

## TOWN OF DUNDEE – GENERAL PROVISION CLAUSE(S)

### TERMS AND CONDITIONS

#### 1) GENERAL CONDITIONS:

- a) Bidders are required to submit their proposals subject to and upon the following express conditions:
- b) Bidders shall thoroughly examine the specifications, instructions, all other Contract Documents, visit the site of this project (if applicable) and fully acquaint itself, at its own risk, with all conditions which may affect completion of this project and/or delivery of bid items.
- c) These Terms and Conditions and any contract documents related hereto are subject and subordinate to any existing or future state, federal, or local law, regulation, or written policy, which may be applicable hereto, including any applicable building codes.

#### d) **PUBLIC RECORDS:**

Town and Consultant/Bidder/Contractor agree that Consultant/Bidder/Contractor shall comply with Florida's public records laws to specifically include the following:

Public Records. Consultant/Bidder/Contractor agrees to:

- i) Keep and maintain public records required by the public agency to perform the service.
- ii) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or as otherwise provided by law.
- iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant/Bidder/Contractor does not transfer the records to the public agency.
- iv) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Consultant/Bidder/Contractor or keep and maintain public records required by the public agency to perform the service. If the Consultant/Bidder/Contractor transfers all public records to the public agency upon completion of the contract, the Consultant/Bidder/Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant/Bidder/Contractor keeps and maintains public records upon completion of the contract, the Consultant/Bidder/Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian

of public records, in a format that is compatible with the information technology systems of the public agency.

- e) **IF THE CONSULTANT/BIDDER/CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S/BIDDER'S/CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 863-438-8330 EXT. 258, [loneill@TownofDundee.com](mailto:loneill@TownofDundee.com), P.O. BOX 1000, 202 EAST MAIN STREET, DUNDEE, FLORIDA 33838.**

**If the Consultant/Bidder/Contractor does not comply with a public records request, the Town shall enforce the contract provisions which may include immediate termination of contract.**

- f) It shall be understood and agreed that by the submission of a proposal, the Consultant/Bidder/Contractor, if awarded a contract, shall save harmless and fully indemnify the Town and any of its officers, or agents from any and all damages that may, at any time, be imposed or claimed for infringement of any patent right, trademark, or copyright of any person or persons, association, or corporation, as the result of the use of such articles by the Town, or any of its officers, agents, or employees, and of which articles the Consultant/Bidder/Contractor is not the patentee, assignee, licensee, or lawfully entitled to sell same.
- g) It is the intent of the Town of Dundee that this Invitation to Bid/RFP promotes competitive bidding. It shall be the bidder's responsibility to advise Purchasing at the address noted on the cover letter, if any language, requirements, etc. inadvertently limits the requirements stated in this Invitation to Bid/RFP to a single source. Such notification must be received in writing by the Office of the Town Clerk not later than ten (10) days prior to the bid opening date.
- h) Bidders must possess any applicable business, contractor, or occupational licenses at the time of submission of the Bid. The Town may request proof of such licensure. Bidders shall also obtain all permits required for this project.
- i) The Town shall be entitled to rely on the written representations of the Bidder. No claims shall be paid by the Town unless in writing and approved by the Town. Additionally, sovereign immunity is not waived as to any verbal representations or comments made by the Town.
- j) Unless detailed elsewhere in the bid documents, proof of insurance naming the Town as an additional insured shall be required of the successful bidder (on any project requiring work, labor, and/or installation on Town property) with the following minimum coverage: workers compensation, general liability, and automobile insurance in an amount and form acceptable to the Town, with limits of not less than one-million dollars and zero cents (\$1,000,000.00).

## 2. DEFINITIONS

Words used in the Contract Documents issued hereunder shall possess their everyday and ordinary meaning, provided however, that where a term is used in any of the Contract Documents, the following meanings shall be given to the terms herein defined:

- a. **ACCEPTANCE:** The Seller shall be bound by the Purchase Order and its terms and conditions when it delivers the goods ordered or renders the services ordered by the Town.
- b. **APPLICABLE LAW:** Any contract entered into pursuant to this Invitation to Bid/RFP shall be construed in accordance with the laws of the State of Florida. Venue for any action or proceeding concerning this contract shall be in the State Courts of Polk County, Florida.
- c. **CALENDAR DAYS:** Any and all days in a 365-day calendar year.
- d. **CHANGES:** The Town, without invalidating the Contract, may order changes, including additions, deletions, or modifications. The Parties recognize that said changes may affect price and time for performance, in which event appropriate adjustments will be considered. All such changes in the work shall be authorized in writing, signed by the Town Manager or his/her designee. The price and the time for performance may be changed only by Change Order Request. By written instructions to the Contractor, the Town may make minor changes in the work which are consistent with the purpose of the work, and which do not change the contract price or time for completion. The Town Manager shall be notified of any proposed changes in: (a) materials used, (b) manufacturing process, or (c) construction. However, changes shall not be binding upon the Town unless evidenced by a Change Order Request issued and signed by the Town Manager.
- e. **DAYS:** A calendar day unless specifically stated otherwise.
- f. **TOWN:** The Town of Dundee, Florida, a Florida municipal corporation, and/or its authorized representative vested with home rule authority pursuant to the Municipal Home Rule Powers Act, Chapter 166 of the Florida Statutes, and Article VIII, §2 of the Florida Constitution; and the Town is therefore vested with governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services, including the general exercise of any power for municipal purposes.
- g. **CONTRACT:** The Contract executed by the Town and Contractor and shall include all Contract Documents and bid documentation.
- h. **CONTRACTOR:** The successful bidder who enters into the Contract with the Town to complete the project.
- i. **DEFAULT:** Default in promised delivery of supplies, completion of project, or failure to meet specifications authorizes the Town to terminate the Contractor's right to proceed with the order/work by giving the Contractor written notice. The defaulting Contractor may, at

- i. the discretion of the Town, be charged the increase in cost(s) of obtaining the goods/services elsewhere.
- j. **CONTRACT DOCUMENTS:** The bid documentation, Invitation to Bid, Terms and Conditions, Construction Agreement, Contract Bond, Special Provisions, Specifications, Technical Specifications, Proposal and Bid Form, Engineering Plans or Drawings prepared for a project, Addenda issued during the bidding period, and Change Orders issued after the Contract is let.
- k. **INDEMNIFICATION:** Consultant/Bidder/Contractor shall hold harmless, indemnify, and defend the Town, its elected officials, appointed officers, and employees, representatives, or agents, against any claims, action, loss, damage, injury, liability, tax, assessment, cost or expense of whatever kind (including, but not by way of limitation, attorneys' fees and court costs (in bankruptcy, trial and appellate matters in any judicial and/or administrative tribunal) arising out of and/or incidental to the Consultant/Bidder/Contractor performance of this contract. Other specific references to the Consultant/Bidder/Contractor duty to indemnify the Town and hold it harmless, which may be set forth herein, shall be construed as in addition to, and not as a limitation of the requirements of this section. The Town shall be entitled to recover its reasonable attorneys' fees, including trial and appellate, and court costs in the event judicial and/or administrative enforcement of this Consultant/Bidder/Contractor indemnity is required.
- l. **INSPECTION:** The goods and services purchased are subject to the inspection and approval of the initiating department. The Town reserves the right to reject goods and services which do not conform to provisions of the Purchase Order.
- m. **INSURANCE:** As specified in the Contract Documents.
- n. **LIMITATION ON MUNICIPAL INDEMNITY:** To the extent that the contract or agreement calls for the Town to indemnify any party thereto, the following sentence shall be appended to the indemnity and shall control the indemnity as if set forth therein, as follows:
  - i) "Provided, however, that regardless of whether any such obligations incurred hereunder are based on tort, contract, statute, strict liability, negligence, product liability or otherwise, the obligations of the Town of Dundee under this indemnification provision shall be limited in the same manner that would have applied if such obligations were based on, or arose out of, an action at law to recover damages in tort and were subject to Section 768.28, Florida Statutes, as that section existed at the inception of this Contract or Agreement." Provided further, no waiver of the Town's sovereign immunity is intended to be made herein.
  - ii) The addition of this language shall not be construed to create Town indemnifications where none are expressly made in the terms and conditions of the contract or agreement.
- o. **STATEMENT OF ASSURANCE:** No bids submitted shall be considered unless the Bidder

warrants that, upon execution of a Contract with the Town, it shall:

- i. not engage in employment practices that have the effect of discriminating against employees or prospective employees because of race, color, religion, sex, national origin, age, handicap, or marital status; and
  - ii. will submit such reports as the Town may thereafter require to assure compliance.
- p. ***SUB-CONTRACTOR***: An individual, firm, company, corporation, association, society, or group which enters into a contract with the Contractor to do a portion of the work on this project.
- q. ***TITLE***: The risk of loss of goods covered by the Purchase Order shall remain with the Seller and/or Contractor until the goods have been delivered to a designated site and actually received by the Town. Any damage to the material and equipment, or loss of any kind, occasioned in transit shall be borne by the Seller and/or Contractor.
- r. ***WARRANTY***: The Contractor shall not incorporate in the work of a project any materials or equipment subject to a chattel mortgage, a conditional sales contract, or any other agreement permitting a Vendor to retain an interest. The Contractor shall warrant clear title to all materials and equipment incorporated in the work; when the project is completed, the Contractor shall deliver to the Town the improvements it has incorporated free of any lien or claim. The provisions of this section shall be included in all contracts with Vendors and Sub-Contractors. **Vendors who furnish materials without a formal contract shall be given notice, by the Contractor, that this provision exists.**

### **3) INTERPRETATIONS OR ADDENDA:**

- a. No oral interpretation will be made to any Consultant/Bidder/Contractor as to the meaning of the Contract Documents or any part thereof to include any error, omission, discrepancy, or vagueness. Every request for such an interpretation shall be made in writing to the Town Manager. Any inquiry received prior to the cut-off time and date for questions will be given consideration. Where necessary, interpretations made to a Consultant/Bidder/Contractor will be in the form of an Addendum to the Contract Documents, and when issued, will be on file in the Office of the Town Clerk.
- b. The Town shall not be responsible for the safe delivery of the Addenda and/or notification of same. It shall be the Consultant/Bidder/Contractor responsibility to make inquiry as to the Addenda issued. All such Addenda shall become part of the Contract Documents and all Consultants/Bidders/Contractors shall be bound by such Addenda, whether received or not.

### **4) MANUFACTURER'S NAMES AND APPROVED EQUIVALENTS:**

- a. Unless specifically set forth in the specifications, any manufacturer's names, trade names, brand names, information and/or catalog numbers listed in a specification are for information and not intended to unfairly limit competition. The consultant/bidder/contractor may offer any brand for which they are an authorized representative, which meets or exceeds the specification for any item(s). If bids are based on equivalent products, indicate on the

bid form, the manufacturer's name, and number. The Consultant/Bidder/Contractor shall submit with their proposal descriptive literature, and/or complete specifications. Reference to literature submitted with a previous bid will not satisfy the provision. The consultant/bidder/contractor shall also explain in detail the reasons 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 within the discretion of the Town.

- b. **Alternate bids will not be considered unless alternate bids are specifically required by the technical specifications. (For purposes of these Terms and Conditions, Alternate bids shall mean any bid which deviates from the specific type of product; method of construction; or plans specified in the Invitation to Bid.)**

## 5) SAMPLES:

Samples of products, when called for, must be furnished free of expense and may, upon request, be returned at the Consultant/Bidder/Contractor expense. Each individual sample must be labeled with the Consultant/Bidder/Contractor name, manufacturer's name brand name and number, bid number and item reference. If forwarding instructions, payment for postage, and/or pick-up, is not made by the Consultant/Bidder/Contractor within ninety (90) days of the bid opening, the commodities shall be disposed of by the Town.

## 6) PROTEST PROCEDURES:

The Town of Dundee encourages prompt and fair handling of all complaints and disputes with the business community. In order to resolve disputed matters in an equitable manner without fear of retribution on the part of a vendor or person, the following shall apply:

- a. All formal Invitations to Bid shall include the following statement: "**NOTE: THE FAILURE TO FOLLOW THE BID PROTEST PROCEDURE REQUIREMENTS WITHIN THE TIME FRAMES PRESCRIBED HEREIN AS ESTABLISHED BY THE TOWN OF DUNDEE, FLORIDA, SHALL CONSTITUTE A WAIVER OF BIDDERS PROTEST AND ANY RESULTING CLAIMS.**"
- b. **RIGHT TO PROTEST:** Any aggrieved, actual, or prospective consultant/bidder/contractor in connection with a solicitation or pending award of a bid or contract may protest to the Office of the Town Clerk.
- c. **NOTIFICATION:** The Town shall post all recommendation of awards available for review by the General Public on the Town's web site.
- d. **INITIAL NOTICE:** Any person adversely affected by an intended decision or action with respect to the initial recommendation of award of any bid or action shall file with the Office of the Town Clerk a written notice of intent to file a protest. For the purpose of computation, the initial notice of intent to file a protest must be received by the Office of the Town Clerk no later than 3:00 p.m. on the third (3rd) workday following the date of the

notice of the initial recommendation of award (excluding Saturdays, Sundays, and legal Town holidays).

In addition, a non-refundable protest bond (the "Bond") in the amount of one thousand dollars and zero cents (\$1,000.00) in the form of a cashier's check payable to the Town of Dundee shall be submitted with the initial notice of intent to file a protest. The initial notice of intent to file protest shall be in writing and shall state the basis of the protest (recommendation of award protest or other) and clearly indicate that its purpose is to serve as the initial notice of intent to file a protest. Failure to clearly indicate its intent or failure to provide a Bond shall constitute a waiver of the right to seek any remedy provided under these protest procedures.

Upon the timely receipt of an initial notice of intent to file a protest and the required Bond, the Town shall toll (put on hold) any further actions related to the recommendation of award (except as noted below). Should the affected party decide to withdraw its initial notice of intent to file a protest during the tolled action the Bond will be refunded in full. This is the only reason the Town will refund the Bond other than a finding in favor of the protestor.

**If during tolled action, the Town Manager determines that an Emergency Purchase (as defined by the Code of Ordinances of the Town of Dundee) is necessary, action may be taken to secure the goods or services.**

- e. **FORMAL NOTICE: Any person who has filed an initial notice of intent to file a protest, as described above, shall file a formal written protest within ten (10) calendar days after the date of the filing of the initial notice of intent to file a protest. Any amendment to the formal written protest shall be in writing and received by the Office of the Town Clerk within ten calendar days of the date of the initial notice of intent to file a protest. No amendments to the protest will be allowed after the ten (10) calendars day period has expired.**

**The formal written protest shall contain the following:**

- i) Town bid number and/or title (if applicable).
  - ii) Name and/or address of the Town department, division or agency affected.
  - iii) The name and address of the affected party.
  - iv) The title and position of the person submitting the protest.
  - v) A statement of disputed issues of material fact.
  - vi) If there are no disputed material facts, the written letter must so indicate.
  - vii) Concise statement of the facts alleged.
  - viii) Statement identifying with specificity the rule(s), regulation(s), statute(s), ordinance(s), and/or constitutional provision(s) entitling the affected party to the relief requested.
  - ix) Statement identifying with specificity the relief which an entitlement is alleged.
  - x) Such other information as the affected party deems to be material to the issue.
- f. **PROTEST MEETING:** The Town will notify all parties and schedule a protest meeting. The

protest will be presented to the Protest Committee, which shall be made up of three (3) members consisting of the Town Manager or his/her designee who shall serve as the Chairperson, the Town of Dundee Finance Director or his/her designee and a designated member of the Town's Public Works Department. The Town Attorney or designee shall be present and act in an advisory capacity to the Protest Committee. The Protest Committee shall meet with the protesting party within fourteen (14) workdays (excluding Saturdays, Sundays, and legal Town holidays) of receipt of the formal written protest. The response time may be extended, if necessary. All affected parties will be notified of the location, date and time of the Bid Protest meeting and will be allowed the opportunity to make their presentation to the Bid Protest Committee. The parties may bring a representative if they so choose.

The Town Clerk shall present the background for the protest to the Committee. The purpose of the protest meeting is: (1) to question and review the basis of the protest; (2) to evaluate the facts and merits of the protest; and (3) gather information in order to make a decision.

The agenda for the protest meeting will be:

- i) The background as to why the recommendation for award was made or why the vendor was not selected.
  - ii) The protesting party or their representative will speak to how they were adversely affected by the decision of the Town.
  - iii) Any other affected parties or their representative will be given the opportunity for rebuttal and to present any facts that they deem are relevant to the protest.
  - iv) During the meeting, the Committee may ask questions of all parties as necessary.
- g. The Bid Protest Committee will render their decision in writing within five (5) workdays of the bid protest meeting.
- h. The Town Manager may conduct an evidentiary hearing if there are disputed issues of material fact. The Town Manager will conduct a review and make a final written decision within ten (10) workdays after the rendering of the decision of the committee; date of the hearing; or the review, whichever is later. **The Town Manager's decision shall be final and binding. No further protests of the action in question will be heard by the Town.**
- i. Any person who is aggrieved by the final and binding decision of the Town Manager shall be entitled to a review of the final and binding decision by the 10th Judicial Circuit Court of Polk County, Florida by filing an appropriate petition with the Clerk of the Court within 30 calendar days following the rendering of the Town Manager's final and binding decision.

## 7) PROPOSALS:

- a. The Bid must contain a manual signature of an authorized representative in the space provided on the proposal form. Each party shall be responsible for the accuracy of his/her/its proposal. A party cannot obtain relief by pleading that its bid was in error.
- b. Submittals must be received no later than the time and date, and at the location specified for submission in the Bid Documents. No bid will be accepted after the specified deadline or at any location other than that specified in the Bid Documents. Any bid received late or because



of submittal to another location will be maintained unopened in the bid file. Bids properly received will be opened at the time and place stated in the Bid Documents.

- c. The Town may elect to cancel or postpone a bid at any time prior to the time and date set to open the subject bid(s).
- d. Sealed bids, proposals, or replies received by the Town pursuant to a Request for Proposal are exempt from disclosure under Section 119.071 of the Florida Statutes and s.24(a), Art. I of the Florida Constitution until such time as the Town provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.
- e. If the Town rejects all bids, proposals, or replies submitted in response to a Request for Proposal and the Town concurrently provides notice of its intent to reissue the Request for Proposal, the rejected bids, proposals, or replies remain exempt from disclosure under Section 119.071 of the Florida Statutes and s. 24(a), Art. I of the Florida Constitution until such time as the Town provides notice of an intended decision concerning the reissued Request for Proposal or until the Town withdraws the reissued Request for Proposal. A bid, proposal, or reply is not exempt for longer than twelve (12) months after the initial Town notice rejecting all bids, proposals, or replies
- f. Bid and a non-collusion affidavit should be submitted on the forms furnished by the Town and completed without additions, modifications, deletions, and erasures. Bids not submitted on attached bid form(s) may be rejected. Bids must be typed or printed in ink. All corrections must be initialed. Each Consultant/Bidder/Contractor shall deliver its sealed proposal to the location specified on the Request for Proposal. It is the Consultant/Bidder/Contractor responsibility to assure that its bid is delivered at the proper time and place of the bid opening. Bids which are not received, as set forth in the Request for Proposal and herein, may not be considered.
- g. Telegraph, telephone, e-mail, electronically transmitted, or facsimile (FAX) bids shall not be considered. Bids may be modified, in writing, provided such modification is received at the location specified for submission and prior to the time and date set for the bid opening. Each Consultant/Bidder/Contractor shall be solely responsible for the costs associated with preparation and submittal of its bid.
- h. BIDS RECEIVED AFTER THE TIME AND DATE SET FOR THE BID OPENING SHALL NOT BE CONSIDERED.**

#### **8) PRICES, TERMS, AND PAYMENT:**

- a. Prices shall be firm and good for ninety (90) days after the bid opening and shall include all labor, materials, supplies, equipment, overhead, profit, insurance, applicable taxes, packing, shipping charges, and delivered to any point designated by the Town.
- b. **Taxes:** (For purchase of products only) - Bids shall not include federal excise or state sales taxes in bid prices of products only as these are not applicable to municipalities.
- c. **Discounts:** Consultant/Bidder/Contractor may offer a cash discount for prompt payment; however, such discounts shall NOT be considered in determining the lowest net cost for bid

evaluation purposes. Consultant/Bidder/Contractor are encouraged to reflect cash discounts in the unit prices quoted. Any discount offered shall allow no less than fifteen (15) working days for payment.

**9) SUBMITTING A "NO BID" OR A "NO CHARGE":**

Consultant/Bidder/Contractor that wish to not bid on some of the item(s) sought by this solicitation must mark those item(s) as "No Bid." However, if some of the item(s) are being offered at no charge, then items must be marked as "No Charge." Items that are left blank shall be considered a "No Bid" for that item, and the bid shall be evaluated accordingly.

**10) MISTAKES; INACCURACIES; INCOMPLETE INFORMATION:**

- a. Consultant/Bidder/Contractor are expected to examine the specifications, delivery schedule, bid prices, and all instructions pertaining to supplies and services. The failure to do so will be at the Consultant/Bidder/Contractor risk.
- b. **In the Purchasing of goods or supplies, without labor, where the bid contains a mistake in extension or total bid amount, the unit price will govern.** The Town shall be entitled to presume that a mistake has been made where the unit price and total or extension do not equate.
- c. The Town reserves the right to contact a Consultant/Bidder/Contractor, telephonically or in writing, to clarify inconsistent, inaccurate, or confusing information regarding the proposal submitted. As well, the Town reserves the right to demand the execution or re-execution of the proposal, affidavits, or certification required to be accompanied with the bid proposal, when it appears to the Town that the deficiency was an oversight in good faith. It shall be presumed that proposals submitted without a single signature on an affidavit or on the proposal is non-responsive and shall not be considered for clarification or correction.

**11) SAFETY STANDARDS:**

Unless otherwise stipulated in the bid, all manufactured items and fabricated assemblies shall comply with applicable requirements of federal, state, and local law, including, but not limited to, the Occupational Safety and Health Act and REGULATIONS OR STANDARDS THEREUNDER.

**12) INVOICING AND PAYMENT:**

The Consultant/Bidder/Contractor shall be paid upon submission of proper invoices to the Town at the prices stipulated in the contract at the time the order is placed, after delivery and acceptance of the goods, less deductions, if any, within thirty (30) working days after approval of invoice by the Town. If a cash discount is taken by the Town on a prompt payment invoice, payment shall be made within the time specified, but not less than fifteen (15) working days. All invoices shall include the purchase order number for purchases against any contract resulting from this bid. An original and one (1) copy of the invoice shall be submitted. 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 lists and correspondence. No overcharge will be paid. In the event an invoice is submitted with an overcharge, a credit memo must be submitted in order to correct such overcharge. Any applicable discounts that apply as a result of this contract will be taken even though the allowable time has lapsed due to the time awaiting credit memorandum(s).

### **13) WITHDRAWAL OF PROPOSALS:**

A bid proposal may be withdrawn prior to the time fixed for the bid opening, if proper written notification is received, at the location specified for submission in the Bid Documents, prior to the time fixed for the bid opening. A proposal may also be withdrawn if the Town does not accept it within ninety (90) calendar days after the date fixed for the bid opening after proper written notification is received by the Town. Notwithstanding any withdrawal, all bid documents received by the Town shall remain the property of the Town.

### **14) NONCOLLUSION AGREEMENT:**

Each Consultant/Bidder/Contractor submitting a bid for any project on which bidding is based, shall execute, and submit with its bid a non-collusion affidavit which states that it has not entered into a collusive agreement with any other person, firm, or corporation in regard to any bid submitted.

### **15) REJECTION OF BIDS:**

The Town may reject a bid if:

- a. The Consultant/Bidder/Contractor misstates or conceals any material fact in the bid;
- b. The bid does not strictly conform to the law or the requirements which includes, but is not limited to, the terms and conditions set forth herein; or
- c. A bid is submitted in a manner to limit competition.

**The Town Manager and/or the Town Commission shall have the right to reject any and all bids and request the entire transaction be rebid in the best interests of the Town. The Town may also waive any minor informalities, irregularities, or technicalities in any bid.**

### **16) STATEMENT OF QUALIFICATIONS:**

Each Consultant/Bidder/Contractor shall, upon request of the Town, submit a statement of qualifications, its experience record in furnishing a particular commodity or constructing any type of improvements embraced in the Contract Documents, its organization and equipment available for the work contemplated, and, when specifically requested by the Town, appropriate financial information which would assist in determining the ability and solvency to perform work contemplated by the Contract Documents.

The Consultant/Bidder/Contractor may also be requested to furnish references which the Town may use to verify claims of competency. The Town shall have the right to take such steps as it deems necessary to determine the ability of the Consultant/Bidder/Contractor to perform its obligations under the Contract Documents; and the Consultant/Bidder/Contractor shall furnish the Town all such information and data for this purpose as it may request.

**The right is reserved to reject any bid where an investigation of the available evidence or information does not satisfy the Town that the Consultant/Bidder/Contractor is qualified to carry out properly the terms of the Contract Documents.**

#### **17) AWARD OF CONTRACT:**

- a. The Town reserves the right to award contract(s) to more than one Consultant/Bidder/Contractor, to split awards, to award contracts by item or group of items, to make partial awards, or to decrease or increase any or all quantities that is in the Town's best interest.
- b. The Consultant/Bidder/Contractor may qualify its bid for acceptance by the Town on an "All or None" basis. An "All or None" basis bid must include all items upon which bids are invited. Consultant/Bidder/Contractor are hereby notified that a bid submitted on an "All or None" basis is at risk for rejection in instances where the Town may deem it necessary to split or divide a project as set forth herein. **Consultant/Bidder/Contractor shall denote on the front page of the bid proposal as to whether the bid is an "All or None" bid.**
- c. A written award of acceptance or a signed Purchase Order mailed or otherwise furnished to the successful Consultant/Bidder/Contractor results in a binding contract without further action by either party. The signed Purchase Order authorizes the party in receipt of same to submit the product(s).
- d. After issuance of a notice of intent to award and no protests having been timely filed, award shall be made to the lowest, responsive, and responsible party (or as specified in the bid documents). Additional criteria as set forth in the Invitation to Bid/RFP will be considered in the award of the bid. The lowest responsive and responsible party will be determined after evaluation of the bid by the Town. In determining the lowest responsive and responsible party, in addition to price, the following may be considered as criteria if noted in the bid documents:
  - i) Evaluations and quality of performance on previous projects.
  - ii) Ability, capacity, equipment, and skill of the party to fulfill the contract.
  - iii) Ability to fulfill the contract within the time specified, without delay.
  - iv) Character, integrity, reputation, judgment, experience, and efficiency.
  - v) Previous compliance with laws and ordinances relating to the contract.
  - vi) Sufficiency of the financial resources to fulfill the contract.
  - vii) Quality, availability and adaptability of the supplies or contractual services.
  - viii) Ability to provide future maintenance and service, as required or needed.
  - ix) Number and scope of conditions attached to the bid.

## **18) OTHER GOVERNMENTAL ENTITIES:**

The Town of Dundee encourages and agrees to the successful Consultant/Bidder/Contractor extending the pricing, terms, and conditions of this solicitation and any resulting contract (if there is any such resulting contract) to other governmental entities at the discretion and/or option of the successful Consultant/Bidder/Contractor.

## **19) PERFORMANCE:**

- a. Contractor shall keep the Town advised at all times of status of order. Default in promised delivery of supplies, completion of project, or failure to meet specifications authorizes the Town to terminate the Contractor's right to proceed with the order/work by giving the Contractor written notice, and to purchase supplies/services elsewhere, and charge full increase of cost and handling to defaulting Contractor.
- b. The Contract shall not be terminated, nor the Contractor charged with liquidated damages (if otherwise provided for in the Contract Documents) because of any delays due to unforeseeable cause beyond the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the Town, fires, floods, epidemics, strikes, (with which the Contractor has no direct connections), and unusually severe weather. The Contractor shall, within ten (10) calendar days from the beginning of such delay, notify the Town, in writing, of the cause for the delay. If, in the opinion of the Town, the failure of Contractor to perform the conditions of this contract is occasioned by or is the result of acts or events over which the Contractor has no control, said delay in performance may be excused.
- c. The Contractor shall take into account all contingent work which has to be done by other parties, arising from any cause whatsoever, and shall not plead its want of knowledge of said contingent work as an excuse for delay in its work or for the non-performance thereof.

## **20) SERVICE AND WARRANTY:**

Unless otherwise specified, the Consultant/Bidder/Contractor shall define any warranty service and replacements that will be provided during and subsequent to this contract. Consultant/Bidder/Contractor shall explain on an attached sheet to what extent warranty and service facilities are provided.

## **21) GOVERNMENTAL RESTRICTIONS:**

In the event any governmental restrictions may be imposed which would necessitate alteration of the materials, quality, workmanship, or performance of the items offered on this proposal prior to their delivery, it shall be the responsibility of the Contractor to notify the Town immediately after learning of such restriction, including indicating in writing the specific regulation which required an alteration. The Town reserves the right to accept any such alteration, including any price adjustments occasioned thereby, or to cancel the Contract at no expense to the Town.

## **22) PRICE AND ADJUSTMENTS:**

Any price decrease effectuated during the term of the Contract and/or any time specified for performance therein, either by reason of market change or on the part of the Contractor to other customers, shall be passed on to the Town.

**23) EQUAL EMPLOYMENT OPPORTUNITY:**

No bids submitted shall be considered unless the Consultant/Bidder/Contractor warrants that upon execution of a Contract with the Town, it shall not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, sex, national origin, age, handicap, or marital status, and will submit such reports as the Town may thereafter require to assure compliance. '

**24) OCCUPATIONAL HEALTH AND SAFETY (FLORIDA RIGHT-TO-KNOW-LAW):**

- a. In compliance with Chapter 442, Florida Statutes, any item delivered from a Contract resulting from this Invitation to Bid/RFP, which contains a toxic substance as listed on the FLORIDA SUBSTANCE LIST, shall be accompanied by a Material Safety Data Sheet (MSDS) which product shall be labeled as such as well. These MSDS shall be forwarded to: Town of Dundee, Attn: Town Manager, P.O. Box 1000, 202 East Main Street, Dundee, Florida 33838.
- b. The MSDS shall be maintained by the Town and must include the following information:
  - i) The Division/Department to which the material was shipped.
  - ii) The chemical name and the common name of the toxic substance.
  - iii) The hazards or other risks in the use of the toxic substance, including:
    - (1) The potential for fire, explosion, corrosivity, and reactivity;
    - (2) The known acute health effects and chronic health effects of risks from exposure to the toxic substance, including those medical conditions which are generally recognized as being aggravated by exposure to toxic substance; and
    - (3) The primary routes of entry and symptoms of overexposure.
  - iv) The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of overexposure.
    - a. The emergency procedures for spills, fire, disposal, and first aid.
    - b. A description of the known specific potential health risks posed by the toxic substance, which description is written in lay terms and is intended to alert any person who reads this information.

- c. The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

## **25) TIE BIDS:**

The Town Manager shall make award of all tie bids. In accordance with Florida law, a firm which is a drug-free workplace shall have precedence. In the event that both or neither firm is a drug-free workplace, tie bids may be awarded to one of the bidders based on any of the criteria listed below (in descending order), or as otherwise directed by the Town Manager to comply with all of the Source Selection provisions of Town of Dundee Ordinance No. 14-17 (*codified in Sec. 2-159*) and the Code of Ordinances of the Town of Dundee:

- a. Where tie bids are between bidders, one of which is a business whose principal place of business is located in the Town of Dundee utility service area and the other bidder is not, the recommended award shall be to the bidder located in the Town of Dundee utility service area.
- b. Where tie bids are between bidders, one of which is a business whose principal place of business is located in Polk County and the other bidder is not, the recommended award shall be to the bidder located in Polk County.
- c. Availability or completion period.
- d. Previous vendor record on similar projects or requirements.
- e. Business location closest to the Town of Dundee.

## **26) NOTICE:**

- a. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for construction or repair of a public building or public work, may not submit bids on leases of real property to 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, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.**
- b. A company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of \$1 million or more if that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, the company: (a) Is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel.**

- c. **Any contract for goods and/or services in and amount of \$1,000,000.00 or more will be subject to termination by the Town if the contractor is found to have been placed on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Sector List, or been engaged in business operations in Cuba or Syria or has been placed on the Scrutinized Companies that Boycott Israel list, or is engaged in a boycott of Israel.**

**27) UNAUTHORIZED ALIEN(S):**

- a. The Contractor agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this solicitation. The Town shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of any agreement and/or the Contract by the Town. As part of the response to this solicitation, the successful party shall complete and submit the attached form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS".
- b. Employers may avail themselves of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automated link to Federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.
- c. If your company wishes to avail themselves of this program, you can register online for E-Verify at <https://www.vis-dhs.com/EmployerRegistration>, which provides instructions for completing the registration process. At the end of the registration process, you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you as the employer, the SSA, and DHS. An employee who has signatory authority for the employer can sign the MOU. Employers can use their discretion in identifying the best method by which to sign up their locations for E-Verify. To find out more about E-Verify, please visit [www.dhs.gov](http://www.dhs.gov) le-verify or contact USCIS at **1-888-464-4218**.

**CONSTRUCTION-RELATED CLAUSES**

The Construction-Related Clauses shall apply to all work done on this project by either the Contractor or by any Subcontractor engaged to do a portion of the work. The Contractor shall supply each of its Subcontractors with a copy of all of the Terms and Conditions and all other Contract Documents.

**28) ERRORS:**

If the Contractor discovers any error, omission, or vagueness in the Contract Documents, the Contractor shall report this discovery to the Town immediately upon learning of same. Work done after such a discovery and before the Town corrects the error, omission, or vagueness shall be at



the Contractor's risk.

## **29) UNIT PRICES:**

The unit prices for each of the several items in the proposal of each Consultant/Bidder/Contractor shall include its pro rata share of overhead so that the sum of the products obtained by multiplying the quantity shown for each item by the unit price bid represents the total bid. Any bid not conforming to this requirement may be rejected as non-responsive. Special attention is called to this provision for should conditions make it necessary to revise the quantities, no limit will be fixed for such increased or decreased quantities nor extra compensation allowed, provided the net monetary value of all such additive and subtractive changes in quantities of such items of work (i.e., difference in cost) shall not increase or decrease the original contract price by more than twenty-five percent (25%) for work not covered in the drawings and technical specifications.

## **30) SALES TAX SAVINGS PROCEDURE/OWNER DIRECT PURCHASES:**

This procedure will be in accordance with Florida Administrative Code 12A-1.094 Public Works Contracts and Section 212.08(6) of the Florida Statutes.

The Town reserves the right to purchase all equipment, materials, and supplies that are components of a construction bid, but generally will purchase only major equipment, materials, and supplies. When the Town exercises this option for the following procedures shall be used for ordering, receiving, and paying for the component(s) selected.

### **a. BID PRICES.**

The bid must include the appropriate Florida State sales tax for all components of the bid that makes up the lump sum amount submitted.

### **b. ORDERING.**

- i) The Town may exercise its right to direct purchase any component of the bid in order to save the sales tax on the selected component, which may include equipment, materials, and supplies contained within the bid. The items selected will then be purchased directly from the vendors that the Contractor used to submit their bid to the Town and therefore made a part of the construction contract executed with the Town. The Contractor shall fully cooperate with the Town, providing information for the preparation of purchase orders for these direct purchases, monitoring deliveries, and approving invoices.
- ii) Following receipt of a sales tax savings form from the Contractor, the Town will issue a purchase order, and certificate of entitlement, to the material supplier for the component selected for owner direct purchase (ODP). The purchase order, and certificate, will be sent to the Contractor, who shall verify that the order was issued correctly, and if so, send to the material supplier. A separate form shall be used for each item or group of items selected for ODP.

**The Contract shall be reduced by the amount of all construction materials plus taxes selected by the Town, for direct purchase.**

c. EXPEDITING.

The Contractor shall be responsible for expediting delivery to ensure that material is received on time to maintain the construction schedule.

d. RECEIPT.

The Contractor shall sign for and receive all materials; and retain packing slips and delivery tickets for all materials delivered for the project. The Contractor and subcontractors shall be responsible for the safe care, custody, and control of all materials.

i) BILLINGS/PAYMENTS.

- i) All ODP's shall be billed to the Town in care of the Contractor.
- ii) The Contractor shall check all invoices for accuracy and completeness when received. The Contractor shall be responsible for immediately notifying the supplier of any billing errors and requesting corrected invoices as necessary.
- iii) Receipts and invoices must be processed in a timely manner in order to take advantage of any discount payment terms. **All discounts shall accrue to the Town.**
- iv) The Contractor shall prepare a direct purchase report for the Town upon submittal of each pay request.

j) OTHER CONSIDERATIONS.

- i) The Town shall have title to all items of which any payment has been made under these provisions.
- ii) The Town shall have the assumption of the risk of damage or loss at the time of the purchase.
- iii) The selection of ODP for any item(s) contained within the bid does not relieve the Contractor from liability for that item as it may related to the quantity ordered, the maintenance and care of the item when delivered, or the installation or incorporation of the item in the work to be performed in accordance with the Contract Documents.
- iv) The Town shall have access to all necessary records in order to conduct audits to determine the correctness and accuracy of any item purchased in accordance with these provisions.
- v) To be entitled to purchase materials tax exempt for a public works project, a governmental entity is required to issue a Certificate of Entitlement to each vendor

and to the governmental entity's contractor to certify that the tangible personal property purchased from that vendor will go into or become a part of a public works.

### **31) INSPECTION:**

- a. For the Town, the Contractor shall provide facilities for safe and convenient access to any completed work, work-in-progress, and preparation for work to be done.
- b. The Town shall examine the work to assure its conformity with the Contract Documents, including plans, specifications, and requirements. The Town will assist the Contractor in correctly interpreting the plans, specifications, and other Contract Documents, but this assistance will not require that the Town give early notice of rejection of work or materials.
  - i) The examination and/or assistance by the Town shall not relieve the Contractor of the Contractor's responsibility of any actions it may take or neglect by Contractor or its subcontractors in performing the work.
  - ii) The Town shall not be responsible for Contractor's means, methods, techniques, sequences of starting, stopping, or resuming work, or procedures of construction, or the safety precautions and programs incident thereto, and the Town shall not be responsible for Contractor's failure to perform the work in accordance with the Contract Documents.
  - iii) The Town shall not be responsible for the acts or omissions of Contractor or any subcontractors, or any of Contractor's agents or employees.
  - iv) Neither the Town's authority to act under these Contract Documents, nor any decision made by the Town in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the Town to Contractor, any subcontractor, any materialman, fabricator, supplier or any of their agents, or employees or any other person performing any of the work.
- c. The Town shall retain authority to make a final decision in any matter which involves interpretation of plans and other Contract Documents, including quality and quantities of materials used, construction and progress of work, work completed and estimates.
- d. If the Town finds any materials or work faulty, it shall so inform the Contractor; the Contractor shall replace, at its expense, and as soon as possible, said faulty materials or work. If the Contractor does not replace the faulty materials or work within a reasonable length of time, the Town may stop the work, furnish materials and men to replace the faulty work, and deduct the expense incurred by the Town from the amount due, or which will become due the Contractor.
- e. The Town may reinspect work which has been passed and it shall be permitted to reject faulty work which existed but was not apparent at the time of a previous inspection.
- f. The Town may order the Contractor to uncover work which has been covered without the consent of the Town. The Contractor shall bear the expense of the extra work. The Town

may order the Contractor to uncover work which has been covered with the consent of the Town. If the questioned work is found to be without fault, the Contractor may charge the Town for this extra work; if the questioned work is found faulty, the Contractor shall bear the expense of the extra work.

### **32) SUPERVISION:**

The Contractor shall maintain a competent superintendent, who fulfills the Town's requirements, on this project at any time work is in progress and furnish efficient and skilled supervision of all work. The Contractor may change project superintendents only if the change is approved by the Town or if the Contractor discharges the project superintendent for cause. If the Contractor is not present, the Town shall be permitted to consider the project superintendent the Contractor's agent; and the Town shall consider instructions given to the superintendent as binding as instructions given to the Contractor.

### **33) ACCIDENT PREVENTION:**

- a. No laborer or mechanic employed in the performance of this Contract shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety as determined under construction safety and health standards promulgated by the Secretary of Labor.
- b. The Contractor shall exercise proper precautions at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of Contractor's prosecution of the work. Machinery, equipment, and all hazards shall be guarded in accordance with safety provisions to the extent that such provisions are not in conflict with applicable laws.
- c. The Contractor shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. The Contractor shall promptly furnish the Town with these reports.

### **34) CLAIMS FOR ADDITIONAL PAY:**

If the Town issues written instructions which the Contractor believes will involve extra work and cost, the Contractor may assert a claim for extra cost only if it gives written notice to the Town Manager or his/her designee immediately after it receives the instructions and before it complies with those instructions. **The Contractor may assert a claim for extra cost without advance written notice only if immediate compliance with the instructions given by the Town is necessary to meet an emergency which endangers life or property.**

If the Contractor asserts a claim for extra pay, the Town may cancel the instructions and deny the claim or follow the procedure(s) set forth herein for "CHANGES". The cost or credit to the Town from a change in the work shall be determined from price information in the bid form, or by a lump sum price agreement with the Contractor, or a price based on the Contractor's cost for labor, materials, equipment, supervision, and insurance plus fifteen percent (15%) for profit and

overhead, or as the parties otherwise agree.

**35) FITTING AND COORDINATION OF THE WORK:**

The Contractor shall be responsible for the proper fitting of all work and for the coordination of the operations of all trades, subcontractors, or materialmen engaged upon this Contract. The Contractor shall be prepared to guarantee to each of its subcontractors the locations and measurements which they may require for the fitting of their work to all surrounding work.

**36) SUB-CONTRACTING:**

Nothing in the Contract Documents shall be construed to create a contractual relationship between the Town and a subcontractor doing a portion of the work on this project, nor shall it create any obligation on the part of the Town to pay or see to the payment of any moneys due any such subcontractor. The Town shall hold the Contractor responsible for the work done by any of its subcontractors. For any portion of the work to be sub-contracted, a list of the subcontractors shall be furnished to the Town Manager prior to the commencing of this project(s).

**37) MUTUAL RESPONSIBILITY OF CONTRACTORS:**

If, through acts or neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor shall settle with such other, contractor or subcontractor by agreement or arbitration, if such other contractor or subcontractor will so settle. If such other contractor or subcontractor shall assert any claim against the Town on account of any damage alleged to have been so sustained, the Town will notify the Contractor, who shall defend at Contractor's own expense any suit based upon such claim, and, if any judgment or claims against the Town shall be allowed, the Contractor shall pay or satisfy such judgment or claim and pay all attorney's fees, costs, and expenses in connection therewith.

**38) LINES AND GRADES:**

The Town shall establish a base line and a benchmark at each location of any separate portion of this project. The Contractor shall reference all base lines, benchmarks, and property monuments and re-establish in their original state any which are disturbed during work on this project. The Contractor shall verify in the field all base lines, elevations, and dimensions shown on the plans, report any error, omission, or discrepancy it discovers, and assume full responsibility for its grades.

**39) ASSIGNMENT OR NOVATION:**

The Contractor shall not assign or transfer, whether by assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the express written consent of the Town; provided, however, that assignments to banks, trust companies or other financial institutions, of payments due to Contractor, may be made without the consent of the Town.

#### **40) OTHER CONTRACTS:**

The Town may award, or may have awarded other contracts for additional work, and the Contractor shall cooperate fully with such other contractors, by scheduling its own work with that to be performed under other contracts as may be directed by the Town. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor as scheduled, on this project or any other project.

#### **41) PATENT INFRINGEMENT:**

The Contractor shall indemnify the Town, its officers, its agents, and its employees and hold all free of liability and unharmed by any suit or claim which results from the incorporation of any patented or unpatented invention, device, process, or system in the work of this project.

#### **42) SHOP DRAWINGS:**

Where a portion of this project requires the use of shop drawings, the Contractor shall submit four (4) copies of these drawings and a schedule of the required work to the Town. The Town shall review these drawings promptly and note any corrections required to meet the intent of the plans and specifications. The Contractor shall make the noted revisions and submit four (4) copies of the revised drawings to the Town. The Town's approval of the shop drawings shall not relieve the Contractor of its responsibility for any error in the shop drawings and any deviation from the plans and specifications.

#### **43) PLANS AND SPECIFICATIONS:**

- a. The Contractor shall keep a set of plans and specifications available at the project site at all times.
- b. The original plans and specifications, and any copies of plans and specifications the Town furnishes the Contractor, shall remain the property of the Town. They shall not be used on work other than this project. The Town may ask the Contractor to return all copies of the plans and specifications when the work is completed. The Contractor shall coordinate the requirements of the plans, specifications, and all other Contract Documents prepared for this project.

#### **44) SUB-SURFACE DATA:**

The Town does not guarantee the accuracy of the sub-surface data shown on the plans. Where it will influence its execution of the Contract, the Contractor shall, with its own resources, verify ground water elevations, soil conditions, wetland jurisdictional boundary, the location of underground structures, sewers, water pipes, gas lines, telephone cables, electric cables, conduits, and other such underground infrastructure.

#### **45) FACILITIES, MATERIALS, AND EMPLOYEES:**

- a. Unless it is otherwise stipulated in the Contract Documents, Contractor shall be responsible

for supervision, electric power, water, and any other facilities required to complete this project.

- b. The Contractor shall incorporate in the work of this project only materials, equipment, and methods which conform to applicable Town specifications.
- c. Unless otherwise specifically provided for in the Technical Specifications, all workmanship, equipment, materials, and articles incorporated in the work shall be new and the best grade of the respective kinds for the purpose. Where equipment, materials, articles, or workmanship are referred to in the Technical Specifications as "equal to" any particular standard, the Town shall decide the question of equality.
- d. The Contractor shall furnish to the Town for approval the manufacturer's detailed specifications for all machinery, mechanical and other special equipment, which it contemplates installing, together with full information as to type, performance characteristics, and all other pertinent information as required, and shall likewise submit for approval, as required, full information concerning all other materials or articles which it proposes to incorporate in the work.
- e. Machinery, mechanical and other equipment, materials, or articles installed or used without such prior approval shall be at the risk of subsequent rejection.
- f. Materials specified by reference to the number or symbol of a specific standard, such as an A.S.T.M. Standard, a Federal Specification or other similar standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Invitation to Bid/RFP, except as limited to type, class, or grade, or modified in such reference. The Standards referred to, except as modified in the Technical Specifications shall have full force and effect as though printed therein.
- g. The Contractor shall use only employees with skills at least equal to the requirements of their work assignment on this project.

#### **46) TESTS AND INSPECTIONS OF MATERIALS AND EQUIPMENT:**

- a. Unless it is otherwise stipulated in the Invitation to Bid/RFP, Terms and Conditions, or Contract Documents, the tests and inspections of materials and equipment incorporated in the work of this project shall be made at the Contractor's expense by independent laboratories and agencies approved by the Town.
- b. The Contractor shall instruct any laboratory or agency making, required tests to furnish the Town with a copy of the report made on each test and inspection.

#### **47) PROTECTION OF WORK, MATERIALS, PROPERTY, AND THE PUBLIC:**

The Contractor shall protect the work of this project and the stored materials not yet incorporated in the work, on site or off site, from injury, damage, and loss. The Contractor shall protect and save from damage all public and private property adjacent to the project site. The Contractor shall

guard all excavations by appropriate means; and shall protect the public from hazard. Receipt of progress payment(s) shall not affect the obligations of the Contractor under this provision.

**48) PROTECTION OF MONUMENTS:**

The Contractor shall protect and save from damage or movement all survey monuments, permanent reference monuments, property monuments, reference points, and benchmarks. If the work demands the temporary removal of such a monument, point, or benchmark, the Contractor shall notify the Town who shall reference the monument, point, or benchmark and reset it without cost to the Contractor. If the Contractor damages, moves, or destroys a monument, point, or benchmark, the Town may restore such by a registered surveyor at the Contractor's expense and withhold the cost from money otherwise due the Contractor from the Town.

**49) USE OF PREMISES:**

The Contractor shall confine its equipment, storage or materials, and construction operations to the contract limits as shown on the drawings and as prescribed by ordinances or permits, or as determined by the Town, and shall not unreasonably encumber the site or public right-of-way with its materials and construction equipment.

**50) WORK PROGRESS:**

- a. If the Contractor fails to proceed with the diligence required to complete the project within the contract time or within an extension of that time the Town may grant, the Town may terminate the Contractor's right to proceed with the work by giving it written notice.
- b. If the Town terminates the Contractor's right to proceed, the Town may choose to proceed with the work, take possession of the materials on the project site, incorporate these materials in the work, and hold the Contractor and its sureties liable for payment of excess costs the Town may incur, or demand the surety to complete the project as permitted under the terms and conditions of the performance bond. The execution of this Contract by Contractor shall constitute an acknowledgment of the Surety's consent to this provision.
- c. If the Town does not terminate the Contractor's rights to proceed, the Contractor shall proceed with the work; in this event, it will be impossible to determine the actual damage the delay has caused. In lieu of payment of actual damage, the Contractor and its sureties shall be liable for the payment of the fixed, agreed, and liquidated damages as may be set forth in the Contract Documents for each calendar day of delay beyond the contract time.

**51) REQUESTS FOR INTERPRETATION AND INFORMATION:**

- a. All requests for interpretation shall be in writing and submitted to the Office of the Town Clerk. Whenever a written request for interpretation(s) of the Contract Documents are properly submitted, the request(s) shall be answered by way of written Addenda. All Addenda will be sent to each party holding Contract Documents. The Town shall not be responsible for the safe delivery of the Addenda.



It shall be the responsibility of the party to make inquiry as to the issuance of the Addenda. All such Addenda shall become part of the Contract Documents and all parties shall be bound by such Addenda, whether received or not.

- b. It shall be the responsibility of the Contractor to make timely requests of the Town for any additional information not already in its possession which should be furnished by the Town under the terms of this Contract, and which it will require in the planning and execution of the work. Such request may be submitted from time to time as the need is approached, but each shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Each request shall be in writing and list the various times and the latest date by which each will be required by the Contractor. The first list shall be submitted, within two (2) weeks after Contract award and shall be as complete as possible at that time. The Contractor shall, if requested, furnish promptly any assistance and information the Town may require in responding to these requests of the Contractor. The Contractor shall be fully responsible for any delay in its work or to others arising from its failure to comply fully with the provisions of this section.

#### **52) DISPUTES:**

- a. All disputes arising under this Contract or its interpretation, except those disputes covered by FEDERAL LABOR• STANDARD PROVISIONS (if applicable), whether involving law or fact or both, or extra work, and all claims for alleged breach of contract shall within ten (10) calendar days of commencement of the dispute be presented by the Contractor to the Town for decision. All papers pertaining to claims shall be filed in quadruplicate. Such notice need not detail the amount of the claim but shall state the facts surrounding the claim in sufficient detail to identify the claim, together with its character and scope.

At all time(s) during the pendency of a dispute, the Contractor shall proceed with the work as directed. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived by the Contractor.

- b. The Contractor shall submit in detail its claim and proof thereof. Each decision by the Town shall be final. Each decision by the Town will be in writing and mailed to the Contractor by registered or certified mail, return receipt requested, directed to the Contractor's last known address.
- c. If the Contractor does not agree with any decision of the Town, it shall in no case allow the dispute to delay the work but shall notify the Town promptly that it is proceeding with the work under protest.

#### **53) CONTRACTOR INSURANCE:**

**For contracts not exceeding \$500,000.00 dollars the following insurance requirements shall be met:**

- i) The Contractor shall, at its own expense, procure and maintain, with insurers acceptable to the Town (the "Owner"), the types and amounts of insurance conforming to the minimum

requirements set forth herein. The Contractor shall not commence work until the required insurance is in force and evidence of insurance acceptable to the Owner has been provided to and approved by the Owner. As evidence of compliance with the insurance required herein, the Contractor shall furnish Owner with (a) a fully completed satisfactory Certificate of Insurance evidencing all coverage required herein, with a copy of the actual notice of cancellation endorsement(s) as issued on the policies and a copy of the actual additional insured endorsement as issued on the Commercial General Liability policy, signed by an authorized representative of the insurer(s) verifying inclusion of Owner's officials, officers and employees as Additional Insureds in the Commercial General Liability coverage; (b) the original of the policy(ies); or (c) other evidence satisfactory to Owner. Such evidence shall include thirty (30) days written notice of cancellation to the Owner for all coverage. With respect to Property Insurance, an appropriate Evidence of Property Insurance form, or a copy of the policy itself shall be satisfactory evidence of insurance. Until such insurance is no longer required by this Contract, the Contractor shall provide the Owner with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.

**a. Worker’s Compensation Insurance:**

a. Such insurance shall be no more restrictive than that provided by the Standard Workers' Compensation Policy, as filed for use in Florida by the National Council of Compensation Insurance, without restrictive endorsements. In addition to coverage for the Florida Workers' Act, where appropriate, coverage is to be included for the Federal Employer’s Liability Act and any other applicable Federal or State law. The policy must be endorsed to provide the Owner with thirty (30) days’ notice of cancellation. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

(i) Part One:	“Statutory”	
(ii) Part Two:	\$500,000.00	Each Accident
	\$500,000.00	Disease-Policy Limit
	\$500,000.00	Disease-Each Employee

b. The policy must be endorsed to waive the insurer's right to subrogation against Owner and its officials, officers and employees in the manner which would result from the attachment of National Council on Compensation Insurance's (NCCI) Waiver of Our Right to Recover from Others' Endorsement (Advisory Form WC 00 03 13) with Owner and its officials, officers and employees scheduled thereon.

**b. General Liability Insurance:**

a. Such insurance shall be no more restrictive than that provided by the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those required by ISO or the State of Florida or those described below. The policy

must be endorsed to provide the Owner with thirty (30) days' notice of cancellation. The coverage may include restrictive endorsements excluding coverage for liability arising out of:

- (i) Mold, Fungus or Bacteria
- (ii) Terrorism
- (iii) Sexual Molestation

b. Unless the work under this Contract includes activities, which would be the subject of such exclusions, the coverage may also exclude coverage for liability arising out of:

- (i) Architects and Engineers Professional Liability
- (ii) Exterior Insulation and Finish Systems (EIFS)

c. The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

- |       |                |   |
|-------|----------------|---|
| (i)   | \$1,000,000.00 | General Aggregate                       |
| (ii)  | \$1,000,000.00 | Products/Completed Operations Aggregate |
| (iii) | \$1,000,000.00 | Personal and Advertising Injury         |
| (iv)  | \$1,000,000.00 | Each Occurrence                         |

**c. Automobile Liability Insurance:**

Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of the standard Business Auto Policy (ISO Form CA 00 01) without restrictive endorsements, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of the work. The policy must be endorsed to provide the Owner with thirty (30) days' notice of cancellation. Such insurance shall not be subject to any aggregate limit and the minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

- |     |                |                                  |
|-----|----------------|----------------------------------|
| (i) | \$1,000,000.00 | Each Occurrence – BI/PD Combined |
|-----|----------------|----------------------------------|

**d. Property Insurance:**

a. If this Contract includes: (1) construction of a new above-ground structure or structures; (2) any addition(s), improvement(s), alteration(s) or repair(s) to an existing above-ground structure or structures; or (3) the installation of machinery or equipment into an existing structure or structures, the Contractor shall provide, in a policy acceptable to Owner, "all risk" (i.e., Special Form) property insurance on any such construction, additions, machinery or equipment. The amount of the insurance shall be no less than the estimated replacement value at the time of the Owner's final acceptance of such new structures, addition(s), improvement(s), alteration(s),

repair(s), machinery or equipment<sup>1</sup>. The coverage shall not be subject to any restriction with respect to occupancy or use by the Owner and, subject to thirty (30) days prior written notice to the Owner, shall remain in full effect until final acceptance by the Owner. The policy must be endorsed to provide the Owner with thirty (30) days' notice of cancellation. The Owner shall be an insured on this policy. The maximum deductible shall be \$500 per occurrence.

- b. If this Contract includes: (1) construction of a new above-ground structure or structures located within a Special Flood Hazard Area (100 year floodplain), or (2) any addition(s), improvement(s), alteration(s) or repair(s) to an existing above-ground structure or structures located within a Special Flood Hazard Area (100 year floodplain), Flood insurance must also be provided on such new structure(s), addition(s), improvement(s), alteration(s) or repair(s) for the lesser of: (1) the estimated replacement value at the time of the final acceptance of such new structure(s), addition(s), improvement(s), alteration(s) or repair(s), or (2) the maximum amount of flood insurance available through the National Flood Insurance Program.
  - c. The insurance provided by the Contractor and its subcontractors shall apply on a primary basis. Any insurance maintained by the Owner, shall be excess of and shall not contribute with the insurance provided by the Contractor and its subcontractors. Except as otherwise specifically authorized in this Contract, or for which prior written approval has been obtained hereunder, the insurance maintained by the Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention. Under limited circumstances, the Owner may permit the application of a deductible or permit the Contractor to self-insure, in whole or in part, one or more of the insurance coverages required by this Contract. The Contractor shall pay on behalf of the Owner or Owner's officials, officers, and employees any deductible or self-insured retention applicable to a claim against the Owner or the Owner's officials, officers, and employees.
- ii) The insurance provided by the Contractor shall be endorsed to provide that the Insurer waives its rights against the Owner and Owner's officials, officers, and employees.
  - iii) Compliance with these insurance requirements shall not limit the liability of the Contractor or its Subcontractors. Any remedy provided to the Owner by the insurance provided by the Contractor and its subcontractors shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of the Contractor) available to the Owner under this Contract or otherwise.
  - iv) Neither approval nor failure to disapprove insurance furnished by the Contractor shall relieve the Contractor from responsibility to provide insurance as required by this Contract and the Contract Documents.

#### 54) INDEMNIFICATION:

- a. The Contractor shall indemnify and hold harmless the Town, its elected officials, officers, agents, and employees, from and against any and all claims, costs, losses, and damages (including but not limited to all fees and reasonable charges of attorneys, and other professionals, and all court or other dispute resolution costs), liabilities, expenditures, taxes and assessments, or cause and/or causes of action of any kind (including negligent, reckless, or willful or intentional acts or omission of the Contractor including but not limited to subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees and any person or organization directly or indirectly employed and/or utilized by the Contractor to perform or furnish any work or anyone for whose acts any of them may be liable), to the extent arising from, relative to, or caused by the performance of any services as may be described or provided in the Contract Documents, and/or any services pursuant to the Contract issued hereunder. Such indemnification shall specifically include, but not be limited to, claims, damages, losses, liabilities, and expenses (including but not limited to all fees and reasonable charges of attorneys, and other professionals, and all court or other dispute resolution costs) to the extent arising out of or from:
  - i) Any omission, default, or negligent act of the Contractor including but not limited to subcontractors, sub-subcontractors, sub-consultants, sub-sub-consultants, materialmen, or agents of any tier or their respective employees, (including negligent, reckless, willful, or intentional acts or omissions);
  - ii) Any and all bodily injuries, sickness, disease or death;
  - iii) Injury to or destruction of tangible property, including the loss of use resulting therefrom;
  - iv) Other such damages, liabilities, or losses received or sustained by any person or persons during or on account of any operations connected with this Contract and/or any work arising out of the Contract Documents; and/or
  - v) The violation of any federal, state, county or city laws, by-laws, ordinances, or regulations by the Contractor including but not limited to subcontractors, sub-subcontractors, sub-consultants, sub-sub-consultants, materialmen, or agents of any tier or their respective employees and/or persons and/or entities under Contractor's direction and/or control.
  - vi) Any indemnification hereunder shall not include claims of, or damages resulting from, gross negligence, or willful, wanton or intentional misconduct of the Town or its elected officials, officers, agents, and employees, or for statutory violation or punitive damages **except** and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Contractor or any of the Contractor's subcontractors, sub-subcontractors, sub-consultants, sub- sub-consultants, materialmen, or agents of any tier or their respective employees.

- b. This contractual indemnity is authorized by Section 725.06 of the Florida Statutes, and this contractual indemnity shall survive the termination of this Contract.
- c. Contractor shall indemnify, and hold harmless the Town, its elected officials, officers, agents, and employees from liability for damages to persons or property caused by any act, omission, or default of Contractor (specifically including, but not limited to, Contractor's negligent or grossly negligent acts, omissions, or defaults) to the extent it relates to, pertains to, or arises from the Contract or Contractor's performance thereof. This contractual indemnity is authorized by Sections 725.06 and 725.08 (if applicable) of the Florida Statutes. Contractor also agrees to indemnify, defend, save and hold harmless the Town, its elected officials, officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and cause and causes of action of every name and description including but not limited to reasonable attorney's fees and reasonable attorney's fees in appellate or bankruptcy proceedings, that may be brought against the Town, its elected officials, officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent or for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.
- d. In the event of any claims or suits which fall within either of the foregoing indemnities, payment of any amount due pursuant thereto shall, after receipt of written notice by Contractor from the Town that such amount is due, be made by Contractor prior to the Town being required to pay same, or in the alternative, the Town, at the Town's option, may make payment of an amount so due and the Contractor shall promptly reimburse the Town for same, together with interest thereon at the rate of 6% per annum simple interest from the day of the Town's payment.
- e. Additionally, if Contractor, after receipt of written notice from the Town fails to make any payment due hereunder to the Town, Contractor shall pay any reasonable attorney's fees or costs incurred by the Town in securing any such payment from Contractor.
- f. Nothing contained herein is intended nor shall it be construed to waive the Town's Sovereign Immunity and/or the Town's limits of liability as set forth in Section 768.28 of the Florida Statutes, as amended from time to time, regardless of whether any such obligations are based in tort, contract, statute, strict liability, and negligence, product liability or otherwise. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist in the Town's favor
- g. The Contractor shall not be entitled to an increase in the contract price or payment or compensation of any kind from Town for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency or extended overhead, arising because of delay, disruption, interference or hindrance from any cause whatsoever whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by Contractor for hindrances or delays due solely to fraud, bad faith or active malicious interference on the part of Town. Otherwise, Contractor shall be entitled only to extensions of the contract time as the sole and exclusive remedy for excusable events of delay.
- h. The Town reserves the right to include a provision for liquidated damages as a result of any

delay by the Contractor.

- i. The Contractor and its subcontractors and/or sub-subcontractors agree by entering into the Contract to a waiver of subrogation for each required policy herein. When required by the insurer or should a policy condition not permit the Contractor or subcontractor or sub-subcontractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then the Contractor or subcontractor or sub-subcontractor agree to notify the insurer and request the policy be endorsed with a “waiver of transfer of rights against others” or its equivalent. This “waiver of subrogation” requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should the Contractor or subcontractor or sub-subcontractor enter into such an agreement on a pre-loss basis.
- j. Acceptance by the Contractor of the last payment shall be a release to the Town and every officer and agent thereof, from all claim(s) and liability hereunder for anything done or furnished for, or relating to the work, or for any act or neglect of the Town or of any person relating to or affecting the work.
- k. The parties agree that to the extent the written terms of this Indemnification conflict with any provisions of Florida law or Florida Statute(s), in particular Sections 725.06 and 725.08 of the Florida Statutes, the written terms of this Indemnification shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in full and complete compliance with all such laws or statutes and to contain such limiting conditions, or limitations of liability, or to not contain any unenforceable, or prohibited term or terms, such that this Indemnification shall be enforceable in accordance with and to the greatest extent permitted by Florida law.

#### **55) BID BOND:**

- a. Where the bid price does not exceed \$30,000.00, a bidder will not be required to post a bid bond. In cases where the bid price does exceed \$30,000.00, each bid must be accompanied by a certified check, cashier's check or a bid bond in an amount not less than five per-cent (5%) of the base bid, as guarantee that the Consultant/Bidder/Contractor will not withdraw from the competition after the opening of the bids, and will, within twenty-five (25) consecutive calendar days after receipt of written notice of award, enter into a contract with the Town in accordance with the accepted Contract Documents. **Should the successful Consultant/Bidder/Contractor fail to enter into a contract, the bid bond shall be forfeited as liquidated damages.**
- b. **No proposal or bid shall be considered unless accompanied by a bid bond in the amount and form specified.**

#### **56) PERFORMANCE AND PAYMENT BOND:**

- a. In cases where the bid price does exceed \$30,000.00 and/or for utility contracts covered by Section 180.24 of the Florida Statutes, the successful bidder shall be required to furnish a performance bond in an amount equal to one hundred percent (100%) of the contract price as security for the faithful performance of the contract. The successful bidder shall also furnish a payment bond in an amount equal to one hundred percent (100%) of the contract price as security for the payment of all persons performing labor on the project under the contract and furnishing material(s).

- b. The performance bond and the payment bond may be in one or separate instruments in accordance with applicable law. Subject bonds are due within twenty-five (25) calendar days after written notice of award is received. Subject bonds shall also be recorded in the public records of Polk County [per F.S. 255.05(1)(a)] with proof of the recording furnished with the bonds or a certified recorded copy.

#### **57) BONDING COMPANY QUALIFICATIONS:**

- a. All bonds shall be written through a reputable and responsible surety bond agency licensed to do business in the State of Florida and with a surety company or corporation meeting the following specifications:
  - i) Minimum rating of "A-" or better;
  - ii) Financial Size Category of "VII" according to the A.M. Best Company; and
  - iii) Current Certificate of Authority as acceptable surety on Federal Bonds in accordance with the latest edition of the United States Treasury Department Circular 570 entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and As Acceptable Reinsurance Companies" and shall be accepted for an amount not exceeding the underwriting limitations thereon.
- b. All surety companies are subject to approval and may be rejected by the Town without cause in the same manner that bids may be rejected.
- c. **Awards of \$500,000 or less:** Bonds shall be written with a surety company meeting the qualifications as set forth in Paragraph a) above, or the qualifications set forth in Section 287.0935 of the Florida Statutes.
- d. **Power of Attorney:** An Attorney-in-fact which signs a contract bond shall file with said bond a certified and effectively dated copy of the power of attorney. The power of attorney shall bear the raised seal of the surety company.
- e. The failure to furnish the required bond(s) within twenty-five (25) calendar days or within such extended period as the Town may grant shall constitute a default, and the Town may either award the contract to the next most responsive and responsible bidder or re-advertise for bids, and may charge against the original successful bidder the difference between the amount of its bid and the amount for which a contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the bid bond. If a more favorable bid is received by re-advertising, the defaulting bidder shall have no claim against the Town for a refund.

#### **58) PAYMENT:**

The construction agreement shall set forth the terms and condition(s) relating to the contract price, payment(s), timing of payment(s), progress payment(s), and final payment. The construction agreement shall be negotiated, approved, and executed by the Town and Contractor no later than 30 calendar days following the date on which the Town awards the contract and/or project.



## **59) LIENS:**

No liens of any type shall be allowed, including labor, materials, rentals, or services furnished.

## **60) GUARANTEE:**

- a. The Contractor shall guarantee all materials, equipment, and workmanship for a period of no less than one (1) year from the date the Town accepts the completed project in its entirety. The Contractor shall replace, repair, or restore any faulty materials, equipment, work, and incidental damage during this period of guarantee.
- b. Neither the final payment nor any provision in the Contract Documents shall relieve the Contractor of the responsibility for negligence or faulty materials or workmanship within the extent and period provided by law. Upon written notice, the Contractor shall remedy all defects due thereto and pay all expenses for any damage to other work and/or property of the Town resulting therefrom.
- c. A notice of defect(s) will be issued by the Town. Upon receipt by the Contractor of such written notice, the Contractor shall immediately investigate any and all claimed defects. Should the Contractor feel that any claimed defect is invalid, it shall so advise, in writing, to the Town within ten (10) calendar days after receipt of said notice.
- d. Defects shall be remedied by the Contractor within thirty (30) calendar days after receipt of notice. Within ten (10) calendar days after completion of such corrective measures, the Contractor shall notify the Town, in writing, of correction in defects. The Contractor shall transmit to the Town a copy of each certified statement as required below.
- e. Each subcontractor shall transmit to the Contractor, in duplicate, on its business letterhead, addressed to both the Contractor and Town, a certified statement as to:
  - i) The work performed and/or materials supplied; and
  - ii) A guarantee in accordance with requirements of the Contract Documents appertaining to said work and/or materials.

## **61) THE CONSTRUCTION AGREEMENT:**

- a. The Town will require the successful bidder, as the Contractor, to execute a construction agreement. Upon execution of the construction agreement, the construction agreement and the Contract Documents become the Contract between the Town and Contractor.
- b. The construction agreement shall be negotiated, approved, and executed by the Town and Contractor no later than 30 calendar days following the date on which the Town awards the contract and/or project.
- c. The Contractor cannot claim modification of the Contract because of any representation made by an employee of the Town or any other person.
- d. In the event the construction agreement is not negotiated, approved, and executed within the time period set forth herein, the Town may, in its sole discretion, award the project and/or contract to the next most responsive and responsible bidder or withdraw the subject

Invitation-To-Bid/RFP and re-advertise the project and/or contract.

**62) CONSTRUCTION SCHEDULE:**

- a. The Contractor shall submit to the Town for review and approval, a construction schedule at least five (5) working days before the start of project.
- b. The Contractor shall complete the work, phase(s), and/or part(s) of the project in the order set forth in the approved construction schedule.
- c. The Contractor's receipt of an approved construction schedule does not authorize the Contractor to begin work on the project.
- d. The Town's issuance of a Notice to Proceed authorizes the Contractor to commence work on the project.

**63) FINAL INSPECTION:**

- a. When the work on this project(s) is substantially completed, the Contractor shall notify the Town, in writing, at least three (3) working days before the inspection date that the work will be ready for final inspection on a definite date. The Contractor shall expressly provide the date for final inspection.
- b. Prior to the final inspection, the Contractor shall clear the project site of all trash, rubbish, and debris and restore all damage done to the project site and adjacent areas during the performance of the project. The Contractor's duty to clear the project site prior to final inspection does not relieve the Contractor of the obligation to keep the project site free from trash, rubbish, and debris during the performance of the contract.

**64) CONSTRUCTION AND CONSULTING EVALUATION:**

- a. The award of contracts by the Town of Dundee for construction and/or consulting service(s) is based on the lowest responsive/responsible bid (for construction) or in accordance with the guidelines and requirements of Section 287.055 of the Florida Statutes (Consultants Competitive Negotiation Act) for applicable consulting services. In addition, the Town will consider the previous performance of any bidder who may have completed work for the Town of Dundee or other entity
- b. A Construction and Consulting Evaluation Form shall be completed by the department head or Town Manager for the project. The form shall be completed upon the completion of the project and submitted to the Office of the Town Clerk for retention.
- c. This form will be completed on all firms performing construction and/or consulting work for the Town of Dundee. Furthermore, the Town may, at its discretion, provide this form to other entities for whom the noted firm has completed work.