

VILLAGE OF NORTH PALM BEACH

INVITATION TO BID FOR

Commercial Pool Cooler System



VILLAGE OF NORTH PALM BEACH
501 U.S. HIGHWAY ONE
NORTH PALM BEACH, FL 33408

**ADVERTISEMENT, INSTRUCTION, SPECIFICATIONS,
GENERAL TERMS AND CONDITIONS**

INVITATION TO BID

The Village of North Palm Beach will be receiving sealed bids for the Purchase of a Commercial Pool Cooler System. Sealed bids (one original, one copy and one electronic copy) will be received by the Village Clerk's Office at 501 U.S Highway One, North Palm Beach, Florida 33408 until **2:15 P.M. EST on June 26, 2019**. Any bids received after the time specified will not be accepted and shall be returned unopened to the Bidder. All bids will be publicly opened and read aloud in the Village Hall Conference Room.

The Invitation to Bid is open to inspection and may be obtained at Village Hall, 501 U.S. Highway One, North Palm Beach, Florida 33408, on DemandStar or on the Village's website: www.village-npb.org.

No bid may be withdrawn for a period of sixty (60) days after the scheduled closing date for the receipt of bids except as otherwise provided in the Instructions to Bidders and Terms and Conditions.

The Village of North Palm Beach will not be responsible for any expenses incurred in connection with the preparation and/or delivery of a bid.

The Village of North Palm Beach reserves the right to reject any or all bids, to waive technicalities, and to re-advertise. The award, if made, will be made to the lowest qualified bidder meeting all specifications, terms and conditions and whose bid is determined by the Village, in its sole discretion, to be most advantageous.

VILLAGE OF NORTH PALM BEACH, FLORIDA
Andrew Lukasik, Village Manager

INSTRUCTIONS TO BIDDERS AND TERMS AND CONDITIONS

GENERAL INFORMATION

The Bid Documents consist of:

1. Invitation to Bid;
2. Instructions to Bidders and Terms and Conditions;
3. Scope of Work/Specifications
4. Contractor's Affidavit to Owner
5. Drug Free Workplace Certification;
6. Sworn Statement on Public Entity Crimes;
7. Bid Proposal Form;
8. Standard Contract;
9. Any Addenda issued prior to the date designated for receipt of bids.

Complete sets of the Bid Documents shall be used in preparing the submitted Bid. The Village of North Palm Beach ("Village") does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets. The Bid Proposal Form is to be filled in, signed, and all required documents are to be placed in a sealed envelope bearing the words "**Commercial Pool Cooler System**" on the outside and mailed or hand-delivered to the Village Clerk on or before the specified time and date. **Each Bidder shall submit one (1) original and one (1) copy of its Bid and one electronic copy of its Bid on a thumbdrive.**

It is the Bidder's sole responsibility to ensure that its Bid is received by the Village Clerk on or before the closing date and time. The Village shall in no way be responsible for delays caused by any occurrence. Bids submitted by telephone, telegram or facsimile will **not** be accepted.

The bid opening time shall be scrupulously observed. Under no circumstances shall bids delivered after the time specified be considered. Such bids shall be returned unopened.

All bids must be typewritten or filled in with pen and ink. Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed or the signature attested to by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

All corrections made to the bid price must be initialed.

Bidders shall not be allowed to modify their bids after the opening time and date.

Pursuant to Section 119.071(1)(b)2, Florida Statutes, sealed bids remain exempt from public disclosure until such time as the Village provides notice of its intended decision to accept a Bid or for thirty (30) days after opening, whichever is earlier.

The submission of a bid shall constitute an incontrovertible representation by the Bidder that the Bid Documents and Contract are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the requested services.

For information concerning this Invitation to Bid, please contact:

Chuck Huff
Director of Special Projects
Village of North Palm Beach
501 US Highway 1
North Palm Beach, FL 33408
561-841-3359

All questions must be submitted in writing by e-mail to chuff@village-npb.org at least five (5) days prior to the bid opening.

ACCEPTANCE/REJECTION

The Village reserves the right to accept or to reject any or all bids in whole or in part, with or without cause, to waive any informalities and technicalities and to make the award to the Bidder, who in the sole opinion of the Village, is the lowest responsive, responsible Bidder and whose Bid will be most advantageous to the Village. The Village reserves the right to reject the Bid of any Bidder who has previously failed in the proper performance of an award or to deliver on time contracts of a similar nature or who is not in a position to perform properly under this award. The Village reserves the right to re-issue the Invitation to Bid.

ADDITIONAL TERMS AND CONDITIONS

No additional terms and conditions included with the Bid Response shall be evaluated or considered and any and all such additional terms and conditions shall have no force and effect and are inapplicable to this bid, whether submitted either purposely through intent or design or inadvertently appearing separately in transmittal letters, specifications, literature, price lists or warranties. It is understood and agreed that the terms and conditions in this Invitation to Bid solicitation are the only conditions applicable to the Bid and the Bidder's authorized signature affixed to the Bidder's proposal form attests to this.

INTERPRETATIONS, CLARIFICATIONS AND ADDENDA

No oral interpretations will be made to any Bidder as to the meaning of the Bid Documents. Any inquiry or request for interpretation received five (5) or more days prior to the date fixed for opening of Bids will be given consideration. All such changes and interpretations will be made in writing in the form of an addendum and, if issued, will be mailed or sent by available means to all known prospective Bidders prior to the established Bid opening date. Submission of a Bid constitutes acknowledgment by the Bidder of the receipt of addenda. All addenda are a part of the Bid Documents and each Bidder will be bound by such addenda, whether or not received by him. It is the responsibility of each Bidder to verify that he has received all addenda issued before Bids are opened. No authorization is allowed by Village personnel or the Village Engineer to interpret, or give information as to Bid requirements in addition to that which is contained in the written Bid document and addenda.

CONTRACTUAL AGREEMENT

All terms and conditions of the Bid Documents shall be included and incorporated in the Standard Contract, a copy of which is included in the Bid Documents. The order of contract precedence shall be the Contract and then Bid Documents and Bid Response. Any and all legal action necessary to enforce the Contract will be held in Palm Beach County and the Contract will be interpreted according to the laws of Florida.

FEDERAL AND STATE TAX

The Village is exempt from Federal and State taxes for tangible personal property. However, vendors or contractors doing business with the Village shall **not** be authorized to use the Village's Tax Exemption Number in securing materials for performance of the work associated with this Project.

LEGAL REQUIREMENTS

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

VARIANCES

The Bidder shall be responsible for reading very carefully, and understanding completely, the requirements and the specifications for the Contract being proposed. For purposes of bid evaluation, Bidders must indicate any variances to the specifications, terms and conditions, no matter how slight. If variations are not stated in the bid, the Village shall construe the Bid to fully comply with the specifications, terms and conditions as given herein.

AWARD

The Village will award the bid to the lowest and best responsive responsible bidder in its sole determination.

BID WITHDRAWAL

Any bid may be withdrawn up until the time set for opening of the bids. Any bid not so withdrawn shall, upon opening, constitute an irrevocable offer to sell to the Village the goods or services set forth in the attached specifications until one or more of the bids have been duly accepted by the Village.

If, within twenty-four (24) hours after Bids are opened, any Bidder files a duly signed written notice with the Village and promptly demonstrates to the reasonable satisfaction of the Village that there was a material and substantial mistake in the preparation of his/her Bid, that Bidder may withdraw his/her Bid. Thereafter, that Bidder will be disqualified from further bids on the work.

CERTIFICATION

When applicable, vendor must hold Certificate of Competency issued by the State of Florida or the Palm Beach County Construction Industry Licensing Board and a current Business Tax Receipt. Copies of such Certificate and Receipt must be submitted with the Bid and must be in the name of the vendor shown on the Bid Proposal page.

NON-APPROPRIATIONS

The obligations of the Village to make a Bid award and execute a Contract under the terms of this "Invitation to Bid" are contingent upon funds lawfully appropriated for this purpose. Should funds not be appropriated for this purpose, the Village, at its sole discretion, shall have the right to reject all bids.

BID FORMS

In filling out bid forms, Bidders shall be governed by the following provisions.

- (A) Bids must be made on the blanks provided herewith.
- (B) Bid amount shall be shown in words and figures.
- (C) Any bid which in any manner fails to conform to the condition of the published notice may be rejected.
- (D) Bids must be signed in ink by the Bidder with the signature in full.
- (E) Bids that contain any omission, erasure, alteration, addition or item not called for, or that show irregularities of any kind, will be considered as informal or irregular. This will constitute cause for the rejection of the Bid.
- (F) If a Bidder wishes to change prices, they shall strike the price and add the changes in the appropriate space. Changes shall be initialed by the person submitting the bid. Any changes or alteration of prices in the bid must be initialed. Failure to initial these changes or illegible entries or corrections or prices may be cause for the rejection of the bid as informal or irregular.

QUALIFICATION OF BIDDERS

This bid shall be awarded only to a responsible Bidder, qualified by experience to provide the goods and services specified. Each Bidder shall submit the following information with its bid or within three days of request:

- (A) Evidence of current status as authorized dealer to sell and install the commercial pool cooler system offered.
- (B) Evidence of valid state, county and local licenses and receipts proving authority to conduct business in the jurisdiction of the work.
- (C) Evidence that manufacturer offered has been in this business for five (5) consecutive

years or more.

Failure to submit the above requested information may be cause for rejection of the Bid.

SITE ACCESS AND DUTIES

For the performance of the contract, the contractor will be permitted to occupy such portions of Village property as permitted by the owner or its representative or as necessary to complete requested services. He shall leave the site of work in a neat and orderly condition equal to that which originally existed.

REGULATIONS, PERMITS AND FEES

The selected Bidder must comply with all Federal, State and local laws and regulations that may apply and obtain all required permits.

INSURANCE REQUIREMENTS

- (A) Prior to the approval of the Contract, the selected Bidder shall provide to the Village certificates evidencing insurance coverage in the minimum amounts as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The certificates shall clearly indicate that the selected Bidder has obtained insurance of the type, amount, and classification as required for strict compliance with this Section and that no material change or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the Village. Failure to comply with the foregoing requirements shall not relieve the selected bidder of its liability and obligations under a resulting contract.
- (B) The selected Bidder shall maintain, during the life of a resulting contract, commercial general liability, including contractual liability insurance, in the amount of \$1,000,000 per occurrence or \$2,000,000 in aggregate to protect the selected Bidder from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under a resulting contract, whether such operations be performed by the selected bidder or by anyone directly employed by or contracting with the selected bidder.
- (C) The selected Bidder shall maintain, during the life of a resulting contract, comprehensive automobile liability insurance in the minimum amount of \$500,000 combined single limit for bodily injury and property damages liability to protect the selected bidder from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the selected bidder or by anyone directly or indirectly employed by the selected Bidder.
- (D) The parties to the resulting contract shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes. In the event that a party does not carry Workers' Compensation Insurance and chooses not to obtain same, then such party shall in accordance with Section 440.05, Florida Statutes, apply for and obtain an exemption authorized by the Department of Insurance and shall provide a copy of such exemption to the other party.

- (E) All insurance, other than Worker's Compensation, to be maintained by the selected bidder shall specifically include the Village as an Additional Insured.

CONE OF SILENCE

This Invitation to Bid is expressly subject to the Cone of Silence provisions of Section 2-355 of the Palm Beach County Code of Ordinances. Any contract entered into in violation of the cone of silence provisions shall render the transaction voidable.

NON-COLLUSION

By submitting a Bid, each Bidder affirmatively represents that neither the Bidder nor any of its officers, partners, owners, agents, representatives or employees have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder to submit a collusive or sham Bid or have in any manner directly or indirectly sought by agreement or collusion to fix the prices of the Bid or to secure through any agreement or collusion any advantage. The prices quoted in the Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, or employees.

SCOPE OF WORK/SPECIFICATIONS

The Village of North Palm Beach is requesting bids for a **new** Commercial Pool Cooler System to be delivered and installed at 951 U.S. Highway One, North Palm Beach, Florida 33408. The Village is constructing a new Clubhouse at this location and installation must be coordinated with the Village's Construction Manager, The Weitz Co. The Village is currently estimating to be ready for the installation of this system in July 2019, with completion scheduled to be no later than August 31, 2019.

DESCRIPTION

New Commercial Pool Cooler System.

Glacier Model GPC2100 Commercial Pool Cooler or equivalent.

- A. Sized to reduce a 600k+ gallon pool by 10 – 15 degrees F.
- B. 300 GPM nominal water flow; 4" influent/effluent connection.
- C. Fan Motor 2 HP, 230/440/480V, 3 phase.
- D. Thermostatic Temperature Controls.
- E. Concrete Pad Size 12' x 12'

INSTALLATION

- A. General: Follow all manufacturer's documented instructions and procedures for installation of Pad and Commercial Pool Cooler System and in compliance with local building codes.

FIELD QUALITY CONTROL

- A. Verify Commercial Pool Cooler System is working to optimal specifications.
- C. Replace components that are scratched, dented, or damaged in any manner with new items from the manufacturer. Surface scratches may be touched up but repair must be complete and undistinguishable.

CLEANING

- A. Upon completion of installation, clean all components and surfaces. Cover to protect from dust and environmental fallout as a result of other work continuing in the surrounding area. Remove all packaging material and debris that accumulated as a result of the installation immediately upon completion. Leave area of installation neat, in broom clean condition, and ready to present to appropriate persons.

DEMONSTRATION AND TRAINING

- A. Schedule and conduct demonstration of the commercial pool cooling system. Review all safety features and proper operation with owner's personnel. Review any additional features or points of interest as appropriate.
- B. Schedule and conduct maintenance training with owner's maintenance personnel. Training session should include a full operation demonstration and all preventative maintenance and minor repair procedures for the commercial pool cooling system that they would normally be expected to perform.

PROTECTION

- A. Protect system against dirt and damage during remainder of construction period. Recommend to owner of any additional precautions needed to ensure that system will remain unharmed during balance of construction in surrounding area.

Successful CONTRACTOR is to verify all dimensions and review space available for placement of the Pad with the Village's Representative prior to installation of the system.

Bidder must read and consider all information in Bid Documents in addition to the information contained in this Section of the Bid.

BID PROPOSAL FORM

Bid Proposal of _____ to furnish a new Commercial Pool Cooling System delivered and installed at 951 U.S. Highway One, North Palm Beach, Florida as set forth in the Bid Documents.

All Bid Proposals shall include all sales taxes, all other applicable fees, and all requirements of the Bid Documents. The undersigned Bidder has carefully examined the Bid Documents and the site(s) of the proposed work. The undersigned is familiar with the nature and extent of the work and any local conditions that may in any manner affect the work to be done. The undersigned agrees to do all the work and furnish all materials called for by the Bid Documents, in the manner prescribed therein and to the standards of quality and performance established by the Village of North Palm Beach, for the total lump sum price and within the time period designated in the spaces provided below:

TOTAL AMOUNT OF BID

\$ _____.

Written Out: _____ Dollars and _____ Cents.

MANUFACTURER OFFERED: _____

SUBMITTALS (in addition to Qualification information requested in Instructions)

- A. Product Data: Submit manufacturer's product literature and installation instructions.
- B. Drawings: Provide dimensional layout of complete system offered
- C. Warranty: Submit a copy of manufacturer's warranty.
- D. Maintenance Data: Provide manufacturer's operation manual, maintenance and care instructions, and instructions for care and cleaning of the finish.
- E. Reference List: Provide list of recently installed similar type pool cooler installations.
- F. A list shall be submitted of all specification deviations with a complete description of each.

TIME FOR COMPLETION:

The Bidder warrants that they can deliver and install the Commercial Pool Cooler System as offered with installation completed no later than August 31, 2019 and as directed by the Director of Special Projects.

Signature

Print Name

Title

Date

Phone Number

Address

Fax Number

E-mail Address

DRUG FREE WORKPLACE

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids or proposals which are equal with respect to price, quality, and service are received by any political subdivision for the procurement of commodities or contractual services, a bid or proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall:

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 or proposal 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 or proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States 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

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a),
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

1. This sworn statement is submitted to the Village of North Palm Beach, Florida

by _____
(print individual's name and title)

for _____
(print name of entity submitting sworn statement)

whose business address is _____

and (if applicable) its Federal Employer Identification Number (FEIN) is: _____

(If the entity has no FEIN, include the Social Security Number of the Individual signing this sworn statement: _____)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), **Florida Statutes**, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision or any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), **Florida Statutes**, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), **Florida Statutes**, means:

- a. A predecessor or successor of a person convicted of a public entity crime; or
- b. An entity under the control any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), **Florida Statutes**, means any natural person or entity organized under the laws of any state or of the United States with the legal

power to enter into binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. **(indicate which statement applies.)**

_____ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. **(attach a copy of the final order)**

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT HIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

The foregoing document was sworn and subscribed before me this _____ day of _____, 2019 by _____, who is personally known to me or produced _____ as identification.

Notary Public
My Commission Expires:

CONTRACT

This Contract is made as of the _____ day of _____, 2019, by and between the VILLAGE OF NORTH PALM BEACH, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as VILLAGE, and _____, a _____ corporation or partnership authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal I.D. is _____.

In consideration of the promises and mutual covenants herein contained, it is hereby agreed that the CONTRACTOR shall provide to the VILLAGE all goods and services requested under the **Invitation to Bid for a Commercial Pool Cooler System** and as further stated in CONTRACTOR's Bid Proposal and pursuant to the terms and conditions of this Contract.

ARTICLE 1. SERVICES OF THE CONTRACTOR.

A. The CONTRACTOR shall provide all goods and services as stated in the Bid Documents referenced therein in accordance with the Bid Proposal (hereinafter referred to as "Work"), which are incorporated herein by reference, to that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession practicing in the same or similar locality at the time the Work is provided.

B. The Work provided by the CONTRACTOR shall be commenced subsequent to the execution and approval of this Contract and upon receipt of Purchase Order.

ARTICLE 2. PERIOD OF SERVICE.

A. This Contract and the provision of all Work hereunder shall be completed by the CONTRACTOR no later than August 31, 2019.

B. The CONTRACTOR shall not be considered in default by reason of any failure in performance of the Work if such failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; labor disputes; freight embargoes; unreasonable utility provider delays, unreasonable permitting delays and abnormally severe and unusual weather conditions.

C. Upon the CONTRACTOR's request, the VILLAGE shall consider the facts and extent of any failure to perform the Work and, if the CONTRACTOR's failure to perform was without it or its subcontractor's fault or negligence, the Contract schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the VILLAGE's rights to change, terminate, or stop any or all of the work at any time.

D. Notwithstanding the foregoing, the CONTRACTOR shall not be entitled to an increase in the agreed to compensation in this Contract or payment or compensation of any kind from the VILLAGE for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay,

disruption, interference or hindrance from any cause whatsoever. Provided, however, that this provision shall not preclude recovery or damages by the CONTRACTOR for hindrances or delays due solely to fraud, bad faith or active interference on the part of the VILLAGE or its agents. Otherwise, the CONTRACTOR shall be entitled only to extensions of the schedule in this Contract as the sole an exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

ARTICLE 3. VILLAGE’S REPRESENTATIVE.

Unless otherwise specified by the VILLAGE, the VILLAGE’s representative shall be the Village Special Projects Director.

ARTICLE 4. COMPENSATION AND METHOD OF PAYMENT.

A. The VILLAGE agrees to compensate the CONTRACTOR in accordance with CONTRACTOR’s Bid Proposal in response to the ITB. The total and cumulative amount of this Contract shall not exceed _____ (\$_____).

B. CONTRACTOR shall invoice the VILLAGE on the form provided as Exhibit “A” and include such information as requested in Exhibit “A”. Invoices received from the CONTRACTOR pursuant to this Contract will be reviewed and approved by the VILLAGE’s representative, indicating that the Work has been provided and rendered in conformity with the Contract and then will be sent to the Finance Department for payment. Work shall be invoiced when the Commercial Pool Cooling System is installed and accepted by the VILLAGE’s representative. Invoices will normally be paid within thirty (30) days following the VILLAGE representative’s approval.

C. Work undertaken or expenses incurred that exceeds an amount set forth in this Contract without prior written authorization from the VILLAGE shall be the liability of the CONTRACTOR.

D. CONTRACTOR waives consequential or incidental damages for claims, disputes or other matters in question arising out of or relating to this Contract.

E. If the VILLAGE disputes any invoice or part of an invoice, VILLAGE shall notify CONTRACTOR of such dispute within fifteen (15) days of receipt of the invoice. VILLAGE reserves the right to off-set, reduce or withhold any payment to CONTRACTOR in accordance with the terms and conditions of this Contract.

ARTICLE 5. INDEMNIFICATION.

A. To the fullest extent permitted by applicable laws and regulations, the CONTRACTOR shall indemnify and save harmless and defend the VILLAGE, its officials, agents, servants, and employees from and against any and all claims, liability, losses, and/or causes of action arising out of or in any way related to the services furnished by the CONTRACTOR pursuant to this Contract, including, but not limited to, those caused by or arising out of any act, omission, negligence or default of the CONTRACTOR and/or its subcontractors, agents, servants or employees.

B. The CONTRACTOR shall not be required to indemnify the VILLAGE, its officials, agents, servants and employees when the occurrence results solely from the wrongful acts or omissions of the VILLAGE, its officials, agents, servants and employees. The terms of this Section shall survive completion of all services, obligations and duties provided for in this Contract as well as the termination of this Agreement for any reason.

C. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against either the VILLAGE or the CONTRACTOR, nor shall this Contract be construed a waiver of sovereign immunity beyond the limited waiver provided in § 768.28, Florida Statutes.

ARTICLE 6. PERSONNEL.

A. The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the Work under this Contract. Such personnel shall not be employees of or have any contractual relationship with the VILLAGE.

B. All of the Work required hereunder shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the Work shall be fully qualified and, if required, authorized or permitted under state and local law to perform such Work.

C. All of the CONTRACTOR's personnel (and all sub-contractors) while on VILLAGE premises, will comply with all VILLAGE requirements governing conduct, safety, and security.

ARTICLE 7. TERMINATION.

A. This Contract may be cancelled by the CONTRACTOR upon ten (10) days prior written notice to the VILLAGE's representative in the event of substantial failure by the VILLAGE to perform in accordance with the terms of this Contract through no fault of the CONTRACTOR. It may also be terminated, in whole or in part, by the VILLAGE, with or without cause, upon ten (10) days written notice to the CONTRACTOR.

ARTICLE 8. FEDERAL AND STATE TAX.

The VILLAGE is exempt from payment of Florida State Sales and Use Tax. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials used to fill contractual obligations with the VILLAGE, nor is the CONTRACTOR authorized to use the VILLAGE's Tax Exemption Number in securing such materials.

ARTICLE 9. INSURANCE.

Prior to commencing any Work, the CONTRACTOR shall provide certificates evidencing insurance coverage as required in the Bid Documents. All insurance, other than Worker's Compensation, to be maintained by the CONTRACTOR shall specifically include the VILLAGE as an Additional Insured.

ARTICLE 10. SUCCESSORS AND ASSIGNS.

The VILLAGE and the CONTRACTOR each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the VILLAGE nor the CONTRACTOR shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the VILLAGE which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the VILLAGE and the CONTRACTOR.

ARTICLE 11. GOVERNING LAW, VENUE AND REMEDIES.

A. This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held in Palm Beach County.

B. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

C. The VILLAGE and CONTRACTOR **knowingly, voluntarily and intentionally waive any right they may have to a trial by jury** with respect to any litigation arising out of or in connection with this Contract.

ARTICLE 12. INDEPENDENT CONTRACTOR RELATIONSHIP.

The CONTRACTOR is, and shall be, in the performance of all Work under this Contract, an Independent Contractor, and not an employee, agent, or servant of the VILLAGE. All persons engaged in any of the Work performed pursuant to this Contract shall at all times, and in all places, be subject to the CONTRACTOR's sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the Work.

ARTICLE 13. ACCESS AND AUDITS.

The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Work for at least three (3) years after completion of this Contract. The VILLAGE shall have access to such books, records, and documents as required in this ARTICLE for the purpose of inspection or audit during normal business hours, at the CONTRACTOR's place of business. In no circumstances will CONTRACTOR be required to disclose any confidential or proprietary information regarding its products and service costs.

ARTICLE 14. NONDISCRIMINATION.

The CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry,

marital status, or sexual orientation.

ARTICLE 15. ENFORCEMENT COSTS.

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court awarded costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

ARTICLE 16. AUTHORITY TO PRACTICE.

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the Work under this Contract, and that it will at all times conduct its business and provide the Work under this Contract in a reputable manner. Proof of such licenses and approvals shall be submitted to the VILLAGE's representative upon request.

ARTICLE 17. SEVERABILITY.

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 18. PROTECTION OF WORK AND PROPERTY.

A. The CONTRACTOR shall protect the VILLAGE's property and adjacent private and public property from injury or loss arising in connection with the Contract. Except for any such damage, injury, or loss, except that which may be directly due to errors caused by the VILLAGE or employees of the VILLAGE, the CONTRACTOR shall provide any necessary materials to maintain such protection.

B. The CONTRACTOR will also take every necessary precaution to ensure the safety of the VILLAGE, public and other guests and invitees thereof at or near the areas where work is being accomplished during and throughout the completion of all work.

C. The CONTRACTOR shall have the responsibility to repair, rebuild or restore to its former condition any and all portions of existing utilities, structures, equipment, appurtenances or facilities, which may be disturbed or damaged due to his delivery of the trailer(s). The CONTRACTOR shall return all swale areas back to their original condition, including, but not limited to, repairing broken sprinklers, filling in ruts caused by the delivery, and replacing damaged grass.

ARTICLE 19. PRECAUTIONS/COORDINATION WITH CURRENT ACTIVITIES.

The CONTRACTOR shall conduct his operations in accordance with the Village's Construction Manager's (The Weitz Co.) direction on site to ensure coordination with the construction of the new Country Club.

ARTICLE 20. NOTICE.

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the VILLAGE shall be mailed to:

Village of North Palm Beach
Attn: Village Manager
501 U.S. Highway One
North Palm Beach, FL 33408

and if sent to the CONTRACTOR shall be mailed to:

The foregoing names and addresses may be changed if such change is provided in writing to the other party.

ARTICLE 21. ENTIRETY OF CONTRACTUAL AGREEMENT.

The VILLAGE and the CONTRACTOR agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

ARTICLE 22. TERMINOLOGY AND CAPTIONS.

All pronouns, singular, plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. Wherever the context may require, the singular shall mean and include the plural and the plural shall mean and include the singular. The term "Contract" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter" and the like mean this Contract in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings are for reference and convenience only and do not enter into or become a part of the context of this Contract, nor shall such headings affect the meaning or interpretation of this Contract.

ARTICLE 23. WAIVER.

Failure of a party to enforce or exercise any of its right(s) under this Contract shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

ARTICLE 24. PREPARATION.

This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

ARTICLE 25. MATERIALITY.

All provisions of the Contract shall be deemed material. In the event CONTRACTOR fails to comply with any of the provisions contained in this Contract or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Contract and VILLAGE may at its option and without notice terminate this Contract.

ARTICLE 26. EXHIBITS AND CONTRACT DOCUMENTS.

Each exhibit and other contract documents referred to in this Contract forms an essential part of this Contract. The exhibits and other contract documents, if not physically attached, should be treated as part of this Contract and are incorporated herein by reference.

ARTICLE 27. LEGAL EFFECT.

This Contract shall not become binding and effective until approved by the Village Council of the Village of North Palm Beach.

ARTICLE 28. SURVIVABILITY.

Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

ARTICLE 29. DEFAULT.

A. Notwithstanding anything contained in this Contract to the contrary, the parties agree that the occurrence of any of the following shall be deemed a material event of default and shall be grounds for termination:

1. The filing of a lien by any sub-CONTRACTOR, sub-contractor or third tier sub-contractor including, but not limited to materialmen, suppliers, or laborers, upon any property, right of way, easement or other interest in land or right to use within the territorial boundaries of the VILLAGE which lien is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR;
2. The filing of any judgment lien against the assets of CONTRACTOR related to the performance of this Contract which is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR; or
3. The filing of a petition by or against CONTRACTOR for relief under the

Bankruptcy Code, or for its reorganization or for the appointment of a receiver or trustee of CONTRACTOR or CONTRACTOR's property; or an assignment by CONTRACTOR for the benefit of creditors; or the taking possession of the property of CONTRACTOR by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of CONTRACTOR; or if a temporary or permanent receiver or trustee shall be appointed for CONTRACTOR or for CONTRACTOR's property and such temporary or permanent receiver or Trustee shall not be discharged within thirty (30) days from the date of appointment.

4. Due to circumstances within the control of the CONTRACTOR, CONTRACTOR fails to provide the Work under this Contract on schedule as agreed to by CONTRACTOR in this Contract.

B. CONTRACTOR shall provide written notice to the VILLAGE of the occurrence of any event of default within five (5) days of CONTRACTOR's receipt of notice or knowledge of any such default.

ARTICLE 30. WARRANTY.

CONTRACTOR warrants that all Work, including goods and services, provided under this Contract will be free of defects in material and workmanship for a period of ten (10) years following delivery and acceptance of the system(s), subject to the conditions set forth in the Specifications. Should any Work fail to comply with this warranty during the warranty period of ten (10) years, upon written notification from the VILLAGE, CONTRACTOR shall immediately repair or replace said defective materials and/or workmanship at CONTRACTOR's sole expense. The CONTRACTOR shall provide the VILLAGE with copies of all manufacturer warranties and certify that the Work complies with the conditions set forth in such warranties, if any.

ARTICLE 31. WAIVER OF SUBROGATION.

CONTRACTOR hereby waives any and all rights to Subrogation against the VILLAGE, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.

ARTICLE 32. REPRESENTATIONS/BINDING AUTHORITY.

The persons executing this Contract represent that they have the full power, authority and legal right to execute and deliver this Contract and perform all of its obligations under this Contract.

ARTICLE 33. INSPECTOR GENERAL

CONTRACTOR is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Contract, and in furtherance thereof, may demand and obtain records and testimony from CONTRACTOR and its subcontractors. CONTRACTOR understands and agrees that in addition to all other remedies and consequences provided by law, the failure of CONTRACTOR or its subcontractors to fully cooperate with the Inspector General when requested may be deemed by the VILLAGE to be a material breach of the Contract Documents justifying termination.

IN WITNESS WHEREOF, the VILLAGE and CONTRACTOR hereto have made and executed this Contract as of the day and year first above written.

CONTRACTOR:

BY: _____

Print Name: _____

Title: _____

VILLAGE OF NORTH PALM BEACH

BY: _____

MAYOR

ATTEST:

BY: _____

MELISSA TEAL,
VILLAGE CLERK

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

BY: _____

VILLAGE ATTORNEY

EXHIBIT "A"
INVOICE FORM

Invoice to be standard invoice provided by CONTRACTOR referencing the purchase order number and describing what the payment covers.