



Florida's Warmest Welcome

**CITY OF POMPANO BEACH REQUEST FOR
PROPOSALS P-03-21**

DEBT COLLECTION SERVICES

OPENING: April 8, 2021, 2:00 P.M.

**Virtual Zoom Meeting
POMPANO BEACH, FLORIDA 33060**

**CITY OF POMPANO BEACH, FLORIDA
REQUEST FOR PROPOSALS P-03-21
DEBT COLLECTION SERVICES**

I. Introduction

The City of Pompano Beach ("City") seeks written responses ("Proposals") in response to this solicitation ("RFP") that demonstrate the Proposer is qualified to provide comprehensive turnkey debt collection services for all receivables due and owing the City in accordance with all applicable laws, the highest professional standards and cost-effective methods (the "Work").

The City is customer service oriented and firmly believes in a positive approach in dealing with debtors. The successful Proposer shall exercise high ethical standards in their collection philosophy and techniques and perform the Work in a professional manner that preserves the dignity of the City. The City prohibits any collection practices that be may be considered harassment or demeaning or that otherwise reflect poorly on the City.

In order to view RFP documents and submit a Proposal, all Proposers must register on the City's eBid System at <https://pompanobeachflionwave.net/CurrentSourcingEvents.aspx>. The Proposer is solely responsible for downloading all documents required under the RFP and the City is not responsible for the accuracy or completeness of any documents received from any source other than the eBid System.

Sealed Proposals shall be submitted electronically through the eBid System on or **2:00 p.m. (EST)** on before April 8, 2021. Any Proposal received after the foregoing deadline will not be considered and any uncertainty regarding the time a Proposal is received shall be resolved against the Proposer. Proposer shall upload Proposal as one (1) file to the eBid System. The file size for uploads is limited to 250 MB. If the file size exceeds 10 MB, the Proposal must be split and uploaded as two (2) separate files. The Proposer Information Page Form and any other required forms must be completed and submitted electronically through the City's eBid System.

II. Scope of Services

The successful Proposer shall provide comprehensive debt collection services from the time the City refers an account for collection until the debt is collected in full or the City takes the account back in accordance with the standard operating procedures mutually agreed upon in the negotiation phase of the bid award. Delinquent accounts may include, but are not limited to, Code Enforcement, Unsafe Structure and Nuisance Abatement liens; water and sewer charges; fines; fees; parking citations; licenses; permits; rental charges and any other receivable capable of being collected.

Proposer shall be responsible to accept any account the City submits to it regardless of account amount or age of the receivable; perform all necessary collection activities on the City's

behalf, which include, but are not limited to, telephone contact, mail correspondence, skip tracing, credit bureau reporting, reaching and monitoring debtor settlements; and, upon written approval of the City's Finance Director, seeking money judgments or filing foreclosure or garnishment actions.

The City's goal is to turnover accounts within 180 days from the delinquency date and the successful Proposer shall have forty-five (45) days thereafter to commence Work on each account. If not successful in collecting on the account within 180 days of receipt from the City, the delinquent account may be considered for withdrawal and returned to City without a collection fee unless the Proposer receives payment within five (5) working days from the date City requests said account be withdrawn.

Subject to the recordkeeping, inspection and audit rights of the City's Internal Auditor as set forth in Paragraph I of Subsection V of this RFP entitled, "Miscellaneous Contract Provisions," the City's Finance Director or designee shall have sole authority to (1) determine which delinquent accounts are referred for collection; (2) decide which collection techniques should be utilized; and (3) take back any assigned delinquent account(s).

By the first of each month, Proposer shall provide monthly reports to the City detailed for each City department that, at a minimum, include the following information:

1. All accounts which the City has referred for collection and the originating City department (e.g. Code Compliance, Utilities, etc.), the amount and collection status;
2. Acknowledges the referral of any new accounts as well as all accounts no longer being pursued and the reason why; and
3. Active accounts showing the amount submitted, amount paid in the current 30-day period, amount paid to date, balance remaining on the account and amount of commission resulting from any current payment.

Proposer shall provide an annual summary report that, at a minimum, includes the number of accounts and amounts placed in collection; the average amount of accounts in collection; the time the accounts were in collection prior to final payment; if the account remains outstanding, the amount of time in collection; collection payments received to date; percentage of collection; and any commission paid to date.

The Proposer awarded the contract under this RFP shall meet with designated City staff at least biannually or as often as required by the City's Finance Director; provide the City primary and secondary contacts for daily operational issues related to the Work; remit any amounts due City from debtor payments received by the first of each month following collection; at no charge or billed commission, return to City any account that was placed in error or previously submitted but subsequently recalled; and have established internal computer systems that are able to communicate with the City's computer systems.

III. Proposal Requirements, Terms and Conditions

The Proposal shall be clear, concise and include sufficient detail for effective evaluation and substantiating the validity of Proposer's representations therein, including providing standard operating procedures for how Proposer intends to conduct the Work. To assure consistency, Proposals must conform to the format and order presented below.

A. Title Page. This should include the RFP reference number and subject, Proposer's name and FEI number, the date of the Proposal, and the name, title, phone and email of a contact person.

B. Table of Contents. Identify the material included in the Proposal and the corresponding page number.

C. Transmittal Letter/Executive Summary. Include a letter summarizing Proposer's understanding of, and commitment to, perform the Work and describe the services and resources Proposer has to offer; provide a statement the Proposal is a firm and irrevocable offer for a 90 day period from the closing date of this RFP; and include the name, title and signature of the representative who has been authorized to submit the Proposal on behalf of Proposer.

D. Professional Experience, Qualifications and References. State whether the Proposer is a national, regional or local firm and the location from which the Work is to be performed. Provide a brief history of Proposer's background and expertise providing similar debt collection services and how that experience will be utilized to perform the Work along with any other information that Proposer deems relevant to demonstrate its qualifications for the Work.

1. Provide a detailed description of any past or current or future government or other contracts similar in scope to the Work being requested herein which Proposer is currently performing or has completed and include the following information for each contract: client name, address, email and telephone number; the contract period, scope, collection fee and average success rate; the name and contact information for an individual who can attest to Proposer's performance therein; and clarify whether Proposer was the prime contractor or a sub-contractor.

2. Discuss familiarity with state and federal laws governing the Work specific to each category of City receivables as described above, citing all applicable laws governing the City's ability to collect on said debts. Be sure to discuss any known legal issues limiting the City's ability to pursue collections to demonstrate your understanding of the legal issues governing these matters and provide any technical or practical limitations for collection of the various receivable categories (e.g. a recommended minimum dollar threshold for referring accounts for collections, etc.).

3. Provide a list of all clients that terminated your services in the past five (5) years and the reason for termination. If not applicable, please provide a statement to that effect.

4. Describe any prior or pending litigation or investigation, civil or criminal, in which Proposer or any of its employees, sub-contractors or other agents are or have been involved with in the past five (5) years while in the performance of their duties for Proposer, including the status/outcome.

5. Describe and explain any prior complaints (both substantiated and inconclusive) filed with any governmental, professional or regulatory agency against Proposer and any of its key personnel in the past five (5) years, including the status/outcome.

6. Describe any other relevant experience related to the Work.

7. List any prior projects performed for the City.

8. Key Personnel. The phrase "key personnel" includes Proposer's principals, managers, employees and subcontractors proposed to perform the Work. Describe Proposer's organizational structure showing all key personnel who will perform the Work; provide their resumes, level of involvement, field of expertise; include any honors, awards or other professional recognition received; and clearly identify whether they are Proposer's employees or a subcontractor.

E. Financial Statements and Service Organization Controls. Proposers shall be financially solvent and appropriately capitalized to provide the Work required under this RFP for the term of the contract. Proposers must upload the documentation listed below to the *Response Attachments* tab in the eBid System as a separate file titled "Financial Statements" and marked "Confidential."

Financial statements required as submittals to pre-qualify for a solicitation are exempt from public disclosure; however, financial statements submitted to pre-qualify for a solicitation that are not required by the City may be subject to public disclosure. The City requires the reserves the right to reject financial statements that do not comply with the requirements listed below and to request additional information after the Proposal is opened and prior to its evaluation, to ensure Proposer is financially solvent and has sufficient financial resources to perform the Work.

1. Provide a copy of Proposer's most recent audited financial statements that shall not be dated more than one (1) year prior to the date of your Proposal along with relevant accompanying notes and supplemental information.

2. Proposer shall provide a current SSAE 18, SOC 2, Type I Report as part of its Proposal. If Proposer cannot provide the SSAE 18, SOC 2, Type I Report at time of Proposal submittal, a current SOC 3 Report will be accepted. If awarded the bid under this RFP, Proposer shall be required to provide a SSAE 18, SOC 2, Type II Report annually during the term.

F. Proposed Approach and Methodology to Work. Describe the methods and processes that Proposer will utilize to perform the Work from the time a delinquent account is referred until it is either collected in full or recalled by the City, including relevant time frames for initial/follow-up letters, phone calls, skip tracing, identifying debtor assets, etc. Explain your process for making recommendations regarding potential legal options available to the City (e.g. foreclosure, garnishment, seeking a money judgment, etc.) and identify what City staff you anticipate will be needed to perform the Work.

Describe Proposer's internal online reporting capabilities and method for measuring its debt collection success rate. If specific reports are used, provide sample reports as exhibits to the Proposal along with all standard letters and notifications sent debtors as part of the Work.

G. Collection Fee. Proposer shall submit a proposed all-inclusive contingency fee through the designated line items listed on the eBids website which shall be subject to the terms and conditions listed below.

1. For all accounts referred by the City, unless otherwise instructed by the Finance Director or his designee, Proposer shall add the collection fee to the amount of the debt owed City. The City shall not be responsible for any fees.

2. Proposer shall be responsible to collect the collection fee from the debtor and deduct it prior to remitting the principal amount to City.

3. If an account is reduced or cancelled by the City, no collection fee shall be due Proposer for the amount so reduced or cancelled or as otherwise stated in the contract.

4. If a bankruptcy court discharges Proposer's collection fee, Proposer shall be entitled to a percentage equal to Proposer's fee of the non-dischargeable debt collected. Proposer shall deduct this amount prior to remitting the remaining principal amount to City.

5. Should there be changes in law or City policy that allow a different method for recovering collection fees, Proposer shall modify its methods in accordance the Finance Director's instruction and, if necessary, execution of an amendment to the contract.

H. References. Provide references for your provision of similar collection services, preferably in the Miami-Dade, Broward and Palm Beach County area. Describe the scope of each engagement in physical terms, costs and responsibilities. Provide the name, email and telephone numbers for a supervisor or manager who can attest to your performance.

I. Insurance Requirements. Proposer 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 a bid and have questions regarding the insurance requirements hereunder, please contact the City's Purchasing Department at 954-786-4098. If the contract has already been awarded,

please direct any queries and proof of the requisite insurance coverage to City staff responsible for oversight of the subject contract.

Proposer is responsible to deliver to City, for timely review and written approval/disapproval, Certificates of Insurance that evidence 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, reserves 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 Proposer, is not intended to, and shall not in any way limit or qualify the liabilities and obligations assumed by Proposer under this Contract.

Throughout the term of this Contract, Proposer 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 Proposer is obligated to pay compensation to employees engaged in the performance of the Work. Proposer 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 that arise from Proposer's negligent acts or omissions in connection with Proposer's performance under this Contract.

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

Type of Insurance

Limits of Liability

GENERAL LIABILITY

* Policy to be written on occurrence basis

	Per Occurrence	Aggregate
XX comprehensive form	\$1,000,000	\$2,000,000
XX premises – operations	bodily injury and property damage	
XX underground hazard	bodily injury and property damage	
XX products/completed operations hazard	bodily injury & property damage combined	
XX contractual insurance	bodily injury & property damage combined	
XX broad form property damage	bodily injury & 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	\$1,000,000	\$1,000,000

AUTOMOBILE LIABILITY

* Minimum Bodily injury (each person)

bodily injury (each accident), property damage, bodily injury and property damage combined

	Per Occurrence	Aggregate
XX comprehensive form	\$1,000,000	\$1,000,000
XX owned		
XX hired		
XX non-owned		

REAL & PERSONAL PROPERTY

* Policy to be written on a claims

occurrence basis comprehensive form; Proposer must show proof they have this coverage

EXCESS/UMBRELLA LIABILITY

* Policy to be written on a claims

occurrence basis

	Per Occurrence	Aggregate
XX excess/umbrella	\$5,000,000	\$5,000,000
	bodily injury & property damage combined	

PROFESSIONAL LIABILITY

* Policy to be written on a claims made

basis

	Per Occurrence	Aggregate
XX professional liability	\$1,000,000	\$1,000,000

3. If Professional Liability insurance is required, Proposer agrees the indemnification and hold harmless provisions of the contract shall survive its termination or

expiration for a period of three (3) years unless terminated sooner by the applicable statute of limitations.

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

CYBER LIABILITY	* Policy to be written on claims made basis	
	Per Claim	Aggregate
	\$1,000,000	\$1,000,000
XX Network Security/Privacy Liability		
XX Breach Response/Notification Sublimit (minimum limit of 50% of policy aggregate)		
XX Technology Products E&O - \$1,000,000 (only applicable for vendors supplying technology related services and/or products)		
XX Coverage shall be maintained in effect during the period of the contract and for not less than four (4) years after its termination or completion		

EMPLOYER’S LIABILITY * Proposer 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 Proposer, Proposer 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, modified or substantially modified, the issuing company shall provide thirty (30) days advance written notice to the City.

6. Waiver of Subrogation. Proposer 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 Contract to waive subrogation without an endorsement, then Proposer 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 that includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should Proposer enter into such a contract on a pre-loss basis.

J. Miscellaneous Terms and Conditions. The completed Proposal (together with all required attachments) must be submitted electronically to City on or before the time and date stated herein. All Proposers, by electronic submission of a proposal, shall agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. All Proposals and supporting materials submitted shall become the property of the City.

1. All Proposers shall complete and submit all forms required for this RFP in the eBids system.

2. All Proposers are required to provide all information requested in this RFP. Failure to do so may result in the disqualification of the Proposal.

3. The City reserves the right to postpone or cancel this RFP; reject all Proposals; and waive any technical or formal errors or omissions if it is determined to be in the best interest of the City to do so.

4. The City shall not be liable for any costs incurred by the Proposer in the preparation of their Proposal or for any work performed in connection therewith.

5. Proposer's Proposal shall not contain any alteration to the document posted other than entering data in spaces provided or including attachments as necessary. By submission of a response, Proposer affirms that a complete set of bid documents was obtained from the eBid System or from the Purchasing Division only and no alteration of any kind has been made to the RFP. Exceptions or deviations to the Proposal may not be added after the submittal date.

6. The City reserves the right to waive any technical or formal errors or omissions; reject all proposals; or award the contract for the Work requested herein, in part or whole, if City determines it is in the best interests of the City to do so.

IV. Selection/Evaluation Process

A Selection/Evaluation Committee (“Committee”) will be appointed to select the most qualified Proposer(s) and present their findings to the City Commission for formal approval or other action. Proposals will be evaluated according to the criteria set forth below.

	<u>Criteria</u>	<u>Point Range</u>
1	Firm's Background, Experience and Personnel	0-25
2	Collection Method/Approach/Reporting and Success Rate	0-35

3 Collection Fee 0-40

Total 0-100

Additional 0-5% for Tier1/Tier2 Local Business will be calculated on combined scoring totals of each Proposer.

A. Value of Previously Awarded Work in Tiebreaker. In the event of a tie, the Proposer with the lowest value of work as a prime contractor on City projects within the last five years will receive the higher ranking, the Proposer with the next lowest value of work shall receive the next highest ranking, and so on. The analysis of past work will be based on the City's Purchase Order and payment records.

The Committee has the option to use the above criteria for the initial ranking to shortlist Proposers or, if deemed necessary, to use an ordinal ranking system to score shortlisted Proposers following presentations with a score of "1" assigned to the shortlisted Proposer they deem most qualified.

For shortlisting purposes, each Proposer shall submit documentation for the Committee's review that evidences their capability to provide the Work. After an initial review of the Proposals, the City may invite Proposers for an interview to discuss their Proposal and meet their representatives, particularly key personnel who would be assigned to perform the Work. Should interviews be deemed necessary, it is understood the City shall incur no costs as a result of the interview nor bear any obligation in further consideration of their Proposal.

When more than three Proposals are received, the Committee shall furnish the City Commission a list, in ranked order, of no fewer than three Proposers deemed the most qualified to perform the Work. If three or less Proposers respond to this RFP, the list will contain the ranking of all Proposals.

The City Commission has the authority, including, but not limited to, approve/reject the Committee's recommendation; direct City staff to re-advertise the RFP; postpone or cancel this RFP; reject all Proposals; review the Proposals themselves; and request oral presentations and determine a ranking order that may be different the Committee's ranking.

B. Local Business Program. On March 13, 2018, the City Commission approved Ordinance 2018-46 wherein the City established a Local Business Program to increase participation of the City's businesses in its procurement process. For purposes of this RFP, "Local Business" is defined in subsections 1- 3as set forth below.

1. **TIER 1 LOCAL VENDOR. POMPANO BEACH BUSINESS EMPLOYING POMPANO BEACH RESIDENTS.** A business entity that has maintained a permanent place of business within Pompano Beach and maintains a staffing level, within this local office, of at least 10% who are Pompano Beach residents or has subcontracting commitments to Local Vendors Subcontractors for at least 10% of the value of the contract awarded under this

RFP. The permanent place of business may not be a post office box. The business must be located in a non-residential zone and actually distribute goods or services from that location. The business must be staffed with full-time employees located within Pompano Beach city limits. The business must also have a current business tax receipt from the City for a minimum of one year prior to the date of issuance of this RFP.

2. **TIER 2 LOCAL VENDOR. BROWARD COUNTY BUSINESS EMPLOYING POMPANO BEACH RESIDENTS OR UTILIZING LOCAL VENDOR SUBCONTRACTORS.** A business entity that has maintained a permanent place of business within Broward County and maintains a staffing level, within this local office, of at least 15% who are Pompano Beach residents or has subcontracting commitments to Local Vendors Subcontractors for at least 20% of the value of the contract awarded under this RFP. The permanent place of business may not be a post office box. The business must be located in a non-residential zone and actually distribute goods or services from that location. The business must be staffed with full-time employees located within Pompano Beach city limits. The business must have a current business tax receipt from the respective Broward County municipality for a minimum of one year prior to the date of issuance of this RFP.

3. **LOCAL VENDOR SUBCONTRACTOR. POMPANO BEACH BUSINESS.** A business entity that has maintained a permanent place of business within Pompano Beach. The permanent place of business may not be a post office box. The business must be located in a non-residential zone and actually distribute goods or services from that location. The business must be staffed with full-time employees located within Pompano Beach city limits. The business must also have a current business tax receipt from the City for a minimum of one year prior to the date of issuance of this RFP.

You can view the list of businesses in Pompano Beach that have a current City-issued Business Tax Receipt and locate local businesses available to assist in the performance of the Work. This information, sorted by business use classification, is posted on the webpage for the City's Business Tax Receipt Division by selecting the Pompano Beach Business Directory in the Shop Pompano! Section at pompanobeachfl.gov/pages/dev_svc_btr/btr.

For evaluation purposes, Tier 1 and Tier 2 businesses shall be a criterion for award of this RFP. No business may qualify for more than one tier level. It is the responsibility of the Proposer awarded the contract under this RFP to comply with all Tier 1 and Tier 2 guidelines and ensure all requirements are met before execution of a contract with the City for the Work.

The City shall award a Local Vendor preference as set forth below.

1. Tier 1 business as defined by this subsection shall be granted a preference in the amount of five percent of the total score.

2. Tier 2 business as defined by this subsection shall be granted a preference in the amount of two and one-half percent of the total score.

The City is strongly committed to ensuring the participation of Pompano Beach businesses as contractors and subcontractors for the procurement of goods and services, including labor,

materials and equipment. Proposers are required to participate in the City's Local Business Program by including, as part of their submittal package, the Local Business Participation Form listing the local businesses that will be participate in the Work (Exhibit A) and the Letter of Intent Form from each local business that will participate in the Work for this RFP (Exhibit B).

The required goal for this RFP is 10% for Local Vendor. If a Prime Contractor/Vendor is not able to achieve this goal, they will be requested to provide the Local Business Unavailability Form that identifies businesses that were contacted but not available (Exhibit C) and the Good Faith Effort Report that describes Proposer's efforts to include local business participation (Exhibit D). This documentation shall be provided to the City Commission for review and approval.

The successful Proposer is required to submit "Local Business Subcontractor Utilization Reports" during and after the term of the contract awarded under this RFP, the template and instructions for which are included in the bid document. Failure to meet Local Vendor Goal commitments will result in an "unsatisfactory" compliance rating which may impact award of future City contracts if a sanction is imposed by the City Commission.

V. Miscellaneous Contract Provisions. The contract resulting from this solicitation shall include this RFP, the successful Proposal and the resulting contract prepared by the City Attorney of Pompano Beach. The legal provisions set forth below are representative of some, but not all, of the standard legal provisions to be included in the contract awarded under this RFP.

A. Term. This Contract shall be for a five (5) year term. In the event City determines Proposer performance during the first five-year term is satisfactory, then with both parties' written consent executed with the same formality of this contract, City shall have the option to renew this contract for one (1) additional three (3) year period provided the City gives written notice of its intention to renew six (6) months prior to the end of the first Term.

B. Key Personnel and Manner of Performance. No diversion or substitution of principals or key personnel shall be allowed unless a written request that sets forth the qualifications and experience of their proposed replacement(s) is submitted to and approved by the City in writing. Proposer agrees to perform its duties and obligations under the contract resulting from this RFP in a professional manner and in accordance with all applicable local, federal and state laws, rules and regulations.

Proposer agrees the Work shall be provided by employees or other agents that are educated, trained, experienced, certified and possess and appropriately licensed in all areas encompassed within their designated duties. Proposer agrees to furnish the City with all documentation, certification, authorization, license, permit, or registration currently required by applicable laws or rules and regulations. Proposer further certifies that it and its employees are now in and will maintain good standing with such governmental agencies and that it and its employees will keep all license, permits, registration, authorization or certification required by applicable laws or regulations in full force and effect during the term of this contract. Failure of Proposer to comply with this paragraph shall constitute a material breach of contract.

C. Default and Remedies to Cure Default.

1. Default by Proposer. Proposer acknowledges City is relying on Proposer for the faithful performance of all undertakings and covenants contained herein and that Proposer's expressed professional ability to accomplish same has served as inducement for City to enter into this contract.

An event of default or breach by Proposer shall include, but not be limited to, any of the following: failure of Proposer to perform the Work at any time during the Term; failure of Proposer to obtain the approval of the City where required hereunder; failure of Proposer to perform any requisite covenant, condition or provision contained herein; or Proposer files for bankruptcy or is the subject of insolvency or receivership proceedings.

2. Default by City or Proposer. If either party fails to perform any material covenant, Contract, undertaking or term of this Contract, or if the parties' representations set forth herein are materially untrue or incorrect, then the party alleging default or breach shall give written notice, in which event the party alleged to be in default/breach shall proceed immediately to address the situation and have thirty (30) days cure or resolve same.

If such default or breach is not cured resolved within the foregoing thirty (30) day cure period, the party not in default may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy said default or breach, including, but not limited to, proceedings to compel specific performance; injunctive relief, termination of this contract, and damages for breach of contract.

However, in the event a particularly egregious default or breach poses a threat to persons or property, both parties reserve the right to require the other to take immediate or other such prudent and timely action as is necessary under the circumstances to prevent any such harm or damage from occurring.

D. Termination. City shall have the right to terminate this contract, in whole or in part, without cause upon ninety (90) days advance written notice to Proposer. 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.

In the event of termination, City shall compensate Proposer for all authorized Work satisfactorily performed through the termination date under the payment terms set forth herein and Proposer shall deliver all Work product documents requested by City within thirty (30) 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 contract may be extended until said Work is completed and accepted by City.

If there is any material breach or default in Proposer's performance of any covenant or obligation hereunder which has not been remedied within thirty (30) days after City's written Notice of Termination, City, in its sole discretion, may terminate this Contract immediately and Proposer

shall not be entitled to receive further payment for services rendered from the effective date of the Notice of Termination.

E. Force Majeure. If either party is unable to perform, or delayed in their performance of any obligations hereunder due to fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, pandemic, acts of nature or any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("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 the Force Majeure event. In no event shall economic hardship or lack of funds be considered an event of Force Majeure.

In order to be entitled to the benefit of the foregoing provisions, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail said event and diligently proceed to correct the adverse effect(s) or by the parties' mutual agreement, may reschedule performance of the Work or services to a later date. The parties agree, that to these Force Majeure provisions, time is of the essence.

With regard to the COVID-19 pandemic or similar emergency, Proposer must follow all federal, state, county and City regulations and safety guidelines, including, but not limited to, social distancing and personal protection equipment. Proposer's inability or failure to follow any and all foregoing regulations or safety guidelines shall constitute grounds for City's immediate unilateral termination of this Contract upon written notice to Proposer's Contract Administrator which may be provided via email and subsequently confirmed via certified mail.

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

1. Proposer 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 Proposer 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 Proposer, its agents, officers and/or employees, in performance of the Work.

Proposer 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 Proposer 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.

For Professional Liability claims, Proposer agrees this indemnification and hold harmless section of the contract shall survive its termination or expiration for a period of four (4) years unless sooner terminated by the applicable statute of limitations. For General Liability claims, Proposer agrees this indemnification and hold harmless section shall survive the contract's termination or

expiration for a period of two (2) years unless sooner terminated by the applicable statute of limitations.

Proposer acknowledges and agrees that City would not enter into this contract without this indemnification of the City by Proposer, and that the City's entering into this contract shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of this contract.

2. Proposer acknowledges and agrees that City would not enter into this contract without Proposer indemnification of the City. The parties agree that one percent (1%) of the total compensation paid to Proposer hereunder shall constitute specific consideration to Proposer for the foregoing indemnification provisions which shall survive expiration or early termination of this contract.

G. Sovereign Immunity. Nothing in this contract shall be construed to waive or affect in any way the City's rights, privileges and immunities as set forth in § 768.28, Florida Statutes.

H. Non-Assignability and Subcontracting. Nothing herein shall be construed to create any personal liability on the part of any City officer or agent that may be a party hereto, nor shall it be construed as granting any rights or benefits hereunder to anyone other than the City and Proposer.

1. Non-Assignability. This contract is not assignable and Proposer agrees it shall not assign, transfer, merge or otherwise convey 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 ninety (90) days prior to the date of any proposed assignment. Any attempt by Proposer 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 contract whereby City shall be released of any of its obligations hereunder. In addition, this contract 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 Proposer's insolvency or bankruptcy, City may, at its option, terminate and cancel this contract without any notice of any kind whatsoever, in which event all rights of Proposer hereunder shall immediately cease and terminate.

2. Subcontracting. Prior to subcontracting for Work to be performed hereunder, Proposer 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, Proposer shall be prohibited from allowing that subcontractor to provide any Work hereunder. Although Proposer may subcontract Work in accordance with this Article, Proposer 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 Public Entity Crimes Act provisions of this contract.

I. Recordkeeping, Inspection, Audit and Public Records Procedures. Proposer shall use such accounting methods and procedures as may be prescribed by City, in accordance with

generally accepted accounting principles, which shall include but not be limited to, those methods and procedures set forth herein or otherwise prescribed by City in the contract awarded pursuant to this RFP. Proposer shall require all subcontractors, insurance agents, material suppliers and other payees to comply with the audit, retention, right to access and Public Records provisions of this subsection by inserting these requirements in any written contract for the Work. Failure to obtain such written contracts to include the requisite provisions shall be reason to exclude some or all of any amounts payable to Proposer under the contract.

1. Right to Audit. Proposer's records shall include, but not be limited to, accounting records and reports; written policies and procedures; computer records, disks and software; videos; photographs; subcontract files, including proposals of successful and unsuccessful bidders; original estimates; estimating worksheets; correspondence; change order files, including documentation covering negotiated settlements; and any other supporting evidence necessary to substantiate charges related to this contract (collectively, "records"). The form of all records and reports shall be subject to approval of the City's Internal Auditor. Proposer shall comply with all recommendations for additions, deletions or other changes requested by the City's Internal Auditor.

All records shall be available for City's inspection and subject to audit and/or reproduction during normal working hours by City's authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by Proposer or any of its payees pursuant to execution of this contract. Such records subject to examination or audit shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs, including overhead allocations, as they may apply to costs associated with this contract.

For the purpose of such audits, inspections, examinations and evaluations, the City's authorized representative shall have access to said records from the effective date of this contract for the duration of the Work and for three (3) years after the date of City's final payment to Proposer under this contract. City's authorized representative shall have access to the facilities and all records of Proposer and its agents that City, in its sole discretion, deems necessary in order to exercise its examination and audit rights as provided herein. City's authorized representative shall provide reasonable advance notice of intended audits and Proposer and its agents hereunder shall provide City adequate and appropriate workspace to conduct same.

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

a. Keep and maintain public records 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 PROPOSER 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 Proposer, or keep and maintain public records required by the City to perform the service. If the Proposer transfers all public records to the City upon completion of the contract, the Proposer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Proposer keeps and maintains public records upon completion of the contract, the Proposer 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.

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

PUBLIC RECORDS CUSTODIAN

IF THE PROPOSER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO PROPOSER'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

J. Familiarity and Adherence to Law and Legal Requirements for the Work. Proposer shall be familiar and comply with, all federal, state and local laws, ordinances, rules and regulations associated with the Work and be responsible for obtaining all requisite permits, licenses, certifications, etc., including complying with all attendant requirements thereunder. Ignorance on Proposer's part shall in no way relieve Proposer from the foregoing responsibility. Proposer shall also adhere to all applicable laws governing its relationship with its employees including, but not limited to, laws, rules, regulations and policies concerning worker's compensation, unemployment compensation and minimum wage requirements.

K. Independent Contractor. Nothing in this contract shall be construed to create a partnership or joint venture between the City and Proposer. It is expressly agreed that in performance of the Work, Proposer, its employees and contractors/subcontractors and the

employees thereof, is and shall be an independent contractor and shall not in any manner be deemed to be an employee, principal or agent of the City. As such, the employees of the Proposer, its contractors/subcontractors and their employees, shall not be subject to any withholding for tax, social security or other purposes by City or be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, unemployment compensation or the like from City.

All persons engaged in any service or activity as Work hereunder shall at all times and in all places be subject to Proposer's sole direction, supervision and control. Proposer acknowledges it shall have no authority to bind either City to any contractual or other obligation whatsoever.

L. Governing Law. This contract shall be interpreted 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 contract shall be in 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 contract must be litigated in federal court, the exclusive venue for any such lawsuit shall be the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS CONTRACT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS CONTRACT.

M. Waiver and Modification. No waiver made by either party with respect to performance, manner, time or any obligation or 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.

1. 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 contract 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 problem nor shall any waiver made by City with respect to any specific default by Proposer be considered a waiver of City's rights with respect to that default or any other default by Proposer.

2. Modification. Either party may request changes to modify certain provisions of this contract; 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 contract.

N. No Contingent Fee. Proposer warrants that other than a bona fide employee working solely for Proposer, Proposer 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 contract or contingent upon or resulting from the award or making of this contract. In the event of Proposer's breach or violation of this provision, City shall have the right to terminate this contract without liability and, at City's sole discretion, to deduct from any compensation due Proposer for the Work hereunder or otherwise recover the full amount of such fee, commission, gift or other consideration.

O. No Conflict of Interest. For purposes of determining any possible conflict of interest, each Proposer must disclose if any Elected Official, Appointed Official, or City employee is also an owner, corporate officer, or an employee of Proposer. If any Elected Official, Appointed Official, or City Employee is an owner, corporate officer, or an employee, the Proposer must file a statement with the Broward County Supervisor of Elections pursuant to § 112.313, Florida Statutes.

P. Attorneys' Fees and Costs. In the event of any litigation involving the provisions of this contract, the prevailing party 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 in such litigation through all appellate levels.

Q. Equal Opportunity Employment. Proposer agrees not to discriminate against any employee or applicant for employment for work under this Contract because of race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of compensation; and selection for training, including apprenticeships.

R. No Third Party Beneficiaries. Proposer and City agree this contract and other contracts pertaining to Proposer's performance hereunder shall not create any obligation on Proposer or City's part to third parties. No person not a party to this Contract shall be a third-party beneficiary or acquire any rights hereunder and nothing herein shall be construed as consent from either party to be sued by third parties.

S. Public Entity Crimes Act. As of the full execution of this contract, Proposer 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 Proposer is subsequently listed on the *Convicted Vendors List* during the term of this contract, Proposer agrees it shall immediately provide City written notice of such designation in accordance with the notice procedures required under this contract.

A person or affiliate who has been placed on the *Convicted Vendors List* following a conviction for public entity crime may not (1) submit a proposal on a contract to provide any goods or services to a public entity; (2) submit a proposal on a contract with a public entity for the construction or repair of a public building or public work; (3) submit proposals on leases of real property to public entity; (4) be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; (5) transact business with any public entity in excess of the threshold amount provided in Florida Statute, § 287.017, for Category Two for a period of 36 months from the date of being placed on the *Convicted Vendors List*.

T. Counterparts. This contract 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 contract and any signatory hereon shall be considered for all purposes as original.

U. Approvals. Whenever City approval(s) shall be required for any action hereunder, said approval(s) shall not be unreasonably withheld.

V. Absence of Conflict of Interest. Both parties represent they presently have no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with their performance under this contract and that no person having any conflicting interest shall be employed or engaged by either party in their performance hereunder.

Proposer shall timely notify City in writing of all potential conflicts of interest for any prospective business association, interest or other circumstance that may influence or appear to influence Proposer's judgment or quality of Work hereunder. Said notification shall identify the prospective business interest or circumstance and the nature of work that Proposer intends to undertake and shall request the City's opinion as to whether such association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by Proposer.

W. Drug-Free Workplace. Proposers shall maintain a Drug-Free Workplace in accordance with § 112.0455, Florida Statutes.

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

Y. Survival of Provisions. Any terms or conditions hereunder that require acts beyond the date this contract is terminated shall survive said termination and remain in full force and effect unless and until the terms of conditions are completed and be fully enforceable by either party.

Z. Joint Preparation, Binding Effect and Entire Contract. This contract shall be interpreted as being drafted by both parties equally with each party having the opportunity to be represented by counsel of their choice. The benefits and obligations imposed pursuant to this contract shall be binding and enforceable by and against the parties hereto.

This document embodies the entire agreement between the parties and supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein. Both parties agree there are no commitments, agreements or understandings concerning the subject matter of this contract that are not contained in this document and that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.