

WINTER HAVEN

The Chain of Lakes City

Office of Procurement

August 15, 2023

INVITATION TO BID ITB-23-49

Sealed Bids will be received by the City of Winter Haven until **2:00 P.M., SEPTEMBER 20, 2023**, at our online solicitation platform, for the following:

“Eagle Lake Interconnect”

A Pre-Bid meeting will be held **Tuesday, September 5, 2023, at 10:00 a.m.**, via a Zoom meeting. Those who wish to attend may do so by the following this link:

<https://us06web.zoom.us/j/84108132833?pwd=azhSNXBhRIE5OHd3ZndRM0FUyW12UT09>

A public bid opening will be held immediately following the 2:00 deadline via a Zoom meeting. Those who wish to attend may do so by following this link:

<https://us06web.zoom.us/j/86522698563?pwd=aUZQaTljdXk2WXRIQ2IPOWVaRmFuUT09>

The project specified shall be furnished in accordance with the Invitation To Bid, Specifications, and Terms and Conditions attached hereto and made a part hereof as if fully set forth herein and any other documents prepared for this bid.

Questions concerning this bid must be submitted on or before **2:00 p.m., September 12, 2023**, to Keri Sorensen at ksorensen@mywinterhaven.com. Questions received after this time may not be answered.

Public Records – It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency / Fla. Statute – 119.01(1). (Do not submit any documents that you do not want to be made public).

Bidders shall submit bids on the Proposal and Bid form furnished by the City. **An Excel Proposal and Bid form is provided for this project, please submit this form in Excel format when submitting your bid on Merzell (fka “Negometrix”).** Please note the Affidavit form which must also be completed. **W-9** should be attached to the bid. Payment will be rendered to the name and ID appearing on the W-9.

The City of Winter Haven reserves the right to reject any and all bids, to waive informalities, to re-advertise, and to enter into a contract determined to be in its best interest, in accordance with the Terms and Conditions referenced herein above.

Sincerely,
CITY OF WINTER HAVEN

Bethany Owen

Bethany Owen
Procurement Manager

LEGAL ADVERTISEMENT
INVITATION TO BID

ITB-23-49

The City of Winter Haven will receive Sealed Bids until **2:00 P.M., SEPTEMBER 20, 2023.**

“Eagle Lake Interconnect”

A public bid opening will be held immediately following the 2:00 deadline via Zoom.

Prospective bidders may obtain copies of the Invitation To Bid from the following website:
<https://app.negometrix.com/buyer/690>

Advertise: August 16, 2023

**PROPOSAL AND BID FORM
ITB-23-49**

Proposal to furnish all labor, materials, equipment, plant and supervision necessary for the “**Eagle Lake Interconnect**” in accordance with the Invitation To Bid, Scope of Work, Terms and Conditions, and any other documents prepared for this project.

ARTICLE 1

The Invitation To Bid, Terms and Conditions, and any other Contract documents prepared for this bid, and any addenda issued during the bidding period, are a part of this Proposal and Bid Form.

The Bidder received the following addenda during the bidding period:

Addendum Number _____ Date _____ Addendum Number _____ Date _____
Addendum Number _____ Date _____ Addendum Number _____ Date _____

The Bidder agrees to complete this project in accordance with the Contract Documents.

ARTICLE 2

The Bidder declares that he makes this proposal in good faith without collusion and without connection with any other person or persons bidding on this project.

Contractor must start within 20 days after receipt of Notice to proceed and project must be completed within 180 calendar days after receipt of Notice to Proceed.

The Bidder declares he has examined the bid documents, visited the site of this project, and fully acquainted himself with all conditions which may affect completion of this project.

ARTICLE 3

The Bidder includes with the Proposal and Bid Form a certified check, a cashier's check, U.S. government bond (at par value), or a bid bond payable to the City of Winter Haven in an amount not less than five percent (5%) of the base bid (if bid amount is \$30,000 or more).

ARTICLE 4

The contractor agrees to pay liquidated damages of \$450/calendar day for every day past the 180 calendar days completion time that the project remains uncompleted. No additional time will be allotted for work stoppages not caused by a natural disaster or approved by the City of Winter Haven.

ARTICLE 5

The bidder, along with the Proposal and Bid Form, will provide a list of at least three (3) projects in similar scope and size, as specified in this Invitation to Bid.

Project Manager & Project name	Job Date	Location/City/State	Phone Number & Email
1.			
2.			
3.			

**PROPOSAL AND BID FORM
ITB-23-49**

The Bidder, proposes and agrees to furnish all plans, permits, labor, material, services, supplies and equipment, and perform the Work required for construction for each item listed on Proposal and Bid Form PBF-3.

A City of Winter Haven Procurement Card will be accepted as method of payment. ____ YES ____ NO

NOTE: if Bidder checks “yes” above, Bidder agrees that the City may use a City issued Mastercard for the payment of any and all invoices submitted as a result of the performance of this bid.

By signing and submitting this bid, the undersigned bidder hereby certifies that the company is not on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operations in Cuba or Syria (for bid amounts of \$1,000,000 or more). Any contract with the City of Winter Haven for goods and/or services of any amount, entered into on or after July 1, 2018, may be terminated at the sole option of the City of Winter Haven, at no cost to the City, if the company is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, or if the company is found to have submitted a false certification as provided under subsection (5) of F.S.287-135.

_____	_____
Date	Name of Company
_____	_____
Authorized Signature	Mailing Address
_____	_____
Title/Position	City State Zip
_____	_____
Printed Name	Email address
_____	_____
Federal Employer I.D. # (FEID)	Telephone Number
_____	_____
State Registration #	State Certification #

Affidavit of Prime Bidder

Non-Collusion The contractor/vendor is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid; such Bid is genuine and is not a collusive or sham Bid; neither the said Bidder nor any of his 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 Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or has refrained from bidding in connection with such Contract; nor in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder; nor has fixed any overhead, profit or cost element of the Bid price, or the Bid price of any other Bidder; nor has secured through any collusion, conspiracy, connivance or unlawful agreement, any advantage against the City of Winter Haven or any person interested in the proposed Contract; and 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 Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Drug-Free Workplace The contractor/vendor certifies that it is a drug-free workplace and has a substance abuse policy in accordance with and pursuant to Section 440.102, Florida Statutes.

Affidavit Certification Immigration Laws City of Winter Haven will not intentionally award City contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 a(e) {Section 274a(e) of the IMMIGRATION AND NATIONALITY ACT ("INA"). City of Winter Haven may consider the employment by any contractor of unauthorized aliens a violation of Section 274a(e) of the INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY CITY OF WINTER HAVEN.** The contractor/vendor attests that they are fully compliant with all applicable immigration laws (specifically to the 1986 Immigration Act and subsequent amendments).

(Signed) _____
Name

Title

CITY OF WINTER HAVEN - TERMS AND CONDITIONS - GENERAL PROVISION CLAUSES
(06/16/2023 constr)

1) GENERAL CONDITIONS:

- a) Bidders are required to submit their proposals subject to and upon the following express conditions:
- b) Bidders shall thoroughly examine the specifications, instructions, all other Contract Documents, visit the site of this project (if applicable) and fully acquaint itself, at its own risk, with all conditions which may affect completion of this project and/or delivery of bid items. Prospective Bidders, subcontractors and suppliers are encouraged to attend a pre-bid conference and site visit if announced in the advertisement for bid and/or included in specifications. Work areas to be examined during the site visit may contain hazardous materials or conditions. Attendees should review the information and safety precautions set forth in the Bid Documents to determine for themselves appropriate protective clothing or equipment. Attendees further agree to indemnify and hold the City of Winter Haven harmless from any and all claims of personal injury arising from their participation in the site visit.
- c) These Terms and Conditions and any contract documents related hereto are subject and subordinate to any existing or future state, federal, or local law, regulation, or written policy, which may be applicable hereto, including any applicable building codes.

d) PUBLIC RECORDS

City and Consultant/Contractor agree that Consultant/Contractor shall comply with Florida's public records laws to specifically include the following:

Public Records. Consultant/Contractor agrees to:

- i) Keep and maintain public records required by the public agency to perform the service.
 - ii) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
 - iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant/Contractor does not transfer the records to the public agency.
 - iv) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Consultant/Contractor or keep and maintain public records required by the public agency to perform the service. If the Consultant/Contractor transfers all public records to the public agency upon completion of the contract, the Consultant/Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant/Contractor keeps and maintains public records upon completion of the contract, the Consultant/Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.
- e) **IF THE CONSULTANT/CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S/CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT 863-291-5600, records@mywinterhaven.com; 451 THIRD ST NW, WINTER HAVEN, FLORIDA 33881.**

If the Consultant does not comply with a public records request, City shall enforce the contract provisions which may include immediate termination of contract.

- f) It shall be understood and agreed that by the submission of a proposal, the Bidder, if awarded a contract, shall save harmless and fully indemnify the City and any of its officers, or agents from any and all damages that may, at any time, be imposed or claimed for infringement of any patent right, trademark, or copyright of any person or persons, association, or corporation, as the result of the use of such articles by the City, or any of its officers, agents, or employees, and of which articles the Contractor is not the patentee, assignee, licensee, or lawfully entitled to sell same.
- g) It is the intent of the City of Winter Haven that this Invitation to Bid promotes competitive bidding. It shall be the bidder's responsibility to advise Procurement at the address noted in the solicitation, if any language, requirements, etc. inadvertently limits the requirements stated in this Invitation to Bid to a single source. Such notification must be received in writing by Procurement not later than ten (10) days prior to the bid opening date.
- h) Bidders must possess any applicable business, contractor, or occupational licenses at the time of submission of the Bid. The City may request proof of such licensure. Bidders shall also obtain all permits required for this project.
- i) The City shall be entitled to rely on the written representations of the Bidder. No claims shall be paid by the City unless in writing and approved by the City. Additionally, sovereign immunity is not waived as to any verbal representations or comments made by the City.
- j) Unless detailed elsewhere in the bid documents, proof of insurance naming the City as an additional insured shall be required of the successful bidder (on any project requiring work, labor, and/or installation on City property) with the following minimum coverage: workers compensation, general liability, and automobile insurance in an amount and form acceptable to the City, with limits of no less than one-million dollars.

2) DEFINITIONS

Whenever used in any of the Contract Documents, the following meanings shall be given to the terms herein defined:

- a) **ACCEPTANCE:** The Seller shall be bound by the Purchase Order and its terms and conditions when it delivers the goods ordered or renders the services ordered by the City.
- b) **APPLICABLE LAW:** Any contract entered into pursuant to this bid shall be construed in accordance with the laws of the State of Florida. Venue for any action or proceeding concerning this contract shall be in the State Courts of Polk County, Florida.
- c) **CHANGES:** The City, without invalidating the Contract, may order changes, including additions, deletions, or modifications. The Parties recognize that said changes may affect price and time for performance, in which event appropriate adjustments will be considered. All such changes in the work shall be authorized in writing, signed by the City Manager or his designee, or the Procurement Manager in a manner consistent with contract documents. The price and the time for performance may be changed only by Change Order Request. By written instructions to the Contractor, the City may make minor changes in the work which are consistent with the purpose of the work and which do not change the contract price or time for completion. Procurement is to be notified of any proposed changes in: (a) materials used, (b) manufacturing process, or (c) construction. However, changes shall not be binding upon the City unless evidenced by a Change Order Request issued and signed by the Procurement Manager.
- d) **CITY:** The City of Winter Haven, Florida or its authorized representative.
- e) **CONTRACT:** The Contract executed by the City and the Contractor, and shall include all Contract and Bid Documents.

- f) **CONTRACTOR:** The successful bidder who enters into a Contract with the City to complete the project.
- g) **DEFAULT:** Default in promised delivery of supplies, completion of project, or failure to meet specifications authorizes the City to terminate the Contractor's right to proceed with the order/work by giving the Contractor written notice. The defaulting Contractor may, at the discretion of the City, be charged the increase in costs of obtaining the goods/services elsewhere.
- h) **DOCUMENTS:** The Bid Documents consist of the Invitation to Bid, Terms and Conditions, Construction Agreement, Contract Bond, Special Provisions, Specifications, Technical Specifications, Proposal and Bid Form, Engineering Plans or Drawings prepared for a project, Addenda issued during the bidding period, and Change Orders issued after the Contract is let.
- i) **INDEMNIFICATION:** As specified in the bid documents.
- j) **INSPECTION:** The goods and services purchased are subject to the inspection and approval of the initiating department. The City reserves the right to reject goods and services which do not conform to provisions of the Purchase Order.
- k) **INSURANCE:** As specified in the bid documents.
- l) **LIMITATION ON MUNICIPAL INDEMNITY:** To the extent that the contract or agreement calls for the City to indemnify any party thereto, the following sentence shall be appended to the indemnity and shall control the indemnity as if set forth therein:
 - i) "Provided, however, that regardless of whether any such obligations incurred hereunder are based on tort, contract, statute, strict liability, negligence, product liability or otherwise, the obligations of the City of Winter Haven under this indemnification provision shall be limited in the same manner that would have applied if such obligations were based on, or arose out of, an action at law to recover damages in tort and were subject to section 768.28, Florida Statutes, as that section existed at the inception of this Contract or Agreement." Provided further, no waiver of the City's sovereign immunity is intended to be made herein.
 - ii) The addition of this language shall not be construed to create City indemnifications where none are expressly made in the terms and conditions of the contract or agreement.
- m) **ONLINE SOLICITATION:** The City utilizes an internet based ONLINE SOLICITATION SYSTEM at www.negometrix.com to post solicitation opportunities.
- n) **PLATFORM:** The City's internet based online solicitation system is identified as and located at <https://app.negometrix.com/buyer/690> (Provider). The Platform is utilized by the City and the Suppliers to:
 - 1) allow Suppliers to register and manage their company records;
 - 2) City posts and issues solicitation packages for Suppliers from inception to award of a solicitation;
 - 3) allows Suppliers to submit a response online, electronically, through the Platform;
 - 4) allows Suppliers to view all public record documents related to the Online Solicitation.

File Uploads - All electronic files uploaded must be in a common format accessible by software programs the City uses. Those common formats are generally described as Microsoft Word (.doc or .docx), Microsoft Excel (.xls or .xlsx), Microsoft Power Point (.ppt or pptx), or Adobe Portable Document Format (.pdf.). Suppliers will not secure, password protect or lock uploaded files; the City must be able to open and view the contents of the file. Suppliers will not disable or restrict the ability of the City to print the contents of an uploaded file. Scanned documents or images must be of sufficient quality, no less than 150 dpi, to allow for reading or interpreting the words, drawings, images or sketches. The City may disqualify any Submittal Response that does not meet the criteria stated in this paragraph.

- o) **STATEMENT OF ASSURANCE:** No bids submitted shall be considered unless the Bidder warrants that upon execution of a Contract with the City it will:

- i) not engage in employment practices that have the effect of discriminating against employees or prospective employees because of race, color, religion, sex, national origin, age, disability, or marital status
 - ii) will submit such reports as the City may thereafter require to assure compliance.
- p) **SUB-CONTRACTOR:** An individual, firm, company, corporation, association, society or group which enters into a contract with the Contractor to do a portion of the work on this project.
- q) **TITLE:** The risk of loss of goods covered by the Purchase Order shall remain with the Seller until the goods have been delivered to a designated site and actually received by the City. Any damage to the material and equipment, or loss of any kind, occasioned in transit shall be borne by the Seller.
- r) **WARRANTY:** The Contractor shall not incorporate in the work of a project any materials or equipment subject to a chattel mortgage, a conditional sales contract, or any other agreement permitting a Vendor to retain an interest. The Contractor shall warrant clear title to all materials and equipment incorporated in the work; when the project is completed, the Contractor shall deliver to the City the improvements it has incorporated free of any lien or claim. The provisions of this section shall be included in all contracts with Vendors and Sub-Contractors. Vendors who furnish materials without a formal contract shall be given notice by Contractor that this provision exists.

3) INTERPRETATIONS OR ADDENDA:

- a) No oral interpretation will be made to any Bidder as to the meaning of the Contract Documents or any part thereof--to include any error, omission, discrepancy or vagueness. Every request for such an interpretation shall be made in writing to the City Procurement Manager. Any inquiry received prior to the cut-off time and date for questions will be given consideration. Where necessary, interpretations made to a Bidder will be in the form of an Addendum to the Contract Documents, and when issued, will be on file in the office of Procurement. In addition, all Addenda will be posted for review by the General Public on the City e-procurement platform: <https://app.negometrix.com/buyer/690>
- b) A notification will be emailed to vendors who are registered for that particular bid on the Mercell platform.
- c) The City shall not be responsible for the safe delivery of the Addenda/email notification. It shall be the Bidders' responsibility to make inquiry as to the Addenda issued. All such Addenda shall become part of the Contract Documents and all Bidders shall be bound by such Addenda, whether received or not.

4) MANUFACTURER'S NAMES AND APPROVED EQUIVALENTS:

- a) Unless specifically set forth in the specifications, any manufacturer's names, trade names, brand names, information and/or catalog numbers listed in a specification are for information and not intended to unfairly limit competition. The bidder may offer any brand for which they are an authorized representative, which meets or exceeds the specification for any item(s). If bids are based on equivalent products, indicate on the bid form, the manufacturer's name and number. Bidder shall submit with their proposal descriptive literature, and/or complete specifications. Reference to literature submitted with a previous bid will not satisfy the provision. The bidder shall also explain in detail the reasons why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids which do not comply with these requirements are subject to rejection within the discretion of the City.
- b) **Alternate bids will not be considered unless alternate bids are specifically required by the technical specifications. (For purposes of these Terms and Conditions, Alternate bids shall mean any bid which deviates from the specific type of product; method of construction; or plans specified in the Invitation to Bid.)**

5) SAMPLES:

- a) Samples of products, when called for, must be furnished free of expense and may, upon request, be returned at the Bidder's expense. Each individual sample must be labeled with Bidder's name,

manufacturer's name brand name and number, bid number and item reference. Unsuccessful Bidders can reclaim samples upon payment of postage, delivery, or pick-up charges, if any. Successful Bidder's samples shall remain with the City until performance under the contract has been completed. If forwarding instructions, or pick-up, is not made by Bidder within ninety (90) days of the bid opening, the commodities shall be disposed of by the City.

6) PROTEST PROCEDURES:

The City of Winter Haven encourages prompt and fair handling of all complaints and disputes with the business community. In order to resolve disputed matters in an equitable manner without fear of retribution on the part of a vendor or person, the following shall apply:

- a) All formal Invitations To Bid shall include the following statement: **“NOTE: THE FAILURE TO FOLLOW THE BID PROTEST PROCEDURE REQUIREMENTS WITHIN THE TIME FRAMES PRESCRIBED HEREIN AS ESTABLISHED BY THE CITY OF WINTER HAVEN, FLORIDA, SHALL CONSTITUTE A WAIVER OF BIDDERS PROTEST AND ANY RESULTING CLAIMS.”**
- b) **RIGHT TO PROTEST:** Any aggrieved, actual or prospective bidder in connection with a solicitation or pending award of a bid or contract may protest to the Procurement Manager.
- c) **NOTIFICATION:** Procurement shall post all recommendations of award available for review by the General Public on the City's e-procurement platform: <https://app.negometrix.com/buyer/690>. A notification will be emailed to vendors who are registered for that particular bid on the platform.
- d) **INITIAL NOTICE:** Any person adversely affected by an intended decision or action with respect to the initial recommendation of award of any bid or action shall file with the City's Procurement Manager a written notice of intent to file a protest. For the purpose of computation, the initial notice of intent to file a protest must be received by the Procurement Manager no later than three o'clock (3:00) p.m. on the third (3rd) workday following the e-mailing date of the notice of the initial recommendation of award (excluding Saturdays, Sundays and legal City holidays). In addition, a non-refundable protest bond (the "Bond") in the amount of one thousand dollars (\$1,000.00) in the form of a cashier's check payable to the City of Winter Haven must be submitted with the initial notice of intent to file a protest. The initial notice of intent to file protest must be in writing and shall state the basis of the protest (recommendation of award protest or other) and clearly indicate that its purpose is to serve as the initial notice of intent to file a protest. Failure to clearly indicate its intent or failure to provide a Bond shall constitute a waiver of the right to seek any remedy provided under these protest procedures. Upon the timely receipt of an initial notice of intent to file a protest and the required Bond, the Procurement Manager shall toll (put on hold) any further actions related to the recommendation of award (except as noted below). Should the affected party decide to withdraw its initial notice of intent to file a protest during the tolled action the Bond will be refunded in full. This is the only reason the City will refund the Bond other than a finding in favor of the protestor.
 - i) If during tolled action, the City Manager determines that an Emergency Purchase is necessary, as defined in this Procurement Manual, action may be taken to secure the goods or services.
- e) **FORMAL NOTICE:** Any person who has filed an initial notice of intent to file a protest, as described above, shall file a formal written protest within ten (10) calendar days after the date of the filing of the initial notice of intent to file a protest. Any amendment to the formal written protest shall be in writing and received by the Procurement Manager within ten (10) calendar days of the date of the initial notice of intent to file a protest. No amendments to the protest will be allowed after the ten (10) calendar day period has expired. The formal written protest shall contain the following:
 - i) City bid number and/or title (if applicable).
 - ii) Name and/or address of the City department, division or agency affected (if known).
 - iii) The name and address of the affected party, and the title or position of the person submitting the protest.

- iv) A statement of disputed issues of material fact. If there are no disputed material facts, the written letter must so indicate.
 - v) Concise statement of the facts alleged and of the rules, regulations, statutes ordinances and constitutional provisions entitling the affected party to the relief requested.
 - vi) The statement shall indicate the relief to which the affected party deems himself/herself entitled.
 - vii) Such other information as the affected party deems to be material to the issue.
- f) **PROTEST MEETING:** The Procurement Manager will notify all parties and schedule a protest meeting. The protest will be presented to the Protest Committee, which shall be made up of three (3) members consisting of the Assistant to the City Manager or designee who will serve as the Chairperson, the Assistant Director of Financial Services or designee and the Procurement Manager or designee. The City Attorney or designee shall be present and act in an advisory capacity to the Protest Committee. The Protest Committee shall meet with the protesting party within fourteen (14) workdays (excluding Saturdays, Sundays and legal City holidays) of receipt of the formal written protest. The response time may be extended, if necessary. All affected parties will be notified of the location, date and time of the Bid Protest meeting and will be allowed the opportunity to make their presentation to the Bid Protest Committee. The parties may bring a representative if they so choose. The Procurement Manager or designee shall present the background for the protest to the Committee. The purpose of the protest meeting is: 1) to question and review the basis of the protest; 2) to evaluate the facts and merits of the protest and 3) gather information in order to submit a recommendation to the City Manager. The agenda for the protest meeting will be:
- i) The User Department will present the background as to why the recommendation for award was made or why the vendor was not selected.
 - ii) The protesting party or their representative will speak to how they were adversely affected by the decision of the City of Winter Haven.
 - iii) Any other affected parties or their representative will be given the opportunity for rebuttal and to present any facts that they deem are relevant to the protest.
 - iv) During the meeting, the Protest Committee may ask questions of all parties as necessary.
- g) The Protest Committee will render their recommendation in writing to the City Manager within five (5) workdays of the bid protest meeting. The City Manager may conduct an evidentiary hearing, if there are disputed issues of material fact. The City Manager will conduct a review and make a final written decision within ten (10) workdays after receipt of the recommendation; date of the hearing; or the review, whichever is later. The City Manager's decision shall be final and binding. No further protests of the action in question will be heard by the City.
- h) Any person who is aggrieved by the final and binding decision of the City Manager shall be entitled to a review of the final and binding decision by the 10th Judicial Circuit Court of Polk County, Florida by filing an appropriate petition with the Clerk of the Court within 30 calendar days following the rendering of the City Manager's final and binding decision.

7) PROPOSALS

- a) The Bid must contain a manual signature of an authorized representative of Bidder in the space provided on the proposal form. Each Bidder shall be responsible for the accuracy of his proposal. Bidders cannot obtain relief by pleading that it made an error in its bid.
- b) Submittals must be received no later than the time and date specified in the solicitation, and submitted via the e-procurement platform. No bid will be accepted after the specified deadline on the Merccell platform.
- c) The Procurement Manager may elect to cancel or postpone a bid at any time prior to the time and date set to open bids.
- d) Sealed bids, proposals, or replies received by the City pursuant to an Invitation to Bid are exempt from disclosure under s.119.07(1) and s.24(a), Art. I of the State Constitution until such time as the City

provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.

- e) If the City rejects all bids, proposals, or replies submitted in response to an Invitation to Bid and the City concurrently provides notice of its intent to reissue the Invitation to Bid, the rejected bids, proposals, or replies remain exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the City provides notice of an intended decision concerning the reissued Invitation to Bid or until the City withdraws the reissued Invitation to Bid. A bid, proposal, or reply is not exempt for longer than 12 months after the initial City notice rejecting all bids, proposals, or replies.
- f) Bid and Affidavit of Prime Bidder (which includes Non-Collusion; Drug-Free Workplace and Affidavit Certification Immigration Laws) should be submitted on the form furnished by the City and completed by the Bidder without additions, modifications, deletions, and erasures. Bids not submitted on attached bid form may be rejected. All corrections made by Bidder to their bid must be initialed. Each Bidder shall submit its proposal on the e-procurement platform as specified on the Invitation To Bid. It is the Bidder's responsibility to assure that its bid is submitted by the proper time of the bid opening. Bids which are not received, as set forth herein, may not be considered.
- g) Telegraph, telephone, e-mail, electronically transmitted, posted (USPS, FedEx, UPS, etc.) or facsimile (FAX) bids will not be considered. Bids may be modified provided such modification is submitted on the platform prior to the time and date set for the bid opening. Each Bidder shall be solely responsible for the costs associated with preparation and submittal of its bid.
- h) **BIDS RECEIVED AFTER THE TIME AND DATE SET FOR THE BID OPENING WILL NOT BE CONSIDERED.**

8) PRICES, TERMS, AND PAYMENT:

- a) Prices shall be firm and good for ninety (90) days after the bid opening and shall include all labor, materials, supplies, equipment, overhead, profit, insurance, applicable taxes, packing, shipping charges, and delivered to any point designated by the City.
- b) **Taxes:** (For purchase of products only) - Bids shall not include federal excise or state sales taxes in bid prices of products only as these are not applicable to municipalities.
- c) **Discounts:** Bidders may offer a cash discount for prompt payment; however, such discounts shall NOT be considered in determining the lowest net cost for bid evaluation purposes. Bidders are encouraged to reflect cash discounts in the unit prices quoted. Any discount offered shall allow no less than fifteen (15) days for payment.

9) SUBMITTING A "NO BID" OR A "NO CHARGE":

- a) Bidders who wish to not bid on some of the item(s) sought by this solicitation must mark those item(s) as "No Bid." However, if some of the item(s) are being offered at no charge, then bidders must mark those item(s) as "No Charge." Items that are left blank shall be considered a "No Bid" for that item, and the bid shall be evaluated accordingly.

10) MISTAKES; INACCURACIES; INCOMPLETE INFORMATION:

- a) Bidders are expected to examine the specifications, delivery schedule, bid prices, and all instructions pertaining to supplies and services. Failure to do so will be at bidder's risk.
- b) **In the purchasing of goods or supplies, without labor, where the bid contains a mistake in extension or total bid amount, the unit price will govern.** The City shall be entitled to presume that a mistake has been made where the unit price and total or extension do not equate.

- c) The City reserves the right to contact bidders, telephonically or in writing, to clarify inconsistent, inaccurate, or confusing information regarding the proposal submitted. As well, the City reserves the right to demand the execution or re-execution of the proposal, affidavit, or certification required to be accompanied with the bid proposal, when it appears to the City that the deficiency was an oversight in good faith. It shall be presumed that proposals submitted without signatures on the affidavit or on the proposal is non-responsive and shall not be considered for clarification or correction.

11) SAFETY STANDARDS:

- a) Unless otherwise stipulated in the bid, all manufactured items and fabricated assemblies shall comply with applicable requirements of federal, state, and local law, including, but not limited to the Occupational Safety and Health Act and REGULATIONS OR STANDARDS THEREUNDER.

12) INVOICING AND PAYMENT:

- a) The Contractor shall be paid upon submission of proper invoices to the City at the prices stipulated in the contract at the time the order is placed, after delivery and acceptance of the goods, less deductions, if any, within thirty (30) calendar days after approval of invoice by ordering department and the Finance Department of the City. If a cash discount is taken by the City on a prompt payment invoice, payment shall be made within the time specified, but not less than fifteen (15) days. Contractor(s) shall include the purchase order number on invoices for purchases against any contract resulting from this bid. An original and one (1) copy of the invoice shall be submitted. Failure to follow these instructions may result in delay in processing invoices for payment. In addition, the purchase order number must appear on bills of lading, packages, cases, delivery lists and correspondence. No overcharge will be paid. In the event the successful bidder submits an invoice with an overcharge, a credit memo must be submitted by the bidder to correct such overcharge. Any applicable discounts that apply as a result of this contract will be taken even though the allowable time has lapsed due to the time awaiting credit memorandums.

13) WITHDRAWAL OF PROPOSALS:

- a) A bidder may withdraw its proposal prior to the time fixed for the bid opening. A bidder may also withdraw its proposal if the City does not accept it within ninety (90) calendar days after the date fixed for the bid opening after proper written notification is received by Procurement. Notwithstanding any withdrawal, all bid documents received by the City shall remain the property of the City of Winter Haven.

14) REJECTION OF BIDS:

The City may reject a bid if:

- a) The Bidder mis-states or conceals any material fact in the bid, or if,
- b) The bid does not strictly conform to the law or the requirements (including the terms and conditions set forth herein) of the bid, or if,
- c) The Bidder's bid is submitted in a manner to limit competition.
 - i) Within applicable Spending Approval Thresholds, a Department Director, the Procurement Manager, the City Manager and the City Commission shall have the right to reject all bids and request the entire transaction be rebid in the best interests of the City. The City may also waive any minor informalities, irregularities or technicalities in any bid.

15) STATEMENT OF BIDDER'S QUALIFICATIONS:

- a) Each bidder shall, upon request of the City, submit a statement of the Bidder's qualifications, its experience record in furnishing a particular commodity or constructing any type of improvements embraced in the Agreement, its organization and equipment available for the work contemplated, and, when specifically requested by the City, appropriate financial information which would assist in

determining bidders ability and solvency to perform work contemplated by the Agreement. The Bidder may also be requested to furnish references which the City may use to verify claims of competency. The City shall have the right to take such steps as it deems necessary to determine the ability of the Bidder to perform its obligations under the Contract; and the Bidder shall furnish the City all such information and data for this purpose as it may request. The right is reserved to reject any Bid where an investigation of the available evidence or information does not satisfy the City that the Bidder is qualified to carry out properly the terms of the Contract.

16) AWARD OF CONTRACT:

Notwithstanding the provisions of the Local Preference Ordinance:

- a) The City reserves the right to award contract(s) to more than one Bidder, to split awards, to award contracts by item or group of items, to make partial awards, or to decrease or increase any or all quantities that is in the City's best interest.
- b) In evaluating and making any award of a bid to the lowest most responsive bidder, the City may take into consideration a bidder's previous work performance with the City based on information in completed City Contractor Evaluation Forms for a previous project and/or any negative feedback from references provided. Information on such completed City Contractor Evaluation Forms and/or negative references may be the basis for a decision by the City to either reject a bid or not award a bid as determined by the City in its best interests.
- c) The Bidder may qualify its bid for acceptance by the City on an "All or None" basis. An "All or None" basis bid must include all items upon which bids are invited. Bidders are hereby notified that a bid submitted on an "All or None" basis is at risk for rejection in instances where the City may deem it necessary to split or divide a project as set forth herein. Bidders shall denote on the front page of the bid proposal as to whether the bid is an "All or None" bid.
- d) A written award of acceptance or a signed Purchase Order mailed or otherwise furnished to the successful Bidder results in a binding contract without further action by either party. The signed Purchase Order authorizes the Bidder to submit the product(s).
- e) After issuance of a notice of intent to award and no protests having been timely filed, award shall be made to the lowest, responsive and responsible bidder (or as specified in the bid documents). Additional criteria as set forth in the ITB will be considered in the award of the bid. The lowest responsive and responsible bidder will be determined after evaluation of the bid by the user department/division and their consultants, when applicable. In determining the lowest responsive and responsible bidder, in addition to price, the following may be considered as criteria if noted in the bid documents:
 - i) Contractor evaluations – quality of performance on previous projects.
 - ii) Ability, capacity, equipment and skill of the bidder to fulfill the contract.
 - iii) Ability of bidder to fulfill the contract within the time specified, without delay or interference.
 - iv) Character, integrity, reputation, judgment, experience and efficiency of the bidder.
 - v) Previous compliance by the bidder with laws and ordinances relating to the contract.
 - vi) Sufficiency of the financial resources to fulfill the contract to provide the goods and/or services.
 - vii) Quality, availability and adaptability of the supplies or contractual services to the particular use required.
 - viii) Ability of the bidder to provide future maintenance and service, as required or needed.
 - ix) Number and scope of conditions attached to the bid.
 - x) City Commission shall make bid awards for purchases of \$50,000.00 or greater, if funds are budgeted and there is no successful bid protest. Work shall not begin until issuance of a Purchase Order, Notice to Proceed, or a contract is executed by the City Manager, as applicable.
- f) Prohibition Against Considering Social, Political or Ideological Interests in Government Contracting – F.S. 287.05701: 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.

17) OFFER EXTENDED TO OTHER GOVERNMENTAL ENTITIES:

- a) The City of Winter Haven encourages and agrees to the successful bidder extending the pricing, terms, and conditions of this solicitation and any resulting contract (if there is any such resulting contract) to other governmental entities at the discretion/option of the successful bidder.

18) LOCAL PREFERENCE ORDINANCE

- a) **THE CITY OF WINTER HAVEN, FLORIDA HAS ENACTED ORDINANCE NO. O-10-17, RELATING TO A POLICY OF LOCAL PREFERENCE IN CONJUNCTION WITH THE PURCHASE OF GOODS AND SERVICES;**
- b) Where competitive bids are received for the purchase, or contract for, personal property or contractual service, the city commission, city manager or purchasing agent may give local preference to local vendors as defined herein and shall implement such policy in the following manner:
- c) Except as exempted in this policy, local vendors, defined as any business having a physical location within the City of Winter Haven's utility service area at which employees are located and from which business is regularly transacted, shall be given preference in the purchasing of goods and services when bids are sought as follows:
 - i) When bids are received and the lowest bid price does not exceed \$15,000.00 and the vendor offering the low bid is located outside of the City of Winter Haven's utility service area, and the next lowest price is offered by a vendor located within the City of Winter Haven's utility service area and is within 6% of the lowest price offered, then the Winter Haven vendor shall be given the opportunity to match the lowest price offered, and if agreed to, the Winter Haven vendor will be awarded the bid as long as the Winter Haven vendor is otherwise fully qualified and meets all bid requirements as determined by the City, or
 - ii) When bids are received and the lowest bid price does not exceed \$25,000.00 and the vendor offering the low bid is located outside of the City of Winter Haven's utility service area, and the next lowest price is offered by a vendor located within the City of Winter Haven's utility service area and is within 5% of the lowest price offered, then the Winter Haven vendor shall be given the opportunity to match the lowest price offered, and if agreed to, the Winter Haven vendor will be awarded the bid as long as the Winter Haven vendor is otherwise fully qualified and meets all bid requirements as determined by the City, or
 - iii) When bids are received and the lowest bid price does not exceed \$50,000.00 and the vendor offering the low bid is located outside of the City of Winter Haven's utility service area, and the next lowest price is offered by a vendor located within the City of Winter Haven's utility service area and is within 4% of the lowest price offered, then the Winter Haven vendor shall be given the opportunity to match the lowest price offered, and if agreed to, the Winter Haven vendor will be awarded the bid as long as the Winter Haven vendor is otherwise fully qualified and meets all bid requirements as determined by the City, or
 - iv) When bids are received and the lowest bid price does not exceed \$150,000.00 and the vendor offering the low bid is located outside the City limits of Winter Haven, and the next lowest price is offered by a vendor located within the City of Winter Haven's utility service area and is within 3% of the lowest price offered, then the Winter Haven vendor shall be given the opportunity to match the lowest price offered, and if agreed to, the Winter Haven vendor will be awarded the bid as long as the Winter Haven vendor is otherwise fully qualified and meets all bid requirements as determined by the City, or
 - v) When bids are received and the lowest bid price does not exceed \$250,000.00 and the vendor offering the low bid is located outside of the City of Winter Haven's utility service area, and the next lowest price is offered by a vendor located within the City of Winter Haven's utility service area and

is within 2% of the lowest price offered, then the Winter Haven vendor shall be given the opportunity to match the lowest price offered, and if agreed to, the Winter Haven vendor will be awarded the bid as long as the Winter Haven vendor is otherwise fully qualified and meets all bid requirements as determined by the City, or

- vi) When bids are received and the lowest bid price exceeds \$250,000.00 and the vendor offering the low bid is located outside of the City of Winter Haven's utility service area, and the next lowest price is offered by a vendor located within the City of Winter Haven's utility service area and is within 1% of the lowest price offered, then the Winter Haven vendor shall be given the opportunity to match the lowest price offered, and if agreed to, the Winter Haven vendor will be awarded the bid as long as the Winter Haven vendor is otherwise fully qualified and meets all bid requirements as determined by the City.
- d) The provisions of this ordinance shall not apply to the purchasing of goods and/or services by the City of Winter Haven involving the following entities and/or situations as follows:
- i) Purchase and or sale of real property,
 - ii) Bids that meet the criteria of Florida Statute 255.0991, subsection (2), or are prohibited thereby,
 - iii) Bids for contracts that are being funded by an outside source or agency that does not allow for a local preference, or that stipulates the award criteria,
 - iv) Proposals related to Florida Statute 287.055 (Consultants Competitive Negotiation Act).
 - v) The purchase of personal property to the extent governed by Florida Statute 287.084.
 - vi) Any other purchases that are determined by the City to be exempt from the local preference policy established herein.

19) PERFORMANCE:

- a) Contractor shall keep the City advised at all times of status of order. Default in promised delivery of supplies, completion of project, or failure to meet specifications authorizes the City to terminate the Contractor's right to proceed with the order/work by giving the Contractor written notice, and to purchase supplies/services elsewhere, and charge full increase of cost and handling to defaulting Contractor.
- b) The Contract shall not be terminated nor the Contractor charged with liquidated damages (if otherwise provided for in the contract documents) because of any delays due to unforeseeable cause beyond the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the City, fires, floods, epidemics, strikes, (with which the Contractor has no direct connections), and unusually severe weather. The Contractor shall, within ten (10) calendar days from the beginning of such delay, notify the City, in writing, of the cause for the delay. If, in the opinion of the City, the failure of Contractor to perform the conditions of this contract is occasioned by or is the result of acts or events over which the Contractor has no control, said delay in performance may be excused.
- c) The Contractor shall take into account all contingent work which has to be done by other parties, arising from any cause whatsoever, and shall not plead it's want of knowledge of said contingent work as an excuse for delay in its work or for the non-performance thereof.

20) SERVICE AND WARRANTY:

- a) Unless otherwise specified, the Bidder shall define any warranty service and replacements that will be provided during and subsequent to this contract. Bidders must explain on an attached sheet to what extent warranty and service facilities are provided.

21) GOVERNMENTAL RESTRICTIONS:

- a) In the event any governmental restrictions may be imposed which would necessitate alteration of the materials, quality, workmanship or performance of the items offered on this proposal prior to their delivery, it shall be the responsibility of the contractor to notify Procurement immediately after learning of such restriction, including indicating in writing the specific regulation which required an alteration. The City

reserves the right to accept any such alteration, including any price adjustments occasioned thereby, or to cancel the Contract at no expense to the City.

22) PRICE AND ADJUSTMENTS:

- a) Any price decrease effectuated during the Contract period, either by reason of market change or on the part of the Contractor to other customers, shall be passed on to the City.

23) EQUAL EMPLOYMENT OPPORTUNITY:

- a) No bids submitted shall be considered unless the Bidder warrants that upon execution of a Contract with the City, it will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, sex, national origin, age, disability, or marital status, and will submit such reports as the City may thereafter require to assure compliance.

24) OCCUPATIONAL HEALTH AND SAFETY (FLORIDA RIGHT-TO-KNOW-LAW):

- a) In compliance with Chapter 442, Florida Statutes, any item delivered from a Contract resulting from this bid, which contains a toxic substance as listed on the FLORIDA SUBSTANCE LIST, shall be accompanied by a Material Safety Data Sheet (MSDS) which product shall be labeled as such as well. These MSDS shall be forwarded to: City of Winter Haven, Human Resources Division, P.O. Box 2277, Winter Haven, Florida 33883-2277.
- b) The MSDS shall be maintained by the City and must include the following information:
 - i) The Division/Department to which the material was shipped.
 - ii) The chemical name and the common name of the toxic substance.
 - iii) The hazards or other risks in the use of the toxic substance, including:
 - (1) The potential for fire, explosion, corrosivity, and reactivity;
 - (2) The known acute health effects and chronic health effects of risks from exposure to the toxic substance, including those medical conditions which are generally recognized as being aggravated by exposure to toxic substance; and
 - (3) The primary routes of entry and symptoms of overexposure.
 - iv) 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.
 - v) The emergency procedures for spills, fire, disposal, and first aid.
 - vi) A description of the known specific potential health risks posed by the toxic substance, which description is written in lay terms and is intended to alert any person who reads this information.
 - vii) 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.

25) TIE BIDS:

- a) The Procurement Manager shall make award of all tie bids. In accordance with Florida law, a firm which is a drug-free workplace shall have precedence. In the event that both or neither firm is a drug-free workplace, tie bids may be awarded to one of the bidders based on any of the criteria listed below (in descending order), or as otherwise directed by the Procurement Manager to comply with all of the provisions of the Purchasing ordinance:
 - i) Where tie bids are between bidders, one of which is a business whose principal place of business is located in the Winter Haven utility service area and the other bidder is not, the recommended award shall be to the bidder located in the Winter Haven utility service area.

- ii) Where tie bids are between bidders, one of which is a business whose principal place of business is located in Polk County and the other bidder is not, the recommended award shall be to the bidder located in Polk County.
- iii) Availability or completion period.
- iv) Previous vendor record on similar projects or requirements.
- v) Business location closest to Winter Haven.

26) *NOTICE*

- a) **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 construction or repair of a public building or public work, may not submit bids on leases of real property to 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.**
- b) **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 \$1 million or more if that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, the company: (a) Is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, or is engaged in a boycott of Israel;**
- c) **Any contract for goods and/or services in and amount of \$1,000,000.00 or more will be subject to termination by the City if the contractor is found to have been placed on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Sector List, or been engaged in business operations in Cuba or Syria or has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel.**

27) UNAUTHORIZED ALIEN(S) / E-VERIFY

- a) The VENDOR agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this solicitation. The City shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the City.
- b) By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." This includes but is not limited to utilization of the E-Verify System, a U.S. Immigration and Customs Enforcement program, to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. 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 20 calendar days after the date of termination. 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 year after the date of termination.
- c) Register online for E-Verify at <https://www.vis-dhs.com/EmployerRegistration> which provides instructions for completing the registration process. At the end of the registration process, you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you as the employer, the SSA, and DHS. An employee who has signatory authority for the employer can sign the MOU. Employers can use their discretion in identifying the best method by which to sign up their locations for E-Verify. To find out more about E-Verify, please visit www.dhs.gov/e-verify or contact USCIS at **1-888-464-4218**.

CONSTRUCTION-RELATED CLAUSES

The Construction-Related Clauses shall apply to all work done on this project by either the Contractor or by any Sub-Contractor engaged to do a portion of the work. The Contractor shall supply each of its Sub-Contractors with a copy of all of the Terms and Conditions and all other contract documents.

28) ERRORS:

- a) If either the Contractor or its project superintendent discovers any error, omission, or vagueness in the Contract Documents, it shall report this discovery to the City immediately upon learning of same. Work done after such a discovery and before the City corrects the error, omission, or vagueness shall be at the Contractor's risk.

29) UNIT PRICES:

- a) The unit prices for each of the several items in the proposal of each Bidder shall include its pro rata share of overhead so that the sum of the products obtained by multiplying the quantity shown for each item by the unit price bid represents the total bid. Any bid not conforming to this requirement may be rejected as non-responsive. The special attention of all Bidders is called to this provision for should conditions make it necessary to revise the quantities, no limit will be fixed for such increased or decreased quantities nor extra compensation allowed, provided the net monetary value of all such additive and subtractive changes in quantities of such items of work (i.e., difference in cost) shall not increase or decrease the original contract price by more than twenty-five (25%) percent for work not covered in the Drawings and Technical Specifications.

30) PERMIT FEES:

The successful bidder shall pull all required building permits, pay fees, and shall submit for reimbursement. These fees shall not be included in the bid. These fees will be reimbursed, at cost, as a separate pay item. Permit fee receipt shall be submitted as part of invoice.

31) SALES TAX SAVINGS PROCEDURE / OWNER DIRECT PURCHASES:

This procedure will be in accordance with Florida Administrative Code 12A-1.094 Public Works Contracts, and Florida Statute 212.08(6).

The **City** reserves the right to purchase all equipment, materials, and supplies that are components of a construction bid, but generally will purchase only major equipment, materials, and supplies. When the **City** exercises this option the following procedures shall be used for ordering, receiving, and paying for the component(s) selected.

a) BID PRICES

- i) The bid must include the appropriate Florida State sales tax for all components of the bid that makes up the lump sum amount submitted.

b) ORDERING

- i) The **City** may exercise its right to direct purchase any component of the bid in order to save the sales tax on the selected component, which may include equipment, materials, and supplies contained within the bid. The items selected will then be purchased directly from the vendors that the contractor used to submit their bid to the **City** and therefore made a part of the construction contract executed with the **City**. The **Contractor** shall fully cooperate with the **City**, providing information for the preparation of purchase orders for these direct purchases, monitoring deliveries, and approving invoices.
- ii) Following receipt of a sales tax savings form from the contractor, the **City** will issue a purchase order,

and certificate of entitlement, to the material supplier for the component selected for owner direct purchase (ODP). The purchase order, and certificate, will be sent to the **Contractor**, who shall verify that the order was issued correctly, and if so, send to the material supplier. A separate form shall be used for each item or group of items selected for ODP.

iii) **The contract will be reduced by the amount of all construction materials plus taxes selected by the City, for direct purchase.**

c) EXPEDITING

i) The **Contractor** shall be responsible for expediting delivery to ensure that material is received on time to maintain the construction schedule.

d) RECEIPT

i) The **Contractor** shall sign for and receive all materials; and retain packing slips and delivery tickets for all materials delivered for the project. The **Contractor** and subcontractors shall be responsible for the safe care, custody and control of all materials.

e) BILLINGS / PAYMENTS

i) All ODP's shall be billed to the **City** in care of the **Contractor**.

ii) The **Contractor** shall check all invoices for accuracy and completeness when received. The **Contractor** shall be responsible for immediately notifying the supplier of any billing errors and requesting corrected invoices as necessary.

iii) Receipts and invoices must be processed in a timely manner in order to take advantage of any discount payment terms and all discounts shall accrue to the **City**.

iv) The **Contractor** shall prepare a direct purchase report for the **City** upon submittal of each pay request.

f) OTHER CONSIDERATIONS

i) The **City** shall have title to all items of which any payment has been made under these provisions.

ii) The **City** shall have the assumption of the risk of damage or loss at the time of the purchase.

iii) The selection of ODP for any item(s) contained within the bid does not relieve the **Contractor** from liability for that item as it may related to the quantity ordered, the maintenance and care of the item when delivered, or the installation or incorporation of the item in the work to be performed in accordance with the contract documents.

iv) The **City** shall have access to all necessary records in order to conduct audits to determine the correctness and accuracy of any item purchased in accordance with these provisions.

v) To be entitled to purchase materials tax exempt for a public works project, a governmental entity is required to issue a Certificate of Entitlement to each vendor and to the governmental entity's contractor to certify that the tangible personal property purchased from that vendor will go into or become a part of a public works.

32) INSPECTION

a) For the City, the Contractor shall provide facilities for safe and convenient access to any completed work, work-in-progress, and preparation for work to be done.

b) The City shall examine the work to assure its conformity with the Contract Documents, including Plans, Specifications, and requirements. The City will assist the Contractor in correctly interpreting the Plans, Specifications, and other Contract Documents, but this assistance will not require that the City give early notice of rejection of work or materials.

i) The examination and/or assistance by the City shall not relieve the Contractor of the Contractor's responsibility of any actions it may take or neglect by Contractor or its Sub-Contractors in performing

the work.

- ii) The City will not be responsible for Contractor's means, methods, techniques, sequences of starting, stopping, or resuming work, or procedures of construction, or the safety precautions and programs incident thereto, and the City will not be responsible for Contractor's failure to perform the work in accordance with the Contract Documents.
 - iii) The City will not be responsible for the acts or omissions of Contractor or any Sub-Contractors, or any of Contractor's agents or employees.
 - iv) Neither the City's authority to act under these Contract Documents, nor any decision made by the City in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the City to Contractor, any Sub-Contractor, any materialman, fabricator, supplier or any of their agents, or employees or any other person performing any of the work.
- c) The City shall retain authority to make a final decision in any matter which involves interpretation of Plans and other Contract Documents, including: quality and quantities of materials used, construction and progress of work, work completed and estimates.
 - d) If the City finds any materials or work faulty, it shall so inform the Contractor; the Contractor shall replace, at its expense, and as soon as possible, said faulty materials or work. If the Contractor does not replace the faulty materials or work within a reasonable length of time, the City may stop the work, furnish materials and men to replace the faulty work, and deduct the expense incurred by the City from the amount due, or which will become due the Contractor.
 - e) The City may reinspect work which has been passed and it shall be permitted to reject faulty work which existed but was not apparent at the time of a previous inspection.
 - f) The City may order the Contractor to uncover work which has been covered without the consent of the City. The Contractor shall bear the expense of the extra work. The City may order the Contractor to uncover work which has been covered with the consent of the City. If the questioned work is found to be without fault, the Contractor may charge the City for this extra work; if the questioned work is found faulty, the Contractor shall bear the expense of the extra work.

33) SUPERVISION:

- a) The Contractor shall maintain a competent superintendent, who fulfills the City's requirements, on this project at any time work is in progress and furnish efficient and skilled supervision of all work. The Contractor may change project superintendents only if the change is approved by the City or if the Contractor discharges the project superintendent for cause. If the Contractor is not present, the City shall be permitted to consider the project superintendent the Contractor's agent; and the City shall consider instructions given to the superintendent as binding as instructions given to the Contractor.

34) ACCIDENT PREVENTION:

- a) No laborer or mechanic employed in the performance of this Contract shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety as determined under construction safety and health standards promulgated by the Secretary of Labor.
- b) The Contractor shall exercise proper precautions at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of Contractor's prosecution of the work. Machinery, equipment and all hazards shall be guarded in accordance with safety provisions to the extent that such provisions are not in conflict with applicable laws.
- c) 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 and in the course of employment on work under the Contract. The Contractor shall promptly furnish the City with these reports.

35) CLAIMS FOR EXTRA PAY:

- a) If the City issues written instructions which the Contractor believes will involve extra work and cost, the Contractor may assert a claim for extra cost only if it gives written notice to the City Manager or his designee, or the Procurement Manager immediately after it receives the instructions and before it complies with those instructions. **The Contractor may assert a claim for extra cost without advance written notice only if immediate compliance with the instructions given by the City is necessary to meet an emergency which endangers life or property.** If the Contractor asserts a claim for extra pay, the City may cancel the instructions and deny the claim or follow the procedure described in section "2) c) CHANGES". The cost or credit to the City from a change in the work shall be determined from price information in the Bid Form, or by a lump sum price agreement with the Contractor, or a price based on the Contractor's cost for labor, materials, equipment, supervision, and insurance plus fifteen (15) percent for profit and overhead, or as the parties otherwise agree.

36) FITTING AND COORDINATION OF THE WORK:

- a) The Contractor shall be responsible for the proper fitting of all work and for the coordination of the operations of all trades, Sub-Contractors, or material-men engaged upon this Contract. The Contractor shall be prepared to guarantee to each of its Sub-Contractors the locations and measurements which they may require for the fitting of their work to all surrounding work.

37) SUB-CONTRACTING:

- a) Nothing in the Bid Documents shall be construed to create a contractual relationship between the City and a Sub-Contractor doing a portion of the work on this project, nor shall it create any obligation on the part of the City to pay or see to the payment of any moneys due any such Sub-Contractor. The City shall hold the Contractor responsible for the work done by any of its Sub-Contractors. For any portion of the work to be sub-contracted, a list of the Sub-Contractors shall be furnished to the City prior to the commencing of this project(s).

38) MUTUAL RESPONSIBILITY OF CONTRACTORS:

- a) If, through acts or neglect on the part of the Contractor, any other Contractor or any Sub-Contractor shall suffer loss or damage on the work, the Contractor shall settle with such other Contractor or Sub-Contractor by agreement or arbitration, if such other Contractor or Sub-Contractor will so settle. If such other Contractor or Sub-Contractor shall assert any claim against the City on account of any damage alleged to have been so sustained, the City will notify this Contractor, who shall defend at Contractor's own expense any suit based upon such claim, and, if any judgment or claims against the City shall be allowed, the Contractor shall pay or satisfy such judgment or claim and pay all attorney's fees, costs, and expenses in connection therewith.

39) LINES AND GRADES:

- a) The City shall establish a base line and a bench mark at each location of any separate portion of this project. The Contractor shall reference all base lines, bench marks, and property monuments and re-establish in their original state any which are disturbed during work on this project. The Contractor shall verify in the field all base lines, elevations, and dimensions shown on the plans, report any error, omission, or discrepancy it discovers, and assume full responsibility for its grades.

40) ASSIGNMENT OR NOVATION:

- a) The Contractor shall not assign or transfer, whether by assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the written consent of the City; provided, however, that assignments to banks, trust companies or other financial institutions, of payments due to Contractor, may be made without the consent of the City.

41) OTHER CONTRACTS:

- a) The City may award, or may have awarded other contracts for additional work, and the Contractor shall cooperate fully with such other Contractors, by scheduling its own work with that to be performed under other Contracts as may be directed by the City. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor as scheduled, on this project or any other project.

42) PATENT INFRINGEMENT:

- a) The Contractor shall protect and indemnify the City, its officers, its agents, and its employees and hold all free of liability and unharmed by any suit or claim which results from the incorporation of any patented or unpatented invention, device, process, or system in the work of this project.

43) SHOP DRAWINGS:

- a) Where a portion of this project requires the use of shop drawings, the Contractor shall submit four copies of these drawings and a schedule of the required work to the City. The City shall review these drawings promptly and note any corrections required to meet the intent of the plans and specifications. The Contractor shall make the noted revisions and submit four copies of the revised drawings to the City. The City's approval of the shop drawings shall not relieve the Contractor of its responsibility for any error in the shop drawings and any deviation from the plans and specifications.

44) PLANS AND SPECIFICATIONS:

- a) The City shall furnish the Contractor one set of the plans and specifications when the City notifies the Contractor to begin work. The Contractor shall keep this set available at the project site at all times. If the Contractor wants more than one set of plans and specifications, it may obtain these if he pays the cost of reproduction.
- b) The original plans and specifications, and any copies of these plans and specifications the City furnishes the Contractor, shall remain the property of the City. They shall not be used on work other than this project. The City may ask the Contractor to return all copies of the plans and specifications when the work is completed. The Contractor shall coordinate the requirements of the plans, specifications, and all other Contract Documents prepared for this project.

45) SUB-SURFACE DATA:

- a) The City does not guarantee the accuracy of the sub-surface data shown on the plans. Where it will influence its execution of the Contract, the Contractor shall, with its own resources, verify ground water elevations, soil conditions, wetland jurisdictional boundary, the location of underground structures, sewers, water pipes, gas lines, telephone cables, electric cables, and conduits.

46) FACILITIES, MATERIALS, AND EMPLOYEES:

- a) Unless it is otherwise stipulated in the Contract Documents, Contractor shall be responsible for supervision, electric power, water and any other facilities required to complete this project.
- b) The Contractor shall incorporate in the work of this project only materials, equipment, and methods which conform to applicable City specifications.
- c) Unless otherwise specifically provided for in the Technical Specifications, all workmanship, equipment, materials, and articles incorporated in the work shall be new and the best grade of the respective kinds for the purpose. Where equipment, materials, articles or workmanship are referred to in the Technical Specifications as "equal to" any particular standard, the City shall decide the question of equality.

- d) The Contractor shall furnish to the City for approval the manufacturer's detailed specifications for all machinery, mechanical and other special equipment, which it contemplates installing, together with full information as to type, performance characteristics, and all other pertinent information as required, and shall likewise submit for approval, as required, full information concerning all other materials or articles which it proposes to incorporate in the work.
- e) Machinery, mechanical and other equipment, materials or articles installed or used without such prior approval shall be at the risk of subsequent rejection.
- f) Materials specified by reference to the number or symbol of a specific standard, such as an A.S.T.M. Standard, a Federal Specification or other similar standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Invitation to Bid, except as limited to type, class or grade, or modified in such reference. The Standards referred to, except as modified in the Technical Specifications shall have full force and effect as though printed therein.
- g) The Contractor shall use only employees with skills at least equal to the requirements of their work assignment on this project.

47) TESTS AND INSPECTIONS OF MATERIALS AND EQUIPMENT:

- a) Unless it is otherwise stipulated in the Invitation to Bid, Terms and Conditions, or Special Provisions, if any, the tests and inspections of materials and equipment incorporated in the work of this project shall be made at the Contractor's expense by independent laboratories and agencies approved by the City.
- b) The Contractor shall instruct any laboratory or agency making required tests to furnish the City with a copy of the report made on each test and inspection.

48) PROTECTION OF WORK, MATERIALS, PROPERTY, AND THE PUBLIC:

- a) The Contractor shall protect the work of this project and the stored materials not yet incorporated in the work, on site or off site, from injury, damage, and loss. The Contractor shall protect and save from damage all public and private property adjacent to the project site. The Contractor shall guard all excavations by appropriate means; and shall protect the public from hazard. Receipt of progress payment(s) shall not affect the obligations of the contractor under this provision.

49) PROTECTION OF MONUMENTS:

- a) The Contractor shall protect and save from damage or movement all survey monuments, permanent reference monuments, property monuments, reference points, and bench marks. If the work demands the temporary removal of such a monument, point, or bench mark, the Contractor shall notify the City who shall reference the monument, point, or bench mark and reset it without cost to the Contractor. If the Contractor damages, moves, or destroys a monument, point, or bench mark, the City may restore such by a registered surveyor at the Contractor's expense and withhold the cost from money otherwise due the Contractor from the City.

50) USE OF PREMISES:

- a) The Contractor shall confine its equipment, storage or materials, and construction operations to the Contract Limits as shown on the Drawings and as prescribed by ordinances or permits, or as determined by the City, and shall not unreasonably encumber the site or public right-of-way with its materials and construction equipment.

51) PROGRESS OF WORK:

- a) If the Contractor fails to proceed with the diligence required to complete the project within the contract time or within an extension of that time the City may grant, the City may terminate the Contractor's right

to proceed with the work by giving it written notice.

- b) If the City terminates the Contractor's right to proceed, the City may choose to proceed with the work, take possession of the materials on the project site, incorporate these materials in the work, and hold the Contractor and its sureties liable for payment of excess costs the City may incur, or demand the surety to complete the project as permitted under the terms and conditions of the performance bond. The execution of this Contract by Contractor shall constitute an acknowledgment of the Surety's consent to this provision.
- c) If the City does not terminate the Contractor's rights to proceed, the Contractor shall proceed with the work; in this event, it will be impossible to determine the actual damage the delay has caused. In lieu of payment of actual damage, the Contractor and its sureties shall be liable for the payment of the fixed, agreed, and liquidated damages as may be set forth in the Contract Documents for each calendar day of delay beyond the contract time.

52) REQUESTS FOR SUPPLEMENTARY INFORMATION:

- a) Whenever verbal/written request for interpretations of Contract Documents are made known at a pre-bid conference for a construction project, these requests shall be answered by way of written Addenda. All Addenda will be sent to each person holding Contract Documents. The City shall not be responsible for the safe delivery of the Addenda. It shall be the Bidder's responsibility to make inquiry as to the Addenda issued. All such Addenda shall become part of the Contract Documents and all Bidders shall be bound by such Addenda, whether received or not. It shall be the responsibility of the Contractor to make timely requests of the City for any additional information not already in its possession which should be furnished by the City under the terms of this Contract, and which it will require in the planning and execution of the work. Such request may be submitted from time to time as the need is approached, but each shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Each request shall be in writing, and list the various times and the latest date by which each will be required by the Contractor. The first list shall be submitted, within two weeks after Contract award and shall be as complete as possible at that time. The Contractor shall, if requested, furnish promptly any assistance and information the City may require in responding to these requests of the Contractor. The Contractor shall be fully responsible for any delay in its work or to others arising from its failure to comply fully with the provisions of this section.

53) DISPUTES:

- a) All disputes arising under this Contract or its interpretation, except those disputes covered by FEDERAL LABOR-STANDARD PROVISIONS (if applicable), whether involving law or fact or both, or extra work, and all claims for alleged breach of contract shall within ten (10) calendar days of commencement of the dispute be presented by the Contractor to the City for decision. All papers pertaining to claims shall be filed in quadruplicate. Such notice need not detail the amount of the claim but shall state the facts surrounding the claim in sufficient detail to identify the claim, together with its character and scope. In the meantime, the Contractor shall proceed with the work as directed. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) calendar days of its commencement, the claim will be considered only for a period commencing ten (10) calendar days prior to the receipt by the City of notice thereof.
- b) The Contractor shall submit in detail its claim and proof thereof. Each decision by the City will be in writing and will be mailed to the Contractor by registered or certified mail, return receipt requested, directed to Contractor's last known address.
- c) If the Contractor does not agree with any decision of the City, it shall in no case allow the dispute to delay the work but shall notify the City promptly that it is proceeding with the work under protest and Contractor may then except the matter in question from the final release.

54) CONTRACTOR PROVIDED INSURANCE

a) **For contracts not exceeding \$500,000.00 dollars the following insurance requirements shall be met:**

i) The Contractor shall, at its own expense, procure and maintain, with insurers acceptable to the City (Owner), the types and amounts of insurance conforming to the minimum requirements set forth herein. The Contractor shall not commence work until the required insurance is in force and evidence of insurance acceptable to the Owner has been provided to and approved by the Owner. As evidence of compliance with the insurance required herein, Contractor shall furnish Owner with (a) a fully completed satisfactory Certificate of Insurance (ACORD Form 25 or equivalent) evidencing all coverage required herein, with a copy of the actual notice of cancellation endorsement(s) as issued on the policies and a copy of the actual additional insured endorsement as issued on the Commercial General Liability policy, signed by an authorized representative of the insurer(s) verifying inclusion of Owner's officials, officers and employees as Additional Insureds in the Commercial General Liability coverage; (b) the original of the policy(ies); or (c) other evidence satisfactory to Owner. Such evidence shall include thirty (30) days written notice of cancellation to the Owner for all coverage. With respect to Property Insurance, an appropriate Evidence of Property Insurance form (ACORD Form 28 or equivalent), or a copy of the policy itself shall be satisfactory evidence of insurance. Until such insurance is no longer required by this Contract, the Contractor shall provide the Owner with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.

(1) Workers' Compensation Insurance

(a) Such insurance shall be no more restrictive than that provided by the Standard Workers' Compensation Policy, as filed for use in Florida by the National Council of Compensation Insurance, without restrictive endorsements. In addition to coverage for the Florida Workers' Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law. The policy must be endorsed to provide the Owner with thirty (30) days' notice of cancellation. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

(i) Part One:	"Statutory"	
(ii) Part Two:	\$500,000	Each Accident
	\$500,000	Disease-Policy Limit
	\$500,000	Disease-Each Employee

(b) The policy must be endorsed to waive the insurer's right to subrogation against Owner and its officials, officers and employees in the manner which would result from the attachment of National Council on Compensation Insurance's (NCCI) Waiver of Our Right to Recover From Others' Endorsement (Advisory Form WC 00 03 13) with Owner and its officials, officers and employees scheduled thereon.

(2) General Liability Insurance

(a) Such insurance shall be no more restrictive than that provided by the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those required by ISO or the State of Florida or those described below. The policy must be endorsed to provide the Owner with thirty (30) days' notice of cancellation. The coverage may include restrictive endorsements which exclude coverage for liability arising out of:

- (i) Mold, fungus, or bacteria
- (ii) Terrorism
- (iii) Sexual molestation

- (b) Unless the Work under this Contract includes activities which would be the subject of such exclusions, the coverage may also exclude coverage for liability arising out of:
 - (i) Architects & engineers professional liability
 - (ii) Exterior Insulation and Finish Systems (EIFS)

The Owner and the Owner's officials, officers and employees shall be included as an "Additional Insured" on a form no more restrictive than ISO Form (CG 20 10), Additional Insured - Owners, Lessees, or Contractors.

- (c) The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:
 - (i) \$1,000,000 General Aggregate
 - (ii) \$1,000,000 Products/Completed Operations Aggregate
 - (iii) \$1,000,000 Personal and Advertising Injury
 - (iv) \$1,000,000 Each Occurrence

(3) Automobile Liability Insurance

- (a) Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of the standard Business Auto Policy (ISO Form CA 00 01) without restrictive endorsements, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of the work. The policy must be endorsed to provide the Owner with thirty (30) days' notice of cancellation. Such insurance shall not be subject to any aggregate limit and the minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

- (i) \$1,000,000 Each Occurrence - Bodily Injury and Property Damage Combined

In the event that the proposer/bidder does not own any vehicles that are used in the business, or titled in the business name, then the business auto requirement can be satisfied with a hired and non-owned automobile liability extension being added to the commercial general liability.

(4) Property Insurance

- (a) If this Contract includes: (1) construction of a new above-ground structure or structures, or (2) any addition(s), improvement(s), alteration(s) or repair(s) to an existing above-ground structure or structures, or (3) the installation of machinery or equipment into an existing structure or structures, the Contractor shall provide, in a policy acceptable to Owner, "all risk" (i.e., Special Form) property insurance on any such construction, additions, machinery or equipment. The amount of the insurance shall be no less than the estimated replacement value at the time of the Owner's final acceptance of such new structures, addition(s), improvement(s), alteration(s), repair(s), machinery or equipment. The coverage shall not be subject to any restriction with respect to occupancy or use by the Owner and, subject to thirty (30) days prior written notice to the Owner, shall remain in full effect until final acceptance by the Owner. The policy must be endorsed to provide the Owner with thirty (30) days' notice of cancellation. The Owner shall be an insured on this policy. The maximum deductible shall be \$500 per occurrence.
- (b) If this contract includes: (1) construction of a new above-ground structure or structures located within a Special Flood Hazard Area (100 year floodplain), or (2) any addition(s), improvement(s), alteration(s) or repair(s) to an existing above-ground structure or structures located within a Special Flood Hazard Area (100 year floodplain), Flood insurance must also be provided on such new structure(s), addition(s), improvement(s), alteration(s) or repair(s) for the lesser of: (1) the estimated replacement value at the time of the final acceptance of

such new structure(s), addition(s), improvement(s), alteration(s) or repair(s), or (2) the maximum amount of flood insurance available through the National Flood Insurance Program.

(c) The insurance provided by the Contractor and its Subcontractors shall apply on a primary basis. Any insurance maintained by the Owner shall be excess of and shall not contribute with the insurance provided by the Contractor and its Subcontractors. Except as otherwise specifically authorized in this Contract, or for which prior written approval has been obtained hereunder, the insurance maintained by the Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention. Under limited circumstances, the Owner may permit the application of a deductible or permit the Contractor to self-insure, in whole or in part, one or more of the insurance coverages required by this Contract. The Contractor shall pay on behalf of the Owner or Owner's officials, officers and employees any deductible or self-insured retention applicable to a claim against the Owner or the Owner's officials, officers and employees.

- ii) The insurance provided by the Contractor shall be endorsed to provide that the Insurer waives its rights against the Owner and Owner's officials, officers and employees.
- iii) Compliance with these insurance requirements shall not limit the liability of the Contractor or its Subcontractors. Any remedy provided to the Owner by the insurance provided by the Contractor and its Subcontractors shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of the Contractor) available to the Owner under this Contract or otherwise.
- iv) Neither approval nor failure to disapprove insurance furnished by the Contractor shall relieve the Contractor from responsibility to provide insurance as required by this Contract.

b) **For contracts exceeding \$500,000.00 dollars the following insurance requirements shall be met:**

i) Evidence of Insurance

Contractor shall not commence work until the Contractor has procured the insurance required under this Article and such insurance has been approved by the City (Owner). The Contractor shall provide evidence of such insurance in the following manner:

(1) As evidence of compliance with the insurance required by Section b) iii) Workers' Compensation/ Employer's Liability, 2. Commercial General Liability and 3. Business Auto Policy, the Contractor shall furnish the Owner with:

(a) a fully completed satisfactory Certificate of Insurance (ACORD Form 25 or equivalent) evidencing all coverage required herein, with a copy of the actual notice of cancellation endorsement(s) as issued on the policy(ies) and a copy of the actual additional insured endorsement as issued on the Commercial General Liability policy, signed by an authorized representative of the insurer(s) verifying inclusion of Owner and Owner's officials, officers and employees as Additional Insureds in the Commercial General Liability coverage;

(b) the original of the policy(ies); or

(c) other evidence satisfactory to Owner.

The Certificate of Insurance shall provide that the Owner shall be given no less than thirty (30) days written notice prior to cancellation.

(2) As evidence of compliance with the insurance required by Section b) iii))Protection of Owner), the Contractor shall furnish the Owner with:

(a) a fully completed satisfactory Certificate of Insurance (ACORD Form 25 or equivalent) evidencing all coverage required herein, and a copy of the actual additional insured endorsement as issued on the Commercial General Liability policy, signed by an authorized

representative of the insurer(s) verifying inclusion of Owner and Owner's officials, officers and employees as Additional Insureds in the Commercial General Liability coverage;

(b) the original of the policy(ies); or

(c) other evidence satisfactory to Owner.

(3) As evidence of compliance with the insurance required by Section b) iii) (Property Insurance), the Contractor shall furnish the Owner with:

(a) a fully completed Evidence of Property Insurance (ACORD Form 28 or equivalent) signed by an authorized representative of the insurer(s) providing the coverage with a copy of the actual notice of cancellation endorsement(s) as issued on the policy(ies);

(b) a copy of the original policy; or

(c) other evidence satisfactory to the Owner

(4) Until such time as the insurance is no longer required to be maintained by the Contractor, the Contractor shall provide the Owner with renewal or replacement evidence of the insurance in the manner described by Paragraph b) iii), Subparagraphs (1) and (2) no less than thirty (30) days before the expiration or termination of the insurance for which previous evidence of insurance has been provided.

(5) Notwithstanding the prior submittal of a Certificate of Insurance, if requested by the Owner, the Contractor shall, within thirty (30) days after receipt of a written request from the Owner, provide the Owner with a certified complete copy of the policies of insurance providing the coverage required. Contractor may redact or omit, or cause to be redacted or omitted, those provisions of the policy or policies which are not relevant to the coverage required by Section b) iii).

ii) Qualification of Insurers/Group Self-Insurers

Insurers providing the insurance required by this Section b) must meet the following minimum requirements:

(1) Such insurers must either be:

(a) authorized by subsisting certificates of authority issued to the companies by the Department of Insurance of the State of Florida or an eligible surplus lines insurer under Florida Statute 626.918, or,

(b) with respect only to the coverage required by Section b) iii) Workers' Compensation/Employer's Liability, authorized as a group self-insurer pursuant to Florida Statute 440.57 which has been in continuous operation in the State of Florida for five years or more or authorized as a commercial self-insurance fund pursuant to Florida Statute 624.462 which has been in continuous operation in the State of Florida for five years or more.

(2) In addition, such insurers other than those authorized by Florida Statute 440.57, Florida Statute 624.462 or Lloyd's of London shall have and maintain throughout the period for which coverage is required, a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

(3) If, during the period when an insurer is providing the insurance required by this Contract, an insurer shall fail to comply with the foregoing minimum requirements, as soon as the Contractor has knowledge of any such failure, the Contractor shall immediately notify the Owner' and shall immediately replace the insurance provided by the insurer with an insurer meeting the requirements. Until the Contractor has replaced the unacceptable insurer with an insurer

acceptable to the Owner, the Contractor shall be in default of this Contract.

iii) Description of Required Insurance

(1) Unless and to the extent Owner has agreed otherwise, without limiting any of the other obligations and liabilities of the Contractor, the Contractor shall, at the Contractor's expense, procure, maintain and keep in force the amounts and types of insurance conforming to the minimum requirements set forth herein. Except as otherwise specified in this Contract, the insurance shall commence prior to the commencement of work by the Contractor and shall be maintained in force until final completion of the work.

(2) Workers' Compensation/Employer's Liability

(a) Contractor's insurance shall cover Contractor (and to the extent its Subcontractors and Sub-subcontractors are not otherwise insured, its Subcontractors and Sub-subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation Policy as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. The policy must be endorsed to provide the Owner with thirty (30) days' notice of cancellation. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law.

(b) The policy must be endorsed to waive the insurer's right to subrogation against Owner and its officials, officers and employees in the manner which would result from the attachment of National Council on Compensation Insurance's (NCCI) Waiver of Our Right to Recover From Others' Endorsement (Advisory Form WC 00 03 13) with Owner and its officials, officers and employees scheduled thereon.

(c) Subject to the restrictions of coverage found in the standard Workers' Compensation policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act or any other coverage customarily insured under Part One of the standard Workers' Compensation policy. The minimum amount of coverage for those coverages customarily insured under Part Two of the standard Workers' (inclusive of any amount provided by an umbrella or excess policy) shall be those amounts specified in the Required Limits of Insurance form (INS 06/01).

(3) Commercial General Liability

(a) Such insurance shall be no more restrictive than that provided by the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those required by ISO or the State of Florida or those described below. The policy must be endorsed to provide the Owner with thirty (30) days' notice of cancellation. The coverage may include restrictive endorsements which exclude coverage for liability arising out of:

- (i) Mold, fungus, or bacteria
- (ii) Terrorism
- (iii) Sexual molestation

(b) Unless the Work under this Contract includes activities which would be the subject of such exclusions, the coverage may also exclude coverage for liability arising out of:

- (i) Architects & engineers professional liability
- (ii) Exterior Insulation and Finish Systems (EIFS)

(c) The minimum limits of insurance (inclusive of any amounts provided by an umbrella or excess

policy) covering the work performed pursuant to this Contract shall be the amounts specified in the Required Limits of insurance form (INS 06/01). The amounts specified under Column A of Form INS 06/01 shall be an initial layer of coverage which shall be applicable only to the work performed pursuant to this Contract and shall not be reduced or diminished in any manner by claims resulting from other than work performed pursuant to this Contract. The amounts specified in Column B of Form INS 06/01 shall be the total minimum limits required, including the initial layer specified in Column A.

- (d) If this Contract includes construction of, or additions to, buildings or structures, the Contractor shall continue to maintain Products/Completed Operations coverage for three years after the final completion of the work.
- (e) Except with respect to coverage for Property Damage Liability, which may be subject to a maximum deductible of \$500 per occurrence, the Commercial General Liability coverage shall apply on a first dollar basis without application of any deductible of self-insured retention. The Contractor shall pay on behalf of the Owner or the Owner's officer or employee any such Property Damage Liability deductible applicable to a claim against the Owner or the Owner's official, officer or employee.

(4) Business Auto Policy

- (a) Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the latest occurrence edition of the standard Business Auto Policy (ISO Form CA 00 01), including coverage for liability contractually assumed, as filed for use in the State of Florida by the Insurance Services Office. The policy must be endorsed to provide the Owner with thirty (30) days' notice of cancellation. Coverage shall be included on all owned, non-owned and hired autos used in connection with this Contract.
- (b) The minimum limits of insurance (inclusive of any amount provided by an umbrella or excess policy) shall be those amounts specified in the Required Limits of Insurance form (INS 06/01).

(5) Protection For Owner

The Contractor shall include the Owner and the Owner's officials, officers and employees as "Additional Insureds" on the Contractor Commercial General Liability coverage required pursuant to Paragraph b) iii), Subparagraph (2) Commercial General Liability. The coverage afforded such Additional Insureds shall be no more restrictive than that which would be afforded by adding the Owner and the Owner's officials, officers and employees as "Additional Insureds" using the latest Additional Insured - Owners, Lessees or Contractors (ISO Form CG 20 10).

- (a) And the latest edition of the Additional Insured – Owners, Lessees or Contractors – Completed Operations Endorsement (ISO Form CG 20 37) both as filed for use in the State of Florida by the Insurance Services Office. The Certificate of Insurance on other evidence of insurance shall clearly indicate the use of this alternative.
- (b) As an alternative to the coverage required by Paragraph b) iii), Subparagraph (4) the Contractor shall, at the Contractor's expense, provide the Owner with Owner's Protective Liability insurance which shall cover the Owner for all sources of liability which would be covered by the latest occurrence edition of the standard Owner's and Contractor's Protective Liability Coverage Form. Coverage for Operations of Designated Contractor (ISO Form CG 0009), (hereinafter OCP Policy) as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements.
- (c) The Owner shall be the Named Insured on the OCP Policy and, if applicable, the excess policy or policies. The policy or policies shall be endorsed to include the Owner and the Owner's

officials, officers and employees as insureds. The policy or policies shall include the Contractor and its Subcontractors of every tier as the contractor designated in the declarations.

- (d) The minimum OCP Policy limits per occurrence and, if subject to an aggregate, the annual aggregate to be provided by the Contractor (inclusive of any amounts provided by excess policies) shall be the same as the amounts specified in Column B of the Required Limits of Insurance form (INS 06/01), as the minimum Each Occurrence and General Aggregate limits respectively required for the Commercial General Liability Coverage.
- (e) The OCP Policy and, if applicable, the excess policy or policies, must be specifically endorsed to provide the Owner with forty-five (45) days written notice of cancellation, non-renewal or restriction.

(6) Property Insurance

- (a) If this Contract includes construction of or additions to above-ground buildings or structures, or the installation of machinery or equipment into an existing structure, the Contractor shall provide, in a policy acceptable to Owner, "all risk" (i.e., Special Form) Property insurance on any such construction, additions, machinery or equipment. The policy must be endorsed to provide the Owner with thirty (30) days' notice of cancellation
 - (b) The amount of the insurance shall be no less than the estimated replacement value at the time of the Owner's final acceptance of such addition(s), building(s), structure(s), machinery or equipment.
 - (c) The coverage shall not be subject to any restriction with respect to occupancy or use by the Owner and, subject to thirty (30) days prior written notice to the Owner, shall remain in full effect until final acceptance by the Owner.
 - (d) The Owner shall be an insured on this policy.
 - (e) The insurance provided by the Contractor shall be endorsed to provide that the Insurer waives its rights against the Owner and Owner's officials, officers and employees.
 - (f) The maximum deductible for other than Windstorm or Hail shall be \$5,000 per occurrence. The maximum deductible per occurrence for Windstorm or Hail shall be five percent (5%) of the estimated replacement value at the time of the loss of all buildings, structures, additions, machinery and equipment. The Contractor shall pay on behalf of the Owner or the Owner's official, officer or employee any such deductible.
 - (g) If this Contract includes construction of or additions to above-ground buildings or structures located within a Special Flood Hazard Area (100 year floodplain), flood insurance must also be provided on such construction or additions for the lesser of: (1) the estimated replacement value at the time of the Owner's final acceptance of such addition(s), building(s), or structure(s) or (2) the maximum amount of flood insurance available through the National Flood Insurance Program.
- iv) Contractor's Insurance Primary - The insurance provided by the Contractor shall apply on a primary basis and any other insurance or self-insurance maintained by the Owner or an Owner's official, officer or employee shall be excess of and not contributing with the insurance provided by or on behalf of the Contractor.
- v) Deductible Provisions - Except as otherwise specifically authorized in Paragraph b) iii)., the insurance maintained by the Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention.

- vi) Insurance is Additional Remedy - Compliance with the insurance requirements of this Contract shall not limit the liability of the Contractor. Any remedy provided to the Owner or the Owner's officials, officers or employees by the insurance shall be in addition to and not in lieu of any other remedy (including, but not limited to as an indemnitee of the Contractor) available under this Contract or otherwise.
- vii) Insurance on Subcontractors - The Contractor shall require all subcontractors to maintain any and all insurance required by law. However, except to the extent required by law, the Owner has not established minimum insurance requirements for the Contractor's subcontractors
- viii) No Waiver By Approval/Disapproval - Neither approval by the Owner nor failure to disapprove the insurance furnished by the Contractor shall relieve the Contractor of the Contractor's full responsibility to provide the insurance as required by this Contract.

55) INDEMNIFICATION BY CONTRACTOR

- a) The Contractor shall indemnify and hold harmless the City (Owner), and its officers and employees, from liabilities, damages, losses, and costs including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Contractor and persons employed or utilized by the Contractor in the performance of this Contract.
- b) The remedy provided to an indemnitee by Paragraph a), shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise.
- c) The remedy provided to an indemnitee by this Contract shall survive this Contract and shall not be limited in any manner by acceptance, final completion or final payment.
- d) A claim for indemnity pursuant to this Contract shall be commenced within the period established under Florida law for commencement of an action founded on the design, planning or construction of an improvement to real property.
- e) The provisions of this Article are severable and if, for any reason, any one or more of the provisions contained in the Article shall be held by a court of competent jurisdiction to be invalid, illegal, against public policy or unenforceable in any respect, the invalidity, illegality, being against public policy or unenforceability shall not affect any other provision of this Article which shall remain in effect and be construed as if the invalid, illegal, against public policy or unenforceable provision had never been contained in the Article.

56) BID BOND:

- a) Where the bid price does not exceed \$100,000, a bidder will not be required to post a bid bond. **In cases where the bid price does exceed \$100,000, each bid must be accompanied by a copy of a certified check, cashier's check or a bid bond in an amount not less than five per-cent (5%) of the base bid, (with the original provided upon request)** as guarantee that the Bidder will not withdraw from the competition after the opening of the bids, and will, within twenty-five (25) consecutive calendar days after receipt of written notice of award or a signed Purchase Order, enter into a Contract with the City in accordance with the accepted Proposal. Should the successful Bidder fail to enter into a Contract, the Bid Bond shall be forfeited as liquidated damages.
- b) No proposal or bid will be considered unless accompanied by a bid bond in the amount and form specified.

57) PERFORMANCE AND PAYMENT BOND:

- a) Except for certain utility contracts, where the bid price does not exceed \$100,000.00 a bidder will not be required to post a performance and payment bond.

- b) In cases where the bid price does exceed \$100,000.00 or for utility contracts covered by Florida Statutes Section 180.24, the successful bidder will be required to furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract price as security for the faithful performance of the contract. The successful bidder will also be required to furnish a payment bond in an amount equal to one hundred percent (100%) of the contract price as security for the payment of all persons performing labor on the project under the contract and furnishing materials in connection with the contract.
- c) The performance bond and the payment bond may be in one or in separate instruments in accordance with the current applicable law. Subject bonds are due within twenty-five (25) consecutive calendar days after written notice of award is received by successful Bidder. Subject bonds must also be recorded in the public records of Polk County [per F.S. 255.05(l)(a)] with proof of the recording furnished with the bonds or a certified recorded copy.

58) BONDING COMPANY'S QUALIFICATIONS:

- a) All bonds shall be written through a reputable and responsible surety bond agency licensed to do business in the State of Florida and with a surety company or corporation meeting both of the following specifications:
 - i) A minimum rating of "A-" or better and Financial Size Category of "VII" according to the A.M. Best Company;
 - ii) Current Certificate of Authority as acceptable surety on Federal Bonds in accordance with the latest edition of the United States Treasury Department Circular 570 entitled "Companies Holding Certificates of Authority As Acceptable Sureties on Federal Bonds and As Acceptable Reinsurance Companies" and shall be accepted for an amount not exceeding the underwriting limitations thereon.
- b) All surety companies are subject to approval and may be rejected by the City without cause in the same manner that bids may be rejected.
- c) Awards of \$500,000 or less: Bonds shall be written with a surety company meeting the qualifications as set forth in Paragraph a) above, or the qualifications set forth in Section 287.0935, Florida Statutes.
- d) **Power of Attorney:** Attorneys-in-fact who sign contract bonds must file with the bond a certified and effectively dated copy of their power of attorney, bearing the raised seal of the surety company.
- e) The failure of the successful bidder to furnish the required bond(s) within twenty-five (25) consecutive calendar days or within such extended period as the City may grant shall constitute a default, and the City may either award the Contract to the next most responsive and responsible bidder or re-advertise for bids, and may charge against the original successful bidder the difference between the amount of his bid and the amount for which a contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the bid bond. If a more favorable bid is received by re-advertising, the defaulting bidder shall have no claim against the City for a refund.

59) PAYMENT:

- a) **In cases where the contract price is less than \$100,000.00**, payment shall be as follows: Payment shall not be due until all work is completed and accepted by the City, and the Contractor has delivered to the City a properly prepared invoice, together with a properly prepared Affidavit of Contractor for Final Payment. No partial payment or progress payment shall be made.
- b) **In cases where the contract price is between \$100,000.00 and \$200,000.00**, payment shall be as follows (60b – 60h): Soon after execution of the construction agreement, and before the first partial payment estimate is presented to the City, the Contractor shall deliver to the City a construction schedule showing the dates it proposes to begin and to complete each portion of the work and its estimate of the payment which will be due Contractor from the City for work completed during each partial payment period.

- c) At the end of each calendar month, the Contractor shall present to the City a partial payment estimate which shows the total contract price and which shows the total amount of work completed on the project site at the end of that month in dollars and as a percentage of the total contract price and which shows the difference between the two amounts in dollars. The City shall review the estimate within fifteen (15) calendar days from receipt of partial payment estimate.
- d) The Contractor may choose to receive partial payment for materials delivered and stored at the project site for incorporation in the work, but not yet incorporated in the work at the time the party's payment estimate is presented to the City. The Contractor shall include in its partial payment estimate an itemized "Materials on project site but not incorporated" and its cost in dollars in the itemized list of work completed at the end of the calendar month. Cost in dollars should be accompanied by invoices showing paid amounts for each material item. It is the Contractor's sole responsibility to secure the project site and procure coverage for loss or theft.
- e) Within twenty (20) calendar days after receipt of partial payment estimate, the City shall make monthly progress payments for percentage of work actually performed under the contract during the preceding calendar month less five percent (5%) of the total amount due which is to be retained by the City until all work is completed and accepted by the City, subject to and in accordance with F.S. 255.078. Retainage on Final Payment shall be in accordance with the last paragraph of this clause. When the City makes this partial payment to the Contractor, the City shall become the owner of all materials, equipment, and work the Contractor has included in its partial payment estimate. This transfer of ownership shall not relieve the Contractor of its sole responsibility to protect all materials, equipment, and work included in its partial payment estimates, to restore any damaged work, and to fulfill all terms of the Contract Documents.
- f) In instances when payment or retainage may otherwise be considered as due, it is understood and agreed that the City may withhold payment or retainage, in whole or in part, to protect its interest on account of (1) Default by the Contractor; (2) There is reasonable evidence the Contractor cannot complete the project for the unpaid balance of the contract price; (3) Damage to another Contractor; (4) Failure to submit required Documents to the City or other governmental agencies; (5) or obtain required approvals, permits, and certifications from the City or other governmental agencies.
- g) If the City deems it not expedient to require the Contractor to correct faulty work or to repair damaged work, it may choose to reach an agreement with the Contractor to deduct an equitable amount from the contract price.
- h) Final retainage shall be due when the Contractor has delivered to the City a properly completed Affidavit of Contractor for Final Payment not later than thirty (30) calendar days after all work is completed and the City has inspected and accepted the work. The acceptance of final payment by the Contractor shall constitute a waiver of all claims by the Contractor against the City, except those previously made in writing and still unsettled. Notwithstanding, this section (**PAYMENT**) shall be subject to F.S. 255.078
- i) **In cases where the contract price exceeds \$200,000.00**, payment shall be in compliance with F.S. 255.078 and items 60b – 60h that do not conflict with F.S. 255.078. Final Payment shall not be due until all work is completed and accepted by the City, and the Contractor has delivered to the City a properly prepared invoice, together with a properly prepared Affidavit of Contractor for Final Payment.

60) LIENS:

- a) No liens of any type shall be allowed, including labor, materials, rentals, or services furnished.

61) GUARANTEE:

- a) Under this Contract, the Contractor shall guarantee all materials, equipment, and workmanship for a period of no less than one (1) year from the date the City accepts the completed project in its entirety; the

Contractor shall replace, repair, or restore any faulty materials, equipment, work, and incidental damage during this period of guarantee stated on the Proposal and Bid Form.

- b) Neither the final payment nor any provision in the Contract Documents shall relieve the Contractor of the responsibility for negligence or faulty materials or workmanship within the extent and period provided by law. Upon written notice the Contractor shall remedy all defects due thereto and pay all expenses for any damage to other work and/or property of the City resulting there from.
- c) Said notice of defects will be issued by the City. Upon receipt by the Contractor of such written notice, the Contractor shall immediately investigate any and all claimed defects. Should the Contractor feel that any claimed defect is invalid, it shall so advise, in writing, to the issuer within ten (10) calendar days after receipt of said notice.
- d) Defects shall be remedied by the Contractor within thirty (30) calendar days after receipt of said notice. Within ten (10) calendar days after completion of such corrective measures, the Contractor shall notify the issuer, in writing, of correction in defects. The Contractor shall transmit to the City a copy of each certified statement as required below.
- e) Each Sub-Contractor shall transmit to Contractor, in duplicate, on its business letterhead, addressed to both the Contractor and the City a certified statement as to:
- f) Work performed and/or materials supplied.
- g) Guarantee in accordance with requirements of contract appertaining to said work and/or materials.

62) FORM OF CONTRACT: (CONTRACTS IN EXCESS OF \$100,000.00)

- a) The City will require the successful Bidder, as Contractor, to execute in duplicate the Construction Agreement. Then executed, the Construction Agreement and the proposal form becomes the Contract between the City and the Contractor along with Contract Documents as defined herein; the Contractor cannot claim modification of this Contract because of any representation made by an employee of the City or any other person.

63) CONSTRUCTION SCHEDULE: (CONTRACTS IN EXCESS OF \$100,000.00)

- a) The Contractor shall submit to the City for review and approval, his Construction Schedule at least five (5) working days before the start of project. The Contractor shall complete individual parts of the project in the order of the approved construction schedule. Receipt of approved construction schedule does not authorize Contractor to begin work on the project.
- b) The City's issuance of a Notice to Proceed authorizes the Contractor to commence work on the project.

64) FINAL INSPECTION:

- a) When the work on this project(s) is substantially completed, the Contractor shall notify the City, by letter, at least three (3) working days before the inspection date that the work will be ready for final inspection on a definite date to be stated in the letter. Prior to the final inspection, the Contractor shall clear the project site of all trash, rubbish, and debris and restore all damage done to the project site and adjacent areas during execution of this Contract. The Contractor's duty to clear the project site of trash, etc., prior to final inspection does not relieve the Contractor of the obligation to keep the project site free from trash, rubbish, and debris during the performance of the contract.

65) CONSTRUCTION AND CONSULTING EVALUATION:

- a) The award of contracts by the City of Winter Haven for construction and/or consulting services is based on the lowest responsive/responsible bid (for construction) or in accordance with the guidelines and

requirements of FS 287.055 – Consultants Competitive Negotiation Act-CCNA (for applicable consulting services). In addition, the City will consider the previous performance of any bidder who may have completed work for the City of Winter Haven or other entity.

- b) The Construction and Consulting Evaluation Form shall be completed by the department head or his designee responsible for the project. The form shall be filled in upon the completion of the project and submitted to Procurement for retention.
- c) This form will be completed on all firms performing construction and/or consulting work for the City of Winter Haven. Furthermore, the City may, at its discretion, provide this form to other entities for whom the noted firm has completed work.

66) FEDERAL FUNDING:

When Federal funds are expended by the City of Winter Haven, the following provisions pertain as applicable:

- a) 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.”.
- b) Copeland “Anti-Kickback” Act (2 CFR Part 200.326(D)): All vendors, contractors and subcontractors must comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR part 3). Applies to all contracts and sub grants for construction or repair.
- c) 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.
- d) 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.

- e) Access to Records (2 CFR Part 200.336): All vendors, contractors and subcontractors shall give access to the City of Winter Haven, the appropriate Federal agency, Inspectors General, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the vendor which is directly pertinent to this specific bid for the purpose of making audit, examination, excerpts and transcripts.
- 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) The prospective lower tier participant certifies, by submission and signature of this bid, that neither it, nor its principals, its agents or its representatives are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - ii) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid.
- 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.
 - i) The contractor certifies, by submission and signature of this bid, that during the term and after the awarded term of an award for all contracts resulting from this procurement, it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment 31 U.S.C. 1352, including 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.

- ii) Where funds other than Federal appropriated funds are used for such purpose in connection with obtaining any Federal award, contractor must disclose same.

- j) Procurement of recovered materials (2 CFR §200.323): 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 \$5,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$5,000; 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.

- k) Records Retention: (2 CFR §200.333): 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.

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CONTRACTOR NOTIFICATION

TO: ALL CONTRACTORS / SUB-CONTRACTORS

FROM: THE CITY OF WINTER HAVEN

SUBJECT: ASBESTOS-CONTAINING MATERIALS IN THIS BUILDING

Asbestos-Containing Material (ACM) is present in many buildings. The presence of ACM does not necessarily mean that a hazard exists; however, a hazard may be created when ACM is disturbed and asbestos fibers become airborne. The best way to maintain a safe environment is to avoid the disturbance of ACM.

It is possible that you may encounter ACM while working in buildings. Therefore, workers must exercise caution and be watchful for materials that might contain asbestos. Avoid disturbing ACM or suspected ACM as you carry out your work.

If your work necessitates the disturbance of ACM you shall take whatever precautions are necessary to protect human health and the environment from asbestos fibers. At a minimum, you must comply with all Federal, State, and Local laws governing working with asbestos.

Your employer is responsible for assuring that you are medically certified, trained, and equipped with the proper personal protective devices for safe handling of ACM. You must notify the Facility Asbestos Contact Person before disturbing any asbestos-containing materials in the buildings.