

REQUEST FOR QUALIFICATIONS (RFQ)



RFQ #: T-13-24

ENGINEERING SERVICES FOR THE WATER TREATMENT PLANT IMPROVEMENT PROJECT

**City of Pompano Beach, Florida
General Services and Procurement
1190 NE 3 Avenue, Pompano Beach, FL 33060
Phone: 954.786.4098 Fax: 954.786.4168**

**Virtual Zoom Meeting
For access go to:
<https://pompanobeachfl.gov/pages/meetings>**

Advertisement Date: May 30, 2024

SCHEDULE OF EVENTS

RFQ documents and Addenda(s) are available and can be downloaded for free from the eBid System as a pdf at: <https://pompanobeachfl.ionwave.net>

RFQ NUMBER:	T-13-24
RFQ TITLE:	ENGINEERING SERVICES FOR THE WATER TREATMENT PLANT IMPROVEMENT PROJECT
DATE PUBLISHED IN SUN-SENTINEL	Sunday, June 2, 2024
RELEASE DATES/TIME:	Thursday, May 30, 2024 by 5:00 PM
NON-MANDATORY PRE-PROPOSAL CONFERENCE:	Thursday, June 6, 2024 at 10:00 AM
WRITTEN QUESTIONS AND INQUIRIES ARE DUE ON OR BEFORE:	Friday, June 14, 2024 at 5:00 PM
ADDENDA AS RESPONSES TO QUESTIONS SHALL BE ISSUED ON OR BEFORE:	Tuesday, June 18, 2024 by 2:00 PM
RFQ RESPONSES DUE DATE/TIME:	Thursday, June 20, 2024 at 2:00:00 PM
RECOMMENDATION FOR AWARD:	Summer 2024
DIRECT ALL INQUIRIES TO:	https://pompanobeachfl.ionwave.net
E-PROPOSAL SUBMITTALS ONLY:	https://pompanobeachfl.ionwave.net
PROPOSAL VIRTUAL OPENING:	https://www.pompanobeachfl.gov/meetings

*Dates in this schedule may be amended by the City in its sole discretion and no rights shall accrue to any Proposer due to such amendment. Proposers may not rely on dates after the Due Date and Time until confirmed by the City. All times listed are Eastern Standard Time (EST)

LOCAL VENDORS: The City of Pompano Beach encourages active participation by local vendors.

The City of Pompano Beach reserves the right to reject any or all Proposals, to waive any informalities or irregularities in any Proposal received, to re-advertise for Proposals, or to take any other such actions that may be deemed to be in the best interest of the City. The City reserves the right to accept or reject any or all Proposals and to waive any informality concerning the Request for Qualification when such rejection or waiver is deemed to be in the best interest of the City.

Late Proposals will not be considered. **Electronic submission date and time shall be conclusive as to the timeliness of filling.** Facsimile submissions will not be accepted. The City of Pompano Beach is not liable for any costs incurred by the proposer in responding to this solicitation.

CONE OF SILENCE NOTICE: Proposers are hereby notified that this Solicitation is subject to a “Cone of Silence” pursuant to Section 1.39 of the General Terms and Conditions.

A Cone of Silence means a prohibition on any communication regarding any particular competitive solicitation governed by Section 1.39 of the General Terms and Conditions between:

- Any person who seeks an award therefrom, including a potential vendor or vendor's representative, and
- Any member of the City Commission, all other city employees, and any non-employee appointed to evaluate or recommend selection in such procurement process. For purposes of this section, Vendor's Representative means an employee, partner, officer, or director of a potential vendor, or consultant, lobbyist, or actual or potential subcontractor or sub-consultant of a vendor.

The “cone of silence” shall terminate at the time the City awards or approves a contract, votes to reject all Proposals or responses, or otherwise take action that ends the solicitation or other procurement process. If the City Commission refers the item back to the City Manager and staff for further review, the cone of silence shall remain in effect until an award is made, a contract is approved, or the City Commission takes any other action that ends the solicitation or other procurement process. If a Cone of Silence is imposed for a competitive solicitation but the solicitation is not issued, the cone of silence shall terminate upon a final determination by the General Services and Procurement that the solicitation will not be issued. When a Cone of Silence is terminated, public notice of the termination shall be posted.

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ADVERTISEMENT
REQUEST FOR QUALIFICATIONS (RFQ)
RFQ #: T-13-24 ENGINEERING SERVICES FOR THE WATER TREATMENT
PLANT IMPROVEMENT PROJECT

ALL PROSPECTIVE QUALIFIED CONSULTANTS:

The City of Pompano Beach requests electronically sealed qualification packages for Engineering Services for the Water Treatment Plant Improvement Project. Requests for Qualifications (RFQ) shall comply with the State of Florida Competitive Consultants Negotiations Act (CCNA) FS Chapter 287.055. Pricing is not submitted as a part of this evaluation process for submitted qualification proposals. Interested parties shall submit one (1) complete proposal package electronically through Ionwave with all the required documents before the RFQ due date and time of **Thursday, June 20, 2024 @ 2:00:00 PM**, at which time sealed proposals will be opened by the City of Pompano Beach, Broward County, Florida.

SCOPE OF WORK:

The City is seeking a qualified full-service engineering firm to provide professional engineering services including, but not limited to, water quality analysis, treatment process evaluation, preliminary design report, design, specifications, contract documents, permitting, construction management, inspections, testing, startup, and operation assistance for the construction of Water Treatment Plant Improvement Project located at 1205 NE 5th Avenue, Pompano Beach, FL 33060.

The City has applied for FDEP DWSRF Emerging Contaminants Funding, and the project is included in the FDEP DWSRF Priority List for FY2023-2024.

The Engineering Services required will consist of the environmental review, design, permitting, bidding, and construction phase services as a Consultant to the City of Pompano Beach. This project will be procured by CCNA guidelines.

The pre-construction activities of the project will be funded through an FDEP DWSRF Florida State program funding, which is a Federal Funding Source; therefore, Consultants must complete this project by applicable regulations contained in Title 2 Code of Federal Regulations (CFR) Part 200, Appendix II as well as regulations promulgated by Federal Agencies, including OMB, FEMA, and FHWA, as well as Florida State Agencies FDOT, FDH, NRCS, SFWMD, and FDEP in conjunction with any grant requirements and the City's needs. The Federal funding for this Project will require CONSULTANT to comply with the Buy America Build America Act (BABBA). This provision requires that all iron, steel, manufactured products, and construction materials used in federally funded infrastructure projects must be produced in the United States.

This project will also require Davis-Bacon wage tables per the Federal funding source.

Non-mandatory Pre-Proposal Conference will be held on: Thursday, June 6, 2024 @ 10:00 AM at 1205 NE 5th Avenue, Pompano Beach, FL 33060

Please note this is a non-mandatory pre-proposal conference, but all parties interested in submitting a proposal for this RFQ are highly encouraged to attend this conference.

CONE OF SILENCE NOTICE: Proposers are hereby notified that this solicitation is subject to a "Cone of Silence" pursuant to Section 1.40 of the General Terms and Conditions.

VENDORS:

The City of Pompano Beach reserves the right to reject any or all proposals, to waive any informalities or irregularities in any proposal received, to re-advertise this RFQ, or to take any other such actions that may be deemed to be in the best interest of the City. The City anticipates entering into a written agreement with the Consultant who is a responsive, responsible Proposer, meeting all specifications, and who provides the most advantageous solution for the City.

Solicitation documents may be obtained from the City of Pompano Beach website at <https://pompanobeachfl.ionwave.net>. All communication regarding this RFQ shall be directed to the questions feature of the City's eBid System. There are no charges for the documents. Late proposals cannot be submitted in Ionwave and will not be considered. The Ionwave electronic time stamp shall be conclusive as to the timeliness of filing. Faxed, emailed, and or mailed submissions addressed to any City of Pompano Beach personnel, inclusive of the City Clerk (s), will not be accepted. The City of Pompano Beach is not liable for any costs incurred by a Proposer in responding to this solicitation.

*****ONLY PROPOSALS SUBMITTED ELECTRONICALLY THROUGH IONWAVE
E-BIDDING PORTAL WILL BE ACCEPTED*****

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SECTION I: GENERAL TERMS AND CONDITIONS

These general terms and conditions apply to all offers made to the City of Pompano Beach by all prospective responding firms including but not limited to Invitations for Bids, Request for Qualifications, Requests for Quotation, and Requests for Proposal. As such, the words "quotation," "bid," and "proposal" may be used interchangeably in reference to all offers submitted by prospective responding companies/firms. Any and all special conditions in this solicitation or any sample agreement document that may be in variance or conflict with these General Terms and Conditions shall have precedence over these General Terms and Conditions. If no changes or deletions to General Conditions are made in the Special Conditions, then the General Terms and Conditions shall prevail in their entirety.

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1.1 BASIC DEFINITIONS

Wherever used in this solicitation or the final Agreement resultant from an award made for this solicitation, or in other Contract Documents, the following terms have the meanings indicated, which are applicable to both the singular and plural of each:

Addenda – Written or graphic instruments issued prior to the opening of Proposals which clarify, correct, or change the submittal requirements or the contract document.

Agreement – The written agreement between the City and the Consultant covering the Work to be performed including other Contract Documents that are attached to the Agreement and made a part thereof.

City – The City of Pompano Beach, Florida. Also referred to as Owner.

Contract Documents – Upon final award of this solicitation, the contract documents consist of the final Agreement, conditions of the solicitation, the solicitation document contained herein (including General, Supplementary and other Conditions and Provisions), Scope of Work, all addenda issued prior to, all modifications issued after execution of this Agreement, Notice of Award, Notice to Proceed, Certificate(s) of Insurance, and any additional modifications and supplements, Change Orders and Work directive changes issued on or after the effective date of the Contract. These contract documents form the Agreement, and all are as fully a part of the Agreement if attached to this Agreement or repeated therein.

Consultant – the individual or firm who successfully receives the award for work to be completed as defined by this solicitation. Consultant and Contractor and used interchangeably throughout this RFQ.

Defective – An adjective which when modifying the Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents.

Effective Date of the Agreement – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

End User (EU) – Internal Member of the City Staff who has requested a procurement service. Also known as a Stakeholder (SH)

Project Manager – The City's authorized project representative.

Sub-Consultant – An individual, firm, or corporation having a direct Contract with the Consultant or with any other Sub- Consultant for the performance of a part of the Work at the site.

Supplier – A manufacturer, fabricator, supplier, distributor, materialman, or vendor.

Unit Price Work – Work to be paid for based on unit prices.

Written Amendment – A written amendment of the Contract Documents, signed by the CITY and the Consultant on or after the Effective Date of the Agreement and normally dealing with the non-engineering, or non-technical aspects rather than strictly Work-related aspects of the Contract Documents.

1.2 QUALIFICATIONS OF PROPOSERS

No proposal will be accepted from, nor will any contract be awarded to, any person who is in arrears to the City of Pompano Beach, upon any debt or contract, or who has defaulted, as surety or otherwise, upon any obligations to the City, or who has been deemed irresponsible or unreliable to the City. The City is not required to award any jobs to a Consultant based solely on their submittal being the lowest. Awards will be based on past performance and quality of work in addition to the Consultant's RFQ response.

If selected for a project, all proposers must perform to the satisfaction of the City prior to being considered for award of additional contracts. Proposers whose performance is unsatisfactory shall be subject to debarment or suspension.

1.3 EXAMINATION OF CONTRACT DOCUMENTS

Before submitting a Proposal, each Proposer should (a) consider federal, state, and local laws, ordinances, rules, and regulations that may in any manner affect cost or performance of the work, (b) study and carefully correlate the Proposers' observations with the Proposal Documents; and (c) notify the Procurement Representative of all conflicts, errors, and discrepancies, if any, in the Proposal Documents.

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

1.4 INCONSISTENCIES / INQUIRIES

Any seeming inconsistency between different provisions of the plans, specifications, solicitation, proposal or agreement, or any point requiring explanation must be inquired into by the responder, in writing to the City Procurement Official listed in the solicitation, no later than the date specified in this solicitation for acceptance of questions. After proposals are opened, the responder shall abide by the decision of the City as to such interpretation.

1.5 NON-COLLUSION

Proposer shall not collude, conspire, connive or agree, directly or indirectly, with any other proposer, firm or person to submit a collusive or sham response in connection with the work for which the response has been submitted; or to refrain from responding in connection with such work or have in any manner, directly or

indirectly, sought by a person to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against any other proposer, or any person interested in the proposed work. The proposer certifies there has been no collusion with any other firm or employees from any other firm who will be submitting a proposal on the same project.

1.6 LEGAL CONDITIONS

Proposers are notified to familiarize themselves with the provisions of the law of the State of Florida relating to the hours of labor on municipal work, and with the provisions of the laws of the State of Florida and the Charter and the ordinances of the City of Pompano Beach.

1.7 ASSIGNMENT

The Responding firm shall not transfer or assign the performance required by this proposal without the prior written consent of the City. Any award issued pursuant to this proposal and monies that may become due hereunder are not assignable except with prior written approval of the City. No such approval will be construed as making the City a part of or to such assignment, or subjecting the City to liability of any kind to any assignee. No subcontract or assignment shall, under any circumstances, relieve the Consultant of its liability and obligation under this contract, and despite any such assignment, the City shall deal through the Consultant only. However, if the company is sold during the life of the contract, the buying agent must provide the City with a letter signed by an officer of the new owner who can legally bind the company, stating that they will continue to perform the requirements of the contract in compliance with all the terms, conditions, and specifications so stated in the contract.

1.8 EMPLOYEES

Employees of the Responding firm shall always be under its sole direction and not an employee or agent of the City. The Responding firm shall supply competent and physically capable employees. The City may require the Responding firm to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable. Responding firm shall be responsible to the City for all acts and omissions of all employees working under its directions.

1.9 INDEPENDENT CONSULTANT

An Agreement resulting from this solicitation does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the successful Consultant is an independent Consultant under this Agreement and not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law.

The Consultant shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Consultant's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under any potential Agreement shall be those of Consultant, which policies of Consultant shall not conflict with City, State, or United States policies, rules or regulations relating to the use of Consultant's funds provided for herein. The Consultant agrees that it is a separate and independent enterprise from the City, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. Any potential Agreement shall not be construed as creating any joint employment relationship between the Consultant and the City, and the City will not be liable for any obligation incurred by Consultant, including but not limited to unpaid minimum wages and/or overtime premiums.

In accordance with the status of an independent Consultant, the Consultant covenants and agrees that the Consultant will conduct itself consistent with such status, that the Consultant will neither hold the City out as, not claim to be an officer or employee of the City for any right or privilege applicable to an officer or employee of the City, including, but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

The Consultant's Staff Personnel shall not be employees of the City, and the Consultant alone shall be responsible for their work, the direction thereof, and their compensation and benefits of any kind. Nothing in this Contract shall impose any liability or duty on the City on account of its acts, omissions, liabilities or obligations or any person, firm, company, agency association, corporation, or organizations engaged by the Consultant as a(n) expert, consultant, independent Consultant, specialist, trainee, employee, servant or agent or for taxes on any nature, including, but not limited to unemployment insurance, worker's compensation and anti-discrimination or work place legislation of any kind and the Consultant hereby agrees to indemnify and hold harmless the City against any such liabilities, even if they arise from actions directed or taken by the City.

1.10 NON-DISCRIMINATION & EQUAL OPPORTUNITY EMPLOYMENT

During the performance of the Contract, the successful Consultant and its sub-consultants shall not discriminate against any employee or applicant for employment because of race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity and expression, or disability if qualified. The Consultant will take affirmative action to ensure that employees and those of its sub-consultants are treated during employment, without regard to their race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity, genetic information or expression, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant and its sub-consultants shall agree to post in conspicuous places,

available to its employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The Consultant further agrees that he/she will ensure that all sub-consultants, if any, will be made aware of and will comply with this nondiscrimination clause.

1.11 OMISSION OF DETAILS

Omission of any essential details from the terms or specifications contained herein will not relieve the responding firm of supplying such product(s) or service as specified.

1.12 VENUE

Any Agreement resulting from this solicitation shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this agreement is fixed in Broward County, Florida.

1.13 TAX EXEMPTION

All proposals must be submitted including all local, state and federal taxes, if applicable. Please contact the Finance Department for a copy of the Consumer's Certificate of Exemption. The City of Pompano Beach is exempt from all Federal, State, and local taxes.

1.14 TERMINATION

a. DEFAULT: In addition to all other remedies available to the City, any Agreement resulting from this RFQ shall be subject to cancellation by the City for cause, should the Consultant neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by Consultant of written notice of such neglect or failure.

b. TERMINATION FOR CONVENIENCE OF CITY: Notwithstanding any additional requirements for performance-based contracting contained in the special conditions herein, the final Agreement may be terminated by the City for convenience, upon seven (7) days of written notice by the City to the Consultant for such termination in which event the Consultant shall be paid its compensation for services performed to termination date, including services reasonably related to termination. If the Consultant abandons this Agreement or causes it to be terminated, Consultant shall indemnify the City against loss pertaining to this termination.

c. FUNDING OUT: This Agreement shall remain in full force and effect only if the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Pompano Beach in the annual budget for each fiscal year of this Agreement and is subject to termination based on lack of funding.

1.15 PERFORMANCE

The proposer shall be fully responsible for performing all the work necessary to meet City standards in a safe, neat, and good workmanlike manner, using only generally accepted methods in carrying out the work and complying with all federal and state laws and all ordinances and codes of the City relating to such work.

Failure on the part of the submitting firm to comply with the conditions, terms, specifications, and requirements of the RFQ shall be just cause for cancellation of the RFQ award, notwithstanding any additional requirements enumerated in the Special conditions herein relating to performance-based contracting. The City may, by written notice to the Responding firm, terminate the Contract for failure to perform. The date of termination shall be stated in the notice. The City shall be the sole judge of nonperformance.

1.16 INSURANCE

Consultant shall obtain at Consultant's expense all necessary insurance in such form and amount as outlined in the INSTRUCTION TO OFFERORS before beginning work under this RFQ and Agreement. Responding firm shall maintain such insurance in full force and effect during the life of this Agreement. Responding firm shall provide within the solicitation submission all certificates of insurance outlined in this solicitation prior to beginning any work under this Agreement. Responding firm shall indemnify and hold the City harmless from any damage resulting to it for failure of either Responding firm or any sub-consultant to obtain or maintain such insurance.

The City reserves the right to require higher limits depending upon the scope of work under this Solicitation and Agreement that may be outlined below.

Neither Responding firm nor any sub-consultant shall commence work under this contract until they have obtained all insurance required under this section and have supplied the City with evidence of such coverage in the form of an insurance certificate and endorsement. The Responding firm will ensure that all sub-consultants will comply with the above guidelines and will maintain the necessary coverage throughout the term of this Agreement.

All insurance carriers shall be rated at least A- or higher credit rating and class VII Financial Size Category per A.M. Best's Credit Rating Guide and be licensed to do business in Florida. Policies shall be "Occurrence" form. Each carrier will give the City sixty (60) days' notice prior to cancellation.

1.17 COPIES OF SPECIFICATIONS

After award, copies of the specifications, details, and Contract will be on file in the City Clerk's Office of the City of Pompano Beach.

1.18 DEBARMENT AND SUSPENSION

The City shall have the authority to debar or suspend vendors. Causes for debarment or suspension include the following:

1. Conviction of a criminal offense incident to obtaining or attempting to obtain a public or private Contract or subcontract, or incident to the performance of such Contract or subcontract;
2. Conviction under state or federal statutes of

embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;

3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
4. Violation of City's contract provisions, which is regarded by the City Manager to be indicative of non-responsibility. Such violation may include failure without good cause to perform in accordance with the terms and conditions of a City contract or to perform within the time limits provided in the City contract, provided that failure to perform caused by acts beyond the control of a party shall not be considered a basis for debarment or suspension;
5. Debarment or suspension of the person or entity by any federal, state, or other governmental entity;
6. False certification pursuant to debarment and suspension decisions; and/or any other cause judged by the City Manager to be so serious and compelling as to affect the responsibility of the person or entity performing city contracts.

1.19 CONVICTED / SUSPENDED / DISCRIMINATORY VENDORS

Those Consultants who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid or proposal on a contract to provide any goods or services to a public entity, may not submit a Proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit Proposals on leases of real property to a public entity, may not be awarded or perform work as a Consultant, supplier, sub-consultant, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of \$25,000 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists

1.20 MEASUREMENT AND PAYMENT

Payment will be made monthly for all completed work, inspected, and properly invoiced in accordance with the Prompt Payment Act of Florida.

1.21 BUDGETARY CONSTRAINTS

In the event the City is required to reduce contract costs due to budgetary constraints, all services specified in this document may be subject to a permanent or temporary reduction in budget. In such an event, the total cost for the affected service shall be reduced as required.

1.22 CONTINGENT FEES PROHIBITED

The Offeror must warrant that it has not employed or retained a company or person, other than a bona fide employee, Consultant or sub-consultant, working in its employ, to solicit or secure a contract with the City, and that it has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee, Consultant or sub-consultant, working in its employ, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of a contract with the City.

1.23 GRANT FUNDED PROJECTS

The City of Pompano Beach may use Federal Procurement Standards include 2 CFR Part 200 appendix II, which requires the non-Federal entity (City of Pompano Beach) to conduct procurements in a manner that prohibit the use of statutorily or administratively imposed in-State or local geographic preferences in the evaluation of bids or proposals. Therefore, consistent with 2 CFR Section 200.319(b), the Office of Economic and Small Business Development (OESBD) may establish a goal on this project.

2 CFR Part 200 requires the City of Pompano Beach take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Section 200.321 requires the non-Federal entity (City of Pompano Beach) to take the following necessary affirmative steps in its procurement process:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime Consultant, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

1.24 SCRUTINIZED COMPANIES - 287.135 AND 215.473

By submission of this solicitation, CONSULTANT, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, Proposal on, submit a Proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:

Any amount of, at the time of submitting a Proposal for, or entering into or renewing such Contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

One million dollars or more if, at the time of submitting a Proposal for, or entering into or renewing such Contract, the company:

Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or is engaged in business operations in Syria

1.25 INELIGIBLE CONSULTANTS

A Consultant may be considered ineligible to submit a proposal for this project if the Consultant has been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past years.

1.26 PROPOSAL PREPARATION EXPENSE

The Proposer preparing a submission in response to this RFQ shall bear all expenses associated with its preparation. The Proposer shall prepare a proposal with the understanding that no claim for reimbursement shall be submitted to the City for the expense of proposal preparation and/or presentation.

1.27 LICENSES

Services performed for the City will require licenses. The proposer shall secure all necessary licenses at his/her expense. All licenses shall fully comply with all applicable laws, regulations and codes as required by the State of Florida, county, or local ordinances. The proposer must fully comply with all federal and state laws, county and municipal ordinances, and regulations in any manner affecting the prosecution of the work. Any fines or penalties to the proposer shall be paid at the proposer's expense.

All responders must hold and submit with their response (and maintain same throughout the duration of the contract) current valid licenses as specified in the solicitation for the types of work covered by the Contract.

1.28 CONTRACT / AGREEMENT

The proposer to whom award is made shall execute a written Agreement with the City. A proposed form of Agreement is attached.

1.29 SUB-CONSULTANTS

If the Proposer proposes to use sub-consultants in the course of providing these services to the City, this

information shall be a part of the solicitation response. Such information shall be subject to review, acceptance and approval of the City, prior to any contract award. The City reserves the right to approve or disapprove of any sub-consultant candidate in its best interest.

1.30 LABOR, SUPERVISION, MATERIALS AND EQUIPMENT

The proposer shall furnish, at his/her own expense, all labor, supervision, equipment, materials, supplies, paper products, and other equipment necessary for satisfactory completion of all the services as specified in this solicitation, unless otherwise specified.

1.31 ENFORCEMENT OF SPECIFICATIONS

Copies of the specifications shall be placed in the hands of the Public Works/Utilities Director, who shall enforce every requirement of the contract. There will be no varying from the specifications.

1.32 COPIES OF SPECIFICATIONS

Copies of the specifications, details, and contract are on file in the City Clerk's Office of the City of Pompano Beach.

1.33 CUSTOMER RELATIONS

The proposer, all its employees and sub-consultants under the supervision and control of the Consultant shall at all times at a site, office, or yard be required to conduct themselves in a professional and courteous manner and do all things necessary to insure good and harmonious customer relations. Continuous failure to abide by this requirement shall constitute a basis for termination of this agreement.

1.34 LEGAL REQUIREMENTS

Each Proposer must comply with all federal, state, and local laws, ordinances, rules and regulations that are applicable to this RFQ and the work to be performed under the Agreement, including the City's Procurement Code. The Proposer's lack of knowledge about the Applicable Law shall not be grounds for relief from such laws, or constitute a defense against the enforcement of such laws, or justify an increase in the Rates paid to the Consultant under the Agreement. By submitting a Proposal in response to this RFQ, the Proposer represents that the Proposer is familiar with all federal, state, and local laws, ordinances, rules and regulations that are applicable to the services required under this RFQ. If a Proposer discovers any provision in this RFQ that is contrary to or inconsistent with any Applicable Law, the Proposer shall promptly report it to the City's Purchasing and Contracts Division in writing.

1.35 CITY'S PROCUREMENT CODE

This RFQ is governed by the City's Procurement Code.

1.36 E-VERIFY

By submission of this proposal, CONSULTANT certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to

time and briefly described herein below.

Definitions for this Section:

"Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.

"Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

"E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

Registration Requirement; Termination: Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors shall register with and use the E-Verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

All persons employed by a Contractor to perform employment duties within Florida during the term of the Contract; and

All persons (including subvendors/ subconsultants/ subcontractors) assigned by Contractor to perform work pursuant to the Contract with the City of Pompano Beach. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the Contract is a condition of the Contract with the City of Pompano Beach; and

The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the Contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of Contract and may not be considered as such. If this Contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of

one (1) year after the date of termination.

1.37 PROHIBITION AGAINST CONSIDERING SOCIAL, POLITICAL, OR IDEOLOGICAL INTERESTS IN GOVERNMENT CONTRACTING.

Pursuant to Florida Statute 287.05701(3), Prospective Proposers are notified that the City will not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor, nor will it give preference to a vendor based on the vendor's; social, political, or ideological interest.

1.38 PUBLIC RECORDS/CUSTODIAN

Upon completion of the Agreement, transfer, at no cost to the CITY, all public records in possession of CONSULTANT, or keep and maintain public records required by the CITY to perform the service.

If CONSULTANT transfers all public records to the CITY upon completion of the Agreement, CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

If CONSULTANT keeps and maintains public records upon completion of the Agreement, CONSULTANT 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.

During the term of this Agreement and any renewals, CONSULTANT shall maintain all books, reports, and records in accordance with generally accepted accounting practices and standards for records directly related to this contract.

1.39 CONE OF SILENCE.

Any proposer, or lobbyist for a proposer, is prohibited from having any communications (except as provided in this rule) concerning any solicitation for a competitive procurement with any city official, the Major, any Evaluation Committee Member, or any other City employee after General Services and Procurement releases a solicitation to the General Public.

All communications regarding this solicitation shall be directed to the designated Purchasing Agent unless so notified by General Services and Procurement. This "Cone of Silence" period shall go into effect and shall remain in effect from the time of the release of the solicitation until the contract is awarded. Further, any vendor, its principals, or their lobbyists shall not offer campaign contributions to the City officials or offer contributions for campaigns of other candidates for political office during the period in which the vendor is attempting to sell goods or services to the City. This period of limitation of offering campaign contributions shall commence at the time of the "cone of silence" period beginning for any solicitation for a competitive procurement. Any vendor or lobbyist who violates this provision shall cause their Proposal (or that of their principal) to be considered non-responsive and therefore be ineligible for award.

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

**CITY OF POMPANO BEACH, FLORIDA
CITY CLERK
100 Atlantic Blvd.
Pompano Beach, FL 33060**

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SECTION II INSTRUCTIONS TO OFFERORS **REQUEST FOR QUALIFICATIONS (RFQ)**

RFQ #: T-13-24

ENGINEERING SERVICES WATER TREATMENT PLANT IMPROVEMENT PROJECT

Procurement Definition: A Request for Qualifications (RFQ) is a method of procurement permitting discussions with responsible offerors and revisions to proposals prior to the award of a contract. Request for Qualifications shall be in compliance with the State of Florida Consultants Competitive Negotiations Act, (CCNA) FS Chapter 287.055. Pricing is not submitted as a part of this evaluation process for submitted qualification proposals. The award will be based on the criteria set forth herein to the most qualified firms as indicated by SECTION III. STATEMENT OF WORK.

The following instructions are given to guide the Proposers in adequately preparing their response. These directions have equal force and weight with the specifications, and strict compliance is required with all provisions.

2.1 DEFINED TERMS

Terms used in these Instructions to Proposers are defined as follows:

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“Addenda” – Written or graphic instruments issued prior to the opening of Solicitations which clarify, correct, or change the solicitation requirements or the contract document.

“Agreement” The written agreement between the City and the Consultant covering the Work to be performed including other Contract Documents that are attached to the Agreement and made a part thereof.

“City” - the City of Pompano Beach, a municipal corporation of the State of Florida.

“Contract Administrator” – The Department’s Director, or some other employee expressly designated as Contract Administrator in writing by the Director, who is the City’s Representative concerning the Contract Documents.

“Contract Documents” – The contract documents consist of this Agreement, conditions of the contract (General, Supplementary, and other Conditions), drawings, specifications of this Solicitation, all addenda issued prior to, all modifications issued after execution of this Agreement, Notice of Award, Notice to Proceed, Certificate(s) of Insurance, Bonds and any additional modifications and supplements, Change Orders and Work directive changes issued on or after the effective date of the Contract. These contract documents form the Agreement, and all are as fully a part of the Agreement if attached to this Agreement or repeated therein.

“Consultant” - the individual(s) or firm(s) to whom the award is made and who executes the Contract Documents

“Firm” - the individual(s) or firm(s) to whom the award is made and who executes the Contract Documents.

“Offeror” - one who submits a Proposal in response to a solicitation, as distinct from a Sub-Offeror, who submits a Proposal to the Offeror.

“On-line e-procurement system” or “e-procurement system” – The City of Pompano Beach’s solicitation management partner “Ionwave”.

“Performance-Based Contract” -- A contracting model whereby satisfactory

performance under the contract, will result in the City’s exclusive use of the Consultant for all contractual purchases for the full period specified as the contract term for the individual services as awarded. Unsatisfactory performance by the Consultant shall result in the Consultant’s loss of exclusivity. If, in the sole judgment of the City, the Consultant is not providing satisfactory service, the exclusive contractual relationship between the City and the Consultant may be terminated, without penalty, by the City at any time after it has purchased the guaranteed volume of goods or services as specified in the Special Conditions and/or the Scope of

Work. The principle of Performance Based Contracting, however, does not negate the right of the City to terminate the contract under the standard terms and conditions which govern contract termination.

“Project” – the total scope of work for which the Consultant is responsible under this agreement, including all labor, materials, equipment and transportation used or incorporated in such performance of contract work.

“Proposal” means the package of materials and information submitted by a Proposer in response to this RFQ.

“Proposal Documents” - the Request for Qualifications, Instructions to Offerors, Offeror’s Qualifications Statement, Non-Collusive Affidavit, Certified Resolution, Vendor Drug-Free Workplace, Offeror’s Proposal, Proposal Security and Specifications, if any, and the proposed Contract Documents (including all Addenda issued prior to opening of Proposals).

“Project Manager” – The City’s authorized project representative who is responsible for the full scope of project management tasks including authorizing and monitoring the work of consultants, vendors, and field staff of assigned projects. The Project Manager also is responsible to ensure successful completion of projects.

“Proposer” means a Person (e.g., a corporation or partnership) that submits a Proposal in response to this RFQ. The terms “Offeror” and “Proposer” are used interchangeably and have the same meaning.

“Respondent/Offeror/Proposer” - one who submits a Proposal in response to a solicitation, as distinct from a Sub-Respondent, who submits a Proposal to the RFQ.

“Response Documents/Proposal” - the Request for Qualifications, Instructions to Offerors, Respondent’s Qualifications Statement, Non-Collusive Affidavit, Certified Resolution, Vendor Drug-Free Workplace, Respondent’s Proposal, Proposal Security and Specifications, if any, and the proposed Contract Documents (including all Addenda issued prior to

opening of Proposals).

“Responsible Proposer” means a Person or firm who has the capability in all respects to fully perform the requirements in the RFQ and Agreement, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit to assure good faith performance.

“Responsive Proposer” means a Person who has submitted a Proposal that conforms in all material respects to the requirements set forth in this RFQ.

“Request for Qualification or (RFQ)” means this procurement document and all addenda, exhibits, and attachments, including the Agreement.

Written Amendment” – A written amendment of the Contract Documents, signed by the CITY and the Consultant on or after the Effective Date of the Agreement and normally dealing with non-technical aspects rather than strictly work-related aspects of the Contract Documents.

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2.2 SPECIAL CONDITIONS AND/OR STATEMENT OF WORK

Where there appear to be variances or conflicts between the General Terms and Conditions and any Special Conditions and/or Statement of Work outlined in this RFQ, the Special Conditions and/or the Statement of Work shall prevail.

2.3 EXAMINATION OF CONTRACT DOCUMENTS AND SITE

Before submitting a Proposal, each Offeror must visit the site (if applicable to the project) to become familiar with the facilities and equipment that may in any manner affect cost or performance of the work; must consider federal, state, grant requirements (if Applicable) and local laws, ordinances, rules and regulations that may in any manner affect cost or performance of the work, must carefully compare the Offeror's observations made during site visits or in review of applicable laws with the Proposal Documents; and must promptly notify the Purchasing Agent assigned to the solicitation of all conflicts, errors and discrepancies, if any, in the Proposal Documents.

The Offeror, by and through the submission of a Proposal, agrees that the Offeror shall be held responsible for having examined the facilities and equipment (if applicable); is familiar with the nature and extent of the work and any local conditions that may affect the work, and is familiar with the equipment, materials, parts, and labor required to successfully perform the work.

2.4 INTRODUCTION

The City of Pompano Beach ("City") was incorporated in 1908 and derives its name from the Pompano fish. Centrally located in the heart of Florida's Gold Coast, Pompano Beach is positioned midway between Miami and Palm Beach and covers over 25 square miles in northern Broward County. It's known for its beaches, boating, marinas, and offshore coral reefs, plus numerous wrecks, and other dive sites. Anglers and families flock to the beautifully redeveloped beachside fishing village with a 1,000-foot-long fishing pier, world-class restaurants, retail, playgrounds, grills, and picnic tables. North, along the shore, the 1900s Hillsboro Lighthouse guards the Hillsboro Inlet, an entrance to the Intracoastal Waterway.

The City has a population of 112,650 (2024), making it the sixth-largest city in Broward County, the in ninth-largest the South Florida metropolitan area, and the 20th-largest in Florida.

The City operates under the Commission/Manager form of government and employs more than 600 employees. The City Commission is comprised of four commissioners that represent separate geographic districts and a Major that is elected citywide.

2.5 SCOPE OF SERVICES

The City is seeking a qualified full-service engineering firm to provide professional engineering services including, but not limited to, water quality analysis, treatment process evaluation, preliminary design report, design, specifications, contract documents, permitting, construction management, inspections, testing, startup, and operation assistance for the construction of Water Treatment Plant Improvement Project located at 1205 NE 5th Avenue, Pompano Beach, FL 33060. The City has applied for FDEP DWSRF Emerging Contaminants Funding, and the project is included in the FDEP DWSRF Priority

List for FY2023-2024. This project will be procured in accordance with CCNA guidelines.

2.6 ELIGIBILITY OF PROPOSER

To be eligible to respond to this solicitation, the proposing firm or principals must demonstrate that they, or the principals assigned to the project, have successfully provided services similar magnitude as those specified in SECTION III. STATEMENT OF WORK of this solicitation to at least one city similar in size and complexity to the City of Pompano Beach or can demonstrate they have the experience with large-scale private sector clients and the managerial and financial ability to successfully perform the services.

2.7 PRE-PROPOSAL CONFERENCE

The City may hold a non-mandatory Pre-Proposal conference for this project. The information regarding such a meeting will be included in the Schedule of Events section.

2.8 QUESTIONS AND ADDENDA ON THIS SOLICITATION

It is the proposer's responsibility to submit written questions or request clarification for items included in this solicitation, via email through the Ionwave website.

Any and all responses to questions or inquiries, interpretations, and supplemental instructions will be in the form of a written addendum which, if issued, will be posted on Ionwave (pompanobeachfl.ionwave.net) by the due date referenced on page 2. No verbal interpretations may be relied upon. Failure of any proposer to receive any such addenda or interpretation shall not relieve any Proposer from any obligation under a response as submitted. All addenda so issued shall become a part of the solicitation document. The proposer shall acknowledge all addenda by completing the "Addendum Acknowledgment Form" before submitting a response.

If you have received this RFQ packet from a source other than directly from Ionwave or the City of Pompano Beach's website and you are not registered with Ionwave, you must register with Ionwave to receive any changes, additions, addenda or other notices concerning this project. Any questions should be included in the subject line RFQ# T-13-24 Engineering Services Water Treatment Plant Improvement Project.

No negotiations, decisions, or actions shall be initiated by the proposer as a result of any discussions with a CITY employee. Only those communications that are in writing from the General Services and Procurement and released through pompanobeachfl.ionwave.net may be considered as a duly authorized expression. Also, only communications from proposers, which submitted through Ionwave, will be recognized by the CITY as duly authorized expressions on behalf of the proposer.

2.9 MISTAKES WITHIN RFQ

Proposers are cautioned to examine all terms, conditions, specifications, Statement of Work, exhibits, addenda, delivery instructions, and special conditions about the solicitation. The failure of the proposer to examine all pertinent documents shall not entitle him to any relief from the conditions imposed in the contract and may lead to the rejection of a proposal.

2.10 SUBMISSION OF THE PROPOSAL

The Responding firm is directed to submit all proposals online through pompanobeachfl.ionwave.net no later than the date and time specified on the 2nd page of this solicitation document. Proposals will not be considered and cannot be entered online after the above-referenced closing date. The City will not be responsible for a late proposal due to the vendor's inability to respond and upload their Proposal response in a timely manner.

It is the Responding firm's responsibility to read and understand the requirements of this RFQ. Unless otherwise specified, the Responding firm must use the proposal forms located on Ionwave. All proposals shall be submitted in the English language.

2.11 CAUSES FOR REJECTION

No response will be canvassed, considered, or accepted which, in the opinion of the City's Selection Evaluation Committee (SEC) is incomplete, informal, or unbalanced, or contains inadequate documentation as required herein. Any alteration, erasure, interlineations, or failure to specify response for all items called for in the schedule shall render the proposal invalid.

2.12 REJECTION OF PROPOSALS

The City reserves the right to reject any proposal if the evidence submitted by the proposer, or if the investigation of such proposer, fails to satisfy the City that such proposer is properly qualified to carry out the obligations and to complete the work contemplated. Any or all proposals will be rejected if there is reason to believe that collusion exists among proposers. A proposal shall be considered irregular and may be rejected, if it indicates serious omissions, alterations in form, additions not called for, conditions or unauthorized alternates, or irregularities of any kind. The City reserves the right to reject any or all proposals, to waive such technical errors; to waive informalities or irregularities in any response received; to re-advertise; or to take any other actions as may be deemed best for the interests of the City.

2.13 WITHDRAWAL OF PROPOSALS

Any responder may, without prejudice to himself, withdraw his response at any time before the expiration of the time during which responses may be submitted. Such withdrawal request must be in writing and signed in the same manner and by the same person who signed the response through Ionwave. After the expiration of the period for receiving responses, no proposal can be withdrawn, modified, or explained. Proposals can be withdrawn at any time before the Selection Evaluation Committee meeting.

2.14 FORM OF PROPOSALS

Each response and its accompanying statements must be made on the blanks provided where specified. The forms must be submitted in good order and with all of the blanks completed and filled in. Incomplete forms may be rejected by General Services and Procurement as non-responsive. Proposal packages must be submitted electronically through Ionwave by the due date and time outlined on the second page of this RFQ. The response must be signed by one duly authorized to do so, and in case signed by a deputy or subordinate, the principal's properly written authority to such deputy or subordinate must

accompany the response.

2.15 COMPLETION OF REQUIRED FORMS

All responses must comprehensively cover all items for which responses are asked and no other.

2.16 SUMMARY OF DOCUMENTS TO BE SUBMITTED WITH RFQ

The following is a summary of documents required to be submitted or agreed to electronically for this RFQ. Failure to include a technical proposal, Proposal surety (if required below), or any other document that, by its omission, may prejudice the rights of other respondents, may result in immediate rejection of your proposal. Other forms or documents which, by their nature do not impact the Offeror's cost of doing business should accompany the Proposal; but must be provided within three (3) business days of the City's request to be considered responsive:

- Letter of Transmittal
- Qualifications of Proposer
- Required Narratives responding to requirements outlined in the Scope of Work/Specifications
- Offeror's Certification
- Vendor Drug-Free Workplace Requirement
- Non-Collusive Affidavit Form
- Scrutinized Companies Requirement
- Proof of applicable insurance
- Copies of all current applicable professional license(s)
- T-13-24 Project Team Form.

The City reserves the right to request the most recently completed audited financial statement or other approved documentation to verify financial viability.

2.17 REFERENCES

As part of the proposal evaluation process, the City may conduct an investigation of references, including a record check and/or consumer affairs complaint. Proposer's submission of a Proposal constitutes acknowledgment of this process and consent to investigate. The City is the sole judge in determining Proposers qualifications.

2.18 INSURANCE REQUIREMENTS

Certificates of Insurance reflecting evidence of the required Insurance shall be submitted with the response to the Request for Qualifications. These Certificates shall contain a provision that all coverage afforded under these policies will not be cancelled until at least thirty (30) days prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Financial Ratings must be not less than A- Credit Rating and Class VII Financial Size Category per A.M. Best Guide Credit Rating Guide. .

Consultant agrees to maintain, on a primary non-contributory basis and at its sole expense, at all times during the life of this Agreement, the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Consultant is not intended

to and shall not in any manner limit or qualify the liabilities or obligations assumed by Consultant under this Agreement. Any coverage maintained by the City shall apply excess of, or contingent upon the absence of, other insurance required or maintained by Consultant.

Commercial General Liability: Consultant agrees to maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** for each occurrence, **\$2,000,000** annual aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Separation of Insureds.

- A. Worker's Compensation Insurance & Employers Liability: Consultant agrees to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute, Chapter 440.
- B. Professional Liability: Consultant agrees to maintain Professional (Errors & Omissions) Liability at a limit of liability not less than **\$500,000** per claim, **\$1,000,000** annual aggregate, or a **\$1,000,000** combined single limit. When a self-insured retention (SIR) or deductible exceeds **\$25,000**, the City reserves the right, but not the obligation, to review and request a copy of the Consultant's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, Consultant agrees to maintain a retroactive date prior to or equal to the effective date of any resulting contract. In the event the policy is cancelled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of any resulting contract, Consultant agrees to purchase a SERP with a minimum reporting period not less than **two (2)** years. The requirement to purchase a SERP shall not relieve Consultant of the obligation to provide replacement coverage.
- C. Additional Insured: The Consultant agrees to endorse the City as an Additional Insured on the Commercial General Liability with the following, or similar endorsement providing equal or broader Additional Insured coverage, the CG 20 26 07 04 or G C 20 26 04 13 Additional Insured – Designated Person or Organization endorsements; or the CG 20 10 07 04 or GC 20 10 04 13 Additional Insured – Owners, Lessees, or Consultants endorsements in combination with the additional endorsement GC 20 37 07 04 or GC 20 04 13 Additional Insured – Owners, Lessees, or Consultants – Completed Operations shall be required to provide back coverage for the Consultant's "your work" as defined in the policy and liability arising out of the products-completed operations hazard. The Additional Insured shall read "City of Pompano Beach."
- D. Waiver of Subrogation: Consultant agrees to provide a Waiver of Subrogation for each required policy herein. When required by the insurer or should a policy condition not permit Consultant to enter into a pre-loss agreement to waive subrogation without an endorsement, then Consultant agrees to 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 specifically prohibiting such an

endorsement, or voids coverage should Consultant enter into such an agreement on a pre-loss basis.

- E. Certificate(s) of Insurance: Consultant agrees to provide City a Certificate of Insurance evidencing that all coverages, limits, and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify City of a non-renewal or cancellation notice, when available by Consultant's insurer. If the Consultant receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Consultant agrees to notify the City by fax and email as set forth in this Section within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance.

The certificate holder address shall read:
City of Pompano Beach
Attn: Risk
100 West Atlantic Blvd.
Pompano Beach, FL 33060

The Consultant shall also be required to add the grantor agency, if applicable as additionally insured.

- F. Right to Revise or Reject: City reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverages, and endorsements, or to reject any insurance policies that fail to meet the criteria stated herein. Additionally, City reserves the right, but not the obligation, to review and reject any insurer providing coverage due to its poor financial condition or failure to operate legally.

2.19 EVALUATION METHODOLOGY AND CRITERIA

A Selection Evaluation Committee (SEC) will be created and will be responsible for selecting the most qualified firm and then negotiating a contract. The City Manager or Designee shall select this SEC. The Proposers with the highest-ranked submittals may be asked to make a detailed presentation of their product/service to the SEC.

All Proposers are advised that in the event of receipt of an adequate number of Proposals which in the opinion of the SEC require no clarification and/or supplementary information, such Proposals may be evaluated without discussion or oral presentations. Hence, proposals should be initially submitted on the most complete and favorable terms that Proposers are capable of offering to the City.

Evaluation Points shall be assigned to each proposer by each member of the SEC. The highest-ranked firms may then be short-listed and may be asked to provide oral presentations. If no oral presentations are required, the weighted scoring criteria shall serve as the final determination of rank, and the highest-ranked firm(s) will be awarded for each category herein.

When oral presentations are requested for short-listed firms, the SEC, after presentations, (as applicable), will be assigned a final score, with the highest-ranked firm or firms moving forward to the negotiation phase if required.

Upon completion of oral presentations, as may be required, the SEC reserves the right to make the decision for the final recommendation for award utilizing one of the following scoring methods:

- A. Use the original criteria-based weighted scoring requiring the Committee to re-score each proposal using the original weighted criteria.
- B. Addition of an additional scoring component to comparatively score the quality of the proposer's oral presentation; or
- C. A singular comparative ranking of each finalist whereby the highest-ranked firm would be ranked as "#1", or 1st place, the second-highest firm would be ranked as "#2", or 2nd place, and so on for each of the finalist firms. The firm ranked as #1 would then be recommended to receive the contract award. Note: This method will be the City's default methodology for final scoring.

Upon successful negotiation, a recommendation for an award will be considered by the City of Pompano Beach Commission. No work on this project shall proceed without written authorization from the City.

The City reserves the right to enter into contract negotiations with the selected Proposer or Proposers. If the City and the selected Proposer cannot negotiate a successful contract, the City may terminate such negotiations and begin negotiations with the second-ranked selected Proposer at the direction of the Commission. If the City and the second-ranked Proposer cannot negotiate a successful contract, the City may terminate such negotiations and begin negotiations with the third-ranked Proposer at the direction of the Commission, and so on. No Proposer shall have any rights against the City arising from such negotiations.

2.20 WEIGHTED CRITERIA

The City's evaluation criteria may include, but shall not be limited to, the criteria outlined below. The potential weighted criteria may include the following examples (**See SECTION III STATEMENT OF WORK for the Actual Evaluation Criteria and Weights**):

- **Compliance with Request for Qualifications Requirements (Responsiveness)**
[Mandatory]
This refers to the adherence to all conditions and requirements of the Request for Qualifications.
- **Quality of Response**
Clearly demonstrated understanding of the work to be performed.
 - A. Completeness and reasonableness of the offeror's plan/proposal for accomplishing the tasks.
 - B. Level of creativity demonstrated by the offeror's proposed methodologies for meeting the requirements of this proposal.
 - C. Management demonstrates sufficient focus and ability to successfully direct

work teams and other staff to perform under this agreement in a consistent and professional manner in conformance with the individual Scope of Work for each set of tasks as defined herein.

D. Demonstration of sufficient resources including staffing and equipment, and the ability to meet required property maintenance schedules.

- **Services to be Provided and Quality Control**

This refers to the exact type and nature of the offeror's proposed services and how they accomplish the objectives of the project related to the quality planning process that they utilize to ensure compliance with our specification's requirements, as well as the ability to rapidly respond to the City's needs, as defined in the Evaluation Criteria set forth.

- **Managerial Capacity and Relevant Experience**

Offeror's capability in all respects to have sufficient management and supervisory staff available to manage work teams and project performance and to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, and reliability which will assure good faith performance, as well as satisfactory reference verification. The criteria shall include:

- A. The firm's experience and its record on engagements of a similar nature, including the ability to serve in a similar capacity for other units of government or organizations.
- B. Personnel to be assigned to the project, and their education, capabilities, qualifications, and experience with similar projects.
- C. Reference information gathered from other entities regarding the experience of the firm; and
- D. Other areas addressed in the *Scope of Work* herein.

2.21 ACCEPTABILITY OF PROPOSALS

The Offer shall be evaluated solely in accordance with the criteria set forth herein. The proposals shall be categorized as follows:

- Acceptable.
- Potentially Acceptable – Proposal is reasonably susceptible of being made acceptable; or
- Unacceptable -- Scoring is below an aggregate score which may be specified in the proposal document, or in the absence of a specific aggregate score, a score lower than 70% of the potential possible points available.

2.22 AWARD RESERVATIONS

The award shall be made by the City to the responsible offeror whose proposal is determined to be the most advantageous to the City, taking into consideration the evaluation criteria outlined in SECTION III – STATEMENT OF WORK. The City of Pompano Beach reserves the right to accept the Proposal as a whole, or for any component thereof if it appears to be in the best interest of the City.

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SECTION III STATEMENT OF WORK

RFQ #: T-13-24 ENGINEERING SERVICES WATER TREATMENT PLANT IMPROVEMENT PROJECT

Definition: A Request for Qualifications (RFQ) is a method of procurement permitting discussions with responsible offerors and revisions to proposals prior to the award of a contract. Requests for Qualifications shall be in compliance with the State of Florida Consultants Competitive Negotiations Act, (CCNA) FS Chapter 287.055. Pricing is not submitted as a part of this evaluation process for submitted qualification proposals. Award will be based on the criteria set forth herein to the most qualified firms as indicated by the STATEMENT OF WORK, herein.

3.1 INTRODUCTION / PURPOSE

The City of Pompano is seeking a qualified full-service engineering firm to provide professional engineering services including, but not limited to, water quality analysis, treatment process evaluation, preliminary design report, design, specifications, contract documents, permitting, construction management, inspections, testing, startup, and operation assistance for the construction of Water Treatment Plant improvement Project located at 1205 NE 5th Avenue, Pompano Beach, FL 33060. The City has applied for FDEP DWSRF Emerging Contaminants Funding, and the project is included in the FDEP DWSRF Priority List for FY2023-2024.

This project will be procured in accordance with CCNA guidelines per Section 287.055 Florida Statute.

To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids or requests for proposals shall be excluded from competing for such procurements.

3.2 PROJECT LOCATION

1205 NE 5th Avenue, Pompano Beach, FL 33060

3.3 LICENSES AND CERTIFICATIONS

To be eligible for the award of this contract, all Design Engineering firms must submit and possess at the time of submission the proposals, all applicable state and/or county license(s) as may be required to perform the scope as determined by state and/or county licensing agency. This is the design for the Water Treatment Plant Improvement Project.

- State: Florida Board of Professional Engineers (FBPE): Certificate Authorized under

the provision of Section 471.023 Florida Business Statutes, to offer engineering services to the public through a Professional Engineer duly licensed under Chapter 471, Florida Statutes.

- Business Tax license must be in effect as required by Florida Statute §205.065.

3.4 SCOPE OF WORK

The City of Pompano Beach (City) currently provides approximately fifteen million (15,000,000) gallons per day (MGD) of potable water to an estimated population of 114,650 (2024).

The City of Pompano Beach is seeking the services of a qualified, full-service engineering firm to provide professional engineering services for the Water Treatment Plant Improvement Project located at 1205 NE 5th Avenue, Pompano Beach, FL 33060. The services required include, but are not limited to, water quality analysis, treatment process evaluation, preliminary design report, design, specifications, contract documents, permitting, construction management, inspections, testing, startup, and operation assistance. The City has applied for the Florida Department of Environmental Protection (FDEP) Drinking Water State Revolving Fund (DWSRF) Emerging Contaminants Funding, and the project is included in the FDEP DWSRF Priority List for FY2023-2024. The Engineering Services required will consist of the environmental review, design, permitting, bidding, and construction phase services, with the selected firm acting as a Consultant to the City of Pompano Beach. This project will be procured in accordance with the Consultants' Competitive Negotiation Act (CCNA) guidelines.

In order to enhance drinking water quality and address future emerging contaminants, the City intends to design and construct the Water Treatment Plant Improvement Project. The scope of professional engineering services includes, but is not limited to, water quality analysis, treatment process evaluation, preliminary design report, design, specifications, contract documents, permitting, construction management, inspections, testing, startup, and operation assistance for the construction of Water Treatment Plant Improvement Project located 1205 NE 5th Avenue, Pompano Beach, FL 33060.

3.5 PROJECT TIMELINE

With its submittal, the Proposer will provide a project schedule.

Once the design and engineering are complete, the City plans to procure this through a design-bid-build procurement process.

3.6 COMPETENCY AND MINIMUM QUALIFICATIONS OF RESPONDER

- 3.6.1 Statements of Qualifications will only be considered from firms which are regularly engaged in the business of providing services as described in this RFQ and who can provide evidence that they have established a satisfactory record of performance in meeting the minimum and technical qualification requirements established in the RFQ. The City reserves the sole right to determine if a responder can sufficiently and efficiently provide the required services/commodities in a timely and satisfactory manner as will be required by the specifications herein.
- 3.6.2 The responder shall submit the following information with the Statement of Qualifications. This information, along with any other data the City considers pertinent will be used in determining if the responder is qualified to provide the work specified.
- A. County Business Tax Receipt where the business is located (included with the response).
 - B. Copy of the State of Florida or County Competency license (to be included with response).
 - C. T-13-24 Project Team Form.

3.7 PROFESSIONAL SERVICES NEGOTIATIONS AND FEES

- 3.7.1 The City anticipates negotiating the scope and fee with the one (1) selected firm utilizing the City's Professional Services Consulting Contract template. As this is a project defined in F.S. 287.055(2)(f), the project will be negotiated with one (1) firm. In accordance with F.S. 287.055 (4) COMPETITIVE SELECTION and (5) COMPETITIVE NEGOTIATION, project award and fees/method of payment will be made as follows:
- A. The City will generate a preliminary scope of work.
 - B. The City will contact the firm under the professional services contract for this work to obtain a proposal and the City will negotiate compensation for professional services that is fair, competitive and reasonable.
 - C. If the negotiations are not acceptable to the City, the City will issue a separate formal solicitation and follow the selection and negotiation process in accordance with F.S. 287.055.

3.8 MINIMUM REQUIREMENTS

Proposals will be considered from qualified firms whose experience includes successful work in the industry.

- 3.8.1 The consultant must have on staff, engineers, as required by the Statement of Work (SOW), with knowledge of all applicable Federal, State, County, and City standards and requirements needed to develop design plans, specifications,

cost estimates, site inspections and project management as applicable.

- 3.8.2** The Engineers must be licensed to practice in the State of Florida.
- 3.8.3** Firm must preferably possess considerable relevant experience in the scope of services.
- 3.8.4** Proposals will be considered from qualified firms whose experience includes successful work in the industry.
- 3.8.5** T-13-24 Project Team Form.
- 3.8.6** All required Standard City Forms as outlined in the Instructions to SECTION II INSTRUCTIONS TO OFFERORS.

3.9 REQUIREMENT OF CONSULTANT

- 3.9.1** Consultants interested in performing these services must exhibit considerable relevant experience with this type of work and should emphasize both experience and capability of personnel who will perform the work. Consultants should indicate any sub-consultants proposed to be utilized in work for City.
- 3.9.2** Consultants shall invoice the City monthly for this project. Each properly completed invoice shall identify the project, detail the contract price, payments made to date, percentage of completion of the project, payment due this invoice, remaining balance due. Invoices shall itemize hours, hourly wage, or other unit agreed upon as measurement of payment. They shall identify the name and title of personnel who worked on the project. Reimbursable items shall be listed individually, with supporting documentation attached to the invoice.

3.10 COMMITTEE REVIEW

- 3.10.1** To begin the Firm selection process, the City Manager will appoint at least five (5) persons to evaluate the qualifications of all interested Firms. That evaluation will be made by such people, who will be appointed by the City Manager to act as a Selection Evaluation Committee ("SEC") on behalf of the Commission City.
- 3.10.2** The evaluation by the SEC shall consist of the ultimate identification, selection and recommended ranking of Firms determined by the SEC to be the most qualified to perform the services, based upon a review of all of the interested Firms' professional qualifications, their availability to meet both the City's needs and its scheduling requirements and an analysis of the past work of each Firm (including partners, members or both).
- 3.10.3** Each firm should submit the requested documents with their proposal that evidence capability to provide the services required for SEC's review for short-listing purposes.
- 3.10.4** The short-listed firms may be contacted to provide an oral presentation to the SEC as may be required toward final selection.
- 3.10.5** The City reserves the right to short-list the number of highest ranked A/E/S firms that it deems in the best interest of the City. However, in all cases, the weighted scoring criteria for selection contained in this RFQ, shall be the basis of selection. The City reserves the right to not require oral presentations in the

event that the Evaluation Committee feels that there is sufficient clarity provided by the individual written presentations.

3.10.6 The Selection of Architects and Engineers statute requires the public announcement of requirements for A-E-S services, and the selection of one (1) qualified firm based on demonstrated competence and professional qualifications according to specific criteria published in the announcement. The Act then requires the negotiation of a contract starting first with the most highly qualified firm.

3.10.7 The information used to evaluate firms is from this form and other sources, including performance evaluations, any additional data requested by the agency, and interviews with the most highly qualified firms and their references.

3.10.8 This process may be repeated until one of the Firms ranked and recommended to the Commission by the SEC is selected. The City reserves the absolute right to terminate the selection process at any time and to revise City procedures, subject to the requirements of applicable law.

Criteria	Max Points
Qualifications and Experience (30 points):	30
Technical Approach (30 points):	30
Previous Project Experience (25 points):	25
Financial Capability and Current Workload (15 points):	15
TOTAL MAXIMUM POINTS	100

3.10.9 The weighted criteria provided above, is provided to assist the Proposer in the allocation of their time and efforts during the submission process. This weighted criterion is the framework for evaluation used by the SEC during the short-list and final ranking process. The Committee shall be the sole judge as to the number of firms ultimately recommended for award for these continuing services.

3.10.10 Short-listed proposals will be selected for an interview/presentation prior to recommendation of award. As the best interest of the CITY may require, the right is reserved without prejudice to reject any and all proposals or waive any minor irregularity or technicality in proposals received. Proposers are cautioned to make no assumptions unless their proposal has been evaluated as being responsive. Additional information may be required of the proposer during the review and selection process to clarify the Proposers presented information.

3.10.11 The SEC may conduct discussions with any Proposer who submits an acceptable or potentially acceptable proposal. Proposers shall be accorded

fair and equal treatment with respect to any opportunity for discussion and revision of proposals.

3.10.12 The SEC reserves the right to request the Proposer to provide additional information during this process. All Oral Presentations will be closed to the public in and conducted in accordance with the requirements of Florida Statutes 286.0113 "General Exemptions from Public Meetings".

3.10.13 In the event a score, for an individual evaluator, results in a tie, the ranking for the tied vendors will be broken based on the volume of work previously awarded to each firm by the City, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms, as outlined in Florida Statute 287.055(4)(b). In the event the score still results in a tie, the ranking for the tied vendors will be broken by giving preference to a business that certifies that it has implemented a drug-free workplace program on the Vendor Drug-Free Workplace Certification Form, as outlined in Florida Statute 287.087.

3.10.14 CONTACT WITH PERSONNEL OF THE CITY OF POMPANO BEACH OTHER THAN THE PURCHASING DESIGNATED REPRESENTATIVE DURING THE SOLICITATION, EVALUATION, AND AWARD PROCESS REGARDING THEIR REQUEST FOR QUALIFICATIONS IS CONSIDERED AS A VIOLATION OF THE CONE OF SILENCE (GENERAL TERMS AND CONDITION SECTION 1.40) AND MAY BE GROUNDS FOR ELIMINATION FROM THE SELECTION PROCESS.

3.11 PROPOSAL REQUIREMENTS

3.11.1 Prospective proposers interested in responding to this solicitation are requested to provide all of the information listed in this section. Submittals that do not respond completely to all requirements specified herein may be considered non-responsive and eliminated from the process. Brevity and clarity are encouraged.

A. Tab 1 - Firm's Understanding and Approach to the Work:

The understanding that the applicant and consultants demonstrate as to the requirements and needs of the project, including an evaluation of the thoroughness demonstrated in analyzing and investigating the scope of the project.

- A. A cover letter could be placed at the beginning of a firm's proposal.
- B. Provide a narrative statement demonstrating an understanding of the overall intent of this solicitation, as well as the methods used to complete assigned tasks.
- C. Please clearly describe all aspects of the project proposed.
- D. Include details of your approach and work plans.
- E. Identify any issues or concerns of significance that may be appropriate.

- F. A Statement of Qualifications, to include copies of résumés, professional and business licenses, letters of reference, and any other information deemed pertinent by the Firm relating to its particular qualifications to perform the services. Please list any and all sub-consultants, include their qualifications and what services they will perform.
- G. Project Team Form to include additional sheets for projects completed within the past twenty (20) years so that the City can obtain adequate information for this RFQ.
- H. Organizational charts, to include a staffing plan which identifies key personnel to be assigned to perform the services, including the length of tenure of such personnel with the Firm.
- I. Identification of principals and the place of residence of each of the principals of the Firm.
- J. A brief statement must be included which explains why your proposal would be the most effective and beneficial to the City of City of Pompano Beach.

B. Tab 2 - Willingness to Meet Budget, and Time Line Requirements

Please advise if your firm is willing to meet the following time and budget requirements.

- 1. **Budget:** The budget for this project is as follows:
 - a. TBD
 - b. TBD
- 2. **Timeline:**
 - a. TBD
- 3. **Funding Sources:**
 - a. FDEP DWSRF Emerging Contaminants Funding to be appropriated
 - b. Please provide a statement that CONSULTANT will comply with all requirements of 2 CFR Part 200, Appendix II.
- 4. Detail your current workload, noting projected completion dates.
- 6. Required Narratives responding to requirements outlined in the Statement of Work:

Please note that during this portion of the process, the City is NOT asking for the firms to submit pricing. After the evaluation committee has selected the firms in order of preference, the City shall negotiate a contract with the most qualified firm for professional services at compensation which the agency determines is fair, competitive, and reasonable. Should the agency be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price

the agency determines to be fair, competitive, and reasonable, negotiations with that firm must be formally terminated. The agency shall then undertake negotiations with the next most qualified firm.

The Federal funding for this Project will require CONSULTANT to comply with the Buy America Build America Act (BABBA). This provision requires that all iron, steel, manufactured products, and construction materials used in federally funded infrastructure projects must be produced in the United States.

This project will also require Davis-Bacon wage tables per the Federal funding source.

C. Tab 3 - Location:

Please provide the address and the primary location of where work will be performed by your firm for this project. If services will be performed by different offices (such as a joint venture), provide a location for each firm.

D. Tab 4 – Litigation

1. Statement of complete history of citations, violations (including notices of same), and litigation involving public contract disputes and the ultimate disposition and current status of all of the foregoing. The Firm shall provide a summary of any litigation or arbitration that the Firm, its parent company, or its subsidiaries have been engaged in during the past five (5) years against or involving:
2. any public entity for any amount, or any private entity for an amount greater than One Hundred Thousand Dollars (\$100,000). The summary shall state the nature of the litigation or arbitration, a brief description of each case, the outcome or projected outcome and the monetary amounts involved. The City may disqualify any Proposer if it determines in its sole discretion that a Firm is excessively litigious, or if the Proposer failed to disclose violations, citations, or litigation during the past five (5) years.

E. Tab 5 - Financial Information:

1. Financial Stability: The Firm shall demonstrate financial stability. Firm shall provide a statement of its financial stability, including information as to current or prior bankruptcy proceedings. Proposals shall include a copy of the most recent annual financial report/annual audit/10K and the most recent 10Q, if appropriate. Financial reports provided shall include at a

minimum, a balance sheet, an income statement and statement of cash flows.

2. **Financial Statement:** The Firm shall include a copy of its latest audited financial statements. If the Firm is a corporation, it shall submit a copy of the latest audited financial statements of the corporation. In the event the Firm does not have audited financial statements, it may substitute non-audited financial statements and complete federal tax returns for the last two (2) years. Pursuant to Section 119.071 Florida Statutes, financial statements that are required as submittals to prequalify for a solicitation will be exempt from public disclosure. To protect statements from public records requests, they must be uploaded to the Response Attachments tab in the eBid System as a separate file titled "FINANCIAL STATEMENTS" and marked "CONFIDENTIAL".

F. Tab 6 - All Standard Information Required including:

- Letter of Transmittal
- Offeror's Certification
- Vendor Drug-Free Workplace Requirement
- Non-Collusive Affidavit Form
- Scrutinized Companies Requirement
- Proof of applicable insurance
- Exhibit A through D

3.12 PROHIBITION AGAINST CONTINGENT FEES

3.12.1 In accordance with Florida Statute 287.055(5) "Competitive Negotiation":

- A. The City's Administrative Staff shall negotiate a contract with the most qualified firm for professional services at compensation which the agency determines is fair, competitive and reasonable. In making such a determination, the City's Administrative Staff shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For any lump-sum or cost-plus-a- fixed-fee professional service contract **over \$195,000** (*the threshold amount provided in s. 287.017 for CATEGORY FOUR*), the City shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract under which such a certificate is required must contain a provision that the original contract price and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price was increased due to inaccurate, incomplete, or

noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within 1 year following the end of the contract.

- B. Should the City's Administrative Staff be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the City's Administrative Staff determines to be fair, competitive, and reasonable, negotiations with that firm must be formally terminated. The City's Administrative Staff shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the City's Administrative Staff must terminate negotiations. The City's Administrative Staff shall then undertake negotiations with the third most qualified firm.
- C. Should the City's Administrative Staff be unable to negotiate a satisfactory contract with any of the selected firms, the City's Administrative Staff shall select additional firms in the order of their competence and qualification and continue negotiations in accordance with this subsection until an agreement is reached.

3.13 ADDITIONAL COMMITTEE REVIEW CONSIDERATIONS

3.13.1 The following is the list of criteria, procedures, and standards, which the Committee, in its evaluation of qualifications from Firms interested in providing the Services, will consider:

- A. The qualifications and credentials of each Firm.
- B. Certification that the Firm is not barred from performing the services by operation of the Florida Public Entity Crimes law.
- C. If the Firm or any of its subconsultants is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act of 1985. Provide certification if the firm answers "yes" in the Attributes' tab.

3.13.2 The foregoing list is intended to inform interested Firms, before competitive qualifications are sought by the City, of the considerations which will be used to evaluate qualifications submitted by Firms qualified to perform the work.

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SECTION IV – FEDERAL GRANT REQUIREMENTS

RFQ #: T-13-24

ENGINEERING SERVICES WATER TREATMENT PLANT IMPROVEMENT PROJECT

The City of Pompano Beach (“City”) will submit an SRF loan application for the planning and design of the project. Therefore, Consultants must comply with all provisions listed within the grant requirements. Consultants should familiarize themselves with all regulations and requirements contained below and in 2 CFR Part 200, along with Appendix II, before submitting a response.

All references to a “Non-Federal Entity” herein shall be construed to mean the City of Pompano Beach (CITY), its officers, employees, and elected officials.

By submitting a proposal for this project Consultant agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State, County, and City orders, statutes, ordinances, rules, and regulations which may pertain to the Services required under the Agreement, including but not limited to the following:

Data is current as:

Included herein:

Title 2 → Subtitle A → Chapter II → Part

200 Title 2: Grants and Agreements

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards 200.318 (a-b) GENERAL PROCUREMENT STANDARDS

The CITY has documented procurement procedures and will conform to the procurement standards identified in §§ 200.317 through 200.327. In accordance with the requirements of this grant/s, the CITY shall maintain oversight to ensure that Consultants perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

PROCUREMENT STANDARDS

§ 200.317 Procurements by states.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

§ 200.318 General procurement standards.

(a) The Non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or sub-award. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

(b) Non-Federal entities must maintain oversight to ensure that Consultants perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from Consultants or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods

and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible Consultants possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as Consultant integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, Consultant selection or rejection, and the basis for the contract price.

(j)

(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the Consultant exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the Consultant for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the Consultant exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the Consultant is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern.

Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

§ 200.319 Competition.

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.

(b) In order to ensure objective Consultant performance and eliminate unfair competitive advantage, Consultants that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include, but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient

requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential proposers from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with § 200.320.

§ 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) Informal procurement methods. When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) Micro-purchases -

(i) Distribution. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) Micro-purchase awards. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) Micro-purchase thresholds. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) Non-Federal entity increase to the micro-purchase threshold up to \$50,000. Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) Non-Federal entity increase to the micro-purchase threshold over \$50,000. Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) Small purchases -

(i) Small purchase procedures. The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) Simplified acquisition thresholds. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) Formal procurement methods. When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) Sealed bids. A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose

bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) Proposals. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional architecture whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.

(c) Noncompetitive procurement. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation list's;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime Consultant, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

§ 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

§ 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its Consultants must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 200.324 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action over the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the procurement situation, but as a starting point, the non-Federal entity must make independent estimates before

receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the Consultant, the Consultant's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§ 200.325 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- (1) The non-Federal entity's procurement procedures or operation fail to comply with the procurement standards in this part;
- (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement

systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the Consultant for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Consultant's requirements under such contract.

(c) A payment bond on the part of the Consultant for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§ 200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

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APPENDIX II TO PART 200 - CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY- CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable. All references to a "Non-Federal Entity" herein shall be construed to mean the City of Pompano Beach (CITY), its officers, employees, and elected officials.

All Provisions shall be included and made a part of the final contract between the CITY and the CONSULTANT whether specifically included in the final contract document or referenced within the contract document, in which case these provisions shall be included as a part of the Agreement as if specifically enumerated therein.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the CITY under the Federal award must contain provisions covering the following, as applicable:

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where Consultants violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of "federally assisted construction contract" in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, "Equal Employment Opportunity" ([30 FR 12319](#), [12935](#), [3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at [41 CFR part 60](#), "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Consultants must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage

determination made by the Secretary of Labor. In addition, Consultants must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), "Consultants and Sub-consultants on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each Consultant or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(D) Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each Consultant must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(E) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(F) Clean Air Act ([42 U.S.C. 7401-7671q.](#)) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended – Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(G) Debarment and Suspension (Executive Orders 12549 and 12689) – A contract award (see

[2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#)

that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(H) Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) – Consultants that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(I) See [§ 200.323](#). A non-Federal entity that is a state agency or agency of a political subdivision of a state and its Consultants must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(J) See [§ 200.216](#): Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- (c) See Public Law 115–232, section 889 for additional information.
- (d) See also § 200.47
- (K) See [§ 200.322](#). Domestic preferences for procurements.
- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
 - (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber;

and lumber.

(3) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in [2 CFR part 184](#).

CONSULTANT shall be required to adhere to Buy America Build America Act (BABAA) while preparing and developing the design-bid-build Scope of Work and plans for this project.

BABAA requires that all iron, steel, manufactured products, and construction materials used in federally funded projects for infrastructure must be produced in the United States.

See [2 CFR part 184](#).

[[78 FR 78608](#), Dec. 26, 2013, as amended at [79 FR 75888](#), Dec. 19, 2014; [85 FR 49577](#), Aug. 13, 2020]

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EXHIBIT "A" - STATEMENT OF COMPLIANCE - TRAINING, EMPLOYMENT, AND CONTRACTING OPPORTUNITIES FOR BUSINESS AND LOWER-INCOME PERSONS

A. The project assisted under this (RFQ) is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 70U. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.

B. Notwithstanding any other provision of this (contract) (agreement), the (applicant) (recipient) shall carry out the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary set forth in 24 CFR Part 135 (published in 38 Federal Register 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued there under prior to the execution of this (contract) (agreement). The requirements of said regulations include but are not limited to development and implementation of an affirmative action plan for utilizing business concerns located within or owned in substantial part by persons residing in the area of the project; the making of a good faith effort, as defined by the regulation, to provide training, employment and business opportunities required by Section 3; and incorporation of the "Section 3 Clause" specified by Section 135.20 (b) of the regulations in all contracts for work in connection with the project. The (applicant) (recipient) certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.

C. Compliance with the provision of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the City of the application for this (contract) (agreement), shall be a condition of the Federal financial assistance provided to the project, binding upon the (applicant) (recipient), its successors and assigns. Failure to fulfill these requirements shall subject the (applicant) (recipient), its Consultants and sub-consultants, its successors, and assigns to the sanctions specified by the (contract) (agreement), and to such sanctions as are specified by 24 CFR Section 135.

Name of Consultant: _____

Title of RFQ or Spec: _____

Spec # or RFQ # or Purchase Order Bid No: _____

Will you hire new employees as a result of this contract? Yes [] No []

Consultant: _____

Consultant's Signature and Title Date: _____

EXHIBIT "B" - CERTIFICATION FOR COMPLIANCE WITH CITY, COUNTY, STATE, AND FEDERAL LAWS AND REGULATIONS

I, agree to comply with all City, County, State, and Federal laws and regulations, including, but not limited to the following:

CONFLICTS OF INTEREST

Consultant covenants that no person who presently exercises any functions or responsibility on behalf of the City of Pompano Beach in connection with this agreement has any personal financial interests, direct or indirect, with the Consultant. Consultant further covenants that, in the performance of any contract, no person having such conflicting interest, shall be employed by the Consultant. Any conflict of interest attributable to the Consultant or its employees must be disclosed in writing to the City of Pompano Beach upon discovery.

Consultant is aware of the conflict-of-interest laws of the State of Florida, particularly Chapter 112, Part III, Florida Statutes; and the United States Department of Housing and Urban Development, particularly, 24 CFR Part 570 § 570.611, and agrees to comply with all respects to those provisions fully.

EQUAL OPPORTUNITY

During the performance of this RFQ, the successful Consultant and its sub-consultants shall not discriminate against any employee or applicant for employment because of race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity and expression, or disability if qualified. The Consultant will take affirmative action to ensure that employees and those of its sub-consultants are treated during employment, without regard to their race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity, genetic information or expression, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant and its sub-consultants shall agree to post in conspicuous places, available to its employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

The Consultant further agrees that he/she will ensure that all sub-consultants, if any, will be made aware of and will comply with this nondiscrimination clause.

In the event local laws or ordinances governing equal opportunity apply as well, Consultant agrees to comply.

DEBARMENT/SUSPENSION

The Consultant certifies, by submission of this certification, that neither the Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Where the Consultant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this certification.



ZONING CODES AND BUILDING CODES

Consultant must comply with the City of Pompano Beach Zoning and Building Codes, the Florida Building Code, local building codes, and other standards established by the City of Pompano Beach, as deemed necessary by such agency.

Signature: _____
Print Name: _____
Date: _____
State of _____
County of _____

The foregoing instrument was acknowledged before me via physical presence OR online notarization This day of _____, 20_____.

By _____

Personally, known OR produced identification

Type of identification produced

NOTARY NAME HERE, Notary Public

My Commission Expires _____



EXHIBIT "C" – STATE AND FEDERAL STATUTES, REGULATIONS, AND POLICIES

The DWSRF funds available to the Subrecipient "CITY" through this agreement constitute a subaward of a Federal award under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. The following provisions apply to awarded Consultant/Contractor.

Furthermore, Consultant/Contractor agree to abide by the Davis-Bacon Wage Act and wage tables.

Consultant/Contractor agree to meet all American Iron and Steel requirements.

This agreement includes terms and conditions of Federal award that are imposed on the Subrecipient and the Subrecipient agrees to carry out its obligations in compliance with all of the obligations described in this Agreement.

Signature: _____
Print Name: _____
Date: _____
State of _____
County of _____

The foregoing instrument was acknowledged before me via physical presence OR online notarization This day of _____, 20_____.

By _____

Personally, known OR produced identification

Type of identification produced

NOTARY NAME HERE, Notary Public

My Commission Expires _____

EXHIBIT “D” – BUILD AMERICA, BUY AMERICA ACT (BABA) - INFRASTRUCTURE PROJECTS FEDERALLY FUNDED

This provision does not apply where there is a valid waiver in place. However, the provision may apply to funds expended before the waiver or after expiration of the waiver.

Through execution of this document CONSULTANT confirms and agrees to abide by all regulations and policies stated in Buy America Build America Act (BABAA) while preparing and developing the design-bid-build Scope of Work and plans for this project.

BABAA requires that all iron, steel, manufactured products, and construction materials used in federally funded projects for infrastructure must be produced in the United States.

See [2 CFR part 184](#).

Recipients or Subrecipients of an award of Federal financial assistance from a program for infrastructure are required to comply with the Build America, Buy America Act (BABAA), including the following provisions:

- a. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. All manufactured products used in the project are produced in the United States-this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- c. All construction materials are manufactured in the United States-this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Signature: _____
Print Name: _____
Date: _____
State of _____
County of _____



The foregoing instrument was acknowledged before me via physical presence OR online notarization This day of _____, 20_____.

By _____

Personally, known OR produced identification Type of identification produced
NOTARY NAME HERE, Notary Public

My Commission Expires _____



SAMPLE AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT (“Agreement”), dated _____, 20_____, is entered into by and between:

THE CITY OF POMPANO BEACH, a municipal corporation of the State of Florida with a business address of **100 West Atlantic Blvd. Pompano Beach, FL 33060** (hereinafter referred to as the "CITY"),

and

_____, a For Profit Corporation as listed with the Florida Division of Corporations, with a principal address of _____ (hereinafter referred to as the "CONSULTANT"). CITY and CONSULTANT may hereinafter be referred to collectively as the "Parties."

WITNESSETH:

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONSULTANT agree as follows:

ARTICLE 1 - PREAMBLE

In order to establish the background, context and form of reference for this Agreement, and to generally express the objectives and intentions of the respective Parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow, and may be relied upon by the Parties as essential elements of the mutual considerations upon which this Agreement is based.

1.1 On _____, the CITY advertised its notice to bidders of the CITY's desire to hire a firm for engineering services to deliver complete and permitted design documents for the _____ and provide all other professional services that may be deemed necessary for the satisfactory design and engineering and completion of the project, as more particularly described in **Exhibit “A”** attached hereto and by this reference made a part hereof, for the said solicitation entitled:

Request for Qualifications (RFQ) # _____
“ _____ ”

1.2 On _____, the proposals were electronically opened by the General Services and Procurement.

1.3 On _____, the CITY’s selection evaluation committee (SEC) certified CONSULTANT as qualified to provide the professional services as described in **Exhibit “A”** and selected CONSULTANT as the most highly qualified to perform the required services in accordance with the Consultant's Competitive Negotiation Act (“CCNA”), §287.055, Florida

Statutes.

1.4 On _____, the CITY negotiated the proposal with CONSULTANT and authorized the proper CITY officials to negotiate and enter into this Agreement with

CONSULTANT to govern the services more particularly described herein below.

1.5 Negotiations pertaining to the services herein required were undertaken in accordance with the CCNA, §287.055, Florida Statutes and this Agreement incorporates the results of such negotiation.

1.6 In the event of any conflicts between this Agreement and any exhibits hereto, this Agreement shall prevail, followed by the bid specifications attached hereto as Exhibit "A".

1.7 The services provided by CONSULTANT pursuant to this Agreement shall comply with the definition of "professional services" as provided for in Section 287.055(2)(a), Florida Statutes, as may be amended from time to time.

ARTICLE 2 - SERVICES AND RESPONSIBILITIES

2.1 CONSULTANT hereby agrees to deliver complete and permitted design documents for _____, more particularly located at _____ ("Property"), and perform all other professional services deemed necessary for the satisfactory design and completion of the project, as more particularly described in, and in accordance the specifications attached hereto and made a part hereof as **Exhibit "A"**, CONSULTANT's response thereto, attached hereto and made a part hereof as **Exhibit "B"**, and the scope of services proposed by CONSULTANT attached hereto and made a part hereof as **Exhibit "C"**. CONSULTANT agrees to perform all services required pursuant to this Agreement, the Sealed Bid Package, Addenda to this Agreement, and Commission award complete with proposal form.

2.2 CONSULTANT shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement and all services performed under this Agreement shall be performed in a professional manner.

2.3 CONSULTANT hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONSULTANT, that CONSULTANT has the professional expertise, experience and manpower to perform the services to be provided by CONSULTANT pursuant to the terms of this Agreement.

2.4 CONSULTANT assumes professional and technical responsibility for performance of its services to be provided hereunder in accordance with recognized professional and ethical guidelines established by their profession. If within one year following completion of its services, such services fail to meet the aforesaid standards, and the CITY promptly advises CONSULTANT thereof in writing, CONSULTANT agrees to re-perform such deficient services without charge to the CITY.

2.5 CONSULTANT shall schedule regular meetings with the CITY's representatives at least once a month to discuss the progress of the services required to deliver complete and permitted design documents for the design services, as more specifically described in **Exhibit "A"** and **Exhibit "C"**.

2.6 The relationship between CITY and CONSULTANT created hereunder and the services to be provided by CONSULTANT pursuant to this Agreement are non-exclusive. CITY shall be free to pursue and engage similar relationships with other Consultants to perform the same or similar services performed by CONSULTANT hereunder, so long as no other consultant shall be engaged to perform the specific project assigned to CONSULTANT while CONSULTANT is so engaged without first terminating such assignment. CONSULTANT shall be free to pursue relationships with other parties to perform the same or similar services, whether or not such relationships are for services to be performed within the City of Pompano Beach, so long as no such relationship shall result in a conflict of interest, ethical or otherwise, with the CITY's interests in the services provided by CONSULTANT hereunder.

2.7 CONSULTANT shall not utilize the services of any sub-consultant without the prior written approval of CITY. CONSULTANT shall comply with the applicable provisions of the City of Pompano Beach Code of Ordinances and shall require that all sub-consultants comply with the applicable provisions of the City of Pompano Beach Code of Ordinances.

ARTICLE 3 - TIME FOR PERFORMANCE AND TERMINATION

3.1 CONSULTANT shall perform the services more particularly described in **Exhibit "C"** within _____ **calendar days** from the award and full execution of this Agreement. Minor adjustments to the timetable for completion approved by CITY in advance, in writing, will not constitute non-performance by CONSULTANT. The CITY shall define the time for performance and authorize the commencement of later phases in writing which may be memorialized by work orders or written amendments hereto.

3.2 **Post Contractual Obligations.** In the event that the term of this agreement expires, the CONSULTANT agrees to continue providing services, at the current rates, on a month-to-month basis until the CITY establishes a new contract or amendment for services.

3.3 **Termination for Convenience.** This Agreement may be terminated by the CITY for convenience upon providing thirty (30) business days of written notice to the CONSULTANT, in which event CONSULTANT shall be paid its compensation for services performed to the termination date, including services reasonably related to termination. In the event that the CONSULTANT abandons this Agreement or causes it to be terminated, CONSULTANT shall indemnify the CITY against any loss pertaining to this termination up to a maximum of the full contracted fee amount.

3.4 **Default by CONSULTANT.** In addition to all other remedies available to CITY, this Agreement shall be subject to cancellation by CITY for cause, should CONSULTANT neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by CONSULTANT of written notice of such neglect or failure.

3.5 In the event of termination for cause or convenience, all finished or unfinished documents, data, studies, plans, surveys, and reports prepared by CONSULTANT shall become the property of CITY and shall be delivered by CONSULTANT to CITY immediately.

ARTICLE 4 - COMPENSATION AND METHOD OF PAYMENT

4.1 The CITY agrees to compensate CONSULTANT for all services performed in accordance with this Agreement pursuant to the rates more particularly described in **Exhibit "C"**, attached hereto and by this reference made a part hereof. The total amount of compensation paid to CONSULTANT pursuant to this Agreement for the scope of services more particularly described in **Exhibit "C"**, shall not exceed _____ (\$____.00).

4.2 CONSULTANT shall be entitled to invoice CITY on a monthly basis for services performed. The invoice shall include information such as, but not be limited to, the date of service, staff classification, the amount of time spent, a description of the service, and any other information reasonably required by CITY.

4.3 CITY will make its best efforts to pay CONSULTANT within thirty (30) days of receipt of proper invoice the total shown to be due on such invoice. All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes. Payment will be made to CONSULTANT at:

4.4 **Truth-In-Negotiation Certificate.** Signature of this Agreement by CONSULTANT shall act as the execution of a Truth-in-Negotiation Certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums, by which the CITY determines that contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs.

4.5 **Contingency or Allowance.** Any contingency or allowance amount provided for by the CITY authorizes the CITY to execute change orders up to the amount of the contingency or allowance without the need to obtain additional Commission approval. In addition, CITY shall utilize the contingency or allowance to reimburse CONSULTANT for the related permit, license, impact or inspection fees. Payments will be made to CONSULTANT based on the actual cost of permits upon submission of paid permit receipts. It is hereby understood and agreed that the CONSULTANT shall not expend any dollars in connection with the contingency or allowance without the expressed prior written approval of the CITY's authorized representative. Any contingency or allowance funds that have not been utilized at the end of the project will remain with the CITY, the CONSULTANT shall only be paid for the proposed project cost as approved by the City Commission along with any contingency or allowance expenses that were approved by the CITY's authorized representative. If the permit fees exceed the contingency or allowance CITY will reimburse the CONSULTANT the actual amount of the permit fees required for project completion.

ARTICLE 5 - CHANGES TO SCOPE AND ADDITIONAL SERVICES

5.1 CITY or CONSULTANT may from time-to-time request changes that would increase, decrease, or otherwise modify the scope of services, as described in **Exhibit "C"**, to be provided under this Agreement subject to the requirements set forth in §287.055, Florida Statutes. Such changes or additional work must be in accordance with the provisions of the CITY's Code of Ordinances, and must be contained in a written amendment, executed by the Parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this

Agreement, including the initiation of any additional or extra work.

5.2 CONSULTANT shall continue to render services while seeking a change order unless such services have not been authorized herein, by written amendment, or change order. Services to be performed while a seeking change order which have not been described herein or in a separate written amendment or change order shall be performed at the CONSULTANT'S own risk. In no event will the CONSULTANT be compensated for any services which have not been described either herein or in a separate written amendment or change order.

ARTICLE 6 - INDEMNIFICATION

1.1 The CONSULTANT shall indemnify and hold harmless the CITY, its officers and employees, from liability, losses or damages, including reasonable attorneys' fees and costs of defense, which the CITY, its officers and employees may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the negligence, recklessness, or intentional wrongful misconduct of CONSULTANT and other persons employed or utilized by CONSULTANT in the performance of this Agreement. The CONSULTANT shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon.

1.2 CONSULTANT agrees that the covenants and representations relating to indemnification shall survive the term of this Agreement and continue in full force and effect as to the Party's responsibility to indemnify.

1.3 Nothing contained here is intended nor shall be construed to waive CITY's rights and immunities under the common law or Section 768.28, Florida Statutes, as may be amended from time to time.

ARTICLE 7 – INSURANCE

7.1 The CONSULTANT expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONSULTANT shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents, and instrumentalities as herein provided.

7.2 CONSULTANT shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONSULTANT allow any sub-consultant to commence work on any subcontract until all similar such insurance required of the sub-consultant has been obtained and similarly approved.

7.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the City's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A- credit rating" as to management, and no less than "Class VII" as to financial size category according to A.M. Best's Credit Rating Guide.

7.4 Certificates of Insurance shall provide for thirty (30) days' prior written notice to the CITY

in case of cancellation or material changes in the policy limits or coverage states. If the carrier cannot provide thirty (30) days' notice of cancellation, either the CONSULTANT or their Insurance Broker must agree to provide notice.

7.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the CONSULTANT shall furnish, at least forty-five (45) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONSULTANT shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect.

CONSULTANT shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

Certificates of Insurance reflecting evidence of the required Insurance shall be submitted with the response to the Request for Qualification. These Certificates shall contain a provision that all coverage afforded under these policies will not be cancelled until at least thirty days (30) prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Florida.

Consultant agrees to maintain, on a primary non-contributory basis and at its sole expense, at all times during the life of this Agreement, the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Consultant is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Consultant under this Agreement. Any coverage maintained by the City shall apply excess of, or contingent upon the absence of, other insurance required or maintained by Consultant.

- A. Commercial General Liability: Consultant agrees to maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** each occurrence, **\$2,000,000** annual aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Separation of Insureds.
- B. Worker's Compensation Insurance & Employers Liability: Consultant agrees to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute, Chapter 440.
- C. Professional Liability: Consultant agrees to maintain Professional (Errors & Omissions) Liability at a limit of liability not less than **\$500,000** per claim, **\$1,000,000** annual aggregate, or a **\$1,000,000** combined single limit. When a self-insured retention (SIR) or deductible exceeds **\$25,000**, the City reserves the right, but not the obligation, to review and request a copy of the Consultant's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, Consultant agrees to maintain a retroactive date prior to or equal to

the effective date of any resulting contract. In the event the policy is cancelled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of any resulting contract, Consultant agrees to purchase a SERP with a minimum reporting period not less than **two (2)** years. The requirement to purchase a SERP shall not relieve Consultant of the obligation to provide replacement coverage.

- D. Additional Insured: The Consultant agrees to endorse the City, Florida Department of Environmental Protection and any other applicable grant agency as an Additional Insured on the Commercial General Liability with the following, or similar endorsement providing equal or broader Additional Insured coverage, the CG 20 26 07 04 or GC 20 26 04 13 Additional Insured – Designated Person or Organization endorsements; or the CG 20 10 07 04 or GC 20 10 04 13 Additional Insured – Owners, Lessees, or Consultants endorsements in combination with the additional endorsement GC 20 37 07 04 or GC 20 04 13 Additional Insured – Owners, Lessees, or Consultants – Completed Operations shall be required to provide back coverage for the Consultant’s “your work” as defined in the policy and liability arising out of the products-completed operations hazard. The Additional Insured shall read “City of Pompano Beach.”
- E. Waiver of Subrogation: Consultant agrees to provide a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Consultant to enter into a pre-loss agreement to waive subrogation without an endorsement, then Consultant agrees to 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 specifically prohibiting such an endorsement, or voids coverage should Consultant enter into such an agreement on a pre-loss basis.
- F. Certificate(s) of Insurance: Consultant agrees to provide City a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify City of a non-renewal or cancellation notice, when available by Consultant’s insurer. If the Consultant receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Consultant agrees to notify the City by fax and email as set forth in this Section within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance.

The certificate holder's address shall read:
City of Pompano Beach and
Attn: Risk
City of Pompano Beach
100 West Atlantic Blvd.
Pompano Beach, FL 33060

CONSULTANT shall indemnify and hold the City and the Florida Department of Economic Opportunity (DEO) harmless for any damages resulting from failure of the CONSULTANT to take out and maintain such insurance. CONSULTANT's Liability Insurance policies shall be endorsed to add the City and the Florida Department of Economic Opportunity (DEO) as additional insureds. CONSULTANT shall be responsible for payment of all deductibles and self-insurance retentions on CONSULTANT's Liability Insurance policies. The following are required types and minimum limits of insurance coverage, which the Bidder agrees to maintain during the term of this contract:

Right to Revise or Reject: City reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverages and endorsements, or to reject any insurance policies that fail to meet the criteria stated herein. Additionally, City reserves the right, but not the obligation, to review and reject any insurer providing coverage due of its poor financial condition or failure to operating legally.

ARTICLE 8 - NON-DISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYMENT

During the performance of the Agreement, neither the CONSULTANT nor any sub-consultants shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. CONSULTANT will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONSULTANT further agrees that CONSULTANT will ensure that sub-consultants, if any, will be made aware of and will comply with this nondiscrimination clause.

ARTICLE 9 - INDEPENDENT CONSULTANT

This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the CONSULTANT is an independent Consultant under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONSULTANT shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONSULTANT's activities and responsibilities hereunder provided, further those administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT, which policies of CONSULTANT shall not conflict with CITY, State, or United States policies, rules or regulations relating to the use of CONSULTANT's funds provided for herein. The CONSULTANT agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment

relationship between the CONSULTANT and the CITY and the CITY will not be liable for any obligation incurred by CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.

ARTICLE 10 - AGREEMENT SUBJECT TO FUNDING

This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Pompano Beach in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

ARTICLE 11 - UNCONTROLLABLE FORCES

Neither CITY nor CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing Party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a Party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming Party. It includes, but is not limited to: fire, flood, earthquakes, storms, lightning, epidemic, pandemic, acts of God, war, riot, civil disturbance, sabotage, and governmental actions. Neither Party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming Party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming Party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other Party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 12 - GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all claims or actions arising out of or related to this Agreement shall be in Broward County, Florida.

ARTICLE 13 - SIGNATORY AUTHORITY

CONSULTANT shall provide CITY with copies of requisite documentation evidencing that the signatory for CONSULTANT has the authority to enter into this Agreement.

ARTICLE 14 - DEFAULT OF CONTRACT & REMEDIES

14.1 **Damages.** CITY reserves the right to recover any ascertainable actual damages incurred as a result of the failure of CONSULTANT to perform in accordance with the requirements of this Agreement, or for losses sustained by CITY resultant from CONSULTANT's failure to perform in accordance with the requirements of this Agreement.

14.2 **Correction of Services.** If, in the judgment of CITY, the services provided by CONSULTANT do not conform to the requirements of this Agreement, or if the services exhibit poor workmanship, CITY reserves the right to require that CONSULTANT correct all deficiencies in the services to bring the services into conformance without additional cost to CITY, and/or replace any personnel who fail to perform in accordance with the requirements of this Agreement. CITY shall be the sole judge of non-conformance and the quality of services.

14.3 **Default of Contract.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by CONSULTANT for which CITY may terminate for cause:

14.3.1 The abandonment, unnecessary delay, refusal of, or failure to comply with any of the terms of this Agreement or neglect, or refusal to comply with the instructions of the City Manager or individual relative thereto.

14.3.2 The failure by CONSULTANT to observe or perform any of the terms, covenants, or conditions of this Agreement to be observed or performed by CONSULTANT, where such failure shall continue for a period of thirty (30) days after written notice thereof by CITY to CONSULTANT; provided, however, that if the nature of CONSULTANT 's default is such that more than thirty (30) days are reasonably required for its cure, then CONSULTANT shall not be deemed to be in default if CONSULTANT commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

14.3.3 The assignment and/or transfer of this Agreement or execution or attachment thereon by CONSULTANT or any other Party in a manner not expressly permitted hereunder.

14.3.4 The making by CONSULTANT of any general assignment or general arrangement for the benefit of creditors, or the filing by or against CONSULTANT of a petition to have CONSULTANT adjudged a bankruptcy, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against CONSULTANT, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of CONSULTANT's assets, or for CONSULTANT's interest in this Agreement, where possession is not restored to CONSULTANT within thirty (30) days; for attachment, execution or other judicial seizure of substantially all of CONSULTANT's assets, or for CONSULTANT's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

ARTICLE 15 – BANKRUPTCY

It is agreed that if CONSULTANT is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective on the date and at the time the bankruptcy petition is filed.

ARTICLE 16 - DISPUTE RESOLUTION

In the event that a dispute, if any, arises between CITY and CONSULTANT relating to this Agreement, performance or compensation hereunder, CONSULTANT shall continue to render service in full compliance with all terms and conditions of this Agreement as interpreted by CITY regardless of such dispute. CONSULTANT expressly agrees, in consideration for the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court, but will negotiate with CITY for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute, may present the matter to a court of competent jurisdiction in an appropriate suit therefore instituted by it or by CITY.

ARTICLE 17 - PUBLIC RECORDS

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

17.1.1 Keep and maintain public records required by the CITY to perform the service;

17.1.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the 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;

17.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, CONSULTANT shall destroy all copies of such confidential and exempt records remaining in its possession after the CONSULTANT transfers the records in its possession to the CITY; and

17.1.4 Upon completion of the Agreement, CONSULTANT shall transfer to the CITY, at no cost to the CITY, all public records in CONSULTANT's possession. All records stored electronically by the CONSULTANT 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.

17.2 The failure of CONSULTANT to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement, for which, the CITY may terminate the Agreement in accordance with the terms herein.

17.3 The CONSULTANT shall provide the right of access to all records for the CITY and Federal Grant Agency and keep all records pertaining to this project for **SIX (6)** years after the CITY has closed out the grant award.

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

**CITY CLERK
100 West Atlantic Blvd.
Pompano Beach, FL 33060
(954) 786-4600**

ARTICLE 18 - SCRUTINIZED COMPANIES

18.1 CONSULTANT, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Energy Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:

18.1.1 Any amount if, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

18.1.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

18.1.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Terrorism Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or

18.1.2.2 Is engaged in business operations in Syria.

ARTICLE 19 - EMPLOYMENT ELIGIBILITY

19.1 **E-Verify**. CONSULTANT certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

19.1.1 **Definitions for this Section.**

19.1.1.1 "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration.

19.1.1.2 "Contractor" includes, but is not limited to, a vendor or consultant.

19.1.1.3 "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

19.1.1.4 "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

19.2 **Registration Requirement; Termination.** Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status

of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

19.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and

19.2.2 All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Pompano Beach. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Pompano Beach; and

19.2.3 The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

ARTICLE 20 – MISCELLANEOUS

20.1 **Ownership of Documents.** Reports, surveys, plans, studies and other data provided in connection with this Agreement are and shall remain the property of CITY whether or not the project for which they are made is completed. CITY hereby agrees to use CONSULTANT's work product for its intended purposes.

20.2 **Legal Representation.** It is acknowledged that each Party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the Party preparing same shall not apply herein due to the joint contributions of both Parties.

20.3 **Records.** CONSULTANT shall keep such records and accounts and require any and all subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONSULTANT expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of five (5) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries. All records shall be maintained and available for disclosure, as appropriate, in accordance with Chapter 119, Florida Statutes.

20.4 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT without the prior written consent of CITY. For purposes of this Agreement, any change of



ownership of CONSULTANT shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

20.5 **No Contingent Fees.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

20.6 **Notice.** Whenever any Party desires to give notice unto any other Party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the Party for whom it is intended and the remaining Party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONSULTANT and CITY designate the following as the respective places for giving of notice:

CITY:

_____,
City Manager City of Pompano Beach
100 West Atlantic Blvd.
Pompano Beach, FL 33060
(954) 786-4600

Copy To:

CONSULTANT:

20.7 **Binding Authority.** Each person signing this Agreement on behalf of either Party individually warrants that he or she has full legal power to execute this Agreement on behalf of the Party for whom he or she is signing, and to bind and obligate such Party with respect to all provisions contained in this Agreement.

20.8 **Headings.** Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

20.9 **Exhibits.** Each exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

20.10 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

20.11 **Extent of Agreement; Conflicts.** This Agreement represents the entire and integrated agreement between the CITY and the CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. In the event of any conflict or ambiguity by and between this Agreement, **Exhibit "A"**, **Exhibit "B"**, and **Exhibit "C"**, this Agreement shall govern and prevail, followed by **Exhibit "C"**, **Exhibit "A"**, and **Exhibit "B"**.

20.12 **Attorneys' Fees.** In the event that either Party brings suit for enforcement of this Agreement, each Party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

20.13 **Counterparts and Execution.** This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other Party through facsimile transmission, email, or other electronic delivery.

20.14 **No Third-Party Beneficiaries.** The services to be performed by the CONSULTANT are intended solely for the benefit of the CITY. No person or entity not a signatory to this Agreement shall be entitled to rely on the CONSULTANT's performance of its services hereunder, and no right to assert a claim against the CONSULTANT by assignment of indemnity rights or otherwise shall accrue to a third Party as a result of this Agreement or the performance of the CONSULTANT's services hereunder.

20.15 **Design Professional.**

A DESIGN PROFESSIONAL WHO IS AN INDIVIDUAL EMPLOYEE OR AGENT OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE OCURING WITHIN THE COURSE AND SCOPE OF THIS AGREEMENT, PURSUANT TO §558.0035, FLORIDA STATUTES, AS MAY BE AMENDED FROM TIME TO TIME.

20.16 **STATE OF FLORIDA DEO - CDBG-MIT GRANT REQUIREMENTS**

By execution of this Agreement, CONSULTANT certifies that CONSULTANT has familiarized themselves with all regulations and requirements of 2 C. F.R. part 200 – Uniform Administrative Requirements and Audit Requirements for Federal Awards, Appendix 1 1 to Part 200, included herein as Exhibit B along with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 CFR part 570, as modified by the Federal Register notices that govern the use of CDBG-MIT funds available under this grant, as referenced in the Bid document. These Federal Register notices include, but are not limited to, Federal Register Guidance Vol. 83, No. 28/Friday, February 9, 201 8/Notices and Vol. 83 , No. 1 57/Tuesday, August 1 4, 201 8/Notices in order to submit a bid for this project.

20.17 **CONSULTANT CERTIFIES THAT THE FOLLOWING DOES NOT APPL Y TO THEIR**

FIRM:

Pursuant to Section 287. 1 33(2)(a), F .S., a person or affiliate, as defined in Section 287. 1 33(1) , F. S., who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a CONSULTANT supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any pub lie entity in excess of thirty-five thousand dollars (\$35, 000) for a period of thirty-six (36) months following the date of being placed on the convicted vendor list. By executing this Agreement, the Subrecipient represents and warrants that neither it nor any of its affiliates is currently on the convicted vendor list.

- Pursuant to Section 287 . 1 34(2)(a), F . S. , an entity or affiliate, as defined in Section 287. 1 34(1) , who has been placed on the discriminatory vendor list may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a CONSULTANT, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity. By executing this Agreement,

the Subrecipient represents and warrants that neither it nor any of its affiliates is currently on the discriminatory vendor list.

ARTICLE 21 – FEDERAL REQUIREMENTS

Notwithstanding anything to the contrary set forth herein, CONSULTANT shall comply with the applicable federal required standard provisions, as set forth in 2 C.F.R. Sec. 200.326 and 2 C.F.R. Part 200. In the event of any conflicts, the provisions of 2 C.F.R. Sec. 200.326 and 2 C.F.R. Part 200 shall prevail. Any reference made to CONSULTANT in this section shall also apply to any subcontractor under the terms of this Contract. The prime CONSULTANT shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with all of these contract clauses:

21.1 Equal Employment Opportunity. During the performance of this contract, CONSULTANT agrees as follows:

21.1.1 CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. CONSULTANT will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

21.1.2 CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

21.1.3 CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with CONSULTANT's legal duty to furnish information.

- 21.1.4 CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of CONSULTANT's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 21.1.5 CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 21.1.6 CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 21.1.7 In the event of CONSULTANT's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and CONSULTANT may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 21.1.8 CONSULTANT will include the provisions of paragraphs (21.1.1 through (21.1.7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CONSULTANT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- 21.2 **Davis-Bacon Act**. CONSULTANT shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor Regulations (29 CFR Part 5). In accordance with the statute, CONSULTANT must be required to pay wages to laborers and mechanics

at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, CONSULTANT must be required to pay wages not less than once a week.

21.3 **Copeland “Anti-Kickback” Act.** CONSULTANT shall comply with the Copeland “Anti-Kickback” Act, (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). CONSULTANT must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. City must report all suspected or reported violations to the Federal awarding agency.

21.4 **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, pursuant to 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) CONSULTANT must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

22.4.1 **Overtime requirements.** No CONSULTANT or subconsultant contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

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

- 22.4.3 Withholding for unpaid wages and liquidated damages.** City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by CONSULTANT or subcontractor under any such contract or any other Federal contract with the same prime CONSULTANT, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONSULTANT, such sums as may be determined to be necessary to satisfy any liabilities of such CONSULTANT or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (ii) of this section.
- 22.4.4 Subcontracts.** CONSULTANT or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (22.4.1) through (24.4.4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONSULTANT shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (22.4.4) through (22.4.4) of this section.
- 21.5** CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). City will report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 22.5.1 Clean Air Act.** CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. CONSULTANT agrees to report each violation to City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.
- 22.5.2 Federal Water Pollution Control Act.** CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. CONSULTANT agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

- 21.6 Suspension and Debarment.** This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000, as such CONSULTANT is required to verify that none of the CONSULTANT's agents, principals (defined at 2 C.F.R. § 180.995), or affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). CONSULTANT must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by City. If it is later determined that CONSULTANT did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to State and City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
- 21.7 Byrd Anti-Lobbying Amendment, as amended (31 U.S.C. § 1352).** CONSULTANT shall file the required certification pursuant to 31 U.S.C. 1352. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
- 21.8 Compliance with State Energy Policy and Conservation Act.** CONSULTANT shall comply with all mandatory standards and policies relating to energy efficiency contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- 21.9 Procurement of Recovered Materials.** The City and CONSULTANT must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 21.10 Reporting.** Pursuant to 44 CFR 13.36(i)(7), CONSULTANT shall comply

with federal requirements and regulations pertaining to reporting, including but not limited to those set forth at 44 CFR 40 and 41, if applicable. Furthermore, both parties shall provide the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative access to any books, documents, papers, and records of CONSULTANT which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts, and transcriptions. Also, both Parties agree to provide FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the Agreement.

21.11 No Obligation by the Federal Government.

21.11.1 Absent the express written consent by the Federal Government, the Federal Government is not a party to the Agreement and shall not be subject to any obligations or liabilities to the City, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Agreement.

21.11.2 CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

21.12 Compliance with Federal Law, Regulations, and Executive Orders.

This is an acknowledgement that federal financial assistance will be used to fund the Agreement only. CONSULTANT will comply with all applicable federal law, regulations, executive orders, policies, procedures, and directives.

21.13 Fraudulent Statements. CONSULTANT acknowledges that 31 U.S.C. Chap. 38 applies to CONSULTANT's actions pertaining to this Agreement.

21.14 Rights to Inventions. CONSULTANT agrees that if this Agreement results in any copyrightable materials or inventions, the Federal Government reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use the copyright of said materials or inventions for Federal Government purposes.

21.15 DHS Seal, Logo, and Flags. CONSULTANT shall not use DHS(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific federal pre-approval.

21.16 Prohibition on Contracting for Covered Telecommunications Equipment or Services. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause.

21.16.1 **Prohibitions.** Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons. Unless an exception described below applies, the CONSULTANT and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- 21.16.1 (Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- 21.16.2 Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- 21.16.3 Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- 21.16.4 Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

22.16.2 Exceptions.

- 22.16.2.1 This clause does not prohibit CONSULTANT from providing: (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- 22.16.2.2 By necessary implication and regulation, the prohibitions also do not apply to: (i) Covered telecommunications equipment or services that: a. Are not used as a substantial or essential component of any system; and b. Are not used as critical technology of any system. (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

- 22.16.3 **Reporting Requirement.** In the event CONSULTANT identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the CONSULTANT is notified of such by a subcontractor at any tier or by any other source, the CONSULTANT shall report the following information to City: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within ten (10) business days of submitting the information to City CONSULTANT shall report: Any further available information about mitigation actions undertaken or recommended. In addition, the CONSULTANT shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services. The CONSULTANT shall insert the substance of this clause, including this in all subcontracts and other contractual instruments.
- 21.17 **Domestic Preference for Procurements.** As appropriate, and to the extent consistent with law, the CONSULTANT should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- 21.18 **Affirmative Socioeconomic Steps.** If subcontracts are to be let, CONSULTANT is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses.
1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and

minority businesses, and women's business enterprises;

4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

21.19 Upon request the, un-certified MWBE entity will be referred to the SBA, DMS, and/or Minority Business Development Agency for certification by the STATE.

21.20 **License and Delivery of Works Subject to Copyright and Data Rights.**

If applicable, the CONSULTANT grants to City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, CONSULTANT will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, CONSULTANT will deliver to the CONSULTANT data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by CONSULTANT.

21.21 **REQUIREMENTS OF SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT (HUD) ACT OF 1968**

The project assisted under this (RFQ) is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S. C. 70U. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.

Notwithstanding any other provision of this (contract) (agreement), the (applicant) (recipient) shall carry out the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary set forth in 24 CFR Part 135 (published in 38 Federal Register 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued there under prior to the execution of this (contract) (agreement). The requirements of said regulations include but are not limited to development and implementation of an affirmative action plan for utilizing business concerns located within or owned in substantial part by persons residing in the area of the project;

the making of a good faith effort, as defined by the regulation, to provide training, employment and business opportunities required by Section 3; and incorporation of the "Section 3 Clause" specified by Section 135.20 (b) of the regulations in all contracts for work in connection with the project. The (applicant) (recipient) certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.

Compliance with the provision of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the City of the application for this (contract) (agreement), shall be a condition of the Federal financial assistance provided to the project, binding upon the (applicant) (recipient), its successors and assigns. Failure to fulfill these requirements shall subject the (applicant) (recipient), its Consultants and sub-consultants, its successors, and assigns to the sanctions specified by the (contract) (agreement), and to such sanctions as are specified by 24 CFR Section 135.

SIGNATURE PAGE FOLLOWS



IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

ATTEST:

CITY OF POMPANO BEACH:

KERVIN ALFRED, CITY CLERK

GREG HARRISON, CITY MANAGER

DATE

DATE

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

OFFICE OF THE CITY ATTORNEY

DATE

ATTEST:

CONSULTANT:

SIGNATURE

COMPANY NAME

NAME

SIGNATURE OF PRESIDENT

(CORPORATE SEAL)

NAME OF PRESIDENT

DATE

DATE



CORPORATE ACKNOWLEDGEMENT

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 20__, by _____, on behalf of _____ a Florida Corporation. He/she is personally known to me or has produced _____ as identification.

NOTARY PUBLIC

(Name of Notary Typed, Printed or Stamped)

Title or Rank

Serial number, if any.