by the successful Proposer to meet any terms of this agreement, the City will notify the Proposer five (5) days (weekends and holidays excluded) to remedy the default. Failure on the **Consultant's** part to correct the default within the required five (5) days shall result in the contract being terminated and upon the City notifying in writing the Consultant of its intentions and the effective date of the termination. The following shall constitute default:

- A. Failure to perform the Work required under the contract and/or within the time required or failing to use the subcontractor, entities and personnel as identified and set forth, and to the degree specified in the contract.
- B. Failure to begin the Work under this Bid within the time specified.
- C. Failure to perform the Work with sufficient Workers and equipment or with sufficient materials to ensure timely completion.
- D. Neglecting or refusing to remove materials or perform new Work where prior Work has been rejected as non-conforming with the terms of the contract.
- E. Becoming insolvent, being declared bankrupt, or committing act of bankruptcy or insolvency, or making an assignment renders the successful Proposer incapable of performing the Work in accordance with and as required by the contract.
- F. Failure to comply with any of the terms of the contract in any material respect.



In the event of default of a contract, the successful Proposer shall pay all attorney's fees and court costs incurred in collecting any damages. The successful Proposer shall pay the City for any and all costs incurred in ensuing the completion of the project.

Additional provisions may be included in the specimen contract.

### **8.30 ACCEPTANCE OF MATERIAL**

The material delivered under this proposal shall remain the property of the seller until a physical inspection and actual usage of this material and/or services is made and thereafter accepted to the satisfaction of the City and must comply with the terms herein, and be fully in accord with specifications and of the highest quality. In the event the material and/or services supplied to the City are found to be defective or do not conform to specifications, the City reserves the right to cancel the order upon written notice to the seller and return product to seller at the sellers expense.

### **8.31 LOCAL GOVERNMENT PROMPT PAYMENT ACT**

The City complies with Florida Statute 218.70, Local Government Prompt Payment Act.

### **8.32 SCRUTINIZED COMPANIES LIST**

In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of:

- A. Any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or
- B. One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:
  1. Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Terrorism Sectors List, created pursuant to Section 215.473, Florida Statutes; or
  2. Is engaged in business operations in Syria.

By submitting a bid, proposal or response, the company, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, or is engaged in business operations in Syria.

### **8.33 PUBLIC RECORDS; TRADE SECRET, PROPRIETARY AND CONFIDENTIAL SUBMITTALS**

The Proposer's response to this solicitation is a public record pursuant to Florida law, which is subject to disclosure by the City under the State of Florida Public Records Law, Florida Statutes



Chapter 119.07 (“Public Records Law”). The City shall permit public access to all documents, papers, letters or other material submitted in connection with this solicitation and the Contract to be executed for this solicitation, subject to the provisions of Chapter 119.07 of the Florida Statutes.

Any language contained in the Proposer’s response to the solicitation purporting to require confidentiality of any portion of the Proposer’s response to the solicitation, 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 Proposer submits any documents or other information to the City which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 (“Public Records Laws”), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer 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 Proposer’s response to the solicitation constitutes a Trade Secret.

Any claim of confidentiality on financial statements must be asserted at the time of submittal. The firm must identify the specific statute that authorizes the exemption from the Public Records Law. Please note that the financial statement exemption provided for in Section 119.071(1)c, Florida Statutes only applies to submittals in response to a solicitation for a “public works” project.

EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR RESPONSE TO THE SOLICITATION AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR RESPONSE TO THE SOLICITATION OR ANY PART THEREOF AS COPYRIGHTED. ALL DOCUMENTS THAT THE FIRM PURPORTS TO BE CONFIDENTIAL, PROPRIETARY OR A TRADE SECRET SHALL BE UPLOADED TO THE OPENGOV WEBSITE AS A SEPARATE ATTACHMENT CLEARLY IDENTIFYING THE EXEMPTION BEING CLAIMED UNDER FLORIDA STATUTES 119.07.

The city’s determination of whether an exemption applies shall be final, and the proposer agrees to defend, indemnify, and hold harmless the city and the city’s officers, employees, and agent, against any loss or damages incurred by any person or entity as a result of the city’s treatment of records as public records.

#### **8.34 PURCHASING AGREEMENTS WITH OTHER GOVERNMENT AGENCIES**

It is hereby made part of this solicitation that the submission of any bid response to this advertised request constitutes a bid made under the same or similar terms and conditions, for the same price, or better price, to other government agencies if agreeable by the proposer and the government agency.

At the option of the **Consultant**, the use of the contract resulting from this solicitation may be extended to other governmental agencies, including the State of Florida, its agencies, political subdivisions, counties, and cities.

Each governmental agency allowed by the **Consultant** to use this contract shall do so independently of any other governmental entity. Each agency shall be responsible for its own purchases and shall



be liable only for goods or services ordered, received, and accepted. No agency receives any liability by virtue of this bid and subsequent contract award.

### **8.35 CONE OF SILENCE**

**Prohibited Communication:** In accordance with the Cone of Silence Ordinance, Section 35.40 of the City's Code of Ordinances, during the course of a sealed competitive solicitation, a cone of silence shall be in effect between:

A. Any person or entity that seeks a contract, contract amendment, award, recommendation, or approval related to a sealed competitive solicitation or that is subject to being evaluated or having its response evaluated in connection with a sealed competitive solicitation, including a person or entity's representative; and

B. The City Manager or any person or group of persons appointed or designated by the City Commission or the City Manager to evaluate, select, or make a recommendation to the City Commission or the City Manager regarding a sealed competitive solicitation, including any member of the selection/evaluation committee.

**Effective Dates:** A cone of silence shall be in effect during a sealed competitive solicitation process beginning upon the advertisement for the sealed competitive solicitation or during such other procurement activities as declared by the City Commission, and shall terminate at the time the City Commission takes final action or gives final approval of a contract, rejects all bids or responses to the sealed competitive solicitation, or takes other action which ends the sealed competitive solicitation process.

**Permitted Communication:** The cone of silence shall not apply to:

A. Written or oral communications with legal counsel for the city, the Procurement Department staff for the city, and the person or persons designated in the sealed competitive solicitation as the contact person for clarification or information related to the sealed competitive solicitation.

B. Public presentations, asking questions, or providing feedback at pre-bid meetings, site visits or conferences or at a selection, evaluation or negotiation meeting related to the sealed competitive solicitation.

C. Contract negotiations with the selected entity.

**Violations:** Any action in violation of this section shall be cause for disqualification of the bid or the proposal.

### **8.36 E-VERIFY**

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.

A. Definitions for this Section:

1. “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.
2. “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.
3. “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:

1. All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and
2. All persons (including subvendors / subconsultants / subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Pembroke Pines. 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 Pembroke Pines; and
3. 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.

### **8.37 JESSICA LUNSFORD ACT**

Background screening requirements for **Consultant**'s performing services for or at City's Charter Schools.

- A. Except as provided in §§1012.467 or 1012.468, Florida Statutes, non-instructional school employees or contractual personnel who:
  1. are permitted access on school grounds when students are present,
  2. have direct contact with students or,
  3. have access to or control of school funds must meet level 2 screening requirements as described in §1012.32, Florida Statutes. Contractual personnel shall include any **Consultant**, individual, or entity under contract with the City engaged to perform services for or at City's Charter Schools.
  
- B. Every 5 years following employment or entry into a resulting contract in a capacity described in subsection (A), each person who is so employed or under contract with the City must meet level 2 screening requirements as described in §1012.32, Florida Statutes, at which time the City shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for the level 2 screening. If, for any reason following employment or entry into a resulting contract in a capacity described in subsection (A), the fingerprints of a person who is so employed or under contract with the City are not retained by the Department of Law Enforcement under §1012.32(3)(a) and (b), Florida Statutes, the person must file a complete set of fingerprints with the City. Upon submission of fingerprints for this purpose, the City shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for the level 2 screening, and the fingerprints shall be retained by the Department of Law Enforcement under §1012.32(3)(a) and (b), Florida Statutes. The cost of the state and federal criminal history check required by level 2 screening shall be borne by the **Consultant**, or the person fingerprinted. Under penalty of perjury, each person who is employed or engaged to perform a resulting contract in a capacity described in subsection (A) must agree to inform his or her employer or the party with whom he or she is under contract within 48 hours if convicted of any disqualifying offense while he or she is employed or under a resulting contract in that capacity.
  
- C. If it is found that a person who is employed or under contract in a capacity described in subsection (A) does not meet the level 2 requirements, the person shall be immediately suspended from working in that capacity and shall remain suspended until final resolution of any appeals.

### **8.38 PROHIBITION AGAINST CONSIDERING SOCIAL, POLITICAL OR IDEOLOGICAL INTERESTS IN GOVERNMENT CONTRACTING**



Bidders 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 Bidder's social, political, or ideological interests when determining if the Bidder is a responsible Bidder. Bidders are further notified that the City's governing body may not give preference to a Bidder based on the Bidder's social, political, or ideological interests.

## **SECTION 9 - SPECIAL TERMS & CONDITIONS**

### **9.1 PAYMENT AND PERFORMANCE BONDS**

Regardless of the awarded contract amount, two (2) separate bonds (Payment and Performance Bonds) are required, and both must be approved by the City. The penal sum stated in each bond shall be 100% of the contract price.

Note - Contingency is not to be counted in the total amount that the payment and performance bonds are based on.

**Coverage Period:** The surety company shall only cover the period of performance / construction and not the labor warranty nor the manufacturer's warranty periods.

**Successful Proposer:** Within fifteen (15) calendar days after Notice of Award and in any event prior to commencing work, the **Consultant** shall execute and furnish to City a performance bond and a payment bond.

**Minimum Requirements of Surety:** Each bond shall be written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety shall hold a current certificate of authority from the Secretary of Treasury of the United States as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular No. 570. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular and the excess risks must be protected by coinsurance, reinsurance, or other methods, in accordance with Treasury Circular 297, revised September 1, 1978 (31DFR, Section 223.10, Section 223.11). Further, the surety company shall provide City with evidence satisfactory to City, that such excess risk has been protected in an acceptable manner. The surety company shall have at least the following minimum qualification in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858:

B+ to A+

**Performance Bond:** The performance bond shall be conditioned that the **Consultant** performs the contract in the time and manner prescribed in the contract.

**Payment Bond:** The payment bond shall be conditioned that the **Consultant** promptly make payments to all persons who supply the **Consultant** with labor, materials and supplies used directly or indirectly by the **Consultant** in the prosecution of the work provided for in the Contract and shall provide that the surety shall pay the same in the amount not exceeding the sum provided in such bonds, together with interest at the maximum rate allowed by law; and that they shall indemnify and save harmless the City to the extent of any and all payments in connection with the carrying out of said Contract which the City may be required to make under the law.

**Recordation of Bonds with the County:** Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, it shall be the duty of the **Consultant** to record the aforesaid payment and



performance bonds in the public records of Broward County, with the **Consultant** to pay all recording costs.

## **9.2 OWNER'S CONTINGENCY**

While the specifications contained in this solicitation and any ensuing Purchase Orders or contracts have incorporated all anticipated work to be accomplished, there may be unanticipated work required of the **Consultant** in conjunction with a specific project. For this reason, the City Commission may award a project with an "Owner's Contingency". This contingency or allowance authorizes the City execute change orders up to the amount of the contingency without the need to obtain additional Commission approval. The Owner's Contingency is usually based on a specified percent of the proposed project amount and is established for the specific project being performed under the contract. This dollar amount shall be shown on the specific project purchase order as a distinct item from the **Consultant's** overall offer to determine the total potential dollar value of the contract. It is hereby understood and agreed that the **Consultant** shall not expend any dollars in connection with the Owner's Contingency without the expressed prior approval of the City's authorized representative. Any Owner's Contingency funds that have not been utilized at the end of the project will remain with the Owner, the **Consultant** shall only be paid for the proposed project cost as approved by the City Commission along with any Owner Contingency expenses that were approved by the City's authorized representative.