

CITY OF OCALA
Public Services
1805 NE 30th Avenue, Building 300
Gate 1
Ocala, Florida 34470
Phone: (352) 351-6757
Fax (352) 351-6731

INVITATION TO BID
ITB 11-030
June 27, 2011

Sealed bids will be received by the Public Services, Purchasing Agent, for the City of Ocala, Florida, at, 1805 NE 30th Avenue, Building 300, Gate 1, up to **2:00 P.M., July 14, 2011** at which time and place all bids will be publicly opened and read aloud. NO EXCEPTIONS TO OPENING TIME WILL BE ALLOWED.

ITB 11-030: Traffic Annual Striping Projects

All bids shall be addressed to Tami Rapier, Purchasing Agent, City of Ocala, 1805 NE 30th Avenue, Building 300, Gate 1, Ocala, Florida 34470, and plainly marked on the envelope, "**ITB 11-030: Traffic Annual Striping Projects**" to be opened at: **2:00 P.M., July 14, 2011.**"

A Mandatory Pre Bid Conference is scheduled for July 5, 2011, at 11:00 A.M. at the City Complex, Public Works Conference Room, 1805 NE 30th Avenue, Building 300, Ocala FL, 34470. **All vendors wishing to bid must attend this meeting.**

If reasonable accommodations are needed for you to participate in this meeting, please call the Purchasing Agent, (352-351-6757) 48 hours in advance so arrangements can be made.

Any questions relative to any item(s) or portion of this Invitation to Bid should be directed to Tami Rapier, Purchasing Agent (TRapier@ocalafl.org) (352-351-6757).

CITY OF OCALA, FLORIDA

Tami Rapier,
Purchasing Agent

REQUIRED SUBMITTALS CHECKLIST

Note: Submittal is required for each box checked for bid to be considered.

 √ Bid Response Form

 √ Drug Free Workplace Certificate

 √ Vendor Registration Form

 √ Department of the Treasury Internal Revenue Service Form W-9

 √ Affidavit of Compliance

 √ Information Form

 √ Certificate of Insurance

 Financial Statement

 √ List of References

 √ List of Subcontractors

 √ MSDS Sheets (if applicable)

 Bid Bond

 Performance and Payment Bond (Awarded Vendor)

 √ Other: Sample Contract

 √ Other: Local Vendor Preference

1. GENERAL CONDITIONS

The bidders hereby declare that they have carefully read this Request for Bid and its provisions, terms and conditions covering the equipment, materials, supplies or services as called for, and fully understand the requirements and conditions. We certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, entity, or person submitting a bid for the same goods/services (unless otherwise specifically noted), and is in all respects fair and without collusion or fraud. We agree to be bound by all of the terms and conditions of this Request for Bid and certify that we are authorized to sign this bid for the bidder. We further agree to furnish and deliver as indicated, FOB CITY OF OCALA FACILITY LOCATION, with all transportation charges prepaid, and for the prices quoted thereon as follows:

It is the bidder's responsibility to assure that your bid is delivered at the proper time to the Purchasing Agent or specified location. Bids which for any reason are not so delivered will not be considered. Any/All bids received after the date and time specified will not be accepted.

The City of Ocala is not responsible for the U.S. Mail or private couriers in regards to mail being delivered by the specified time so that a proposal can be considered.

2. SEALED BIDS:

All bid sheets must be executed and submitted in a sealed envelope. The face of the envelope shall contain, in addition to the City's address, the date and time of the bid opening and the bid number. Bids not submitted on the attached Bid Response Form may be rejected. All bids are subject to the conditions specified herein. Those, which do not comply with these conditions, are subject to rejection.

ADDITIONAL OR ALTERNATE BIDS, unless specifically requested, WILL NOT BE ACCEPTED.

3. EXECUTION OF BID:

All bids must contain a manual signature of the authorized representative of the bidder in the space provided on the Bid Response Form. All bids must be typed or printed in ink. The bidder should not use erasable ink. All corrections made to the bid by bidder must be initialed.

4. NO BID:

A respondent who is on the bid mailing list, but who decides not to submit a bid, must still respond by

returning only the Bid Response Form, marking it "NO BID" and explaining the reason in the space provided. Failure to respond three (3) times in succession without justification shall be cause for removal of the supplier's name from the bid mailing list. NOTE: To qualify as a response, a bidder must submit the Bid Response Form marked "NO BID" and explain the reason for the "NO BID". The form must have a manual signature and company name, and must be received as per the paragraph named "BID OPENING".

5. BID EVALUATION:

The evaluation of bids and the determination as to equality of products offered shall be the responsibility of the City, and will be based on information furnished by the bidder.

6. MISTAKES:

Bidders are expected to examine the specifications, delivery schedule, bid prices, extensions and all instructions pertaining to supplies and services. Failure to do so will be at bidder's risk. In case of mistake in extension the unit price will govern.

7. BID PRICES:

The Bid period shall be for a period of ninety (90) days unless otherwise specified by bidder, and bid prices shall not be amended after the date and time of the bid opening. Any attempt by the awardee to amend said bid prices except as otherwise provided herein, shall constitute default as outlined in this specification.

8. ADDITION/DELETION:

The City of Ocala reserves the right to add to or delete any item from this bid or resulting award when deemed to be in the best interest of the City.

9. BID DATA:

Bidders shall furnish complete and detailed Bid Data as specified on the Request for Bid Form. Bids furnished without data, or incomplete submissions may be rejected at the discretion of the City. Exceptions to the requirements, if any, shall be noted in complete detail. Failure by the bidder to detail each exception to a bid specification or requirement results in the bidder being required to meet each specification or requirement exactly as stated.

10. AWARDS:

The City reserves the right to make award(s) by individual item, aggregate or none, or a combination thereof; with one or more suppliers; to cancel the bid, reject any and all bids or waive any minor irregularity or technicality in bids received. When it is determined there is no competition to the lowest responsive bidder, evaluation of other bids is not required. Bidders are cautioned to make no assumptions unless his/her bid has been evaluated as being responsive. The City reserves the right to make an award to more than one bidder.

A contract will be awarded, if at all, within sixty (60) days after opening of the bids. The City further reserves the right to not make any award(s) under this bid.

11. CONTRACT CHANGES:

No changes, over the contract/award period, shall be permitted unless prior written approval is given by the Purchasing Agent and, where applicable, confirmed through formal acceptance by the City Council.

12. AWARD TO NEXT RATED BIDDER:

In the event of default by the awarded vendor, the City reserves the right to utilize the next rated bidder meeting specifications as the new vendor. In the event of this occurrence, the next rated bidder meeting specifications shall be required to provide the bid items at the prices as contained on their proposal or bid for this specification.

13. BID OPENING:

Bid opening shall be public, on the date and at the time specified on the bid form. It is the bidder's responsibility to assure that his/her bid is delivered at the proper time to the Purchasing Agent or specified location. Bids, which for any reason are not so delivered, will not be considered. Offers by telegram, telefax or telephone are not acceptable. NOTE: Bid tabulations will be furnished upon written request with an enclosed, self-addressed, stamped envelope. Bid files may be examined during normal working hours by appointment.

14. AMENDMENTS TO BID:

If it becomes necessary to revise or amend any part of this Bid, the Purchasing Agent will furnish the revision by written Addendum. It is the proposer's responsibility to inquire if any Addenda have been issued. Any addenda will be posted to Demandstar www.demandstar.com and on the City's website

www.ocalafl.org/bid_local.aspx, "Bid Processing Page" link. Any addenda must be acknowledged on the Affidavit of Compliance form.

15. MANUFACTURER'S NAME AND APPROVED EQUIVALENTS:

Any manufacturer's names, trade names, brand names, information and/or catalog numbers listed in a specification are for information and not intended to limit competition unless otherwise indicated. The bidder may offer any brand for which he/she is an authorized representative, which meets or exceeds the bid specification for any item(s). If bids are based on equivalent products, indicate on the bid form the manufacturer's product name and reference number. Bidder shall submit with his/her proposal, cuts, sketches, and descriptive literature, and/or complete specifications. Reference to literature submitted with a previous bid will not satisfy this provision. The bidder shall explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids, which do not comply with these requirements, are subject to rejection. Bids lacking any written indication of intent to quote an alternate brand will be received and considered in complete compliance with the specifications as listed on the bid form. The City's Purchasing Agent is to be notified of any proposed changes in (a) materials used, (b) manufacturing process, or (c) construction. However, changes shall not be binding upon the City unless evidenced by a Change Notice issued and signed by the Purchasing Agent or designated representative.

16. NON-CONFORMANCE TO CONTRACT CONDITIONS:

Items may be tested/inspected for compliance with specifications by appropriate testing laboratories. The data derived from any tests for compliance with specifications are public records and open to examination thereto in accordance with Chapter 119, Florida Statutes. Items delivered not conforming to specifications may be rejected and returned at vendor's expense. These items and items not delivered as per delivery date in bid and/or purchase order may result in bidder being found in default in which event any and all re-procurement costs may be charged against the defaulting contractor. Any violation of these stipulations may also result in supplier's name being removed from the vendor/bidder mailing list.

17. SERVICE AND WARRANTY:

Unless otherwise specified, the bidder shall define all warranty service and replacements that will be provided during and subsequent to the award of the contract. Bidders must explain on an attached sheet to what extent warranty and service facilities are provided.

18. SAMPLES:

Samples of items, when called for, shall be furnished free of expense, and if not destroyed may, upon request, be returned at the bidder's expense. Each individual sample shall be labeled with bidder's name, manufacturer's brand name and number, bid number and item reference. Samples of successful bidder's items may remain on file for the term of the contract. Request for return of samples shall be accompanied by instructions, which include shipping authorization and name of carrier, and must be received at time of bid opening. If instructions are not received at this time, the samples shall be disposed of by the City within a reasonable time as determined appropriate by the City.

19. INSPECTION, ACCEPTANCE AND TITLE:

Inspection and acceptance shall be as designated by the City unless otherwise provided. Title and risk of loss or damage to all items shall be the responsibility of the contract supplier until accepted by the City unless loss or damage results from negligence by the City.

20. GOVERNMENTAL RESTRICTIONS:

In the event any governmental restrictions may be imposed which would necessitate alteration of the material quality, workmanship, or performance of the items or services offered on this proposal prior to their delivery, it shall be the responsibility of the supplier to notify the Purchasing Office at once, indicating the specific regulation which required an alteration. The City reserves the right to accept any such alteration, including any price adjustments occasioned thereby, or to cancel the contract at no expense to the City.

21. COMPLIANCE WITH OTHER LAWS:

Applicable provisions of all federal, state and local laws and ordinances, and all City rules and regulations shall govern the quality and warranty of commodities covered by all bids received in response hereto and shall govern any and all claims and disputes 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.

22. RULES, REGULATIONS, LAWS, ORDINANCES AND LICENSES:

The Awardee agrees that it shall observe and obey all the laws, ordinances, regulations and rules of the federal, state, county and City, which may be applicable to its services. Likewise, shall obtain and maintain all permits and licenses necessary for its performance of this contract.

23. PUBLIC RECORD LAW:

Correspondence, materials and documents received pursuant to this Request for Bid become public records subject to the provisions of Chapter 119, Florida Statutes.

24. ADVERTISING:

In submitting a proposal, bidder agrees not to use the City's name as a part of any commercial advertising.

25. SAFETY STANDARDS:

Unless otherwise stipulated in the bid, all manufactured items and fabricated assemblies shall comply with applicable requirements of the Federal Occupational Safety and Health Act (OSHA), American National Standards Institute Safety Standards and any Florida standards thereunder.

26. BANKRUPTCY:

In the event of bankruptcy, either voluntary or involuntary of the vendor, or in the event of the vendor's insolvency, or upon assignment for the benefit of creditors, then, in any such event, the City shall have the right to terminate the contract and any purchase orders immediately as if the contract and purchase orders had not been made, and no assignment for the benefit of creditors, nor any receiver, nor any trustee of bankruptcy, shall ever have any right or claim under the terms hereof.

27. DELIVERY:

All prices shall be F.O.B. Destination, Ocala, Florida. Delivery date and warranties must be written out and submitted with bids. We insist delivery dates, as specified, be met.

28. CONDITION AND PACKAGING:

It is understood and agreed that any item offered or shipped as a result of this bid shall be new (current model at the time of this bid). All containers shall be suitable for storage or shipment, and all prices shall include standard commercial packaging.

29. INVOICING AND PAYMENT:

Unless otherwise agreed to by the City, payment terms will be thirty (30) days net, from receipt of invoice unless an appropriate prompt payment discount is provided and accepted. Payment shall be made by the buyer after the items awarded to a vendor have been received, inspected and found to comply with award specifications, free of damage or defect and properly invoiced. All invoices shall bear the purchase order number. Payment for partial shipments may not be made unless specified in the bid. In addition to the purchase order number, the invoice shall bear the vendor FEID number (Federal Employer Identification Number). An original and one (1) copy of the invoice shall be submitted to address listed on Purchase Order.

Failure to follow these instructions may result in delay in processing invoices for payment. In addition, the purchase order number must appear on bills of lading, packages cases, delivery list and correspondence. All questions regarding payment, invoicing, etc., will be addressed to the Finance Department, Accounts Payable Section, ATTENTION: Accounts Payable Supervisor at (352) 629-8501.

30. NON-FUNDING CLAUSE:

In the event sufficient budgeted funds are not available or depleted, the City shall notify the vendor of such occurrence and contract shall terminate without penalty or expense to the City.

31. PUBLIC ENTITY CRIMES:

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

32. DRUG FREE WORKPLACE AFFIDAVIT:

Pursuant to Florida Statutes 287.087, each bidder shall complete the form on the Drug Free Workplace Affidavit and submit same with any bid response. The Drug Free Workplace Affidavit form is found attached to this Request for Bids. The City of Ocala requires that this form be submitted with each bid.

33. VISA ACCEPTANCE:

The City of Ocala has implemented a purchasing card program, using the Visa platform. Vendors may receive payment from the City by the purchasing card in the same manner as other Visa purchases. Visa acceptance is preferred but is not the exclusive method of payment. Please indicate your ability to accept Visa in the space provided on the bid proposal form.

34. AWARDS CRITERIA:

Award(s) of bid will be made based upon the lowest bid meeting specifications, after taking into account all other considerations and mandatory requirements:

- a. Compliance to the specifications.
- b. Cost.
- c. Warranty (if applicable).
- d. Delivery.
- e. Past Experience.
- e. Drug Free Workplace Affidavit.

35. AWARD OF TIE BIDS:

A thorough review of all tie bids shall be conducted by the Purchasing Agent. Award recommendations shall be based upon the following:

- a. Delivery dates.
- b. Reputation of the vendors involved.
- c. Past performance.
- d. Drug Free Workplace Program.
- e. Location of the vendor.

Preference will be given to businesses with Drug-Free Workplace Programs in accordance with Section 287.087, Florida Statutes.

If all factors and conditions relating to the bids are equal, then the tie bid will be awarded to the local vendor. If the other vendor is local a coin toss will be conducted. The coin toss will be conducted by the Purchasing Agent with one witness from outside the Purchasing Department.

36. PRICES, TERMS AND PAYMENT:

Firm prices shall be bid and include all services rendered to the purchaser.

- A. TAXES: The City of Ocala does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The following exemption number appears on the face of the purchase order: Florida Sales Tax Exemption Number: 85-8012621655C-9, Federal Tax Number 59-6000392.
- B. DISCOUNTS: Cash discount for prompt payment shall not be considered in determining the lowest net cost for bid evaluation purposes.

37. CANCELLATION FOR DEFAULT:

This contract is critical to the City of Ocala and the City reserves the right to immediately cancel or annul whole or any part of this contract due to failure of the contractor to carry out any obligation, term, or condition of the contract. The city will issue a written notice of default effective at once and not deferred by any interval of time. Default shall be for acting or failing to act as in any of the following:

- A. The contractor provides material that does not meet the specifications of the contract;
- B. The contractor fails to adequately perform the services set forth in the specifications of the contract;
- C. The contractor fails to complete the work required or furnish the materials required within the time stipulated in the contract;
- D. The contractor fails to make progress in the performance of the contract and/or gives the City reason to believe that the contractor will not or cannot perform to the requirements of the contracts.

The City may resort to any single or combination of the following remedies:

- A. Cancel any contract;
- B. Reserve all rights or claims to damage for breach of any covenants of the contract;
- C. Perform any test or analysis on materials for compliance with the specifications of the contract. If the results of any test or analysis

find a material non-compliance with the specifications the actual expense of testing will be borne by the contractor;

- D. In case of default, the City reserves the right to purchase materials, or to complete the required work in accordance with the needs of the City. The City may recover any actual excess costs from the contractor by:
 - 1. Deduction from an unpaid balance;
 - 2. Collection against the bid and/or performance bond, or;
 - 3. Any combination of the above or any other remedies as provided by law.

38. SUSPENSION OF PAYMENT AND/OR TERMINATION:

Payment of the amounts due under this contract will be made on a monthly basis. payments will be made by the City at the end of each satisfactory month of service. Should contractor fail to perform the service required under this contract then the City may, at its option, retain any or all of the monthly payment otherwise due until any service discrepancies are corrected. Repeated service discrepancies on behalf of the contractor shall entitle the City to terminate this contract without notice and retain any past due payments otherwise owing under this contract as liquidated damages.

39. MATERIAL SAFETY DATA SHEETS:

In accordance with Chapter 442, Florida Statutes, it is the seller's duty to advise the City of Ocala if a product is a listed toxic substance and to provide a material safety data sheet (MSDS) at the time of delivery.

Contractors must comply with this procedure along with the Florida Right-to-Know law (F.S. 442) and the Federal Hazard Communications Standards (29 CFR 1910.1200) all other applicable laws.

40. BID PROTESTS:

Any bidder who disputes the reasonableness, necessity or competitiveness of the terms and conditions of the Request for Bid, bid specifications, bid selections, contract award or intended contract award shall file such protest in compliance with the City of Ocala Purchasing Policies & Procedures Section Protested Solicitations and Awards. This policy may be obtained

at www.ocalafl.org/bid_local.aspx or may be requested by calling (352) 351-6757. Fees may apply.

41. CONFLICT OF INTEREST:

The award hereunder is subject to the provisions of Chapter 112, Florida Statutes, as amended, governing conflict of interest. All bidders must disclose with each bid the name of any officer, director or agent who is also a public employee. Further, all bidders must disclose the name of any public employee who owns directly or indirectly an interest of five percent (5%) or more in the bidder's firm or any of its branches.

42. MANDATORY PERFORMANCE REQUIREMENTS:

Bidders are required to furnish evidence that they maintain permanent places of business and have adequate equipment, personnel, and inventory to furnish the items offered satisfactorily and expeditiously, and can provide necessary services. These requirements may be satisfied by completing the Required Information Form #1 attached

43. INSPECTION:

The City reserves the right to inspect the awardee's place of business and equipment prior to the awarding of any contract; for determining responsibility as to the terms and conditions as set forth herein. During the course of the contract, the City likewise reserves the right to inspect the awardee's place of business at any time with and/or without any given notice.

44. GENERAL INDEMNITY:

The awardee/contractor and its insurer shall defend, and save harmless the City, and all City officers, agents and employees from and against all losses and all claims, demands, payments, suits, actions, recoveries and judgments of every nature and description and all costs, including attorney's fees arising under this agreement including claims for property damage and claims for injury to or death of persons arising out of or occurring as a result of any act or omission of the said contractor, its agents or employees in the performance of its obligation to the City or through any improper or defective machinery, implements or appliances used in the performance of its obligation to the City.

45. PATENT AND ROYALTY INDEMNITY:

The bidder, without exception, shall indemnify and save harmless the City, its officers, agents and employees from liability of any nature of kind,

including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the City. If the bidder uses any design, device, or materials covered by letters of patent or copyright, it is mutually agreed and understood without prices shall include all royalties or cost arising from the use of such design, device, or materials in any way used in performance of the bidder work.

46. ADDITIONAL PURCHASES ("PIGGY-BACK") BY OTHER PUBLIC AGENCIES:

The vendor, by submitting a bid, authorizes other Public Agencies to "Piggy-Back" or purchases equipment or services being proposed in this invitation to bid at prices bid unless otherwise noted on the proposal sheet.

47. USE OF OTHER CONTRACTS:

The City of Ocala reserves the right to utilize any City of Ocala contract, State of Florida Contract, city or county governmental agencies, school board, community college/state university system cooperative bid agreement. The City of Ocala reserves the right to separately bid any single order or to purchase any item on this bid if it is in the best interest of the City of Ocala.

48. QUANTITIES:

The quantities as specified in this bid are estimates only and are not to be construed as guaranteed minimums.

49. VENDOR REGISTRATION FORM AND INTERNAL REVENUE SERVICE FORM W-9

All bids shall be submitted with a completed "Vendor Registration Form" and "Department of the Treasury, Internal Revenue Service Form W-9". Forms may be downloaded at <http://www.ocalafl.org/purchasing.aspx>. Should the W-9 form not be provided, payment for work and/or materials will be delayed until the City receives a completed form W-9.

50. EXTENSION:

In addition to any extension options contained herein, the City of Ocala is granted the right to extend any award resulting from this bid for the period of time necessary for the City to release, award and implement a replacement bid for the goods, products and/or services provided through this bid. Such extension

shall be upon the same prices, terms and conditions as existing at the time of City of Ocala exercise of this extension right. The period of any extension under this provision shall not be for a period in excess of six months from (a) the termination date of a contract entered into as a result of this bid or (b) the termination date under any applicable period of extension under a contract entered into as a result of this bid.

51. COLLUSION:

The bidder, by affixing their signature to this proposal, agrees to the following: "Bidder certifies that their bid is made without previous understanding, agreement, or connection with any person, firm, or corporation making a bid for the same items and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action".

52. FINANCIAL STATEMENT:

The successful bidder may be required to submit the following:

- a. Certified Public Accountant prepared financial statement for at least two fiscal year ends. The statements should include a balance sheet, income statement, statement of cash flows, and footnotes.
- b. The Financial Statements need to be current, meaning within the last 12 months. If they are older than 6 months, we would ask that a CPA or company prepared interim financial statement be obtained to give us some knowledge of their current situation.

53. LITIGATION:

In the event of any litigation between the parties arising out of this contract, the prevailing party shall be reimbursed by the other party for all attorneys' fees so incurred. Venue for any such litigation shall be Marion County Florida. The entire agreement shall be governed by the laws of the State of Florida.

Neither party shall assign any of its rights, obligations, or duties under the terms and conditions of this agreement without the express, written consent of the other party.

54. ACKNOWLEDGMENT OF ADDENDA/AFFIDAVIT OF COMPLIANCE:

If you take any exceptions to any portion of this bid,

you must so indicate on the Affidavit of Compliance form included in this document. In addition, if any addenda are issued, you must acknowledge addenda, on the Affidavit of Compliance form.

55. INSPECTION, EXAMINATION, AND DUPLICATION OF RECORDS:

Sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57 (3)(a) or within 10 days after bid or proposal opening, whichever is earlier.

56. PERMITS:

The Contractor shall obtain all permit fees, impact fees and inspection fees, etc. and the cost will be absorbed by the City of Ocala, unless indicated otherwise in these bid documents.

57. USE OF PREMISES:

The Contractor shall confine their equipment, the storage of materials and equipment and the operations of their workers to areas permitted by law, ordinances, permits or the direction of the Engineer, and shall not unreasonably encumber the premises with materials or equipment.

The Contractor shall not load nor permit any part of any structure to be loaded with weights that will endanger the structure, nor shall they subject any part of the work area to stress or pressures that will endanger it.

58. SAFETY AND PROTECTION:

The Contractor shall keep the premises free from accumulation of waste materials, rubbish and other debris resulting from the work. At the completion of the work, they shall remove all waste materials, rubbish and debris from and about the premises, as well as tools, equipment and shall leave the site clean. The Contractor shall restore to their original conditions those portions of the site not designated for alteration by the work.

59. PAYMENT:

Payment will be made by the City after all work has been performed and inspected and found to be in complete compliance with the specifications.

60. DISPUTES:

In case of any doubt or difference of opinion as to the items to be furnished hereunder; the decision of the City shall be final and binding on both parties.

61. LEGAL REQUIREMENTS:

- a. The Bidder shall familiarize themselves and comply with all Federal, State and County laws, ordinances, or regulations controlling the action or operation of those engaged in the work or effecting materials used, and govern themselves accordingly.
- b. If the bidder observes the Instructions and Specifications are at variance herewith, They shall promptly notify the City in writing, and any necessary changes shall be adjusted as provided in the Contract.
- c. In accordance with this requirement, it has not been considered necessary to enumerate all the requirements covered by the applicable codes. The Bidder in making their bid agrees that the requirement of such ordinances will be carefully adhered to by them as if they were specifically set forth in the specifications.

62. REMOVAL OF DEBRIS, ETC.:

The Contractor shall comply with the applicable laws and ordinances governing the disposal of materials, debris, rubbish and trash on or off the Project Area, and shall not commit nor trespass on any public or private property in any operation due to or connected with the work or Site Clearance.

63. SUB-CONTRACTORS:

The successful Bidder is required to list under "list of Subcontractors and Major Suppliers" of the proposal all subcontractors and major suppliers included for the prosecution of the work within 72 hours of the bid opening.

64. DEFINITIONS:

CONTRACTOR: The individual firm, partnership or corporation to whom the contract is awarded by the City of Ocala and who is subject to the terms thereof,

for bidding purposes. The terms "Contractor", "Vendor" and "Bidder" are synonymous.

EQUIVALENT: Ability to perform the function described in exactly the manner specified. These specifications are for the sole purpose of establishing minimum requirements for performance levels necessary to provide quality service.

65. CONTRACTOR'S EMPLOYEES:

All employees of the Contractor shall be considered to be at all times the sole responsibility of the Contractor, under their sole direction and supervision and not an employee or agent of the City of Ocala, the contractor shall supply competent and physically capable employees. The City of Ocala reserves the right to require the Contractor to remove any employee it deems careless, incompetent, insubordinate, or otherwise objectionable and whose continued employment on City of Ocala property is not in the best interest of the City.

66. COMPETENCY OF BIDDERS:

Bids will be considered only from vendors regularly engaged in construction and who can produce evidence that they have an established financial support, equipment and organization or personnel sufficient to insure that they can satisfactorily execute the services if awarded the contract under the terms and conditions herein stated.

67. POSTPONEMENT OF BIDS:

If there is a discrepancy with the scope of work or unit of measure that would be unfair to the bidders, the City of Ocala may postpone the bid opening at any time in order to make corrections.

68. LIQUIDATED DAMAGES COMPLETION OF CONTRACT

In case of failure on the part of the successful bidder to complete the contract requirements within the time specified, or whether such additional time as may be granted by the formal action of the Owner, the bidder shall pay to the Owner as liquidated damages, \$200.00 per day. This sum shall be considered as reimbursement, in part, to the Owner for the loss of the use of the items agreed to in the contract.

INSURANCE REQUIREMENTS FOR THE CITY OF OCALA

1. INDEMNIFICATION CLAUSE:

The Contractor shall indemnify and hold harmless the City and their elected officials, employees and volunteers from and against all claims, damages, losses and expenses, including legal costs, arising out of or resulting from the performance of this contract, provided that any such claim, damage, loss or expenses is attributed to bodily injury, sickness, disease, personal injury or death, or to injury to or destruction of tangible property including the loss or loss of use resulting there from and is caused in whole or in part by any negligent act or omission of the Contractor.

2. SAFETY/ENVIRONMENTAL:

The Contractor is responsible at all times for precautions to achieve the protection of all persons including employees and property.

The Contractor shall make special effort to detect hazardous conditions and shall take prompt action where necessary to avoid accident, injury or property damage. EPA, DEP OSHA, and all other applicable safety laws and ordinances shall be followed as well as American National Standards Institute Safety Standards. All hazardous spills, accidents, injuries or claims or potential claims shall be reported promptly to the City of Ocala and appropriate emergency officials.

3. ADDITIONAL INSURED:

The City of Ocala shall be added to all third party coverage required by and provided for this contract as an "ADDITIONAL INSURED".

4. MISCELLANEOUS PROVISIONS:

A. SEVERABILITY OF INTERESTS:

"The Contractor shall arrange for its liability insurance to include, or be endorsed to include, a severability of interests / cross liability provision, so that the City of Ocala (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits."

B. INSURANCE REQUIREMENTS:

These insurance requirements shall not relieve or limit the liability of the Contractor. The City does not in any way represent that these types or amounts of insurance

are sufficient or adequate to protect the Contractor's interests or liabilities, but are merely minimums." No insurance is provided by the City under this contract to cover the Contractor/Subcontractors."

C. DUPLICATE COVERAGE:

1. Insurance required of the Contractor or any other insurance of the Contractor shall be considered primary and insurance or self-insurance of the City shall be considered excess, as may be applicable to claims against the City which arise out of this contract.
2. Insurance written on a "Claims Made" form is not acceptable without Risk Management Department consultation.
3. No work shall be commenced under this contract until the required Certificate(s) have been provided. Work shall not continue after expiration (or cancellation) of the Certificate and shall not resume until new Certificate(s) have been provided.

D. DEDUCTIBLES:

The Contractor's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by the latter. They shall be reduced or eliminated at the option of the City. The Contractor is responsible for the amount of any deductible or self-insured retention."

E. CERTIFICATES:

The Contractor shall provide a Certificate of Insurance, issued by a company authorized to do business in the State of Florida and with an A.M. Best Company rating* of at least B+, showing the City of Ocala as an Additional Insured. The City of Ocala should be shown as the Certificate Holder, and providing for 30 day cancellation notice.

*Non-rated insurers must be approved by the City Risk Manager.

5. LIABILITY INSURANCE:

"General liability insurance, with combined single limits of not less than \$200,000 per occurrence* shall be provided and maintained by the Contractor. The only aggregate limit acceptable is a "project aggregate" and the Certificate must show an appropriate endorsement (ISO CG2501 or equal)".

If the Commercial General Liability form is used:

Coverage A shall include premises, operations, products and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.

Coverage B - shall include personal injury.

Coverage C - medical payments, is not required.

If the Comprehensive General Liability form is used, it shall include at least:

Bodily Injury and Property Damage liability for premises, operations, products and completed operations, independent contractors, and property damage resulting from explosion, collapse or underground (XCU) exposures.

* Either in a single policy or in a combination of underlying and umbrella on excess policies.

6. BUSINESS AUTO LIABILITY:

Business Auto Liability insurance shall be provided by the Contractor with combined single limits of not less than \$200,000 per occurrence and is to include bodily injury and property damage liability arising out of operation, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

7. WORKERS' COMPENSATION:

The Contractor shall purchase and maintain Workers' Compensation insurance for statutory requirements and employers liability limits of at least \$100,000 each accident and \$100,000 each employee \$500,000 policy limit for disease and shall be responsible for ensuring that any subcontractor has statutory coverage. The City need not be named as an Additional Insured, but a "subrogation waiver endorsement is required".

ITB 11-030: Traffic Annual Striping Projects

A. GENERAL INFORMATION

To support the City of Ocala's ongoing efforts to improve traffic safety by maintaining and upgrading to current standards roadway pavement markings.

B. SCOPE OF SERVICES

Provide materials, labor, equipment necessary for re-installation of all roadway pavement striping and markings. Work includes, but is not limited to, pavement edge lines, skip traffic stripes, solid traffic stripes, directional arrows, pavement messages, island nose reflective paint, reflective pavement markers and flexible breakaway delineator posts.

- **Project Locations**

Project 1 – Southwest 27th Avenue from Local Utility Pole # SL 5237 north of Southwest 20th Street to Southwest 41st Street

Project 2 – Southwest 24th Avenue from Southwest 19th Avenue Road to Southwest 27th Avenue

Project 3 – Southwest 3rd Street from Southwest 7th Avenue to Southwest 12th Avenue
See Figure 1 for project location map.

C. SPECIFICATIONS AND STANDARDS

All work and materials shall be in accordance with the latest applicable Florida Department of Transportation (FDOT) Design Standards, FDOT Standard Specifications for Road and Bridge Construction and Manual on Uniform Traffic Control Devices. All Pedestrian Crosswalks shall be Special Emphasis Crosswalks and conform to 2010 FDOT Design Standards Index 17346. All pavement markings shall be thermoplastic with glass spheres and be listed on the Florida Qualified Products List. All reflective pavement markers and delineators shall be listed on the Florida Qualified Products List.

D. WORK SCHEDULES AND MAINTENANCE OF TRAFFIC

The Contractor shall schedule work to minimize impact on the peak traffic periods. Peak periods are defined as **7:00 to 9:00 a.m. and 4:00 to 6:00 p.m. Monday through Friday**. No lane closures shall be permitted during the peak periods. Work performed in FDOT right of way must comply with local FDOT work time constraints.

The Contractor shall provide maintenance of traffic in accordance with the latest FDOT Standards 600 Series for the project. Failure to comply with this requirement will result in complete shutdown by the City Traffic Engineer with no additional compensation to the Contractor. Driveway access shall be maintained at all times

The City of Ocala and the Contractor shall determine the number of calendar days or weeks from the date of the notice to proceed to complete each project location. Work on projects shall begin within 10 days from the date of the notice to proceed / work order. Completion for **all three projects shall be no later than September 30th, 2011.**

E. QUALITY CONTROL

The contractor shall be responsible for the professional quality, workmanship and accuracy of all projects. Any errors or deficiencies shall be corrected by the contract at no additional cost to the City of Ocala.

F. PROJECT MANAGEMENT

The contractor shall identify a project manager for the project and emergency and non-emergency telephone numbers to the City of Ocala at the award of contract. The contractor shall provide a project schedule before any work commences.

ITB 11-030

The undersigned proposes and agrees, if their proposal is accepted to furnish the item(s) on which bid(s) are submitted herewith, including delivery to Ocala, Florida and according to the delivery schedule.

SCHEDULE OF PRICES BID
TRAFFIC ANNUAL STRIPING PROJECTS

Project 1 – Southwest 27th Avenue from Local Utility Pole # SL 5237 north of Southwest 20th Street to Southwest 41st Street

TOTAL PRICE FOR PROJECT 1 \$ _____

Project 2 – Southwest 24th Avenue from Southwest 19th Avenue Road to Southwest 27th Avenue

TOTAL PRICE FOR PROJECT 2 \$ _____

Project 3 – Southwest 3rd Street from Southwest 7th Avenue to Southwest 12th Avenue

TOTAL PRICE FOR PROJECT 3 \$ _____

AFFIDAVIT OF COMPLIANCE

ITB 11-030

To be submitted with vendor's response

_____ We DO NOT take exception to the Proposal Documents/Specifications.

_____ We TAKE exception to the Proposal Documents/Specifications as follows:

Company Name _____ By _____
(Authorized Person's Signature)

(Print or type name and title of signer)

Company Address _____

Telephone Number _____ Toll Free Number _____

FAX: _____ Date _____

ADDENDA : acknowledges receipt of the following Proposer addenda:

Addendum No ____ Date _____ Addendum No ____ Date _____

Addendum No ____ Date _____ Addendum No ____ Date _____

DRUG FREE WORKPLACE CERTIFICATE

I, the undersigned, in accordance with Florida Statute 287.087, hereby certify that, (print or type name of firm) _____

- Publishes a written statement notifying that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace named above, and specifying actions that will be taken against violations of such prohibition.
- Informs employees about the dangers of drug abuse in the work place, the firm's policy of maintaining a drug free working environment, and available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug use violations.
- Gives each employee engaged in providing commodities or contractual services that are under bid or proposal, a copy of the statement specified above.
- Notifies the employees that as a condition of working on the commodities or contractual services that are under bid or proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, pleas of guilty or nolo contendere to, any violation of Chapter 1893, or of any controlled substance law of the State of Florida or the United States, for a violation occurring in the work place, no later than five (5) days after such conviction, and requires employees to sign copies of such written (*) statement to acknowledge their receipt.
- Imposes a sanction on, or requires the satisfactory participation in, a drug abuse assistance or rehabilitation program, if such is available in the employee's community, by any employee who is so convicted.
- Makes a good faith effort to continue to maintain a drug free work place through the implementation of the drug free workplace program.

"As a person authorized to sign this statement, I certify that the above named business, firm or corporation complies fully with the requirements set forth herein".

Authorized Signature

Date Signed

State of: _____

County of: _____

Sworn to and subscribed before me this _____ day of _____, 20__

Personally known _____ or Produced Identification _____
(Specify Type of Identification)

Signature of Notary

My Commission Expires

CITY OF OCALA
INFORMATION FORM #1
ITB 11-030

References:

1. Company Name: _____

Address: _____

Phone No.: _____ Contact: _____

Email address: _____

2. Company Name: _____

Address: _____

Phone No.: _____ Contact: _____

Email address: _____

3. Company Name: _____

Address: _____

Phone No.: _____ Contact: _____

Email address: _____

Statement Regarding the Size, Capacity and Location of Bidder's Facility(s):

LIST OF SUBCONTRACTORS AND MAJOR SUPPLIERS
ITB 11-030

The undersigned expressly agrees that:

- a. If awarded a contract as a result of this proposal, the subcontractors used in the prosecution of the work will be those listed below.
- b. The bidder represents that the subcontractors listed below are financially responsible and are qualified to do the work required.

<u>CATEGORY</u>	<u>NAME OF SUBCONTRACTOR</u>	<u>ADDRESS</u>

<u>MAJOR SUPPLIERS</u>	<u>ADDRESS</u>

CITY OF OCALA, FLORIDA
STATEMENT OF
"NO BID"

IF YOU DO NOT INTEND TO BID ON THIS REQUIREMENT, PLEASE COMPLETE AND RETURN THIS FORM PRIOR TO DATE SHOWN FOR RECEIPT OF BIDS TO: CITY OF OCALA, PURCHASING AGENT, 1805 NE 30th AVENUE, Building 300, OCALA, FLORIDA 34470.

WE, THE UNDERSIGNED, HAVE DECLINED TO BID ON YOUR INVITATION TO BID **ITB 11-030** OPENING _____, FOR _____ FOR THE FOLLOWING REASON(S):

_____ SPECIFICATIONS ARE TOO "TIGHT", I.E. GEARED TOWARD ONE BRAND OR MANUFACTURER ONLY (PLEASE EXPLAIN REASON BELOW).

_____ INSUFFICIENT TIME TO RESPOND TO INVITATION TO BID.

_____ WE DO NOT OFFER THIS PRODUCT/S OR EQUIVALENT.

_____ OUR PRODUCT SCHEDULE WOULD NOT PERMIT US TO PERFORM.

_____ UNABLE TO MEET SPECIFICATIONS.

_____ UNABLE TO MEET BOND REQUIREMENTS.

_____ SPECIFICATIONS UNCLEAR (PLEASE EXPLAIN BELOW).

_____ COMPETITION RESTRICTED BY PRE-APPROVED CITY OF OCALA STANDARDS.

_____ OTHER (PLEASE SPECIFY BELOW).

REMARKS: _____

WE UNDERSTAND THAT IF THIS "NO BID" LETTER IS NOT EXECUTED AND RETURNED, OUR NAME MAY BE DELETED FROM THE LIST OF QUALIFIED BIDDER'S FOR THE CITY OF OCALA FOR FUTURE PROJECTS OR COMMODITIES.

COMPANY NAME

ADDRESS

SIGNATURE AND TITLE

TELEPHONE NUMBER _____ DATE _____

BID BOND

STATE OF FLORIDA
COUNTY OF MARION
CITY OF OCALA

KNOW ALL MEN BY THESE PRESENTS, that we _____ as Principal, and firmly bound unto the City of Ocala in the penal sum of _____ (\$_____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents,

THE CONDITION OF THE OBLIGATION IS SUCH, that whereas the Principal, has submitted the attached bid dated _____ Bid No. **ITB 11-030**.

NOW, THEREFORE, if the Principal shall not withdraw said bid prior to the date of opening of the same and shall within ten (10) days after the prescribed forms are presented to them for signature, enter into a written contract with the City of Ocala in accordance with the bid as accepted, and give a Performance and Payment Bond with good and sufficient surety or sureties as may be required for the faithful performance and proper fulfillment of such Contract and for the prompt payment of all persons furnishing labor or materials in connection therewith, or in the event of the failure to enter into such Contract and to give such Performance and Payment Bond and to provide such proof of insurance within the time specified, if the Principal shall pay the City the difference between the amount specified in said bid, and the amount for which the City may procure the required work and/or supplies, provided the latter amount be in excess of the former, then the above obligations shall be void and of no effect; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above bonded parties have executed this instrument under their several seals this _____ day of _____, 2010, the name and corporate seal of each corporate party being thereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

IN THE PRESENCE OF:

SIGNED: _____
(Individual Principal)

Address

(Individual Principal)

(Business Address)

Address (Business Address)

(Corporate Principal)

(Business Address)

ATTEST: By: _____

Affix Corporate Seal

Title

(Corporate Surety)

(Business Address)

ATTEST: By: _____

Affix Corporate Seal

Title

PERFORMANCE AND PAYMENT BOND

STATE OF FLORIDA
COUNTY OF MARION
CITY OF OCALA

KNOW ALL MEN BY THESE PRESENTS, That as Principal, and _____ a corporation organized and existing under the laws of the State of _____, having its home office in the City of _____ and licensed to do business in the State of Florida, as Surety, are held and firmly bound unto the City of Ocala, Marion County, Florida, hereinafter called the City, in the penal sum of _____ Dollars, (\$ _____) for the payment of which well and administrators, successors and assigns, jointly and severally, by these Presents:

THE CONDITION OF THE OBLIGATION IS SUCH that whereas the Principal on the day of, 2010, entered into a certain Contract with the City, hereto attached, for Contract entitled _____ - BID NO. **ITB 11-030**, City of Ocala, Florida.

NOW, THEREFORE, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said Contract and shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all fully authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived;

AND FURTHERMORE, if the Principal shall promptly make payment to all claimants, as defined in Section 255.05 (1), Florida Statutes supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then this obligation shall be void; otherwise it shall remain in full force and effect.

As provided in Section 255.05(2), Florida Statutes, a claimant, except a laborer, who is not in privity with the Principal and who has not received payment for his labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish the Principal with a notice that he intends to look to this Bond for protection. A claimant who is not in privity with the Principal and who has not received payment for his labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to the Principal and the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. No action for the labor, materials, or supplies may be instituted against the Principal or the Surety unless both notices have been given. No action shall be instituted against the Principal or the Surety on this Bond after one (1) year from the performance of the labor or completion of delivery of the materials or supplies.

1. Each and every person, natural and artificial, for whose benefit this Bond has been executed, as disclosed by the text of this Bond and of said Contract, Specifications and Plans, and of said Agreement, and instruments attached together and made a part of the said Contract, shall have the same several rights of suit of action upon this bond as if he or they were the City herein specifically mentioned, and the obligations hereof shall be several as to the rights of said persons of the City.

3. In case of annulment of the Contract, as provided in the Specifications, there shall be assessed against the Principal and Surety herein, all expenses, including engineering and legal services, incident to collecting losses to the City under this Bond.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals on the date indicated above, the name and corporate seals of each corporate party being hereto affixed and these Presents duly signed by its undersigned representatives, pursuant to authority of its governing body.

Witnesses:

(Pres., V. Pres., etc)

Attest: (S E A L)

SAMPLE

AGREEMENT FOR CONSTRUCTION/RENOVATION OF <<_____>>

THIS AGREEMENT is entered into this _____ day of _____ 20____, by and between the CITY OF OCALA, a municipal corporation existing under the laws of the State of Florida, located at 1805 NE 30th Avenue, Ocala, Florida 34470, hereinafter referred to as the “City” or “Client”, and _____ located at <<_____>>, hereinafter referred to as “Contractor”.

WITNESSETH:

WHEREAS, the CITY OF OCALA “Client” has solicited an Invitation to Bid (ITB) under BID #_____ for <<Description of Improvements>> located at <<Address of improvements>>, Ocala, Florida 344__ in accordance with the plans and specifications attached and incorporated herein as Attachment “A”; and

WHEREAS, Contractor has offered to construct certain improvements on behalf of the City in accordance with the plans and specifications contained in Bid #<<_____>> which are expressly made a part of this Agreement and incorporated herein; and

WHEREAS, faithful adherence to Invitation to Bid #_____ and this Agreement are essential for providing the services solicited and for the satisfactory performance by the contractor; and

WHEREAS, the project encompasses construction services for the construction/renovation of <<_____>>; and

WHEREAS, <<Contractor Name>> is the chosen vendor under Invitation to Bid #_____;

NOW THEREFORE, in consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto agree as follows:

1. **Scope of Services.** The construction services consist of <<construction/renovation Traffic Striping Projects, hereinafter referred to as “the Project.” The existing clubhouse is a _____ square foot building located at the Ocala Golf Club. The improvements shall be constructed in accordance with Bid #_____ and the plans, specifications and permit application referred to as Job #_____ dated MMM DD, YYYY, copies of which are attached and incorporated herein as Attachment “B”>>).

2. **Contractor’s Responsibilities.** The following provisions are the responsibility of the Contractor and are provided with the expectation that each responsibility shall be adhered to:

2.1. Contractor shall supervise and direct all work under the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall be

responsible to see that the finished work complies accurately with the contract and the intent thereof.

- 2.2. Contractor shall keep at the Work site, at all times while work is in progress, a competent resident superintendent who shall not be replaced without written approval from Client. The superintendent will be Contractor's Representative at the sites and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor.
- 2.3. Contractor shall be totally responsible for furnishing to Client completed Work, and represents that it is fully experienced and properly qualified to perform the Work as provided for herein; and that it is properly licensed, equipped, organized, and financed to perform the Work.
- 2.4. Contractor shall act as an independent Contractor, maintaining complete control over its' employees and all of its' Subcontractors; and Contractor shall be fully responsible for the Work, services, materials, and equipment provided for performed by its' Subcontractors and vendors. Contractor shall perform the Work in an orderly and workmanlike manner, and maintain good discipline and order among its' employees and Subcontractors.
- 2.5. Contractor shall provide competent, suitable qualified personnel to survey and layout the Work and perform the Work as required by the Contract. Except in connection with the safety or protection of persons or the Work or property at the sites or adjacent thereto, and except as otherwise indicated in Client's Bid Documents, all Work at the sites shall be performed during regular working hours; and Contractor will not permit overtime work or performance of Work on Saturday, Sunday, or any legal holiday without Client's prior consent.
- 2.6. Contractor shall furnish all materials, equipment, labor, transportation, construction, equipment, machinery, tools, appliances, fuel, power, light, heat, telephone, water, first-aid, sanitary facilities, and all other facilities and incidentals necessary for the execution, testing, initial operation, and completion of the Work.
- 2.7. All materials and equipment incorporated into the Work shall be new and free from defects, and shall conform to the Specifications, Drawings, samples, and other descriptions as set forth in the Contract; and, where not specified, shall be of the suitable grade of their respective kinds for their intended use; and all workmanship shall be in accordance with good construction practices.
- 2.8. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract.
- 2.9. Requests for review of substitute items of material and equipment will not be accepted By Client or its' Representative from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make written application to Client or its'

Representative for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified, and be suited to the same use and capable of performing the same function as that specified. The application will state whether or not acceptance of the substitute for use in the Work will require a change in the Drawings or Specifications to adapt the design to the substitute, and whether or not incorporation or use of the substitute in connection with the Work is subject to payments of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including cost of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Client or its' Representative, evaluating the proposed substitute. Client or its' Representative may require Contractor to furnish at Contractor's expense additional data about the proposed substitute. Client will be the sole judge of acceptability, and no substitute will be ordered or installed without Client's prior written acceptance. Client may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

- 2.10. Contractor shall not employ any Subcontractors or other persons or organizations (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Client or its' Representative may have reasonable objection. Acceptance of any Subcontractor, other person, or organization by Client or its' Representative shall not constitute a waiver of any right of Client or its' Representative to reject Defective Work. If Client or its' Representative, after due investigation, has reasonable objection to any Subcontractor, other person, or organization proposed by Contractor after the Notice of Award, Contractor shall submit an acceptable substitute, and the Contract Price shall remain unchanged or decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued. Contractor shall not be required to employ any Subcontractor, other person, or organization against whom Contractor has reasonable objection.
- 2.11. Contractor shall be fully responsible for all acts and omissions of his Subcontractors and other persons and organizations directly or indirectly employed by them. Nothing in the Contract shall create any contractual relationship between Client or its' Representative and any Subcontractor or other person or organization having a direct contact with Contractor, nor shall it create any obligation on the part of Client or its' Representative to pay or to seek the payments of any monies to any Subcontractor or other person or organization, except as may otherwise be required by law. Client or its' Representative may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.
- 2.12. All Work performed for Contractor by Subcontractor will be pursuant to an appropriate agreement between Contractor and Subcontractor that specifically

binds subcontractor to the applicable terms and conditions of the Contract for the benefit of Client and its' Representative.

- 2.13. It is mutually understood and agreed that the Contract includes all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. If Contractor, or its' sub vendors/subcontractors, is required for desires to use any design, device, material, or process covered by letters, patents, trademarks, or copyrights, Contractor indemnifies and holds harmless Client and its' Representative, and anyone directly or indirectly employed by either of them from any and all claims for infringement by reasons of the use of any such patented design, device, material, or process to be performed under the Agreement; and shall indemnify Client and its' Representative for any costs, expenses (including attorney's fees), and damages which they may be obligated to pay by reason of such infringement, at any time during the prosecution or after the completion of the Work. Client shall give to Contractor notification of the source of any such suits or proceedings, and shall furnish Contractor (at contractor's expense) all needed information, authority, and assistance to enable Contractor to defend the same. If any material, equipment, or Work is in any such suit or proceeding held to constitute infringement or its use is enjoined, Contractor, within a reasonable time, shall either secure for Client, at Contractor's own expense, the right to continue using set material, equipment, or Work by suspension of the injunction, by procuring for Client a license, or otherwise; or shall, at Contractor's own expense and as Client may elect, replace such material, equipment for Work with non-infringing material, equipment for Work, or modify it so that it becomes non-infringing; or remove such infringing material, equipment for Work, and refund the sums paid therefore by Client, all without injury or damage to any other property of Client.**
- 2.14. Contractor shall comply with all Federal, State, and local laws, ordinances, rules and regulations applicable to the work, and be responsible for all costs associated with same. Compliance shall also include, but is not limited to, the Occupational Safety and Health Act of 1970, Executive Order 11246 (Equal Opportunity) and the guidelines established by the Council of Wage and Price Stability, all as amended periodically. If Contractor observes that the Contract is at variance therewith, Contractor shall give Client prompt written notice thereof, and any necessary changes shall be made, all without cost to the Client.**
- 2.15. Unless otherwise specified, Contractor shall obtain and pay for all construction permits and licenses. Client shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the work. Contractor shall pay all charges of utility service companies or connection to the work, and all charges of such companies or capital cost related thereto.**
- 2.16. Contractor shall pay all applicable State and local sales and use taxes from sales to, or performance of the work. Contractor shall identify all costs in connection therewith. Client is an organization exempt from the payment of such State and local taxes of tangible property and services, and will not reimburse contractor such taxes paid. Client holds a valid Florida State Tax Exemption.**

- 2.17. Contractor shall confine construction equipment, restored to materials and equipment, and the operations of workmen to only those areas prescribed by Client.
- 2.18. Daily, during the progress of the work, Contractor shall keep the premises free from accumulations of waste materials, rubbish, and all other debris resulting from the work. At the completion of the work, Contractor shall remove all waste materials, rubbish, and debris from and about the premises, as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by Client. Contractor shall provide an inventory listing of all surplus materials in an area designated by Client. Contractor shall restore to their original condition those portions of the site not designated or alteration by the Contract.
- 2.19. Contractor shall furnish all tools, equipment, scaffolding, staging, ladders, flooring, runways, and any other temporary construction required for the execution of this work, unless otherwise specified in the Contract.
- 2.20. Contractor shall be fully responsible for receipt, inspection, acceptance, handling, and storage of equipment and materials (whether furnish by Contractor or Client) to be utilized in the performance of or incorporated into the work.
- 2.21. Contractor shall not display any signs, posters, or other advertising matter in or on any part of the work or around the site thereof without the specific approval in writing by Client.
- 2.22. Contractor shall keep one record copy of all Specifications, Drawings, Addenda, Modifications, Shop Drawings, and samples at the site in good order an annotated to shall all changes made during the construction process. These shall be available to Client or its' Representative for examination. At the completion of the work, Contractor shall deliver to Client a complete set of "as-built" drawings.
- 2.23. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
- 2.23.1. All employees on the work and other persons that may be affected thereby;
- 2.23.2. All work, materials and equipment to be incorporated therein, whether in storage on or off the site; and
- 2.23.3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

- 2.24. Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction with the safety persons or property, or to protect them from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Clients of adjacent property and utilities with prosecution of the work may affect them. All, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the work shall continue until such time as the Work is completed an accepted by Client.
- 2.25. Contractor shall guarantee to Client that it shall furnish labor that will work in harmony with all other elements of labor currently employed, or to be employed on similar Work days/times at the Project site or on the Project.
- 2.26. Contractor shall carry on the work and maintain the progress schedule during all disputes or disagreements. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and Client may otherwise agree in writing.
- 2.27. Contractor shall, at its' own expense, keep and maintain complete records and books and accounts of cost and expenses relating to the work in accordance with generally accepted accounting practices. Should the dispute arise between Client and Contractor regarding amounts and/or credits under this Contract, Contractor hereby grants Client permission to audit such records and books of account at Contractor's usual place of business at reasonable times.
- 2.28. Contractor agrees to take, use, provide, and make all proper, reasonable, necessary, and sufficient precautions, safeguards, and protection against the occurrence or happening of accidental injuries and damages to any person or property, or harm of any kind to the environment during the progress of the work.

3. Additional Work by Other Entities. Client may perform additional work related to the Project itself, or have additional work performed by utility service companies, or let other direct contracts therefore which shall contain General Conditions similar to these. Contractor shall afford the utility service companies and the other contractors who are parties to such direct contracts (or Client, if Client is performing the additional work with Client's employees) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate his work with theirs.

- 3.1. If any part of Contractor's work depends for proper execution or results upon the work of any such other contractor or utility service company (or Client), Contractor shall inspect and promptly report to Client in writing any latent or apparent defects or deficiencies in such work that render it unsuitable for such proper execution and results. Contractor's failure to so report shall constitute an acceptance of the other work as fit and proper for integration with Contractor's work except for latent or non-apparent defects and deficiencies in the other work.

- 3.2. Contractor shall do all cutting, fitting, and patching of work that may be required to make the parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work, and will only cut or alter their work with the written consent of Client.

4. Responsibilities of Client. Client or its' Representative shall issue all communications to Contractor. Client has the authority to request changes in the Work in accordance with the terms of this Agreement and in compliance with the terms in ITB #_____. Client has the authority to stop Work or to suspend any Work; in addition, Client maintains the right to terminate services of Contractor under certain circumstances.

5. Contract Time

- 5.1. All provisions regarding Contract Time are essential to the performance of this Contract.
- 5.2. All Work shall be substantially completed as follows:
- 5.2.1. Commence Construction _____, 20____;
- 5.2.2. Substantial Completion _____, 20____; and
- 5.2.3. Final Completion _____, 20_____.
- 5.3. The Contract Time may be changed only by a Change Order. Any request for an extension in the Contract Time shall be based on written notice delivered to City or its Representative within 15 days of the occurrence of the event giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered within fifteen days of such occurrence unless the City allows an additional period of time to ascertain more accurate data. All claims for adjustments in the Contract Time shall be determined by City. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.
- 5.4. The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of Contractor. Such delays shall include, but not be limited to, acts for neglect by the City, or to fires, floods, epidemics, or acts of God as determined by the City.
- 5.5. All time limits for Contractor's performance stated in the Contract are of the essence of the Agreement. The provisions of this section shall not exclude recovery by the City or damages (including compensation for additional professional services) for delays by Contractor.

6. Contract Price. City shall pay Contractor for performance of the work in accordance with the Contract Documents in a total amount of _____ THOUSAND AND 00//100 DOLLARS (\$_____.00) subject only to increases or decreases made in strict conformance with the Contract Documents.

- 6.1. Contractor agrees to accept the Contract Price as full compensation for doing all work, furnishing all materials, and performing all work embraced in the Contract Documents; for all loss or damage arising out of performance of the work and from the action of the elements or from any unforeseen or unknown difficulties or obstructions which may arise or be encountered in the prosecution of the Work until the Final Acceptance; and for all risks of every description connected with the Work.

- 6.2. The Contractor acknowledges that Contractor studied, considered, and included in Contractor's Total Bid (original Contract Price) all costs of any nature relating to: (1) performance of the work under Central Florida weather conditions; (2) applicable law, licensing, and permitting requirements; (3) the Project site conditions, including but not limited to, subsurface site conditions; (4) the terms and conditions of the Contract Documents, including, but not limited to, the indemnification and no damage for delay provisions of the Contract Documents.
- 6.3. The Contractor acknowledges that performance of the work will involve significant work adjacent to, above, and in close proximity to Underground Facilities including utilities which will require the support of active utilities, as well as, the scheduling and sequencing of utility installations, and relocations (temporary and permanent) by Contractor.
- 6.3.1. In addition to the acknowledgments previously made, the Contractor acknowledges that the Contractor's Total Bid (original Contract Price) specifically considered and relied upon Contractor's own study of Underground Facilities, utilities in their present, relocated (temporary and permanent) and proposed locations, and conflicts relating to utilities and Underground Facilities.
- 6.3.2. The Contractor acknowledges that Contractor's Total Bid (original Contract Price) considered and included all of Contractor's costs relating to Contractor's responsibilities to coordinate and sequence the work of the Contractor with the work of the City with its own forces, the work of other utility contractors and the work of others at the Project site.

7. **Retainage.** Retainage under the Contract Documents is held as collateral security to secure completion of the Work. Payment shall be made each month in the amount of 90 percent of the estimated value of the services provided at the job site during the previous calendar month, provided the work is reasonably complete. The Client will withhold 10 percent of the amount of each progress payment. The last payment due for each contract will be paid by the Client to the Contractor only after the Contractor has furnished the Client with an affidavit stating that all persons, firms, or corporations defined in Section 713.01, Florida Statutes, who have furnished labor or materials, employed directly or indirectly in the work, have been paid in full.

8. **Payment Procedures**

8.1. **Contractor shall submit Applications for Payment to:**

City of Public Work Department
Attn: <<_____>>
1805 NE 30th Avenue, Building 300
Ocala, Florida 34470
Phone: 352-351-6730
Fax: 352-351-6731

9. **Liquidated Damages**

- 9.1. The Contractor agrees to pay as liquidated damages, the sum of <<_____>> dollars (\$_____.00) for each consecutive calendar day

beyond the date of substantial completion, or if additional time is granted by the formal action of the City. These damages shall be assessed specifically to cover additional costs incurred by the Client for inspection and administration of the project and shall be further considered as reimbursement, in part, to the City for the loss of the use of items.

- 9.2. The City reserves the right to recover any other real damages other than the liquidated damages for the additional costs incurred by the Client for inspection and administration of the project which it may incur as a result of work not completed by the Company by project completion. These damages may include but are not limited to: fines or penalties imposed by regulatory agencies, anticipated revenues from the project, or costs to provide temporary services until project is complete.

10. **Contractor's Representations.** In order to induce the City to enter into this Contract, Contractor makes the following representations:

- 10.1. Contractor has familiarized themselves with the nature and extent of the Contract Documents, work, locality, weather, Purchasing and Contracts Procedures, and with all local conditions and federal, state and local laws, utility locations, ordinances, rules, policies and regulations that in any manner may affect cost, progress or performance of the work.
- 10.2. Contractor has studied carefully and considered in its Bid all reports of investigations and tests of subsurface and physical conditions of the site affecting cost, progress, scheduling, or performance of the work.
- 10.3. Contractor has studied carefully and considered in its Bid the Plans and Specifications, performed necessary observations, examinations, and studied the physical conditions at the site related to Underground Facilities, utility installations, conflicts, re-locations (temporary and permanent) and all other Underground Facilities and utility related conditions of the work and site that may affect cost, progress, scheduling, or any aspect of performance of the work and that its Bid reflects all such conditions. Contractor, by submitting its Bid and executing this Contract acknowledges the constructability of the work under the Plans and Specifications. Contractor by its' study, excludes and releases the City from any implied warranties including but not limited to, those arising under the "Spearin Doctrine", that the Plans and Specifications are adequate to perform the work.
- 10.4. Contractor has made or caused to be made examinations, investigations and tests and studies as he deems necessary for the performance of the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by Contractor for such purposes.
- 10.5. Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

- 10.6. Contractor has given the City written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by the City is acceptable to Contractor.
- 10.7. The Contractor declares and agrees that the approval or acceptance of any part of the work or material by the City, Project Engineer or any agent relating to compliance with the Contract Documents shall not operate as a waiver by the City of strict compliance with the terms and conditions of the Contract Documents.
- 10.8. The Contractor declares and agrees that the City may require them to repair, replace, restore or make all things comply with the Contract Documents including all work or Materials which within a period of one (1) year from Acceptance by the City are found to be defective or fail in any way to comply with the Contract Documents.
- 10.9. The Contractor's Resident Superintendent at the work site shall be: <<_____>> and this Superintendent only shall be utilized by the Contractor unless otherwise approved by the City Project Manager and following the procedure indicated in the General Conditions.
- 10.10. Contractor has studied carefully and considered all permit requirements related to performance of the Work. Contractor declares and agrees that all costs related to performing the work in compliance with the requirements of all permits at the Contract Price are included in the Contract Price. Contractor agrees that Contractor shall be solely responsible for payment of all fines and penalties of any nature assessed to the Contractor or the City or both by any governmental entity, district, authority or other jurisdictional entity relating to all permits required for performance of the work.

11. Indemnity. The Contractor shall indemnify and hold harmless the City and their elected officials, employees and volunteers from and against all claims, damages, losses and expenses, including legal costs, arising out of or resulting from the performance of this contract, provided that any such claim, damage, loss or expenses is attributed to bodily injury, sickness, disease, personal injury or death, or to injury to or destruction of tangible property including the loss or loss of use resulting there from and is caused in whole or in part by any negligent act or omission of the Contractor.

12. Safety/Environmental. The Contractor is responsible at all times for precautions to achieve the protection of all persons including employees and property. The Contractor shall make special effort to detect hazardous conditions and shall take prompt action where necessary to avoid accident, injury or property damage. EPA, DEP OSHA, and all other applicable safety laws and ordinances shall be followed as well as American National Standards Institute Safety Standards. All hazardous spills, accidents, injuries or claims or potential claims shall be reported promptly to the City Risk Management Department.

13. Insurance Requirements. All insurance requirements under this Agreement are expressly stated in "Insurance Requirements for the City of Ocala" pages _____ and through _____ of ITB #_____ and are specifically incorporated herein by reference..

14. Contract Documents. The Contract Documents which comprise the entire agreement between the City and Contractor are made a part hereof and consist of the following:

- 14.1. **This Contract**
- 14.2. **Addenda**
- 14.3. **Bid**
- 14.4. **Performance Bond**
- 14.5. **Council Agenda**
- 14.6. **Payment Bond**
- 14.7. **Specifications**
- 14.8. **Technical Specifications Provided in these Contract Documents**
- 14.9. **Notice To Proceed**
- 14.10. **Change Orders**
- 14.11. **Certificate of Substantial Completion**
- 14.12. **Certificate of Final Inspection**
- 14.13. **Certificate of Final Completion**
- 14.14. **Contractor's Release**
- 14.15. **Drawings and Plans**
- 14.16. **Supplemental Agreements**
- 14.17. **Contractor's Partial Release of Liens**
- 14.18. **Contractor's Final Release of Liens**
- 14.19. **Certification of Liens Paid**
- 14.20. **Consent of Surety to Final Payment**
- 14.21. **Instructions to Bidders**
- 14.22. **Contractor's Insurance Requirements, Certificate and Insurance Policies.**

There are no Contract Documents other than those listed above. The Contract Documents may only be altered, amended or repealed by a modification as provided in the General Conditions

15. Performance and Payment Bond. The Contractor shall furnish to the City a Performance and Payment Bond satisfactory to the City of Ocala on the form in the Contract. The amount of the bond must not be less than the Total Bid Price. The Contractor will guarantee that they will deliver a completed project under their contract in strict accordance with the Contract Documents and will pay promptly all persons supplying them with the labor or material for the work.

16. Power of Attorney. Attorneys-in-fact, who sign Performance and Payment Bonds, or Maintenance and Guarantee Bonds, must file with such bonds a certified and effectively dated copy of their power of attorney to sign such bonds.

17. Cancellation or Termination. This Agreement may be terminated by either party within thirty (30) days written notice in the event of failure to perform in accordance to the terms of this Agreement. If the Agreement is terminated, the City shall pay the contractor for all work satisfactorily completed up to the date of termination. Termination of this Agreement shall have no effect upon the rights of the parties which accrued prior to termination.

18. Approval of Governing Body. The City represents and warrants to Contractor that this Agreement has been approved by its' governing body and is a binding obligation upon the Client.

19. Change Management. Contractor or the City may submit a request for a change to the specifications provided the change shall be made within the scope of this Agreement and will not result in a change in price to the City. If the contractor determines that any change will result in a price change to the City, it will be processed as a Change Order. The Contractor or the City may submit a written Change Order to initiate a change to the Specifications that is not within the scope of this Agreement. The Change Order must include: (1) a description of the requested change, (2) the purpose for the

change, (3) the priority of implementing the change, (4) the date or requested implementation, and (5) the signature of an authorized officer of the party requesting such change. Contractor will advise the City of the resultant impact of the Change Order on price and schedule within seven (7) days after Contractor's receipt of the Change Order, and the parties shall agree in writing upon the Change Order before any change described in it is implemented.

20. Material Breaches of Contract

- 20.1. The parties recognize that breaches of the Contract Documents may occur and that remedies for those breaches may be pursued under the Contract Documents. The parties agree that any breach of the Contract Documents related to life safety shall be considered a material breach of the Contract Documents.**
- 20.2. Upon a material breach of the Contract Documents related to life safety, as determined by the City, the City shall issue a stop work order suspending the Work or any specific portion of the Work until the conditions are corrected. If the life safety conditions giving rise to the stop work order are not corrected within a reasonable time, as determined by City, then the material breach shall entitle City to terminate this Contract. The recognition of breaches of the provisions of the Contract Documents related to life safety as material breaches shall not be construed as a limitation on other remedies for breaches or material breaches of the Contract Documents.**

21. Default. This Contract is critical to the City and the City reserves the right to immediately terminate whole or any part of this contract due to failure of the Engineer to carry out any obligation, term, or condition of the contract. The Owner will issue a written notice of default effective at once and not deferred by any interval of time.

21.1. Default shall be for acting or failing to act as in any of the following:

- 21.1.1. The Contractor approves materials that do not meet the specifications of the contract;**
- 21.1.2. The Contractor fails to adequately perform the services set forth in the specifications of the contract;**
- 21.1.3. The Contractor fails to complete the work required within the time stipulated in the contract;**
- 21.1.4. The Contractor fails to make progress in the performance of the contract and/or gives the Owner reason to believe that the Contractor will not or cannot perform to the requirements of the contracts.**

21.2. The Owner may resort to any single or combination of the following remedies:

- 21.2.1. Terminate the contract;**
- 21.2.2. Reserve all rights or claims to damage for breach of any covenants of the contract; and**
- 21.2.3. Perform any test or analysis on materials for compliance with the**

specifications of the contract. If the results of any test or analysis find a material substitution approved by City to be non-compliance with the specifications the actual expense of testing will be borne by the Contractor.

- 21.3. In case of default, the Owner reserves the right to purchase materials, or to complete the required work in accordance with the needs of the Owner. The Owner may recover any actual excess costs from the Contractor by:

21.3.1. Deduction from an unpaid balance;

21.3.2. or any other remedy as provided by law.

22. **Miscellaneous Provisions**

- 22.1. **Assignment.** No assignments by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound and any such assignment shall be void and of no effect; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 22.2. **Reference to Parties.** Each Reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
- 22.3. **Waiver.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
- 22.4. **Governing Law.** This Agreement is and shall be deemed to be a contract entered into and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida in the county of Marion County.
- 22.5. **Severability of Illegal Provisions.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If any portion of this Agreement is declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
- 22.6. **Section Headings.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.

- 22.7. **Rights of Third Parties.** Unless expressly stated herein to the contrary, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
- 22.8. **Amendment.** The provisions of this Agreement may not be amended, supplemented, waived, or changed orally, but only by writing making specific reference to this agreement signed by the party as to whom enforcement of any such amendment, supplement, waiver, or modification is sought. No amendment to this Agreement shall be effective except those agreed to in writing and signed by both of the parties to this Agreement.
- 22.9. **Entire Agreement.** This Agreement, including attachments (if any), and Bid #_____ contains all agreements between the Parties. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement.
- 22.10. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
- 22.11. **Notices.** Whenever either party desires to give notice unto the other including, but not limited to, Contract Claims, it must be given by written notice, hand delivered, signed and dated for receipt or sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to wit:

FOR CONTRACTOR:

_____, President/Owner/Manager

Ocala, Florida 344____

PH: 352-

FAX: 352-

E-Mail – _____

FOR CITY OF OCALA:

City of Ocala Purchasing

Attn:

151 SE Ocseola Avenue

Ocala, Florida 34471

PH: 352-
FAX: 352-
E-Mail – @ocalafl.org

COPY TO:

Gilligan, King, Gooding & Gifford, P.A.
Attn: Attorney Eric P. Gifford
1531 SE 36th avenue
Ocala, Florida 34471
PH: 352-867-7707
FAX: 352-867-0237
E-Mail – egifford@ocalalaw.com

- 22.12. **Attorneys Fees.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses even if not taxable as court costs (including without limitation, all such fees, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorney's fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, and all other charges billed by the attorney to the prevailing party.
- 22.13. **Jurisdiction and Venue.** The Parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court or the right to bring an action or proceeding in any other court. Service of any court paper may be affected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
- 22.14. **Jury Waiver.** In any civil action, counterclaim, or proceeding, whether at law or in equity, which arises out of, concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, trial shall be to a court of competent jurisdiction and not to a jury. Each party hereby irrevocably waives any right it may have to a trial by jury. Any party may file an original counterpart or a copy of this Agreement with any court, as written evidence of the consent of the parties hereto of the waiver of their right to trial by jury. Neither party has made or relied upon any oral representations to or by any other party regarding the enforceability of this provision. Each party has read and understands the effect of this jury waiver provision.

- 22.15. **Force Majeure.** Neither party shall be responsible for damages or delays caused by Force Majeure or other events beyond the control of the party and which could not reasonably have been anticipated or prevented. For purposes of this Agreement, Force Majeure includes, but is not limited to, adverse weather conditions, floods, epidemics, war, riot, strikes, lockouts, and other industrial disturbances; unknown site conditions, accidents, sabotage, fire loss of or failure to obtain permits, unavailability of labor, materials, fuel, or services; court orders; acts of God; acts, orders, laws, or regulations of the Government of the United States or the several states, or any foreign country, or any governmental agency. In the event that Force Majeure occurs, the parties shall mutually agree on the terms and conditions upon which services may continue.
- 22.16. **Merger Clause.** This instrument, Bid #_____, and any attachments constitute the entire Agreement between the parties hereto with respect to the subject matter hereof. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this agreement. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. This agreement can only be modified in writing and signed by the parties hereto and their duly authorized agents.
- 22.17. **Execution of Contract.** The Contractor to whom the Contract is awarded shall execute and deliver to the City the following: the Contract, the Performance and Payment Bond, satisfactory evidence of all required insurance coverage, and proof (satisfactory to the City) of the authority of the person or persons executing the Contract and Performance and Payment Bond on behalf of the Contractor. The above documents must be furnished, executed, and delivered before the Contract will be executed by the Client. The Contract shall not be binding upon the Client until it has been executed by the Client and a copy of such fully executed Contract is delivered to the Contractor.
- 22.18. **The City and Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.**
23. **Conflict of Interest**
- 23.1. **The Contractor agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Contract with the City or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government and the City's Personnel Policies.**
- 23.2. **The Contractor hereby certifies that no officer, agent or employee of the City has any material interest (as defined in Section 112.312 (15), Florida Statutes, as over five percent (5%) either directly or indirectly, in the business of the Contractor to**

be conducted here, and that no such person shall have any such interest at any time during the term of this Contract.

23.3. Pursuant to Section 216.347, Florida Statutes, the Contractor hereby agrees that monies received from the City pursuant to this Contract will not be used for the purpose of lobbying the Legislature or any other State or Federal Agency.

IN WITNESS WHEREOF, the parties hereto have set their hands by their duly authorized agents on this ____ day of _____ 200____.

ATTEST:

CITY OF OCALA

Angel B. Jacobs
City Clerk

By: _____
Daniel Owen
City Council President

Approved as to form and legality:

_____, Inc.

Eric P. Gifford
Assistant City Attorney

By: _____

President

Attachment(s):

- A. Bid No. 11-030
- B. Etc.

ATTACHMENT “___”

CITY OF OCALA

**AFFIDAVIT OF COMPLIANCE WITH DEPARTMENT OF
HOMELAND SECURITY’S “E-VERIFY” SYSTEM**

As the person duly authorized to enter into such commitment for

_____,
(Company or Organization Name)

I hereby certify that the Company or Organization named herein will

(check one box below)

- ☐ **Be in compliance with all of the requirements of E-Verify for the duration of the contract entered into between the City of Ocala and the Company or Organization**

OR

- ☐ **Hire no employees for the term of the contract between the City of Ocala and the Company or Organization**

Name

Title

Date

E-VERIFY REQUIREMENTS FOR CONTRACTORS

As a requirement and condition of this Agreement, the Contract must use the Department of Homeland Security’s E-Verify system when hiring new employees for the term of the contract.

E-Verify is an electronic system designed to verify the documentation of job applicants. It is operated by the U.S. Department of Homeland Security.

- This requirement shall apply to the Contractor and any and all “sub-contractors” that may be hired during the performance of this contract.
- E-Verify must be used **ONLY** for newly hired employees during the term of the contract. It is **NOT** to be used for existing employees.

- E-Verify must be used to verify the documentation of ANY new employee during the term of the contract, not just those directly or indirectly working on deliverables related to this contract.
- Contractor shall retain a copy of the E-Verify Memorandum of Understanding that they execute with the Department of Homeland Security AND
- Sign and submit to the City of Ocala an Affidavit of Compliance (Attachment 4) with the executed contract.
- Subcontractors, if any, shall also be required to sign an Affidavit of Compliance and retain that Affidavit for four (4) years after the end of the contract.
- The City of Ocala reserves the right to audit the Contractor's compliance with these requirements.

Further information on E-Verify can be found at the following website:

<http://www.uscis.gov/e-verify>

CITY OF OCALA - LOCAL VENDOR
PREFERENCE AFFIDAVIT OF ELIGIBILITY

This form is to be completed in its entirety by the prime vendor and submitted with your bid. Incomplete forms will be rejected for preference evaluation.

In addition, each vendor shall submit a separate form for each major subcontractor the vendor proposes to employ. A major subcontractor is defined as a subcontractor whose subcontract constitutes five percent (5%) or more of the total contract price. In order for a vendor to be considered for local vendor preference, all major subcontractors must also qualify. Copy this form if additional forms are required and attach as submittals to each bid.

1. Legal Name of Firm: _____

Mailing Address:

Physical Address (if different):

or Date your business was established in Marion County: _____

3. Did you pay business or real property tax to either the City or the County for the most recent tax year? Yes_____ No_____

4. Are you planning to employ any major subcontractors? Yes_____ No_____

Under penalty of perjury, the undersigned states that the forgoing statements are true and correct. The undersigned also acknowledges that any person, firm, corporation or entity intentionally submitting false information in an attempt to qualify for local vendor preference shall be prohibited from bidding on City of Ocala products and services in accordance with CP-161 of the City of Ocala's Purchasing and Procedures manual.

Authorized Signature: _____ Date:_____

Printed Name & Title: _____ Phone:_____

State of: _____ County of: _____ Sworn to and

subscribed before me this _____ day of _____, 20__ Personally known

_____ or Produced Identification _____

(Specify Type of Identification)

_____ My Commission Expires _____ Signature of

Notary

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