



## CITY OF WAUCHULA

### INVITATION TO BID ITB# 23-01 ADMIN/PD BUILDING ROOF REPAIR

---

The City of Wauchula will be accepting sealed bids for the Roof Repair at the City Administration Building / Police Department located at 126 S. 7<sup>th</sup> Ave., Wauchula, FL 33873.

Sealed Bids must be received by the City of Wauchula, at the Administrative Building, located at 126 South 7<sup>th</sup> Avenue, Wauchula, FL 33873 no later than **2:00 pm EST on March 23, 2023.**

Attached are important instructions and specifications regarding responses to this Invitation to Bid. Failure to follow these instructions could result in disqualification.

**Questions regarding this invitation to bid must be in writing and must be sent to Holly Smith, City Clerk by mail at the address listed below or by email to [hsmith@cityofwauchula.com](mailto:hsmith@cityofwauchula.com). All questions must be received by March 16, 2023.**

***Prospective bidders shall not contact, communicate with or discuss any matter relating in any way to the Invitation to Bid with the City Commissioners, any employee of the City of Wauchula, other than the City Clerk or as directed in the Invitation to Bid. Such communications initiated by a bidder shall be grounds for disqualifying the offending bidder from consideration for award of the bid and/or any future bid or proposal.***

The Bidder shall be solely responsible for delivery of their bid. Reliance upon mail or public carriers is at the Bidder's risk. All bids will be opened publicly, read aloud and recorded at 2:00 pm EST on March 23, 2023, in the City of Wauchula Administration Building. The City of Wauchula, at their sole discretion, reserves the right to reject any or all bids. Sealed Bids shall reference the following on the outer envelope:

#### BIDDER'S NAME AND ADDRESS

**City of Wauchula  
Holly Smith, City Clerk  
ITB# 23-01 Admin/PD Building Roof Repair  
126 S. 7th Avenue  
Wauchula, Florida 33873**

# CITY OF WAUCHULA

## INVITATION TO BID ITB# 23-01 ADMIN/PD BUILDING ROOF REPAIR

### Notice of Interest

Bidder Name:

Address:

Telephone:

Fax:

E-Mail:

Bidder's Signature:

\_\_\_\_\_  
(Duly Authorized)

Return To:

Holly Smith

City of Wauchula

126 S. 7th Avenue

Wauchula, FL 33873

hsmith@cityofwauchula.com

## SCOPE OF WORK

The City requires the awarded bidder to perform all tasks necessary to repair the entire roof with a silicone based coating system. Tasks will include but are not limited to:

- Removal of all loose gravel/debris and disposal in dumpster or dump trailer (provided by contractor)
- Install perimeter of 1.5" pressure treated wood to allow proper nailing of drip edge
- Install 1.5" ISO Board (Insulated Board) and attach over existing substrate
- Install new drip edge to cover rock guard
- Install peel and stick water barrier over ISO board
- Furnish and Install silicone-based coating foundation coat over ISO board
- Apply 40" Silicone Based system non-woven fabric
- Apply 2<sup>nd</sup> foundation coat of silicone-based coating
- Apply Silicon-Based Top/Final coat
- If applicable – Install materials to the eave and secure eaves with new fasteners
- Provide a minimum of a 15-year material warranty
- Provide a minimum of a 5-year warranty on workmanship
- Remove any debris or remaining construction material from site at completion

It is the intent of the City to negotiate a contract for the work described.

## PROJECT SCHEDULE

The schedule for work described herein will be formalized during the project contract negotiations. In general, the negotiated project schedule shall comply with the intent of the schedule presented below. The awarded bidder, in conjunction with City staff will prepare a schedule for completion of the project. The schedule will be integrated into and become part of the project contracts.

- |  |                |
|--|----------------|
| • Date sealed bids due                                   | March 23, 2023 |
| • Evaluation of bids and recommendation of award         | March 30, 2023 |
| • Present recommendation to City Commission for approval | April 10, 2023 |
| • Notice to Proceed                                      | April 2023     |
| • Project Completion                                     | TBD            |

## SELECTION AND EVALUATION PROCEDURES

The City reserves the right to determine, at its sole discretion, whether the bids satisfactorily meet the criteria established in this ITB, and the right to seek clarification from any firm(s) submitting a bid. A selection committee will review and score the bids received. The evaluation criteria listed below will be utilized to evaluate the bids. Interviews with firms may then be scheduled with the selection committee and/or the City Commission before a final decision is made. The City shall be the sole judge of its own best interests, the bids and the resulting negotiated contract. The City's decisions will be final.

Bidders will be evaluated using a number of factors including, but not limited to, the following:

- Qualifications and experience of staff (20 points)
- Prior Experience with similar projects (35 points)
- Project Approach and schedule (15 points)
- Location of staff (5 points)
- Proposed Fee Schedule (25 points)

The City reserves the right to act in the best interest of the City and its residents and businesses, including the right to reject a bid that is given the highest score in the evaluation process if the bid is not in the best interest of its residents and businesses.

## **SUBMITTAL**

Submittals should not contain information in excess of that requested, must be concise, and must specifically address the issues of this ITB. The submittals should include the following:

1. **Letter of Transmittal:** Briefly state your understanding of the work to be done and provide a positive commitment to perform the work within a specified time period.
2. **Profile of the Firm and Qualifications:**
  - a. Give a brief history of the firm. State whether the firm is local, regional or national. State the location of the office from which the work will be performed. Describe present size of the firm and nature of services offered.
  - b. Give brief resume of key persons to be assigned to the project including but, not limited to how many years employed with this and other firms, experience on similar projects and education. Any use of subcontractors should be shown separately and the tasks to which they will be assigned must be identified as well.
  - c. Provide a list of similar projects which best illustrate the experience of the firm. List no more than ten (10) projects completed within the last five (5) years. For each project listed, include the name and current contact information of a representative for whom the project was undertaken who can verify satisfactory performance and professionalism.
3. **Project Approach and Schedule:** Describe in detail the approach to the project identifying all tasks and activities that the firm will perform. Provide a project schedule identifying major activities and the amount of time required to complete each project activity. Include any innovative approaches to providing the services.
4. **Proposed Cost:** The compensation schedule shall be devised based on the tasks outlined in the project schedule. Each task shall contain a cost, and shall be tallied for a grand total at the bottom of the compensation schedule. The

compensation schedule may include multiple methodology options with applicable costs.

## **RESPONSE**

Interested parties are invited to submit one (1) bound original and one (1) electronic copy on a USB drive of their bid in a sealed envelope to the City Clerk. The envelope should be labeled "**ITB# 23-01, Admin/PD Building Roof Repair**" and marked with the respondent's name and address. Bids may be mailed or delivered to:

**City of Wauchula  
Holly Smith, City Clerk  
126 S. 7th Avenue  
Wauchula, Florida 33873**

The submittal shall be received by the City only at the above address prior to **2:00 p.m., March 23, 2023**.

The delivery of the submittal on the above date and prior to the specified time is solely the responsibility of the bidder.

The submittal may be withdrawn either by written notice to the City Clerk or in person, if properly identified, at any time prior to the above submittal deadline. Bids shall remain valid for at least sixty (60) days after the filing deadline.

## GENERAL CONDITIONS

### CONTACT

After the issuance of any Invitation to Bid, prospective bidders shall not contact, communicate with or discuss any matter relating in any way to the Invitation to Bid with the City Commission, and any employee of the City of Wauchula, other than the City Clerk or as directed in the Invitation to Bid. This prohibition begins with the issuance of any Invitation to Bid and ends upon execution of the final contract. Such communications initiated by a bidder **shall** be grounds for disqualifying the offending bidder from consideration for award of the bid and/or any future bid or proposal.

### INSURANCE REQUIREMENTS

The selected firm, if any, shall maintain, at all times, the following minimum levels of insurance and; shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverages and amounts of coverage not less than those set forth below. Provide to the City original Certificates of Insurance satisfactory to the City to evidence such coverage before any work commences. The City of Wauchula, a municipal corporation, shall be an additional named insured on all policies related to the project; excluding workers' compensation and professional liability. The Workers' Compensation policy shall contain a waiver of subrogation in favor of the City of Wauchula. All insurance coverage shall be written with a company having an A.M. Best Rating of at least the "A" category and size category of VIII. The firm's self-insured retention or deductible per line of coverage shall not exceed \$25,000 without the permission of the City. The City requires thirty (30) days written notice of cancellation and ten (10) days written notice of non-payment. In the event of any failure by the firm to comply with the provisions; the City may, at its option, on notice to the firm suspend the project for cause until there is full compliance. Alternatively, the City may purchase such insurance at the firm's expense, provided that the City shall have no obligation to do so and if the City shall do so, the firm shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

- Worker's Compensation and Employer's Liability Insurance providing statutory benefits, including those that may be required by any applicable federal statute:

Admitted in Florida	Yes
Employer's Liability	\$1,000,000
All States Endorsement	Statutory
Voluntary Compensation	Statutory

- Commercial General Liability Insurance. \$1,000,000 combined single limit of liability for bodily injuries, death, and property damage, and personal injury resulting from any one occurrence, including the following coverages:

Premises and Operations; Broad Form Commercial General Liability Endorsement to include blanket contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted) and Broad Form Property

Damage coverages.

- Comprehensive Automobile Liability Insurance. \$1,000,000 combined single limit of liability for bodily injuries, death, and property damage, and personal injury resulting from any one occurrence, including all owned, hired and non-owned vehicles.

## **INDEMNIFICATION**

The firm shall, in addition to any other obligation to indemnify the City and to the fullest extent permitted by law, protect, defend (by counsel reasonably acceptable to City), indemnify and hold harmless the City, their agents, elected officials and employees from and against, including, but not limited to, all claims, actions, liability, losses, costs (including attorney's fees) arising out of any actual or alleged bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, or any other damage or loss arising out of or resulting from or claims to have resulted in whole or in part from any actual or alleged act or omission of the firm, any subcontractor, anyone direct or indirectly employed by any of them, or anyone for whose acts any of them may be liable in the performance of the work; or violation of law, statute, ordinance, governmental administration order, rule, regulation or infringement of patent rights by the firm in the performance of the work; or liens, claims or actions made by the firm or any subcontractor or other party performing the work.

## **PUBLIC ENTITY CRIMES STATEMENT**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid or proposal on a contract to provide any goods or services to a public entity, may not submit a bid or proposal 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. By submitting this proposal, the bidder or proposer hereby certifies that they have complied with said statute.

## **EQUAL OPPORTUNITY/AFFIRMATIVE ACTION**

The City is an equal opportunity/affirmative action employer. The City is committed to equal opportunity employment effort; and expects firms that do business with the City to have a vigorous affirmative action program.

## **WOMEN/MINORITY BUSINESS ENTERPRISE OUTREACH**

The City hereby notifies all bidders that W/MBE's are to be afforded a full opportunity to participate in any invitation to bid by the City and will not be subject to discrimination on the basis of race, color, sex or national origin.

## **DEVELOPMENT COSTS**

Neither the City nor its representative(s) shall be liable for any expenses incurred in connection with preparation of a response to the ITB. Bidders should prepare their bids simply and economically, providing a straightforward and concise description of the bidder's ability to meet the requirements of the ITB.

## **APPLICABLE LAWS AND COURTS**

This ITB and any resulting agreements or contracts shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Hardee County, Florida or the United States District Court, Middle District of Florida, located in Hillsborough County, Florida. The bidder shall comply with all applicable federal, state and local laws and regulations.

## **CONTRACTUAL MATTERS**

A copy of the proposed contract to be entered into with the successful bidder is included with this ITB as Attachment "A".

All contracts are subject to final approval of the City of Wauchula City Commission. Persons who incur expenses or change position in anticipation of a contract prior to the Commission's approval do so at their own risk.

## **PROPRIETARY INFORMATION**

In accordance with Chapter 119 of the Florida Statutes (Public Records Law), and except as may be provided by other applicable State and Federal Law, all bidders should be aware that Invitations to Bid and the responses thereto are in the public domain. However, the bidders are required to **identify specifically** any information contained in their bids which they consider confidential and/or proprietary and which they believe to be exempt from disclosure.

All bids received from bidders in response to this Invitation to Bid will become the property of the City and will not be returned to the bidders. In the event of contract award, all documentation produced as part of the contract will become the exclusive property of the City.

## **UNAUTHORIZED ALIEN(S)**

The Firm agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this solicitation. The City shall consider the employment or utilization of unauthorized aliens a violation of Section 274A of the



Immigration and Nationality Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Contract by the City.

## **LIMITATIONS**

This invitation to bid does not commit the City of Wauchula to award a contract. Bidders will assume all costs incurred in the preparation of their response to this ITB. The City reserves the right to: 1) accept or reject qualifications and/or bids in part or in whole; 2) request additional qualification information; 3) limit and determine the actual contract services to be included in a contract; 4) obtain information for use in evaluating submittals from any source and 5) reject all submittals. The City reserves the right to modify this ITB at any time. Written addenda issued by the City is the only method which should be relied on with respect to changes to the ITB. Bidder is responsible to contact the City prior to submitting a bid to determine if any amendments were made to the ITB.

**ATTACHMENT "A"**  
**CONTRACT**

THIS CONTRACT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, between the CITY OF WAUCHULA, a municipal corporation, organized and existing under the laws of the State of Florida, by and through its City Commission, situated at 126 S. 7th Avenue, Wauchula, Florida 33873, hereinafter referred to as CITY, and \_\_\_\_\_ a \_\_\_\_\_ corporation, headquartered at \_\_\_\_\_ hereinafter referred to as the FIRM, and whose Federal Employer Identification Number is \_\_\_\_\_:

WHEREAS, CITY desires to engage a Firm that has a special and unique competence and experience in performing the work necessary to complete the scope of work requested; and,

WHEREAS, CITY has solicited these services in ITB# 23-01, included by reference as to the scope of work contained herein; and

WHEREAS, the FIRM represents it is capable and prepared to provide such Services;

NOW, THEREFORE, in consideration of the promises contained herein, the parties hereto agree as follows:

**1.0 Term**

1.1 This Contract shall take effect on the date of its execution by the City Manager.

1.2 The term of this Contract shall extend until the completion of the services required hereunder and in accordance with the project requirements and schedule, unless otherwise terminated as provided herein.

**2.0 Services to Be Performed by the FIRM**

2.1 The FIRM shall perform the services as generally described in the Scope of Work Exhibit "A".

**3.0 Compensation**

3.1 CITY shall pay the FIRM in accordance with Exhibit "B", "Compensation Schedule", which is attached hereto and incorporated by reference as part of this Contract.

3.2 The Compensation Schedule, as set out in Exhibit "B" may be adjusted by an Amendment to the Contract, after mutual written agreement of the parties. The City Manager will approve and execute any compensation schedule amendment.

3.3 Each individual invoice shall be due and payable forty-five (45) days after receipt by the CITY of correct, fully documented, invoice, in form and substance satisfactory to the CITY. All invoices shall be delivered to:

City of Wauchula  
126 S. 7th Avenue  
Wauchula, FL 33873

3.4 In order for both parties herein to close their books and records, the FIRM will clearly state "Final Invoice" on the FIRM's final/last billing to the CITY. This

certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the FIRM.

#### **4.0 Insurance**

##### **4.1 General Provisions**

4.1.1 The FIRM shall maintain, at all times, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverages and amounts of coverage not less than those set forth below and provide the CITY with a Certificate of Insurance and an opportunity to inspect a certified copy of each policy applicable to this Contract followed thereafter by an annual Certificate of Insurance satisfactory to the CITY to evidence such coverage before any work commences. Such certificates will provide that there shall be no termination, non-renewal, modification or expiration of such coverage without thirty (30) days prior written notice to the CITY.

4.1.2 The CITY shall be named as an additional insured on all of the FIRM's policies related to the project, excluding professional liability and worker's compensation. The policies shall contain a waiver of subrogation in favor of the City of Wauchula. All insurance coverage shall be written with an insurer having an A.M. Best Rating of a least the "A" category and size category of VIII.

4.1.3 The FIRM's self-insured retention or deductible per line of coverage shall not exceed \$25,000.00 without the permission of the CITY.

4.1.4 If there is any failure by the FIRM to comply with the provisions of this section, the CITY may, at its option, on notice to the FIRM, suspend the work for cause until there is full compliance.

4.1.5 CITY may, at its sole discretion, purchase such insurance at The FIRM's expense provided that the CITY shall have no obligation to do so and if the CITY shall do so, it shall not relieve the FIRM of its obligation to obtain insurance.

4.1.6 The FIRM shall not be relieved of or excused from the obligation to obtain and maintain such insurance amount and coverages.

4.1.7 All FIRM's sub-contractors shall be required to include CITY and the FIRM as additional insured on their General Liability Insurance policies.

4.1.8 In the event that subconsultants used by the FIRM do not have insurance, or do not meet the insurance limits, the FIRM shall indemnify and hold harmless the CITY for any claim in excess of the subconsultants' insurance coverage.

4.1.9 The FIRM shall not commence work under this Contract until all insurance required as stated herein has been obtained and such insurance has been approved by the CITY.

4.2 Comprehensive Automobile Liability Insurance. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

4.3 Commercial General Liability. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

##### 4.3.1 Premises and Operations:

Broad Form Commercial General Liability  
Endorsement to include Blanket Contractual liability  
(specifically covering, but not limited to, the  
contractual obligations assumed by the Firm);  
Personal Injury (with employment and contractual  
exclusions deleted); and Broad Form Property

Damage coverage.

4.4 Worker's Compensation. The CONSULTANT shall provide, pay for, and maintain worker's compensation insurance on all employees, its agents or subcontractors as required by Florida Statutes.

## **5.0 Standard of Care**

5.1 The FIRM has represented to the CITY that it has the personnel and experience necessary to perform the work in a professional and workmanlike manner.

5.2 The FIRM shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge and resources, under similar circumstances.

5.3 The FIRM shall, at no additional cost to CITY, re-perform services which fail to satisfy the foregoing standard of care or otherwise fail to meet the requirement of this Contract.

5.4 The FIRM warrants that all services shall be performed by skilled and competent personnel to the professional standards in the field.

## **6.0 Indemnification**

6.1 General. Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, CITY and the FIRM agree to allocate such liabilities in accordance with this Section.

### **6.2 Indemnification.**

6.2.1 The FIRM, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to CITY) protect and hold CITY, and its officers, employees and agents, free and harmless from and against any and all, including, but not limited to, any claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses and expenses (including, without limitation, attorney's fees and costs during negotiation, through litigation and all appeals therefrom), or death of or injury to any person or damage to any property whatsoever, arising out of or resulting from (i) the failure of the FIRM to comply with applicable non-conflicting laws, rules or regulations, (ii) the breach by the FIRM of its obligations under this Contract, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of the FIRM's performance of this Contract, or (iv) the negligent act, errors or omissions, or intentional or willful misconduct, of the FIRM, its sub-contractors, consultants, agents, employees and invitees; provided, however, that the FIRM shall not be obligated to defend or indemnify the CITY with respect to any such claims or damages arising out of the CITY's negligence.

6.2.2 CITY review, comment and observation of the FIRM's work and performance of this Contract shall in no manner constitute a waiver of the indemnification provisions of this Contract.

6.2.3 The FIRM agrees that it bears sole legal responsibility for its work and work product, and the work and work product of subcontractors and their employees, and/or for the FIRM's performance of this Contract and its work product(s).

6.3 Survival. Upon completion of all Services, obligations and duties provided for in this Contract, or in the event of termination of this Contract for any reason, the terms and conditions of this Contract shall survive as if the Contract were in full force and effect.

## **7.0 Independent Contractor**

7.1 The FIRM undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance.

7.2 CITY shall have no right to supervise the methods used, but CITY shall have the right to observe such performance.

7.3 The FIRM shall work closely with CITY in performing Services under this Contract.

7.4 The FIRM shall not pledge the CITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and shall have no right to speak for or bind the CITY in any manner.

7.5 The FIRM further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

## **8.0 Authority to Practice**

8.1 The FIRM hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

## **9.0 Compliance with Laws**

9.1 In performance of the Services, the FIRM will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

## **10.0 Subcontracting**

10.1 The CITY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor.

10.2 If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the FIRM shall promptly do so, subject to acceptance of the new subcontractor by the CITY. Failure of a Subcontractor to timely or properly perform its obligations shall not relieve the FIRM of its obligations hereunder.

## **11.0 Federal and State Taxes**

11.1 The CITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the CITY will provide an exemption certificate to the FIRM. The FIRM shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the CITY, nor shall the FIRM be authorized to use the CITY's Tax Exemption Number in securing such materials.

## **12.0 Public Entity Crimes**

12.1 The FIRM understands and acknowledges that this Contract with the CITY will be void, in the event the conditions under Section 287.133, Florida Statutes applies to the FIRM, relating to conviction for a public entity crime.

## **13.0 CITY's Responsibilities**

13.1 CITY shall be responsible for providing access to all information in the CITY's possession that may reasonably be required by the FIRM, including; existing reports, studies, financial information, and other required data that are available in the files of the CITY.

#### **14.0 Termination of Contract**

14.1 This Contract may be terminated by the FIRM upon thirty (30) days prior written notice to the CITY in the event of substantial failure by the CITY to perform in accordance with the terms of the Contract through no fault of the FIRM.

14.2 This Contract may be terminated by the CITY with or without cause immediately upon written notice to the FIRM.

14.3 Unless the FIRM is in breach of this Contract, the FIRM shall be paid for services rendered to the CITY's satisfaction through the date of termination.

14.4 After receipt of a Termination Notice and except as otherwise directed by the CITY, the FIRM shall:

14.4.1 Stop work on the date and to the extent specified.

14.4.2 Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

14.4.3 Transfer all work in process, completed work, and other material related to the terminated work to the CITY.

14.4.4 Continue and complete all parts of the work that have not been terminated.

14.5 The FIRM shall be paid for services actually rendered to the date of termination.

#### **15.0 Uncontrollable Forces (Force Majeure)**

15.1 Neither the CITY nor the FIRM shall be considered to be in default of this Contract if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Contract and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

15.2 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch.

15.3 The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Force, give written notice to the other party describing the circumstances and Uncontrollable Forces preventing continued performance of the obligations of this Contract.

#### **16.0 Governing Law and Venue**

16.1 This Contract shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Hardee County, Florida or the United States District Court, Middle District of Florida located in Hillsborough County, Florida.

#### **17.0 Non-Discrimination**

17.1 The FIRM warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

## **18.0 Waiver**

18.1 A waiver by either CITY or the FIRM of any breach of this Contract shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

## **19.0 Severability**

19.1 The invalidity, illegality, or unenforceability of any provision of this Contract, or the occurrence of any event rendering any portion or provision of this Contract void, shall in no way affect the validity or enforceability of any other portion or provision of the Contract.

19.2 Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void.

19.3 The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

19.4 The provisions of this section shall not prevent the entire Contract from being void should a provision which is of the essence of the Contract be determined to be void.

## **20.0 Entirety of Contract**

20.1 The CITY and the FIRM agree that this Contract sets forth the entire Contract between the parties, and that there are no promises or understandings other than those stated herein.

20.2 This Contract supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the CITY and the FIRM pertaining to the Services, whether written or oral.

## **21.0 Modification**

21.1 The Contract may not be modified unless such modifications are evidenced in writing signed by both CITY and the FIRM. Such modifications shall be in the form of a written Amendment executed by both parties.

## **22.0 Successors and Assigns**

22.1 CITY and the FIRM each binds itself and its partners, successors, assigns and legal representatives to the other party to this Contract and to the partners, successors, executors, administrators, assigns, and legal representatives.

22.2 The FIRM shall not assign this Contract without the express written approval of the CITY by executed amendment.

22.3 In the event of a merger, the surviving corporation shall be substituted for the contracting party to this contract and such substitution shall be affirmed by the City of Wauchula City Commission by executed amendment.

## **23.0 Contingent Fees**

23.1 The FIRM warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the FIRM to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than bona fide employee working solely for the FIRM, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract.

#### **24.0 Truth-In-Negotiation Certificate**

24.1 Execution of this Contract by the FIRM shall act as the execution of a Truth-in-Negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete, and current as of the date of the Contract.

24.2 The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The CITY shall exercise its rights under this "Certificate" within one (1) year following payment.

#### **25.0 Ownership of Documents**

25.1 The FIRM shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the CITY for its use and/or distribution as may be deemed appropriate by the CITY. The FIRM is not liable for any damages, injury or costs associated with the CITY use or distribution of these documents for purposes other than those originally intended by the FIRM.

#### **26.0 Access and Audits**

26.1 The FIRM shall maintain adequate records to justify all charges and costs incurred in performing the work for at least three (3) years after completion of this Contract. The CITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours at the FIRM's place of business.

26.2 Misrepresentations of billable time or reimbursable expenses as determined by the Auditor to the City of Wauchula shall result in the recovery of any resulting overpayments. The CITY's cost of recovery shall be the sole expense of the FIRM, including accounting and legal fees, court costs and administrative expenses.

26.3 Intentional misrepresentations of billable hours and reimbursable expenses will be criminally prosecuted to the fullest extent of the law.

26.4 All invoices submitted are subject to audit and demand for refund of overpayment up to three (3) years following completion of all services related to this Contract.

#### **27.0 Notice**

27.1 Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by Federal-Express or by Certified Mail, postage prepaid as follows:

**As to City:**  
**City of Wauchula**  
126 S. 7th Avenue  
Wauchula, FL 33873

**Attention: City Manager**

As to the FIRM:



27.2 Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m., or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

27.3 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the FIRM and CITY.

**28.0 Service of Process**

As to City: Kristie Hatcher-Bolin, Esquire  
GrayRobinson, P.A.  
One Lake Morton Drive  
Lakeland, Florida 33801

As to the FIRM:

**29.0 Contract Administration**

29.1 Services of the FIRM shall be under the general direction of the City Manager, or his designee, who shall act as the CITY's representative during the term of the Contract.

**30.0 Key Personnel**

30.1 The FIRM shall notify CITY in the event of key personnel changes, which might affect this Contract. To the extent possible, notification shall be made within ten (10) days prior to changes. The FIRM at CITY's request shall remove without consequence to the CITY any Subcontractor or employee of the FIRM and replace him/her with another employee having the required skill and experience. CITY has the right to reject proposed changes in key personnel. The following personnel shall be considered key personnel:

Name:

Name:

**31.0. Annual Appropriations**

31.1 The FIRM acknowledges that the CITY, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such agreement. Nothing herein contained shall prevent the making of agreements for a period exceeding one year, but any agreement so made shall be executory only for the

value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the CITY's performance and obligation to pay under this contract is contingent upon annual appropriation.

**32.0 Unauthorized Alien(s)**

32.1 The FIRM agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this Contract. The City shall consider the employment or utilization of unauthorized aliens a violation of Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Contract by the City.

**33.0 Limitation of Liability.**

33.1 In no event, shall the CITY be liable to the FIRM for indirect, incidental, consequential, special, exemplary, or punitive damages of any kind or nature, including loss of profit, whether foreseeable or not, arising out of or resulting from the nonperformance or breach of this contract by the CITY whether based in contract, common law, warranty, tort, strict liability, contribution, indemnity or otherwise.

(THE REMAINDER OF THE PAGE LEFT INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the date and year first above written.

**Attest:**  
**HOLLY SMITH**  
City Clerk

**CITY OF WAUCHULA, a municipal corporation, organized & existing under the laws of the State of Florida**

By: \_\_\_\_\_  
Holly Smith, City Clerk

By: \_\_\_\_\_  
Terry W. Atchley, City Manager

Date Approved by Commission: \_\_\_\_\_

Review as to form and legal sufficiency

\_\_\_\_\_ Date: \_\_\_\_\_  
Kristie Hatcher-Bolin, Esquire  
City Attorney

**Attest:** \_\_\_\_\_  
[Company Name]  
a \_\_\_\_\_ Corporation

By: \_\_\_\_\_  
Corporate Secretary

By: \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Print Name]

Date: \_\_\_\_\_

\_\_\_\_\_  
[Title]

SEAL

Date: \_\_\_\_\_

ACKNOWLEDGEMENT OF FIRM, IF A CORPORATION

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The foregoing instruments was acknowledged before me this

\_\_\_\_\_ by \_\_\_\_\_

(Date)

(Name of officer or agent, title of officer or agent)

on behalf of the corporation, pursuant to the powers conferred upon said officer or agent by the corporation. He/she personally appeared before me at the time of notarization, and is personally known to me or has produced \_\_\_\_\_ as identification and did certify to have knowledge of the matters stated in the foregoing instrument and certified the same to be true in all respects.

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_

(Date)

\_\_\_\_\_ Commission Number \_\_\_\_\_

(Official Notary Signature and Notary Seal)

\_\_\_\_\_ Commission Expiration Date \_\_\_\_\_

(Name of Notary typed, printed or stamped)

ACKNOWLEDGEMENT OF FIRM, IF A PARTNERSHIP

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this

\_\_\_\_\_ by \_\_\_\_\_

(Date)

(Name of acknowledging partner or agent)

on behalf of \_\_\_\_\_, a partnership. He/She personally appeared before me at the time of notarization, and is personally known to me or has produced \_\_\_\_\_ as identification and did certify to have knowledge of the matters in the foregoing instrument and certified the same to be true in all respects.

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_

(Date)

\_\_\_\_\_ Commission Number \_\_\_\_\_

(Official Notary Signature and Notary Seal)

\_\_\_\_\_ Commission Expiration Date \_\_\_\_\_

(Name of Notary typed, printed or stamped)

ACKNOWLEDGEMENT OF FIRM, IF AN INDIVIDUAL

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this

By \_\_\_\_\_

(Date)

(Name of acknowledging)

who personally appeared before me at the time of notarization, and is personally known to me or has produced \_\_\_\_\_ as identification and did certify to have knowledge of the matters in the foregoing instrument and certified the same to be true in all respects. Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_

(Date)

\_\_\_\_\_ Commission Number \_\_\_\_\_

(Official Notary Signature and Notary Seal)

\_\_\_\_\_ Commission Expiration Date \_\_\_\_\_

(Name of Notary typed, printed or stamped)

**EXHIBIT "A"**  
**SCOPE OF WORK**

All tasks necessary to repair the entire roof with a silicone-based coating system. Tasks will include but are not limited to:

- Removal of all loose gravel/debris and disposal in dumpster or dump trailer (provided by contractor)
- Install perimeter of 1.5" pressure treated wood to allow proper nailing of drip edge
- Install 1.5" ISO Board (Insulated Board) and attach over existing substrate
- Install new drip edge to cover rock guard
- Install peel and stick water barrier over ISO board
- Furnish and Install silicone-based coating foundation coat over ISO board
- Apply 40" Silicone Based system non-woven fabric
- Apply 2<sup>nd</sup> foundation coat of silicone-based coating
- Apply Silicon-Based Top/Final coat
- If applicable – Install materials to the eave and secure eaves with new fasteners
- Provide a minimum of a 15-year material warranty
- Provide a minimum of a 5-year warranty on workmanship
- Remove any debris or remaining construction material from site at completion

**EXHIBIT "B"**  
**COMPENSATION SCHEDULE**