



**INVITATION TO BID  
T-36-22**

**Furnish and Install Ice Machine in Alsdorf Park**

**OPENING: JANUARY 11, 2023, 2:00:00 P.M.**

**Virtual Zoom Meeting**  
**For access go to:**

**<https://www.pompanobeachfl.gov/meetings>**

The City of Pompano Beach (the “City”) is currently soliciting bids to establish a Contract for the furnishing and installation of an ice machine in Alsdorf Park as described herein. Sealed bids for Invitation to Bid (ITB) **T-36-22, Furnish and Install Ice Machine in Alsdorf Park** will be received until **2:00:00 p.m. (local), January 11, 2023**. Bids must be submitted electronically through the eBid System on or before the due date and time as specified herein. Bid openings are open to the public. All Bidders and/or their representatives are invited to be present. Any bid received after the due date and time specified will not be considered. Any uncertainty regarding the time a bid is received will be resolved against the Bidder.

Bidder must be registered on the City’s eBid System in order to view the ITB documents and respond to this ITB. The ITB documents can be downloaded for free from the eBid System as a pdf at: <https://pompanobeachfl.ionwave.net>. The City is not responsible for the accuracy or completeness of any documentation the Bidder receives from any source other than from the eBid System. Bidder is solely responsible for downloading all required documents. A list of Bidders will be read aloud in a public forum. To attend the virtual public meeting, go to <https://www.pompanobeachfl.gov/meetings> to find the Zoom link.

Once opened, the bids will be tabulated, evaluated, and presented to the appropriate City officials for Contract award.

There are three (3) sections in this ITB: Specifications/Special Conditions, General Conditions, and Proposal. Please read all sections thoroughly. Complete the ITB in accordance with the instructions. Failure to do so may result in the rejection of your bid.

If you need any additional information regarding this ITB, please contact Tammy R, Thompkins, Purchasing Agent, at [purchasing@copbfl.com](mailto:purchasing@copbfl.com).

#### SECTION I - SPECIFICATIONS/SPECIAL CONDITIONS

A. Contract Period

The Contract shall commence upon award by the appropriate City officials.

B. Quantities

Specified quantities of each item required are provided in this ITB. Bidders are to indicate if they will honor the prices bid for additional purchases of the specified equipment. No warranty or guarantee is given or implied that the City will purchase quantities other than those stated in this ITB.

C. Basis of Award

Award will be made to the lowest responsive, responsible Bidder based on the grand total as set forth in Section III.

D. Pricing

All prices bid shall be F.O.B. destination/freight prepaid and allowed for delivery to Alsdorf Park, 2901 NE. 14<sup>th</sup> Street, Pompano Beach, Florida, 33062.

E. Delivery

Bidders are to state the number of calendar days after receipt of an order required for delivery. The City seeks a source of supply that will provide accurate and timely delivery. The Awarded Bidder must adhere to delivery schedules. If, in the opinion of the General Services Director, the Awarded Bidder fails at any time to meet the requirements herein, including the delivery requirements, then the Contract may be cancelled upon written notice. See Section II - General Conditions, (6) "Delivery", and (10) "Default", for additional information.

F. Addenda

The issuance of a written addendum or posting of an answer in response to a question submitted using the Questions feature in the eBid System are the only official methods whereby interpretation, clarification, or additional information can be given. If any addendum is issued to this ITB, the addendum will be issued via the eBid System. It shall be the responsibility of each Bidder, prior to submitting its response, to check the eBid System or to contact the City's Purchasing Division of the General Services Department at [purchasing@copbfl.com](mailto:purchasing@copbfl.com) to determine if addendum was issued and to make such addendum a part of its bid. Each addendum will be posted to the ITB in the eBid System.

G. Local Business Program

On March 13, 2018, the City Commission approved Ordinance 2018-46, establishing a Local Business Program, a policy to increase the participation of City of Pompano Beach businesses in the City's procurement process.

You can view the list of City businesses that have a current Business Tax Receipt on the City's website, and locate local firms that are available to perform the work required by the ITB specifications. The business information, sorted by business use classification, is posted on the webpage for the Business Tax Receipt Division: [www.pompanobeachfl.gov](http://www.pompanobeachfl.gov) by selecting the Pompano Beach Business Directory in the section "Shop Pompano!".

**Please note that, while no goals have been established for this ITB, the City encourages Local Business participation in *all* of its procurements.**

#### H. Ice Machine Requirements

1. Ice machine dimensions must not exceed: 12'H x 10'W x 12'L
2. Ice machine must use a single phase 220V/100-amp electrical service
3. Ice machine must use ½'-3/4' Water supply service
4. Ice machine must provide two ice makers
5. Ice machine must provide a water vending option
6. Ice machine must be able to produce at a minimum of 300 (10 lb. bags) a day
7. Ice machine must be able to produce a minimum size of 10lb bags.
8. Ice machine must provide and install hurricane code tie downs and anchors
9. Ice machine must be able to store a minimum of 2000 lbs. of ice
10. Ice machine must be shaded and/or must have a canopy
11. Ice machine must be able to withstand elements of heat, rain and saltwater exposure and must be corrosion free
12. Ice machine must include a coin/bill validator and acceptor
13. Ice machine must include a credit card reader/ cashless option.

#### I. Installation Maintenance and Warranty Requirements

1. Vendor must provide an expert support hotline available weekdays and weekends.
2. Vendor must be able to furnish engineered approved shop drawings and specifications for permitting.
3. Vendor must include a high security lock for the ice machine.
4. Vendor must include approved hurricane tie down anchors for the ice machine.
5. Vendor must include any licensing/support package for the ice machine.
6. Vendor must include all shipping, start-up and training for the ice machine.
7. Vendor must provide 1000 qty (10lb) bags for ice.
8. Vendor must warranty the ice machine as follows:
  - a. 1-year full warranty
  - b. 3 years on the ice maker
  - c. 5 years evaporator/condenser/compressor
9. Vendor must include 180 calendar days of full scheduled maintenance service beginning from the ice machines first day of operation.
10. Vendor must be able to provide a certified technician located in the State of Florida to service the ice machine.
11. Vendor must be present when electrical and plumbing connections are being completed. \*

\* The City will provide the following infrastructure for the ice machine, including: Concrete slab, electrical conduit to the machine, water service to the machine. The City will provide a forklift for delivery of the ice machine.

#### J. Insurance

Awarded Bidder shall not commence services under the terms of this Contract until certification or proof of insurance, detailing terms and provisions has been received and approved in writing by the City's Risk Manager. If you are responding to an ITB and have

questions regarding the insurance requirements hereunder, please contact the City's Purchasing Division of the General Services Department at (954) 786-4098. If the Contract has already been awarded, please direct any inquiries and proof of the requisite insurance coverage to City staff responsible for oversight of the subject project/Contract.

Awarded Bidder is responsible to deliver to the City for timely review and written approval/disapproval Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which name on a primary basis, the City as an additional insured on all such coverage. **Such policy or policies shall be issued by United States Treasury approved companies authorized to do business in the State of Florida. The policies shall be written on forms acceptable to the City's Risk Manager, meet a minimum financial A.M. Best and Company rating of no less than Excellent, and be part of the Florida Insurance Guarantee Association Act. No changes are to be made to these specifications without prior written approval of the City's Risk Manager.**

Throughout the term of this Contract, City, by and through its Risk Manager, reserve the right to review, modify, reject or accept any insurance policies required by this Contract, including limits, coverages or endorsements. City reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as City's review or acceptance of insurance maintained by Awarded Bidder, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by Awarded Bidder under this Contract.

Throughout the term of this Contract, Awarded Bidder and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverages and limits described herein, including endorsements:

1. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees) or the state in which the work is to be performed or of the state in which Awarded Bidder is obligated to pay compensation to employees engaged in the performance of the work. Awarded Bidder further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

2. Liability Insurance.

- a. Naming the City of Pompano Beach as an additional insured as City's interests may appear, on General Liability Insurance only, relative to claims which arise from Awarded Bidder's negligent acts or omissions in connection with Awarded Bidder's performance under this Contract.

- b. Such Liability Insurance shall include the following checked types of insurance and indicated minimum policy limits.

<b>Type of Insurance</b>	<b>Limits of Liability</b>	
<b>GENERAL LIABILITY:</b>	Per Occurrence/Aggregate	
* Policy to be written on a claims occurrence basis		
	\$1,000,000	\$2,000,000
XX comprehensive form	bodily injury and property damage	
XX premises - operations	bodily injury and property damage	
— explosion & collapse	hazard	
— underground hazard		
XX products/completed	bodily injury and property damage combined operations hazard	
XX contractual insurance	bodily injury and property damage combined	
XX broad form property damage	bodily injury and property damage combined	
XX independent contractors	personal injury	
XX personal injury		
— CG2010 ongoing operations (or its' equivalent)		
— CG 2037 completed operations (or its' equivalent)		
— sexual abuse/molestation	Minimum \$1,000,000 Per Occurrence and Aggregate	

**AUTOMOBILE LIABILITY:**

Minimum \$1,000,000 Per Occurrence and Aggregate. Bodily injury (each person) bodily injury (each accident), property damage, bodily injury and property damage combined.

- XX comprehensive form
- owned
- hired
- non-owned

**REAL & PERSONAL PROPERTY**

\* Policy to be written on a claims occurrence basis comprehensive form  
Agent must show proof they have this coverage.

<b>EXCESS / UMBRELLA LIABILITY</b>	Per Occurrence	Aggregate
* Policy to be written on a claims occurrence basis		
— excess/umbrella	\$5,000,000	\$5,000,000
— property damage combined		

<b>PROFESSIONAL LIABILITY</b>	Per Occurrence	Aggregate
* Policy to be written on a claims made basis		
— professional liability	\$1,000,000	\$1,000,000

- c. If Professional Liability insurance is required, Awarded Bidder agrees the indemnification and hold harmless provisions of Section 12 of the Contract shall survive the termination or expiration of the Contract for a period of three (3) years unless terminated sooner by the applicable statute of limitations.

<b>ENVIRONMENTAL / POLLUTION LIABILITY</b>	Per Occurrence	Aggregate
* Policy to be written on a claims made basis		
XX environmental/pollution liability	\$1,000,000	\$1,000,000

<b>CYBER LIABILITY</b>	Per Occurrence	Aggregate
* Policy to be written on a claims occurrence basis		
	\$1,000,000	\$1,000,000

- \_\_ Network Security / Privacy Liability
- \_\_ Breach Response / Notification Sublimit (minimum limit of 50% of policy aggregate)
  - \_\_ Technology Products E&O - \$1,000,000 (only applicable for vendors supplying technology related services and or products)
  - \_\_ Coverage shall be maintained in effect during the period of the Contract and for not less than four (4) years after termination/ completion of the Contract.

3. Employer’s Liability. Awarded Bidder and all subcontractors shall, for the benefit of their employees, provide, carry, maintain and pay for Employer's Liability Insurance in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) per employee, Five Hundred Thousand Dollars (\$500,000) per aggregate.

4. Policies: Whenever, under the provisions of this Contract, insurance is required of the Awarded Bidder, the Awarded Bidder shall promptly provide the following:

- a. Certificates of Insurance evidencing the required coverage;
- b. Names and addresses of companies providing coverage;
- c. Effective and expiration dates of policies; and
- d. A provision in all policies affording City thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

5. Insurance Cancellation or Modification. Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the issuing company shall provide thirty (30) days written notice to the City.

6. Waiver of Subrogation. Awarded Bidder hereby waives any and all right of subrogation against the City, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement then, Awarded Bidder shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should Awarded Bidder enter into such an agreement on a pre-loss basis.

K. Questions And Communication

All questions regarding the ITB are to be submitted using the Questions feature in the eBid System. Questions must be received at least seven (7) calendar days before the scheduled ITB opening. Oral and other interpretations or clarifications will be without legal effect. Addenda will be posted to ITB in the eBid System, and it is the Bidder's responsibility to obtain all addenda before submitting a response to the ITB.

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SECTION II - GENERAL CONDITIONS

1. Submission and Receipt of Bids
  - 1.1. Bidders must use the forms furnished by the City.
  - 1.2. Bids must submit their response via the eBid System.
  - 1.3. It will be the sole responsibility of the Bidder to have their bid submitted via the eBid system before the closing hour and date shown for receipt of bids.
  - 1.4. Bidder's response shall not contain any alternation to the document posted other than entering data in spaces provided or including attachments as necessary.
  - 1.5. By submission of a response, Bidder affirms that a complete set of bid documents was obtained from the eBid System and no alteration of any kind has been made to the ITB.
  - 1.6. Late bids will not be considered.
  - 1.7. Bids transmitted by email or facsimile will not be accepted.
2. Completion of Bid Forms

Bidder is to enter information into the eBid System and upload any required attachments and forms as specified in the ITB.
3. Electronic Signature

Bidder acknowledges that the user identification, password, entry of the user's full name, and entry of the user's email address serves as their unique electronic signature for all bid responses and submissions as provided by 668.001, Fla. Stat. et. seq. Bidder further agrees that only individuals with signature authority will submit a response.
4. Prices to be Firm

Bidder certifies that prices, terms and conditions in the bid will be firm for acceptance for a period of ninety (90) days from the date of bid opening unless otherwise stated by the City. Bids may not be withdrawn before the expiration of ninety (90) days. Prices shall be firm, with no escalator clauses unless specified by the City. Bids may be withdrawn after ninety (90) days only upon written notification to the City.
5. Extensions

If there is an error in extensions (mathematical calculations), unit prices will prevail.
6. Delivery
  - 6.1. All items are to be bid F.O.B. delivered with freight charges prepaid and included, to designated addresses as specified by the City on its purchase order(s) or in letter(s) of authorization.
  - 6.2. Bidder must state specific number of calendar days required for delivery of each item bid in attribute in the eBid System for consideration of award of this bid.

- 6.3. Delivery time will be a factor for any orders placed as a result of this bid. The City reserves the right to cancel such order(s) or any part thereof, without obligation, if delivery is not made within the time(s) specified herein and hold the vendor in default. (See Section 10.)
7. Electronic Bid Considered an Offer

This electronic bid submitted via the eBid System is considered an offer on the part of the Bidder, which offer shall be considered accepted upon approval by the City Commission of the City of Pompano Beach (if required). The City of Pompano Beach will issue a purchase order or a letter of authorization to the Awarded Bidder, as authorization for delivery of the items awarded subject to requirements of detailed specifications and those contained herein.

In the event of default on the part of the Bidder after such acceptance, the City may take such action as it deems appropriate including legal action for damages or specific performance.
8. Quality

All materials used for the manufacture or construction of any supplies, materials or equipment covered by this bid shall be new. The items bid must be new, the latest model, of the best quality and highest grade workmanship unless otherwise specified in this bid by the City.
9. Brand Names

Whenever proprietary names are used, (whether or not followed by the words "or approved equal"), the item(s) will be subject to acceptance and/or approval by authorized City personnel, and said personnel will deem it their prerogative to select the item(s) which are lowest bid, item by item, meeting specifications from the information furnished by the Bidder with the bid and/or sample inspection or testing of the item(s) called for herein.
10. Default Provisions

In the event of default by the Bidder, the City reserves the right to procure the item(s) bid from other sources and will hold the Bidder responsible for excess costs incurred as a result. A contractor who defaults on a City Contract may be banned from doing business with the City for a period of 36 months from the date of default.
11. Samples

Samples, when requested, must be furnished at, or before, bid opening, (unless otherwise specified), and will be delivered at no charge to the City. If not used and/or destroyed in testing, said sample(s) will, at Bidder's request, be returned within thirty (30) days of bid award at Bidder's expense. If requested by the City, samples and/or inspection of like items are to be made available in the southeast Florida area.
12. Acceptance of Materials

The material delivered as a result of this bid shall remain the property of the seller until a physical inspection and actual usage of the item(s) is made and thereafter deemed acceptable to the satisfaction of the City, in compliance

- with the terms and specifications contained herein. In the event that the item(s) supplied to the City is/are found to be defective, or does/do not conform to specifications, the City reserves the right to cancel the order upon written notice to the seller and return the item(s) to the seller at the seller's expense.
13. **Manufacturers' Certifications**
- The City reserves the right to obtain separate manufacturer certification of all statements made in the bid.
14. **Copyrights and Patent Rights**
- Bidder warrants that there has been no violation of copyrights or patent rights in manufacturing, producing and/or selling the item(s) ordered or shipped as a result of this bid, and Awarded Bidder agrees to hold the City harmless from any and all liability, loss or expense by any such violation.
15. **Laws and Regulations**
- All applicable laws and regulations of the Federal government, the State of Florida, and ordinances of the City of Pompano Beach will apply to any resulting bid award.
16. **Taxes**
- The City of Pompano Beach is exempt from any taxes imposed by the State and Federal government. Exemption certificates will be provided upon request. State sales tax exemption certificate #85 8012621672C-6 and Federal exemption tax #59 74 0083K apply and appear on each purchase order.
17. **Conflict of Instructions**
- If a conflict exists between the General Conditions and instructions contained herein, and the Specific Conditions and instructions contained herein, the specifics shall govern.
18. **Exceptions to Specifications**
- For purposes of evaluation, Bidder must indicate any exception to the specifications, terms, and/or conditions, no matter how minor. This includes any agreement or Contract forms supplied by the Bidder that are required to be signed by the City. If exceptions are not stated by the Bidder, in his bid, it will be understood that the item(s)/services fully comply with the specifications, terms and/or conditions stated by the City. Exceptions are to be listed by the Bidder on an attachment included with his bid. The City will not determine exceptions based on a review of any attached sales or manufacturer's literature.
19. **Warranties**
- The City of Pompano Beach will not accept any disclaimer of the warranties of merchantability and fitness for a particular purpose for the product(s) offered. Proposals will clearly state any additional warranties and guarantees against defective materials and workmanship. A copy of the complete manufacturer's warranty statement is to be submitted with the bid.

20. **Retention of Records and Right to Access Clause**
- The Awarded Bidder shall preserve and make available all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for a period of five (5) years after termination of this Contract; or if an audit has been initiated and audit findings have not been resolved at the end of these five (5) years, the records shall be retained until resolution of audit finding.
21. **Qualifications/Inspection**
- Bids will only be considered from firms normally engaged in providing the types of commodities/services specified herein. The City reserves the right to inspect the Bidder's facilities, equipment, personnel, and organization at any time, or to take any other action necessary to determine Bidder's ability to perform. The General Services Director reserves the right to reject bids where evidence or evaluation is determined to indicate inability to perform.
22. **Anti-collusion Statement**
- By submitting this bid, the Bidder affirms that this bid is without previous understanding, agreement, or connection with any person, business, or corporation submitting a bid for the same materials, supplies, or equipment, and that this bid is in all respects fair, and without collusion or fraud.
- Additionally, Bidder agrees to abide by all conditions of this bid and certifies that they have the legal authority to submit this bid on behalf of the named Bidder. In submitting a bid to the City of Pompano Beach, the Bidder offers and agrees that if the bid is accepted, the Bidder will convey, sell, assign or transfer to the City of Pompano Beach all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the City of Pompano Beach. At the City's discretion, such assignment shall be made and become effective at the time the City tenders final payment to the Bidder.
23. **Indemnification**
- Contractor covenants and agrees that it will indemnify and hold harmless the City and all of the City's officers, agents, and employees from any claim, loss, damage, costs, charge or expense arising out of any act, action, neglect or omission by contractor during the performance of the Contract, whether direct, or indirect, and whether to any person or property to which the City of said parties may be subject, except that neither the contractor nor any of its sub-contractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of City or any of its officers, agents, or employees.
24. **Reservation for Rejections and Award**
- The City reserves the right to accept or reject any or all bids or parts of bids, to waive irregularities and technicalities, and to request re-bids. The City also reserves the right to award the Contract on such items the City deems will best serve the interests of the City. The

City further reserves the right to award the Contract on a "split order" basis, or such combination as shall best serve the interests of the City unless otherwise specified.

25. Interpretations

Any questions concerning the conditions and specifications contained in this bid should be submitted in writing and received by the Purchasing Division no later than seven (7) calendar days prior to the bid opening. The City of Pompano Beach shall not be responsible for oral interpretations given by any City personnel or representative or others. The issuance of a written addendum is the only official method whereby interpretation, clarification or additional information can be given.

26. Failure to Respond

If you elect not to bid, please return enclosed "Statement of No Response" form by the bid due date, and state your reason(s) for not bidding. Failure to respond, either by submitting a bid, or by submitting a "Statement of No Response" form, may result in your name being removed from our notification list.

27. Bid Tabulations

Tabulations are posted to the Purchasing page of the City's website. Bidders who wish to receive a copy of the bid tabulation should request it by enclosing a stamped, self addressed envelope with their bid, or by requesting a tabulation be sent to their fax machine. Bid results will not be given out by telephone. The City does not notify Non-Awarded Bidders of Contract awards.

28. Assignment

Awarded Bidder may not assign or transfer this Contract, in whole or part, without prior written approval of the City of Pompano Beach.

29. Termination for Convenience of City

Upon seven (7) calendar days written notice delivered by certified mail, return receipt requested, to the Awarded Bidder, the City may without cause and without prejudice to any other right or remedy, terminate the agreement for the City's convenience whenever the City determines that such termination is in the best interest of the City. Where the agreement is terminated for the convenience of the City the notice of termination to the Awarded Bidder must state that the Contract is being terminated for the convenience of the City under the termination clause and the extent of the termination. Upon receipt of such notice, the contractor shall promptly discontinue all work at the time and to the extent indicated on the notice of termination, terminate all outstanding sub-contractors and purchase orders to the extent that they relate to the terminated portion of the Contract and refrain from placing further orders and subcontracts except as they may be necessary, and complete any continued portions of the work.

30. Public Entity Crimes

In accordance with Florida State Statute 287.133 (2)(a): A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a Contract to

provide any goods or services to a public entity, may not submit a bid on a Contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a Contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided s. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

31. Governing Procedures

This bid is governed by the applicable sections of the City's General Services Procedures Manual. A copy of the manual is available for review at the City Purchasing office.

32. Identical Tie Bids

In accordance with Section 287.087, State of Florida Statutes, preference shall be given to businesses with Drug-free Workplace Programs. Whenever two or more bids which are equal with respect to price, quality, and service are received for the procurement of commodities or contractual service, a bid received from a business that certifies that it has implemented a Drug-free Workplace Program shall be given preference in the award process.

Established procedures for processing tie bids will be followed if none of the tied vendors have a Drug-free Workplace Program. In order to have a Drug-free Workplace Program, a business shall:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States of any State, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.

6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

33. Invoicing/Payment

All invoices should be sent to City of Pompano Beach, Accounts Payable, P.O. Drawer 1300, Pompano Beach, Florida, 33061. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City will attempt to pay within fewer days if Bidder offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D.

34. Optional Contract Usage

As provided in Section 287.042(17), Florida Statutes, State of Florida agencies may purchase from a Contract resulting from this ITB, provided the Department of Management Services, Division of Purchasing, has certified its use to be cost effective and in the best interest of the State. Contractor(s) may sell such commodities or services certified by the Division to State of Florida agencies at the contractor's option.

35. Non Discrimination

There shall be no discrimination as to race, color, religion, gender, national origin, ancestry, and physical or mental disability in the operations conducted under this Contract. Included as applicable activities by the contractor under this section are the ITB for, or purchase of, goods or services, or the subcontracting of work in performance of this Contract.

36. Notice To Contractor

The employment of unauthorized aliens by any contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the Contract.

37. Costs Incurred by Bidders

All expenses associated with the preparation and/or presentation and submission of bids to the City, or any work performed in connection therewith, shall be the sole responsibility of the Bidder and shall not be reimbursed by the City.

38. Public Records

1) Any material submitted in response to this ITB will become a public document pursuant to Section 119.071, Florida Statutes. This includes material which the responding Bidder/proposer might consider to be confidential or a trade secret. Any claim of confidentiality is waived upon submission, effective after opening pursuant to Section 119.071, Florida Statutes.

2.1) The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law, as amended. Specifically, the Contractor shall:

a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;

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

c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the City;

d. Upon completion of the Contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

e. Failure of the Contractor to provide the above described public records to the City within a reasonable time may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

**PUBLIC RECORDS CUSTODIAN**

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

**CITY CLERK  
100 W. Atlantic Blvd., Suite 253  
Pompano Beach, Florida 33060  
(954) 786-4611  
RecordsCustodian@copbfl.com**

2.2) The failure of Contractor to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Contract and the City shall enforce the Default in accordance with the provisions set forth herein.

SECTION III - PROPOSAL

**BID LINE ITEM PRICING MUST BE SUBMITTED ELECTRONICALLY USING THE CITY'S EBID SYSTEM.**

Item	Quantity	Description	Unit Price	Sub-Total
1	1 EA	Ice Machine as described herein	\$_____	\$_____
2	1 EA	Installation of ice machine as described herein	\$_____	\$_____
3	3 MO	Ice machine maintenance as described herein	\$_____	\$_____
<b>GRAND TOTAL</b>				\$_____

Note: Prices quoted must include any fees currently required by the State of Florida, or any other governmental entity.

**REQUESTED INFORMATION BELOW IS ON THE ATTRIBUTES TAB FOR THE BID IN THE EBID SYSTEM. PROVIDE THIS INFORMATION ELECTRONICALLY.**

Delivery Time After Receipt of Order: Enter the number of calendar days for delivery time after receipt of order. \_\_\_\_\_

Warranty on workmanship against defective product

State manufacturer/model bid: \_\_\_\_\_

(Include complete descriptive literature with your bid)

A copy of the complete manufacturer's warranty statement is to be submitted with the bid or if submitting an electronic quote with the eBid System upload the complete manufacturer's warranty statement to the Response Attachments tab for this request for quotation in the eBid System.

Additional Items at Awarded Contract Price

If awarded the contract resulting from this bid, will your company agree to sell additional items at the awarded contract price? If so state the time period for additional items to be purchased at the awarded contract price in calendar days. If you will not agree to sell additional items at awarded contract price enter 0. \_\_\_\_\_

Location for obtaining parts and service during and after the warranty period: Provide the name and address of the company for obtaining parts and service during and after the warranty period. Also include the phone number and name for a contact person.

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Extensions of prices, terms and conditions to other governmental entities: If awarded the Contract resulting from this bid, will your company agree to extend the same prices, terms and conditions to other governmental entities? (Note -- Optional, agreement not required for Contract award.)

Yes \_\_\_\_\_ No \_\_\_\_\_

Conflict of Interest: For purposes of determining any possible conflict of interest, all Bidders must disclose if any City of Pompano Beach employee is also an owner, corporate officer, or employee of their business. Indicate either "Yes" (a City employee is also associated with your business), or "No". (Note: If answer is "Yes", you must file a statement with the Supervisor of Elections, pursuant to Florida Statutes 112.313.)

Yes \_\_\_\_ No \_\_\_\_

Drug-Free Workplace: Whenever two or more bids which are equal with respect to price, quality, and service are received for the procurement of commodities or contractual service, a bid received from a business that certifies that it has implemented a Drug-free Workplace Program shall be given preference in the award process. If Bidder's company has a Drug-free Workplace Program as outlined in General Conditions, section 32., so certify below:

Bidder has a drug-free workplace program Yes \_\_\_\_ No \_\_\_\_\_

### **VENDOR CERTIFICATION REGARDING SCRUTINIZED COMPANIES LISTS**

Respondent Vendor Name: \_\_\_\_\_

Vendor FEIN: \_\_\_\_\_

Section 215.4725, Florida Statutes, prohibits agencies from contracting (at any dollar amount) with companies on the Scrutinized Companies that Boycott Israel List, or with companies that are engaged in a boycott of Israel. As the person authorized to sign electronically on behalf of Respondent, I hereby certify by selecting the box below that the company responding to this solicitation is not listed on the Scrutinized Companies that Boycott Israel List. I also certify that the company responding to this solicitation is not participating in a boycott of Israel, and is not engaged in business operations in Syria or Cuba. I understand that pursuant to sections 287.135 and 215.4725, Florida Statutes, the submission of a false certification may subject company to civil penalties, attorney's fees, and/or costs.

I Certify



**REQUESTED INFORMATION BELOW IS ON QUALIFICATIONS OF BIDDERS  
FORM IN BID ATTACHMENTS TAB. BIDDERS ARE TO COMPLETE FORM IN  
ITS ENTIRETY AND UPLOAD COMPLETED FORM TO THE RESPONSE  
ATTACHMENTS TAB FOR THE BID IN THE EBID SYSTEM**

**Qualifications Of Bidders**

To demonstrate qualifications to perform the work, and to be considered for award, each bidder shall submit at least three (3) business customer references. Provide information for business customers for whom you have performed work of this nature which you list as references, excluding the City of Pompano Beach. (Use an attachment if necessary.)

1. Name and address of customer: \_\_\_\_\_

Contact person name and telephone number: \_\_\_\_\_

Description of services provided and date(s) of service: \_\_\_\_\_

\_\_\_\_\_

2. Name and address of customer: \_\_\_\_\_

Contact person name and telephone number: \_\_\_\_\_

Description of services provided and date(s) of service: \_\_\_\_\_

\_\_\_\_\_

3. Name and address of customer: \_\_\_\_\_

Contact person name and telephone number: \_\_\_\_\_

Description of services provided and date(s) of service: \_\_\_\_\_

\_\_\_\_\_

# SERVICE CONTRACT No. \$id

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**THIS AGREEMENT** is made and entered into on \_\_\_\_\_, by the City of Pompano Beach (“City”) and \$company\_name, a \$state\_of\_incorporation \$entity\_type (“Contractor”).

**WHEREAS**, City requires services which Contractor is capable of providing under the terms and conditions described herein; and

**WHEREAS**, Contractor is able and prepared to provide such services to City under the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

1. *Contract Documents.* This Agreement consists of the Scope of Work set forth in Exhibit “A” (the “Work”) and, the Insurance Requirements set forth in Exhibit “B”, both of which are attached hereto and made a part hereof; and all written change orders and modifications issued after execution of this Agreement.

2. *Purpose.* City contracts with Contractor to provide \_\_\_\_\_ services upon the terms and conditions set forth herein.

3. *Scope of Work.* Contractor shall provide the Scope Services set forth in Exhibit “A” and insurance set forth in Exhibit “B” both attached hereto and made a part hereof. If the Work requires Contractor to provide materials or complete the Work within a specified time frame or in accordance with certain plans and specifications, these terms and conditions shall be set forth and included in Exhibit A and Contractor agrees to provide said materials or Work in accordance therewith. Contractor and Contractor’s heirs, executors, administrators, successors and assigns, do hereby agree to full performance of all covenants contained herein on Contractor’s part.

4. *Term of Contract.* This Contract shall be for a term of \_\_\_\_\_ year(s) or less beginning with the date this Contract is fully executed by both parties.

\$startif(\$contract\_have\_renewals==“Yes”)

5. *Renewal.* In the event City determines Contractor to be in full compliance with this Agreement and Contractor’s performance thereunder to be satisfactory, then City, with City Commission approval, shall have the option to renew this Agreement for an additional [TERM] year term.

\$endif

\$startif(\$contract\_have\_renewals==“No”)

5. *Renewal.* This Contract is not subject to renewal.

\$endif

6. *Maximum Obligation.* City agrees to pay Contractor for performing the Work and providing the required insurance.

7. *Price Formula, Payment and Invoices.*

A. *Price Formula.* City agrees to pay Contractor for performance of the Work set forth in this Agreement as follows:

**Services not to exceed \$contract\_amount.**

B. *Payment.* All payments by City shall be made after the Work has been verified and completed. Unless disputed by City as provided herein, upon City’s receipt of a Proper Invoice as defined in § 218.72,



Florida Statutes, as amended, City shall forward Contractor payment for (i) construction services defined as all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvement to real property that require a license under Parts I and II of Chapter 489, Florida Statutes, within twenty-five (25) business days and (ii) forty five (45) days for all goods and services provided other than construction services.

City may temporarily remove for review any disputed amount, by line item, from an invoice and shall timely provide Contractor written notification of any such disputed charge. Contractor shall provide clarification and a satisfactory explanation to City, along with revised copies of all such documents if inaccuracies or errors are discovered, within ten (10) days of receipt of City's notice of the disputed amount

In the event City has a claim against Contractor for Work performed hereunder which has not been timely remedied in accordance with the provisions of this Article 7, City may withhold payment for the contested amount, in whole or in part, to protect itself from loss on account of defective Work, claims filed or reasonable evidence indicating probable filing of claims by other parties against Contractor, and/or Contractor's failure to make proper payments to subcontractors or vendors for material or labor. When the reason(s) for withholding payment are removed or resolved in a manner satisfactory to City, payment shall be made.

Resolution of improper payment requests or invoices shall be in accordance with § 218.76, Florida Statutes, as amended.

C. Invoices. Contractor shall submit invoices to City on a monthly basis or on

8. *Disputes.* Any factual disputes between City and the Contractor in regard to this Agreement shall be directed to the City Manager for the City, and such decision shall be final.

9. *Contract Administrators, Notices and Demands.*

A. *Contract Administrators.* During the term of this Agreement, the City's Contract Administrator shall be \$backup\_person\_name and the Contractor's Contract Administrator shall be \$party\_main\_contact (or their authorized written designee) as further identified below.

B. *Notices and Demands.* A notice, demand, or other communication hereunder by either party to the other shall be effective if it is in writing and sent via email, facsimile, registered or certified mail, postage prepaid to the representatives named below or is addressed and delivered to such other authorized representative at the address as that party, from time to time may designate in writing and forward to the other.

**If to Contractor:** \$party\_main\_contact  
\$street\_address \$street\_address\_2  
\$city0, \$state\_province \$zip\_or\_postal\_code0  
Office: \$party\_main\_contact\_phone  
Email: \$party\_main\_contact\_email

**If to City:** \$backup\_person\_name, Contract Administrator  
100 West Atlantic Blvd  
Pompano Beach, FL 33060  
Office: \$backup\_person\_phone  
Email: \$backup\_person\_email

**With a copy to:** Antonio Pucci, Contract Manager  
100 West Atlantic Blvd.  
Pompano Beach, FL 33060  
Phone: 954-786-5574  
Email: antonio.pucci@copbfl.com

10. *Ownership of Documents and Information.* All information, data, reports, plans, procedures or other proprietary rights in all Work items, developed, prepared, assembled or compiled by Contractor as required for the Work hereunder, whether complete or unfinished, shall be owned by the City without restriction, reservation or limitation of their use and made available at any time and at no cost to City upon reasonable written request for its use and/or distribution as City deems appropriate provided City has compensated Contractor for said Work product. City's re-use of Contractor's Work product shall be at its sole discretion and risk if done without Contractor's written permission. Upon completion of all Work contemplated hereunder or termination of this Agreement, copies of all of the above data shall be promptly delivered to the City's Contract Administrator upon written request. The Contractor may not disclose, use, license or sell any work developed, created, or otherwise originated hereunder to any third party whatsoever. The rights and obligations created under this Article shall survive the termination or expiration of this Agreement.

To the extent it exists and is necessary to perform the Work hereunder, City shall provide any information, data and reports in its possession to Contractor free of charge.

11. *Termination.* City shall have the right to terminate this Agreement, in whole or in part, for convenience, cause, default or negligence on Contractor's part, upon ten (10) business days advance written notice to Contractor. Such Notice of Termination may include City's proposed Transition Plan and timeline for terminating the Work, requests for certain Work product documents and materials, and other provisions regarding winding down concerns and activities.

If there is any material breach or default in Contractor's performance of any covenant or obligation hereunder which has not been remedied within ten (10) business days after City's written Notice of Termination, City, in its sole discretion, may terminate this Agreement immediately and Contractor shall not be entitled to receive further payment for services rendered from the effective date of the Notice of Termination.

In the event of termination for convenience, City shall compensate Contractor for all authorized Work satisfactorily performed through the termination date under the payment terms set forth in Article 7 above and all Work product documents and materials shall be delivered to City within ten (10) business days from the Notice of Termination. If any Work hereunder is in progress but not completed as of the date of the termination, then upon City's written approval, this Agreement may be extended until said Work is completed and accepted by City.

12. *Force Majeure.* Neither party shall be obligated to perform any duty, requirement or obligation hereunder if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of nature or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of Force Majeure. If either party is unable to perform or delayed in their performance of any obligations hereunder by reason of any event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of Force Majeure.

Contractor must follow all Federal, State, County, and City safety guidelines, including all CDC safety guidelines in effect during the term of the program, including but not limited to social distancing, and personal protection equipment. Inability to conduct the program and follow any and all required safety guidelines applicable to the COVID-19 virus or other similar pandemic or emergency, or failure to follow such requirements, including but not limited to, social distancing, shall constitute grounds for immediate cancellation of this Agreement unilaterally by the City upon written notice, which may be provided via electronic mail.

13. *Insurance.* Contractor shall maintain insurance in accordance with Exhibit "B" throughout the term of this Agreement.

14. *Indemnification.* Except as expressly provided herein, no liability shall attach to the City by reason of entering into this Agreement.

A. Contractor shall at all times indemnify, hold harmless and defend the City, its officers, officials, employees, volunteers and other authorized agents from and against any and all claims, demands, suit, damages, attorneys' fees, fines, losses, penalties, defense costs or liabilities suffered by the City arising directly or indirectly from any act, breach, omission, negligence, recklessness or misconduct of Contractor and/or any of its agents, officers, or employees hereunder, including any inaccuracy in or breach of any of the representations, warranties or covenants made by the Contractor, its agents, officers and/or employees, in the performance of services of this contract. Contractor agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and to bear all other costs and expenses related thereto, even if the claim(s) is/are groundless, false or fraudulent. To the extent considered necessary by City, any sums due Contractor hereunder may be retained by City until all of City's claims for indemnification hereunder have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.

B. Contractor acknowledges and agrees that City would not enter into this Agreement without Contractor's indemnification of the City. The parties agree that one percent (1%) of the total compensation paid to Contractor hereunder shall constitute specific consideration to Contractor for the indemnification provided under this Article and these provisions shall survive expiration or early termination of this Agreement.

15. *Sovereign Immunity.* Nothing in this Agreement shall constitute a waiver by the City of its sovereign immunity limits as set forth in section 768.28, Florida Statutes. Nothing herein shall be construed as consent from either party to be sued by third parties.

16. *Non-Assignability and Subcontracting.*

A. *Non-Assignability.* This Agreement is not assignable and Contractor agrees it shall not assign or otherwise transfer any of its interests, rights or obligations hereunder, in whole or in part, to any other person or entity without City's prior written consent which must be sought in writing not less than fifteen (15) days prior to the date of any proposed assignment. Any attempt by Contractor to assign or transfer any of its rights or obligations hereunder without first obtaining City's written approval shall not be binding on City and, at City's sole discretion, may result in City's immediate termination of this Agreement whereby City shall be released of any of its obligations hereunder. In addition, this Agreement and the rights and obligations herein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership. In the event of Contractor's insolvency or bankruptcy, City may, at its option, terminate and cancel this Agreement without any notice of any kind whatsoever, in which event all rights of Contractor hereunder shall immediately cease and terminate.

B. *Subcontracting.* Prior to subcontracting for Work to be performed hereunder, Contractor shall be required to obtain the written approval of the City's Contract Administrator. If the City's Contract Administrator, in his/her sole discretion, objects to the proposed subcontractor, Contractor shall be prohibited from allowing that subcontractor to provide any Work hereunder. Although Contractor may subcontract Work in accordance with this Article, Contractor remains responsible for any and all contractual obligations hereunder and shall also be responsible to ensure that none of its proposed subcontractors are listed on the *Convicted Vendors List* referenced in accordance with the provisions of Article 28 below.

17. *Performance Under Law.* The Contractor, in the performance of duties under the Agreement, agrees to comply with all applicable local, state and/or federal laws and ordinances including, but not limited to, standards of licensing, conduct of business and those relating to criminal activity, and the Americans with Disabilities Act (ADA).

18. *Audit and Inspection Records.* The Contractor shall permit the authorized representatives of the City to inspect and audit all data and records of the Contractor, if any, relating to performance under the contract until the expiration of three years after final payment under this contract.

The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that City or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontractor, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontractor.

19. A *Adherence to Law.* Both parties shall adhere to all applicable laws governing their relationship with their employees including, but not limited to, laws, rules, regulations and policies concerning worker's compensation, unemployment compensation and minimum wage requirements.

B *Conflict of Interest.* During the time period this Agreement is in effect, Contractor shall not engage in any conduct or activities that would constitute a conflict of interest, and shall otherwise avoid any appearance of such conflict of interest. Such conduct or activities shall include, but not be limited to, participation in political campaigns for any city-elected office.

20. *Independent Contractor.* The Contractor shall be deemed an independent Contractor for all purposes, and the employees of the Contractor or any of its contractors, subcontractors and the employees thereof, shall not in any manner be deemed to be employees of City. As such, the employees of the Contractor, its Contractors or subcontractors, shall not be subject to any withholding for tax, social security or other purposes by City, nor shall such Contractor, subcontractor or employee be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation or the like from City.

21. *Contractor cooperation.* The Contractor recognizes that the performance of this contract is essential to the provision of vital public services and the accomplishment of the stated goals and mission of City. Therefore, the Contractor shall be responsible to maintain a cooperative and good faith attitude in all relations with City and shall actively foster a public image of mutual benefit to both parties. The Contractor shall not make any statements or take any actions detrimental to this effort.

22. *Public Records.*

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law, as amended. Specifically, the Contractor shall:

1. Keep and maintain public records required by the City in order to perform the service.

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

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.

4. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

B. Failure of the Contractor to provide the above described public records to the City within a reasonable time may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

## **PUBLIC RECORDS CUSTODIAN**

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

### **CITY CLERK**

**100 W. Atlantic Blvd., Suite 253  
Pompano Beach, Florida 33060  
(954) 786-4611  
[RecordsCustodian@copbfl.com](mailto:RecordsCustodian@copbfl.com)**

23. *Governing Law.* Agreement must be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement will be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

24. *Waiver and Modification.*

A. No waiver made by either party with respect to performance, manner, time, or any obligation of either party or any condition hereunder shall be considered a waiver of that party's rights with respect to the particular obligation or condition beyond those expressly waived in writing or a waiver of any other rights of the party making the waiver or any other obligations of the other party.

B. *No Waiver by Delay.* The City shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Agreement provided that any delay by City in asserting its rights hereunder shall not operate as a waiver of such rights or limit them in any way. The intent of this provision is that City shall not be constrained to exercise such remedy at a time when it may still hope to otherwise resolve the problems created by the default or risk nor shall any waiver made by City with respect to any specific default by Contractor be considered a waiver of City's rights with respect to that default or any other default by Contractor.

C. Either party may request changes to modify certain provisions of this Agreement; however, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

25. *No Contingent Fee.* Contractor warrants that other than a bona fide employee working solely for Contractor, Contractor has not employed or retained any person or entity, or paid or agreed to pay any person or entity, any fee, commission, gift or any other consideration to solicit or secure this Agreement or contingent upon or resulting from the award or making of this Agreement. In the event of Contractor's breach or violation of this provision, City shall have the right to terminate this Agreement without liability and, at City's sole discretion, to deduct from the Price Formula set forth in Article 7 or otherwise recover the full amount of such fee, commission, gift or other consideration.

26. *Attorneys' Fees and Costs.* In the event of any litigation involving the provisions of this Agreement, both parties agree that the prevailing party in such litigation shall be entitled to recover from the non-prevailing party

reasonable attorney and paraprofessional fees as well as all out-of-pocket costs and expenses incurred thereby by the prevailing party in such litigation through all appellate levels.

27. *No Third Party Beneficiaries.* Contractor and City agree that this Agreement and other agreements pertaining to Contractor's performance hereunder shall not create any obligation on Contractor or City's part to third parties. No person not a party to this Agreement shall be a third-party beneficiary or acquire any rights hereunder.

28. *Public Entity Crimes Act.* As of the full execution of this Agreement, Contractor certifies that in accordance with §287.133, Florida Statutes, it is not on the *Convicted Vendors List* maintained by the State of Florida, Department of General Services. If Contractor is subsequently listed on the *Convicted Vendors List* during the term of this Agreement, Contractor agrees it shall immediately provide City written notice of such designation in accordance with Article 9 above.

29. *Entire Agreement.* This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

30. *Headings.* The headings or titles to Articles of this Agreement are not part of the Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

31. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy, email or facsimile copy of this Agreement and any signatory hereon shall be considered for all purposes as original.

32. *Approvals.* Whenever CITY approval(s) shall be required for any action under this Agreement, said approval(s) shall not be unreasonably withheld.

33. *Absence of Conflicts of Interest.* Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with their performance under this Agreement and that no person having any conflicting interest shall be employed or engaged by either party in its performance under this Agreement.

34. *Binding Effect.* The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the parties hereto.

35. *Employment Eligibility.* By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit or County Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination

36. *Severability.* Should any provision of this Agreement or the applications of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts of provisions of this Agreement shall remain in full force and effect.

**THE REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Attest:

**CITY OF POMPANO BEACH**

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

By: \_\_\_\_\_  
REX HARDIN, MAYOR

By: \_\_\_\_\_  
GREGORY P. HARRISON, CITY MANAGER

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

(SEAL)

**“CONTRACTOR”**

\$company name

Witnesses:

\_\_\_\_\_

(Print or Type Name)

\_\_\_\_\_

(Print or Type Name)

By: \_\_\_\_\_  
Name, Title

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_, a Florida corporation on behalf of the corporation **Or** a Florida limited liability company on behalf of the company. He/she is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY’S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number