

AGREEMENT FOR MEDICAL DIRECTOR SERVICES

THIS AGREEMENT, dated _____, 2021, is by and between the City of Fort Lauderdale, a Florida municipality ("City"), whose address is 100 North Andrews Avenue, Fort Lauderdale, Florida 33301, and Jim Roach, D.O., P.A., a Florida for profit corporation ("Physician" or "Medical Director" or "Contractor"), comprised of a physician licensed to practice medicine in the State of Florida, whose address is 108 Dockside Circle, Weston, Florida 33327, for medical director services.

WHEREAS, the City operates a basic life support service and an advanced life support service; and

WHEREAS, the delivery of advanced emergency medical services by paramedics requires intravenous administration of emergency resuscitative drugs and performance of sophisticated technical emergency procedures; and

WHEREAS, the administration of drugs and performance of such emergency procedures as endotracheal intubation, intravenous catheterization, electrical defibrillation, and any other invasive emergency procedure may be performed in the State of Florida only by or under the direction of a licensed Florida physician; and

WHEREAS, Section 401.265, Florida Statutes (2020), as may be amended or revised, requires each basic life support transportation service or advanced life support service to employ or contract with a Medical Director,

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the City and the Medical Director hereby agree as follows:

Designation

Jim Roach, D.O., P.A. is designated during the term of this Agreement and during the term of any extension or renewal of this Agreement as the Medical Director for the City of Fort Lauderdale's emergency medical services system, effective March 1, 2021.

Jim Roach, D.O., P.A. is a sole proprietorship. Within ninety (90) days, Medical Director shall designate in writing, independent contractor physicians who will have the authority to act and provide the required services under this Agreement in the absence of the Medical Director. All said physicians are subject to prior written City approval and must provide the required insurance for City review prior to and before rendering any services under this Agreement.

Duties: Responsibilities

1. The Medical Director shall supervise and assume direct responsibility for the medical performance of the emergency medical technicians and paramedics operating for the City of Fort Lauderdale's emergency medical services system.
2. The Medical Director shall perform duties including advising, consulting, training, counseling, and oversight of emergency medical services, including appropriate quality assurance but not including administrative or managerial functions. This Agreement is contingent on the Medical Director employing a sufficient number, in the opinion of the City's City Manager ("City Manager"), of physicians licensed pursuant to Florida law and Board Certified in the State of Florida in emergency medicine ["Physician(s)"], to provide the services enumerated in this Agreement. The Medical Director shall provide proof of a Physician's qualifications and inclusion as an insured under the insurance policies required by this Agreement to the City prior the Physician's performance of any services pursuant to this Agreement on the Medical Director's behalf, and such qualifications and insurance shall be subject to the City Manager's and the City's Risk Manager's prior written approval.
3. The Medical Director shall prescribe for use by the City's Police Department ("Police Department") pursuant to Section 381.887, Florida Statutes (2020), as may be amended or revised, an emergency opioid antagonist, and shall assist and instruct such Police Department personnel as determined by the City Manager in the proper administration of such emergency opioid antagonist.
4. Except as otherwise provided for herein, the Medical Director's role regarding the hiring and firing of, and disciplinary actions against any medically certified employee of the City, is advisory only.
5. The Medical Director shall cause a physician who is either an officer, employee or contract employee of the Medical Director to comply with the notice requirement of Section 458.348(1), Florida Statutes (2020), as may be amended or revised. The Medical Director shall have the authority to permit or prohibit any emergency medical technician or paramedic employed by the City to perform basic life support or advanced life support patient services in accordance with applicable law. The Medical Director shall notify in writing the City's Fire Chief ("Fire Chief") or the Fire Chief's designee of the Medical Director's prohibition of a City employee to perform basic life support or advanced life support patient services within twenty-four (24) hours of the Medical Director's prohibition of a City employee to perform basic life support or advanced life support patient services.

6. The Medical Director shall be available and on-call twenty-four (24) hours per day seven (7) days per week every day that this Agreement is in effect. Such on-call physician shall make radio or telephone contact with the Fire Chief or the Fire Chiefs designee within fifteen (15) minutes of such on-call physician's receipt of notification or page from the Fort Lauderdale Fire Rescue ("FLFR") or the Fire Rescue communications center. The Medical Director shall be responsible for the acts and omissions of all such on-call physicians.
7. The Medical Director shall assist the Fire Chief or the Fire Chief's designee in determining the qualifications of personnel who supervise the emergency medical technicians and paramedics in the City's Fire Rescue Department ("Department").
8. The Medical Director shall review and approve Emergency Medical Technician ("EMT") and Paramedic continuing medical education ("CEUs") provided by FLFR and Fort Lauderdale Ocean Rescue as requested by the Battalion Chief of Training and Special Operations.
9. The Medical Director shall provide liaison services as requested by the Department or by the City, or on behalf of the City, to any educational, governmental, or medical agency or institution, and to other providers in Broward County and elsewhere, to which the Department may deliver patients or from which the Department may seek medical or regulatory consultation, relating to the City's provision of emergency medical services.
10. The Medical Director shall serve as liaison between the City and the various community hospitals, other local emergency medical services agencies, and any other agency, physician, institution or organization affecting the Department's provision of emergency medical services.
11. The Medical Director shall serve as liaison between the City and various community hospitals, other local emergency medical services agencies, physician(s), institutions, and organizations for the purposes of ensuring compliance with all federal and state standards and regulations regarding infectious disease exposures and reporting requirements for the Fire Rescue Department.
12. Subject to the Fire Chief's approval, and subject to the City's budget and appropriation and the availability of funds, the City may reimburse the Medical Director pursuant to the City's Travel Allowance and Subsistence Policy, for travel expenses for Dr. Roach to attend professional conferences pertaining to the City's provision of emergency medical services.

13. In conjunction with the EMS Bureau, the Medical Director shall develop and revise medically correct standing orders or protocols pursuant to Section 64J-1.004(4), Florida Administrative Code (2019), as may be amended or revised, to reflect the current standard of care for patients.
14. The Medical Director will provide a website so that the protocols can be accessed on the mobile devices in the field with an internet connection. The website will be paid for, managed and updated by the Medical Director. There will be an export function so that at any given moment the protocols can be captured in a moment in time and archived for testing purposes.
15. The Medical Director will review and approve or disapprove the training, certification, and re-certification of skills for all first responders, emergency medical technicians, and paramedics employed by the City.
16. Pursuant to Section 64J-1.004(4), Florida Administrative Code (2019), as may be amended or revised, the Medical Director, by and through Dr. Roach, shall develop and implement a continuous quality improvement (“CQI”) assurance system to assess the medical performance of paramedics and emergency medical technicians. The Medical Director, by and through Dr. Roach, shall establish a quality assurance committee to provide for quality assurance review of all emergency medical technicians and paramedics operating under its supervision in accordance with the provisions of Section 401.265(2), Florida Statutes (2020), as may be amended or revised. The Medical Director shall conduct periodic review sessions with Department personnel regarding medical management of individual medical rescue cases. The Medical Director, by and through Dr. Roach, shall conduct in-station education and case scenario reviews to continually improve and refine the skills of emergency medical technicians and paramedics.
17. The Medical Director, in conjunction with the Fire Chief and the Fire Chief’s staff, shall keep records for continuing education and re-certification training. The Medical Director shall keep records related to quality assurance committee meetings and quality assurance measures. The Medical Director, in conjunction with the Fire Chief and the Fire Chief’s staff, shall keep other necessary documentation related to attendance at such programs as required by federal, state, and county regulations. The Medical Director will assist with the required documentation as necessary for the emergency medical services re-certification of all Fire Rescue Department employees. The Medical Director shall make all such records contemporaneously with the corresponding event and keep all such records in accordance with Florida law, including the Florida public records law.

18. In concert with the Fire Chief and the Fire Chief's staff, the Medical Director will establish a routine monthly meeting lasting at least one to two hours, for the purposes of medical consultation, planning, education, and quality assurance.
19. The Medical Director shall review regularly medical rescue reports prepared by Fire Rescue Department emergency medical technicians and paramedics and review all problem cases as necessary or medically appropriate. The Medical Director shall keep a log of all such reviews, in accordance with Florida law, including the Florida public records law, and make such log available for inspection by the City Manager, or designee at any time.
20. The Medical Director shall, in conjunction with the Fire Chief or the Fire Chief's designee, subject to the City's budget and appropriation and the availability of funds, authorize, and may require, the Fire Rescue Department's emergency medical technicians and paramedics to attend specialized training programs, conferences, and schools for the purpose of earning CEU's.
21. The Medical Director shall assist, and make recommendations to, the Fire Chief, the Fire Chief's staff, and other City personnel, as required by the City Manager, regarding planning for emergency medical services, ambulance transportation policies, deployment of vehicles, distribution of resources, personnel matters, emergency medical technician training, paramedic training, utilization of medical facilities, hospital supplies, medical equipment, medications, narcotics, emergency medical services billing and reimbursement systems, and recovery of costs associated with the City's emergency medical services system.
22. The Medical Director shall participate as a crew member on the City's emergency vehicles in accordance with Florida Department of Health rules and shall provide on-site personnel evaluation. The Medical Director shall perform at least twenty-four (24) hours per contract year of in-the-field operations riding in rescue vehicles and/or chief command vehicles, reviewing the performance of Fire Rescue Department's emergency medical services personnel, and reviewing different incidents in which emergency medical services are rendered. The Medical Director will schedule the time, date, and location within the City of Fort Lauderdale, of in-the-field operations.
23. The Medical Director shall participate in monthly and/or quarterly meetings with emergency medical services supervisors and/or field training officers, to last 1-4 hours and, if needed as determined by the City Manager or the City Manager's designee, three consecutive days, to allow all shifts (A, B and C) to participate. The Medical Director will schedule the time, date, and location within the City of Fort Lauderdale of the monthly and/or quarterly meetings.

24. In January of each year of this Agreement, the Medical Director shall assist with the annual review of medical rescue services via a report to the Fire Chief, assessing the overall quality of services delivered by the City's Fire Rescue Department Emergency Medical Services, emergency medical technicians, and paramedics.
25. The Medical Director shall be available upon request to meet and confer with the City Manager, the Fire Chief, and other officials and employees of the City as determined by the City Manager or the City Manager's designee, regarding the City's emergency medical services delivery programs, personnel issues related to the continuation of practices by medically certified Fire-Rescue Department personnel, and any other issues that may impact the City's ability to deliver quality emergency medical services. The Medical Director shall be required to participate in and testify as witnesses in employee discipline and discharge proceedings, grievance hearings, depositions, court proceedings, and other proceedings, as may be requested by the City Manager or by the City Manager's designee or by the City's legal counsel, or designee in connection with any matter related to or that may affect the City's provision of emergency medical services or pre-hospital medical care, and regarding any matter pursuant to subpoena or court order.
26. The Medical Director shall review and have the authority to approve such community medical education and training programs as may be offered by the Fire Rescue Department.
27. The Medical Director shall have consultative and authorizing authority over the City's provision of emergency medical services in conjunction with special events held within the corporate limits of the City of Fort Lauderdale, Florida, and the City of Wilton Manors, Florida, and/or subject to regulation and/or requirements of the Fire Rescue Department in conjunction with the event.
28. The City may require the Medical Director to respond to major incidents, special events, or disasters which the Fire Rescue Department has responsibility for managing.
29. The Medical Director shall provide all services as set forth in Chapter 64J, Florida Administrative Code, Florida Department of Health regulations, as may be amended and subsequently promulgated. The Medical Director shall provide all other services as may be specifically required by law or regulations, and/or mutually agreed to by both Parties, relating to the provision of emergency medical services.

Insurance

1. The Medical Director shall maintain during the term of this Agreement and during the term of any extension or renewal of this Agreement and provide to the City a certificate of commercial general liability insurance with a reputable insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager ("Risk Manager"), in an amount not less than \$1,000,000 per occurrence limit for bodily injury and property damage, including coverage for premises/operations, products/completed operations, contractual liability, independent contractors, and coverage for the liability assumed by the Medical Director under the indemnification provision of this Agreement.
2. The Medical Director shall maintain during the term of this Agreement and during the term of any extension or renewal of this Agreement and provide to the City proof of automobile liability insurance with a reputable insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the Risk Manager, with policy coverage and limits in accordance with State law.
3. The Medical Director shall maintain during the term of this Agreement and during the term of any extension or renewal of this Agreement and provide to the City a certificate of professional liability/medical malpractice insurance with minimum limits of \$1,000,000 per claim, and \$3,000,000 aggregate, insuring the Medical Director and the Medical Director's officers and employees and the City against liability arising out of all acts and omissions by the Medical Director and by the Medical Director's officers and employees during the term of this Agreement and during the term of any extension or renewal thereof, including coverage for the liability assumed by the Medical Director under the indemnification provision of this Agreement.
4. The commercial general liability and professional liability/medical malpractice policies shall name the City of Fort Lauderdale, a Florida municipality, as a certificate holder and as an additional insured.
5. If required by law, the Medical Director shall maintain during the term of this Agreement and during the term of any extension or renewal of this Agreement and provide to the City a certificate of workers' compensation insurance, including employer's liability, with a reputable insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the Risk Manager, with a limit of \$500,000 employer's liability, in compliance with all state and federal laws.
6. The Medical Director shall provide to the City at least thirty (30) days' written notice by registered mail, return receipt requested, addressed separately, to the Fire

Chief and to the Risk Manager, prior to cancellation or modification of any required insurance. The provisions of this entire Section shall remain in effect until four (4) years after the expiration or termination of this Agreement and any extension or renewal of this Agreement, unless the Medical Director is able to secure an occurrence insurance policy as may be approved by the Risk Manager.

Compensation

In consideration for the services provided by the Medical Director as an independent contractor, City hereby agrees to pay the Medical Director \$70,000 per year, payable in twelve monthly installments after the first day of each month for the previous month's services.

Term

The initial term of this Agreement shall be for a three-year period commencing on March 1, 2021 at 0000 and ending on February 29, 2024. The City reserves the right to extend the Agreement for two (2) additional one-year terms providing all terms conditions and specifications remain substantially the same and both Parties agree to the extension.

Termination

1. Either Party may terminate this Agreement or any extension or renewal of this Agreement for any reason at any time by providing ninety (90) days prior written notice of termination by certified mail or hand delivery to the other Party.
2. Either Party may terminate this Agreement for a material breach of this Agreement by the other Party upon seven (7) calendar days' written notice to the other Party and an opportunity to cure within the seven-day period, except that the only material breach by the City for which the Medical Director may terminate this Agreement upon seven (7) days' written notice with an opportunity to cure is the City's failure to pay the Medical Director the monthly fee provided for in this Agreement on or before the forty-fifth day following the end of the month for which the fee is due.
3. The City may, in the City's sole discretion, terminate this Agreement immediately or upon such notice as the City deems appropriate in the City's sole discretion by giving written notice to the Medical Director in the event of any one or more of the following:
 - a. The Medical Director's license to practice medicine in any state where Physician holds such a license is suspended or revoked, or Physician is placed on probation, reprimanded, fined, or has his medical practice privileges restricted by any state or governing authority;

- b. The Medical Director is charged with, or indicted or informed against or arrested for, or convicted of, any felony or misdemeanor or criminal traffic offense;
 - c. The Medical Director is found, in connection with his service as a medical director for any emergency medical services system, to have committed negligence or gross negligence or recklessness or an intentional tort or medical malpractice by a jury or judge of a court of competent jurisdiction regardless of the results of any retrial, rehearing, or appeal;
 - d. Any insurance coverage required by this Agreement is not maintained or is not maintained at the required level or is canceled.
 - e. The Medical Director is either temporarily or permanently incapacitated, as determined solely by the City.
4. The Medical Director shall provide the City with written notice 24 hours after the Medical Director is informed of any of the foregoing grounds for immediate termination. In addition, if any medical malpractice action or proceeding in connection with the Medical Director's service as a medical director for any emergency medical services system is initiated against the Medical Director, whether such action or proceeding arises out of events occurring prior to or after the effective date of this Agreement, then the Medical Director shall, within five (5) calendar days after the Medical Director is informed of such action or proceeding, provide the City with written notice of such action or proceeding.

Indemnification

The Medical Director shall protect and defend at the Medical Director's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents, from and against any and all claims, damages, judgments, losses, penalties, fines, settlements, charges, costs, and expenses, including any award of attorney fees and any award of costs, that may arise out of, or be occasioned by, any act or omission or medical malpractice, including supervision, direction, oversight, counseling, and training of, and consultation with, City personnel, by the Medical Director or by any third party physician acting on behalf or in place of the Medical Director. This paragraph shall survive expiration or early termination of this Agreement.

Governing Law: Venue: Waiver of Jury Trial

This Agreement shall be governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the courts in and for Broward County, Florida, or in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida. **THE PARTIES HEREBY EXPRESSLY AGREE TO WAIVE A TRIAL BY JURY OF ALL ISSUES SO**

TRIBLE REGARDING THIS AGREEMENT.

Severability

In the event any one or more of the provisions contained in this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement not having been held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, shall remain in full force and effect.

Miscellaneous

1. No failure or delay by either Party in exercising any power or right under this Agreement shall operate as a waiver thereof. No waiver by either Party of any provision of this Agreement shall operate as a subsequent waiver of the same provision or a waiver of any other provision of this Agreement.
2. The Medical Director shall at all times comply with, and be subject to, all laws, rules, regulations, and ordinances governing physicians and medical directors.
3. Subject to certain statutory exemptions, including Sections 401.30, 119.071(1)(a), and 401.425(5), Florida Statutes (2020), as may be amended or revised, and subject to the Privacy Rule and the Security Rule promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996, records made or received by the City in connection with this Agreement, including this Agreement, and records made or received by the Medical Director in connection with this Agreement are public records subject to public inspection and copying. The City's determination of whether any or no exemption applies shall control.
4. The City's General Conditions are incorporated herein by this reference as Exhibit A.
5. The Medical Director shall not assign this Agreement to any other person or entity without the City's prior written consent.
6. The Medical Director, in his role as Medical Director, shall not discriminate illegally against any person on the basis of race, color, religion, sex, age, national origin, disability, marital status, or sexual orientation, or violate any applicable federal or state civil rights or human rights law or applicable county or municipal civil rights or human rights ordinance.
7. Within fourteen days following the commencement of this Agreement and within fourteen days following every anniversary of this Agreement, the Medical

Director shall provide to the City Manager or designee a schedule of all of its activities planned pursuant to this Agreement for the ensuing year, which schedule shall be subject to the City Manager's or the City Manager's designee's approval or revision.

Notice

Notices from one Party to the other Party shall be by E-mail, except in the case of termination of this Agreement, by hand delivery, or by certified mail, return receipt requested, and addressed as follows:

City of Fort Lauderdale

Fire Chief
528 NW 2nd Street
Fort Lauderdale, FL 33311
Phone: 954-828-6816
rkerr@fortlauderdale.gov

With a copy to:

City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301
Phone: 954-828-6174
clagerbloom@fortlauderdale.gov

City Attorney Office
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301
Phone: 954-828-7452
aboileau@fortlauderdale.gov

Medical Director

James Roach, DO
Jim Roach, DO, P.A.
108 Dockside Circle
Weston, FL 33327
Phone: 954-494-8866
Edmed911@yahoo.com

IN WITNESS WHEREOF, the Parties execute this Agreement for Medical Director Services as follows:

ATTEST:

CITY OF FORT LAUDERDALE, a Florida municipality

JEFFREY A. MODARELLI
City Clerk

By: _____
CHRISTOPHER J. LAGERBLOOM
City Manager

Approved as to form:
ALAIN E. BOILEAU, City Attorney

By: _____
RHONDA MONTTOYA HASAN
Assistant City Attorney

WITNESSES:

JIM ROACH, D.O., P.A., a Florida profit corporation

By: _____

JAMES ROACH, DO

[Witness print/type name]

[Witness print/type name]

STATE OF :
COUNTY OF :

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2021, by JAMES ROACH, DO of JIM ROACH, D.O., P.A., a Florida profit corporation.

(SEAL)

(Signature of Notary Public – State of Florida)

Print, Type or Stamp Commissioned Name of
Notary Public)

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

Attachment: City of Fort Lauderdale, General Conditions

Exhibit A
CITY OF FORT LAUDERDALE
GENERAL CONDITIONS

These instructions and conditions are standard for all contracts for commodities or services issued through the City of Fort Lauderdale Procurement Services Division. The City may delete, supersede, or modify any of these standard instructions for a particular contract by indicating such change in the Invitation to Bid (ITB) Special Conditions, Technical Specifications, Instructions, Proposal Pages, Addenda, and Legal Advertisement. In this general conditions document, Invitation to Bid (ITB), Request for Qualifications (RFQ), and Request for Proposal (RFP) are interchangeable.

PART I BIDDER PROPOSAL PAGE(S) CONDITIONS:

- 1.1 BIDDER ADDRESS:** The City maintains automated vendor address lists that have been generated for each specific Commodity Class item through our bid issuing service, BidSync. Notices of Invitations to Bid (ITB'S) are sent by e-mail to the selection of bidders who have fully registered with BidSync or faxed (if applicable) to every vendor on those lists, who may then view the bid documents online. Bidders who have been informed of a bid's availability in any other manner are responsible for registering with BidSync in order to view the bid documents. There is no fee for doing so. If you wish bid notifications be provided to another e-mail address or fax, please contact BidSync. If you wish purchase orders sent to a different address, please so indicate in your bid response. If you wish payments sent to a different address, please so indicate on your invoice.
- 1.2 DELIVERY:** Time will be of the essence for any orders placed as a result of this ITB. The City reserves the right to cancel any orders, or part thereof, without obligation if delivery is not made in accordance with the schedule specified by the Bidder and accepted by the City.
- 1.3 PACKING SLIPS:** It will be the responsibility of the awarded Contractor, to attach all packing slips to the OUTSIDE of each shipment. Packing slips must provide a detailed description of what is to be received and reference the City of Fort Lauderdale purchase order number that is associated with the shipment. Failure to provide a detailed packing slip attached to the outside of shipment may result in refusal of shipment at Contractor's expense.
- 1.4 PAYMENT TERMS AND CASH DISCOUNTS:** Payment terms, unless otherwise stated in this ITB, will be considered to be net 45 days after the date of satisfactory delivery at the place of acceptance and receipt of correct invoice at the office specified, whichever occurs last. Bidder may offer cash discounts for prompt payment but they will not be considered in determination of award. If a Bidder offers a discount, it is understood that the discount time will be computed from the date of satisfactory delivery, at the place of acceptance, and receipt of correct invoice, at the office specified, whichever occurs last.
- 1.5 TOTAL BID DISCOUNT:** If Bidder offers a discount for award of all items listed in the bid, such discount shall be deducted from the total of the firm net unit prices bid and shall be considered in tabulation and award of bid.
- 1.6 BIDS FIRM FOR ACCEPTANCE:** Bidder warrants, by virtue of bidding, that the bid and the prices quoted in the bid will be firm for acceptance by the City for a period of one hundred twenty (120) days from the date of bid opening unless otherwise stated in the ITB.
- 1.7 VARIANCES:** For purposes of bid evaluation, Bidder's must indicate any variances, no matter how slight, from ITB General Conditions, Special Conditions, Specifications or Addenda in the space provided in the ITB. No variations or exceptions by a Bidder will be considered or deemed a part of the bid submitted unless such variances or exceptions are listed in the bid and referenced in the space provided on the bidder proposal pages. If variances are not stated, or referenced as required, it will be assumed that the product or service fully complies with the City's terms, conditions, and specifications.
- By receiving a bid, City does not necessarily accept any variances contained in the bid. All variances submitted are subject to review and approval by the City. If any bid contains material variances that, in the City's sole opinion, make that bid conditional in nature, the City reserves the right to reject the bid or part of the bid that is declared by the City as conditional.
- 1.8 NO BIDS:** If you do not intend to bid please indicate the reason, such as insufficient time to respond, do not offer product or service, unable to meet specifications, schedule would not permit, or any other reason, in the space provided in this ITB. Failure to bid or return no bid comments prior to the bid due and opening date and time, indicated in this ITB, may result in your firm being deleted from our Bidder's registration list for the Commodity Class Item requested in this ITB.
- 1.9 MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION AND BUSINESS DEFINITIONS:** The City of Fort Lauderdale wants to increase the participation of Minority Business Enterprises (MBE), Women Business Enterprises (WBE), and Small Business Enterprises (SBE) in its procurement activities. If your firm qualifies in accordance with the below definitions please indicate in the space provided in this ITB.

Minority Business Enterprise (MBE) "A Minority Business" is a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to: Blacks, Hispanics, Asian Americans, and Native Americans.

The term "Minority Business Enterprise" means a business at least 51 percent of which is owned by minority group members or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by minority group members. For the purpose of the preceding sentence, minority group members are citizens of the United States who include, but are not limited to: Blacks, Hispanics, Asian Americans, and Native Americans.

Women Business Enterprise (WBE) a "Women Owned or Controlled Business" is a business enterprise at least 51 percent of which is owned by females or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by females.

Small Business Enterprise (SBE) "Small Business" means a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than \$1,000,000 in annual gross receipts.

BLACK, which includes persons having origins in any of the Black racial groups of Africa.

WHITE, which includes persons whose origins are Anglo-Saxon and Europeans and persons of Indo-European decent including Pakistani and East Indian.

HISPANIC, which includes persons of Mexican, Puerto Rican, Cuban, Central and South American, or other Spanish culture or origin, regardless of race.

NATIVE AMERICAN, which includes persons whose origins are American Indians, Eskimos, Aleuts, or Native Hawaiians.

ASIAN AMERICAN, which includes persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

1.10 MINORITY-WOMEN BUSINESS ENTERPRISE PARTICIPATION

It is the desire of the City of Fort Lauderdale to increase the participation of minority (MBE) and women-owned (WBE) businesses in its contracting and procurement programs. While the City does not have any preference or set aside programs in place, it is committed to a policy of equitable participation for these firms. Proposers are requested to include in their proposals a narrative describing their past accomplishments and intended actions in this area. If proposers are considering minority or women owned enterprise participation in their proposal, those firms, and their specific duties have to be identified in the proposal. If a proposer is considered for award, he or she will be asked to meet with City staff so that the intended MBE/WBE participation can be formalized and included in the subsequent contract.

1.11 SCRUTINIZED COMPANIES

As to any contract for goods or services of \$1 million or more and as to the renewal of any contract for goods or services of \$1 million or more, subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2019), as may be amended or revised. As to any contract for goods or services of any amount and as to the renewal of any contract for goods or services of any amount, the Contractor certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2019), and that it is not engaged in a boycott of Israel. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2019), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2019), or is engaged in a boycott of Israel, or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2019), as may be amended or revised.

1.12 DEBARRED OR SUSPENDED BIDDERS OR PROPOSERS

The bidder or proposer certifies, by submission of a response to this solicitation, that neither it nor its principals and subcontractors are presently debarred or suspended by any Federal department or agency.

Part II DEFINITIONS/ORDER OF PRECEDENCE:

2.1 BIDDING DEFINITIONS The City will use the following definitions in its general conditions, special conditions, technical specifications, instructions to bidders, addenda and any other document used in the bidding process:

INVITATION TO BID (ITB) The solicitation document used for soliciting competitive sealed bids for goods or services.

INVITATION TO NEGOTIATE (ITN) All solicitation documents, regardless of medium, whether attached to or incorporated by reference in solicitations for responses from firms that invite proposals from interested and qualified firms so the city may enter into negotiations with the firm(s) determined most capable of providing the required goods or services.

REQUEST FOR PROPOSALS (RFP) A solicitation method used for soliciting competitive sealed proposals to determine the best value among proposals for goods or services for which price may not be the prevailing factor in award of the contract, or the scope of work, specifications or contract terms and conditions may be difficult to define. Such solicitation will consider the qualifications of the proposers along with evaluation of each proposal using identified and generally weighted evaluation criteria. RFPs may include price criteria whenever feasible, at the discretion of the city.

REQUEST FOR QUALIFICATIONS (RFQ) A solicitation method used for requesting statements of qualifications in order to determine the most qualified proposer for professional services.

BID – a price and terms quote received in response to an ITB.

PROPOSAL – a proposal received in response to an RFP.

BIDDER – Person or firm submitting a Bid.

PROPOSER – Person or firm submitting a Proposal.

RESPONSIVE BIDDER – A firm who has submitted a bid, offer, quote, or response which conforms in all material respects to the competitive solicitation document and all of its requirements.

RESPONSIBLE BIDDER – A firm who is fully capable of meeting all requirements of the solicitation and subsequent contract. The respondent must possess the full capability, including financial and technical, ability, business judgment, experience, qualifications, facilities, equipment, integrity, capability, and reliability, in all respects to perform fully the contract requirements and assure good faith performance as determined by the city.

FIRST RANKED PROPOSER – That Proposer, responding to a City RFP, whose Proposal is deemed by the City, the most advantageous to the City after applying the evaluation criteria contained in the RFP.

SELLER – Successful Bidder or Proposer who is awarded a Purchase Order or Contract to provide goods or services to the City.

CONTRACTOR – Any firm having a contract with the city. Also referred to as a "Vendor".

CONTRACT – All types of agreements, including purchase orders, for procurement of supplies, services, and construction, regardless of what these agreements may be called.

CONSULTANT – A firm providing professional services for the city.

2.2 SPECIAL CONDITIONS: Any and all Special Conditions contained in this ITB that may be in variance or conflict with these General Conditions shall have precedence over these General Conditions. If no changes or deletions to General Conditions are made in the Special Conditions, then the General Conditions shall prevail in their entirety,

PART III BIDDING AND AWARD PROCEDURES:

3.1 SUBMISSION AND RECEIPT OF BIDS: To receive consideration, bids must be received prior to the bid opening date and time. Unless otherwise specified, Bidders should use the proposal forms provided by the City. These forms may be duplicated, but failure to use the forms may cause the bid to be rejected. Any erasures or corrections on the bid must be made in ink and initialed by Bidder in ink. All information submitted by the Bidder shall be printed, typewritten or filled in with pen and ink. Bids shall be signed in ink. Separate bids must be submitted for each ITB issued by the City in separate sealed envelopes properly marked. When a particular ITB or RFP requires multiple copies of bids or proposals they may be included in a single envelope or package properly sealed and identified. Only send bids via facsimile transmission (FAX) if the ITB specifically states that bids sent via FAX will be considered. If such a statement is not included in the ITB, bids sent via FAX will be rejected. Bids will be publicly opened in the Procurement Office, or other designated area, in the presence of Bidders, the public, and City staff. Bidders and the public are invited and encouraged to attend bid openings. Bids will be tabulated and made available for review by Bidder's and the public in accordance with applicable regulations.

- 3.2 MODEL NUMBER CORRECTIONS:** If the model number for the make specified in this ITB is incorrect, or no longer available and replaced with an updated model with new specifications, the Bidder shall enter the correct model number on the bidder proposal page. In the case of an updated model with new specifications, Bidder shall provide adequate information to allow the City to determine if the model bid meets the City's requirements.
- 3.3 PRICES QUOTED:** Deduct trade discounts, and quote firm net prices. Give both unit price and extended total. In the case of a discrepancy in computing the amount of the bid, the unit price quoted will govern. All prices quoted shall be F.O.B. destination, freight prepaid (Bidder pays and bears freight charges, Bidder owns goods in transit and files any claims), unless otherwise stated in Special Conditions. Each item must be bid separately. No attempt shall be made to tie any item or items contained in the ITB with any other business with the City.
- 3.4 TAXES:** The City of Fort Lauderdale is exempt from Federal Excise and Florida Sales taxes on direct purchase of tangible property. Exemption number for EIN is 59-6000319, and State Sales tax exemption number is 85-8013875578C-1.
- 3.5 WARRANTIES OF USAGE:** Any quantities listed in this ITB as estimated or projected are provided for tabulation and information purposes only. No warranty or guarantee of quantities is given or implied. It is understood that the Contractor will furnish the City's needs as they arise.
- 3.6 APPROVED EQUAL:** When the technical specifications call for a brand name, manufacturer, make, model, or vendor catalog number with acceptance of APPROVED EQUAL, it shall be for the purpose of establishing a level of quality and features desired and acceptable to the City. In such cases, the City will be receptive to any unit that would be considered by qualified City personnel as an approved equal. In that the specified make and model represent a level of quality and features desired by the City, the Bidder must state clearly in the bid any variance from those specifications. It is the Bidder's responsibility to provide adequate information, in the bid, to enable the City to ensure that the bid meets the required criteria. If adequate information is not submitted with the bid, it may be rejected. The City will be the sole judge in determining if the item bid qualifies as an approved equal.
- 3.7 MINIMUM AND MANDATORY TECHNICAL SPECIFICATIONS:** The technical specifications may include items that are considered minimum, mandatory, or required. If any Bidder is unable to meet or exceed these items, and feels that the technical specifications are overly restrictive, the bidder must notify the Procurement Services Division immediately. Such notification must be received by the Procurement Services Division prior to the deadline contained in the ITB, for questions of a material nature, or prior to five (5) days before bid due and open date, whichever occurs first. If no such notification is received prior to that deadline, the City will consider the technical specifications to be acceptable to all bidders.
- 3.8 MISTAKES:** Bidders are cautioned to examine all terms, conditions, specifications, drawings, exhibits, addenda, delivery instructions and special conditions pertaining to the ITB. Failure of the Bidder to examine all pertinent documents shall not entitle the bidder to any relief from the conditions imposed in the contract.
- 3.9 SAMPLES AND DEMONSTRATIONS:** Samples or inspection of product may be requested to determine suitability. Unless otherwise specified in Special Conditions, samples shall be requested after the date of bid opening, and if requested should be received by the City within seven (7) working days of request. Samples, when requested, must be furnished free of expense to the City and if not used in testing or destroyed, will upon request of the Bidder, be returned within thirty (30) days of bid award at Bidder's expense. When required, the City may request full demonstrations of units prior to award. When such demonstrations are requested, the Bidder shall respond promptly and arrange a demonstration at a convenient location. Failure to provide samples or demonstrations as specified by the City may result in rejection of a bid.
- 3.10 LIFE CYCLE COSTING:** If so specified in the ITB, the City may elect to evaluate equipment proposed on the basis of total cost of ownership. In using Life Cycle Costing, factors such as the following may be considered: estimated useful life, maintenance costs, cost of supplies, labor intensity, energy usage, environmental impact, and residual value. The City reserves the right to use those or other applicable criteria, in its sole opinion that will most accurately estimate total cost of use and ownership.
- 3.11 BIDDING ITEMS WITH RECYCLED CONTENT:** In addressing environmental concerns, the City of Fort Lauderdale encourages Bidders to submit bids or alternate bids containing items with recycled content. When submitting bids containing items with recycled content, Bidder shall provide documentation adequate for the City to verify the recycled content. The City prefers packaging consisting of materials that are degradable or able to be recycled. When specifically stated in the ITB, the City may give preference to bids containing items manufactured with recycled material or packaging that is able to be recycled.
- 3.12 USE OF OTHER GOVERNMENTAL CONTRACTS:** The City reserves the right to reject any part or all of any bids received and utilize other available governmental contracts, if such action is in its best interest.
- 3.13 QUALIFICATIONS/INSPECTION:** Bids will only be considered from firms normally engaged in providing the types of commodities/services specified herein. The City reserves the right to inspect the Bidder's facilities, equipment, personnel, and organization at any time, or to take any other action necessary to determine Bidder's ability to perform. The Procurement Director reserves the right to reject bids where evidence or evaluation is determined to indicate inability to perform.
- 3.14 BID SURETY:** If Special Conditions require a bid security, it shall be submitted in the amount stated. A bid security can be in the form of a bid bond or cashier's check. Bid security will be returned to the unsuccessful bidders as soon as practicable after opening of bids. Bid security will be returned to the successful bidder after acceptance of the performance bond, if required; acceptance of insurance coverage, if required; and full execution of contract documents, if required; or conditions as stated in Special Conditions.
- 3.15 PUBLIC RECORDS/TRADE SECRETS/COPYRIGHT:** The Proposer's response to the RFP is a public record pursuant to Florida law, which is subject to disclosure by the City under the State of Florida Public Records Law, Florida Statutes Chapter 119.07 ("Public Records Law"). The City shall permit public access to all documents, papers, letters or other material submitted in connection with this RFP and the Contract to be executed for this RFP, subject to the provisions of Chapter 119.07 of the Florida Statutes.

Any language contained in the Proposer's response to the RFP purporting to require confidentiality of any portion of the Proposer's response to the RFP, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Proposer submits any documents or other information to the City which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 ("Public Records Laws"), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Proposer's response to the RFP constitutes a Trade Secret. The city's determination of whether an exemption applies shall be final, and the proposer agrees to defend, indemnify, and hold harmless the City and the City's officers, employees, and agents, against any loss or

damages incurred by any person or entity as a result of the City's treatment of records as public records. In addition, the proposer agrees to defend, indemnify, and hold harmless the City and the City's officers, employees, and agents, against any loss or damages incurred by any person or entity as a result of the City's treatment of records as exempt from disclosure or confidential. Proposals bearing copyright symbols or otherwise purporting to be subject to copyright protection in full or in part may be rejected. The proposer authorizes the City to publish, copy, and reproduce any and all documents submitted to the City bearing copyright symbols or otherwise purporting to be subject to copyright protection.

EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR RESPONSE TO THE RFP AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR RESPONSE TO THE RFP OR ANY PART THEREOF AS COPYRIGHTED.

3.16 PROHIBITION OF INTEREST: No contract will be awarded to a bidding firm who has City elected officials, officers or employees affiliated with it, unless the bidding firm has fully complied with current Florida State Statutes and City Ordinances relating to this issue. Bidders must disclose any such affiliation. Failure to disclose any such affiliation will result in disqualification of the Bidder and removal of the Bidder from the City's bidder lists and prohibition from engaging in any business with the City.

3.17 RESERVATIONS FOR AWARD AND REJECTION OF BIDS: The City reserves the right to accept or reject any or all bids, part of bids, and to waive minor irregularities or variations to specifications contained in bids, and minor irregularities in the bidding process. The City also reserves the right to award the contract on a split order basis, lump sum basis, individual item basis, or such combination as shall best serve the interest of the City. The City reserves the right to make an award to the responsive and responsible bidder whose product or service meets the terms, conditions, and specifications of the ITB and whose bid is considered to best serve the City's interest. In determining the responsiveness of the offer and the responsibility of the Bidder, the following shall be considered when applicable: the ability, capacity and skill of the Bidder to perform as required; whether the Bidder can perform promptly, or within the time specified, without delay or interference; the character, integrity, reputation, judgment, experience and efficiency of the Bidder; the quality of past performance by the Bidder; the previous and existing compliance by the Bidder with related laws and ordinances; the sufficiency of the Bidder's financial resources; the availability, quality and adaptability of the Bidder's supplies or services to the required use; the ability of the Bidder to provide future maintenance, service or parts; the number and scope of conditions attached to the bid.

If the ITB provides for a contract trial period, the City reserves the right, in the event the selected bidder does not perform satisfactorily, to award a trial period to the next ranked bidder or to award a contract to the next ranked bidder, if that bidder has successfully provided services to the City in the past. This procedure to continue until a bidder is selected or the contract is re-bid, at the sole option of the City.

3.18 LEGAL REQUIREMENTS: Applicable provisions of all federal, state, county laws, and local ordinances, rules and regulations, shall govern development, submittal and evaluation of all bids received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a bid response hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any bidder shall not constitute a cognizable defense against the legal effect thereof.

3.19 BID PROTEST PROCEDURE: Any proposer or bidder who is not recommended for award of a contract and who alleges a failure by the city to follow the city's procurement ordinance or any applicable law may protest to the chief procurement officer, by delivering a letter of protest to the director of finance within five (5) days after a notice of intent to award is posted on the city's web site at the following url: <https://www.fortlauderdale.gov/departments/finance/procurement-services/notices-of-intent-to-award>

The complete protest ordinance may be found on the city's web site at the following url: https://library.municode.com/fl/fort_lauderdale/codes/code_of_ordinances?nodeid=coor_ch2ad_artvfi_div2pr_s2-182direpr

PART IV BONDS AND INSURANCE

4.1 PERFORMANCE BOND: If a performance bond is required in Special Conditions, the Contractor shall within fifteen (15) working days after notification of award, furnish to the City a Performance Bond, payable to the City of Fort Lauderdale, Florida, in the face amount specified in Special Conditions as surety for faithful performance under the terms and conditions of the contract. If the bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing Performance Bond. The Performance Bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida and having a resident agent.

Acknowledgement and agreement is given by both parties that the amount herein set for the Performance Bond is not intended to be nor shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Contractor to the City in the event of a material breach of this Agreement by the Contractor.

4.2 INSURANCE: The Contractor shall assume full responsibility and expense to obtain all necessary insurance as required by City or specified in Special Conditions.

The Contractor shall provide to the Procurement Services Division original certificates of coverage and receive notification of approval of those certificates by the City's Risk Manager prior to engaging in any activities under this contract. The Contractor's insurance is subject to the approval of the City's Risk Manager. The certificates must list the City as an ADDITIONAL INSURED for General Liability Insurance, and shall have no less than thirty (30) days written notice of cancellation or material change. Further modification of the insurance requirements may be made at the sole discretion of the City's Risk Manager if circumstances change or adequate protection of the City is not presented. Bidder, by submitting the bid, agrees to abide by such modifications.

PART V PURCHASE ORDER AND CONTRACT TERMS:

5.1 COMPLIANCE WITH SPECIFICATIONS, LATE DELIVERIES/PENALTIES: Items offered may be tested for compliance with bid specifications. Items delivered which do not conform to bid specifications may be rejected and returned at Contractor's expense. Any violation resulting in contract termination for cause or delivery of items not conforming to specifications, or late delivery may also result in:

- Bidder's name being removed from the City's bidder's mailing list for a specified period and Bidder will not be recommended for any award during that period.
- All City Departments being advised to refrain from doing business with the Bidder.
- All other remedies in law or equity.

5.2 ACCEPTANCE, CONDITION, AND PACKAGING: The material delivered in response to ITB award shall remain the property of the Seller until a physical inspection is made and the material accepted to the satisfaction of the City. The material must comply fully with the terms of the ITB, be of the

required quality, new, and the latest model. All containers shall be suitable for storage and shipment by common carrier, and all prices shall include standard commercial packaging. The City will not accept substitutes of any kind. Any substitutes or material not meeting specifications will be returned at the Bidder's expense. Payment will be made only after City receipt and acceptance of materials or services.

- 5.3 SAFETY STANDARDS:** All manufactured items and fabricated assemblies shall comply with applicable requirements of the Occupation Safety and Health Act of 1970 as amended.
- 5.4 ASBESTOS STATEMENT:** All material supplied must be 100% asbestos free. Bidder, by virtue of bidding, certifies that if awarded any portion of the ITB the bidder will supply only material or equipment that is 100% asbestos free.
- 5.5 OTHER GOVERNMENTAL ENTITIES:** If the Bidder is awarded a contract as a result of this ITB, the bidder may, if the bidder has sufficient capacity or quantities available, provide to other governmental agencies, so requesting, the products or services awarded in accordance with the terms and conditions of the ITB and resulting contract. Prices shall be F.O.B. delivered to the requesting agency.
- 5.6 VERBAL INSTRUCTIONS PROCEDURE:** No negotiations, decisions, or actions shall be initiated or executed by the Contractor as a result of any discussions with any City employee. Only those communications which are in writing from an authorized City representative may be considered. Only written communications from Contractors, which are assigned by a person designated as authorized to bind the Contractor, will be recognized by the City as duly authorized expressions on behalf of Contractors.
- 5.7 INDEPENDENT CONTRACTOR:** The Contractor is an independent contractor under this Agreement. Personal services provided by the Proposer shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, procurement policies unless otherwise stated in this ITB, and other similar administrative procedures applicable to services rendered under this contract shall be those of the Contractor.
- 5.8 INDEMNITY/HOLD HARMLESS AGREEMENT:** Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the Contractor or by any officer, employee, agent, invitee, subcontractor, or sublicensee of the Contractor. Without limiting the foregoing, any and all such claims, suits, or other actions relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged violations of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court shall be included in the indemnity hereunder.
- 5.9 TERMINATION FOR CAUSE:** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the provisions of this Agreement, the City may upon written notice to the Contractor terminate the right of the Contractor to proceed under this Agreement, or with such part or parts of the Agreement as to which there has been default, and may hold the Contractor liable for any damages caused to the City by reason of such default and termination. In the event of such termination, any completed services performed by the Contractor under this Agreement shall, at the option of the City, become the City's property and the Contractor shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due to the City from the Contractor can be determined.
- 5.10 TERMINATION FOR CONVENIENCE:** The City reserves the right, in the City's best interest as determined by the City, to cancel any contract by giving written notice to the Contractor thirty (30) days prior to the effective date of such cancellation.
- 5.11 CANCELLATION FOR UNAPPROPRIATED FUNDS:** The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.
- 5.12 RECORDS/AUDIT:** The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The Contractor agrees to make available to the City Auditor or the City Auditor's designee, during normal business hours and in Broward, Miami-Dade or Palm Beach Counties, all books of account, reports, and records relating to this contract. The Contractor shall retain all books of account, reports, and records relating to this contract for the duration of the contract and for three years after the final payment under this Agreement, until all pending audits, investigations or litigation matters relating to the contract are closed, or until expiration of the records retention period prescribed by Florida law or the records retention schedules adopted by the Division of Library and Information Services of the Florida Department of State, whichever is later.
- 5.13 PERMITS, TAXES, LICENSES:** The successful Contractor shall, at his/her/its own expense, obtain all necessary permits, pay all licenses, fees and taxes, required to comply with all local ordinances, state and federal laws, rules and regulations applicable to business to be carried out under this contract.
- 5.14 LAWS/ORDINANCES:** The Contractor shall observe and comply with all Federal, state, local and municipal laws, ordinances rules and regulations that would apply to this contract.

NON-DISCRIMINATION: The Contractor shall not, in any of its activities, including employment, discriminate against any individual on the basis of race, color, national origin, age, religion, creed, sex, disability, sexual orientation, gender, gender identity, gender expression, marital status, or any other protected classification as defined by applicable law.

1. The Contractor certifies and represents that the Contractor will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida, (2019), as may be amended or revised, ("Section 2-187"), during the entire term of this Agreement.
2. The failure of the Contractor to comply with Section 2-187 shall be deemed to be a material breach of this Agreement, entitling the City to pursue any remedy stated below or any remedy provided under applicable law.
3. The City may terminate this Agreement if the Contractor fails to comply with Section 2-187.
4. The City may retain all monies due or to become due until the Contractor complies with Section 2-187.
5. The Contractor may be subject to debarment or suspension proceedings. Such proceedings will be consistent with the procedures in section 2-183 of the Code of Ordinances of the City of Fort Lauderdale, Florida.

- 5.15 UNUSUAL CIRCUMSTANCES:** If during a contract term where costs to the City are to remain firm or adjustments are restricted by a percentage or CPI cap, unusual circumstances that could not have been foreseen by either party of the contract occur, and those circumstances significantly affect the

Contractor's cost in providing the required prior items or services, then the Contractor may request adjustments to the costs to the City to reflect the changed circumstances. The circumstances must be beyond the control of the Contractor, and the requested adjustments must be fully documented. The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the City will reserve the following options:

1. The contract can be canceled by the City upon giving thirty (30) days written notice to the Contractor with no penalty to the City or Contractor. The Contractor shall fill all City requirements submitted to the Contractor until the termination date contained in the notice.
2. The City requires the Contractor to continue to provide the items and services at the firm fixed (non-adjusted) cost until the termination of the contract term then in effect.
3. If the City, in its interest and in its sole opinion, determines that the Contractor in a capricious manner attempted to use this section of the contract to relieve Contractor of a legitimate obligation under the contract, and no unusual circumstances had occurred, the City reserves the right to take any and all action under law or equity. Such action shall include, but not be limited to, declaring the Contractor in default and disqualifying Contractor from receiving any business from the City for a stated period of time.

If the City does agree to adjusted costs, these adjusted costs shall not be invoiced to the City until the Contractor receives notice in writing signed by a person authorized to bind the City in such matters.

- 5.16 ELIGIBILITY:** If applicable, the Contractor must first register with the Florida Department of State in accordance with Florida Statutes, prior to entering into a contract with the City.
- 5.17 PATENTS AND ROYALTIES:** The Contractor, without exception, shall defend, indemnify, and hold harmless the City and the City's employees, officers, employees, volunteers, and agents from and against liability of any nature and kind, including cost and expenses for or on account of any copyrighted, patented or un-patented invention, process, or article manufactured or used in the performance of the contract, including their use by the City. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include any and all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.
- 5.18 ASSIGNMENT:** Contractor shall not transfer or assign the performance required by this ITB without the prior written consent of the City. Any award issued pursuant to this ITB, and the monies, which may become due hereunder, are not assignable except with the prior written approval of the City Commission or the City Manager or City Manager's designee, depending on original award approval.
- 5.19 GOVERNING LAW; VENUE:** The Contract shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of the Contract, and for any other legal proceeding, shall be in the courts in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida.
- 5.20 PUBLIC RECORDS:**

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT PRRCONTRACT@FORTLAUDERDALE.GOV, 954-828-5002, CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 33301.

Contractor shall comply with public records laws, and Contractor shall:

1. Keep and maintain public records required by the City to perform the service.
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 (2019), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.
4. Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.