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People empowered

Issue Date: April 20, 2018

Mandatory Pre-Bid Conference:
May 21, 2018 @ 6:00 p.m.
at 200 E University Avenue, Room 332
Gainesville, Florida

Deadline for receiving questions: June 8, 2018 @ 12:00 p.m. local time.
All questions must be submitted in writing on or before the deadline
indicated.

Bid Due Date: June 29, 2018 @ 3:00 p.m. local time

INVITATION TO BID

Elevator Modernization –
City Hall, Old Library Building, Thomas Center Buildings A & B

BID NO.FMGT-180080-MS

Procurement Representative:
Melanie Sowers
Procurement Division
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City of Gainesville
200 East University Avenue, Room 339 – Gainesville, Florida 32601

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City of Gainesville
General Government Procurement
Invitation to Bid

DATE: April 20, 2018

BID #: FMGT-180080-MS

BID NAME: Elevator Modernization

BID DATE: June 29, 2018

@ 3:00 p.m. local time

Sealed bids will be received by the City of Gainesville, Florida, at General Government Procurement until 3:00 p.m., local time, on the bid date, at which time and place all bids will be publicly opened and will be available for inspection upon notice of award or intended award or within 30 days after bid opening, whichever is earlier. If special accommodations are needed in order to attend a pre-bid conference or a bid opening, please contact the Procurement Division at least 72 hours in advance. Bid prices may be read at the public bid opening, at the sole discretion of General Government Procurement. Bids must be in the possession of General Government Procurement prior to bid call at 3:00 p.m. on the bid date. Possession is defined as being physically received in General Government Procurement at City Hall, 200 East University Avenue, Room 339, Gainesville, Florida 32601. The time clock located in General Government Procurement will be the official time for bid call. Bids shall be sealed and plainly marked on the outside of the envelope with both the bid number and the bid name. ANY BID RECEIVED IN GENERAL GOVERNMENT PROCUREMENT AFTER THE SPECIFIED TIME WILL NOT BE CONSIDERED. Bids must be completed and signed in ink in space[s] provided on the enclosed bid form(s) and **submitted in triplicate** or bid will be subject to rejection. In addition, proposer should provide one (1) electronic copy of their bid in PDF format on a CD or USB flash drive. Electronic document should not be password protected, encrypted, etc. Delivery shall be F.O.B. Gainesville, Florida. The point of delivery will be specified on the purchase order or other notification of acceptance. Please note that if bonds are required, they must be in the approved form attached to the specifications or the bid will be subject to rejection.

MANDATORY PRE-BID CONFERENCE: There will be a Mandatory Pre-Bid Conference on May 21, 2018 at 6:00 p.m. located at City Hall, 200 E University Avenue, Room 332, Gainesville, FL 32601. We will also visit the Old Library Building which neighbors City Hall and the Thomas Center Buildings located at 302 NE 6th Ave, Gainesville, FL 32601. **Failure to attend the Mandatory Pre-Bid Conference and visit each site will disqualify prospective bidders.**

There will be a non-refundable fee of \$2.00 per set of plans and specifications picked up at the City of Gainesville Procurement Division.

Any deviation from the specifications must be explained in detail on sheets attached to the Bid Form and labeled "Clarifications and Exceptions," and each deviation must be itemized by number and must specifically refer to the applicable specification paragraph and page. Otherwise, it will be considered that items offered are in strict compliance with these Specifications and the successful Bidder will be held responsible for meeting the Specifications. A Bidder who is aggrieved in connection with the specifications of this bid must advise General Government Procurement in writing prior to the opening of bids. If Bidder wishes its Standard Terms and Conditions to be considered as part of its bid, such terms and conditions must be made part of the "Clarifications and Exceptions." The City reserves the following rights: to waive clarifications and exceptions in awarding the bid in the best interest of the City; to accept or reject any or all bids; to waive any or all irregularities; and to award the contract to the most responsible and responsive Bidder whose bid is determined by the City to be in its best interest. Notice of intended award shall be posted at 200 East University Avenue, 3rd floor, Gainesville, Florida. Protests of the intended award must be filed within five business days of posting for purchases which do not require prior approval of the City Commission and within five business days for purchases which require prior approval of the City Commission. It is the Bidder's responsibility to inform himself of intended award and specific protest procedures.

Melanie Sowers, Senior Buyer
General Government Procurement
(352) 334-5021

SECTION I – INSTRUCTIONS TO BIDDERS

1. Definition of Terms

- 1.1 Authorized Representative: Any representative of the City, whether or not a City employee, designated as the City's Authorized Representative for the purposes of this Contract either in a provision of these Specifications or in written communication from the City Manager to the Contractor.
- 1.2 Bidder: Any person, firm, corporation, organization or agency submitting a bid for the work proposed, or its duly authorized representative.
- 1.3 Change Order: A written directive, issued after the Effective Date of the Contract, to show the recommendation of the City's Authorized Representative, the approval of the Architect/Engineer, if any, and the authorization of the City to a change in the work that results in an adjustment in the Contract Price or the Time for Completion. The work covered by a Change Order shall be within the scope of the Contract. The Contract Price and the Time for Completion may be changed only by a Change Order, not by a Field Order or Work Change Directive. A Change Order signed by the Contractor indicates the Contractor's final agreement therewith, and shall not be subject to further claim.
- 1.4 City: City of Gainesville, Florida, or an Authorized Representative.
- 1.5 Commercially Useful Function: shall exist when the business responsible for execution of the work of the contract is carrying out its responsibilities by actually performing, managing, and supervising the work involved.
- 1.6 Construction Services: All labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or an other improvements to real property.
- 1.7 Contract or Agreement: The Contract executed by the Owner and Contractor for the performance of the work. The Contract shall be substantially in the form provided in these Specifications or by purchase order incorporating the provision of the Specifications.
- 1.8 Contract Price: The total sum of moneys payable to the Contractor for completion of the Work in accordance with the Contract.
- 1.9 Elevator Contractor: The person, firm, corporation, organization or agency with whom the City has executed a contract for performance of the work or supply of equipment or materials, or its duly authorized representative.
- 1.10 Control: Means having the primary power, direct or indirect, to influence the management of a business enterprise. The controlling party must have the demonstrable ability to make independent and unilateral business decisions on a day-to-day basis, as well as the independent and unilateral ability to make decisions which may influence and chart the future course of the business. In determining whether socially and economically disadvantaged owners control a firm the City may utilize the criteria in 49 CFR Part 23 & 26, Section 26.71.
- 1.11 Field Order: A written directive to Contractor, issued after the Effective Date of the Contract, which orders minor changes in the Work, but which does not involve an increase in the Contract Price or Time for Completion. The work covered by a Field Order shall be within the scope of the Contract. A Field Order is signed by the Contractor and the City's Authorized Representative.
- 1.12 Local business: The vendor has a valid business tax receipt, issued by the City of Gainesville, to do business in said locality that authorizes the business to provide the goods, services, or construction to be purchased, and a physical business address located within the limits of said locality, in an area zoned

for the conduct of such business, from which the vendor operates or performs business on a day-to-day basis. Post office boxes are not verifiable and shall not be used for the purpose of establishing said physical address. In order to be eligible for local preference, in the Bid or RFP evaluation, the vendor must provide a copy of the business tax receipt and Zoning Compliance Permit. Exhibit -E-(Attached Codified document). The business tax receipt must be issued at least six months prior to bid or proposal opening date.

- 1.13 Local Small and Service-Disabled Veteran Business: A Small and/or Service-Disabled Veteran Business, which is duly licensed and authorized to engage in business, maintains a permanent principal place of operation with no more than 200 full time employees within the corporate limits of the City of Gainesville, has a net worth not exceeding \$5 million and maintains a current City business tax receipt, and is certified by the Office of Equal Opportunity.
- 1.14 Material Supplier: (also Supplier) a manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.
- 1.15 Specifications: Directions, provisions, and requirements contained in the Invitation to Bid, Instructions to Bidders, Special Provisions, General Conditions, Technical Specifications (if any), Supplementary Conditions (if any), Bid Form, Bids (if any), together with any written contract made or to be made setting out or relating to the methods and manner for the work to be carried out.
- 1.16 Subcontractor: An individual or entity having a direct contract with Elevator Contractor or with any other Subcontractor for the performance of a part of the Work at the site.
- 1.17 Supplier: (also Material Supplier) A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.
- 1.18 Work: The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
- 1.19 Work Change Directive: A written directive to Contractor issued after the Effective Date of the Contract, and signed by City's Authorized Representative, with approval of the Architect/Engineer, if any, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. The work covered by a Work Change Directive shall be within the scope of the Contract. A Work Change Directive does not change the Contract Price or Time for Completion but is evidence that the parties expect that such a change will be incorporated in a subsequently issued Change Order following negotiations by the parties. A Work Change Directive differs from a Change Order in that at the time the Work Change Directive is issued, it is not possible for either the City or the Contractor to accurately quantify the exact increase in the Contract Price or the Time for Completion that will result from the ordered change in the Work. A Work Change Directive is signed by the Contractor and the City's Authorized Representative.
- 1.20 Laws and Regulations. Laws or Regulations—Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

2. Specifications

- 2.1 All sections of the Specifications and all supplementary documents are essential parts of the Contract and requirements occurring in one are as though occurring in all. These Specifications and documents in their entirety shall be included in, and made a part of, the Contract between the City and the successful Bidder.

- 2.2 If there is any conflict between the terms and conditions contained in the Specifications, the precedence of the Specifications shall be as follows:
- (a) contract
 - (b) addenda or modifications of any nature, if any
 - (c) supplementary conditions, if any
 - (d) technical specifications, if any
 - (e) special provisions
 - (f) general conditions
 - (g) instructions to bidders
 - (h) bid form
 - (i) invitation to bid
- 2.3 Any Bidder in doubt as to the true meaning of any part of the Specifications or related documents may submit a written request to the City for interpretation thereof. Any interpretation to a bidder will be made only by an addendum duly issued and a copy of such addendum will be mailed or delivered to each Bidder receiving a set of documents.

3. Bond Requirements

- 3.1 Bond requirements are detailed in the sections entitled Special Provisions.
- 3.2 Performance/Payment Bond. All projects with a value of \$200,000.00 or more are required by state law to have a Performance/Payment Bond. In accordance with Chapter 255.05, Florida Statutes, any person entering into a formal contract with the City for the construction of a public building, for the prosecution and completion of a public work or for repairs upon a public building or work shall be required, before commencing the work, to execute, deliver to the City, and record in the public records of the county where the improvement is located, a payment and performance bond with a surety authorized to do business in the state of Florida as surety.

4. Preparation of Bids

- 4.1 Bids shall be submitted in triplicate on the prescribed form provided in these Specifications. All copies must be plainly marked by the Bidder who will be responsible for their correctness. All blank spaces must be filled in as noted in ink or type. Any erasures or corrections must be initialed in ink by the Bidder. In addition, proposer should provide one (1) electronic copy of their bid in PDF format on a CD or USB flash drive. Electronic document should not be password protected, encrypted, etc.
- 4.2 Only one bid from any individual, firm, corporation, organization or agency under the same or different name shall be considered. Should it appear to the City that any Bidder is interested in more than one bid, all bids in which such Bidder has interest will be rejected.
- 4.3 Bids shall be accompanied with the attached Tabulation of Subcontractors & Suppliers form, listing the Subcontractors and Material Suppliers which the Bidder proposes to employ. Subcontractor and Supplier requirements are detailed in Section 7.3 of the General Conditions.
- 4.4 Any deviation from these Specifications must be explained in detail. Otherwise, it will be considered that labor, materials and equipment bid are in strict compliance with these Specifications and the successful Bidder will be held responsible for meeting those Specifications. Any exceptions or clarifications to any section of the Specifications shall be clearly indicated on a separate sheet(s) attached to the Bid Form and shall specifically refer to the applicable specification paragraph and page.
- 4.5 A Bidder is expected to fully inform itself as to the requirements of the Specifications and failure to do so will be at its own risk. A Bidder shall not expect to secure relief on the plea of error.

5. Contact Person

To ensure fair consideration and consistent and accurate dissemination of information for all proposers, the City prohibits communication to or with any department, employee, or agent evaluating or considering the proposals during the submission process, except as authorized by the contact person.

During the blackout period as defined herein, except as pursuant to an authorized appeal, no person may lobby, as defined herein, on behalf of a competing party in a particular procurement process, City officials or employees except the Procurement designated staff contact in the Procurement division. Violation of this provision shall result in disqualification of the party on whose behalf the lobbying occurred.

The blackout period means the period between the issue date which allows for immediate submittals to the City of Gainesville Procurement Departments for an invitation for bid or the request for proposal, or qualifications, or information, or the invitation to negotiate, as applicable, and the time the City Officials and Employee awards the contract Lobbying means when any natural person, for compensation, seeks to influence the governmental decision-making, to encourage the passage, defeat or modification of any proposal, recommendation or decision by City officials and employees, except as authorized by procurement documents.

6. Qualifications of Bidders

6.1 The City reserves the right to make such investigations as it may deem necessary to establish the competency and financial ability of any Bidder to perform the work.

6.2 If, after the investigation, the evidence of competency and financial ability is not satisfactory, the City reserves the right to reject the bid.

7. Receipt and Opening of Bids

7.1 All bids must be submitted in a sealed envelope, addressed, and delivered as stated in the Invitation to Bid. Any Bidder may withdraw its bid either personally, or by telegraphic or written communication at any time prior to the scheduled closing time for the bid.

7.2 The Bidder shall submit its bid on the form furnished with all indicated information filled in on the form. Bids shall be in the units specified for each item. The Bidder shall enter the company name wherever the Bid Form so indicates and shall sign the Bid Form wherever the Bid Form so indicates.

7.3 Bids shall be publicly opened at the time and place indicated in the Invitation to Bid and will be available for inspection upon notice of award or intended award or within 30 days after bid opening, whichever is earlier.

8. Consideration of Bids and Award of Contract

8.1 If the Contract is awarded, the City will accept the bid and award the Contract to the successful Bidder within sixty (60) days after the opening of the Bids by written notice to the successful Bidder. The award of the Contract will be made to one Contractor only for all work to be done.

8.2 Failure on the part of the successful Bidder to execute a Contract within fifteen (15) days after the notice of acceptance shall be just cause for annulment of award. The City may then accept the bid of the next best evaluated bid or re-advertise for bid.

8.3 If the bid of the next best Bidder is accepted, this acceptance shall bind such Bidder as though he were the original successful Bidder.

8.4 City reserves the right to award the contract to other than the low Bidder for such reasons as acceptability of specific products or designs, delivery times, warranties, past performance, unacceptable deviations or

exceptions taken to these Specifications or degree of compliance with any other requirement of these Specifications. Further, City shall have the right to consider price, quality, past performance including compliance with Local Small Business Procurement Program requirements, time required for performance and qualifications of the Bidder in making the award.

8.5 The City of Gainesville reserves the right to accept or reject any or all bids, reserves the right to waive any or all irregularities, and to award the contract to the responsible and responsive Bidder whose bid is determined by the City to be in its best interest.

8.6 Any contract resulting here from shall not be effective until fully executed by all parties.

9. Performance

9.1 All material and parts shall be bid F.O.B. Gainesville, Florida, at the job site.

9.2 The performance time may be a factor in the evaluation of the Bid. The performance time shall be defined as the anticipated time period expected to elapse between receipt of the purchase order or execution of the Contract and completion of the work. It is to be emphasized that the meeting of specified performance schedules is a significant part of ability to perform and that failure to meet such schedule may result in termination of the Contract and will surely be considered in the evaluation of future bids.

10. Collusion

10.1 The bid shall be made without any previous understanding, agreement, or connections with any persons, firms, or corporations making a bid on the same items and shall be in all respects fair and in good faith without any outside control, collusion or fraud.

10.2 No City Commissioner, other City officer, or City employee shall directly or indirectly own more than five (5) percent of the total assets or capital stock of the bidding entity, nor will such person directly or indirectly benefit by more than five (5) percent from the profits or emoluments of this contract. For purposes of this section, indirect ownership or benefit does not include ownership or benefit by a spouse or minor child.

11. Addenda

Addenda issued by City prior to the bid opening shall be binding as if written into the Specifications. Bidders shall acknowledge receipt of the same as indicated on the Bid Form.

12. Tie Bids

Whenever two or more bids which are equal with respect to price, quality and service are received, preference shall be given in the following order: (1) Bidders submitting the attached Drug-Free Workplace form with their bid/proposal certifying they have a drug free workplace in accordance with Section 287.087, Florida Statutes; (2) Bidders located within the City of Gainesville, if not subject to the Local Preference Ordinance; (3) Bidders located within the State of Florida; and (5) coin toss.. In the case where Federal funds are being utilized, articles 2, 3 and 4 will not apply.

13. Rights of Appeal

Participants in this Invitation to Bid solicitation may protest Invitation to Bid specifications or award in accordance with Section 41-580 of the City of Gainesville's Financial Procedures Manual.

14. Davis-Bacon

It will be the responsibility of the contractor to check with the department project manager to determine if compliance with the Davis Bacon Act and the DOL regulations are required.

SECTION II – GENERAL CONDITIONS

1. Work

- 1.1 Conduct of the Work :The Contractor shall employ only competent and skilled workers on the work and shall employ a competent superintendent or foreman with authority to give and receive orders and execute the work to be present at all times when work is in progress. The superintendent shall not be changed without written approval of the City. The Contractor shall, upon demand from the City, immediately remove any superintendent, foreman or other worker who the City shall consider incompetent or undesirable. Should the Contractor fail to remove such person or persons or fail to furnish suitable or sufficient machinery, equipment or force for the proper execution of the work, the City may suspend the work until compliance with such orders. All materials to be permanently installed shall be new and of the most suitable grade for the purpose intended. Equipment shall be modern, in good condition, and of adequate size to perform the duty required.
- 1.2 Authorized Changes in the Work: The City may, without invalidating the Contract and without preliminary notice to the surety, order changes in the Work consisting of additions, deletions or other alterations, provided the changes are within the general scope of the Contract. All such changes in the Work shall be documented by Change Order, Work Change Directive or Field Order, and shall be performed promptly by the Contractor under the applicable conditions of the Contract.
- 1.2.1 Unless otherwise specified herein, the City’s Authorized Representative, upon approval of the City Manager or his designee, shall be and is hereby authorized to make such alterations in the Work as may increase or decrease the originally awarded Contract quantities, provided that the aggregate of such alterations does not increase the Contract Price or the total cost of any major Contract line item by more than the ten percent (10%). A major Contract item shall be defined as having a cost equal to or greater than ten percent (10%) of the amount of the Contract Price. Alterations which do not exceed the ten percent (10%) limitation shall not invalidate the Contract nor release the Surety, and Contractor agrees to accept payment for such alterations as if the altered work had been a part of the original Contract. These alterations must be for work within the scope of the Contract and shall be documented by Change Order and/or Work Change Directive. Change Orders for altered work may include extensions of Time for Completion where, in the City’s Authorized Representative’s opinion, such extensions are necessary and commensurate with the amount and difficulty of added work.
- 1.2.2 Should the aggregate increase of altered work exceed the ten percent (10%) limitation specified above, such excess altered work shall be covered by a supplemental agreement. If City and Contractor are unable to agree on an adjustment for work that requires a supplemental agreement, City reserves the right to terminate the Contract with respect to the work and make other arrangements for its completion. All supplemental agreements shall be subject to the approval of the City Commission.
- 1.2.3 Notwithstanding anything contained herein to the contrary, City shall have the right to terminate this Contract in accordance with Section 17.2. In the event of such termination, provisions herein regarding additional compensation shall not be applied.
- 1.3 Suspension of Work. The City shall have the right to suspend work wholly or in part for such period or periods as may be deemed necessary due to unsuitable weather or other conditions, which the City considers unfavorable for the work to proceed. No allowance of any kind will be made for such suspension of work except an extension of equivalent time for completion of the Contract.
- 1.4 Unauthorized Changes in the Work: Contractor shall not be entitled to an increase in the Contract Price or an extension of the Time for Completion with respect to any work performed that is not required by the Contract as amended by Change Order or Work Change Directive, except in the case of an emergency as provided in Section 1.6.

- 1.5 Changed Conditions. If during the progress of the work, field conditions are found to differ materially from those covered by the Specifications or from those which could reasonably have been foreseen by a Contractor who is familiar with conditions found in this area after examination of the site, the Contractor shall provide written notice to the City's Authorized Representative within 5 days of discovering the changed conditions and before it begins work on which it may have a claim for adjustment to the Contract Price or Time for Completion. The City shall, within 10 days of receipt of the written notice, determine whether a change in the Work is required. If the City determines a change is required, a Change Order or Work Change Directive will be issued to document the change. If the City fails to respond within 10 days, the change shall be deemed denied. If the City determines a change is unnecessary, the Contractor shall proceed with the Work under the Contract or shall file a claim in accordance with Section 22. If Contractor fails to provide the 5 day written notice noted above, Contractor will be deemed to have waived any right it otherwise may seek an adjustment to the Contract Price or Time for Completion or to make any claim for damages or additional compensation.
- 1.6 Emergencies. In the event of an emergency affecting the safety or protection of persons, property or work at the project site or adjacent thereto, Contractor is obligated to immediately notify the City's Authorized Representative to prevent damage, injury or loss. Contractor shall give the City's Authorized Representative written notice within 36 hours after the occurrence of the emergency as to any significant changes in work or variations from the Contract the Contractor believes have been caused thereby. If the City's Authorized Representative determines that a change in the Contract is required because of the action taken in response to an emergency, a Change Order, Work Change Directive or Field Order will be issued to document the consequences of the changes. If Contractor fails to provide the 36 hour written notice noted above, Contractor will be deemed to have waived any right it otherwise may seek an adjustment to the Contract Price, an extension of the Time for Completion or to make any claim for damages or additional compensation.
- 1.7 Interpretation of Estimated Bid Quantities. An estimate of quantities of work to be done and materials to be furnished under these specifications may be given in the Bid Documents. If so, it is the result of careful calculations and is believed to be correct. It is given only as a basis for comparison of bids and awards of the Contract. The City does not expressly or by implication agree that the actual quantities involved will correspond exactly with the estimated quantities; nor shall the Contractor plead misunderstanding or deception because of such estimates of quantities, or of the character, location, or other conditions pertaining to the work. Payment to the Contractor shall be made only for the actual quantities of work performed or materials furnished in accordance with the plans and specifications. It is understood that the quantities may be increased or decreased as hereinafter provided.

2. Contract Price

2.1 Contract Price

The City shall pay the Contractor for the work at the price[s] stated on the Bid Form. No additional payment shall be made to the Contractor except for additional work or materials as stated on a valid change order issued by the City prior to the performance of the work or delivery of materials.

2.2 Final Payment Acceptance. The acceptance by the Contractor of final payment due on completion of this contract shall constitute a full and complete release of the City from any and all claims, demands and causes of action whatsoever which the Contractor, its successors or assigns have or may have against the City under the provisions of this Contract.

2.3 The obligations of the City as to any funding required pursuant to this Agreement shall be limited by an obligation in any given year to budget and appropriate from legally available funds, after monies for essential City services have been budgeted and appropriated sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.

3. Time of Completion

- 3.1 The work shall be completed within the time provided in the Special Provisions section of the specifications.
- 3.2 Time is of the essence for the completion of all work under this contract.
- 3.3 Actual damages will be charged upon delay.

4. Examination of the Site

- 4.1 Before submitting a bid, the Bidder may visit the job site in order to ascertain the prevailing local conditions which may affect the work to be done.
- 4.2 Arrangements to visit the work site can be made by contacting the Authorized Representative designated in the Special Provisions section of the specifications.
- 4.3 The site of the work is as specified in the Special Provisions section of the specifications.
- 4.4 No payment for additional work or materials shall be made upon any claim of changed condition[s] if such condition[s] could have been reasonably foreseen upon diligent examination of the site prior to submission of the bid.

5. Cooperation/Coordination

- 5.1 The City and its authorized representatives shall be permitted free access and every reasonable facility for the inspection of all work and materials.
- 5.2 Work By City. The City of Gainesville hereby reserves the right to perform activities in the area where work is being done under this contract with its own forces.
- 5.3 Work By Other Contractors. The City of Gainesville hereby reserves the right to permit other contractors to work within the area which is the site of the work under the Contract.
- 5.4 Coordination. Contractor shall afford City and other contractors reasonable opportunity for the introduction and storage of their equipment, materials and equipment and the execution of their work concurrently, and shall properly coordinate its work with theirs in the best interest of the City.

6. Bonds

- 6.1 Bid Security. If Bid Security is required in the Special Provisions section of the specifications, each bid must be accompanied by a cashier's check, certified check or bid bond in the form attached to these specifications payable to the City of Gainesville in the amount of five percent (5%) of the bid submitted. Bid security will be forfeited if the successful Bidder fails to execute a contract with the City substantially in the form attached hereto within fifteen (15) days after notification of award of the Contract. The City shall within ten (10) days after the opening of the bids, return the bid securities of all Bidders except those posted by the three lowest responsive Bidders, whose bid securities will be returned upon the final award and execution of the Contract between the successful Bidder and the City, and after proof of insurance and/or a Performance Bond as specified herein has been received by the City.
- 6.2 Performance Bond. If Performance and Payment Bonds are required in the Special Provisions section of the specifications, the Contractor shall furnish a copy of the recorded Performance and Payment Bond in the form attached to these specifications, each in an amount of 100% of the lump sum amount bid as security for the full and complete performance of the Contract and for the payment of all persons performing labor, furnishing materials or furnishing equipment in connection with the Contract.

- 6.3 Requirements as to Surety. If either Bid Security or Performance/Payment Bond is required in the Special Provisions section of the specifications, the Surety or Sureties issuing such bonds shall be a company or companies satisfactory to the City. Any surety shall be required to have a resident agent in the State of Florida and shall be duly licensed to conduct business in Florida.

7. Responsibilities of the Contractor

- 7.1 Performance. The Contractor shall perform all authorized work initiated by the City promptly and diligently in a good, proper, and workmanlike manner in accordance with these Specifications. The Contractor in doing the work shall have the freedom to perform the authorized work by such means and in such a manner as it may choose within the limits of these Specifications. Employees of the Contractor shall not be deemed employees of the City for any purposes whatsoever.

- 7.2 Materials, Services and Facilities. The Contractor shall provide and pay for all labor, tools, equipment, transportation and materials and these shall be of a high quality in every respect. The Contractor's employees shall be as clean and as in good appearance as the job conditions permit and shall conduct themselves in an industrious and courteous manner. Modern tools kept in good working order shall be utilized. Adequate first aid supplies shall be provided by the Contractor and shall be accessible to the employees.

7.3 Subcontractors

- 7.3.1 The Contractor may utilize service or specialty Subcontractors or Material Suppliers on those parts of the work which under normal contracting practices are performed by specialty Subcontractors or Material Suppliers. **The Tabulation of Subcontractors and Material Suppliers form should be completed and submitted with the bid.** The following provisions shall apply:

- 7.3.2 The City has adopted a Local Small and Service-Disabled Veteran Business Program attached as Exhibit A. Contractor must abide by the requirements of this program, or Contractor's bid will be rejected as non-responsive.

- 7.3.3 The Contractor shall notify the City in writing of any Subcontractor or Material Supplier that is to be utilized and no Subcontractor or Material Supplier shall be employed without the written approval of the City.

- 7.3.4 The Contractor shall be as fully responsible to the City for acts and omissions of persons directly or indirectly employed as it is for the acts and omissions of persons strictly employed.

- 7.3.5 Nothing contained in this Contract shall create any kind of contractual relationship between the Subcontractor and the City.

- 7.3.6 If City, after due investigation, has reasonable objection to any proposed Subcontractor, Material Supplier, individual, or entity, City may, before the Notice of Award is given request apparent Successful Bidder to submit a substitute, without an increase in the Bid. If apparent Successful Bidder declines to make any such substitution, City may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Material Suppliers, individuals or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which City makes no written objection prior to giving the Notice of Award will be deemed acceptable to City.

- 7.3.7 Contractor shall not be required to employ any Subcontractor, Material Supplier, individual, or entity against whom Contractor has reasonable objection.

- 7.3.8 All successful contractors specific to construction in the amount of \$300 thousand or more to include material suppliers shall be required to provide information of subcontractors in addition to sub and sub subcontractors prior to final payment under the contract.

7.4 Laws and Regulations. Contractor shall keep itself fully informed of all applicable Laws and Regulations which in any manner affect the Project/Work. All permits, licenses, inspection fees, impact fees, and other costs necessary for performance of, compliance with, and/or completion of the Project/Work shall be obtained and paid for by Contractor, unless otherwise modified in the Supplementary Conditions.

If the City has obtained and paid for any permits or licenses applicable to the Project/Work, Contractor shall meet all requirements of those permits and licenses. Contractor shall bear all costs arising from Contractor's responsibilities under this Article.

All Work is to be performed by Contractor in accordance with the most current applicable Laws and Regulations. Provided, however, in the event of any changes to any applicable Laws and Regulations that take effect after the date Contractor submitted its Proposal to the City, and under the circumstances it is not reasonable to assume that contractor was or should have been aware of such changes, and Contractor provides Notice to the City of the changes and City thereupon directs Contractor in writing to perform the Project/Work in accordance with such changes, and such changes impact the time and/or cost of Contractor's performance of the Project/Work, a Change Order or similar document shall be issued with respect to such changes.

7.5 Indemnification.

7.5.1 Contractor shall indemnify and hold harmless Owner, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the indemnifying party and persons employed or utilized by the Contractor in the performance of the Work.

7.5.2 In any and all claims against Owner or its officers, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.5.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.6 Responsibility for Damages.

7.6.1 Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible and (e) damage to existing utilities.

7.6.2 If a damage or injury claim is made by the owner or occupant of any such land, utility, or area because of the performance of the Work, or because of negligent, reckless, or intentional wrongful misconduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) indemnify and hold harmless Owner and Project Manager, and the officers, and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of this Contract.

7.7 Enforcement or Litigation Costs. The Contractor shall pay all costs and expenses that may be incurred by the City (i) in enforcing compliance by the Contractor with the provisions of this Contract, or (ii) in defending any proceeding or suit brought against the City for violation by the Contractor of any law or ordinance, or (iii) in defending any action or suit for which indemnification is required hereunder. If the City shall be, or be made, a party to any litigation with respect to any matter arising out of, or related to, this Contract as to which the Contractor is at fault or responsible, the Contractor shall pay all judgments, decrees and costs, including reasonable attorney's fees, incurred by or imposed upon the City in connection therewith.

8. Insurance

8.1 City's and Subcontractors Insurance. The Contractor shall not commence work until he has obtained all the insurance required under these documents and until such insurance has been approved by the City nor shall the Contractor allow any Subcontractor to commence work until the Subcontractor has obtained the insurance required for a Contractor herein and such insurance has been approved unless the Subcontractor's work is covered by the protections afforded by the Contractor's insurance.

8.2 Compensation Insurance. The Contractor shall procure and maintain worker's compensation insurance to the extent required by Florida Statute 440 for all employees to be engaged in work under this Contract.

8.3 Public Liability Insurance. The Contractor shall procure and shall maintain broad form comprehensive general liability insurance (including contractual coverage) and comprehensive automobile liability insurance in the amounts shown in the special provisions section. The City shall be an additional insured on this insurance with respect to all claims arising out of the operations or work to be performed.

Comprehensive General (Public) Liability (other than automobile)

- A) Premises/Operations
- B) Independent Contractors
- C) Products/Completed Operations
- D) Personal Injury
- E) Contractual Liability
- F) Explosion, collapse and underground property damage (unless such coverage is excluded in the Special Provisions section).
- G) Contractor's Pollution

Comprehensive Automobile Bodily Injury and Property Damage Liability

- A) City/Leased Automobiles
- B) Non-Owned Automobiles
- C) Hired Automobiles

8.4 Proof of Carriage of Insurance. The Contractor shall furnish the City a certificate of insurance in a form acceptable to the City for the insurance required. Such certificate or an endorsement provided by the Contractor must state that the City will be given thirty (30) days' written notice (except the City will accept ten (10) days written notice for non-payment) prior to cancellation or material change in coverage.

9. Permits and Licenses

The Contractor shall procure all permits and licenses, pay all charges and fees and give all notice necessary and incidental to the performance of the work.

10. Assignment of Contract

10.1 The Contractor shall not assign or subcontract in whole or in part its rights or obligation under the Contract or any monies due or to become due hereunder without the written consent of the City.

11. Sovereign Immunity

Nothing in the Contract shall be interpreted that the City waives its sovereign immunity granted under Section 768.28, Florida Statutes.

12. Liens

Before the final acceptance of the work and payment by the City, the Contractor shall furnish to the City proper satisfactory evidence, under oath, that all claims for labor and materials employed or used in the construction of said work have been settled and no legal claim can be filed against the City for such labor and materials. If such evidence is not furnished to the City, such amounts as may be necessary to meet the unsatisfied claims may be retained from monies due to the Contractor under this Contract until the liability shall be fully discharged.

13. Defective Work and Materials – *Suspension of Work*

- 13.1 All materials furnished or work done, when not in accordance with the intent of these Specifications, shall be rejected and shall be removed immediately and replaced by suitable and satisfactory work and materials. Failure to reject any defective work or materials will not prevent later rejection when such a defect is discovered and shall not relieve the Contractor of its obligation to fulfill the Contract even though such work and materials have been previously inspected by the City and accepted; it shall not obligate the City to final acceptance nor shall it prevent the City in any time subsequent from recovering damages from work actually shown to be defective within a one year period after the final acceptance.
- 13.2 If the Contractor fails to remove any defective work or materials, the City shall have the right to stop work and remedy the cause at the expense of the Contractor.
- 13.3 If the City deems it expedient to accept minor imperfect work, the City shall have the right to retain such work and an equitable deduction shall be made in the Contract price.
- 13.4 The City has the authority to suspend the Contractor's operations, wholly or in part, for cause, for such periods deemed necessary. The City will order such suspension in writing, giving in detail the reasons for the suspension and stating whether contract Time will be charged during the suspension. Unless the City, at its sole discretion, determines that the suspension of the Contractor's operations is for the convenience of the City, Contract Time will be charged during all suspensions of Contractor's operations. No additional compensation will be paid to the Contractor when the operations are suspended for the following reasons:
- a. The Contractor fails to comply with the Contract Documents.
 - b. The Contractor fails to carry out orders given by the City.
 - c. The Contractor causes, or unreasonably allows to exist, conditions considered unfavorable for continuing the Work.

Contractor shall immediately comply with any suspension order. Contractor shall not resume operations until authorized to do so by the City in writing. Any operations performed by the Contractor and otherwise constructed in conformance with the provisions of the Contract after the issuance of the suspension order and prior to the City's authorization to resume operations will be at no cost to the City. Further, failure to immediately comply with any suspension order will also constitute an act of default by the Contractor and is deemed sufficient basis in and of itself for the City to declare the Contractor in default.

14. Damage to the Work

Until final acceptance of the work by the City, it shall be under the charge and care of the Contractor who shall take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever. The Contractor shall rebuild, repair, restore or make good, at its own expense, damages to any portion of the work before its completion and acceptance.

15. Final Cleanup

Before the work is considered complete, all rubbish and unused material due to, or connected with, the work must be removed and the premises left in a condition satisfactory to the City. All property, public or private, disturbed or damaged during the execution of the work shall be restored to its former condition. Final payment will be withheld until such work is accomplished.

16. Safety and Protection

- 16.1 Safety. The Contractor shall furnish and install all necessary and temporary work for the protection of the work and the safety of the public and shall carry on this work in a manner best calculated to avoid injury to the public or to the workers.

17. Termination/Default

- 17.1 Termination. If the Contractor shall be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditor(s), or if a receiver shall be appointed for the Contractor, or if he should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper materials, or if he should refuse or fail to make payment to persons supplying labor or materials for the work under the Contract, or persistently disregard instructions of the City, or fail to observe or perform or be guilty of a substantial violation of any provision of the Contract documents, then the City, after serving at least ten (10) days' prior written notice to the Contractor of its intent to terminate and such default shall continue unremedied for a period of ten (10) days, may terminate the Contract without prejudice to any other rights or remedies and take possession of the work; and the City may take possession of and utilize in completing the work such materials, appliances, equipment as may be on the site of the work and necessary therefore. The Contractor shall be liable to the City for any damages resulting from such default.

If, after default under this subsection, it is determined for any reason that Contractor was not in default, or that its default was excusable, or that City is not entitled to the remedies against Contractor provided herein, then Contractor's remedies against City shall be the same as and limited to those afforded Contractor pursuant to the subsection title TERMINATION FOR CONVENIENCE.

- 17.2 Termination for Convenience. City shall have the right to terminate this Contract, in whole or in part, without cause, upon seven (7) calendar days' written notice to Contractor. In the event of such termination for convenience, Contractor's recovery against City shall be limited to that portion of the contract price earned through the date of termination, together with any retainage withheld and direct and immediate termination expenses incurred, but Contractor shall not be entitled to any other or further recovery against City. Contractor shall not be entitled to anticipated profits, or other consequential damages.

Termination of the contract or a portion thereof, for cause or convenience, shall neither relieve the Contractor of its responsibilities for the completed work nor shall it relieve his/her surety of its obligation for and concerning any just claim arising out of the work performed.

18. Delay

- 18.1 Notwithstanding the contract schedule, the City shall have the right to delay performance for up to three months as necessary or desirable and such delay shall not be deemed a breach of contract, but the contract schedule shall be extended for a period equivalent to the time lost by reason of the City's delay.

If the work is stopped or delayed for more than three months, either in whole or in substantial part, either the City or Contractor may elect to terminate the Contract because of such delay. If such stoppage or delay is due to actions taken by the City within its control, Contractor's sole remedy under the Contract shall be reimbursement for costs reasonably expended in preparation for or in performance of the contract.

- 18.2 If the performance of the Contract is delayed by fire, lightning, earthquake, cyclone, or other such cause completely beyond the control of either the City or the Contractor then the time for completion of the Contract shall be extended for a period equivalent to the time lost by reason of any of the aforesaid causes.
- 18.3 NO DAMAGES FOR DELAY. Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under the Contract Documents, shall be the sole remedy of the Contractor for any (i) delay in the commencement, prosecution or completion of the Work, (ii) hindrance or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (collectively referred to as "Delay") whether or not such Delay is foreseeable, unless the Delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damage in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency of Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.

19. Warranty/Guarantee

- 19.1 Contractor warrants and guarantees to City that all materials will be new unless otherwise specified and that all work will be of good quality and free from defects and in accordance with the Specifications.
- 19.2 Contractor agrees to remedy promptly, and without cost to City, any defective materials or workmanship which appear within one (1) year from the date of final acceptance of the work.
- 19.3 No provision contained in these Specifications shall be held to limit Contractor's liability for defects to less than the legal limit of liability in accordance with law.
- 19.4 No provision contained in these Specifications shall be held to limit the terms and conditions of the Manufacturer's Warranty and Contractor shall secure parts, materials and equipment to be installed with Manufacturer's full warranty as to parts and service for five years wherever possible.

20. Payment

- 20.1 Punch list and Payment. The City is required to devise a list (generally known as a "punch list") of items required to render the construction services purchased "complete, satisfactory, and acceptable". This list will be provided in accordance with the timeframe as stated in Section 218.735, Florida Statutes available on the Internet at <http://www.leg.state.fl.us/statutes/>. The parties shall cooperate in developing the list.
- 20.2 Retainage. The City shall withhold, from each progress payment made to the contract, 5% as retainage. Once the project reaches 50% or more completion of construction services (payment will result in expenditure of over 50% of the total cost of construction services, as identified in the contract, including additions or deletions approved up to and including this pay request), and upon request, the City will disburse 50% of previously withheld retainage.
- 20.3A Invoicing. The contractor shall be responsible for invoicing the City for progress payments as described below.
- 20.3B Payment. The contractor shall submit documentation to the City of Gainesville in accordance with the attached "City of Gainesville Subcontractor and Material Supplier Payment Certification" form to validate payment to the Subcontractors and/or Material suppliers. The form must be complete and notarized by all appropriate parties. Failure to certify payments to Subcontractors and Material Suppliers or failure to truthfully certify payments to Subcontractors and Material Suppliers shall result in no further payments to Contractor. Payment will be due to the Contractor from the City of Gainesville thirty (30) days after receipt

of invoice, provided that Contractor shall not submit more than one invoice per thirty-day period. Payment may be withheld by the City due to failure by Contractor to comply with the Specifications, because unacceptable equipment or Materials were delivered as determined by the City's inspection or failure by the Contractor to comply with the "Prompt Payment: Late Payments by Contractors to Subcontractor and Material Suppliers; penalty:" clause. The City shall notify the Contractor of any unsatisfactory performance or non-compliance with the "Late Payments by Contractors to Subcontractor and Material Suppliers" clause as soon as practicable so that it can be corrected without delaying payment if possible.

Contractor payment by City issued procurement card (currently VISA) is preferred. Otherwise, contractor will be paid electronically as an electronic funds transfer (EFT).

- 20.3C Prompt Payment Assurance: Late Payments by Contractors to Subcontractors and Material Suppliers, penalty. When a contractor receives from the City of Gainesville any payment for contractual services, commodities, materials, supplies, or construction contracts, the contractor shall pay such moneys received to each Subcontractor and Material Supplier in proportion to the percentage of Work completed by each Subcontractor and Material Supplier at the time of receipt. If the contractor receives less than full payment, then the contractor shall be required to disburse only the funds received on a pro rata basis with the Subcontractors and Material Suppliers, each receiving a prorated portion based on the amount due on the payment. If the contractor without reasonable cause fails to make payments required by this section to Subcontractors and Material Suppliers within 10 days after the receipt by the contractor of full or partial payment, the contractor shall pay to the Subcontractors and Material Suppliers a penalty in the amount of 1 percent of the amount due, per month, from the expiration of the period allowed herein for payment. Such penalty shall be in addition to actual payments owed. The Contractor shall include the above obligation in each subcontract it signs with a Subcontractor or Material Supplier.
- 20.3D Records of progress payment made by prime contractors to Subcontractors or Material Suppliers are required at least on a monthly basis. However, information can be submitted more frequently than monthly.
- 20.4 Determining adjustment in price for authorized changes in work. The cost or credit to the City resulting from an authorized change in the Work shall be selected by the City to be determined in one or more of the following ways:
- a. by mutual acceptance of a lump sum price properly itemized and supported by sufficient substantiating data to permit evaluation;
 - b. by unit price as stated in the Contract; or
 - c. by net cost and an acceptable fixed or percentage fee to be determined by the parties by the method provided below.

Unless the cost to the City is determined using methods a, b or c above and a Change Order is issued, the Contractor, upon receipt of a Work Order Directive signed by the City's Authorized Representative, shall promptly proceed with the work involved and the cost of such work shall then be determined by the City's Authorized Representative after consultation with the Engineer, if any, on a basis of the reasonable expenditures and savings of those performing the work attributable to the change, and may include an allowance for overhead and profit. In such case, and also under subparagraphs a and b above, the Contractor shall keep and present, in such form as the City may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract, net costs shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, unemployment insurance, and fringe benefits required by agreement or custom, excluding bonuses; workers' compensation insurance; bond premiums; field and home office overhead; increased insurance premiums; interest on borrowed monies; storage costs; rental value of equipment and machinery; and the cost of supervision and field office personnel directly attributable to the change.

Except for terminations for convenience, the amount of credit to be allowed by the Contractor to City for any deletion, alteration or change which results in a net decrease in the Contract price will be the amount of

the actual net cost as confirmed by the City's Authorized Representative after consultation with the Engineer, if any. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net cost increase, if any, with respect to that change. The maximum allowable overhead and profit percentages, stated below, shall be considered to include, but not limited to, use of small tools, incidental job burdens, office expense, and general conditions attributable to this project. Percentages for overhead and profit shall be negotiated and may vary according to the nature, extent and complexity of the work involved, but in no case shall exceed the following:

- a. To Contractor on work performed by other than his forces or additional costs by insurance and/or bonding company - 5%.
- b. To Contractor or subcontractors for that portion of work performed with their respective forces - 10%.

No more than two mark-up percentages, not to exceed the maximum of fifteen percent (15%), will be allowed, regardless of the number of subcontractors (i.e. the mark-up of work subcontracted by a subcontractor will be limited to one overhead and profit percentage in addition to the Contractor's overhead and profit percentage). In considering a Change Order, the City's Authorized Representative shall check estimates in detail, utilizing unit prices where specified, to arrive at an equitable adjustment to the Contract.

- 20.5 Lump Sum, Unit Pricing or Both. The Contract Price shall be based on one of the following: Lump Sum Price, Unit Prices or combination of Lump Sum and Unit Prices. Where the Bid Documents provide that all or any portion of the Work is to be determined by Unit Prices, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price work times the estimated quantity of each item as indicated in the Bid Documents. The estimated quantities of items of Unit Price work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities of Unit Price work performed by Contractor will be governed by Section 1.7. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- 20.6 Compensation for Altered Quantities. When the accepted quantities of work vary from the quantities in the Bid Documents, the Contractor shall accept as payment in full, so far as Contract items are concerned, payment at the original Contract unit price for the accepted quantities of work actually completed and accepted. No allowance will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor which results directly or indirectly from such alterations from its unbalanced allocation of overhead and profit among the Contract items, or from any other cause. The City retains the right to omit from the project any portion of the work which is in the best interest of the City in the City's sole judgment.
- 20.7 Claims for Adjustment. If for any reason the Contractor deems that additional compensation or an extension of time is due him for work or materials not clearly provided for in the Contract or previously authorized Change Order or Field Directive Change Order, it shall within 36 hours, and before it begins the work on which it bases the claim, notify the City's Authorized Representative in writing of its intention to claim such additional compensation or extension of time. If such notification is not given or the City's Authorized Representative is not afforded proper opportunity by the Contractor for keeping strict account of actual cost as required, then the Contractor hereby waives any claim for such additional compensation or consideration of any additions to Contract time. Such notice by the Contractor and the fact that the City's Authorized Representative has kept account of the cost of the work shall in no way be construed as proving or substantiating the validity of the claim. In the event the City's Authorized Representative and the Contractor cannot reach mutual agreement on the additional compensation or extension of time, the dispute shall be handled in accordance with Section 22.

21. Notices

21.1 Notices to the Contractor pursuant to these Specifications shall be deemed to have been properly sent when mailed to the Contractor at the address provided on the Bid Forms.

21.2 Notices to the City shall be deemed to have been properly sent when mailed to the Procurement Manager of the City at the address stated for the mailing of bids on the Invitation to Bid.

22. Disputes

Except as otherwise provided in this Contract, any dispute concerning a question of fact or of interpretation of a requirement of the Contract which is not disposed of by mutual consent between the parties shall be decided by the City Manager or designee, who shall reduce the decision to writing and furnish a copy thereof to the parties. In connection with any dispute proceeding under this clause each party shall be afforded an opportunity to be heard and to offer evidence in support of its version of the facts and interpretation of the Contract. The City Manager or designee shall make such explanation as may be necessary to complete, explain or make definite the provisions of this Contract and the findings and conclusions shall be final and binding on both parties. Pending the final decisions of a dispute hereunder, Contractor shall proceed diligently with its performance of the Contract in accordance with the preliminary directions of the City Manager or designee.

23. Public Entity Crime Information Statement

For your information, Section 287.133 (2)(a) , Florida Statutes, contains the following provisions: “A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.”

24. Taxes, Charges and Fees

Contractor shall pay any and all sales, and use taxes and all withholding taxes, whether Local, State or Federal, and pay all Social Security charges and also all State Unemployment Compensation charges, and pay or cause to be withheld, as the case may be, any and all taxes, charges, fees, or sums whatsoever, which are now required to be paid or withheld under any laws, unless otherwise modified in the Supplementary Conditions.

25. Local Preference

In bidding of, or letting contracts for procurement of, supplies, materials, equipment and services, as described in the Procurement policies, the city commission, or other Procurement authority, may give a preference to local businesses in making such purchase or awarding such contract in an amount not to exceed five percent of the local business' total bid price, and in any event the cost differential should not exceed \$25,000.00.

26. Records/Audit

Contractor shall maintain records sufficient to document their completion of the scope of services established by this Contract. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the City. These records shall be kept for a minimum of three (3) years after completion of the Contract. Records which relate to any litigation, appeals or settlements of

claims arising from performance under this Order shall be made available until a final disposition has been made of such litigation, appeals, or claims.

27. Investigation of Alleged Wrongdoings, Litigation/Settlements/Fines/Penalties

The City Commission specifically requests that responders to this document indicate in writing any investigations of wrongdoings, litigation and/or settlements, and fines or penalties (anywhere in the U.S) involving the Contractor and specific Contractors listed as projected to provide services to the City. You may be required to respond to questions on this subject matter.

28. Non-Discrimination Policy and Commercial Non-Discrimination Requirement

As a condition of entering into this agreement, the company represents and warrants that it will comply with Title VI and Title VII of the Civil Rights Act of 1964 and all other federal, state or local laws prohibiting discrimination. The company shall not discriminate on the basis of race, color, religion, gender, national origin, marital status, sexual orientation, age, disability or gender identity, or other unlawful forms of discrimination in the solicitation, selection, hiring, commercial treatment of subcontractors, vendors, suppliers or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination.

The City reserves the right to investigate any claims of illegal discrimination by the Contractor and in the event a finding of discrimination is made and upon written notification thereof, the Contractor shall take all necessary steps to cure and rectify such action to the reasonable satisfaction of the City. The company understands and agrees that a violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.”

For more information on this policy and requirement, please visit the Office of Equal Opportunity’s website.

SECTION III – SPECIAL PROVISIONS

1. Scope

These Special Provisions shall supplement the general conditions and shall govern purchases by the City of Gainesville under these Specifications, except that technical specifications, whether provided by separate section attached hereto, or stated in the Invitation to Bid, will govern if conflict arises between such technical specifications and these Special Provisions.

2. Descriptions of the Work/Alterations

These purpose and scope of these specifications is to establish the requirements for a contract for: Elevator Modernization Project for City Hall, Old Library Building and Thomas Center Buildings A & B.

3. Plans and Specifications

The following documents were uploaded to DemandStar separately:
Specifications – March 12, 2018 – prepared by VTE Solutions, LLC – 124 pages

Plans and Technical Specifications will be available through your appropriate distributing organization (Demandstar, construction house, City of Gainesville, etc.).

4. Mandatory Pre-Bid Conference

A Mandatory Pre-Bid Conference will be held on May 21, 2018 at 6:00 p.m. located at 200 E University Avenue, Room 332, Gainesville, FL. . We will also visit the Old Library Building which neighbors City Hall and the Thomas Center Buildings located at 302 NE 6th Ave, Gainesville, FL 32601. **Failure to attend the Mandatory Pre-Bid Conference and visit each site will disqualify prospective bidders.**

5. Commencement of Work

5.1 The work shall commence as follows:

- immediately upon receipt of a Notice to Proceed or other notification of acceptance.
- within 10 calendar days of issuance of a purchase order or other notification of acceptance.

5.2 A pre-construction meeting will be held at a time arranged by the City and Contractor.

6. Permits

Application for permits shall be the responsibility of the Contractor.

7. Time of Completion

The work shall be completed as follows:

- within the time stated on the bid as time required to complete all work.
- within 426 calendar days after commencement.

8. Warranty Period

Warranty period shall be one year from completion of the contract for all labor.

9. City’s Authorized Representative

The Authorized Representative for the work shall be the following unless changed in written communication from the City Manager to the Contractor:

Ed Gable
(Name)

352-393-7979
(Telephone number)

10. Bonds

10.1 Bid Security.

is required as provided for in Section 6.1, General Conditions.
 is not required.

10.2 Performance Bond

is required as provided for in Section 6.2, General Conditions.
 is not required, unless contract amount exceeds \$200,000. See Section 3.2, Instructions to Bidders.

10.3 Payment Bond

is required as provided for in Section 6.2, General Conditions.
 is not required unless contract amount exceeds \$200,000. See Section 3.2, Instructions to Bidders.

11. Local Small and Service-Disabled Veteran Business Participation

It is the policy of the City of Gainesville that all local small and service-disabled veteran businesses as defined in the Local Small Business Procurement Program Policies and Procedures, have the maximum practical opportunity to participate in contracting opportunities provided by the City. In keeping with this policy, each proposer is asked to state whether it will utilize small and service-disabled veteran that are eligible for assistance to perform work on the project(s) being advertised. For firms not yet certified by the City, a small and service-disabled veteran application may be requested and submitted to the Office of Equal Opportunity. Applications can be downloaded from the Office of Equal Opportunity website at <http://www.cityofgainesville.org/OfficeofEqualOpportunity.aspx>. To be considered as a certified small and/or service-disabled veteran, a proposer must have a current certificate at the time of the solicitation submittal due date. For more information on certified small and service-disabled veteran businesses, please visit the Office of Equal Opportunity’s website.

12. Actual Damages

Actual damages will be charged upon delay.

12. Insurance

The Contractor shall furnish the City a Certificate of Insurance in a form acceptable to the City for the insurance required. Such certificate or an endorsement provided by the Contractor must state that the City

will be given thirty days written notice (except the City will accept ten (10) days written notice for non-payment) prior to cancellation or material change in coverage.

Worker's Compensation Insurance to the extent required by law

Comprehensive General (Public) Liability (other than automobile) \$1,000,000 combined single limit for bodily injury and property damage

Automobile Bodily Injury \$ 300,000 per individual \$ 500,000 aggregate

Automobile Property Damage Liability \$ 500,000 per occurrence

- Explosion, collapse and underground property damage is required.
- Explosion, collapse and underground property damage is not required.

- Contractor's Pollution liability insurance is required.
- Contractor's Pollution liability is not required.

NOTE: **The City of Gainesville must be named as an additional insured on the certificates of insurance.**

13. Conduct of Work

- Superintendent or foreman is required.
- Superintendent or foreman is not required.

14. Subcontractors

- Subcontractor will be allowed as provided in Section 7.3, General Conditions, and Exhibit A. Subcontractor/Material Supplier list should be provided with bid.
- Subcontractor will not be allowed.

15. Examination of Site

Contractors may make arrangements for visits to inspect site(s) by contacting the City's Authorized Representative as specified in 9.1 of these Special Provisions.

16. Construction Access to Site

Contractor will have limited working access to site which shall be during normal work hours of 8 a.m. to 5 p.m., Monday through Friday, excluding City-observed holidays.

17. Living Wage

- This contract is a covered service.
- This contract is not a covered service.

The Living Wage ordinance, Ordinance 020663, as amended at Ordinance 030168, and as shown on the City's web page, applies to certain contracts for specific "Covered Services," which the City has determined include construction services and, therefore, may include services purchased under this Contract, depending upon the cost/price of the contract awarded. A copy of the ordinance, as amended, will be attached to and made a part of the executed contract. Bidders/Proposers should consider the effect/cost of compliance, if any, with the requirements of the Living Wage Ordinance if the prime

contract amount exceeds the threshold amount, the bidder/proposer meets the definition of Service Contractor/Subcontractor (and is not otherwise excluded from the application of the ordinance) and the ordinance provisions, which are incorporated herein, apply to any Covered Employees.

If applicable, the adjusted Living Wage for this contract will be \$12.0673 per hour (Living Wage with Health Benefits) or \$13.3173 per hour if Health Benefits are not offered.

If applicable, a successful Service Contractor/Subcontractor shall be required to execute the certification, attached as Exhibit D hereto, prior to the City executing the contract. Once executed, such certification will become a part of this contract; however, failure to sign such certification will prevent execution of the contract, may result in forfeiture of any applicable bid or proposal bond, and could result in other adverse action.

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor shall comply with the provisions of the City of Gainesville's living wage requirements, as applicable. Failure to do so shall be deemed a breach of contract and shall authorize the City to withhold payment of funds until the living wage requirements have been met.
- (2) The Contractor will include the provision of (1) above in each subcontract for Covered Services with a Service Contractor/Subcontractor, as defined herein, so that the provisions of (1) above will be binding upon each such Service Contractor/Subcontractor. The Contractor will take such action with respect to any such subcontract as may be directed by the contract administrator as a means of enforcing such provisions; provided, however, the City shall not be deemed a necessary or indispensable party in any litigation between the contractor and a subcontractor concerning compliance with living wage requirements.

18. Local Preference

A copy of your Business tax receipt and Zoning Compliance Permit should be submitted with your bid if a local preference is requested.

19. Additional Bid Requirements

- None required.
 Required as listed below:

- 20.1 State of Florida Elevator Contractor Licensed - 10 continuous years minimum
- 20.2 State of Florida Interior Contractor License - 10 continuous years minimum
- 20.3 Documented on-going Quality Assurance Program
- 20.4 Provide rendering of cab interior with bid proposal
- 10.5 Project Schedules for Technical Specifications 1 & 2 must be completed and submitted with bid

BID FORM

TO: City of Gainesville, Florida
200 East University Avenue
Gainesville, Florida 32601

PROJECT: Elevator Modernization

BID#: FMGT-180080-MS

BID DUE DATE: June 29, 2018

CITY’S REPRESENTATIVE (to be contacted for additional information on this proposal):

Name: Melanie Sowers Telephone Number: 352-334-5021
Fax Number: 352-334-3163
Email address: sowersma@cityofgainesville.org

Bidder Legal Name: _____

Bidder Alias/DBA: _____

Bidder’s Address: _____

BIDDER’S REPRESENTATIVE (to be contacted for additional information on this proposal)

Name: _____ Telephone Number _____
Date: _____ Fax Number _____
Email address _____

BIDDER’S DECLARATION AND UNDERSTANDING

The undersigned, hereinafter called the Bidder, declares that the only person or parties interested in this Bid are those named herein, that this Bid is, in all respects, fair and without fraud, that it is made without collusion with any official of the City, and that the Bid is made without any connection or collusion with any person submitting another Bid on this contract.

The Bidder further declares that no City Commissioner, other City officer, or City employee directly or indirectly owns more than five (5) percent of the total assets or capital stock of the bidding entity, nor will directly or indirectly benefit by more than five (5) percent from the profits or emoluments of this contract. (For purposes of this paragraph, indirect ownership or benefit does not include ownership or benefit by a spouse or minor child.)

The Bidder further declares that it has carefully examined the Specifications and that this Bid is made according to the provisions and under the terms of the Specifications, which Specifications are hereby made a part of this Bid. Bidder further declares that any deviation from the specifications are explained on separate sheets labeled Clarifications and Exceptions attached to this Bid Form and that each deviation is itemized by number and specifically refers to the applicable specification paragraph and page.

ADDENDA

The Bidder hereby acknowledges receipt of Addenda No.'s _____, _____, _____, to these Specifications.

TAXES

The Bidder agrees that any applicable Federal, State and Local sales and use taxes, which are to be paid by City of Gainesville, are included in the stated bid prices. Since often the City of Gainesville is exempt from taxes for equipment, materials and services, it is the responsibility of the Contractor to determine whether sales taxes are applicable. The Contractor is liable for any applicable taxes which are not included in the stated bid prices.

BID PRICES

The undersigned hereby proposes and agrees, if this bid is accepted, to perform the work in accordance with the specifications:

Note: Additive Alternates may be accepted in any order and will be determined at time of Bid Award. Not all alternatives may be awarded. Award is subject to budget approval by the City of Gainesville.

BASE BID: Base Bid to include a total base contract price for all labor and materials to provide repair, upgrade, and new work as called for in Traction Elevator Technical Specification #1 and Hydraulic Elevator Technical Specifications #2 as applicable to the following units:

City Hall, Main Entry Elevator #1- FL State SN #4642

City Hall, Main Entry Elevator #2 - FL State SN #4643

Old Library Building, Elevator #1 (Hydraulic) - FL State SN #4647

BASE BID AMOUNT

_____ *Dollars*
(\$ _____).

If the Living Wage Ordinance applies, please indicate costs within the bid price associated with compliance with the Living Wage Ordinance:

_____ Dollars (\$_____).

ALTERNATE #1: Alternate to include a total additive contract price for all labor and materials to provide elevator cab interior upgrades as called for in Traction Elevator Cab Interior Upgrade Specification for the following units:

City Hall, Main Entry Elevator #1 (interior) - FL State SN #4642

City Hall, Main Entry Elevator #2 (interior) - FL State SN #4643

ALTERNATE #1 BID AMOUNT

Dollars

(\$ _____).

If the Living Wage Ordinance applies, please indicate costs within the bid price associated with compliance with the Living Wage Ordinance:

_____ Dollars (\$_____).

ALTERNATE #2: Alternate to include a total contract price for all labor and materials to provide repair, upgrade, and new work called for in Hydraulic Elevator Technical Specifications #2 for the following units:

Thomas Center "A" Elevator - FL State SN #25165

Thomas Center "B" Elevator - FL State SN #23860

ALTERNATE #2 BID AMOUNT

Dollars

(\$ _____).

If the Living Wage Ordinance applies, please indicate costs within the bid price associated with compliance with the Living Wage Ordinance:

_____ Dollars (\$_____).

ALTERNATE #3: Alternate to include a total contract price for all labor and materials to provide repair, upgrade, and new work called for as elevator cab interior upgrades in Hydraulic Elevator Cab Interior Upgrade Specification for the following units:

Thomas Center “A” Elevator (interior) - FL State SN #25165

Thomas Center “B” Elevator (interior) - FL State SN #23860

ALTERNATE #3 BID AMOUNT

Dollars

(\$ _____ . _____).

If the Living Wage Ordinance applies, please indicate costs within the bid price associated with compliance with the Living Wage Ordinance:

_____ Dollars (\$ _____).

ALTERNATE #4: Alternate to include a total contract price for all labor and materials to provide repair, upgrade, and new work called for in Traction Elevator Technical Specification #1 for the following units:

City Hall, Loading Dock Elevator #3 - FL State SN #4644

ALTERNATE #4 BID AMOUNT

Dollars

(\$ _____ . _____).

If the Living Wage Ordinance applies, please indicate costs within the bid price associated with compliance with the Living Wage Ordinance:

_____ Dollars (\$ _____).

PROJECT BID TOTALS SUMMARY

<u>BASE BID</u>	\$
<u>ALTERNATE #1</u>	\$
<u>ALTERNATE #2</u>	\$
<u>ALTERNATE #3</u>	\$
<u>ALTERNATE #4</u>	\$
<u>TOTAL AMOUNT (BASE BID + ALL ALTERNATES)</u>	\$

If the Living Wage Ordinance applies, please indicate costs within the bid price associated with compliance with the Living Wage Ordinance:

_____ Dollars (\$_____).

Note: THE CITY RESERVES THE RIGHT TO ADD OR DELETE LOCATIONS, SERVICES, ITEMS, MATERIALS OR ANY OTHER ASPECTS OF CONSIDERATION FROM THIS CONTRACT SHOULD IT BE IN THE BEST INTEREST OF THE CITY. THE CONTRACT PRICE WILL BE ADJUSTED ACCORDINGLY UPON MUTUAL NEGOTIATION AND AGREEMENT OF THE CONTRACTOR AND THE CITY'S REPRESENTATIVE.

LOCAL PREFERENCE (check one)

Local Preference requested: YES NO

A copy of your Business tax receipt and Zoning Compliance Permit should be submitted with your bid if a local preference is requested.

QUALIFIED LOCAL SMALL AND/OR DISABLED VETERAN BUSINESS STATUS (check one)

Is your business qualified as a Local Small Business in accordance with the City of Gainesville Small Business Procurement Program? (Refer to Definitions) YES NO

Is your business qualified as a Local Service-Disabled Veteran Business in accordance with the City of Gainesville Small and Service-Disabled Veteran Business Procurement Program? (Refer to Definitions) YES NO

LIVING WAGE COMPLIANCE

See Living Wage Decision Tree (Exhibit C hereto)

Check One:

- Living Wage Ordinance does not apply (check all that apply)
 - Not a covered service
 - Contract does not exceed \$100,000
 - Not a for-profit individual, business entity, corporation, partnership, limited liability company, joint venture, or similar business, who or which employees 50 or more persons, but not including employees of any subsidiaries, affiliates or parent businesses.
 - Located within the City of Gainesville enterprise zone.

Living Wage Ordinance applies and the completed Certification of Compliance with Living Wage is included with this bid.

NOTE: If Contractor has stated Living Wage Ordinance does not apply and it is later determined Living Wage Ordinance does apply, Contractor will be required to comply with the provision of the City of Gainesville's living wage requirements, as applicable, without any adjustment to the bid price.

SIGNATURE ACKNOWLEDGES THAT: (check one)

Bid is in full compliance with the Specifications.

Bid is in full compliance with specifications except as specifically stated and attached hereto.

Signature also acknowledges that Bidder has read the current City of Gainesville Debarment/Suspension/Termination Procedures and agrees that the provisions thereof shall apply to this bid.

ATTEST:

(CORPORATE SEAL)

BIDDER:

Signature
By: _____

Title: _____

Signature
By: _____

Title: _____

TABULATION OF SUBCONTRACTORS AND MATERIAL SUPPLIERS

The Undersigned states that the following is a complete list of the proposed Subcontractors and Material Suppliers on this Project and the class of work to be performed by each, and that such list will not be added to nor altered without written consent of the City of Gainesville. This form should be completed and submitted with the bid. Please TYPE or PRINT legibly. Use additional sheets as necessary.

SUBCONTRACTORS

Company Name	Company Phone Number	Class of Work	% or Price of Work	Qualified Local Small Business
1.				<input type="checkbox"/> Yes <input type="checkbox"/> No
2.				<input type="checkbox"/> Yes <input type="checkbox"/> No
3.				<input type="checkbox"/> Yes <input type="checkbox"/> No
4.				<input type="checkbox"/> Yes <input type="checkbox"/> No
5.				<input type="checkbox"/> Yes <input type="checkbox"/> No

MATERIALS SUPPLIERS

Company Name	Company Phone Number	Type of Supply/Material	% or Price of Materials	Qualified Local Small Business
1.				<input type="checkbox"/> Yes <input type="checkbox"/> No
2.				<input type="checkbox"/> Yes <input type="checkbox"/> No
3.				<input type="checkbox"/> Yes <input type="checkbox"/> No
4.				<input type="checkbox"/> Yes <input type="checkbox"/> No
5.				<input type="checkbox"/> Yes <input type="checkbox"/> No

Bidding Company Name: _____

Form Completed By: _____

Date: _____

Title: _____

DRUG FREE WORKPLACE FORM

The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies that

_____ does:

(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty of nolo contendere to, any violation of Chapter 893, Florida Statutes, or of any controlled substance law of the United State or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Bidder's Signature

Date

DRAFT CONTRACT
ELEVATOR RENOVATIONS
CITY HALL, OLD LIBRARY and THOMAS CENTER A, B

THIS CONTRACT is entered into this _____ day of _____, 2018 by the CITY OF GAINESVILLE, FLORIDA, a municipal corporation ("CITY"), and _____ ("CONTRACTOR").

WHEREAS, the CITY wishes to renovate (6) existing elevators in (3) building locations: City Hall located at 200 East University Avenue, Old Library Building located at 222 East University Avenue, Thomas Center Buildings A and B located at NE 6th Avenue Gainesville, Florida.

NOW, THEREFORE, the parties in consideration of the mutual covenants recited below agree as follows:

1. The CONTRACTOR shall furnish the labor, materials, and equipment to perform the Contract, which consists of the following documents, whether attached to this Contract or incorporated by reference (collectively the 'Contract Documents'):

- a) This Contract
- b) Project Design Documents – VTE Consultants dated March 12, 2018 consisting of Specifications - 124 pages
- c) Addendum No. #1 dated May X, 2018
- d) Invitation to Bid dated April 18, 2018, Bid# FMGT-180080-MS
- e) [Contractor's] Proposal dated June 29, 2018

The Contract Documents constitute the entire agreement between the CITY and CONTRACTOR. In the event of conflict or inconsistency between in the Contract Documents, the order of precedence for interpretation shall be the order in which the Contract Documents are listed above. Conflict or inconsistency within a particular contract document shall be resolved by having the more specific reference to the matter prevail.

2. This Contract is for a term of 426 calendar days after the date of the Notice to Proceed issued to the CONTRACTOR by the CITY. All work shall be completed within such time period. Time is of the essence for the completion of all work under this contract.

3. The City of Gainesville shall pay the CONTRACTOR _____ dollars (\$) for the faithful complete performance of this contract and in accordance with Section 20 of the General Conditions of the City of Gainesville Invitation to Bid. Progress payments shall be made every thirty days based on percent of work completed including work materials verified and stored onsite. Pay applications will be reviewed for approval by CITY representatives and the Project Design Professional.

4. Contractor shall be considered an independent contractor and as such shall not be entitled to any right or benefit to which City employees are or may be entitled to by reason of employment. Except as specifically noted in the Contract Documents,

Contractor shall be solely responsible for the means, method, techniques, sequences, and procedures utilized by the Contractor in the full performance of the Contract.

5. Florida has a very broad public records law and certain records of a CONTRACTOR may be considered public records. Accordingly, by entering into an agreement with the CITY, CONTRACTOR must:

- a. Keep and maintain public records required by the CITY to perform the service.
- b. Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the CITY.
- d. Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If the CONTRACTOR transfers all public records to the CITY upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (XXX)XXX-XXXX xxxxxx@cityofgainesville.org, and _____, 405 NW 39th Avenue, Box 51, Gainesville, FL 32627.

6. This Contract shall be interpreted in accordance with the laws of the State of Florida. In the event of any legal proceedings arising from or related to this Contract, applicable law and venue for such proceedings shall be in Alachua County, Florida, notwithstanding its conflict of laws and provisions.

7. This Contract, together with the attached Contract Documents, constitutes the entire agreement between the parties.

IN WITNESS WHEREOF the parties have executed this Contract on the day first above written in two counterparts, each of which shall without proof or accounting for the other counterparts be deemed an original contract.

(SEAL) (If Corporation)

1 WITNESS:

Contractor Name _____

2 Title: _____

Title: _____

3 WITNESS:

CITY OF GAINESVILLE

4

Anthony Lyons, City Manager

Title: _____

**APPROVED AS TO FORM AND
LEGALITY**

By: _____
City Attorney

PUBLIC CONSTRUCTION BOND

Bond No. (enter bond number)

BY THIS BOND, We _____, as Principal and _____, a corporation, as Surety, are bound to _____, herein called Owner, in the sum of \$_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated _____, _____, between Principal and Owner for construction of _____, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

DATED ON _____, _____.

(Name of Principal)

By (As Attorney in Fact)

(Name of Surety)

CITY LICENSES, PERMITS AND FEE

Pursuant to the Public Bid Disclosure Act, EACH LICENSE, PERMIT OR FEE A CONTRACTOR WILL HAVE TO PAY THE CITY BEFORE OR DURING CONSTRUCTION OR THE % METHOD OR UNIT METHOD OF ALL LICENSE, PERMITS AND FEES REQUIRED BY THE CITY AND PAYABLE TO THE CITY BY VIRTUE OF THIS CONSTRUCTION AS PART OF THE CONTRACT IS AS FOLLOWS:

Licenses, permits and fees which may be required by the State of Florida, State Agencies or by other local governmental entities are not included in the above list.

Local Business Tax Receipt must be in effect as required by Florida Statute 205.065 and City of Gainesville Ordinance Chapter 25-41.

LOCAL SMALL AND SERVICE-DISABLED VETERAN BUSINESS PROGRAM

It is the policy of the City of Gainesville that Local Small and Service-Disabled Businesses shall have the maximum opportunity to participate in the performance of all aspects of contracting and subcontracting opportunities for the City of Gainesville. In this regard, the City of Gainesville and its contractors will take all necessary and reasonable steps to ensure that Local Small and Service-Disabled Businesses have the maximum opportunity to compete for and perform such contracts/subcontracts and provide materials for such contracts/subcontracts.

Except as provided below, evaluation of a bid/proposal may result in bid/proposal being rejected for failure to comply with the following conditions. Upon contract award, failure of any Bidder/Respondent to comply with these conditions/requirements which seek to maximize the use of Local Small and Service-Disabled Businesses shall constitute a breach of a contract award. Upon such breach, the City of Gainesville may at its option, terminate the contract and/or pursue any and all other appropriate remedies available under the contract or otherwise under applicable law.

Contract Award Conditions:

Contract award will be conditioned on meeting the requirements of this section. The City of Gainesville requires the following:

1. Submission by the Bidder/Respondent of the completed "Tabulation of Subcontractors" form (Exhibit I) with the bid/proposal;
2. The names and addresses of all Subcontractors. Clearly designate which Subcontractors are Local Small and Service-Disabled Businesses that will participate in the contract;
3. A description of the Work and/or Materials that each Local Small and Service-Disabled Businesses will perform or supply;
4. Percentage of the Work and/or Materials that each Local Small and Service-Disabled Business will provide on the project.
5. If the actual participation of Local Small and Service-Disabled Business in the apparently successful bid/proposal is not maximized, as determined by the Equal Opportunity Director, or designee, such bidder/respondent shall submit documentation of all Good Faith Efforts (successful and unsuccessful) that were engaged in, prior to bid or proposal submission, to maximize the use of Local Small and Service-Disabled Businesses on this project. Efforts undertaken after proposal submissions are not relevant to the decision to award.

Good Faith Efforts:

A condition of contract award is that the contract award be made only to the Bidder/Respondent (including Local Small Business Bidders/Respondents) who maximize the utilization of Local Small and Service-Disabled Business subcontractors or who makes Good Faith Efforts to maximize the use of Local Small and Service-Disabled Business Subcontractors. The City of Gainesville will determine whether a Bidder/Respondent has made Good Faith Efforts if the Bidder/Respondent does the following:

If the Bidder/Respondent does not maximize the participation of Local Small and Service-Disabled Businesses on this project, the Bidder/Respondent must provide all documentation which by its scope, quality, quantity and intensity of the different kinds of efforts the Bidder/Respondent made to maximize participation can be confirmed and be evaluated. The documentation should be provided both as to those efforts wherein the Bidder/Respondent was successful in obtaining participation and those where it was not. In the latter case, the documentation should further indicate the reason for lack for success, i.e. Subcontractor's bid too high, Subcontractor who bids is apparently not qualified to perform the particular services, no bids received, etc.

Mere pro forma efforts are not Good Faith Efforts to meet the Local Small and Service-Disabled Business requirements. The Bidder/Respondent will be required to submit written documentation of Good Faith Efforts when the participation on this project is not maximized, if they wish to be awarded the contract.

The City of Gainesville will consider the following list of types of actions as a part of the Bidder's/Respondent's Good Faith Efforts to obtain Local Small and Service-Disabled Business Subcontractor participation. It is not

intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

1. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all Local Small and Service-Disabled Business who have the capability to perform the Work or provide Materials needed to complete the project. The Bidder/Respondent must solicit this interest within sufficient time to allow them to respond to the solicitation. The Bidder/Respondent must determine with certainty if they are interested by taking appropriate steps to follow-up the initial solicitations.
2. Selecting portions of the Work to be performed or portions of the Materials to be provided by Local Small and Service-Disabled Businesses in order to increase the likelihood that participation is maximized. This includes, where appropriate, breaking out contract Work items or Material items into economically feasible units to facilitate participation, even when the prime contractor might otherwise prefer to perform these Work items or provide these Material items with its own forces.
3. Providing interested Local Small and Service-Disabled Businesses with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. (a) Negotiating in good faith with interested Local Small and Service-Disabled Businesses. It is the Bidder's/Respondent's responsibility to make a portion of the Work or Materials available to the Subcontractors and to select those portions of the Work or Material needed consistent with the available Local Small and Service-Disabled Business Subcontractors, so as to facilitate participation. Evidence of such negotiation includes the names, addresses and telephone numbers of Local Small and Service-Disabled Businesses that were considered; a description of the information provided regarding the plans and specifications for the Work or Materials selected for subcontracting; and evidence as to why additional agreements could not be reached to perform the Work or provide the Materials.
(b) A Bidder/Respondent using good business judgment would consider a number of factors in negotiating with Subcontractors, and would take a firm's price and capabilities into consideration. However, the fact that there may be some additional costs involved in finding and using Local Small and Service-Disabled Businesses is not in itself sufficient reason for a Bidder/Respondent's failure to seek to maximize the use of them as long as such costs are reasonable and/or may be offset by other less tangible benefits. Also, the availability or desire of a Bidder/Respondent, including a Local Small and Service-Disabled Business Bidder/Respondent to perform the Work or provide the Materials of a contract with its own organization does not relieve the Bidder/Respondent the responsibility to make Good Faith Efforts and maximize utilization of other Local Small and Service-Disabled Businesses. Bidder/Respondents are not, however, required to accept higher quotes from Local Small and Service-Disabled Businesses if the price difference is excessive or unreasonable or they are not qualified to perform the Work. These decisions should, however, be supportable and documented as part of the required Good Faith Efforts.
5. Making efforts to assist interested Local Small and Service-Disabled Businesses in obtaining bonding, lines of credit, or insurance as required by the City of Gainesville or Bidder/Respondent.
6. Making efforts to assist interested Local Small and Service-Disabled Businesses in obtaining necessary equipment, supplies, Materials, or related assistance and services.
7. Effectively using the services of available small, women, service-disabled veteran and minority business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of Local Small Businesses.

In determining whether a Bidder/Respondent has maximized participation, the City of Gainesville will take into account the performance of other Bidders/Respondents in meeting this requirement of the bid/proposal and historical participation by Local Small and Service-Disabled Businesses involving similar Work or Materials. For example, when the apparent successful Bidder/Respondent fails to obtain or fails to maximize Local Small Business participation, but others Bidders/Respondents obtained and/or maximized such participation, the City of

Gainesville will reasonably raise questions whether, with additional reasonable efforts, the apparent successful Bidder/Respondent could have obtained and/or maximized participation. As indicated, a reasonable level of participation (maximization) may not be apparent until after bids/proposals are opened and participation of various bidders compared. Therefore, it is recommended that in all cases, all pre-submittal Good Faith Efforts be documented, and retained in the event that such are required to be submitted for review/verification.

Even if a Bidder/Respondent is a Local Small and Service-Disabled Business, maximizing the utilization of other Local Small and Service-Disabled Businesses is still required.

Local Small Businesses Terminations/Substitutions:

A Bidder/Respondent shall not terminate for convenience a Local Small and Service-Disabled Business Subcontractor and then perform the Work or provide the Materials of the terminated Subcontractor within its own forces or those of an affiliate without the prior consent of the City of Gainesville.

When a Local Small and Service-Disabled Business Subcontractor is terminated or fails to complete its Work or fails to provide the Materials on the contract for any reason, the prime contractor shall make Good Faith Efforts to find another Local Small and Service-Disabled Business subcontractor to substitute for the original Local Small and Service-Disabled Business. These Good Faith Efforts shall be directed at finding another Local Small and Service-Disabled Business to perform at least the same amount of Work or provide the same amount of Materials under the contract as the business that was terminated to the extent needed to meet the contract goal or commitment.

The City of Gainesville shall have the right to consider price, quality, past performance including meeting Small Business Procurement Program commitments, time required for performance and qualifications of the Bidder/Respondent in making the award.

Equal Opportunity Assurance:

The Respondent, sub recipient, or Subcontractor shall not discriminate on the basis of race, color, religion, gender, national origin, marital status, sexual orientation, age, disability, and gender identity in the performance of this contract. Failure by the Respondent to carry out these requirements is a material breach of his contract, which may result in termination of this contract or such other remedy as the recipient deems appropriate.

The Respondent shall include this assurance in each subcontract it signs with a Subcontractor or Material Supplier.

Protest of Rejected Bid/Proposal – Administrative Reconsideration

1. The Equal Opportunity Director or designee, shall review bids and proposals to evaluate whether said bids or proposals comply with the above stated requirements. In the event that a bid or proposal is rejected for failure to comply with the stated requirements, the affected bidder or respondent may obtain reconsideration of such determination by filing a Protest/Request for Reconsideration.
2. In the reconsideration, the Bidder/Respondent has the opportunity to demonstrate how the Bid/Proposal met the requirements of the Program. The Request for Reconsideration shall be submitted to the Office of Equal Opportunity within five (5) working days after receipt of notice of rejection. The Request for Reconsideration shall address the issues of whether the Bidder/Respondent maximized Local Small and Service-Disabled Business participation or made adequate good faith efforts to maximize the participation of local small and service-disabled business participation and shall include documentation associated with these factors.
3. The decision on reconsideration will be made by the Executive Chief of Staff.
4. The Bidder/Respondent may have the opportunity to meet in person with the Executive Chief of Staff to discuss the issue of whether it met the criteria outlined above (see Item 2).
5. The Bidder/Respondent will be sent a written decision on reconsideration, explaining the basis for finding that the Bidder/Respondent did or did not meet the criteria above (see Item 2).

6. All the arguments, documentation, and evidence, which is relevant to the Request for Reconsideration must be submitted by the Bidder/Respondent to the Executive Chief of Staff at least three (3) working days prior to the meeting described in Item 4 above or, if no meeting is held, three (3) days prior to the anticipated date of the decision on reconsideration. Absent fraud or mistake not attributable to the Bidder/Respondent, evidence of efforts undertaken subsequent to submission of the bid/proposal will not be considered. If no additional evidence or documentation is submitted by the Bidder/Respondent in accordance with the above, only the documents currently on file with the Procurement Division will be reviewed at the meeting.

QUALIFIED LOCAL SMALL BUSINESS UNAVAILABILITY FORM

This form will assist you in meeting your Good Faith Efforts requirements. *Please TYPE or PRINT legibly. Use additional sheets as necessary.*

***Note:** Keep all relevant documentation that verifies opportunities were provided to Qualified Local Small Businesses. If it is not evident that your firm made Good Faith Efforts to maximize the Qualified Local Small Businesses, you will be asked to submit documentation.

BUSINESS RESPONSES: **1** -Did not bid in response to the invitation; **2** -Submitted a bid which was not the low responsible bid; **3** - Please specify other.

Qualified Local Small Business Name	Business Phone Number	Description of Work/Material Sought	Response of Business (1, 2 or 3)	Notes:

The undersigned representative of the prime contractor confirms that the above Qualified Local Small Businesses were invited to participate as subcontractors and/or materials suppliers in the prime contractor's the bid/proposal for the City of Gainesville.

Bidding/Proposing Company: _____ Form Completed By: _____

Title: _____ Signature: _____ Date: _____

Gainesville.
Citizen centered
People empowered

SUBCONTRACTOR AND MATERIAL SUPPLIER PAYMENT CERTIFICATION

Qualified Local Small Business Subcontractor/Material supplier

Other Subcontractor/Material Supplier

PROJECT INFORMATION

Contract/Project Name: _____

Contract/Project #: _____

Location (park, facility, etc.): _____

Address: _____

City, State, Zip Code: Gainesville, Florida _____

Prime Contractor: _____

Subcontractor/Material Supplier: _____

Amount of Contract between Prime Contractor and Subcontractor/Material Supplier \$ _____

SUBCONTRACTOR AND MATERIAL SUPPLIER

PARTIAL PAYMENT CERTIFICATION

Amount Paid to Date \$ _____

Percentage Paid to Date _____ %

This is to certify that _____
(Subcontractor or Material Supplier)

Received partial payment in the amount of \$ _____ on _____
(amount) (date)

SUBCONTRACTOR AND MATERIAL SUPPLIER

WAIVER AND RELEASE OF LIEN – FINAL PAYMENT

The undersigned lienor, in consideration of the **FINAL PAYMENT** in the amount of \$ _____ hereby waives and releases its lien and right to claim a lien for labor, services or materials furnished to

_____ (Prime Contractor)

on the job of the **CITY OF GAINESVILLE, FLORIDA** contract/location described above.

Official of Subcontractor or Material Supplier:

Official of Prime Contractor:

Printed _____

Printed _____

Signed _____

Signed _____

Sworn to and subscribed before me this
_____ day of _____ A.D., 20____

Sworn to and subscribed before me this
_____ day of _____ A.D., 20____

(Notary Public)

Commission Expires

(Notary Public)

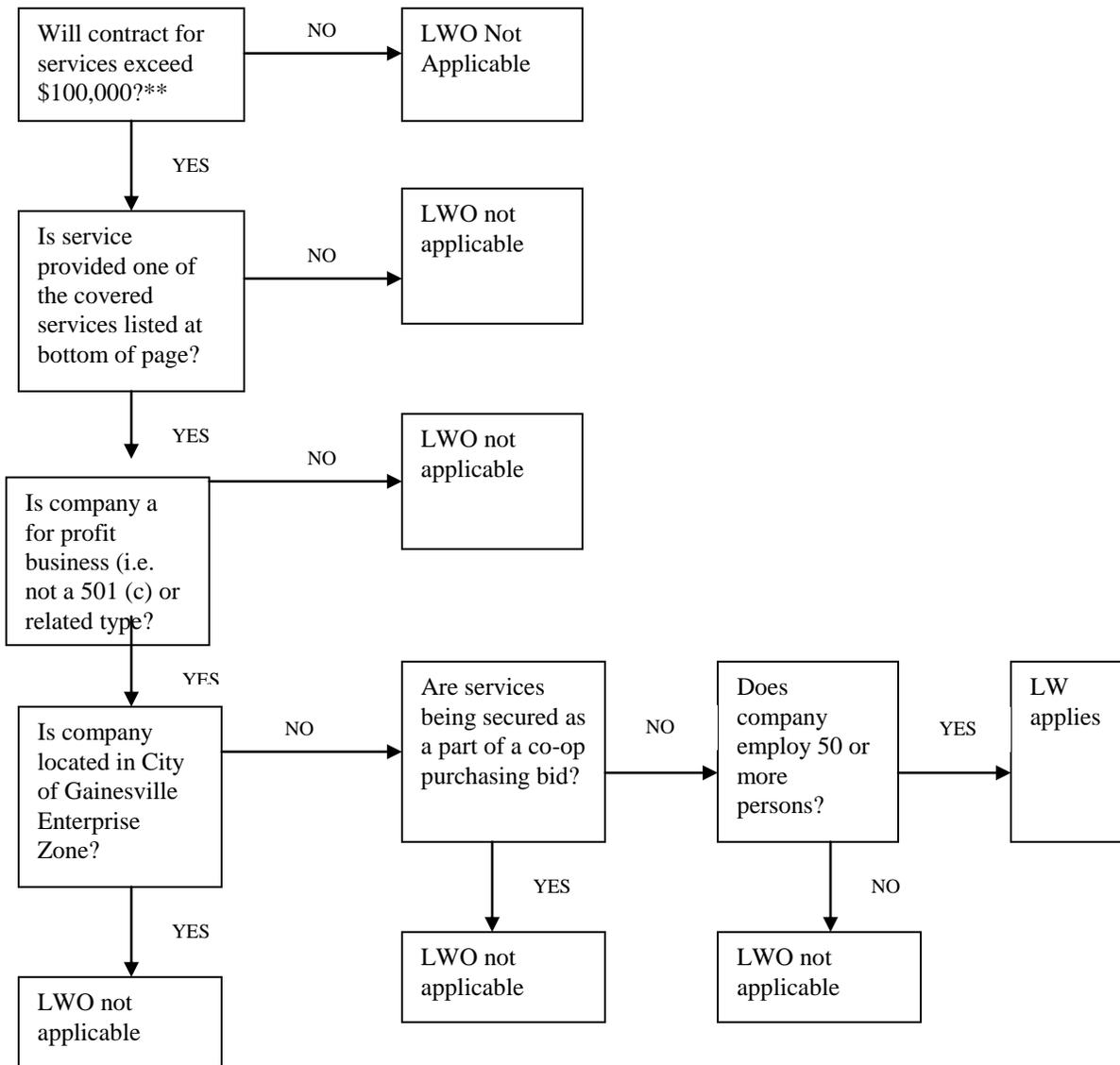
Commission Expires

Notary Seal

Notary Seal

LIVING WAGE DECISION TREE

While not all encompassing, the following is provided as a guideline for contractors in determining whether the City of Gainesville Living Wage Ordinance applies to their firm in the performance of specified service contracts for covered services* with the City. Contractors are advised to review the entire text of the Living Wage Ordinance in conjunction with this guideline.



***Covered Services:** food preparation and/or distribution; custodial/cleaning; refuse removal; maintenance and repair; recycling; parking services; painting/refinishing; printing and reproduction services; landscaping/grounds maintenance; agricultural/forestry services; and construction services
****Total value of contract**

CITY OF GAINESVILLE

CERTIFICATION OF COMPLIANCE WITH LIVING WAGE

The undersigned hereby agrees to comply with the terms of the Living Wage Ordinance and to pay all covered employees, as defined by City of Gainesville Ordinance 020663 as amended at 030168 (Living Wage Ordinance), during the time they are directly involved in providing covered services under the contract with the City of Gainesville for Elevator Modernization a living wage of \$12.0673 per hour to covered employees who receive Health Benefits from the undersigned employer and \$13.3173 per hour to covered employees not offered health care benefits by the undersigned employer.

Name of Service Contractor/Subcontractor: _____

Address: _____

Phone Number: _____

Name of Local Contact Person _____

Address: _____

Phone Number: _____

\$ _____
(Amount of Contract)

Signature: _____ Date: _____

Printed Name: _____

Title: _____

ARTICLE X. LOCAL PREFERENCE POLICY*

***Editor's note:** Section 9 of Ord. No. 001261 states: "This ordinance shall become effective October 1, 2004, and shall be reviewed by the City Commission October 1, 2005, and unless extended by action of the City Commission, shall be deemed repealed effective March 31, 2006, provided that it shall remain applicable to new contracts solicited prior to repeal."

Sec. 2-620. Findings of fact.

The city annually spends significant amounts on purchasing personal property, materials, and contractual services and in constructing improvements to real property or to existing structures. The dollars used in making those purchases are derived, in large part, from taxes, fees, and utility revenues derived from local businesses in the corporate city limits of Gainesville, and the city commission has determined that funds generated in the community should, to the extent possible, be placed back into the local economy. Therefore, the city commission has determined that it is in the best interest of the city to give a preference to local businesses in the corporate city limits of Gainesville in making such purchases whenever the application of such a preference is reasonable in light of the dollar-value of proposals received in relation to such expenditures.

(Ord. No. 001261, § 1, 3-29-04)

Sec. 2-621. Definition.

"Local business" means the vendor has a valid occupational license, issued by the City of Gainesville at least six months prior to bid or proposal opening date, to do business in said locality that authorizes the business to provide the goods, services, or construction to be purchased, and a physical business address located within the limits of said locality, in an area zoned for the conduct of such business, from which the vendor operates or performs business on a day-to-day basis. Post office boxes are not verifiable and shall not be used for the purpose of establishing said physical address. In order to be eligible for local preference, the vendor must provide a copy of the occupational license.

(Ord. No. 001261, § 2, 3-29-04)

Sec. 2-622. Local preference in purchasing and contracting.

In bidding of, or letting contracts for procurement of, supplies, materials, equipment and services, as described in the purchasing policies, the city commission, or other purchasing authority, may give a preference to local businesses in making such purchase or awarding such contract in an amount not to exceed five percent of the local business' total bid price, as described below, and in any event the cost differential should not exceed \$25,000.00. Total bid price shall include not only the base bid price but also all alterations to that base bid price resulting from alternates which were both part of the bid and actually purchased or awarded by the city commission or other authority. In the case of requests for proposals, letters of interest, best

evaluated bids, qualifications or other solicitations and competitive negotiation and selection in which objective factors are used to evaluate the responses, local businesses are assigned five percent of the total points of the total evaluation points.

(Ord. No. 001261, § 3, 3-29-04)

Sec. 2-623. Exceptions to local preference policy.

The preference set forth in this Article X shall not apply to any of the following purchases or contracts:

- (1) Good or services provided under a cooperative purchasing agreement;
- (2) Contracts for professional services procurement of which is subject to the Consultants' Competitive Negotiation Act (F.S. § 287.055) or subject to any competitive consultant selection policy or procedure adopted or utilized by the city commission or charter officer;
- (3) Purchases or contracts which are funded, in whole or in part, by a governmental entity and the laws, regulations, or policies governing such funding prohibit application of that preference; or
- (4) Purchases made or contracts let under emergency or noncompetitive situations, or for litigation related legal services, etc., as such are described in the city's purchasing policies;
- (5) Purchases with an estimated cost of \$50,000.00 or less;
- (6) Application of local preference to a particular purchase, contract, or category of contracts for which the city commission is the awarding authority may be waived upon written justification and recommendation of the charter officer and approval of the city commission. The preferences established herein in no way prohibit the right of the city commission or other purchasing authority to compare quality or fitness for use of supplies, materials, equipment and services proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms, or corporations submitting bids or proposals. Further, the preferences established herein in no way prohibit the right of the city commission or other purchasing authority from giving any other preference permitted by law in addition to the preference authorized herein.

(Ord. No. 001261, § 4, 3-29-04)

Sec. 2-624. Application, enforcement.

The local preference shall apply to new contracts for supplies, materials, equipment and services first solicited after October 1, 2004. This article shall be implemented in a fashion consistent with otherwise applicable city purchasing policies and procedures.

(Ord. No. 001261, § 5, 3-29-04)

DEBARRED AND SUSPENDED BIDDERS: Breach of Contract

1. Scope.

This policy prescribes policies and procedures relating to:

- (a) the debarment of bidders for cause;
- (b) the suspension of bidders for cause under prescribed conditions;
and,
- (c) the rejection of bids, revocation of acceptance and termination of contracts for cause.

It is directly applicable to the advertised and negotiated purchases and contracts, for equipment and services of the City.

2. General.

Debarment and suspension are measures which may be invoked by the City either to exclude or to disqualify bidders and contractors from participation in City contracting or subcontracting. These measures should be used for the purpose of protecting the interests of the City and not for punishment. To assure the City the benefits to be derived from the full and free competition of interested bidders, these measures should not be instituted for any time longer than deemed necessary to protect the interests of the City, and should preclude awards only for the probable duration of the period of non-responsibility.

2.1 Definitions.

- (a) "Debarment" means, in general, an exclusion from City contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense, improper conduct or the inadequacy of performance.
- (b) "Suspension" means a disqualification from City contracting and subcontracting for a temporary period of time because a concern or individual is suspected upon adequate evidence (See Section 6) of engaging in criminal, fraudulent, improper conduct or inadequate performance.
- (c) A "debarment list" or "debarred bidders list" means a list of names of concerns or individuals against whom any or all of the measures referred to in this policy have been invoked.
- (d) "Bidders" means, wherever the term is used in this policy, an offerors bidding pursuant to an invitation for bids or a request for proposals.
- (e) "Affiliates" means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.
- (f) "Business operations" means commercial or industrial activity engaged in regularly and continuously over a period of time for the purpose of receiving pecuniary benefit or otherwise accomplishing an objective. "Business operations" constitute and are equivalent to "carrying on business", "engaged in business", "doing business".

3. Establishment and Maintenance of a List of Concerns or Individuals Debarred or Suspended.

- (a) The Procurement Division shall establish and maintain on the basis contained in Sections 6 and 6.1, a consolidated list of concerns and individuals to whom contracts will not be awarded and from whom bids or proposals will not be solicited.
- (b) The list shall show as a minimum the following information:
 - (1) the names of those concerns or individuals debarred or suspended (in alphabetical order) with appropriate cross-reference where more than one name is involved in a single action;
 - (2) the basis of authority for each action;
 - (3) the extent of restrictions imposed; and,
 - (4) the termination date for each debarred or suspended listing.
- (c) The list shall be kept current by issuance of notices of additions and deletions.

4. Treatment to be Accorded Firms or Individuals Debarred or Suspended

Firms or individuals listed by the Procurement Division as debarred or suspended shall be treated as follows.

- (a) Total restrictions. A contract shall not be awarded to a concern or individual that is listed on the basis of a Section 5(a)(1), (2) or (3) felony "conviction", or to any concern, corporation, partnership, or association in which the listed concern or individual has actual control or a material interest; nor shall bids or proposals be solicited therefrom. However, when it is determined essential in the public interest by the City Commission, an exception may be made with respect to a particular procurement action where the individual or concern is effectively the sole source of supply or it is an emergency purchase.
- (b) Restrictions on subcontracting. If a concern or individual listed on the debarred and suspended bidders list is proposed as a subcontractor, the Procurement Division shall decline to approve subcontracting with that firm or individual in any instance in which consent is required of the City before the subcontract is made, unless it is determined by the City to grant approval City Commission essential to public interest and the individual or concern is effectively the sole source of supply or it is an emergency purchase.

5. Causes and Conditions Applicable to Determination of Debarment.

Subject to the following conditions, Procurement is authorized to debar a firm or individual in the public interest for any of the following causes occurring with ten (10) years of debarment.

(a) Causes

- (1) "Conviction" for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.
- (2) "Convictions" of embezzlement, theft, forgery, issuance of worthless checks, bribery, falsification or destruction of records, perjury, or receiving stolen property where the conviction is based upon conduct which arose out of, or was related to, business operations of the bidder.
- (3) "Conviction" for bid-rigging activities arising out of the submission of bids or proposals.
- (4) Violation of contract provisions, as set forth below, of a character which is regarded by the City to be so serious as to justify debarment action:
 - (i) willful failure to perform in accordance with the specifications or within the time limit provided in the contract;
 - (ii) a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts. Failure to perform or unsatisfactory performance caused by acts beyond the control of the firm or individual as a contractor shall not be considered to be a basis for debarment.
- (5) Debarment by any other governmental agency.

(b) Conditions.

- (1) Debarment for any of the causes set forth in this section shall be made only upon approval of Procurement.
- (2) The existence of any of the causes set forth in (a) of this section does not necessarily require that a firm or individual be debarred except as provided in 4(a). In each instance, whether the offense or failure, or inadequacy of performance, be of criminal, fraudulent, or serious nature, the decision to debar shall only be made if supported by a preponderance of the credible evidence available. Likewise, all mitigating factors may be considered in determining the seriousness of the offense, failure, or inadequacy of performance, in deciding whether debarment is warranted. The actual or apparent authority of an involved individual, the present relationship of involved individuals with the bidder, the past performance of the individual or concern, and the relationship of the violation to the services or materials involved shall be considered.
- (3) The existence of a cause set forth in (a)(1), (2), and (3) of this section shall be established by criminal "conviction" by a court of competent jurisdiction. In the event that an appeal taken from such conviction results in reversal of the "conviction", the debarment shall be removed upon the request of the bidder (unless other causes for debarment exists). For the purposes of this policy, the following shall have the same effect as a "conviction": pleading guilty or nolo contendere, or being found guilty by a jury or court of, the offense in question, regardless of whether probation is imposed and adjudication withheld.
- (4) The existence of a cause set forth in (a)(4) and (5) of this section shall be established by a preponderance of credible evidence by Procurement
- (5) Debarment for the cause set forth in (a)(5) of this section (debarment by another agency) shall be proper if one of the causes for debarment set forth in (a)(1) through (4) of this section was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

5.1 Period of Debarment.

- (a) Debarment of a firm or individual shall be for a reasonable, definitely stated period of time commensurate with the seriousness of the offense or the failure or inadequacy or performance. As a general rule, a period of debarment shall not exceed five (5) years. However, when partial or total debarment for an additional period is deemed necessary, notice of the proposed additional debarment shall be furnished to that concern or individual in accordance with Section 8.
- (b) A debarment may be removed or the period thereof may be reduced by the City Manager upon the submission of an application supported by documentary evidence, setting forth appropriate grounds for the granting of relief; such as newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which the debarment was imposed. The City Manager may request additional information, shall consider all relevant facts, and shall render a decision within twenty (20) days of receipt of the application unless a longer period is warranted under the circumstances.

6. Suspension of Bidders.

- (a) Suspension is a drastic action and, as such, shall not be based upon an unsupported accusation. In assessing whether evidence exists for invoking a suspension, consideration should be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, as well as to the inferences which may properly be drawn from the existence or absence of affirmative facts. This assessment should include an examination of basic documents, such as contracts, inspection reports, and correspondence. In making a determination to suspend, Procurement shall consider the factors set forth in Section 5(b)(2). A suspension may be modified by the City Manager as described in Section 5.1(b).

- 6.1 Causes and Conditions Under Which the City May Suspend Contractors
- (a) Procurement may, in the interest of the City, suspend a firm or individual when the firm or individual is suspected, upon credible evidence, of having committed one or more the following act(s) within three (3) years of the date of suspension:
 - (1) Commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract;
 - (2) Violation of statutes concerning bid-rigging activities out of the submission of bids and proposals; and,
 - (3) Commission of embezzlement, theft, forgery, issuance of worthless checks, bribery, falsification, or destruction of records, perjury, receiving stolen property. Commission of any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a City contractor.
- 6.2 Period of Suspension.
- (a) All suspension shall be for temporary period pending the completion of an investigation and such legal proceedings as may ensue. In the event that prosecution has not been initiated within twelve (12) months form the date of the suspension, the suspension shall be terminated. Upon removal of suspension, consideration may be given to debarment in accordance with Section 5 of this policy.
7. Scope of Debarment or Suspension.
- (a) A debarment or suspension may include all known affiliates of a concern or individual.
 - (b) Each decision to include a known affiliate within the scope of a proposed debarment or suspension is to be made on a case-by-case basis, after giving due regard to actual or apparent authority of the controlling concern or individual and similarity of the services provided by the affiliate to those provided by the debarred individual or concern.
 - (c) The criminal, fraudulent, or seriously improper conduct of an individual may be imputed to the business concern with which he is connected, where such impropriety was accomplished within the course of his official duty or apparent authority, or was effected by him with the knowledge and approval of that concern. When the individual was an officer of the concern, knowledge and approval may be presumed. Likewise, where a concern is involved in criminal, fraudulent, or seriously improper conduct, any individual who was involved in the commission of the impropriety may be debarred or suspended.
8. Notice of Debarment or Suspension.
- When Procurement seeks to debar or suspend a concern or individual (or any affiliate thereof) for cause, it shall furnish that party with a written notice:
- (1) stating that debarment or suspension is being considered;
 - (2) setting forth the reasons for the proposed action;
 - (3) indicating that such party will be afforded an opportunity for a hearing if he so requests one within ten (10) days; and,
 - (4) indicating that such party may make a written response in accordance with Section 9(a).
9. Response to Notice of Debarment or Suspension.
- (a) In lieu of requesting a hearing within the prescribed ten (10) day period, the party may, within said ten (10) day period, notify the City of its intent to provide a written reply and submit written evidence to contest the debarment or suspension. Such written evidence must be submitted within twenty (20) days after receipt of the notice of proposed debarment or suspension in order for it to be considered.
 - (b) Whatever response is received to the notice of intent to debar or suspend, such will be considered in determining whether debarment or suspension action will be made. Where a reply is received to the notice of intent to debar or to suspend, and evidence to refute such action is furnished but no hearing is requested, the information furnished will be considered in determining the action to be taken.
 - (c) If a hearing is requested, it shall be conducted by the City Manager. The hearing will be held at a location convenient to the City as determined by the City Manager and on a date and at a time stated. An opportunity shall be afforded to the firm or individual to appear with witnesses and counsel, to present facts or circumstances showing cause why such firm or individual should not be debarred or suspended. The proceeding shall be of an informal nature as determined by the City Manager. After consideration of the facts, the City Manager shall notify the firm or individual of the final decision.
 - (d) If no response is made to the notice of debarment or suspension within the first ten (10) day period, the decision of the Procurement shall be deemed final and the party so notified.
10. Rejection of Bids, Breach of Contract.
- (a) Previously solicited and/or accepted bids may be rejected or acceptance revoked prior to beginning of performance upon discovery by the City that the bidder or its affiliates have committed any act which would have been cause for debarment.
 - (b) If after a contract is awarded and performance has been begun the City discovers that the bidder or its affiliates have committed any act prior to award or acceptance which would have been cause for debarment had it been discovered prior to solicitation or acceptance, the City may consider such to be a material breach of the contract and such shall constitute cause for termination of the contract.

- (c) If after bids have been solicited and/or accepted or after a contract is awarded and performance begun, the City discovers that the bidder or its affiliates committed any act prior to award or acceptance which would have been cause for disbarment or suspension had it been discovered prior to solicitation or acceptance, the City may require additional satisfactory assurances that such act(s) have not occurred and that the contract can and will be faithfully performed. If additional assurances are requested and are not satisfactory or if the bidder or its affiliates fail to immediately cooperate with all reasonable requests, including requests for information reasonably calculated to lead to the discovery of relevant evidence, then such may be considered a material breach of the contract and such shall constitute cause for termination of the contract.

**CITY OF GAINESVILLE
GENERAL GOVERNMENT
PROCUREMENT DIVISION SURVEY
BID INFORMATION**

BID #: FMGT-180080-MS
SEALED BID ON: Elevator Modernization

DUE DATE: June 29, 2018
@ 3:00 p.m.(local time)

IF YOU DO NOT BID

Please check the appropriate or explain:

- _____ 1. Not enough bid response time.
- _____ 2. Specifications not clear.
- _____ 3. Do not submit bids to Municipalities.
- _____ 4. Current work load does not permit time to bid.
- _____ 5. Delay in payment from Governmental agencies.
- _____ 6. Do not handle this item.
- _____ 7. Other: _____

Company: _____

Address: _____

Are you a minority business? yes _____ no _____