

INSTRUCTIONS TO PROPOSERS & GENERAL CONDITIONS

IS-1. **Acceptance** – Submission of a Response to this Solicitation Package affirms acceptance of these Instructions & General Conditions. Any questions related to these Instructions & General Conditions shall be directed to the Purchasing Division using the method indicated in these instructions. Any questions must be submitted and resolved prior to submission of a response. Exceptions to these Instruction & General Conditions are not permitted.

IS-2. **Addendum** – The Purchasing Division may issue an Addendum to this solicitation which changes, adds to, or clarifies the terms, provisions, or requirements of the solicitation. The Proposer should not rely on any representation, statement or explanation whether written or verbal, regardless of the source, other than those made in this solicitation document or in any addenda issued. Where there appears to be a conflict between the Solicitation Package and any addenda, the last addendum issued shall prevail.

It is the Proposers responsibility to ensure receipt of all addenda and any accompanying documentation. The Proposer is required to acknowledge having reviewed the addendum within the solicitation system. Failure to acknowledge the addendum may cause the Submittal Package to be deemed non-responsive and not be considered for award.

IS-3. **Additional Information/Questions** - Any communication or inquiries are to be made in writing to the attention of the Purchasing Representative identified in the Solicitation Package no later than **SEVEN (7) CALENDAR DAYS** prior to the solicitation due date. Oral answers given by anyone shall not be authoritative. Proposers must submit their questions electronically through the online e-Proposal/RFP/Q system. The Town reserves the right to not answer questions received after the deadline for questions. Should a late question be deemed substantive by the Town the Town may issue an Addendum to answer the question and extend the due date and time for Solicitation Submittals.

IS-4. **Additional Terms** – When submitting your response do not attach any forms, proposals or documents which may contain terms and conditions of the Proposer. Inclusion of additional terms and conditions which may be on your company's standard forms, shall result in your response being declared non-responsive and rejected, as these changes will be considered a counteroffer to the Town's solicitation. Should a Proposer wish to propose terms & conditions different than those provided by the Town they must be listed as an Exception and included in the place provided to list Exceptions.

IS-5. **Applicable Laws** – Proposers are advised all Town Agreements and documentation pertinent to the Solicitation Package and Submittal Package are subject in full or in part to all legal requirements provided for in applicable Town Ordinances, State Statutes, and Federal Regulations. Uniform Commercial Code, Chapters 671-679 et seq, Florida State Statutes shall prevail as the basis for contractual obligations between the Proposer and the Town for any terms and conditions not specifically stated within the context of this Solicitation Package or resulting Agreement.

IS-6. **Award** – Award may be made to the Proposer which offers the best value to the Town. The Town reserves the right to reject any and all offers, to waive non-material irregularities or technicalities and to re-advertise for all or any part of this solicitation as deemed in its best interest. The Town shall be the sole judge of its best interest.

The Town reserves the right to accept or reject any or all proposals, with or without cause, to waive technicalities or to accept the proposal which, in its sole judgment, best serves the interest of the Town, or to award a contract to the next most qualified proposal if the successful proposal does not execute a contract within sixty (60) days after the award of the proposal. The Town also reserves the right to abandon the project and/or to solicit and re-advertise for other proposals.

The Proposer understands that this RFP does not constitute an offer or an Agreement with the Proposer. An offer or Agreement shall not be deemed to exist and is not binding until proposals are reviewed by appointed staff, the best proposal identified, approved by the appropriate level of authority within the Town and executed by all parties.

Any proposal may be withdrawn until the date and time set above for the submission of the proposals. Any proposal not so withdrawn shall constitute an irrevocable offer for a period of six (6) months to provide to the Town the services set forth in this Request for Proposals.

IS-7. **Availability of Funds** – The obligations of the Town under this award are subject to the availability of funds.

IS-8. **Availability of the Platform** – All responses to this solicitation must be submitted electronically through the e-Proposal/RFP Platform. Should there be any technical issues with the Platform (not user/Proposer issues) that prevents any Proposer from submitting a response within the two (2) hours immediately before the due time, the solicitation

Town of Palm Beach for Town of Palm Beach Retirement Board of Trustees and Employees of the Town of Palm Beach

Platform provider (Negometrix) and affect all participating Proposers. The Town shall verify the technical issue or unavailability of the Platform with Negometrix, the system provider. Technical issues localized to a single Proposer will not be considered cause for an extension.

IS-9. Bankruptcy/Insolvency - At the time of submittal of Proposal, vendor/firm shall not be in the process of or engaged in any type of proceedings in insolvency or bankruptcy, either voluntary or involuntary, or receivership proceedings. If the vendor/firm is awarded a contract for six (6) months or longer, and files for bankruptcy, insolvency or receivership, the Town may, at its option, terminate and cancel said contract, in which event all rights hereunder shall immediately cease and terminate.

IS-10. Binding Offer – The submission of a Submittal Proposal Package to this Request for Proposal will constitute an incontrovertible representation by Proposer that Proposer has read, understands and is in compliance with every requirement of this Solicitation Package, that without exception the Submittal Proposal Package is premised upon performing the services and/or furnishing the commodities and materials and such means, methods, techniques, sequences or procedures as may be indicated in or required by the Solicitation Package and terms and conditions provided. The Proposer through their Submittal Package certifies the Solicitation Package provided is sufficient in scope and detail to indicate understanding of all requirements stated. Proposer Submittal Package is submitted with full knowledge and understanding of the requirements and time constraints stated.

IS-11. Binding on Successors and Assigns - This Contract shall inure to and be binding on the heirs, representatives, successors and assigns of the Town and the Contractor, although Contractor may not assign this Contract or any right hereunder (except to the extent of any payments earned for purposes of collateral assignment to lenders) absent the prior written consent of the Town. Contractor acknowledges that the Town has entered into this Agreement with the Contractor after an extensive competitive Proposal process and evaluation of Contractor's particular qualifications and skills to perform the Work. Therefore, Contractor agrees that the Town may withhold the consent to assignment referred to in this subsection for any reason the Town deems appropriate in its sole and unfettered discretion.

IS-12. Cancellation of Solicitation – The Town reserves the right to cancel, in whole or in part, any solicitation when it is in the best interest of the Town. Availability of all information related to a cancelled solicitation is subject to Chapter 119, Florida Statutes.

IS-13. Certifications - When applicable, vendor must hold Certificate of Competency issued by the State of Florida or the Palm Beach County Construction Industry Licensing Board and a current Occupational License for Palm Beach County. Copy of certificate and license must be submitted with Proposal and must be in the name of the vendor shown on the Proposal Proposal page.

IS-14. Certification of Proposer – Submitting a Submittal Package in response to this Solicitation Package, in addition to electronically accepting receipt of the Solicitation Package, certifies the Proposer's Authorized Agent has read, understands and accepts responsibility for the contents of this Solicitation Package and Proposer's Submittal Package and agrees to comply with all requirements prescribed in the Solicitation Package and as submitted in the Submittal Package.

IS-15. Changing of Forms – If the Town discovers any Town provided forms submitted by a Proposer in response to this solicitation have been altered the Town may, at its discretion, disqualify the Proposer and not consider their response for award.

IS-16. Code of Ethics - If any Proposer violates or is a party to a violation of the code of ethics of the Town of Palm Beach, Palm Beach County or the State of Florida with respect to this proposal, such Proposer may be disqualified from performing the work described in this proposal or from furnishing the goods or services for which the proposal is submitted and shall be further disqualified from submitting any future proposals for work, goods or services for the Town of Palm Beach. The link for further information regarding the Palm Beach County Commission on Ethics is: <http://www.palmbeachcountyethics.com/ordinances-codes.htm>.

IS-17. Codes of Regulation - The vendor must strictly comply with all Federal, State and local building and safety codes.

IS-18. Contractual Agreement – This RFP shall be included and incorporated in the final award. The order of contractual precedence will be the Contract or Price Agreement document, original Terms and Conditions, and contractor

Town of Palm Beach for Town of Palm Beach Retirement Board of Trustees and Employees of the Town of Palm Beach

response. Any and all legal action necessary to enforce the award will be held in Palm Beach County and the contractual obligations will be interpreted according to the laws of Florida. Any additional contract or agreement requested for consideration by the Proposer must be attached and enclosed as part of the proposal.

IS-19. **Contract Term** – The purpose of the RFP is to enter into an agreement for period of three (3) years with two (2) additional one (1) year periods at the Board's option. IS-20. **Town is Tax Exempt** - The Town is generally exempt from Federal Excise Taxes and all State of Florida sales and use taxes. The Town will provide a tax exemption certificate upon request. Contractors doing business with the Town are not exempt from paying sales tax to their Proposers for materials to fulfill contractual obligations with the Town, nor shall any contractor be authorized to use any of the Town's Tax Exemptions in securing such materials.

IS-21. **Collusion Among Proposers** - Where two (2) or more related parties, as defined herein, each submit a response for the same Solicitation, such responses shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of such related parties in preparation of such responses. Related parties shall mean an interested party or the principals thereof which have a direct or indirect ownership interest in another interested party for the same contract or in which a parent company or the principals thereof of one interested party have a direct or indirect ownership interest in another interested party for the same contract. Furthermore, any prior understanding, agreement, or connection between two (2) or more corporations, firms, or persons submitting a response for the same materials, supplies, services, or equipment shall also be presumed to be collusive. The relationship of manufacturer or their representative(s) providing pricing to distributors while each party submits a response for the same materials, supplies, services, or equipment shall be presumed to be collusive. Responses found to be collusive shall be rejected. Respondents which have been found to have engaged in collusion may be considered non-responsible, and may be suspended or debarred, and any contract resulting from collusive actions may be terminated for default.

IS-22. **Communication Restriction (Cone of Silence)** – All Proposers are prohibited from indirectly or directly communicating with any member of the Board or Town of Palm Beach to include the Town Council, Town Manager, Town of Palm Beach staff members and Board consultants. Proposers may only communicate with Designated Purchasing Representative identified in the Solicitation Package regarding the solicitation, their submittal package, Notice of Recommendation for Award, or Intent to Reject (if applicable) at any time prior to the Formal Award. Any such contact prior to the Formal Award shall be cause for rejection of your submittal. The Cone of Silence begins when the ITB, RFP or RFQ is issued and ends when the actual award/rejection by the Board is made.

IS-23. **Compliance with Occupational Safety and Health** - Proposer certifies that all material, equipment, etc., contained in his/her Proposal meets all O.S.H.A. requirements. Proposer further certifies that, if he/she is the successful Proposer, and the material, equipment, etc., delivered is subsequently found to be deficient in any O.S.H.A requirement in effect on date of delivery, all costs necessary to bring the material, equipment, etc., into compliance with the aforementioned requirements shall be borne by the Proposer.

IS-24. **Conflict of Interest** - The award of this solicitation is subject to Chapter 112, Florida Statutes. All respondents must disclose with their response the name of any officer, director, or agent who is also an employee of the Town of Palm Beach. Further, all respondents must disclose the name of any Town of Palm Beach employee who owns, directly or indirectly, an interest of five (5) percent or more of the Proposers company or any of its branches.

IS-25. **Contents of the Solicitation Package and Proposers Responsibilities** – It is the responsibility of the Proposer to become thoroughly familiar with the requirements, terms, and conditions of this solicitation. Pleas of ignorance of these matters by the Proposer will not be accepted as a basis for varying the requirements of the Solicitation Package or any resulting Contract.

IS-26. **Contingent Fees Prohibited** - The Proposer warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Proposer, to solicit or secure any resulting Contract and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Proposer any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the Town will have the right to terminate any resulting Contract without further liability and at its discretion, deduct from the contract price,

Town of Palm Beach for Town of Palm Beach Retirement Board of Trustees and Employees of the Town of Palm Beach

or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of any resulting Contract.

IS-27. **Copeland "Anti-Kickback" Act** - The Proposer must comply with the Copeland "Anti-Kickback" Act, 18 USC 874 as supplemented in Department of Labor regulations, 29 CFR Part 3, prohibiting employers from inducing any person employed to give up any part of the compensation to which he or she is otherwise entitled.

IS-28. **Cost of Preparing Response** - All costs incurred by the Proposer for preparation and submittal of a response to the solicitation will be the sole responsibility of the Proposer. The Town of Palm Beach shall not reimburse any Proposer for any such costs.

IS-29. Definitions

29.1. **Addendum:** An official change or revision to a Solicitation Package issued in writing by the Purchasing Division. An Addendum will be published through the Platform.

29.2. **Proposal, Offer, or Response:** Shall refer to any Proposal, offer, or response submitted in regard to this Solicitation that if accepted would bind the Proposer to perform the resultant Contract.

29.3. **Commodity:** A marketable item produced to fulfill a need or want, and references both goods and services. More specifically the product or service requested in this solicitation.

29.4. **Contract:** The Agreement to provide the Commodity(s) set forth in this solicitation. 29.4.1. **Purchase of Goods** - The contract will be comprised of the solicitation document signed by the vendor with any addenda and other attachments specifically incorporated and a Town purchase order.

29.4.2. **Performance of Services** – The contract will be comprised of the Agreement between the Town and the vendor, the solicitation document, any addenda, and other attachments incorporated into the agreement.

29.5. **Contractor:** The vendor to whom Contract award has been made. Used when conditions or responsibilities apply only to the awarded Contractor.

29.6. **Board:** Board of Trustees of the Town of Palm Beach Retirement System.

29.7. **Formal Award:** Is defined as the Town Commissions approval of the solicitation award, or lacking Town Commission approval, issuance of a Notice of Award document or the issuance of a Purchase Order to the awarded Proposer.

29.8. **In Writing** - Writing is any mode of representing or reproducing words in a visible form. To include electronic and technological methods for the representation of words.

29.9. **Invitation for Proposal (IFB):** Shall mean the Online Solicitation, including any Addenda, published through the Town's Platform used to communicate Town requirements to prospective Proposers and to solicit Responses from them.

29.10. **Language:** The Town has established for purposes of this solicitation that the words "shall", "must", or "will" are equivalent in this solicitation and indicate a mandatory requirement or condition, the material deviation from which shall not be waived by the Town. A deviation is material if, in the Town's sole discretion, the deficient response is not in substantial accord with this IFB's mandatory requirements. The words "should" or "may" are equivalent in this solicitation and indicate very desirable conditions or requirements, but are permissive in nature. The masculine pronoun shall include the feminine and neuter and the singular shall include the plural.

29.11. Solicitations Issuance is based upon an ONLINE SOLICITATION SYSTEM at www.negometrix.com to post Solicitation opportunities and Solicitation Packages.

29.12. **Owner:** Shall refer to Town of Palm Beach, Retirement Board.

29.13. **Platform:** The Town's Internet based online solicitation system (e-Proposal/RFx) is identified as and located at www.negometrix.com (Provider). The Platform is utilized by the Town and the Proposers to: 1) Allow Proposers to register and manage their company records, 2) Town posts and issues Town Solicitation Packages

for Proposers from inception to award of a Solicitation, 3) Allows Proposers to submit a response online, electronically, through the Platform, 4) Allows Proposers to view all public record documents related to an Online Solicitation. May also be referred to as e-Proposal/RFX System, or System.

29.14. **Pricing Sheet:** The area within the Platform that Proposers will provide their pricing response for the Solicitation. Also known as Schedule of Proposal Items.

29.15. **Purchase Order:** The Town's document to a Proposer formalizing all the terms and conditions of a proposed transaction, such as a description of the requested items, cost of items being purchased, delivery schedule, terms of payment, and transportation. For formal solicitations the Purchase Order will incorporate the Terms & Conditions of the solicitation.

29.16. **Responsible:** Refers to a Proposer that has the capacity and capability to perform the work required under a Solicitation and is otherwise eligible for award. 29.17. **Responsive:** Refers to a Proposer's Submittal Package or response when the Submittal Package conforms to the instructions and format specified in the Solicitation Package.

29.18. **Proposer:** A general reference to any entity responding to this solicitation and must be the party entering into the Contract with the Town; also includes Proposer, contractor, company, respondent, vendor, etc.

29.19. **System:** See *Platform*.

29.20. **Solicitation:** See *Solicitation Package*.

29.21. **Solicitation Package:** Will mean the group or collection of information that constitutes the information detailing the solicitation requirements and requesting responses, Proposals, offers or submittals from eligible Proposers. The information may be in the form of electronic documents, files and information contained within data fields in the Platform. Solicitations may be in the form of a Request for Quote, Invitation for Proposal, request for Proposal, Request for Qualifications or Invitation to Negotiate. Also referred to as a Solicitation.

29.22. **Submittal Package:** The Submittal Package is defined as a Proposer's submittal or response to all Solicitation Package Requirements as stated in the Platform. All areas requiring a response must be completed by the Proposer, failure to do so may result in the Proposer's Submittal Package being deemed non-responsive and not considered for award. Also known as Solicitation Response, Proposal, Offer, or Response.

In making any award or failure or refusal to make any award pursuant to such proposals, or in any cancellation of award, or in any withdrawal or cancellation of this RFP, either before or after issuance of an award, shall be without any liability or obligation on the part of the Town or their advisors. In its sole discretion, the Town may withdraw this RFP either before or after receiving proposals, may accept or reject proposals, and may accept proposals which deviate from the RFP. In its sole discretion, the Town may determine the qualifications and acceptability of any party or parties submitting proposals in response to this RFP (each such party being hereinafter a "Proposer"). Following submission of a proposal, the Proposer agrees to deliver, within three (3) business days of Town's request, such further details, information and assurances, including, but not limited to, financial and disclosure data, relating to the proposal and/or the Proposer, including the Proposer's affiliates, officers, directors, shareholders, partners and employees, as requested by the Town. The information contained herein is provided solely for the convenience of proposers. It is the responsibility of a Proposer to assure itself that information contained herein is accurate and complete. Neither the Town, nor their advisors provide any assurances as to the accuracy of any information in this RFP. Any reliance on the contents of this RFP, or on any communications with Town representatives or advisors, shall be at each Proposer's own risk. Proposers should rely exclusively on their own investigations, interpretations and analyses in connection with this matter. The RFP is being provided by the Town without any warranty or representation, express or implied, as to its content; accuracy or completeness and no proposer or other party shall have recourse to the Town if any information herein contained shall be inaccurate or incomplete. No warranty or representation is made by the Town that any proposal conforming to these requirements will be selected for consideration, negotiation or approval. The Town, and its representatives shall have no obligation or liability with respect to this RFP, or the selection and award process contemplated hereunder. Neither the Town nor its representatives warrant or represent that any award or recommendation will be made as a result of the issuance of this RFP. All costs

Town of Palm Beach for Town of Palm Beach Retirement Board of Trustees and Employees of the Town of Palm Beach

incurred by a Proposer in preparing and responding to this RFP are the sole responsibility of the Proposer. Any recipient of this RFP who responds hereto fully acknowledges all the provisions of this Disclosure and Disclaimer and agrees to be bound by the terms hereof. Any proposal submitted pursuant to this RFP is at the sole risk and responsibility of the party submitting such proposal. This RFP is made subject to correction of errors, omissions, or withdrawal without notice. Information contained in the RFP is for guidance only and each recipient hereof is cautioned and advised to independently verify all of such information. In the event of any differences between this Disclosure and Disclaimer and the balance of the RFP, the provisions of this Disclosure and Disclaimer shall govern.

IS-30. **Disputes** - In case of any doubt or differences of opinion as to the items to be furnished hereunder, the decision of the Town of Palm Beach Purchasing Manager shall be final and binding on both parties.

IS-31. **Discounts** - Proposers may offer a discount for prompt payment. However, such discounts will not be considered in determining the lowest net cost for Proposal evaluation purposes unless otherwise specified in Special Conditions. Proposers should reflect any discounts to be considered in the Proposal evaluation in the unit prices Proposal.

IS-32. **Disclosure and Disclaimer** – Any action taken by the Town in response to proposals made pursuant to this

IS-33. **Drug Free Workplace** - Preference shall be given to businesses with Drug-Free Work Place (DFW) programs. Whenever two or more proposals which are equal with respect to price, quality, and service are received by the Town for the procurement of commodities or contractual services, a proposal received from a business that completes the attached DFW form certifying that it is a DFW shall be given preference in the award process

IS-34. **E-Verify** - The Town of Palm Beach is an E-Verify employer for the purposes of verifying work authorization. Work authorization for those contracted to provide services and/or goods to the Town of Palm Beach is the sole responsibility of the contracted vendor and/or service provider.

IS-35. **EEO Statement** - Town is committed to assuring equal opportunity in the award of contracts and, therefore, complies with all laws prohibiting discrimination on the basis of race, color, religion, national origin, sex, age and non-disqualifying physical or mental disability

IS-36. **Eligibility** – It is the policy of the Town to encourage full and open competition among all available qualified Proposers. All Proposers regularly engaged in the type of work specified in the solicitation are encouraged to submit responses. Eligibility requirements for contract award are:

36.1. Have NO delinquent indebtedness to the Town of Palm Beach or other federal, state, or municipal agencies;

36.2. Shall be regularly and consistently engaged in providing services the same or similar to those being requested in the solicitation;

36.3. Have adequate financial resources, or the ability to obtain such resources as required during performance of the contract;

36.4. Be able to comply with the required or proposed delivery or performance schedule;

36.5. Have a satisfactory record of performance. Proposers who are or have been deficient in current or recent contract performance (when the number of contracts and the extent of the deficiency of each are considered, in the absence of evidence to the contrary or circumstances properly beyond the control of the contractor) shall be presumed unable to meet this requirement. Past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility;

36.6. Proposers performing work for the Town at the time responses to this solicitation are received may be deemed non-responsible and not considered for award of this solicitation should their current performance be rated as less than satisfactory by the Town's designated representative. Previous award of work does not guarantee future award(s). The Proposers must perform satisfactorily and professionally on all Town work undertaken;

36.7. Have a satisfactory record of integrity and business ethics;

Town of Palm Beach for Town of Palm Beach Retirement Board of Trustees and Employees of the Town of Palm Beach

36.8. Be properly licensed by the appropriate regulatory agency for the work to be performed;

36.9. Not have any previous investigations where the Proposer was found at fault and penalized; or current investigations where disposition is pending by the regulatory agency responsible for licensing Contractors; and

36.10. Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

IS-37. Electronic Submission of Responses – All references herein to signatures, signing requirements, or other required acknowledgments hereby include electronic signature by means of clicking the “Submit” button (or other similar symbol or process) attached to or logically associated with the response created by the respondent within the Town’s Platform. The Proposer agrees that the action of electronically submitting its response constitutes:

37.1. an electronic signature on the response, generally,

37.2. an electronic signature on any form or section specifically calling for a signature, and

37.3. an affirmative agreement to any statement contained in the solicitation that requires a definite confirmation or acknowledgement.

37.4. an affirmative acknowledgement that any employee submitting the response under the Proposers account has been authorized to submit such a response.

IS-38. Electronic Posting of Solicitation Package. The **ONLY** official outlet for publication and posting of Town of Palm Beach solicitations is on the Negometrix Platform. The Platform is the only place the Town will post solicitation information, addendums, question & answer and contract related information. The Town will not honor or verify information redistributed or reposted by other entities on other Internet sites. Proposers relying on such ‘second hand’ information will do so at their own risk and of no consequence to the Town.

IS-39. Execution of Contract – The Proposer to whom the Town intends to award a Contract will be required to execute a Contract document within **ten (10) days** from the date of the Notice of Recommendation for Award, and deliver such executed instruments as instructed to the Town of Palm Beach Purchasing Division. The Town expects the Proposer to execute all Contracts by electronic signature through a system provided by the Town.

IS-40. File Uploads – All electronic files uploaded must be in a common format accessible by software programs the Town uses. Those common formats are generally described as Microsoft Word (.doc or .docx), Microsoft Excel (.xls or .xlsx), Microsoft Power Point (.ppt or pptx), or Adobe Portable Document Format (.pdf). Proposers will not secure, password protect or lock uploaded files; the Town must be able to open and view the contents of the file. Proposers will not disable or restrict the ability of the Town to print the contents of an uploaded file. Scanned documents or images must be of sufficient quality, no less than 150 dpi, to allow for reading or interpreting the words, drawings, images or sketches. The Town may disqualify any Submittal Response that does not meet the criteria stated in this paragraph.

IS-41. Governing Law/Jurisdiction – The interpretation, effect, and validity of any Contract(s) resulting from this Solicitation shall be governed by the laws and regulations of the State of Florida. Venue of any court action shall be in Palm Beach County, Florida, in the event that a suit is brought for the enforcement of any term of the contract(s) or otherwise relating to any contract(s) or these Instructions to Proposers and General Conditions, and any addenda.

IS-42. Indemnification and Insurance - To the fullest extent allowed by law the Contractor shall protect, defend, reimburse, indemnify and hold harmless the Board, its members, the Town of Palm Beach, and the Town’s officers, agents, employees free and harmless from and against any and all claims, losses, penalties, damages, settlements, costs, charges, attorneys or other professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, cause or causes of action of very kind and character in connection with, or arising directly or indirectly out of or related to this Contract and the Work performed hereunder. Without limiting the generality of the foregoing, Contractor’s Indemnity shall include all claims, damages, losses, or expense arising out of or related to personal injury, death, damages to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright, proprietary information, or applications of any thereof, or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or order of any court. Contractor agrees to investigate, respond, adjust and provide a defense for all and any such claims, demands and actions at Contractor’s sole expense and agrees to bear

Town of Palm Beach for Town of Palm Beach Retirement Board of Trustees and Employees of the Town of Palm Beach

and remain liable for all such other costs and expenses relating thereto, even if such claim is groundless, false or fraudulent. Notwithstanding the foregoing, Contractor's Indemnity shall not extend to liability for damages to persons or property to the extent such damage was caused by any act, omission, or default of the Town, or by the Town's officers, agents and employees.

Contractor acknowledges and agrees that Town would not enter into a contract without this indemnification of TOWN by Contractor, and that Town's entering into a contract shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of the Contract. Nothing in this Contract shall be construed to affect in any way the TOWN'S rights, privileges, and immunities as set forth in Florida Statutes 768.28.

Insurance - The Contractor shall maintain insurance in compliance with the Town's insurance requirements as attached to this RFP. The Contractor shall not commence any performance pursuant to the terms of this RFP until certification or proof of insurance naming the Board and Town as additional insureds has been received and approved by the Town's Risk Coordinator or designee.

IS-43. **Late Submittal Packages** – Submittal Packages received in hard copy format or delivery by other electronic means made after the established due date and time will be deemed late and non-responsive. Late Submittal Packages will not be considered for award. Late Submittal Packages received and in the possession of the Town will remain the property of the Town and will not be returned to the Proposer. The Platform will not allow Proposers to submit a Submittal Package after the established due date and time has passed.

IS-44. **Licenses and Permits** - When applicable, it shall be the responsibility of the successful Proposer to obtain at no additional cost to the TOWN, any and all licenses and permit required to complete contractual service. A copy of these licenses and permits shall be submitted prior to commencement of work. Permit fees shall be waived for this work, however, the successful vendor must pay any applicable TOWN Occupational License fees.

IS-45. **Liquidated Damages** - Failure to complete the Project or delivery the work in accordance with the specifications and to the satisfaction of the Town within the time stated shall cause the selected Proposer to be subject to charges for liquidated damages in the amount of 1% of the annual contract amount for each and every calendar day the Selected Proposer fails to timely achieve substantial completion and/or final completion. As compensation due the Town for loss of use and for additional costs incurred by the Town due to such non-completion of the work, the Town shall have the right to deduct the liquidated damages from any amount due, or that may become due to the selected Proposer under this agreement, or to invoice the selected Proposer for such damages if the costs incurred exceed the amount due to the selected Proposer.

IS-46. **Lobbying Prohibited** - Proposers are not to contact or lobby any Town personnel related or involved with this Request for Proposals.

All oral or written inquiries are to be directed to the Purchasing Division as instructed herein. Any violation of this condition may result in rejection and/or disqualification of the Proposer.

Refer to Palm Beach County Registration Ordinance – Effective April 2, 2012 for further information:
<http://www.palmbeachcountyethics.com/ordinances-codes.htm>

IS-47. **Legal Requirements** - Federal, State, County and local laws, ordinances, rules and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the Proposer shall in no way be a cause for relief from responsibility.

(a) Vendors doing business with the Town are prohibited from discriminating against any employee, applicant or client because of race, creed, color, national origin, sex, age or non-disqualifying physical or mental disability, with regard to but not limited to the following: employment practices, rates of pay or other compensation methods, and training selection.

(b) Identical Tie Proposals/Proposals shall be awarded in accordance with the preference established in Section 287.087, Florida Statutes, to a vendor submitting the attached Drug-Free Workplace Certification form properly completed and certified. In the event that tie Proposals are received either from vendors who have all submitted a Drug-Free Workplace

Town of Palm Beach for Town of Palm Beach Retirement Board of Trustees and Employees of the Town of Palm Beach

Certification or none of whom who have submitted such certification, the award will be made in accordance with TOWN purchasing procedures pertaining to tie Proposals.

(c) 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 Proposal on a contract to provide any goods or services to a public entity may not submit a Proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit Proposals on leases of real property to a public entity, may not be awarded or perform work as a contractor, Proposer, subcontractor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO (Currently \$25,000) for a period of 36 months from the date of being placed on the convicted vendor list.

IS-48. Mistakes In Submittal Package

48.1. Correction of mistakes or withdrawal of a submittal package after the established due date and time will not be allowed.

48.2. Mistakes Where Intended Correct Price is Not Evident - If within twenty four (24) hours after submittal packages are opened, any Proposer files a duly signed written notice with the Town, through the office of the Purchasing Manager, and within five (5) calendar days thereafter demonstrates to the satisfaction of the Town, by clear and convincing evidence, that there was a material and substantial clerical mistake in the preparation of the submittal package or that the mistake is clearly evident in the solicitation package but the intended correct submittal package is not similarly evident, then the Purchasing Manager may reject their submittal package response. Thereafter, the Proposer will be disqualified from further participating on the subject contract.

48.3. Mistakes Where Intended Correct Response Is Evident - If the mistake and the intended correct price are clearly evident in the submittal package, the response shall be corrected to the intended correct response. Examples of mistakes that may be clearly evident in the submittal package are errors in extending unit prices, mistakes in totaling line item extended prices to the total price, and arithmetic errors. Mistakes in unit prices **WILL NOT** be corrected.

48.4. Unit prices shall prevail in the event of an error in the Proposer's Submittal Package.

48.5. Minor Informalities - Minor informalities are matters of form rather than material substance from the solicitation, or non-material mistakes that can be waived or corrected without prejudice to other responding Proposers. Material substance is defined as any portion of a Proposer's response that materially affects the submittal package, which includes but is not limited to, the effect on price, quantity, quality, manufacturer, product, delivery, or contractual conditions and shall not be considered a minor informality.

IS-49. **Offer Phase** – Within the Platform the Offer Phase is the time period that Proposers can submit a response to the solicitation. The Offer Phase has a beginning date and time and an ending date and time. The ending date and time of the Offer Phase is the deadline for all responses to the solicitation (a/k/a Proposals). The Platform will not allow Proposers to submit responses after the Offer Phase has closed.

IS-50. **Non-Collusion** - Proposer certifies that his Proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a Proposal for the same materials, services, supplies, or equipment and is in all respects fair and without collusion or fraud.

IS-51. **Material Safety Data Sheets** - In compliance with Chapter 442, Florida Statutes, a Material Safety Data Sheet (MSDS) must accompany any toxic substance resulting from this Proposal. The MSDS must include the following information:

- (a) The identity used on the chemical product's label.
- (b) The chemical and the common name(s) of all ingredients, which have been determined to be a health hazard.
- (c) Physical and chemical characteristics of the hazardous chemicals (i.e. vapor pressure, flashpoint).
- (d) The physical hazards of the hazardous chemical, including the potential for fire, explosion and reactivity.

Town of Palm Beach for Town of Palm Beach Retirement Board of Trustees and Employees of the Town of Palm Beach

- (e) The health hazards of the hazardous chemical, including signs and symptoms of exposure.
- (f) The primary route(s) of entry.
- (g) The Occupational Safety and Health Administration (OSHA) permissible exposure limit, American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value, and any other exposure limit used or recommended.
- (h) Whether the hazardous chemical is listed on the National Toxicology Program (NTP) Annual Report on Carcinogens (latest edition) or has been found to be a potential carcinogen.
- (i) Any general applicable precautions for safe handling and use that are known.
- (j) Any general applicable control measures, which are known.
- (k) Emergency and first aid procedures.
- (l) The date of MSDS preparation or last change to it.
- (m) The name, address and telephone number of the chemical Manufacturer or importer.

IS-52. **News Releases** – The proposer shall obtain the prior approval of the Town Manager’s Office of all news releases or other publicity pertaining to this RFP, the service, or project to which it relates.

IS-53. **Pre-Solicitation Conference / Site Visit** – If a pre-solicitation conference / site visit (meeting) is specified on the information page of the Solicitation Package it will also indicate the attendance requirement as mandatory or non-mandatory. The Town reserves the right to change the attendance requirement through the issuance of an Addenda if it is found to be in the best interest. This would typically be done if there was very low or no attendees at a Mandatory meeting.

53.1. **Mandatory** - If the meeting is stated to be Mandatory, Proposers interested in submitting a Response MUST attend the meeting and be represented on the Attendee Sign-in Sheet under the same name as the Submittal Response will be submitted under.

53.2. **Non-Mandatory** - If the meeting is stated to be non-mandatory, attendance by Proposers interested in submitting a Response is optional. However, Proposers are responsible for familiarizing themselves with the project and the site conditions if applicable. A non-mandatory meeting does not excuse the Proposers from visiting the site if it is required to become familiar with the project and the conditions.

IS-54. **Protests** – Protests can only be made by Interested Parties. Protests must be submitted in writing to the Purchasing Manager at 951 Okeechobee Rd, Suite D., West Palm Beach, FL 33401, no later than three (3) business days after the day the Notice of Recommendation to Award is published and distributed. Protests submitted by electronic mail are acceptable. The written protest must specifically state the reason for the protest and exactly what is being protested. Protests received after the deadline will not be considered. The Purchasing Manager will respond to protests no later than seven (7) business days from the day it is received. In case of a protest the determination and decision of the Town of Palm Beach Purchasing Manager shall be final.

IS-55. **Payments** - Payment will be made by the Town after commodities/services have been received, accepted and properly invoiced as indicated in contract and/or order. Invoices must bear the order number. Terms of payment are net 30 days after services have been completed and accepted. Invoice must reflect purchase order number.

The Town of Palm Beach shall issue direct payments (ACH) or purchasing card for payment of all invoices with the goal of a greener footprint.

IS-56. **Palm Beach County Inspector General** - The contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of any contracts resulting from this solicitation, and in furtherance thereof may demand and obtain records and testimony from the contractor and its subcontractors and lower tier subcontractors. The contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the contractor or its subcontractors or lower tier

Town of Palm Beach for Town of Palm Beach Retirement Board of Trustees and Employees of the Town of Palm Beach

subcontractors to fully cooperate with the Inspector General when requested may be deemed by the municipality to be a material breach of this contract justifying its termination

IS-57. **Price Quoted** - Proposer warrants by virtue of Proposal that prices shall remain firm for a period of ninety days (90) days from the date of Proposal opening or time stated in Special Conditions.

IS-58. **Pricing** - The Town requires a firm price for the contract period. Invoices will be checked to confirm compliance with negotiated pricing. Failure to hold prices firm through the entire contract term will be grounds for contract termination

IS-59. **Price Delivery** - Price quoted must be the price for new merchandise and free from defects. Any Proposals containing modifying or "escalator" clauses will not be considered unless specifically requested in the Proposal specifications.

"Acceptance" as herein used means the acceptance by Town of Palm Beach, herein referred to as TOWN, after the Purchasing Agent or his authorized agent has, by inspection or test of such items, determined that they fully comply with specifications.

Deliveries of all items shall be made as soon as possible. In the appropriate blank on the Proposal form, the vendor must indicate the best delivery date after receipt of order (ARO). Deliveries resulting from this Proposal are to be made during the normal working hours of the TOWN. Time is of the essence and the Proposer's delivery date must be specified and adhered to. Should the Proposer, to whom the order or contract is awarded, fail to deliver on or before his/her stated date, the TOWN reserves the right to CANCEL the order or contract and make the purchase elsewhere. The successful Proposer(s) shall be responsible for making any and all claims against carriers for missing or damaged items.

IS-60. **Public Entity Crimes** – Pursuant to Section 287.133(12)(a) of the Florida Statutes, 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 Submittal Package (Proposal Response) on a contract to provide any goods or services to a public entity, may not submit a bond on a contract with a public entity for the construction or repair of a public building or public work, may not submit Submittal Package (Proposal Response) on leases of real property to a public entity may not be awarded or perform work as a contractor, Proposer, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for Category Two (\$25,000) for a period of 36 months from the date of being placed on the convicted vendor list."

IS-61. **Public Records Law** – The State of Florida has a very broad public records law. Florida Statute Chapter 119 will apply to all responses to this solicitation including FSS 119.071(1)(b).

61.1. FSS 119.071(1)(b) – General exemptions from inspection or copying public records. Sealed Proposals or proposals received by an agency pursuant to invitations to Proposal or requests for proposals are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) or within 10 days after Proposal or proposal opening, whichever is earlier. If an agency rejects all Proposals or proposals submitted in response to an invitation to Proposal or request for proposals and the agency concurrently provides notice of its intent to reissue the invitation to Proposal or request for proposals, the rejected Proposals or proposals remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued invitation to Proposal or Request for Proposal or until the agency withdraws the reissued invitation to Proposal or request for proposals. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature. The Town shall disclose information in accordance with the applicable public records law.

61.2. Contractor Responsibility:

61.2.1. Keep and maintain public records required by the public agency to perform the service.

61.2.2. 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 copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

61.2.3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

61.2.4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements of 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.

61.2.5. IF THE PROPOSER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: Town Clerk, or designee at:

Email records@townofpalmbeach.com

IS-62. **Rights and Privileges** – Rights and privileges granted by the Town shall not be assigned or transferred in any manner whatsoever without written approval of the Town Council. At all times during the term of the contract the Contractor shall act as an independent contractor and at no time shall the Contractor be considered an agent or partner of the Town. The Contractor shall obtain and pay for all permits, licenses, Federal, State and Local taxes chargeable to its operation.

IS-63. **Qualifications of Respondents** - The Town of Palm Beach reserves the right before awarding the contract, to require the Proposer to submit such evidence of his qualifications and experience as it may deem necessary, and may consider any evidence available to it of the financial, technical and other qualifications and abilities of a respondent. 63.1. The Proposer is assumed to be familiar with all Federal, State or local laws, codes, ordinances, rules and regulations that in any manner affect the work, and to a Proposal thereby if awarded the Contract. Ignorance of legal requirements on the part of the Proposer will in no way relieve him of responsibility.

63.2. Any Proposer may be required to show to the complete satisfaction of the Town that he has the necessary personnel, facilities, abilities, and financial resources to perform the work in a satisfactory manner and within the time specified.

63.3. Proposer must possess any and all required licenses to perform and complete the work necessary in this project. The Proposer must be licensed at the time of submitting their Proposal and the license must be in effect for the entire period of the project.

IS-64. **Questions and Answers** – All answers to questions of substance will be publicly published within the Platform. Proposers are required to review all questions and answers within the solicitation. Questions and answers are as authoritative as any information issued in a formalized addendum and incorporated into the Solicitation or any Contract resulting from this Solicitation.

IS-65. **Responsibility of Proposer to Inform Himself as to All Conditions Relating to Project** - The respondent, by and through the submission of his Response, agrees that he will be held responsible for having examined the site if applicable to this Solicitation.

IS-66. **Responsiveness (Solicitation Responses)** – Responses shall conform in all material respects to the solicitation in order to be considered for award. Any response which fails to conform to the solicitation's essential requirements may be rejected. An effective solicitation response will be submitted formatted to the solicitation specifically with particular attention paid to providing the information necessary to meet the evaluation factors in detail. The Submittal Proposal

Town of Palm Beach for Town of Palm Beach Retirement Board of Trustees and Employees of the Town of Palm Beach

Package must demonstrate to the Town that the respondent is highly qualified with regard to each requirement in the solicitation.

IS-67. RESTRICTED AREAS DURING OFFICIAL DIGNITARY VISITS, EMERGENCIES AND WEATHER EVENTS

The Town of Palm Beach may become a restricted area during official Dignitary visits, emergencies and significant weather events. Contractor and workers may be asked to show Town issued ID during this period. The successful contractor and workers assigned to this project will be required to come to the Police Department prior to the start of the contract to have their fingerprints taken at no charge to contractor. If the fingerprint background check returns with no warrants or felonies, the contractor and workers will be given a picture ID for access to Palm Beach Island during this period. This process takes up to three (3) business days and needs to be planned accordingly.

IS-68. Right to Accept or Reject Submittals – Submittals which are incomplete, unbalanced, conditional, obscure or which contain additions not required, or irregularities of any kind, or which do not comply in every respect with the solicitation, and the Contract Documents, may be rejected at the option of the Town of Palm Beach.

68.1. The Town of Palm Beach does not bind itself to accept the lowest price for the minimum specifications stated herein, but reserves the right to accept any response which in the judgment of the Town will best serve the needs and interests of the Town of Palm Beach.

68.2. If, at the time this contract is to be awarded, the lowest Cost Response submitted by a responsible Proposer having acceptable qualifications and abilities to perform the work, does not exceed the amount of funds then estimated by the Town as available to fund the work under the contract; the contract may be awarded to that Proposer.

IS-69. Safety Regulations - Equipment must meet all State and Federal safety regulations for grounding of electrical equipment.

IS-70. Securitized Companies - By execution of this Agreement, in accordance with the requirements of F.S. 287-135 and F.S. 215.473, Contractor certifies that Contractor is not participating in a boycott of Israel. Contractor further certifies that Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the Town will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of contract. The Town shall provide notice, in writing, to Contractor of the City's determination concerning the false certification. Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Contractor does not demonstrate that the Town's determination of false certification was made in error then the Town shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

IS-71. Signature of Proposer – See Electronic Submission of Responses.

IS-72. State Registration Requirements – Any corporation submitting a Submittal Package in response to this Solicitation shall either be registered or have applied for registration with the Florida Department of State in accordance with the provisions of Chapter 607, Florida Statutes. A copy of the registration/application may be required prior to award of a contract. Any partnership submitting a response to this Solicitation shall have complied with the applicable provisions of Chapter 620, Florida Statutes. For additional information on these requirements, please contact the Florida Secretary of State's Office, Division of Corporations, (800) 755-5111 (<http://www.dos.state.fl.us>).

IS-73. State Professional Licenses – The Proposer shall hold all required Professional Licenses as issued by the State of Florida Department of Business and Professional Regulation at the time their Response is submitted and maintain said licenses for the duration of a Contract if awarded.

IS-74. **Subcontractors**

74.1. **Subcontractors Listing** – A question in the Solicitation Package requests Proposers to submit their list of subcontractors to be used for performance of construction services under an awarded Agreement. Proposers shall provide names of subcontractors they have committed for the Contract. Not listing sufficient subcontractors to perform each trade or not indicating a trade or trades will be self-performed may be grounds for deeming the submittal response non-responsive and not considering the Proposer for award. **PROPOSERS MUST LIST THEIR SUB-CONTRACTORS.**

74.2. **Subcontracting** – Unless otherwise specified in this solicitation or Contract Documents, the Contractor shall not change subcontractors from those listed on their Subcontractor Listing form provided in advance of the Notice to Proceed being issued. Changes to Subcontractors may only be made following Contractor submitting a revised Subcontractor Listing and written approval by the Town of the requested change in the subcontractor(s).

IS-75. **Termination for Convenience** –

75.1. a. The Board may terminate performance of work under this contract in whole or in part (the “Work Terminated”) if the Board determines that such termination is in the Town’s best interest. The Board shall terminate by delivering to the Contractor a Notice of Termination, specifying the extent of the Work Terminated and the effective date.

75.1. b. After receipt of a Notice of Termination, a Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

75.1. b.1. Stop work as specified in the notice.

75.1. b.2. Complete performance of the work not terminated.

IS-76 **Termination for Default** - The Town of Palm Beach may, subject to paragraphs below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

76.1.a Perform the services within the time specified;

76.1.b Make progress, so as to endanger performance of this contract; or

76.1.c Perform any of the other provisions of this contract.

IS-77 **Town:** Town of Palm Beach Retirement Board of Trustees and Employees of the Town of Palm Beach.

IS-78 **Withdrawal of Response** - Any response to this solicitation may be withdrawn prior to the due date and time (Offer Phase Ending) specified in the solicitation package or as revised by an addenda. Following the ending of the Offer Phase no response may be withdrawn by a Proposer.

[END]