

SECTION I - RESPONSE REQUIREMENTS

1. Submission and Receipt of Responses

- a. The City of Deerfield Beach (the “City”) uses the eProcurement Marketplace to administer the competitive solicitation process, including but not limited to soliciting and receiving responses, issuing addenda, tabulating responses, posting results and issuing notification of an intended decision. Responses to this competitive solicitation will only be accepted from Offerors who submit electronically through the City’s eProcurement Marketplace by the Close Date and Time indicated; hard copies will not be accepted. Offerors are strongly encouraged to read the Supplier Guides and Tutorials available in the eProcurement Marketplace well in advance of their intention of submitting a response to ensure familiarity with the eProcurement Marketplace and submitting a response through it. The City shall not be responsible for an Offeror’s inability to submit a response by the closing date and time for any reason, including issues arising from the use of the eProcurement Marketplace.
- b. All information submitted by Offeror shall be typewritten, scanned as an attachment, or provided as otherwise instructed in the solicitation documents. Offerors shall use and submit any applicable or required forms provided by the City and attach such to their response. Failure to use the forms provided by the City may cause the response to be rejected and deemed non-responsive.
- c. Responses shall be submitted by an authorized representative of the firm. Responses must be submitted in the business entity’s name by the President, Partner, Officer or Representative authorized to contractually bind the business entity. Responses shall include an attachment evidencing that the individual submitting the response, does in fact have the required authority to bind the business entity.
- d. All responses will become the property of the City of Deerfield Beach. In the event of Contract award, all documentation produced as part of the Contract shall become the exclusive property of the City.
- e. Responses will be publicly opened in the Purchasing and Contract Administration Division, 2nd Floor, 401 SW 4th Street, Deerfield Beach, FL 33441, or virtually via Zoom. Offerors will receive an advance notification through the eProcurement Marketplace advising on which platform will be used. It is the responsibility of the Offerors to check the eProcurement Marketplace constantly for the latest updates. Bids will be tabulated and made available for public inspection at such time as the City provides notice of an intended decision or until 30 days after the closing date and time, whichever is earlier.

2. Required Documents and Information

The City and Town of Hillsboro Beach (the “Town”) deem certain documentation and information important in the determination of responsiveness and responsibility and for the purpose of evaluating responses. The documents and information that the City and Town require from each Offeror submit with their response can be found in the “Response Attachments” tab within the eProcurement Marketplace for this competitive solicitation. Responses should seek to avoid information in excess of that requested, must be concise, and must specifically address each item required by this competitive solicitation. The responses shall be organized and divided into the sections indicated. The “Response Attachments” are not inclusive of all the information that may be necessary to properly evaluate the response and meet the requirements of the scope of work and/or specifications. To the extent the Response Attachments do not address a solicitation requirement, additional documents and information should be provided as deemed appropriate by the Offeror in response to specific requirements stated herein or through the competitive solicitation.

SECTION II - EVALUATION AND AWARD PROCEDURES

This joint solicitation by the City and the Town is issued consistent with the requirements of the Consultant’s Competitive Negotiation Act (“CCNA”), Florida Statutes § 287.055. The City and Town reserve the right, based upon their deliberations and in their opinion, to accept or reject any or all responses, or terminate the competitive solicitation process at any time and secure the solicited products and services by any other lawful means. The City and Town also reserve the right to waive minor irregularities or variations to the specifications and in the competitive solicitation process.

1. Evaluation Procedures

Evaluation of the responses will be conducted by an Evaluation Committee comprised of the City and Town Manager or their designees and one additional member from each municipality, for a total of two members from each municipality. Proposals shall be evaluated based upon the information and references contained in the responses submitted.

a. Tentative Evaluation Committee Meeting Dates

The City and Town will use the following tentative schedule in the evaluation process. The City reserves the right to change and/or delay scheduled events.

Event	Date
Evaluation Committee Initial Review/Short Listing	2/23/2021 @ 10:00AM
Oral Presentations/Final Ranking (if applicable)	TBD

b. Weighted Criteria

The Evaluation Committee shall evaluate all responsive submittals based on the following weighted criteria. Each member of the Evaluation Committee will conduct an independent review of the responsive submittals prior to the scheduled public evaluation meeting. Each committee member will score the submittals by giving a score of one to ten (1-10), ten being the highest. Thereafter, the score will be multiplied by the weight provided below, and weighted scores will be totaled. Each member of the evaluation committee will individually rank the responsive submittals based on the total weighted scores (the highest weighted score being ranked number 1). The committee members’ rankings will then be added together, and those ranking will be the basis for the cumulative ranking. After the committee members’ rankings are added together and totaled, the firm with the lowest cumulative ranking will be the first ranked firm. In the event the rankings result in a tie for the most highly qualified firm, the Evaluation Committee shall rank the firm with the most first place votes as the first ranked firm. If there is still a tie, the firm with the most experience in the Deerfield Beach/Hillsboro Beach segment shall be ranked as the first ranked firm.

Criteria	Weight
Qualifications and Experience (Primary Firm & Sub Consultants)	3
Understanding of the Project’s Objectives and Goals	3
History and Past Performances of Similar Projects Including References	2
Financial Stability	2
Willingness to Meet Time and Budget Requirements	1
Certified Minority Business Enterprise	1

c. The City and Town reserve the right to conduct site visits to the Offeror's facilities to inspect record keeping procedures, staff, facilities, and equipment at any point during the evaluation process.

- d. At the conclusion of an initial evaluation the Committee may decide, in the Committee's sole discretion, to shortlist responses for the purpose of further evaluation. The shortlist shall include no less than the top three (3) ranked firms, assuming that three (3) responses were received, resulting from the initial evaluation. The Evaluation Committee shall then hold discussions, interviews, presentations or other similar proceedings with all short-listed firms at a subsequent meeting. At the conclusion of a subsequent evaluation of the shortlisted firms, the Committee may re-rank the shortlisted firms in accordance with the weighted criteria. In re-ranking the short-listed firms, the Committee shall use the same criteria set forth in the competitive solicitation document and attempt to select the best qualified firm(s) for the services based upon the information provided during the discussions or interviews with the offerors or the presentations given by the offerors, and the materials presented and the responses

2. Evaluation Committee's Recommendation

- a. The Evaluation Committee's recommendation shall be presented to both Commissions, in a joint meeting, based on its final ranking. The Commissions shall, in their sole discretion, have the authority to either (1) approve the evaluation committee's ranking/evaluation and recommendation; (2) reject all responses based upon a stated reason; or (3) send the ranking/evaluation back to the Evaluation Committee to conduct further evaluations consistent with the requirements of the competitive solicitation and the Evaluation Committee may either ratify the ranking/evaluation or re-rank the firms. The Commissions reserve the right to re-rank in accordance with Section 38-130 of the City Code of Ordinances.

b. Tentative Award Event Dates

The City and Town will use the following tentative schedule in the award process. The City and Town reserves the right to change and/or delay scheduled events.

Event	Date
Joint Commission Meeting	TBD
Contract Commencement	TBD

3. Method of Award

Award will be made to the most qualified, highest ranked responsive and responsible Offeror(s) (subject to successful negotiation and approval of a contract by both Commissions).

4. City and Town's Exclusive Rights

The City and Town reserve the exclusive rights to:

- a. Waive any deficiency or irregularity in the selection process;
- b. Accept or reject any or all qualifications statements or bids in part or in whole;
- c. Request additional information as appropriate;
- d. Award all or a portion of the services set forth in this solicitation to one or more respondents as determined to be in the best interest of the City and Town; and
- e. Reject any or all submittals if found not to be in the best interest of the City and Town.

In the event of a sole response, City and Town reserve the right to reject the sole response.

By submitting a response for the requested services, all Offerors acknowledge and agree that no enforceable Contract arises until the City and Town sign the Contract, that no action shall lie to require the City and Town to sign such Contract at any time, and that each Offeror waives all claims to damages, lost profits, costs, expenses, reasonable attorney's fees, etc., as a result of the City and Town not signing such Contract.

SECTION III - GENERAL TERMS AND CONDITIONS

1. Independent Contractor

The Offeror represents itself to be an independent contractor and shall not represent itself or its employees to be employees of the City or Town. Therefore, the Offeror shall assume legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, and other expenses for Offeror's operations, officers, employees and agents, and agrees to indemnify, save, and hold the City and Town, their officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters.

2. Subcontractors

If the Offeror proposes to use subcontractors in the course of providing the requested products and/or services to the City and Town, Offeror shall disclose and include the name and specific type of product or service to be provided by the subcontractor as part of the Offeror's response. Such information shall be subject to review, acceptance, and approval by the City and Town prior to any Contract award. Offerors may also propose in writing the use of subcontractors during the term of the contract or changes to subcontractors during the term of the contract. The City and Town reserves the right to approve or disapprove of any modifications to subcontractors during the term of the contract, which such approval shall not be unreasonably withheld and shall be provided in writing. The City and Town reserve the right to approve or disapprove of any proposed subcontractor in its best interest.

3. Addenda, Changes, and Interpretations

It is the sole responsibility of the Offeror to notify the City and Town in writing and request modification or clarification of any ambiguity, conflict, discrepancy, omission or other error discovered in this competitive solicitation. Requests for clarification, modification, interpretation, or changes must be received prior to the "Last Date for Questions" as indicated in the "Tentative Schedule of Events", as may be amended by the City and Town. Requests received after this date will not be addressed. Clarifications, modifications, interpretations, and changes shall only be made by the issuance of official addenda. Under no circumstances shall an oral explanation given by any City or Town official, officer, staff, or agent be binding upon the City and Town. All requests from Offerors and explanations from the City and Town shall be communicated via the eProcurement Marketplace. All addenda are a part of the competitive solicitation documents and each Offeror will be bound by such addenda, whether or not acknowledged by them. It is the responsibility of each Offeror to read and comprehend all addenda issued. Addenda will be posted no later than the "Last Date for Addenda" indicated in the "Tentative Schedule of Events".

4. Multiple Responses

More than one response to competitive solicitation from an individual, firm, partnership, corporation, or association under the same or different names will not be considered. Such a circumstance will lead to rejection of all responses in which the Offeror is involved, except for circumstances where Offeror is the subcontractor listed on another Offeror's response. If there is reason to believe that collusion exists between Offerors, those parties' responses will be rejected and deemed for City and Town purposes to be a conviction of a public entity crime.

5. Omission of Details

The apparent silence of the specifications and any amendment regarding any details or the omission from the specifications of a detailed description concerning any services or material requested, shall be regarded as meaning that only the best commercial practices are to prevail, and that only material and workmanship of first quality are to be used.

6. Mistakes

Offerors are cautioned to examine all terms, conditions, specifications, drawings, exhibits, addenda, and delivery instructions pertaining to the solicitation. Failure of the Offeror to examine all pertinent documents shall not entitle them to any relief from the conditions imposed herein and may lead to rejection of the response.

7. Costs Incurred

Neither the City nor Town shall be liable for any costs incurred by Offerors in responding to or in any way participating in this solicitation.

8. Withdrawal of Responses

Any response may be withdrawn up until the close date and time. Any response submitted to the City and Town and not withdrawn prior to the close date and time shall constitute an irrevocable offer to the City and Town to provide the product and/or services set forth in the solicitation. Offeror warrants by virtue of submitting the response that the response and any prices quoted in the response will be firm for acceptance by the City and Town for a period of ninety (90) days from the close date unless otherwise agreed upon by the City and Town and Offeror.

9. Acceptance of Responses / Minor Irregularities

Any or all responses to solicitations may be rejected by the City and Town in whole or in part when it is in the best interests of the City and Town. The City and Town reserve the right to accept or reject any or all responses, part of responses, and to waive minor irregularities or variances to specifications contained in responses, which do not make the response conditional in nature, and minor irregularities in the solicitation process. A minor irregularity shall be a variation from the solicitation that does not affect the price of the contract, does not give a respondent an advantage or benefit not enjoyed by other respondents, does not adversely impact the interests of other Offerors, and does not affect the fundamental fairness of the solicitation process.

10. Responsiveness

In order to be considered responsive to the solicitation, the Offeror's response shall fully conform in all material respects to the solicitation and all of its requirements, including all form and substance.

11. Responsibility

In order to be considered as a responsible Offeror, Offeror shall be fully capable to meet all of the requirements of the solicitation and subsequent contract, must possess the full capability, including financial and technical, to perform as contractually required, and must be able to fully document the ability to provide good faith performance.

12. Offeror's Qualifications

Offeror shall be in the business of providing the products and/or services required and must possess sufficient financial support, equipment, personnel and organization to insure that it can satisfactorily perform the work if awarded a Contract. The City and Town shall have the right to investigate the financial condition, experience record, qualifications, facilities, equipment and references of each Offeror and determine to its satisfaction the competency, reputation, quality of products and/or services, and responsibility of each to perform the required work, meet the specifications, and conform in all material respects to the solicitation and all of its requirements. Offeror shall satisfy each of the following requirements cited below and failure to do so may result in the response being deemed non-responsive or rejected. **(a)** Offeror, including any principal, officer, agent, or proposed subcontractor, shall have no record of judgments or pending lawsuits against the City or Town, no criminal activities involving moral turpitude, and shall not have any conflicts of interest that have not been waived by the City and Town Commissions. **(b)** Offeror, including any principal, officer, agent, or proposed subcontractor of Offeror, shall not be in arrears or in default of any debt or contract involving the City or Town, (as a party to a

contract, or otherwise); nor have failed to perform faithfully on any previous contract with the City or Town.

13. Order of Precedence

In the event of inconsistency between provisions of this solicitation and the resulting Contract, the inconsistency shall be resolved by giving precedence in the following order: **(a)** The Contract **(b)** Attachments and Enclosures of the competitive solicitation document whether attached thereto or incorporated by reference, **(c)** Scope of Services/Work and Technical Specifications, **(d)** Special Terms and Conditions, **(e)** General Terms and Conditions.

14. Licenses and Certifications

The Offeror shall be appropriately licensed to perform the work and provide the products and services required. Offeror shall possess by the closing date and time all required licenses and certifications necessary to perform the requested service or provide the requested goods; unless the issuance of such license or certification is contingent upon the work to be performed under the resulting contract. The Offeror shall be responsible for all costs associated with obtaining and maintaining all required licenses, certifications, and permits. Copies of all required licenses and certifications shall be submitted with the Response as a matter of responsiveness.

15. Insurance and Surety Bonds

The Offeror's response shall include evidence of insurability meeting the minimum insurance requirements attached herein and evidence of Offerors ability to obtain required surety bonds, when insurance and surety bonds are required. The successful Offeror shall not commence the work or otherwise perform the work as required by the resulting Contract, until a certificate of insurance naming the City and Town as additionally insured and evidencing the provision of the required insurance in a form acceptable to the City and Town, and required surety bonds have been received and approved by the City and Town. The Offeror shall assume full responsibility and expense to obtain all necessary insurance and surety bonds.

16. Legal Requirements

By the submission of a response, the Offeror certifies that a careful review of the Solicitation Documents has taken place and that the Offeror is fully informed and understands the requirements of (i) the Solicitation Documents, (ii) the quality and quantity of services to be performed and goods to be provided and (iii) the applicable provisions of all federal, state, and county laws, and local ordinances, rules and regulations governing this solicitation and the requested work. Lack of knowledge by any Offeror shall not constitute a cognizable defense against the legal effect thereof.

17. Protest Procedures

In accordance with Section 38-139 of the City of Deerfield Beach Code of Ordinances, if an Offeror intends to protest a solicitation or proposed award the following shall apply: **(a)** Any respondent (also known as Bidder/Offeror) to competitive solicitation who is aggrieved in connection with the pending award of a competitive solicitation or any element of the process leading to the award of a competitive solicitation may protest to the Purchasing Director. A protest must be filed no later than the close of business on the fifth business day after the first date that the respondent to the competitive solicitation knew or should have known of the facts giving rise to the protest, but no later than five (5) business days after notification of intent to award or notification of the recommendation of the selection/evaluation committee or any right to protest is forfeited. It shall be the sole responsibility of the respondent to verify the operating hours of the City and Town. The protest must be in writing, must identify the name and address of the protester, and must include a factual summary of, and the basis for, the protest. Filing shall be considered complete when the protest is received by the Purchasing Director together with the protest fee. Delivery may be by hand delivery, regular mail, certified mail, or electronic mail. **(b)** Upon receipt of a protest of the pending award of a competitive solicitation, the Purchasing Director shall

review the charge to determine whether the protest was timely filed. If upon review the Purchasing Director determines that the protest was not timely filed, the Purchasing Director shall dismiss the protest. If it is determined that the protest was timely filed, the Purchasing Director shall notify all Bidders/Offerors of the protest and inform them of the scheduled hearing before the City and Town Commissions and of their right to intervene. Any Bidder/Offeror may formally intervene in the proceeding by filing a request to intervene with the Purchasing Director within three (3) business days of receipt of such notice. Delivery may be by hand delivery, regular mail, certified mail, or electronic mail. **(c)** The Purchasing Director shall require a protest fee from a protester to compensate the City for the expenses of administering the protest. If the protest is decided in the protester's favor, the entire protest fee shall be returned to the protester. If the protest is not decided in the protester's favor, the protest fee shall be forfeited to the City. The protest fee shall be in the form of a cashier's check or a payment bond. The protest fee shall be in the amount of (i) \$1,000.00 for pending estimated contract awards in the annual amount of \$100,000.00 or less, or (ii) one percent of the annual amount of the pending award for estimated contract amounts that exceed \$100,000.00 per year, with a maximum deposit of \$10,000.00. The estimated contract amount shall be based upon the pending award amount submitted by the recommended bidder. If no contract amount was submitted, the estimated contract amount shall be the City's estimated contract price, in the City's sole opinion. **(d)** The protester and intervener(s) may file written documentation relating to the protest with the Purchasing Director. It shall be the obligation of such protester or intervener(s) to deliver said documentation at least one week prior to City Commission action on the protest. **(e)** The City Commission may hear from the protester and intervener(s) in its discretion or may dispose of the protest without permitting presentations on the protest. If, on its face, the protest does not state sufficient cause to warrant remedial action, the City Commission may deny the protest without further participation by the protester or intervener(s). The Commission, in its sole discretion, may deny the protest, grant the relief requested by the protest, fashion relief or remedial action as it deems appropriate, or reject all responses and begin the competitive solicitation process again.

18. Cone of Silence

In accordance with Section 38-140 of the City of Deerfield Beach Code of Ordinances, during the course of a competitive solicitation, a Cone of Silence shall apply as follows: **(a)** A Cone of Silence shall be in effect during a Competitive Solicitation process beginning upon the advertisement for the competitive solicitation or during such earlier procurement activities as may be declared by the City and Town Commission. The Cone of Silence shall terminate at the time the City and Town Commissions take final action or give final approval of a contract, reject all bids or responses to the Competitive Solicitation, or take other action which ends the Competitive Solicitation process. The Cone of Silence shall continue through the negotiation phase for requests for proposals and requests for qualifications and shall not end until the Commissions give final approval of the contract. **(b)** Any person or entity that seeks a contract, contract amendment, award, recommendation, or approval related to a Competitive Solicitation or that is subject to being evaluated or having its response evaluated in connection with a Competitive Solicitation, including a person or entity's representative shall not have any communication with any City or Town Commissioner, the City or Town Manager or any person or group of persons appointed or designated by the City or Town Commission or the City or Town Manager to evaluate, select, or make a recommendation to the City and Town Commission or the City or Town Manager regarding a competitive solicitation, including any member of the selection committee. **(c)** The Cone of Silence shall not apply to written or oral communications with legal counsel for the City or Town or the Purchasing and Contract Administration Division staff for the City. **(d)** Any action in violation of this section shall be cause for disqualification of the bid or the proposal. The determination of a violation and the penalty shall be made by the City and Town Commission.

19. Disadvantaged Business Enterprise Program

The City of Deerfield Beach established a disadvantaged business enterprise program to encourage and foster the participation of Certified Business Entities (CBEs), in the city's competitive solicitation

process by providing preference to CBEs as detailed in Section 38-142 of the City of Deerfield Beach Code of Ordinances. The City will accept CBEs including small business enterprises (SBEs), minority business enterprises (MBEs), women business enterprises (WBEs), and veteran business enterprises (VBEs) certifications from Offerors, including their subcontractors identified in their response, as defined and certified by the Florida Department of Management, Office of Offeror Diversity or other certifying organizations or jurisdictions in accordance with Section 287.0943 (1) and (2) Florida Statutes. **(a)** During the course of a competitive solicitation when a responsive, responsible non-CBE submits the lowest price bid, and a bid submitted by one or more responsive, responsible CBE is within five percent of the bid submitted by the non-CBE, then such CBE shall have the opportunity to submit, within five calendar days of notification by the purchasing and contract administration division, a best and final offer equal to or lower than the amount of the low bid submitted by the non-CBE. The price bid by the non-CBE shall not be revealed if subject to [section 38-127\(5\)](#), Exemptions from the public records and public meeting requirements. **(b)** Contract award recommendation shall be made to the responsive, responsible business submitting the lowest responsive and responsible final offer. In the case of a tie in the best and final offer between a CBE business and a non-CBE business, contract award recommendation shall be made to the CBE. **(c)** For all other competitive solicitations where the objective factors used to evaluate the responses from offerors are assigned point totals where evaluation of criteria, including and beyond price, is the determining factor for award, the total score of each individual evaluation committee member's total points of the CBE vendor will adjust upward by five percent. **(d)** In the case where an offeror is claiming CBE participation by the use of permitted subcontractors identified in their response and where the subcontractor(s) is the CBE, subcontractor's portion of the work to be performed pursuant to the resulting contract shall equal at least 50 percent of the total work. Offeror shall provide information in the response to substantiate the subcontractor's portion of the work meeting the 50 percent requirement. **(e)** A bidder or offeror shall complete, fully execute, and provide all required information contained in the competitive solicitation related to the disadvantaged business enterprise requirements. **(f)** For the purpose of determining the best value in the award of a competitive solicitation where both the local business and disadvantaged business preference are applicable, the local business preference shall take precedence over the small business preference. **(g)** In order to participate in the disadvantaged business enterprise program, offeror shall have no history within the prior five years of non-performance, delinquent fees, liens, or code violations. **(h)** The disadvantaged business enterprise program shall not apply to a competitive solicitation process when prohibited by law, contract, grant, funding source or other regulation applicable to the competitive solicitation process, contract, or funding source, or when the city acts as the lead agency for a cooperative procurement.

20. Ethics Code

Offerors are required to acquaint themselves with the provisions in the City of Deerfield Beach's Ethics Code Chapter 2, Article IX, City Code of Ordinances. The City Commission will strictly apply the Ethics Code, including Section 2-505 "Disclosure and Behavior Requirements of Applicants and Person/Entity seeking a City contract or currently doing business with the City". Offeror shall complete the "Ethics Code Disclosure" contained herein. Failure to do so may result in the response being deemed non-responsive.

21. Public Records / Confidential Information

(a) Florida law provides that municipal records shall at all times be open for personal inspection by any person, unless otherwise exempt. Information and materials received by the City in connection with an Offeror's response shall be deemed to be public records subject to public inspection. However, certain exemptions to the public records law are statutorily provided for in Section 119.07, F.S. Section 119.07, F.S. provides an exemption from public records law for sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier. **(b)** If the Offeror believes any of the information contained in the response is exempt from the Public Records Law, then the Offeror must in the response specifically identify the material which is deemed to be exempt and cite the legal authority for the exemption, otherwise, the City will treat all materials received

as public records. **(c)** Pursuant to Section 119.0701(2)(a), Florida Statutes, the offeror must keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.

22. Excluded Parties from the Competitive Solicitation Process

(a) Public Entity Crime -A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a Proposer, Offeror, 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, Fla. Stat., for category two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. (b) Pursuant to Section 287.135, Florida Statutes, a bidder may not bid on or submit a proposal for goods or services of \$1,000,000.00 or more if at the time of bidding or submitting a proposal, the bidder: (i) Is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes or is engaged in a boycott of Israel; or (ii) Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 Florida Statutes; or (iii) Is engaged in business operations in Cuba or Syria.

23. Anti-Collusion

Pursuant to Chapter 838 Florida Statutes, it is unlawful for a bidder or offeror to knowingly and intentionally influence or attempt to influence any competitive solicitation of the City or Town. The Bidder certifies that it has not divulged, discussed or compared its response and the contents contained therein with other respondents, except subcontractors if they form part of the response, and has not colluded with any other Bidders or parties to a response whatsoever. No premiums, rebates or gratuities are permitted either with, prior to, or after any delivery of material or service. Any violation of this provision will result in the immediate cancellation of the contract and removal from the Vendor List.

24. Conflict of Interest

(a) The Offeror covenants that they presently have no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services hereunder. The Offeror further covenants that no person having any such known interest shall be employed or conveyed an interest, directly or indirectly, in the contract. **(b)** No contract will be awarded to an Offeror who has City or Town elected officials, officers or employees affiliated with it, unless the Offeror has fully complied with current Florida State Statutes and City Ordinances relating to this issue. **(c)** No contract will be awarded to a Proposer who is actively engaged in providing Coastal Engineering Consulting Services to any firms undertaking development projects within the City or Town. Offeror must disclose any such affiliation. Failure to disclose any such affiliation will result in disqualification of the Offeror and removal of the Offeror from the City's Vendor List and prohibition from engaging in any business with the City.

25. Entire Agreement

This competitive solicitation, all attachments and exhibits, addenda, and the resulting Contract and/or purchase order states the entire contract between the parties hereto with respect to the subject matter hereof, and all prior and contemporaneous understandings, representations and agreements are merged herein or superseded hereby. If a contract will be executed, a draft contract containing the major business concerns for the City and Town may be attached to this competitive solicitation.

26. Waiver

No waiver or modification of any contract resulting from this solicitation or of any covenant, condition or limitation contained in it shall be valid unless the waiver or modification is in writing and duly executed

by the party to be charged with it, and that no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting the contract, or the right or obligations of any party under it, unless such waiver or modification is in writing and duly executed by the party to be charged with the waiver or modification. The parties agree that provisions of this paragraph may not be waived except by a duly executed writing.

27. Warranty

(a) Warranty of Title - The Offeror warrants that all goods and materials offered in their response or furnished under a resulting contract will be new unless otherwise specified and that Offeror possesses good, clear, and marketable title to said goods and there are no pending liens, claims or encumbrances whatsoever against said goods and materials. All goods and materials not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. **(b) Warranty of Specifications** - The Offeror warrants that all goods, materials and workmanship offered in their response or furnished under a resulting contract, whether by Offeror or its sub-Contractors and suppliers, will comply with the specifications, plans, and other descriptions and requirements supplied or adopted. **(c) Warranty of Merchantability** - The Offeror warrants that the goods offered in their response or furnished under the resulting contract are merchantable, of good quality and free from defects, whether patent or latent in material or workmanship. **(d) Warranty of Material and Workmanship** - The Successful Offeror (Consultant) shall warrant all material and workmanship for a minimum of one (1) year from date of delivery and acceptance by the City and Town. The Successful Offeror shall provide a warranty certificate or bond, in a form acceptable to the City and Town Attorney's Offices, stating the terms and conditions of the warranty, which terms shall be consistent with the requirements herein. If within the warranty period, or within such larger period of time as may be prescribed by law or warranted by the Successful Offeror and product manufacturers, any of the materials and workmanship is found to be defective or not in accordance with the Contract documents, the Successful Offeror shall after receipt of a written notice from the City and Town to do so, promptly correct the condition unless the City and Town have previously given the Successful Offeror a written acceptance of such condition. **(e) Warranty of Intellectual Property** - The Offeror warrants that there has been no violation of copyright, patent, or other intellectual property rights either in the United States of America or in foreign countries in connection with the work to be performed pursuant to this competitive solicitation and resulting contract.

28. Survivorship Rights

The contract pursuant to this competitive solicitation shall be binding on all parties to the benefit of the respective parties and their executors, administrators, heirs, personal representative, successors and assignees.

29. Severability

If any term or provision of the contract pursuant to this competitive solicitation is found to be illegal and unenforceable, such term(s) shall be deemed stricken and the remainder of the contract shall remain in full force and effect.

30. Default and Termination

(a) Termination for Cause - In the event the Successful Offeror (Consultant) shall default in any of the terms, obligations, restrictions or conditions in the contract documents, the City and Town shall give the Consultant written notice by registered, certified mail of the default and that such default shall be corrected or actions taken to correct such default shall be commenced within three (3) calendar days thereof. In the event the Consultant has failed to correct the conditions(s) of the default or the default is not remedied to the satisfaction and approval of the City and Town, the City and Town shall have all legal remedies available to it, including, but not limited to termination of the Contract in which case the Consultant shall be liable for any and all damages permitted by law arising from the default and breach of the contract. **(b) Termination for Convenience** - Upon thirty (30) calendar days written notice to the

Consultant, the City and Town may without cause and without prejudice to any other right or remedy, terminate the contract for the City and Town's convenience whenever the City and Town determine that such termination is in the best interest of the City and Town. Where the contract is terminated for the convenience of the City and Town, the notice of termination to the Consultant shall state that the contract is being terminated for the convenience of the City and Town and shall include the termination date and extent of such termination. The Consultant shall discontinue all work on the appointed last day of service. **(c)** Cancellation for Unappropriated Funds - The obligation of the City and Town for payment to a Consultant is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period, regardless of contract term, is subject to appropriation of funds, unless otherwise authorized by law.

31. Scrutinized Companies List

a) Consultant certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the City and Town may immediately terminate this Agreement at their sole option if the Consultant or its subcontractors are found to have submitted a false certification; or if the Consultant, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement. **b)** If this Agreement is for more than one million dollars, the Consultant certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the City and Town may immediately terminate this Agreement at their sole option if the Consultant, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Consultant, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement. **c)** The Consultant agrees to observe the above requirements for applicable subcontracts entered into for the performance of Work under this Agreement. **d)** As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

32. Venue

The venue for any and all litigation arising out of the Contract shall be in Broward County, Florida for state court actions and in the US District Court for the Southern District of Florida for federal court actions.

33. Service Test Period

If the Offeror has not previously provided the goods or services to the City or Town, the City and Town reserves the right to require a service test period to determine if the Offeror can perform in accordance with the requirements of the Contract, to the City's and Town's satisfaction, and within the rights of the City and Town in determining an award recommendation. The length of such test period shall be determined by the City and Town, and shall be an appropriate timeframe for the City and Town to effectively evaluate the goods and services offered. The service test period shall be conducted under all specifications, terms and conditions contained in the Contract.

34. Examination of Records

The Offeror shall keep adequate records and supporting documentation applicable to the subject matter of this RFQ to include, but not be limited to, records of costs, time worked, working paper and/or accumulations of data, and criteria or standards by which findings or data are measured. Said records and documentation shall be retained by the Offeror for a minimum of three (3) years from the date the contract is completed and accepted by the City and Town. If any litigation, is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings, involving the records have been resolved, unless otherwise instructed by the City and Town. Should any

questions arise concerning this contract, the City and Town and their authorized agents shall have the right to review, inspect, and copy all such records and documentation during the record retention period stated above; provided, however, such activity shall be conducted only during normal business hours and shall be at City or Town expense. Offerors shall be authorized to retain microfilm copies in lieu of original records, if they so desire. Any subcontractor(s) employed by an Offeror who is subject to these requirements and the Offeror is required to so notify any such subcontractor(s).

35. Transfer of Responsibility

Upon expiration, termination, or cancellation of the contract, the consultant shall assist the City and Town to insure an orderly transfer of responsibility and/or continuity of those products and services required under the terms of the contract to an organization designated by the City and Town, if requested in writing. The consultant shall provide and/or perform any or all of the following responsibilities: **(a)** The consultant shall deliver, FOB destination, prepaid, all records, documentation, reports, data, recommendations, master, or printing elements, etc., which were required to be produced under the terms of the contract to the City and Town, or to the City and Town's designee within seven (7) calendar days after receipt of the written request. Any and all records which are on electronic media must be delivered in a format which is compatible with the system(s) currently in use by the City and Town. **(b)** The consultant shall agree to continue providing any part or all of the services in accordance with the terms and conditions of the contract for a period not to exceed ninety (90) calendar days after the expiration, termination or cancellation date of the contract for a price not to exceed those prices set forth in the contract in the event City or Town requests for consultant to continue providing services for such extension period.

36. Quantities

No guarantee or warranty is given or implied by the City or Town as to the amount that may or may not be purchased from any resulting contract. The City and Town reserve the right to increase or decrease quantities or add or delete any item or quantity from the contract if it is determined to be in the best interest of the City and Town in their sole discretion.

37. Risk of Loss

The risk of loss, injury or destruction, regardless of the cause of the casualty, shall be on the Successful Offeror until the delivery of completed project and facilities to the City and Town, and inspection and final acceptance of the entire project by the City and Town. Title to all goods, chattel and facilities shall pass to the City and Town upon delivery and acceptance of the goods by City and Town as evidenced in writing.

38. Delivery

All items shall be delivered FOB destination to a specified City or Town address. All delivery costs and charges must be included in the bid price. The City and Town reserve the right to cancel orders or any part thereof, without obligation if delivery is not made at the time specified in the contract.

39. Nonexclusive Contract

Offeror agrees and understands that any contract entered into pursuant to this competitive solicitation shall not be construed as an exclusive arrangement and further agrees that the City and Town may, at any time, secure similar or identical services at its sole option.

40. Required Compliances and Regulations

In performing the Work, Offeror shall comply with all applicable Federal, State, County, City and local laws, rules and regulations.

41. E-Verify

The successful offeror shall comply with Section 448.095, Fla. Stat., "Employment Eligibility," including the registration and use of the E-Verify system to verify the work authorization status of employees. Failure to comply with Section 448.095, Fla. Stat. shall result in termination of the contract. 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 the contract is terminated for a violation of the statute by the successful offeror, the successful offeror may not be awarded a public contract for a period of one year after the date of termination.

42. Manner of Performance and Personnel

(a) The Consultant shall perform the Work in a competent and professional manner satisfactory to the City and Town in accordance with the terms and conditions of this Agreement. The City and Town shall be entitled to satisfactory performance of all Work described herein and to full and prompt cooperation by the Consultant in all aspects of the Work. At the request of the City and Town, the Consultant shall promptly remove from the Project any Consultant employee, Subconsultant, or any other person performing Work under the Agreement. **(b)** The Consultant agrees to defend, hold harmless and indemnify the City and Town and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the City or Town, occurring on account of, arising from or in connection with the removal and replacement of any Consultant's personnel performing services hereunder at the behest of the City and Town. Removal and replacement of any Consultant's personnel as used in this Article shall not require the termination or demotion of such Consultant's personnel. **(c)** The Consultant agrees that at all times it will employ, maintain and assign to the performance of the Work a sufficient number of competent and qualified professionals and other personnel to meet the Agreement requirements. The Consultant agrees to adjust its personnel staffing levels or to replace any of its personnel if so, directed upon reasonable request from the City and Town, should the City and Town make a determination, in their sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position. **(d)** The Consultant warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Work described herein, in a competent and professional manner. Each employee of Consultant shall have and wear proper identification and shall comply with any of City or Town applicable security policies and procedures while performing any Work under this Agreement. Consultant shall require each employee of its Subconsultants to have and wear proper identification and comply with any of City's or Town's applicable security policies and procedures while performing any Work under this Agreement. **(e)** The Consultant shall at all times cooperate with the City and Town and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Work.

43. Draft Agreement

A draft copy of the Agreement is attached to this competitive solicitation and includes the major business concerns for the City and Town, which is subject to change. The final agreement will govern the Successful Offeror's performance under the contract and shall be executed by the Successful Offeror(s). All Offerors, by submission of their bids agree to execute an agreement consistent with the terms of this RFQ if selected by the City and Town to perform the project. The final agreement may not be in the same form as the Draft Agreement

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SECTION IV – SPECIAL TERMS AND CONDITIONS

1. Pre-Proposal Conference

DUE TO THE COVID-19 PANDEMIC ALL MEETINGS WILL FOLLOW ALL CDC GUIDELINES.

Meeting date and time is subject to change. Please check the eProcurement Marketplace constantly for the latest updates.

- a. A non-mandatory proposal conference will be conducted on Thursday, January 21, 2021 at 10:00 a.m. EDST at the City of Deerfield Beach, Central City Campus, 2nd Floor Large Conference Room, 401 SW 4th Street, Bldg. A, Deerfield Beach, FL 33441. Virtual attendance will be permitted by communications ZOOM media technology. The purpose of the conference is to provide the City, Town and prospective Offerors the opportunity to clarify and discuss the solicitation process, terms, conditions, and scope of services. Please allow sufficient time to insure arrival prior to the indicated date and time.
- b. Join Zoom Meeting
<https://deerfield-beach.zoom.us/j/82082636723?pwd=Wk9sR3VacXRza1IqN2xXWXJSd2hKQT09>

2. Minimum Qualifications

Offerors responding to this RFQ shall satisfy all of the following: (This information shall be part of the Response Attachments, Items 1 thru 8)

- a. Shall demonstrate business continuity in the state of Florida for a minimum of the past five (5) years from the date this RFQ is due. This includes working under a different business entity.
- b. Shall have been in business as a coastal engineering consultant for a minimum of the past five (5) years from the date this RFQ is due;
- c. Shall have served as a coastal engineering consultant and successfully completed a minimum of three (3) similar projects within the last five (5) years from the date this RFQ is due. Provide descriptions, owner contacts with contact information for each project.
- d. Shall have demonstrated experience with beach nourishment projects utilizing truck-haul, offshore and dredged-fill sand sources. Firm must have experience evaluating beach fill placement adjacent to nearshore hardbottom resources
- e. Shall have experience in the establishment of the erosion control line (ECL).
- f. Professional qualifications, certifications and capacity of staff assigned to accomplish the work.
- g. Ability to perform the services expeditiously at the request of the City and Town. Location and availability of technical support people and assigned project manager to the City and Town.

3. Agreement Term

- (a) Initial Term and Renewal Options - The initial contract term shall be for three (3) years and shall commence upon final execution of the Contract by the City and Town or as otherwise indicated in the final agreement. The City and Town reserve the right to renew the agreement for two (2) additional one (1) year renewal terms providing all terms conditions and specifications remain the same, all parties agree to the renewal, and such renewal is approved by the City and Town Manager. The City and Town Manager shall execute any renewal agreement. (b) Agreement Extension - In the event services are scheduled to end because of the expiration of the agreement, the Consultant shall continue the service upon the request of the City and Town Manager or designees. The extension period shall not extend for more than one hundred (180)

days beyond the expiration date of the existing agreement. The Offeror shall be compensated for the service at the rate in effect when this extension clause is invoked by the City and Town.

4. Safety

(a) The Successful Offeror shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The Successful Offeror shall comply with the rules and regulations of the Florida Department of Commerce regarding industrial safety (Florida Statutes Section 440.56) and with the standards set forth in the Occupational Safety and Health Act of 1970 (OSHA) and its amendments. **(b)** The Successful Offeror shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to: **(i)** All employees on the work site and all other persons who may be affected thereby. **(ii)** The work and all materials and equipment incorporated therein. **(iii)** Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, structures and utilities not designated for removal, relocation or replacement in the course of the work. **(c)** Occupational Health and Safety - In compliance with Chapter 442, Florida Statutes, any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a result of this Bid must be accompanied by a Material Safety Data Sheet (MSDS) which may be obtained from the manufacturer. The MSDS must include the following information: **(i)** The chemical name and the common name of the toxic substance. **(ii)** 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 and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and **(3)** The primary routes of entry and symptoms of overexposure. **(iii)** The proper precautions, handling practices, necessary personal protection equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of exposure. **(iv)** The emergency procedure for spills, fire, disposal and first aid. **(v)** A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information. **(vi)** 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.

5. Required Licenses and Certifications

To be considered responsive to this competitive solicitation the Offeror or any proposed sub-contractors must either be licensed by the Florida Construction Industry Licensing Board or certified by the applicable Broward County Central Examining Board and registered with the Florida Construction Industry Licensing Board as required by Florida Statute Chapter 489. Additionally, Offerors shall provide evidence licenses and certifications with the response. Specific minimum license requirements are:

- Licensed State of Florida Professional Engineer or other required licenses, certifications and/or accreditations to perform the work.

6. Time for Completion

The work to be completed under the terms and conditions of the Agreement shall be completed and delivered to the City and/or Town within the time frame established and agreed upon by both parties for each project.

7. Waiver of Ownership of Proposals

The Proposal becomes the property of the City and Town upon Offeror's submission of the RFQ Process. All documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared in the Proposal for the solicitation or furnished by the Offeror shall become the property of the City and

Town. The City and Town reserves the right to use Proposals at the City's and Town's sole discretion and in the City's and Town's best interest.

8. Prohibition Against Contingent Fees

The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not and will not employ or retain any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure an agreement pursuant to this competitive solicitation and that he or she has not and will not pay or agree to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from an award or making of an agreement pursuant to this competitive solicitation.

9. Standard of Care

The Successful Offeror(s) (Consultant(s)) shall exercise the same degree of care, skill, and diligence in the performance of the work as is ordinarily provided by a firm under similar circumstances and Consultant(s) shall, at no additional cost to the City, Town or property owner, correct any deficiency which fails to satisfy the foregoing standard of care.

10. Truth-in-Negotiation Certificate

(a) Execution of any Agreement by the Consultant(s) resulting from this solicitation shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete and current as of the date of the Agreement and no higher than those charged the Consultant's most favorable customer for the same or substantially similar service. **(b)** The said rates and costs shall be adjusted to exclude any significant sums should the City and Town determine that the rates and costs were increased due to inaccurate representations of fees paid to outside consultants. The City and Town shall exercise its rights under this "Certificate" within one (1) year following payment.

11. Schedule of Participation from Disadvantage Business Entity(s)

Offeror shall list each of the proposed DBE(s) or CBE(s) or SBE(s), the type of work each firm will perform, and the projected subcontract dollar amount and/or percentage of professional fees to be awarded, if selected.

12. Supplemental Federal Provisions

The work to be performed under any contract resulting from this competitive solicitation may be federally funded and subject to federal provisions attached herein. When any City, Town, or State requirements, or general or special terms and conditions are in variance or conflict with any applicable supplemental Federal provisions, the applicable supplemental Federal provisions shall prevail.

13. Required Compliances and Regulations

In performing services under this RFQ or the resulting contract the successful offeror shall comply with all applicable the Federal Highway Administration (FHWA), Environmental Protection Agency (EPA), Florida Department of Transportation (FDOT), American Disability Act (ADA), Broward County and City of Deerfield Beach Construction Standards.

14. Taxes

The Consultant shall pay sales, consumer, use and similar taxes for the work performed by the Consultant.

15. Permit Fees

(a) The Contractor are responsible for all City, County, State of Florida and other agencies permit fees; the Consultant shall be responsible to incorporate all applicable permit and fees with their proposed pricing. All permit fees outside of the City and/or Town control, such as taxes and County and State surcharges should be included at full costs in the submitted bid pricing. **(b)** The City and/or Town permit fees are to be included in the Consultants pricing at a reduced rate of 50% of the published City permit fee rates shown on the City's website.

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SECTION V - INSURANCE REQUIREMENTS

The Offeror's response shall include evidence of insurability meeting the insurance requirements stated herein. The successful Offeror shall not commence the work or otherwise perform the work as required by the resulting Contract until the requirements stated herein are met and the Certificate(s) of Insurance are approved by the City and Town. The Successful Offeror shall assume full responsibility and expense to obtain all necessary insurance.

1. General

- a. Successful Offeror shall furnish to the Purchasing and Contract Administration Division a Certificate of Insurance or endorsements evidencing the insurance coverage specified herein within fifteen (15) calendar days after notification of award of the Contract. The required Certificates of Insurance shall name the types of policies provided, refer specifically to the Contract (Solicitation Title and Number), and state that such insurance is as required by this Contract. Consultant's failure to provide to the City and Town the Certificates of Insurance or endorsements evidencing the insurance coverage within fifteen (15) calendar days of notification of award shall provide the basis for the termination of the Contract.
- b. Such policy or policies shall be issued by approved companies authorized to do business in the State of Florida. Consultant shall be responsible to pay all deductible amounts, if any. Consultant shall specifically protect City and Town and the Deerfield Beach City Commission by naming City and Town and the City and Town Commissions as additional insured under all required liability policies except for Workers Compensation and secure waivers of subrogation, in favor of the City and Town, on all liability and workers' compensation policies.
- c. Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of Consultant is complete including all renewal terms. All policies must be endorsed to provide City and Town with at least thirty (30) days' notice of expiration, cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.
- d. The City and Town reserve the right to review and revise any insurance requirements at the time of renewal or amendment of this Contract, including, but not limited to, deductibles, limits, coverage, and endorsements based on insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work or specifications that affect the applicability of coverage. If Consultant uses a subcontractor, Consultant shall ensure that subcontractor names the City and Town and the City and Town Commissions as additional insured under the Commercial Liability Policy as well as on any Excess Liability Policy coverage.
- e. A claims-made policy form may be acceptable with the understanding that any final contract with the successful responder shall require they maintain and provide annual evidence of a claims-made policy or an extended reporting period policy ("tail insurance") during and for not less than three years after the project completion date.

2. Coverages

Successful Offeror shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Contract the following insurance as indicated with exes:

- Commercial Liability Insurance** - A Commercial Liability Insurance Policy shall be provided which shall contain limits of no less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury liability, personal injury liability and property damage liability on a per project basis,

and shall contain limits of no less than a Two Million Dollars (\$2,000,000.00) aggregate.

Coverage must be afforded on a form no more restrictive than CG 20 10 10 01 and CG 20 37 10 01 Commercial Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include: premises and operations, independent contractors, products and/or completed operations for contracts, broad form contractual coverage applicable to this specific Contract including any hold harmless and/or indemnification Contract, personal injury coverage with employee and contractual exclusions removed and policy limits shall be applied on a primary and non-contributory basis. The City and Town shall be included as an additional insured on the commercial liability policy.

- Professional Liability (Errors & Omissions) Insurance** - Professional Liability Insurance with the limits of liability provided by such policy for each claim and on a claim made basis or on an occurrence basis to be no less than one million Dollars (\$1,000,000) per occurrence with a limit of no less than two million dollars (\$2,000,000) aggregate with a deductible per claim not to exceed ten percent (10%) of the limit of liability. Consultant shall notify the City and Town in writing within thirty (30) days of any claim filed or made against its Professional Liability Insurance Policy. Consultant acknowledges that the City and Town is relying on the competence of the Consultant to design a project to meet its functional intent. If it is determined during construction of a project that changes must be made due to Consultant's negligent errors and omissions, Consultant shall promptly rectify them at no cost to City and Town and shall be responsible for additional costs, if any, of a project to the proportional extent caused by such negligent errors or omissions.
- Business Automobile Liability** - Business Automobile Liability shall be provided with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence or combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must at a minimum include liability coverage symbols: 2 (owned vehicles), 8 (hired vehicles) and 9 (non-owned vehicles).
- Workers Compensation Insurance** - Workers' Compensation insurance to apply for all employees in compliance with Chapter 440, Florida Statutes, as may be amended from time to time, the "Workers' Compensation Law" of the State of Florida, and all applicable Federal laws. In addition, the policy(ies) must include employers' liability with a limit of One Million Dollars (\$1,000,000.00) each accident, One Million Dollars (\$1,000,000.00) aggregate limit by disease and One Million Dollars (\$1,000,000.00) each employee by disease. Additionally, if there will be operations undertaken on or about navigable waters, a coverage endorsement must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act. If exempt for Worker's Compensation, proper documentation shall be provided.

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SECTION VI – SCOPE OF SERVICES

1. GENERAL INFORMATION

- a. For the purposes of this RFQ, the “Offeror” shall mean contractors, consultants, respondent, organizations, firms, or other persons submitting a response to this RFQ.

The “Successful Offerors” means the most qualified Offerors to whom the City begins negotiations.

The term “City” means the City of Deerfield Beach, a municipal corporation of the State of Florida.

The term “Town” means the Town of Hillsboro Beach, a municipal corporation of the State of Florida.

- b. This RFQ provides guidelines for the submission of qualifications in response to this solicitation for firms and individuals to provide the Scope of Services.
- c. The City and Town anticipate entering into a contract for the services with the most qualified Offeror(s) as determined jointly by the City and Town Commissions. The Offeror understands that this RFQ does not constitute an agreement or a contract with either entity. An official contract or agreement is not binding until the submission is reviewed and accepted by the City and Town Commissions and executed by all parties.
- d. Offeror hereby represents to the City and Town, with full knowledge that the City and Town are relying upon these representations when submitting a proposal, that Offeror has the professional expertise, appropriate permits and licenses, experience, and manpower to perform the services to be provided by the Successful Offerors.

2. SCOPE OF SERVICES

The City and Town are seeking qualified companies who will act on behalf of both municipalities in matters relating to the beach, coastal area, beach nourishment projects, including interacting with various governmental and regulatory organizations, advocating for issues on behalf of each, and monitoring issues, concerns and topics that may possibly affect both municipalities and their respective beaches. It is expected that the company(ies) will lead and guide both municipalities jointly through all aspects related to the management, reporting, and monitoring of the beach and related areas. This partnership will require the company to assume a leadership role by looking forward, and guiding the municipalities through all concerns likely to affect the regions’ marine and beach concerns. The company must be a proponent of regional sand management and have professional associations that will help keep each community aware of what other beach communities are adopting to address coastal challenges.

Additionally, the contractor(s) will be responsible for all aspects of future beach nourishment projects.

The beaches are located on the Atlantic coast in the City and the Town between Florida Department of Environmental Protection (“FDEP”) reference monument markers R1 – R12 in Broward County, FL.

Coastal Management Services may include, but will not be limited to:

- a. Design of coastal protection projects, including but not limited to, beach nourishment, storm protective and erosion control structures, and innovative technologies.

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Coastal Engineering Services (Beach Nourishment), RFQ 21-15-JW

- b.** Prepare construction cost estimates and assist in bidding processes, including pre- construction conferences. Procurement methods shall comply with Florida Statutes and applicable procurement guidelines.
- c.** Perform construction management activities such as field observations, project oversight, construction progress meetings, contract administration, permit compliance, and monitoring for coastal projects.
- d.** Provide permitting assistance for Broward County, State and Federal approval/authorization of coastal protection projects.
- e.** Provide independent and impartial coastal engineering and environmental permitting consulting services on behalf of each jurisdiction.
- f.** Perform coastal modeling for beach erosion, wave hydrodynamics, storm recession, shoreline change, and sediment transport, using the most advanced and diverse modeling suites available.
- g.** Conduct and evaluate topographic and bathymetric surveying.
- h.** Assist in establishing an Erosion Control Line (“ECL”).
- i.** Perform both offshore and upland sand search/geotechnical investigations.
- j.** Perform biological monitoring of nearshore hardbottom and other marine resources as required based on environmental permits.
- k.** Prepare construction cost estimates and assist in bidding processes, including pre- construction conferences.
- l.** Develop or assist with annual FDEP and related funding requests on behalf of both parties.
- m.** Provide public outreach assistance regarding coastal protection projects.
- n.** Participate in City and Town Commission, Marine Advisory Board, and workshop meetings as deemed necessary by staff. The City and Town require the responsive firm to have locally available staff assigned to the contract from a local (tri-County) office.
- o.** Assume responsibility of all aspects of a beach nourishment project related to erosion. Responsibilities will include design, procurement process, permit application/amendment, construction management, Federal Emergency Management Agency (“FEMA”) reporting, FEMA claim tracking and reimbursement, and FEMA reporting and monitoring.
- p.** Prepare and process funding requests from FEMA for Engineered Beaches and other entities. Assist the City and the Town with reimbursement requests and processing. Complete all funding (public assistance) requests, follow-up as needed, file reports and coordinate reimbursement.
- q.** Provide emergency storm damage response.
- r.** Provide capabilities for administering coastal data within Geographic Information Systems (“GIS”)

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- s. Perform all other coastal engineering, coastal resilience, environmental permitting/compliance duties, as deemed necessary by the City and Town.

Firms that have current contracts with adjacent (or nearby) municipalities and/or counties shall identify these contracts as indicated in the submission requirements.

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SECTION VII – FEDERAL SUPPLEMENT PROVISIONS

COMPLIANCE WITH 2 C.F.R. PART 200, APPENDIX II (SUPPLEMENTAL PROVISIONS APPLICABLE TO PROCUREMENTS FUNDED IN WHOLE OR IN PART THROUGH ANY FEDERAL AWARD OR GRANT)

In the event federal funding is received for the services described in this RFQ, the Successful Consultant shall be required to adhere to the requirements set forth in this Exhibit, which may be incorporated into the Contract resulting from RFQ #21-15-JW (the "Bid"). References to "Municipality" shall refer to the City of Deerfield Beach and the Town of Hillsboro Beach, and references to "Consultant" shall refer to the Consultant awarded the Bid.

CONSULTANT AGREES TO ABIDE BY THE FOLLOWING REQUIREMENTS:

EQUAL EMPLOYMENT OPPORTUNITY

Consultant must comply with Executive Order 11246 (3 CFR, 1964-1965 Comp., p. 339), "Equal Employment Opportunity," as amended by Executive Order 11375 (3 CFR, 1966-1970 Comp., p. 684), "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." In accordance with such requirements, during the performance of this Contract, Consultant agrees as follows:

- A. Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- B. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Consultant's legal duty to furnish information.
- D. Consultant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of Consultant's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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E. Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

F. Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

G. In the event of Consultant's non-compliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and Consultant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

H. Consultant will include the provisions of subparagraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Consultant will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (CONTRACTS IN EXCESS OF
\$100,000 THAT INVOLVE THE EMPLOYMENT OF MECHANICS OR LABORERS)**

A. Overtime requirements. Neither Consultant or subcontractors contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Consultant and such subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.

C. Withholding for unpaid wages and liquidated damages. Municipality shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Consultant or subcontractor

under any such contract or any other Federal contract with the same prime contractor or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of Consultant or such subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.

D. Subcontracts. Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this section.

COMPLIANCE WITH CLEAN AIR AND CLEAN WATER ACTS

A. Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

B. Consultant agrees to report each violation to Municipality and understands and agrees that Municipality will, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

C. Consultant agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FEMA.

FEDERAL WATER POLLUTION CONTROL ACT

A. Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

B. Consultant agrees to report each violation to Municipality and understands and agrees that Municipality will, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management, FEMA, and the appropriate Environmental Protection Agency Regional Office.

C. Consultant agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FEMA.

ENERGY EFFICIENCY

Consultant and each subcontractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

SUSPENSION AND DEBARMENT

Federal regulations restrict Municipality from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. Accordingly, a contract or subcontract must not be made with any parties listed on the System for Award Management ("SAM") Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority.

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- (1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Consultant is required to verify that none of Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C during the term of this Contract and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) Consultant must verify its status and the status of its principals, affiliates, and subcontractors at www.SAM.gov and complete the Debarment Certification attached hereto. This certification is a material representation of fact relied upon by Municipality. If it is later determined that Consultant failed to comply, in addition to remedies available to the Florida Division of Emergency Management and Municipality, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

CERTIFICATION REGARDING LOBBYING (CONTRACTS EXCEEDING \$100,000.00)

Consultant must complete the required Lobbying Certification attached hereto. Each tier must also certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

PROCUREMENT OF RECOVERED MATERIALS

- (1) In the performance of this Contract, Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - (i) Competitively within a timeframe providing for compliance with the Contract performance schedule;
 - (ii) Meeting Contract performance requirements; or
 - (iii) At a reasonable price.
- (2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.
- (3) The Consultant also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

ACCESS TO RECORDS

The following access to records requirements apply to this Contract:

- A. Consultant agrees to provide Municipality, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Consultant which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. Consultant agrees to provide the FEMA Administrator or his authorized representative's access to construction or other work sites pertaining to the work being completed under the Contract.
- D. In compliance with the Disaster Recovery Act of 2018, the CITY and Consultant acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

RETENTION OF RECORDS

Consultant shall retain all required records for at least five years after Municipality makes final payment and all other pending matters are closed.

DHS SEAL, LOGO AND FLAGS

Consultant shall not use the U.S. Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund some of all of the services required under this Contract. Consultant will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the Municipality, Consultant, or any other party pertaining to any matter resulting from the Contract.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Consultant's actions pertaining to this Contract.

CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

- (1) Affirmative steps for the prime contractor to take regarding subcontractors must include:
 - (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- (2) Consultant shall sign the Statement of Compliance - Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

REMEDIES

When Consultant's work does not conform to the requirements stated herein completely, a deficiency exists. If a deficiency is serious enough to render a service unacceptable, it is also considered a defect. Defects are important in determining if non-compliance levels have been exceeded for services inspected.

A. Corrective Actions. If a deficiency[ies] is/are identified, Consultant must take action to correct those deficiencies using one, or in some cases a combination of, the following:

- (1) Stop Unsafe Work. Municipality's authorized agent may immediately stop work on the portion of the job affected, until it is corrected.
- (2) Issue a Stop Work Order. If Municipality's authorized agent determines the deficiency is serious, Municipality can issue a stop work order.
- (3) Reduced Value Deduction. Municipality may reduce the Contract price to reflect the reduced value of the services performed. This method is normally used when the work is performed by Municipality or another contractor rather than Consultant. The amount of the deduction is equal to the value of the service(s) not performed. Municipality may discuss corrective actions with Consultant to prevent future occurrences.

B. Municipality's authorized agent will notify Consultant, in writing, of any observed noncompliance with Federal, State, or local laws or regulations. Such notice, when delivered to Consultant at the site of the work, shall be deemed sufficient for the purpose. After receipt of such notice, Consultant must immediately inform Municipality's authorized agent of proposed corrective action and take such action as may be approved. If Consultant fails or refuses to comply promptly, Municipality's authorized agent may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time, or for excess costs or damages by Consultant.

DISPUTE RESOLUTION

A. Any controversy, claim or dispute between Municipality and Consultant arising out of this Contract or any arrangements relating hereto, whether based on contract, tort or other legal theory, arising out of, in the breach hereof or related to this Contract shall be resolved in accordance with the procedures specified in this Section, which shall be the sole and exclusive procedures for the resolution of any such disputes, unless otherwise agreed upon by Municipality and Consultant in writing pursuant to (C) below.

B. Process of Dispute Resolution

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- (1) Negotiation. Representatives of Municipality and Consultant shall attempt in good faith to resolve any and all disputes arising out of or relating to this Contract promptly by negotiation between representatives who have authority to settle the controversy. Either Municipality or Consultant may request negotiation regarding any dispute by providing the other with a written request for negotiation. Within fifteen (15) days after delivery of the written request, the receiving party shall submit a written response. Within thirty (30) days after the delivery of the initial written request for negotiation, the representatives of Municipality and Consultant shall meet at a mutually acceptable time and place, or by telephone if both parties agree, to attempt to resolve the dispute. All negotiations will be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
- (2) Mediation. If the dispute has not been resolved by negotiation within forty-five (45) days after delivery of the initial written request for negotiation, or if the parties agree in writing to forego negotiation, the parties shall endeavor to settle the dispute by mediation. The parties shall in good faith agree on a mediator and each party shall bear its own costs and one-half the costs of the mediator. The format of the mediation, type of decision and scope of discovery shall be established by the mediator and the parties. The mediation conference shall take place in Broward County, Florida. The mediation process and any materials exchanged therein are confidential.

C. Municipality and Consultant agree that by written mutual agreement, they may forego the dispute resolution provisions as set forth in this section and proceed with litigation or other court proceedings pursuant to their written mutual agreement. The parties expressly agree that this Section is not in any way intended to constitute a waiver of any immunities from suit or from liability that the parties or Municipality has by operation of law. Florida Law shall govern any dispute arising out of this Contract and exclusive venue shall lie in Broward County, Florida.

DAVIS-BACON ACT (PRIME CONSTRUCTION CONTRACTS IN EXCESS OF \$2,000)

Consultant shall comply with the requirements of the Davis-Bacon Act as set forth in 29 C.F.R. §5.5. Consultant shall sign the Statement of Compliance (Davis-Bacon Act) form.

COPELAND ANTI-KICKBACK ACT (PRIME CONSTRUCTION CONTRACTS IN EXCESS OF \$2,000)

- (1) Consultant. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

**BYRD ANTI LOBBYING CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND
COOPERATIVE AGREEMENTS**

To be submitted with each bid or offer exceeding \$100,000.00

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

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

Signature of Consultant's Authorized Official

Name and Title of Consultant's Authorized Official

Date _____

