

BID DOCUMENTS
FOR
CITY OF SOUTH DAYTONA
James Street Park Splash Pad Renovation



CITY OF SOUTH DAYTONA

1672 South Ridgewood Ave.
South Daytona, Florida 32119
Telephone: (386) 322-3011 Fax: (386) 322-3008

BID NO. 23-B-004

February 2023

SECTION 1: INVITATION TO BID

CITY OF SOUTH DAYTONA James Street Park Splash Pad Renovation BID NO. 23-B-004

Notice is hereby given that the City of South Daytona is soliciting bids for BID NO. 23-B-004, James Street Park Splash Pad Renovation. Sealed bids will be accepted in the City Manager's Office, City Hall, located at 1672 S. Ridgewood Avenue, South Daytona, Florida, until **2:00 P.M. on Friday, March 24, 2023**, at which time bids will be opened in the Council Chamber Room and publicly read aloud. Bids received after the above time and date will be returned unopened. All Bids will be evaluated to ensure they contain all required forms in order to deem the Bidder responsive or non-responsive.

DESCRIPTION OF WORK

Renovation of the Splash Pad (Baseball Theme) at James Street Park (1700 James Street, South Daytona). Work will include:

- *Provide and install concrete pad, including steel reinforcement and footers pursuant to applicable Code and requirements. Concrete area to include "wet deck" area for a total concrete play area of approximately 1200 sq ft x 5 in thick*
- *Installation of separate colors of concrete stain per plan*
- *Retrofit elements to current holding tank and filtration system*
- *Provide and install spray effects such as: water squirt cannons, triple dumping buckets, ground squirters, arching sprays, bubblers, etc. Play area should have a Sports / Baseball theme.*
- *Renovation of Control Manifold and computer with (11) zones (Control manifold system is in a lockable kiosk for protection from people and elements)*
- *Provide and install schedule 40 PVC pipe and fittings for connections from spray features to the water kiosk system. Plumbing to be supported and embedded appropriately as required*
- *Bonding of all features and parts as required by current NEC*
- *Plumbing and Electrical connections to kiosk to be made by licensed contractors*
- *Functional testing, startup and training services*
- *Demolition of existing area*
- *On site construction activities, including all structural prep work, penetrations, embeds and anchors, concrete footer installation, bonding and water system installation / renovation as needed*
- *Installation of spray features, appurtenances, and concrete decking color concrete stain included*
- *Startup, testing and training of system operation and maintenance*
- *A Baseball theme is preferred*
- *Not to exceed \$200,000*

MANDATORY PRE-BID CONFERENCE:

There will be a Mandatory Pre-Bid Conference for the project on Friday, February 24, 2023 at 10:00am at James Street Splash Pad, 1700 James Street, South Daytona, Florida. All

attendees to the Pre-Bid Conference must sign in. The representative of each Vendor shall be an authorized employee of the Vendor and shall sign in accordingly.

All work is specified within the Bid Documents. A digital copy of the Bid Documents may be obtained at no charge via electronic mail by making a request to the Deputy City Clerk at bwitte@southdaytona.org. The documents will also be made available at the Office of the City Manager located inside City Hall at 1672 South Ridgewood Avenue, South Daytona, Florida. Any addenda to these documents will be issued via electronic mail and posted on the City of South Daytona Website (www.southdaytona.org). It is the bidder's responsibility to confirm that all addenda have been received prior to submitting a proposal in response to this request.

The City reserves the right to reject any or all bids, and the award, if award is made, will be made based on the following evaluation factors and the bidder whose qualifications indicate the award will be in the best interest of the City and whose proposal complies with all the prescribed requirements. The selection committee will present top ranked firm to City Council for approval.

Bids shall be:

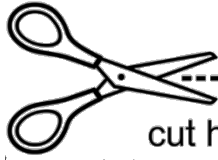
1. Submitted on standard forms which will be furnished with the Bid/Project Manual;
2. Irrevocable after the time and date set for the opening of bids and for a period of 90 days thereafter;
3. Respondents will submit one executed original marked and a USB drive containing an electronic version of the proposal, marked "**BID NO. 23-B-004, James Street Park Splash Pad Renovation.**" The bidders name and address shall be shown on the outside of the sealed envelope (enclosed is a label for your convenience). If submitted by mail or other delivery system, the sealed envelope shall be enclosed in a separate mailing envelope. Facsimile submittals will not be accepted.
4. Bids should be delivered to the Office of the City Manager, 1672 South Ridgewood Avenue, South Daytona, Florida 32119.
5. Bids must include the following required documents for submittal:
 - a. Bid Submittal Checklist
 - b. Bid Form
 - c. Addendum and Change Order Procedure Acknowledgement
 - d. Drug-Free Preference Statement
 - e. Public Entity Crimes Statement
 - f. Anti-Collusion Form
 - g. Statement of Vendor Qualifications
 - h. Independent Contractor's Agreement

CITY OF SOUTH DAYTONA

By/s James L. Gillis, Jr.
City Manager

SECTION 2: ITB LABEL

For your convenience, below is a label to affix to the outside of your sealed bid envelope/package to identify it as a "Sealed Bid." Be sure to include the **name of the company** submitting the bid where requested.



cut here

SEALED BID
****DO NOT OPEN****

Sealed Bid Number:	BID NO. 23-B-004
James Street Park Splash Pad Renovation:	James Street Park Splash Pad Renovation
Due Date / Time: :	Friday, March 24, 2023 at 2:00pm
Submitted By: (Name and Address)	<i>(Please fill in this box)</i>
Deliver to:	City of South Daytona Office of the City Manager 1672 South Ridgewood Avenue South Daytona, Florida 32119
Date/Time Received	<i>(CITY OFFICE USE ONLY):</i>

SECTION 3: PURPOSE AND OVERVIEW

**CITY OF SOUTH DAYTONA
James Street Park Splash Pad Renovation
BID NO. 23-B-004**

Renovation of the Splash Pad (Baseball Theme) at James Street Park (1700 James Street, South Daytona).

Work will include:

- Provide and install concrete pad, including steel reinforcement and footers pursuant to applicable Code and requirements. Concrete area to include “ wet deck” area for a total concrete play area of approximately 1200 sq ft x 5 in thick
- Installation of separate colors of concrete stain per plan
- Retrofit elements to current holding tank and filtration system
- Provide and install spray effects such as: water squirt cannons, triple dumping buckets, ground squirter, arching sprays, bubblers, etc. Play area should have a Sports / Baseball theme.
- Renovation of Control Manifold and computer with (11) zones (Control manifold system is in a lockable kiosk for protection from people and elements)
- Provide and install schedule 40 PVC pipe and fittings for connections from spray features to the water kiosk system. Plumbing to be supported and embedded appropriately as required
- Bonding of all features and parts as required by current NEC
- Plumbing and Electrical connections to kiosk to be made by licensed contractors
- Functional testing, startup and training services
- Demolition of existing area
- On site construction activities, including all structural prep work, penetrations, embeds and anchors, concrete footer installation, bonding and water system installation / renovation as needed
- Installation of spray features, appurtenances, and concrete decking color concrete stain included
- Startup, testing and training of system operation and maintenance
- A Baseball Theme for the SplashPad is preferred.
- Not to exceed \$200,000

SECTION 4: INSTRUCTIONS TO BIDDERS

CITY OF SOUTH DAYTONA James Street Park Splash Pad Renovation BID NO. 23-B-004

Firms or companies (Vendor) desiring to provide services, as described herein shall submit sealed bids, to including one original copy in conformance with the detailed submittal instructions.

TIMELINE (Local Time):

The City reserves the right to modify these timelines and schedules at any time for any reason.

Monday, February 13, 2023	Distribute RFP Document
Friday, February 24, 2023 at 10:00am	Pre-Bid Conference at James Street Splashpad, 1700 James Street, South Daytona
Tuesday, March 7, 2023	Written Questions Due Questions regarding responses to this bid must be in writing through e-mail to Becky Witte, Deputy City Clerk at bwitte@southdaytona.org.
Friday, March 10, 2023	City to respond to Questions
Friday, March 24, 2023 at 2:00pm	Proposals Due to the City
Tuesday, March 28, 2023 at 2:00pm	Selection Committee Meeting (<i>tentative date</i>)
Tuesday, April 11, 2023	Staff Recommendation to the City Council

Bids must be delivered in a sealed envelope/package and delivered to:

City of South Daytona
Attention: Office of the City Manager
1672 S. Ridgewood Avenue
South Daytona, Florida 32119

Sealed Bids must be delivered no later than the date and time listed in the Timeline above. All times referenced are local time.

Bids shall be sealed, and Vendors shall clearly indicate on the outside of their bid the following:

- a) Invitation to Bid (ITB) Number and Title
- b) Date of Opening
- c) Name of Vendor
- d) Address of Vendor

Due to the timing of mail service, the City cautions Vendors to assure actual delivery of Bids to the City prior to the deadline set for receiving bids. Carrier and hand deliveries of bids will be accepted in the City Manager's Office, South Daytona City Hall, 1672 S. Ridgewood Avenue, South Daytona, Florida 32119 until the date and time referenced in the Timeline above or as amended by addendum issued by the City. Bids received after the established deadline shall not be considered.

Vendors are cautioned that they are responsible for delivery to the specific location cited above. Therefore, if your bid, proposal, statement or quotation is delivered by an express mail carrier or by any other means, it is your responsibility to ensure delivery to the above address. This office will not be responsible for deliveries made to any place other than the specified address.

Offers by telephone, email or telegram shall not be accepted. Also, Vendors are instructed NOT to fax their bid package. Faxed bids shall be rejected as non-responsive regardless of where or when the fax is received.

Bids will be opened publicly, and the names of all Vendors shall be read aloud.

The City of South Daytona reserves the right to reject any or all Bids or parts of Bids if it is in the best interest of the City.

MANDATORY PRE-BID CONFERENCE:

There will be a Mandatory Pre-Bid Conference for the project on Friday, February 24, 2023 at 10:00am at James Street Splash Pad at 1700 James Street, South Daytona, Florida. All attendees to the Pre-Bid Conference must sign in. The representative of each Vendor shall be an authorized employee of the Vendor and shall sign in accordingly.

Examination of Contract Documents and Site

Before submitting a Bid, each Bidder must (a) examine the Contract Documents thoroughly, (b) visit the site(s) to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the Work, (c) familiarize himself with federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the Work; and (d) study and carefully correlate Bidder's observations with the Contract Documents.

Before submitting his Bid each Bidder will, at his own expense, make such additional investigations and tests as the Bidder may deem necessary to determine his Bid for performance of the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

On request the City will provide each Bidder access to the site to conduct such investigations and tests as each Bidder deems necessary for submission of his Bid. Bidders making such

investigations shall return site to original condition and shall pay for any damages resulting therefrom.

The submission of a Bid will constitute an incontrovertible representation by the Bidder that he has complied with every requirement and that the Contract Documents are sufficient in Scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

Bid Coordinator

The coordinator for this Bid is:

Becky Witte, Deputy City Clerk

bwitte@southdaytona.org

Phone: 386-322-3011

The City will not respond to oral inquiries. Respondents may submit written (by email only) inquiries regarding this to the coordinator. **Written inquiries must be received by Tuesday, March 7, 2023 by 4:00pm to be considered.** The City will record its responses to inquiries and any supplemental instructions in the form of written addenda via the City website www.southdaytona.org.

The City will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Bid Due Date. Vendors should not rely on any representations, statements or explanations other than those made in this ITB or in any addendum to this ITB. Where there appears to be a conflict between the ITB and any addenda issued, the last addendum issued will prevail. It is the Vendor's responsibility to be sure all correct number of addenda was received. The Vendor should verify with the designated contact persons prior to submitting a Bid that all addenda have been received. Vendors should acknowledge the correct number of addenda received as part of their Bids. It is the responsibility of the Vendor to ensure all addenda have been received prior to submitting a bid.

The City of South Daytona reserves the right to consider the omission of an acknowledgment of addendum as cause for rejection of the submittal.

This provision exists solely for the convenience and administrative efficiency of the City of South Daytona. No Vendor or other third party gains any rights by virtue of this provision or the application thereof, nor shall any Vendor or third party have any standing to sue or cause of action arising therefrom.

CLARIFICATIONS:

It is the Vendor's responsibility to become familiar with and fully informed regarding the terms, conditions and specifications of this ITB. Lack of understanding and/or misinterpretation of any portions of this ITB shall not be cause for withdrawal of your Bid after opening or for subsequent protest of award. Vendors must contact the Bid Coordinator, at the email provided, should clarification be required.

Modification or alteration of the documents contained in the solicitation or contract shall only be valid if mutually agreed to in writing by the parties.

MINIMUM QUALIFICATIONS:

Vendors shall be licensed to do business in the State of Florida. Submit Sunbiz report showing your company registered as “Active”.

Vendors must be properly registered and licensed to provide the goods or services identified in the scope of work, by all applicable state and local agencies.

Vendors must provide a minimum of three (3) verifiable references from similar scope and size of work as identified in this ITB on the provided “Professional References” form. Failure to provide references that verify required experience will cause the Vendor to be deemed non-responsive. The City of South Daytona is not to be used as a reference.

NO LOBBYING:

All Vendors are hereby placed on notice that the City of South Daytona Council, City Employees/Staff, nor Members of the Evaluation Committee (with the exception of the Bid Coordinator designated to receive requests for interpretations or corrections) are not to be lobbied, directly or indirectly either individually or collectively, regarding this ITB. During the entire procurement process, all Vendors and their subcontractors, sub-consultants, or agents are hereby placed on notice that they are not to contact any persons listed above for such purposes as holding meetings of introduction, dinners, etc. if they intend to submit or have submitted Bids for this project. Any Vendor contacting individuals mentioned herein in violation of this warning may automatically be disqualified from further consideration for this ITB.

PRICING SHEETS:

Pricing sheets/Bid Forms are to be completed as directed and without modification and returned as part of the ITB submittal prior to the ITB deadline for submission. Failure to fill out the price sheets/bid forms as directed and without modification may negatively affect the evaluation of your bid.

EXCEPTIONS TO SPECIFICATIONS:

If taking exception to any portion of the ITB specifications, the Vendor must indicate those exceptions as stated on the Vendor’s Acknowledgement Form.

BID SUBMISSION AND WITHDRAWAL:

Unless otherwise specified, Vendor shall use the forms supplied by the City. Bids, once opened, become the property of the City, cannot be withdrawn, and will not be returned to the Vendors. Upon opening, Bids become subject to public disclosure in accordance with Chapter 119, Florida Statutes.

CORRECTION OF BIDS:

Correction of inadvertently erroneous Bids shall be permitted up to the time of ITB opening. Vendors shall not be allowed to modify their Bids after the opening time and date.

WITHDRAWAL OF BIDS:

NO Bid shall be withdrawn for a period of ninety (90) days subsequent to the Bid opening without the consent of the City of South Daytona, Florida. Negligence on the part of the Vendor in preparing the Bid confers no right of withdrawal or modification after the Bid has been opened, at the appointed time and place by the City of South Daytona. Any such withdrawn Bid shall not be resubmitted.

OPENING OF BIDS:

Bids will be received until the date and time stated in this ITB and will be publicly opened and read at the place, time and date stated. No responsibility will attach the City for the premature opening of a Bid not properly addressed and identified.

REJECTION OF BIDS:

The City reserves the right to reject any and/or all Bids when such rejection is in the best interest of the City.

BIDS MAY BE REJECTED AND/OR VENDOR(S) DISQUALIFIED FOR THE FOLLOWING REASONS:

- a) Failure to update the information on file including address, product, service or business descriptions.
- b) Failure to perform according to contract provisions.
- c) Conviction in a court of law of any criminal offense in connection with the conduct of business.
- d) Evidence of a violation of any federal or state antitrust law based on the submission of bids or proposals, or the awarding of contracts.
- e) Evidence that the vendor has attempted to give a City employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the City's purchasing activity.
- f) Other reasons deemed appropriate by the City.

OWNERSHIP OF DOCUMENTS:

All documents resulting from this project will become the sole property of the City of South Daytona. The Vendor must meet all requirements for retaining public records and transfer, at no cost, to the City all public records in the possession of the Vendor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and

exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

AMERICANS WITH DISABILITIES ACT (ADA):

If you need special services provided for under the Americans with Disabilities Act, contact the Deputy City Clerk at 386-322-3011 at least 48 hours before the scheduled event.

Other Requirements.

If this is a federally assisted project it will be subject to Federal Labor Standards which include, the Davis-Bacon Act (payment of prevailing wage rates) and the Copeland Act (anti-kickback of wages & submission of weekly certified payroll reports), as well as other provisions including 24 CFR 85.36 (bonding requirements), and Section 3 & M/WBE. Laborers and mechanics employed by primary contractors and sub-contractors performing construction work on this project shall be paid wages at rates not less than the prevailing rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The prime contractor is responsible for the enforcement of wage compliance and support documentation for the duration of the project and may be held liable for wage restitution. The applicable information regarding the laws and regulations stated above would be included in the bid packet.

Bond

In accordance with section 255.05, Florida Statutes, the Bidder, if awarded the Contract and the bid amount is \$100,000 or more, shall execute and file acceptable performance and payment bonds equal to 100% of the contract price within ten (10) days after written notice of the award of contract. No bidder may withdraw their bid for a period of ninety (90) days after the date set for opening of bids.

Payment of Taxes

The Contractor will be responsible for payment of all Excise, Sales and Use Taxes, and all other taxes required by law on all materials, tools, apparatus, equipment, fixtures, and incidentals which he purchases or uses for the purpose of fulfilling the work of this Contract, and he shall include all amounts required for such taxes with the item prices bid in his Proposal. No additional payment will be made to cover such taxes. Each Bidder shall thoroughly familiarize himself before submitting a Proposal, with all laws requiring the payment of taxes.

Special Requirements

Prohibited Interests. No official of the City who is authorized in such capacity, and on behalf of the City to negotiate, make, accept or approve, or to take part in negotiating, making accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project shall become directly or indirectly interested, personally, in this Contract or in any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for the City who is

authorized in such capacity and on behalf of the City to exercise legislative, executive, supervisory, or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally, in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

Performance of Work by Contractor. The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of the contract or any portion thereof, or of his right, title or interest therein, without written consent of the City. The Contractor shall perform on the site and with his own organization work equivalent to not less than 50 percent of the total dollar value of the work to be performed under this contract except that work designated hereinafter as specialty work may be performed by subcontractors and the cost of any such specialty work so performed by subcontract may be deducted from the total contract amount before computing the amount of work required to be performed by the Contractor with his own organization.

Sworn Statement on Public Entity Crimes. 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 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.

Equal Opportunity Clause. During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- 3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the

contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

[Remainder of this page left intentionally blank]

SECTION 5: SCOPE OF WORK / BID SPECIFICATIONS

Scope for Project:

Renovation of the Splash Pad at James Street Park (1700 James Street, South Daytona). Work will include:

- Provide and install concrete pad, including steel reinforcement and footers pursuant to applicable Code and requirements. Concrete area to include “ wet deck” area for a total concrete play area of approximately 1200 sq ft x 5 in thick
- Installation of separate colors of concrete stain per plan
- Retrofit elements to current holding tank and filtration system
- Provide and install spray effects such as: water squirt cannons, triple dumping buckets, ground squirter, arching sprays, bubblers, etc. Play area should have a Sports / Baseball theme.
- Renovation of Control Manifold and computer with (11) zones (Control manifold system is in a lockable kiosk for protection from people and elements)
- Provide and install schedule 40 PVC pipe and fittings for connections from spray features to the water kiosk system. Plumbing to be supported and embedded appropriately as required
- Bonding of all features and parts as required by current NEC
- Plumbing and Electrical connections to kiosk to be made by licensed contractors
- Functional testing, startup and training services
- Demolition of existing area
- On site construction activities, including all structural prep work, penetrations, embeds and anchors, concrete footer installation, bonding and water system installation / renovation as needed
- Installation of spray features, appurtenances, and concrete decking color concrete stain included
- Startup, testing and training of system operation and maintenance
- Not to exceed \$200,000

SECTION 6: STANDARD PURCHASE DEFINITIONS

The City will use the following definitions in instructions to bidders, terms and conditions, special provisions, technical specifications and any other solicitation documents.

Addendum is a formal written document, released prior to the public opening that modifies any aspect of a Solicitation. Plural: Addenda

Alternate Bid means multiple Bids with substantive variations from the same Bidder in response to a Solicitation.

Amendment is a formal written agreement, signed by both parties, that modifies an existing contractual agreement.

Appropriate, Appropriated, or Appropriation means the adoption by the City Council of the City of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.

Best Value means the highest overall value to the City based on factors that include, but are not limited to, price, quality, design, and workmanship.

Bid is a complete, properly signed response to an Invitation to Bid, which if accepted, would bind the Bidder to perform the resultant Contract.

Bid Guaranty (Bid Bond) guarantees that the Bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract.

Bidder or Proposer is a person, firm, or entity that that submits a Response to a Solicitation. Any Bidder/Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. (See also "Vendor")

City means the City of South Daytona.

Competitive Negotiation means a method for acquiring goods, services, and construction for public use in which discussions or negotiations may be

conducted with responsible offerors who submit Responses through a Request for Proposals, Request for Statements of Qualifications, or Invitation to Negotiate.

Competitive (Formal) Solicitation is the process of requesting and receiving two or more sealed bids, proposals, statements of qualifications or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

Competitive Range means the responsive submissions that meet the evaluation criteria and are considered to be reasonably susceptible of award.

Construction means the process of building, repairing, improving, and alterations, conversion or extension of building, parks, utilities, streets or other improvements or alterations to real property.

Contract is a written agreement or purchase order issued for the purchase of goods or services.

Contractor means the person, firm or entity selling goods or services to the City under a Contract.

Deliverables means the goods, products, materials, and/or services to be provided to the City by a Bidder.

Due Date means the date and time specified for receipt of Responses to a Solicitation.

End User is a person, program, agency, or other eligible user who uses a contract to purchase a commodity or contractual service.

Evaluation/ Selection Committee/Team is a temporary group of City personnel who are responsible for the evaluation of proposals, statements of qualifications or replies as part of a Request for Proposals (RFP), Request for Submission of Qualifications (RFSQ), or Invitation to Negotiate (ITN), or competitive grant process.

Evaluator is a member of the evaluation committee/team.

Goods are supplies ,materials, or equipment.

Intent to Award is a document that informs the public and respondents of the City's decision to award a contract pursuant to a previously issued competitive solicitation.

Invitation to Bid (ITB) or Bid means a formal request to prospective vendors requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper.

Invitation to Negotiate (ITN) means a formal request to prospective vendors requesting proposed specifications and pricing of a product and/or service which has been advertised for replies in a newspaper.

Issues means points, matters, or concerns to be addressed during the negotiations.

Lead Negotiator is the negotiator responsible for leading and facilitating the formal negotiation discussions and selecting other required negotiation team members. Is often the "driver of change" and seeks alternatives/options.

Lowest Responsible Bid means the responsive Bid meeting all requirements of the specifications, terms, and conditions of the Invitation to Bid resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Bidder to perform the Contract, past performance of the Bidder, and compliance with all City ordinances concerning the purchasing process.

Lowest Responsible Bidder means the Bidder submitting Lowest Responsible Bid.

Negotiation Team is a temporary group of City personnel who are responsible for negotiations as part of an Invitation to Negotiate (ITN).

Negotiator is a member of the negotiation team.

Non-Professional Services are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.

Offer means a complete signed Response submitted to the City in response to a Solicitation including, but not limited to, a Bid submitted in response to an Invitation to Bid, a Proposal submitted in response to a Request for Proposal, a Quote submitted in response to a Request for Quotation, a Statement of Qualifications and interest submitted in response to

a Request for Statements of Qualifications, or a Reply submitted in response to an Invitation to Negotiate.

Outlier is a bid, offer, or proposal which is determined by the City to be significantly dissimilar to or inconsistent with, competing bids or offers.

Pre-Bid/Proposal/Statement/Reply Conference means a meeting conducted by the City, held in order to allow Vendors to ask questions about the proposed Contract and particularly the Contract specifications with the City department requesting the goods/services.

Price Analysis is an evaluation of the total cost of a contract in order to determine if the price is reasonable.

Procurement (Process) is a term used in the governmental sector for the combined functions of acquiring (purchasing) needed goods and/or services, receiving and inspection, inventory management, contract administration, and disposal/surplus.

Professional Services means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

Protest is a formalized process by which respondents have an opportunity to challenge a procurement practice or contract award.

Proposal is a complete, properly signed Response to a Request for Proposal, based on performance that is offered rather than on that of price alone, which if accepted, would bind the Vendor to perform the resultant Contract.

Purchase Order is an order placed by the Purchasing Division for the purchase of Goods or Services written on the City's standard Purchase Order form and which, when accepted by the Bidder, becomes a contract. The Purchase Order is the Bidder's authority to deliver and invoice the City for Goods or Services specified, and the City's commitment to accept the Goods or Services for an agreed upon price.

Request for Proposal (RFP) means a formal request to prospective vendors requesting qualifications of the vendor and pricing for a specified Good or Service which has been advertised.

Request for Statement of Qualifications (RFSQ) means a formal request to prospective vendors requesting statements of qualifications pursuant to Florida Statute 287.055 "Consultant's Competitive Negotiation Act" which has been advertised for Statement in a newspaper.

Respondent means an entity that has (or will, i.e. "prospective respondents") submitted a response to a competitive solicitation conducted to create a contractual relationship for the provision of commodities or services.

Response/Submission means all materials submitted to the City by a respondent as part of a solicitation. A response may be called a bid, proposal, statement of qualifications, or a reply, depending on the type of competitive solicitation being issued.

Responsible (Vendor) is a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.

Responsive (Vendor) is a vendor that has submitted a bid, proposal, statement of qualifications, or reply that conforms in all material respects to the solicitation.

Scope means the extent of the area or subject matter that something deals with or to which it is relevant.

Scope of Work means a description of the work activities, deliverables, and/or timeline that a vendor must execute in terms of delivering specific commodities or in performance of contractual services.

Services include all work or labor performed for the City on an independent contractor basis other than construction.

Solicitation means a formal request, as applicable, for prospective vendors to submit responses to an Invitation to Bid, Request for Proposal, Request for Qualifications, Invitation to Negotiate, or a Request for Quotation.

Solicitation Document means a document, or collection of documents, either paper or electronic, that contains all information required to conduct a competitive procurement project according to § 287.057, Florida Statutes.

Stakeholder means an individual, who is not likely to become a vendor, who has an interest in the commodities/contractual services needed.

Subcontractor means a person, firm or entity providing goods or services to a Vendor to be used in the performance of the Vendor's obligations under the Contract.

Subject Matter Expert means a person who has working or expert knowledge about a particular topic or field.

Unbalanced Bid means a Bid that is based on prices which are significantly less than cost for some bid items and significantly more than cost for others.

Vendor is a person, firm, or entity that provides commodities or services and submits a Response to a Solicitation. Any Vendor may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. (Also called "Bidder" or "Proposer".)

SECTION 7: GENERAL TERMS AND CONDITIONS

These instructions are standard for all contracts for commodities or services issued through the City of South Daytona. General Requirements apply to all advertised Solicitations; however, these may be superseded, in whole or in part, by the SPECIAL REQUIREMENTS /INSTRUCTIONS OR OTHER DATA CONTAINED HEREIN.

READ THIS ENTIRE DOCUMENT CAREFULLY. FOLLOW ALL INSTRUCTIONS. YOU ARE RESPONSIBLE FOR FULFILLING ALL REQUIREMENTS AND SPECIFICATIONS. BE SURE YOU UNDERSTAND THEM.

1. ACCEPTANCE BY CITY

The City shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by vendor. The City at its option may reject all or any portion of such goods or services which do not, in City's sole discretion, comply in every respect with all terms and conditions of the contract. The City may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If the City elects to accept nonconforming goods and services, the City, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate the City for the nonconformity. Any acceptance by the City, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services. The material delivered as a result of this solicitation shall remain the property of the seller until a physical inspection and actual usage of the item(s) is made and thereafter deemed acceptable to the satisfaction of the City, in compliance with the terms and specifications contained herein. In the event that the item(s) supplied to the City is/are found to be defective, or does/do not conform to specifications, the City reserves the right to cancel the order upon written notice to the seller and return the item(s) to the seller at the seller's expense.

2. ADDENDUM

When specifications are revised, the City will issue an addendum addressing the nature of the change. Vendors should acknowledge all addenda by listing the addenda received on the "Vendor Acknowledgment Form" and include it in the returned Response package. Failure to acknowledge the correct number of addenda issued may result in rejection of the Response. It is the responsibility of the Vendor to ensure all addenda have been received prior to submitting a bid. All Addenda shall be posted by the City on www.southdaytona.org.

The City shall issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Solicitation Response Due Date. Vendors should not rely on any representations, statements or explanations other than those made in this Solicitation or in any addendum to the Solicitation. Where there appears to be a conflict between the Solicitation and any addenda issued, the last addendum issued shall prevail.

3. ADDITIONAL GOODS

Products, Materials and Goods not specifically identified in this bid request may be added to any resultant contract upon mutual consent of the contracting parties. The City reserves the right to add or delete products or materials of similar nature, within the family of products of "ITB Item(s)" and their commodity codes, to those items requested in this bid.

4. AMERICANS WITH DISABILITIES ACT (ADA):

If you need special services provided for under the Americans with Disabilities Act, contact the Deputy City Clerk at 386-322-3011 at least 48 hours before the scheduled event.

5. ANTI-COLLUSION STATEMENT

By submitting this Response to a Formal Solicitation, the Vendor affirms that this Response is without previous understanding, agreement, or connection with any person, business, or corporation submitting a Response for the same materials, supplies, or equipment, and that this Response is in all respects fair, and without collusion or fraud. Additionally, Vendor agrees to abide by all conditions of this Solicitation

and certifies that they are authorized to sign this Response for the Vendor. In submitting a Response to the City of South Daytona, the Vendor offers and agrees that if the Response is accepted, the Vendor shall convey, sell, assign or transfer to the City of South Daytona all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the City of South Daytona. At the City's discretion, such assignment shall be made and become effective at the time the City tenders final payment to the Vendor.

6. APPLICABLE LAWS

In connection with the furnishing of supplies or performance of work under the Contract, the Vendor agrees to comply with the Fair Labor Standards Act, Equal Opportunity Employment Act, and all other applicable federal and state laws, regulations and executive orders to the extent that the same may be applicable.

7. ASSIGNMENT

The successful Vendor shall not sell, assign, transfer or convey this contract in whole or in part, without the prior written consent of the City of South Daytona. Any such assignment or transfer shall not **release** Vendor from all contractual obligations. If the Vendor requires the services of any subcontractor or professional associate in connection with the work to be performed, the Vendor must obtain the written approval of the City prior to engaging such subcontractor or professional associate. The Vendor will remain fully responsible for the services of any subcontractors or professional associates.

8. AUTHORITY TO CONDUCT BUSINESS IN FLORIDA:

A Florida corporation or partnership is required to provide evidence with its response that the Vendor is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the City.

A foreign (out-of-state) corporation or partnership is required to provide evidence with its response that the Vendor is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request.

A joint venture is required to provide evidence with its response that the joint venture, or at least one of the joint venture partners, is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from the request. However, the joint venture is required to provide evidence prior to contract execution that the joint venture is authorized to transact business in Florida and provide the City with a copy of the joint venture Agreement.

A joint venture is also required to provide with its response a Statement of Authority indicating that the individual submitting the joint venture's proposal has the legal authority to bind the joint venture. If not with its response, such evidence must be submitted to the City no later than five (5) business days from the request of the City.

9. AWARDS

Results from the evaluation committee will be considered by the City of South Daytona City Council at the earliest possible regular meeting subsequent to the evaluation process. This ITB is issued in accordance with and shall be governed by the provisions of the City's Purchasing Policy.

The City of South Daytona City Council reserves the right to make award(s) by individual sections, groups, all or none, or a combination thereof, with one or more Vendors; to reject any and all proposals, or to waive any informality or technicality in proposals received as deemed to be in the best interest of the City.

The City does not award publicly funded contracts to those who knowingly employ unauthorized alien workers in violation of section 274A(e) of the Immigration and Naturalization Act, 8 United States Code s1324a(e). Such employment deprives legal workers of job opportunities. Violation of section 274A(e) shall be grounds for unilateral cancellation of the contract, Contract, proposal or quote for purchase of services and goods by the City of South Daytona.

10. AWARD AND EXECUTION OF CONTRACT:

When a bid received has been determined to be satisfactory, a Contract will be awarded, or Purchase Order issued to the lowest responsible Bidder within the time designated in the Contract Documents.

The Bidder(s) to whom the award is made shall execute the Contract(s) and return it, together with the properly executed bonds and insurance certificates to the office of the City, within the time specified.

11. BID RETURNS

Vendors shall return all completed Responses to the City of South Daytona at the address set forth in the ITB on the date and at the time specified. Late submissions will not be accepted and shall be returned to Vendors unopened.

12. BID PROTEST

In any case where a bidder wishes to protest either the results of or intended disposition of any bid, the following action is required:

- (1) The bidder shall submit a formal written protest to the city manager forty-eight (48) hours after the posting of the notice of decision or intended decision as set forth on a city council agenda item. With respect to a protest of the terms, conditions and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, bids, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within forty-eight (48) hours after the posting of the solicitation.
- (2) The formal written protest shall state with particularity the facts and law upon which the protest is based.
- (3) Failure to submit a formal written protest shall constitute a waiver of proceedings.
- (4) Upon receipt of the formal written protest that has been timely filed, the city shall stop the solicitation or contract award process until the subject of the protest is resolved by final city action. However, the city may continue the solicitation or award process, provided the city manager sets forth in writing particular facts and circumstances, which require the continuance of the solicitation or contract award process without delay, in order to avoid an immediate and serious danger to the public health, safety or welfare. The city will resolve the protest in the following manner:
 - a. As soon as possible after receipt, the finance director shall provide written bid protest to the city manager, city attorney, department head involved, and supervisor directly involved in the acquisition.
 - b. The finance director shall schedule within seven (7) business days, excluding weekends and holidays a meeting with the above-mentioned individuals or designee and protestor. The intent of the meeting is to provide a review and/or solution prior to going before council. After reviewing all relevant information, the city manager shall render a decision.
 - c. If the protester disagrees, he may appeal to the city council at a formal council meeting. After reviewing the evidence, the city council will issue their decision. The city council's decision is final; however, the protester can appeal the

administrative decision to the Circuit Court in Volusia County, Florida within thirty (30) days of the city council's final decision. Decisions at all levels shall be in writing to the protestor.

13. BID/PROPOSAL TABULATION

Vendors who wish to receive a copy of the bid/proposal tabulation may obtain it by contacting the Deputy City Clerk at 386-322-3011.

14. BONDS

If this Solicitation requires submission of bid guarantee and performance bonds, there will be a separate page explaining those requirements. Responses submitted without the required bid bond or certified check shall be deemed non-responsive. When the City deems it necessary, bid bonds/deposits shall be prescribed and are advertised in the public notices inviting bids. Normally, if a bid bond/deposit is requested, it is in the amount of five percent (5%) of the bid amount. Payment and Performance Bonds requested for construction projects shall be in an amount equal to one hundred percent (100%) of the total contract amount. Upon award, the successful Vendor may also be required to furnish and pay for a satisfactory contract one hundred percent (100%) Payment and Performance Bond which will be recorded by the City, at the Vendor's sole cost and expense, with the Clerk of the Circuit Court, Volusia County, Florida, and to enter into a written contract with the City of South Daytona. After recording, the City will furnish to the contractor the recording information for the bond to evidence that the contractor has met the requirements of Florida law. The City will bill the cost of recording to the contractor. Payment and Performance Bonds shall also be recorded at the Vendor's expense in the Office of the Clerk of the Circuit Court, Volusia County, Florida. All bonds no matter which kind, are advertised in the Solicitation which appears in the newspaper. Unsuccessful Vendors are entitled to the return of their surety where the City has required such. A successful Vendor shall forfeit any surety required by the City upon failure on the part of the Vendor to enter into a contract within the time specified after the award of bid.

In accordance with section 255.05, Florida Statutes, the Bidder, if awarded the Contract and the bid amount is \$100,000 or more, shall execute and file acceptable performance and payment bonds equal to 100% of the contract price within ten (10) days after written notice of the award of contract. No bidder may withdraw their bid for a period of ninety (90) days after the date set for opening of bids.

15. CERTIFICATE OF INSURANCE

If required upon notice of intent to award contract resulting from this solicitation, the selected Vendor will be required to submit a Certificate of Insurance showing proof of adequate coverage for professional general liability, errors and omissions and workers' compensation as identified under the insurance requirements of this solicitation and listing the City of South Daytona as a Certificate Holder prior to execution of the contract. (For details, see **Insurance Requirements**)

16. CHANGE ORDERS

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change order requests shall be made in writing by the Contractor for review by the Contract Administrator for the City of South Daytona. No work shall be performed as set forth in the change order until the Contractor receives an executed Purchase Order for the requested change.

17. CHANGE ORDER REQUEST NOTIFICATION

The Successful Contractor is responsible for giving the City of South Daytona, prior to the Contract expiration date, at least forty-five (45) calendar day's advance notice for any anticipated changes in price greater than \$25,000.00, time and/or scope of the awarded Contract. The Contractor shall not continue to provide services past the Contract expiration date unless approved by a written Change Order Notice from the City.

18. CLEAN UP

Upon completion of the delivery of materials, the Contractor shall restore any/all public and private property which was damaged during delivery. Restoration is meant to include removal of any spillage or restoring damage to the edge of pavement, sidewalks, driveways, landscaped areas, etc. Contractor shall make repairs consistent with or better than what existed prior to delivery. This shall be understood to include the use of sod or seed and mulch to replace (if necessary) existing grass that has been damaged.

If sod is used it shall match the sod present on the effected property. Contractor shall make all repairs and restorations at his expense.

19. COMMENCEMENT AND COMPLETION

Vendor is responsible for commencing work under this Solicitation/Agreement within 30 days upon receipt of the Notice of Award and must substantially complete the work not later than 90 calendar days thereafter, and to fully complete the work within 120 calendar days (unless specified in the Agreement approved by Council). The Vendor shall not be entitled to any damages on account of hindrances or delays in construction from any cause whatsoever. This paragraph shall include but not be limited to any actions which result in delays in scheduling, substantial changes in scope of work, or substantial increases in the costs of performing the work under this Agreement.

Liquidated damages will be assessed against Vendor in the amount of \$500 per day, for each day after each milestone that the work contemplated is incomplete.

20. COMPLIANCE/CONSISTENCY WITH SCRUTINIZED COMPANIES PROVISIONS OF FLORIDA STATUTES

Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Vendor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Vendor further hereby certifies that Vendor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Vendor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Vendor to civil penalties, attorney's fees, and/or costs. Vendor further understands that any contract with City for goods or services of any amount may be terminated at the option of City if Vendor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of City if the Vendor is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

21. CONDUCT OF VENDORS

All Vendors or individuals acting on behalf of a Vendor are hereby prohibited from lobbying or otherwise attempting to persuade or influence any member of the Selection Committee, City Council members, or City staff at any time during the course of the solicitation process. The solicitation process shall end upon issuance of the written City Manager and staff recommendation for selection of a Vendor. All Vendors or

individuals acting on behalf of a Vendor are further prohibited from contacting or otherwise attempting to communicate with any member of the staff, Evaluation Committee or City Council members regarding the pending solicitation or its outcome until after the issuance of the written recommendation of the most qualified Vendor. Until such recommendation is issued in writing, any questions regarding the pending solicitation shall be submitted to the Bid Coordinator. Failure to comply with this procedure shall result in rejection/disqualification of said submittal without exception. Contact with staff, City Council members and the Evaluation Committee during a public meeting shall not be considered a violation of this requirement.

22. CONE OF SILENCE

The Cone of Silence is designed to protect the integrity of the procurement process by shielding it from undue influences prior to the execution of the award.

The Cone of Silence is defined as the period beginning with the issuance of the solicitation document and continues through the execution of the award document. During this time vendors, service providers and the like are prohibited from all communications regarding the solicitation with City staff, City consultants, City legal counsel, City Agents, or elected officials. Any vendor who initiates any discussions or attempts to influence a member or members of the aforementioned shall be disqualified from continued participation in the procurement process with regard to that particular solicitation.

Exceptions to the Cone of Silence:

- a) Written communication directed to the Bid Coordinator;
- b) All communications occurring at Pre-Proposal Conferences;
- c) Oral presentations before publicly notice committee meetings;
- d) Procurement of goods and services for Emergency situations; and
- e) Contractors already on contract with the City to perform services for the City are allowed discussions necessary for the completion of an existing contract.

23. CONFLICT OF INTEREST

For purposes of determining any possible conflict of interest, all Vendors must disclose if any City of South Daytona employee is also an owner, corporate officer, or employee of Vendor's business. No official or employee of the City who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Scope of Work covered by the Contract shall voluntarily acquire any personal interest, directly or indirectly, in the contract or proposed Contract.

24. CONFLICT OF INSTRUCTIONS

If a conflict exists between the General Terms and Conditions and instructions contained herein, and the Special Terms and Conditions and instructions contained herein, the Special Terms and Conditions shall govern.

25. CONTRACT

Any acquisition above the \$25,000 level shall be done through one of the formal competitive methods except upon City Council waiver and/or shall have City Council approval. Only the City Manager has the authority to obligate the City by entering into a written contract to purchase goods and/or services up to \$25,000.00. The City of South Daytona, Florida reserves the right to reject any and all Responses or to waive any and all non-substantial irregularity in Responses received, whenever such waiver or rejection is in the best interest of the City.

26. CONTRACT OBLIGATION

The City of South Daytona City Council shall approve the contract if greater than \$25,000 annually. The Mayor or other person authorized by the Council must sign the contract before it becomes binding on the City of South Daytona or the Vendor. Department heads are NOT authorized to sign contracts for the City

of South Daytona. Binding agreements shall remain in effect until all products and/or services covered by this purchase have been satisfactorily delivered and accepted.

27. CONTRACT RENEWALS

Renewals may be made ONLY by written agreement between the City of South Daytona and the Vendor. Any price escalations are limited to those stated by the Vendor on the original Response.

28. COOPERATIVE PURCHASING

The City Manager may elect to purchase through or join with other governmental units in cooperative purchasing ventures when the best interest of the City would be served thereby, provided the same is in accordance with all applicable laws. In the event the City Manager should elect to purchase through or join with other governmental agencies in cooperative purchasing ventures, all purchases in excess of twenty-five thousand dollars (\$25,000) shall require council approval before the purchasing contracts are entered into.

29. COPELAND "ANTI-KICK BACK" ACT - 18 USC 874 AND 40 USC 276C; 29 CFR PART 3

The contractor and subcontractor(s) shall comply with the requirements of the Copeland "Anti-Kick Back" Act as supplemented in the U.S. Department of Labor regulations 29 CFR Part 3. The Copeland Act makes it a federal crime for anyone to require any laborer or mechanic (employed on a federally assisted project) to kickback (i.e. give up or pay back) any part of their wages. The Copeland Act requires every contractor and subcontractor to submit weekly payroll reports (certified payroll) and regulates permissible payroll deductions.

30. COPYRIGHT AND PATENT RIGHTS

Vendor warrants that there has been no violation of copyrights or patent rights in manufacturing, producing and/or selling the item(s) ordered or shipped as a result of this Response, and successful Vendor agrees to hold the City harmless from any and all liability, loss or expense by any such violation.

31. COST INCURRED BY VENDOR

All expenses, including costs for required bonds, involved with the preparation and submission of Responses to the City, or any work performed in connection therewith shall be borne by the Vendor. No payment shall be made for any response received, nor for any other effort required of or made by the Vendor prior to commencement of work as defined by the contract approved by the City Council.

32. DAMAGE

Any damage to driveways, irrigation systems, sidewalks, pavement, or landscaping will be evaluated by the County's representative and the Contractor. If the Contractor is found to be at fault, all repairs, restitution, or reimbursements to the City must be completed within one week of discovery.

33. DEBARMENT HISTORY

The City will consider a Vendor's debarment history information in its review and determination of responsibility. All Vendors are required to disclose to the City all cases of debarment filed, pending, or resolved by the City or other public entity during the last five (5) years prior to the solicitation response due date, whether such actions were brought by or against the Vendor, any parent or subsidiary of the Vendor, or any predecessor organization. If the Vendor is a joint venture, the information provided should encompass the joint venture (if it is not newly-formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Vendor's debarment history is an issue of responsibility, the failure to provide debarment history as required in the Proposal Submittal and Requirements Section may result in a recommendation of non-responsive by the City.

34. DEFAULT PROVISIONS

In the event of default by the Vendor, the City reserves the right to procure the item(s) bid from other sources and hold the Vendor responsible for excess costs incurred as a result. If a contractor defaults on a City contract the City Council may elect to refrain from doing business with the Vendor for a period of 36 months from the date of default.

35. DELIVERY OF GOODS/SERVICES

All materials are to be delivered F.O.B.; City of South Daytona designated facility.

Delivery dates pertaining to this invitation must be clearly stated in the bid form where required and include weekends and holidays. Failure to comply with this requirement may be a cause for disqualification of bid. Unless otherwise specified, delivery at the earliest date is required. The Vendor shall clearly state in the Response the time required for delivery upon receipt of contract or purchase order. Proposed delivery time must be specific and such phrases "as required," "as soon as possible" or "prompt" may result in disqualification of the bid. Delivery time will be a factor for any orders placed as a result of this Response. The City reserves the right to cancel such order(s) or any part thereof, without obligation, if delivery is not made within the time(s) specified herein and hold the vendor in default.

Upon approval of a contract, the vendor is obligated to deliver the goods to the destination specified in the Solicitation or the Purchase Order and bears the risk of loss until delivery. If this Solicitation or Purchase Order does not contain delivery instructions, Vendor shall request instructions in writing from the City. If the delivery instructions contained in the Solicitation allocate delivery costs and risks in a manner contrary to this section, the provisions of this Competitive Solicitation shall prevail.

When delivery is not met as provided for in the contract, the City reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the Vendor, in addition to any other damages, direct or consequential, incurred by the City as a result thereof. In addition, failure of the Vendor to meet the contract delivery dates will be cause for removal of the Vendor from the City's list of eligible Bidders/Proposers as determined by the City.

36. DETERMINATION OF LOWEST AND BEST RESPONSIBLE BIDDER/PROPOSER

In determining the lowest and best responsible Bidder/Proposer, in addition to price, there will be considered the following:

- a) The ability, capacity and skill of the Bidder/Proposer to perform the contract.
- b) Whether the Bidder/Proposer can perform the contract within the time specified, without delay or interference.
- c) The character, integrity, reputation, judgment, experience, and efficiency of the Bidder/Proposer.
- d) The quality of performance of previous contracts.
- e) The previous and existing compliance by the Bidder/Proposer with laws and ordinances relating to the contract.
- f) The sufficiency of the financial resources and ability of the Bidder/Proposer to perform the contract or provide the service.
- g) The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- h) The ability of the Bidder/Proposer to provide further maintenance and service for the use of the subject of the contract.
- i) The number and scope of conditions attached to the bid.
- j) Such other factors as appear to the City Council to be pertinent to the bid or the contract under all of the circumstances involved.

37. DISCLOSURE OF CONFLICTS

The award is subject to the provisions of Chapter 112.313, Florida Statutes. All Vendors must disclose with their Response the name of any officer, director, or agent who is also an employee of the City. Further, all Vendors must disclose the name of any employee who owns, directly or indirectly, an interest in the Vendor's firm or any of its branches. The Vendor shall not compensate, in any manner, directly or indirectly, any officer, agent, or employee of the City for any act or service that he/she may do, or perform for, or on behalf of any officer, agent or employee of the Vendor. No officer, agent, or employee of the City shall have any interest, directly or indirectly, in any contract or purchase made, or authorized to be made by anyone for, or on behalf of the City. The Vendor shall have no interest and shall not acquire any interest that shall conflict in any manner or degree with the performance of the services required under the Solicitation.

38. EQUAL OPPORTUNITY CLAUSE.

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

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- 3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the

administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

39. EVALUATION

Evaluation shall be used as a determinant as to which Response items or services are the most efficient and/or most economical for the City. It shall be based on all factors which have a bearing on price and performance of the items in the user environment. All Responses are subject to tabulation by the City of South Daytona and recommendation to the governing body. Compliance with all Solicitation requirements, delivery and needs of the using department are considerations in evaluating Responses. Pricing is NOT the only criteria for making a recommendation. The City of South Daytona reserves the right to contact any Bidder/Proposer, at any time, to clarify, verify or request information with regard to any Response.

40. EXCEPTIONS TO SPECIFICATIONS

For purposes of evaluation, the Vendor must indicate any exception to the specifications, terms, and/or conditions, no matter how minor. This includes any agreement or contract forms supplied by the Vendor that are required to be signed by the City. If exceptions are not stated by the Vendor, in his bid, it will be understood that the item(s)/services fully comply with the specifications, terms and/or conditions stated by the City. Exceptions are to be listed by the Vendor on an attachment included with the bid. The City will not determine exceptions based on a review of any attached sales or manufacturer's literature.

41. E-VERIFY

Vendors shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor during the term of contract and shall expressly require any subcontractor performing services pursuant to the contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of contract.

42. FACILITIES

The City reserves the right to inspect the Vendor's facilities at any time.

43. FEDERALLY ASSISTED PROJECTS

If this is a federally assisted project it will be subject to Federal Labor Standards which include, the Davis-Bacon Act (payment of prevailing wage rates) and the Copeland Act (anti-kickback of wages & submission of weekly certified payroll reports), as well as other provisions including 24 CFR 85.36 (bonding requirements), and Section 3 & M/WBE. Laborers and mechanics employed by primary contractors and sub-contractors performing construction work on this project shall be paid wages at rates not less than the prevailing rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The prime contractor is responsible for the enforcement of wage compliance and support documentation for the duration of the project and may be held liable for wage restitution. The applicable information regarding the laws and regulations stated above would be included in the bid packet.

If any portion of the funding for this Agreement is derived from the State of Florida, or any department of the State of Florida, or from federal funding through the State of Florida, the provisions of this subparagraph shall apply, provisions elsewhere in this Agreement to the contrary notwithstanding. Vendor shall make inquiry from the City's Project Manager to determine whether Federal or State funding is applicable to this Agreement.

- i. E-Verify. Vendor must utilize, and must expressly require all subcontractors to utilize, the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Vendor during the Term of this Agreement.
- ii. Agency. Vendor agrees and acknowledges that it, its employees, and its subcontractors are not agents or employees of the Federal Government, of the State of Florida, or of any department of the Federal Government or the State of Florida.
- iii. Indemnification. To the fullest extent permitted by law, Vendor shall indemnify and hold harmless the CITY, the Federal Government, the State of Florida, any department of the Federal Government or the State of Florida, and all officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of Vendor and persons employed or utilized by Vendor in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the City's sovereign immunity.
- iv. Workers' Compensation Insurance. Vendor must provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, Vendor must ensure that the subcontractor(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), Vendor must ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. Vendor must ensure that any equipment rental agreements that include operators or other personnel who are employees of independent Contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.
- v. Liability Insurance. Contractor shall carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. Vendor shall cause the State of Florida to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the State of Florida as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Contract, and may not be shared with or diminished by claims unrelated to this Agreement. The policy/ies and coverage described herein may be subject to a deductible. Vendor shall pay all deductibles as required by the policy. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention. At all renewal periods which occur prior to final acceptance of the work, the CITY and the State of Florida shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The CITY and the State of Florida shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The City's or the State of Florida's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the CITY or the State of Florida may have.
- vi. Inspections. Vendor shall permit, and require its subcontractors to permit, the City's and the State of Florida's authorized representatives to inspect all work, materials, payrolls, and

records, to audit the books, records, and accounts pertaining to the financing and development of the Services described in the Contract Documents.

vii. Auditor General Cooperation. Vendor shall comply with §20.055 (5), Florida Statutes, and shall incorporate in all subcontracts the obligation to comply with §20.055 (5), Florida Statutes.

j. E-Verify Compliance. Vendor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Vendor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Vendor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Vendor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.

44. FISCAL YEAR FUNDING APPROPRIATION

Specified Period: Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interest of the City, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contract. Payment and performance obligations for succeeding fiscal periods shall be subject to appropriation by City Council of funds therefor.

Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods: When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the Vendor shall be entitled to reimbursement for the reasonable value of any nonrecurring cost incurred but not advertised in the price of the supplies or services delivered under the contract or otherwise recoverable.

The City is obligated only to the extent that funds are included in the City's fiscal year and/or capital budget. Should the City not include funds for this expense the Agreement is null and void.

45. FINANCIAL STABILITY

Vendors shall be prepared to supply a financial statement upon request, preferably a certified audit of the last available fiscal year. A third party prepared financial statement and the latest Dunn & Bradstreet report will be accepted in lieu thereof.

46. FORCE MAJEURE

Notwithstanding any provisions of this Solicitation Agreement to the contrary, the parties will not be held liable if failure or delay in the performance of this Solicitation/Agreement arises from fires, floods, strikes, embargos, acts of the public enemy, unusually severe weather, out break of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. This provision does not apply if the "Scope of Services" of this Solicitation / Agreement specifies that performance by Vendor is specifically required during the occurrence of any of the events herein mentioned.

47. GOVERNING FORMS

In the event of any conflict between the terms and provisions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall document, the City's interpretation shall govern.

48. GOVERNING LAW

Vendors shall comply with all applicable federal, state and local laws and regulations. All Responses are solicited and shall be made pursuant to the Code of Ordinances, City of South Daytona, Chapter 2, Article VI, and all Responses will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of South Daytona is on file with the Deputy City Clerk, City Hall, 1672 S. Ridgewood Avenue, South Daytona, Florida and at www.municode.com.

The City of South Daytona is also governed by the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, as the method of selecting architects, engineers and land surveyors. The City has utilized the procedures in the Act for Professional counselors, environmentalists, planners, general contractors, computer systems, designers, telecommunications consultants, maintenance technicians, financial services and other professional services.

Every acquisition equal to or greater than \$10,000 must have a signed, notarized "Public Entity Crimes Form" to comply with Section 287.133(3)(a), Florida Statutes. Also required is the "Drug-Free Preference Form" to comply with Section 287.087, Florida Statutes. Each form is included in the Solicitation.

49. GRANT FUNDING

Any contract entered into by the City that is to be paid from grant funds shall be limited to payment from the grant funding and the vendor/provider understands that the City has not set aside any City funds for the payment of obligations under a grant contract. If grant funding should become unavailable at any time for the continuation of services paid for by the grant, and further funding cannot be obtained for the contract, then the sole recourse of the provider shall be to terminate any further services under the contract and the contract shall be null and void.

50. HIPAA COMPLIANCE

The Vendor agrees to comply with the Standards for Privacy of Individually Identifiable Health Information of the Health Insurance Portability and Accountability Act of 1996, PL 104-191, 45 CFR Parts 160-164, as amended, referred to as "HIPAA," to the extent that the Vendor uses, discloses or has access to protected health information as defined by HIPAA.

51. IDENTICAL TIE BIDS

In accordance with Section 287.087, Florida Statutes, preference shall be given to businesses with Drug-Free Workplace Programs. Whenever two or more Responses that are equal with respect to price, quality, and service are received for the procurement of commodities or contractual service, a Response received from a business that certifies that it has implemented a Drug-Free Workplace Program shall be given preference in the award process.

52. INDEMNIFICATION/HOLD HARMLESS

Contractor covenants and agrees that it will indemnify and hold harmless the City and all of the City's officers, agents, and employees from any claim, loss, damage, costs, charge or expense arising out of any act, action, neglect or omission by contractor during the performance of the contract, whether direct, or indirect, and whether to any person or property to which the City of said parties may be subject, except that neither the contractor nor any of its sub-contractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of City or any of its officers, agents, or employees.

53. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by both parties hereto that the City is contracting with the successful vendor as an independent contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the successful vendor under this contract and that the successful vendor has no authority to bind the City.

The Vendor represents itself to be an independent contractor offering such services to the general public and shall not represent himself or his employees to be an employee of the City. Therefore, the Vendor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, worker's compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the City, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney's fees); and damage of any kind related to such matters. The Vendor shall

further understand that the City cannot save and hold harmless and or indemnify the Vendor and/or the Vendor's employees against any liability incurred or arising as a result of any activity of the Bidder/Proposer or any activity of the Vendor's employees performed in connection with the Contract.

54. INSPECTIONS AND TESTING

City of South Daytona reserves the right to inspect any item(s) or service location for compliance with specifications and requirements and needs of the using department. If a Vendor cannot furnish a sample of a Response item, where applicable, for review, or fails to satisfactorily show an ability to perform, the City can reject the Response as inadequate and non-responsive.

55. INSURANCE

If required upon execution of a contract, the Vendor shall maintain insurance during the life of this agreement, and the City of South Daytona shall be listed as additional insured on that insurance document. A waiver of subrogation must be added in all areas and shall suffice in lieu of additional insured on workers' compensation, in an amount and a form set forth herein, to insure against risks, which are identified herein. Insurance providers must be rated "A" or better accordingly to the A.M. Best Company.

56. INSURANCE CANCELLATION

No change or cancellation in insurance shall be made without thirty (30) days' written notice by the Vendor to the City. Insurance coverage required in these specifications shall be in force throughout the contract term. Should any awardee fail to maintain or to provide acceptable evidence of current insurance within five (5) days after receipt of written notice at any time during the contract term, the City shall have the right to consider the Contract breached which shall justify the termination thereof.

57. INSURANCE REQUIREMENTS

The Vendor shall provide to the City a certificate of insurance identifying the City of South Daytona as an additional insured.

For workers' compensation coverage, the Vendor's insurance certificate shall include the insurer's waiver of subrogation in lieu of naming the city as an additional insured for workers' compensation.

Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all Insuring companies are required to have a minimum rating of "A" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. The Vendor shall not commence work under the contract until the City has received a certificate or certificates of insurance and endorsement evidencing the required insurance. The Vendor shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than ten (10) days prior to the effective date of the change.

The City reserves the right to increase insurance coverage as determined for higher risk contracts and shall reimburse the Contractor for the reasonable additional costs of increased coverage.

If the Bid Documents do not state an insurance requirement or the amount of insurance, then the amount of insurance required by this Agreement must not be less than:

- i. Workers' Compensation (unless exempt) with Employers' Liability with a limit of \$500,000 each accident, \$500,000 each employee, \$500,000 policy limit for disease;
- ii. Commercial General Liability (CGL) insurance with a limit of not less than \$300,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project in the amount of \$600,000. CGL insurance shall be written on an occurrence form and include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion,

collapse or underground (x, c, u) exposures, personal injury, and advertising injury. Damage to rented premises shall be included at \$100,000;

- iii. Commercial Automobile Liability Insurance with a limit of not less than \$300,000 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos) and such policy shall be endorsed to provide contractual liability coverage;
- iv. Professional Liability (Errors & Omissions) shall be included at \$1,000,000 minimum.
- v. Fire damage liability shall be included at \$300,000.

In the event the insurance coverage expires prior to the completion of the project, a renewal certificate must be issued 30 days prior to the expiration date. The policy must provide a 30-day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the City before commencement of any work activities.

58. INVOICES AND PAYMENTS

All invoices shall be sent to: City of South Daytona, Accounts Payable, P.O. Box 214960, South Daytona, Florida, 32121-4960. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City will attempt to pay within fewer days if Vendor offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. Vendors should state any payment discount in the space provided on the bid form for construction services.

59. IRREVOCABILITY OF RESPONSES

Each Vendor agrees that Responses shall remain open until the effective date not to exceed 90 days after selection, shall not be subject to revocation or withdrawal, and shall be subject to the City Council's acceptance of a contract with the Vendor.

60. LATE SUBMISSIONS, LATE MODIFICATIONS AND LATE WITHDRAWALS

Responses received after the Response Due Date and time are late and shall not be considered. Modifications received after the Response Due Date are also late and shall not be considered. Letters of withdrawal received after the Response Due Date are late and shall not be considered. Letters of withdraw received after contract award shall be deemed a breach of contract, subject to penalties as set forth in the contract and Solicitation.

61. LEGAL REQUIREMENTS

Applicable provision of all federal, state, county and local laws, and all ordinances, rules, and regulations shall govern development, submittal and evaluation of all Responses received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a response to a Solicitation hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any Vendor shall not constitute a cognizable defense against the legal effect thereof.

Upon execution of a contract, the successful Vendor shall hold harmless, indemnify and defend the City of South Daytona, its members, officials, officers and employees against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, attorneys' fees and court costs) arising out of or incidental to the performance of the Contract, whether or not due to or caused by negligence of the City of South Daytona, its members, officials, officers or employees. This Contract requirement shall be reflected in the insurance coverage certificate.

62. LICENSES, PERMITS AND TAXES

The Vendor shall comply with all rules, regulations, laws and permitting requirements of the City, Volusia County, the State of Florida, and the United States Government now in force or hereafter to be adopted.

The Vendor shall abide by all ordinances and laws pertaining to his operations and shall secure, at his expense, all licenses and permits necessary for construction and operation.

The City of South Daytona wants to ensure that all bidders are licensed to do work in Volusia County. All bidders must be registered with the Volusia County Licensing Program prior to start of any construction activities associated with this project. The bidder's name must match the Licensee name in order to qualify.

The Contractor will be responsible for payment of all Excise, Sales and Use Taxes, and all other taxes required by law on all materials, tools, apparatus, equipment, fixtures, and incidentals which he purchases or uses for the purpose of fulfilling the work of this Contract, and he/she shall include all amounts required for such taxes with the item prices bid in his Proposal. No additional payment will be made to cover such taxes. Each Bidder shall thoroughly familiarize himself before submitting a Proposal, with all laws requiring the payment of taxes.

63. LITIGATION HISTORY:

The City will consider a Vendor's litigation history information in its review and determination of responsibility. All Vendors are required to disclose to the City all "material" cases filed, pending, or resolved during the last five (5) years prior to the solicitation response due date, whether such cases were brought by or against the Vendor, any parent or subsidiary of the Vendor, or any predecessor organization. If the Vendor is a joint venture, the information provided should encompass the joint venture (if it is not newly-formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Vendor's litigation history is an issue of responsibility, the failure to provide litigation history as required in the Evaluation Criteria may result in a recommendation of non-responsive by the City.

64. LITERATURE (if applicable):

If no particular brand, model or make is specified, Vendors shall submit descriptive literature and technical data, fully detailing all features, designs, construction, appointments, finishes and the like not covered in the specifications, necessary to fully describe the equipment, material, and/or services he proposes to furnish.

65. MAINTENANCE

Maintenance required for equipment Solicitation is preferred to be available in the City of South Daytona by a manufacturer-authorized maintenance facility. Costs for this service shall be shown on the Pricing/Delivery Information form. If the City of South Daytona opts to include maintenance, it shall be so stated in the purchase order and said cost will be included. Service will commence only upon expiration of applicable warranties and shall be priced accordingly.

66. NAME BRANDS

Specifications may reference name brands and model numbers. It is not the intent of the City of South Daytona to restrict these bids in such cases, but to establish a desired quality level of merchandise or to meet a pre-established standard due to like existing items. Vendors may offer items of equal stature and the burden of proof of such stature rests with the Vendor, unless otherwise specified by the City. The City of South Daytona shall act as sole judge in determining equality and acceptability of products offered.

67. NON-DISCRIMINATION

There shall be no discrimination as to race, color, religion, gender, age, marital status, national origin, ancestry, and physical or mental disability in the operations conducted under this contract. Included as applicable activities by the contractor under this section are the solicitation for or purchase of goods or services, or the subcontracting of work in performance of this contract.

68. NON-EXCLUSIVITY OF CONTRACT

The selected Vendor understands and agrees that any resulting contractual relationship is non-exclusive and the City of South Daytona reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the City of South Daytona.

69. NON-PERFORMANCE:

Failure to meet the expected quality of workmanship, schedule, or other criteria agreed upon, shall be considered a default.

In case of default, the City may procure the required services from other sources and hold the Consultant responsible for any excess costs occasioned thereby and may immediately cancel the contract.

70. NOTICE TO CONTRACTOR

The employment of unauthorized aliens by any contractor is considered a violation of Section 274A (e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.

71. OPTIONAL CONTRACT USAGE

As provided in Section 287.042(16), Florida Statutes, State of Florida agencies may purchase from a contract resulting from this solicitation, provided the Department of Management Services, Division of Purchasing, has certified its use to be cost-effective and in the best interest of the State. Contractor(s) may sell such commodities or services certified by the Division to State of Florida agencies at the contractor's option.

72. OTHER AGENCIES

All Vendors awarded contracts from this Bid may, upon mutual agreement, permit any municipality or other governmental agency to participate in the contract under the same prices, terms, and conditions, if agreed to by both parties.

It is understood that at no time will any city, municipality, or other agency be obligated for placing an order for any other city, municipality, or agency; nor will any city, municipality, or agency be obligated for any bills incurred by any other city, municipality, or agency. Further, it is understood that each agency will issue its own purchase order to the awarded Vendor(s).

73. OWNERSHIP OF DOCUMENTS:

All documents resulting from this project will become the sole property of the City of South Daytona. The Vendor must meet all requirements for retaining public records and transfer, at no cost, to the City all public records in the possession of the Vendor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

74. PATENTS/COPYRIGHTS

The successful vendor agrees to indemnify and hold the City harmless from any claim involving patent infringement or copyrights on goods supplied.

75. PERFORMANCE OF WORK BY CONTRACTOR

The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of the contract or any portion thereof, or of his right, title or interest therein, without written consent of the City. The Contractor shall perform on the site and with his own organization work equivalent to not less than 50 percent of the total dollar value of the work to be performed under this contract except that work designated hereinafter as specialty work may be performed by subcontractors and the cost of any such specialty work so performed by subcontract may be deducted from the total contract amount before computing the amount of work required to be performed by the Contractor with his own organization.

76. PRE-BID CONFERENCE OR PRE-PROPOSAL CONFERENCE

The City shall determine if a pre-bid conference is required and provide the date, time and location in the Solicitation legal advertisement and Solicitation specifications. The conference shall normally be held in the Council Chambers, located at City Hall, 1672 S. Ridgewood Avenue, South Daytona, Florida. A site visit may be included and shall immediately follow. Attendance to the pre-bid and pre-proposal conference is normally non-mandatory. Only Vendors attending a mandatory pre-bid conference will be eligible to submit a Response. The representative of each Vendor shall be an authorized employee of the Vendor and shall sign in accordingly.

77. PREPARATION OF RESPONSES

In preparing Responses, the Proposal Form, the Bid Form (when a Bid Bond is permitted as proposal security), Certificate as to Corporate Principal, Public Entity Crimes Statement, Anti- Collusion Statement, and Drug Free Preference Statement must be properly executed in ink.

Upon the prescribed Schedule of Unit Prices, all bid prices shall be typewritten or written in ink, or electronically imputed in the blank spaces for each item, with the amounts extended if a unit price bid, and all amounts totaled. The sum of the Total Bid as calculated from the individual items, Schedule of Unit Prices, shall equal the Total Price. Except as provided below, bids containing substitutions or combinations of alternates will not be considered unless such substitutions or combinations are specifically authorized by the Proposal. The Vendor shall sign his name and give his business address in the spaces provided therefore. If the Proposal is made as a partnership, it shall be signed by all partners; if made by a corporation, it shall be signed in the name of the corporation by one of the officers thereof and shall have affixed the seal of the corporation.

78. POSTPONEMENT / CANCELLATION / WAIVER OF IRREGULARITIES

The City may, at its sole and absolute discretion, reject any and all, or parts of, Responses; re- advertise the Solicitation for new Responses; postpone or cancel, at any time, the Solicitation process; or waive any irregularities in the Solicitation or in the Responses received as a result of the Solicitation, or to accept that Response which best serves the interest of the City.

79. PRICING

The Vendor certifies that prices, terms and conditions in the Response will be firm for acceptance for a period of ninety (90) days from the date of Response opening unless otherwise stated by the City. Responses may not be withdrawn before the expiration of ninety (90) days. Prices shall be firm, with no escalator clauses unless specified by the City. Responses may be withdrawn after ninety (90) days only upon written notification to the City. Prices for all goods and/or services shall be firm for the duration of this contract and shall be stated on the Pricing/Delivery Information form.

Prices shall be all-inclusive: no price changes, additions, or subsequent qualifications will be honored during the course of the contract. All prices must be written in ink or typewritten. Pricing on all transportation, freight, drayage and other charges are to be prepaid by the contractor and included in the bid prices. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, the Vendor shall indicate the items required and attendant costs or forfeit the right to payment for such items. Where unit pricing and extended pricing differ, unit pricing prevails. In the event of any discrepancy between the written amounts and the numerals, the written amounts shall govern and will be considered as the price bid.

When submitting Bids/Proposals based on a Lump Sum basis, Vendors shall be required to submit a Schedule of Unit Pricing for each line item listed on the Bid Proposal in order to be considered for award.

80. PRODUCTS/ESTIMATES:

Items included on the Bid Form represent the needs of various departments within the City. This is in no way to be construed as the entire or complete list of products to be purchased from the resulting contract.

There is no anticipated dollar volume for this contract and cannot be guaranteed. Items shall be ordered on an as needed, when needed basis. Exact quantities or estimated quantities cannot be predetermined.

81. PROHIBITED INTERESTS

No official of the City who is authorized in such capacity, and on behalf of the City to negotiate, make, accept or approve, or to take part in negotiating, making accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project shall become directly or indirectly interested, personally, in this Contract or in any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for the City who is authorized in such capacity and on behalf of the City to exercise legislative, executive, supervisory, or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally, in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

82. PROPRIETY INFORMATION

Upon receipt by the City, responses to Solicitations, become public records subject to the provisions Florida's state policy on public records, Section 119, Florida Statutes. If you believe that any portion of your response is exempt, you should clearly identify the specific documents for which confidentiality is claimed, and provide specific legal authority of the asserted exemption. Any financial statement that an agency requires a prospective Vendor to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from Section 119.07, Florida Statutes, and Article I, 24(a), Florida Constitution.

83. PROTECTION

Precaution shall be exercised at all times for the protection of persons, (including employees) and property. All existing structures, utilities, services, roads, trees, shrubbery, etc. shall be protected against damage or interrupted service at all times by the Vendor during the term of contract, and the Vendor shall be held responsible for any damage to the property occurring by reason of his operation on the property.

84. PUBLIC ENTITY CRIMES

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

85. PUBLIC RECORDS COMPLIANCE

Contractor shall comply with public records laws as set forth in Section 119, Florida Statutes, and shall specifically:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

- d) Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.
- e) The failure of Contractor to comply with a public records request shall constitute a material breach of the contract.

QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDORS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, DEPUTY CITY CLERK BECKY WITTE, AT 386-322-3011; BWITTE@SOUTHDAYTONA.ORG; MAILING ADDRESS: 1672 RIDGEWOOD AVENUE, SOUTH DAYTONA, FL 32119.

86. PUBLIC RECORDS/PUBLIC MEETINGS EXEMPTION STATEMENT

Section 119.071(1)(c), Florida Statutes: Any financial statement that an agency requires a prospective Vendor to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. On June 2, 2011, Governor Scott signed HB 7223 into law. This new legislation amends Florida's Public Records and Sunshine Laws, by expanding "exemptions" applicable to bids, proposals and replies to sealed competitive solicitations, and closes evaluation meetings from the public in certain instances. First, Section 119.071, Florida Statutes was amended to provide that sealed bids, proposals, or replies received by a Florida public agency shall remain exempt from disclosure until an intended decision is announced or until 30 days from the opening, whichever is earlier. This means that Vendors will not be able to procure a copy of their competitor's bids until an intended decision is reached or 30 days has elapsed since the time of the bid opening. The prior version of the law provided for a 10-day exemption. Next, Section 286.0113, Florida Statutes was amended to provide that meetings of persons appointed to evaluate bids or proposals and negotiate contracts shall be closed in certain circumstances. Specifically, portions of such meetings may now be closed to the public during oral presentations made by a vendor, or where a vendor answers questions. In other words, neither Vendors, nor the public will be permitted to sit in on meetings, unless this exemption is waived by the City Council, wherein their competitors are making presentations or discussing their bid or proposal with the committee members. The portions of these meetings must still be recorded and are subject to disclosure at the time of an intended award decision or within 30 days of the bid or proposal opening, whichever is earlier. Portions of the meetings that do not involve presentations, questions and answers, or negotiation strategy or negotiation sessions are still open to the public and competing Vendors, but the new law limits public attendance to portions of such meetings.

87. PURCHASE ORDER AND DELIVERY

The successful Vendor shall not deliver products or provide services without a City of South Daytona Purchase Order, signed by an authorized agent of the City of South Daytona. The fastest, most reasonable delivery time shall be indicated by the Vendor. Any special information concerning delivery should also be included, on a separate sheet, if necessary. All items shall be shipped F.O.B. INSIDE DELIVERY unless otherwise stated in the specifications. This shall be understood to include bringing merchandise to the appropriate room or place designated by the using department. Every tender or delivery of goods must fully comply with all provisions of these requirements and the specifications including time, delivery and quality. Nonconformance shall constitute a breach which shall be rectified prior to expiration of the time for performance. Failure to rectify within the performance period shall be considered cause to reject future deliveries and cancellation of the contract by City of South Daytona without prejudice to other remedies provided by law. Where delivery times are critical, the City of South Daytona reserves the right to award accordingly.

88. QUALITY

All materials used for the manufacture or construction of any supplies, materials or equipment covered by this bid shall be new. The items bid must be new, the latest model, of the best quality and highest-grade workmanship unless otherwise specified in this bid by the City.

89. QUESTIONS, INTERPRETATIONS

Questions regarding interpretation of Responses, Solicitation results or Solicitation awards shall be directed in writing to the City and referenced by the Solicitation number no later than the last day for questions as specified in the Solicitation documents. The City shall not be responsible for oral interpretations given by any City personnel or representative or others. The issuance of a written addendum is the only official method whereby interpretation, clarification or additional information can be given.

90. RECORDS/AUDIT

The Vendor shall maintain records sufficient to document their completion of the scope of services as a public record and as a requirement of the Contract. At all reasonable times, these records, unless exempt or confidential, shall be subject to review, inspection, copy and audit by persons duly authorized by the City. These records shall be kept for a minimum of three (3) years after completion of the Contract and in accordance with the requirements of public records retention as prescribed by general law. Records which relate to any litigation, appeals or settlements of claims arising from performance under this requirement shall be made available until a final disposition has been made of such litigation, appeals, or claims.

91. REJECTING OF RESPONSES, REBIDDING

The City reserves the right to accept or reject any or all Responses or parts of Responses, to waive irregularities and technicalities, and to request re-bids. The City also reserves the right to award the contract on such items the City deems will best serve the interests of the City. The City further reserves the right to award the contract on a "split order" basis, or such combination as shall best serve the interests of the City unless otherwise specified. The City Council shall have the authority to reject any and all Responses. If the lowest and best Response exceeds the budgeted amount and the City Council does not make additional funds available, the Buyer with the help of the department head shall have the authority to re-advertise the article or articles for bidding after making sufficient changes in the plans or specifications to bring the cost within the limit of the money available.

92. REQUEST FOR ADDITIONAL INFORMATION

Prior to the final Solicitation selection, Vendors may be required to submit additional information which the City may deem necessary to further evaluate the Vendor's qualifications to perform under the terms of the Solicitation and subsequent Contract.

93. REVIEW OF RESPONSES/SUBMISSIONS

Each Response will be reviewed to determine if the Response is responsive to the submission requirements outlined in the Solicitation. A responsive Response is one which follows the requirements of the Solicitation, includes all required documentation, is submitted in the format outlined in the Solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may deem your Response non-responsive.

94. RIGHT OF NEGOTIATION RFP/RFSQ(RFQ)/ITN

The City reserves the right to negotiate with the selected Vendor the exact terms and conditions of the Contract.

95. RIGHT OF WITHDRAWAL

A bid, proposal, statement, or reply may not be withdrawn before the expiration of ninety (90) days from the Response due date.

96. RIGHTS TO SOLICITATION SUBMITTED MATERIAL

All Responses, inquiries, or correspondence relating to or in reference to a Solicitation, and all reports, charts, and other documentation submitted by Vendors shall become the property of the City when received.

97. RULES, REGULATIONS AND LICENSING REQUIREMENT

The Vendor shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including those applicable to conflict of interest and collusion. Vendors are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

98. SAMPLES

Samples, when requested, must be furnished at, or before, Response opening, (unless otherwise specified), and will be delivered at no charge to the City. If not used and/or destroyed in testing, said sample(s) will, at the Vendor's request, be returned within thirty (30) days after bid award at the Vendor's expense. If requested by the City, samples and/or inspection of like items are to be made available in the central Florida area.

99. SEPARATION AND DISTRIBUTION

The Solicitation has been designed for transmittal as a complete document to interested parties.

It is recommended that it not be separated; however, it may be reproduced in its entirety as additional distribution might dictate.

100. SEVERABILITY

If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

101. SIGNATURE REQUIRED

All Responses must show the company name and be signed by a company officer or employee who has the authority to bind the company or firm by their signature. UNSIGNED RESPONSES WILL BE REJECTED. All manual signatures must be original - no rubber stamp, photocopy, etc.

102. SIGNED RESPONSE CONSIDERED AN OFFER

The signed Response is considered an offer on the part of the Vendor, which offer shall be considered accepted upon approval by the City of South Daytona City Council (if required). The City of South Daytona will issue a purchase order or a letter of authorization to the successful Vendor, as authorization for delivery of the items awarded subject to requirements of detailed specifications and those contained herein. In the event of default on the part of the Vendor after such acceptance, the City may take such action as it deems appropriate including legal action for damages or specific performance.

103. SILENCE OF SPECIFICATIONS

The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest

quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item bid.

104. SOLICITATION FORM COMPLETION, SUBMISSION AND RECEIPT OF RESPONSES

Unless otherwise specified, Vendors shall use the Solicitation forms supplied by the City. Responses shall be typewritten or handwritten in ink and shall bear the original signature of the Vendor's authorized representative. Responses containing erasures or corrections must be initialed by the Vendor in ink. Responses shall be submitted by mail or hand delivery only. No Response will be accepted by facsimile transmission, e-mail or other electronic delivery. Responses submitted by mail shall be addressed to: City South Daytona, Office of the City Manager, City Hall, 1672 S. Ridgewood Avenue, South Daytona, Florida 32119. Responses submitted by hand delivery shall be delivered to: City South Daytona, Office of the City Manager, City Hall, 1672 S. Ridgewood Avenue, South Daytona, Florida 32119. Responses will be accepted until 2:00 p.m. on the date indicated in the Solicitation documents or as addenda issued by the City. One (1) sealed envelope or package shall be submitted. The sealed envelope/package must contain the required forms and price proposals, where applicable, and will be evaluated and deemed responsive or non-responsive. All Responses deemed non-responsive will be returned to the Vendor and will not be opened.

Bids (Envelope/Package) shall contain one (1) original and one (1) digital (flash drive) version unless otherwise indicated in the legal advertisement and shall be mailed or delivered as set forth in the preceding paragraph in one (1) SEALED ENVELOPE/PACKAGE. The envelope/package shall be clearly marked on the outside to include the bid project name, bid number and name of the Vendor.

105. SOVEREIGN IMMUNITY

Nothing in this Solicitation or Agreement extends, or will be construed to extend, the City's liability beyond that provided in section 768.28, Florida Statutes. Nothing in this Solicitation or Agreement is a consent, or will be construed as consent, by the City to be sued by third parties in any matter arising out of this Solicitation or Agreement.

106. STATE LICENSING REQUIREMENTS

All entities defined under Chapters 607, 608, 617 or 620, Florida Statutes, seeking to do business with the City shall be on file and in good standing with the State of Florida's Department of State. Prior to making an offer, the Vendor shall have met the license, certification, and any other requirements of the state, county, city and/or other agency of authority with jurisdiction in such matters and should provide copies of documentation that evidence such qualifications with the response to the Solicitation; and, that the Vendor shall provide follow-up evidence that the Vendor maintains such credentials throughout the period of the agreement. A copy of a current certificate of authority from the Secretary of State authorizing the Bidder/Responder to do business in the State of Florida, or other evidence of legal authority to do business in the state, county, city and/or any other agency of authority should be provided with your response to the Solicitation. Information concerning certification with the Secretary of State may be obtained at <https://dos.myflorida.com/sunbiz/manage-business/certification>. Contract documents shall be executed by the entity's duly authorized officer as evidence by entity records.

107. SUBCONTRACTING

The Vendor will not sub-contract, or enter into any subcontracting agreements pertaining to this contract, without obtaining approval from the City of South Daytona.

108. SUPPLEMENTAL MATERIALS

Vendors are responsible for including all pertinent product data in the returned bid package. Literature, brochures, data sheets, specification information, completed forms requested as part of the bid package and any other facts which may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements that the Vendor wishes to include as a condition of the bid must also be in the returned bid package.

Failure to include all necessary and proper supplemental materials may be cause to reject the entire bid.

109. TAXES

The City of South Daytona is exempt from all federal excise, state and local taxes unless otherwise stated in this document. A Tax Exemption Certificate will be furnished upon written request to the City of South Daytona.

The Contractor will be responsible for payment of all Excise, Sales and Use Taxes, and all other taxes required by law on all materials, tools, apparatus, equipment, fixtures, and incidentals which he purchases or uses for the purpose of fulfilling the work of this Contract, and he/she shall include all amounts required for such taxes with the item prices bid in his Proposal. No additional payment will be made to cover such taxes. Each Bidder shall thoroughly familiarize himself before submitting a Proposal, with all laws requiring the payment of taxes.

110. TERM CONTRACTS

Acceptance by the City of South Daytona of Vendor's offer shall be limited to the terms herein unless expressly agreed in writing by the City. If the contract is intended to cover a specific time period, the term will be given in the bid specifications.

111. TERMINATION

The City of South Daytona reserves the right to terminate the contract for default if the Vendor breaches any of the terms therein, including warranties of the Vendor or if the Vendor becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which the City of South Daytona may have in law or equity. Default may be construed as, but not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to the City's satisfaction and/or to meet all other obligations and requirements. The City may cancel the Contract at any time for breach of contractual obligations by providing the Vendor with a written notice of such cancellation. Should the City exercise its right to cancel the contract for such reasons, the cancellation shall become effective on the date as specified in the notice of cancellation sent to the Vendor.

112. TIME IS OF THE ESSENCE

Time is of the essence in the lawful performance of all goods and/or services, duties and obligations provided by the Vendor under the terms of this Agreement. The Vendor agrees that Vendor shall diligently and expeditiously pursue the Vendor's obligations at such a rate of progress as will ensure full completion thereof within the time specified.

113. TITLE TRANSFER

Title and Risk of Loss of goods shall not pass to City of South Daytona until City of South Daytona actually receives and takes possession of the goods at the point or points of delivery. Receiving times may vary with the using department. Generally, deliveries may be made between 8:30 a.m. and 3:00 p.m., Monday through Friday. The Vendor is advised to consult the using department for instructions. The place of delivery shall be specified in the bid specification and/or on the Purchase Order as a "Deliver To:" address.

114. UNBALANCED BID

A mathematically unbalanced bid is where a bidder places a high price on some items and a low price on other items in a unit price contract. A bid is materially unbalanced when there is reasonable doubt that acceptance of a mathematically unbalanced bid will result in the lowest overall cost to the City. Unbalanced Bids will be rejected if the prices are deemed materially unbalanced.

115. USE OF SOLICITATION FORMS

The Vendor shall complete the appropriate Solicitation Form(s) included in the Solicitation. All blanks on the Solicitation Forms shall be completed. If a question or confirmation is not applicable, it should be answered with an "N/A."

Supplemental information may be attached to the Solicitation Forms. Failure to fully complete the appropriate Solicitation Forms may result in disqualification of the Response.

If additional space for a response is required, attach an additional page to the page on which the question is stated. Clearly identify the number of the question to which the response is attached. Further, if additional Solicitation Form pages are needed, photocopy or replicate as appropriate, and attach such additional pages to the page on which the question or chart is stated.

The signature of the Authorized Person or Entity must be that of an officer, partner or a sole proprietor of the entity making the Response. The original Response, and each copy submitted shall contain an original signature on the Vendor's Acknowledgement Form contained in each Solicitation.

116. VARIANCES

For purposes of Response evaluation, Vendors must indicate any variances, no matter how slight, contained in the Response. No variations or exceptions by a Vendor will be considered or deemed a part of the Response submitted unless such variances or exceptions are listed in the Response and referenced in the space provided on the Response pages. If variances are not stated, or referenced as required, it will be assumed that the product or service complies with the City's terms, conditions and specifications. By receiving a Response, the City does not necessarily accept any variances contained in the Response. All variances submitted are subject to review and approval by the City. If any Response contains material variances that, in the City's sole opinion, make that Response conditional in nature, the City reserves the right to reject the Response or part of the Response that is declared, by the City, as conditional.

117. VENDOR'S PRODUCT OR SERVICES

The Vendor's product (if applicable) delivered to the City shall be free of all liens, claims or encumbrances, and the vendor warrants that it has a clear title to the product being delivered.

If the Vendor is contracted to provide services, such services shall be fully satisfactory to the City as determined by the City.

The Vendor shall provide the City with any data, reports or other information as required and requested by the City to enable it to utilize the product or service furnished by the Vendor.

In furnishing the service or product to the City, the Vendor shall comply with all federal, state, county laws, and city rules, regulations and codes and their successors or amendments.

Violation of such laws, rules, regulations and codes may be grounds for delaying or reducing the amount due, or in rescinding the contract, Contract, proposal or quote.

118. WAIVER OF IRREGULARITIES

The City of South Daytona reserves the right to waive and/or reject any non-substantial irregularity in Responses received whenever such waiver or rejection is in the best interest of the City and/or it does not meet the minimum requirements set forth. All reasonably responsive Responses will be considered. However, the City reserves the right to waive formalities or informalities in Responses, to reject, with or without cause, any or all Responses or portions of Responses, or to interview or not interview individual Vendors, and to accept any Responses or portions of Responses deemed to be in the best interest of the City. The City Council shall grant the City Manager to waive any and all non-substantial irregularities in any and all formal Solicitations.

119. WARRANTIES

Vendors shall furnish all data pertinent to warranties or guarantees which may apply to items in the Response. Vendors may not limit or exclude any implied warranties. The Vendor warrants that product

sold to the City shall conform to the standards established by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event product does not conform to OSHA Standards, where applicable, City of South Daytona may return the product for correction or replacement at the Vendor's expense. If the Vendor fails to make the appropriate correction within a reasonable time, City of South Daytona may correct at the Vendor's expense.

SECTION 8: SPECIAL CONDITIONS

PERIOD OF OFFER VALIDITY: Bids offered in this ITB must remain firm for a period of ninety (90) Days from the ITB opening date.

CONTRACT TERM:

The term of the contract shall be one (1) year with three (3) one-year renewal options agreed upon by both parties.

ELIGIBILITY OF VENDOR:

To be eligible to respond to this ITB, the Vendors must have prior experience working with the services described in this ITB. Please provide eligibility experience with your submittal.

LIQUIDATED DAMAGES:

Vendor is responsible for commencing work under this Solicitation / Agreement within 30 days upon receipt of the Notice of Award and must substantially complete the work not later than 120 calendar days thereafter, and to fully complete the work within 150 calendar days. The Vendor shall not be entitled to any damages on account of hindrances or delays in construction from any cause whatsoever. This paragraph shall include but not be limited to any actions which result in delays in scheduling, substantial changes in scope of work, or substantial increases in the costs of performing the work under this Agreement.

Liquidated damages will be assessed against Vendor in the amount of \$500 per day, for each day after each milestone that the work contemplated is incomplete.

NOTICE: The City reserves the right to consider cooperative contracts, federal, state municipal etc.; in the evaluation process. If in the City's best interest, the City may utilize a cooperative contract in lieu of making an award.

BID BONDS: A certified check or bank draft, payable to the City of South Daytona, Florida or a satisfactory bid bond executed by the Bidder and an acceptable surety, in an amount equal to five percent (5%) of the bid shall be submitted with each bid.

SPECIAL REQUIREMENTS:

This project utilizes Community Development Block Grant funds. The COUNTY, CITY and their Agents which are, or represent governmental entities, shall comply with the requirements and standards, and any revisions or amendments thereto, of 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and with the applicable portions of 24 CFR Part 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" as provided in 24 CFR 570.502. See **Bid From 8K for details.**

SECTION 8: BID FORMS

BID FORM 8A: BID SUBMITTAL CHECKLIST

- ☐ Form 8B: Acknowledgement and Pricing Proposal
- ☐ Form 8C: Drug Free/Tie Preference Statement
- ☐ Form 8D: Public Entity Crimes Statement
- ☐ Form 8E: Anti-Collusion Statement
- ☐ Form 8F: Statement of Vendor Qualifications
- ☐ Form 8G: Professional References for Previous Experience
- ☐ Form 8H: Listing of Subcontractors
- ☐ Form 8I: Required Project Milestones
- ☐ Form 8J: Bid Bond (*if required*)
- ☐ Form 8K: Important Information for this Bid/RFP
- ☐ Independent Contractors Agreement
- ☐ Attachment: Bid Proposal
- ☐ Copy of License(s)
- ☐ Insurance Certificate
- ☐ Submission of one (1) original marked “ORIGINAL”, one (1) copy marked “COPY”, and one (1) digital (flash drive) copy.

BY:

Name of Business

Authorized Signature

Printed Name and Title

Date

THIS DOCUMENT MUST BE COMPLETED AND RETURNED WITH YOUR BID.

**BID FORM 8B: Bid Form
Acknowledgement and Pricing Proposal**

PROJECT IDENTIFICATION: **James Street Park Splash Pad Renovation**

BID IDENTIFICATION AND NUMBER: BID NO. 23-B-004

THIS BID IS SUBMITTED TO:

**CITY OF SOUTH DAYTONA
OFFICE OF THE CITY MANAGER
1672 S. RIDGEWOOD AVENUE
SOUTH DAYTONA, FLORIDA 32119**

Name of Bidder: _____

Mailing Address: _____

Street Address: _____

City/State/Zip: _____

Phone Number: (____) _____ FAX Number: (____) _____

I have carefully examined the Invitation to Bid (ITB), Instructions to Vendors, General and/or Special Conditions, Specifications, and any other documents accompanying or made a part of this invitation.

I hereby propose to furnish the goods or services specified in the Invitation to Bid at the prices or rates as finally negotiated. I agree that my bid will remain firm for a period of up to ninety (90) days in order to allow the City of South Daytona adequate time to evaluate the proposed bid. Furthermore, I agree to abide by all conditions of the Invitation to Bid.

I certify that all information contained in this Bid is truthful to the best of my knowledge and belief. I further certify that I am a duly authorized to submit this Bid on behalf of the Vendor / Contractor as its act and deed and that the Vendor / Contractor is ready, willing and able to perform if awarded the contract.

I propose and agree, if this Bid is accepted, to enter into an Agreement with the City in the form included in the Contract Documents to furnish all necessary materials, equipment, machinery, tools, apparatus, transportation and labor and to complete all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the Contract Documents.

I will accept as full compensation for completion of the project in full compliance with the Contract Documents, the lump sum price for the work items submitted herein with this Bid.

I further certify that this Bid is made without prior understanding, Contract, connection, discussion, or collusion with any person, firm or corporation submitting a Bid for the same product or service; no officer, employee or agent of the City of South Daytona City Council or of any other Vendor interested in said ITB; and that the undersigned executed this Vendor's Acknowledgement with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

I further certify that having read and examined the specifications and documents for the designated services and understanding the general conditions for contract under which services will be performed, does hereby propose to furnish all labor, equipment, and material to provide the services set forth in the ITB.

I hereby declare that the following listing states any clarifications, any and all variations from and exceptions to the requirements of the specifications and documents. The undersigned further declares that the "work" will be performed in strict accordance with such requirements and understands that any exceptions to the requirements of the specifications and documents may render the Bid non-responsive.

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Vendors, General and/or Special Conditions, Specifications, and any other documents accompanying or made a part of this Invitation to Bid.

I acknowledge receipt and incorporation of the following addenda, and the cost, if any, of such revisions has been included in the price of the bid proposal.

Addendum Number: _____ Date: _____	Addendum Number: _____ Date: _____
Addendum Number: _____ Date: _____	Addendum Number: _____ Date: _____

Please note that the City may award contracts to multiple contractors.

BID

The undersigned offers to furnish all materials, equipment and labor for construction of the "BID NO. 23-B-004, James Street Park Splash Pad Renovation," for the City of South Daytona, Florida, complete in every respect in strict accordance with the drawings, specifications, exhibits, figures and any future changes therein.

The LUMP SUM bid total is:

_____ Dollars
(In Words)

(In Figures) \$ _____.

IN WITNESS WHEREOF, Bidder has hereunto executed this form this ____ day of _____, 20____.

(Name of Bidding Firm)

(Signature of person signing form)

(Printed name and Title of person signing form)

STATE OF _____
COUNTY OF _____

This document was sworn to (or affirmed) and subscribed before me by means of ____ physical presence or ____ online notarization, this ____ day of _____, 20____,

he/she is personally known to me or has presented _____ as identification.

Notary Public
My Commission Expires: _____

THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR BID.

BID FORM 8C: Drug-Free Preference Statement

IDENTICAL TIE BIDS - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids, proposals, statements, or replies that are equal with respect to price, quality, and service are received by the city for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program.

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 a copy of the statement specified in subsection (1).
- (4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty 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 Section 287.087, Florida Statutes.

As an authorized representative of the firm, I certify that this firm complies fully with the above requirements.

(Name of Bidding Firm)

(Signature of person signing form)

(Printed name and Title of person signing form)

STATE OF _____
COUNTY OF _____

This document was sworn to (or affirmed) and subscribed before me by means of ___ physical presence or ___ online notarization, this ___ day of _____, 20___, he/she is personally known to me or has presented _____ as identification.

Notary Public

My Commission Expires: _____

THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR BID.

BID FORM 8D:
Public Entity Crimes Statement

(To be signed in the presence of notary public or other officer authorized to administer oaths.)

Before me, the undersigned Authority, personally appeared affiant who, being by me first duly sworn, made the following statement:

This sworn statement is submitted with Bid, Proposal **or** Contract No _____ for

_____. This sworn statement is submitted by

_____ 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:

_____.)

My name is _____ and my relationship to the entity named above is

(relationship such as sole proprietor, partner, president, vice president)

- (1) I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes 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 in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or such an agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.
- (2) I understand that "convicted" or "conviction" is defined by the Florida Statutes to mean 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 a jury verdict, non-jury trial, or entry of a plea of guilt or nolo contendere.
- (3) I understand that "affiliate" is defined by the Florida Statutes to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.
- (4) I understand that a "person" as defined in Paragraph 287.133(i)(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 a 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.
- (5) Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies).

- _____ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members or agents who are active in management of the entity, nor any affiliate of the entity have 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 the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in 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, AND (Please indicate which additional statement applies.)
- _____ There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. (Please attach a copy of the final order.)
- _____ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please attach a copy of the final order).

As an authorized representative of the firm, I certify that this firm complies fully with the above requirements.

(Name of Bidding Firm)

(Signature of person signing form)

(Printed name and Title of person signing form)

STATE OF _____
COUNTY OF _____

This document was sworn to (or affirmed) and subscribed before me by means of ___ physical presence or ___ online notarization, this ___ day of _____, 20___, he/she is personally known to me or has presented _____ as identification.

Notary Public
My Commission Expires: _____

THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR BID.

<p style="text-align: center;">BID FORM 8E: Anti-Collusion Statement</p>
--

By signing this form, the Proposer agrees that this Bid is made without any other understanding, agreement, or connection with any person, corporation, or firm submitting a bid for the same purpose and that the bid is in all respects fair and without collusion or fraud.

SIGN in ink in the space provided below. Unsigned Bids will be considered incomplete, and will be disqualified, and rejected.

IT IS AGREED BY THE UNDERSIGNED VENDOR THAT THE SIGNING AND DELIVERY OF THE BID REPRESENTS THE VENDORS ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE FOREGOING SPECIFICATIONS, CONTRACT AND PROVISIONS, AND IF AWARDED, THIS CONTRACT WILL REPRESENT THE AGREEMENT BETWEEN THE VENDORS AND THE CITY OF SOUTH DAYTONA.

(Signature of person signing form)

(Printed name and Title of person signing form)

Name of Bidder: _____

Address: _____

City/State/Zip: _____

Phone Number: (____) _____ FAX Number: (____) _____

FEIN Number: _____

NO Bid may be withdrawn for a period of ninety (90) days subsequent to the submittal of the Bids, without the consent of the City of South Daytona.

NO BID (REASON): _____

THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR BID.

BID FORM 8F: Statement of Vendor Qualifications
--

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in this Form is complete, true, and correct to the best of their knowledge and belief. If necessary, questions may be answered on separate paper and attached, with any additional information that may be pertinent.

- (1) Name of Vendor.
- (2) Permanent main office address.
- (3) Date organized.
- (4) If a corporation, where incorporated.
- (5) How many years have you been engaged in the contracting business under your present firm or trade name?
- (6) Contracts on hand: (Schedule these, showing amount of each contract and the appropriate anticipated dates of completion.)
- (7) General character of work performed by your company.
- (8) Have you ever failed to complete any work awarded to you? If so, where and why?
- (9) Have you ever defaulted on a contract? If so, where and why?
- (10) List the more important projects recently completed by your company, stating the approximate cost for each and the month and year completed.
- (11) List your major equipment currently owned or leased.
- (12) Experience in work similar to this type of project.
- (13) Background and experience of the principal members of your organization, including the officers.
- (14) The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City in verification of the recitals comprising this Statement of Vendor Qualifications.

(Name of Bidding Firm)

(Signature of person signing form)

(Printed name and Title of person signing form)

STATE OF _____
COUNTY OF _____

This document was sworn to (or affirmed) and subscribed before me by means of ____ physical presence or ____ online notarization, this ____ day of _____, 20____, he/she is personally known to me or has presented _____ as identification.

Notary Public

My Commission Expires: _____

THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR BID.

BID FORM 8G: Professional References for Previous Experience

The Vendor proposes that he/she is qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. The City reserves the right to check references and confirm information provided herein.

Please provide three (3) current and correct references from clients for similar services. (Do not include the City of South Daytona)

Reference 1:

<i>Company Name:</i>	
<i>City, State:</i>	
<i>Contact Person:</i>	
<i>Telephone Number:</i>	
<i>Email Address:</i>	
<i>Description of Goods or Services provided:</i>	
<i>Contract Amount:</i>	
<i>Start/End Date of Contract:</i>	

Reference 2:

<i>Company Name:</i>	
<i>City, State:</i>	
<i>Contact Person:</i>	
<i>Telephone Number:</i>	
<i>Email Address:</i>	
<i>Description of Goods or Services provided:</i>	
<i>Contract Amount:</i>	
<i>Start/End Date of Contract:</i>	

Reference 3:

<i>Company Name:</i>	
<i>City, State:</i>	
<i>Contact Person:</i>	
<i>Telephone Number:</i>	
<i>Email Address:</i>	
<i>Description of Goods or Services provided:</i>	
<i>Contract Amount:</i>	
<i>Start/End Date of Contract:</i>	

THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR BID.

BID FORM 8H: Listing of Subcontractors

The Vendor proposes that the following subcontractors are qualified to perform the referenced work and have successfully done so on recent projects similar in nature and size. All subcontractors whose work product accounts for 5% or more of the total contract value shall be listed. Upon approval of subcontractors listed, the successful Vendor shall not substitute subcontractors without approval from the City. Vendor shall attach additional sheets as necessary.

Subcontractor 1:

<i>Name:</i>			
<i>City, State:</i>			
<i>Description of Work:</i>			
<i>Percent of Contract Price:</i>		<i>Previous Experience Together:</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No

Subcontractor 2:

<i>Name:</i>			
<i>City, State:</i>			
<i>Description of Work:</i>			
<i>Percent of Contract Price:</i>		<i>Previous Experience Together:</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No

Subcontractor 3:

<i>Name:</i>			
<i>City, State:</i>			
<i>Description of Work:</i>			
<i>Percent of Contract Price:</i>		<i>Previous Experience Together:</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No

THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR BID.

BID FORM 8I: Required Project Milestones

The Vendor agrees to complete the required project milestones listed below within the time frame specified.

Milestone #1: _____

Required Milestone #1 Completion Time*: _____

Milestone #2: _____

Required Milestone #2 Completion Time*: _____

Required Substantial Completion Time*: **120 Days**

Required Final Completion Time*: **150 Days**

The Vendor agrees to accept liquidated damages and pay the City **Five Hundred Dollars (\$500)** for each consecutive calendar day, including rain days and holidays, that expires after each of the required project milestone completion times listed above until each are completed or, if no construction milestones are listed, the time specified for final completion until the Work has been fully completed. All milestone completion dates, including substantial and final completion, will be determined solely by the City. The City has the option to retain this amount from the compensation otherwise paid to the Vendor. Should the total amount chargeable as liquidated damages exceed the amount due or payable to the Vendor or his/her Surety, then such excess shall be paid to the City by the Vendor or his/her Surety.

(Signature of person signing form)

(Printed name and Title of person signing form)

Name of Bidder: _____

Address: _____

City/State/Zip: _____

Phone Number: (____) _____ FAX Number: (____) _____

* All completion times listed are consecutive calendar days, including rain days and holidays, that expire from (and including) the date when the Contract Time commences to run as written in the Notice to Proceed.

THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR BID.

**BID FORM 8J:
Bid Bond**

KNOW ALL MEN BY THESE PRESENTS, that we _____

(hereinafter called the Principal) and _____

(hereinafter called the Surety) are held and firmly bound unto the City of South Daytona, Florida

(hereinafter called the Owner) in the sum of _____ Dollars

(\$_____) lawful money of the United States of America, for the payment of which sum well

and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors,

jointly and severally, firmly by these presents:

WHEREAS, the Principal contemplates submitting or has submitted a bid to the City of South Daytona, Florida, for

James Street Park Splash Pad Renovation
BID NO. 23-B-004

WHEREAS, the Principal desires to file this bond in accordance with the law, in lieu of a certified or cashier's check otherwise required to accompany this Bid.

NOW, THEREFORE: the conditions of this obligation are such that if the Bid be accepted the Principal shall within ten (10) days after the receipt of notification of the acceptance thereof execute a contract in accordance with the Bid and upon the terms, conditions and unit or lump sum prices set forth therein, in the form and manner required by the City, and execute a sufficient and satisfactory Contract Bond payable to the City, in an amount not less than the total contract price, as indicated by the approximate quantities shown in the Bid, in form and with security satisfactory to the said City, then this obligation be void; otherwise to be and remain in full force and virtue in law; and the Surety shall upon the failure of the Principal to comply with any or all of the foregoing requirements within the time specified above, immediately pay to the aforesaid City upon demand the amount hereof in good and lawful money of the United States of America, not as a penalty, but as liquidated damages.

IN TESTIMONY WHEREOF, the Principal and Surety have caused these presents to be duly signed and sealed this _____ day of _____, 20_____.

(Principal)
By: _____

ATTEST: _____
(Surety)

Seal
By: _____

THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR BID.

BID FORM 8K:
Important Information for this Bid/RFP
This project utilizes Community Development Block Grant Funds

Important Information for this Bid/RFP

This is a federally assisted project and is subject to Federal Labor Standards which include, the Davis-Bacon Act (payment of prevailing wage rates) and the Copeland Act (anti-kickback of wages & submission of weekly certified payroll reports), as well as other provisions including 24 CFR 85.36 (bonding requirements), and Section 3 & M/WBE. Laborers and mechanics employed by primary contractors and sub-contractors performing construction work on this project shall be paid wages at rates not less than the prevailing rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The prime contractor is responsible for the enforcement of wage compliance and support documentation for the duration of the project and may be held liable for wage restitution. The applicable information regarding the laws and regulations stated above are included in the bid packet.

SUPPLEMENTAL CONDITIONS FOR FEDERALLY ASSISTED PROJECTS

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In case of disagreement with any other section of this contract, the Supplemental Conditions shall govern. This contract is funded in whole or in part with federal funds made available from the U.S. Department of Housing and Urban Development (HUD). The contractor and all of its subcontractors shall comply with these federal provisions. The contractor shall include these supplemental conditions in all subcontracts.

1. Davis-Bacon Act
2. Copeland "Anti-Kick Back" Act
3. Federal Labor Standards
4. Environmental Compliance
5. Lead Based Paint Requirements
6. Historic Preservation
7. Energy Efficiency
8. Flood Disaster Protection
9. Special Equal Opportunity Provisions
10. Section 3
11. Conflict of Interest
12. Utilization of Minority and Women-owned Businesses
13. Fair Housing Laws
14. Drug Free Workplace
15. Debarred Contractors
16. Lobbying
17. Access to Records
18. Records Retention

Attachment I - Federal Labor Standards Provisions

Attachment II - Section 3 Clause

1. Davis- Bacon Act- 29 CFR Parts 1,3,5,6 and 7

The contractor agrees to comply with the requirements of the Davis-Bacon Act, which requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics on federally funded construction projects in excess of \$2,000. A Davis-Bacon wage decision (or wage determination) is a listing of various construction work classifications and the minimum wage rates (and fringe benefits, where prevailing) that workers who perform work in those classifications must be paid.

2. Copeland "Anti-Kickback" Act- 18 USC 874 and 40 USC 276c; 29 CFR Part 3

The contractor and subcontractor(s) shall comply with the requirements of the Copeland "Anti-Kickback" Act as supplemented in the U.S. Department of Labor regulations 29 CFR Part 3. The Copeland Act makes it a federal crime for anyone to require any laborer or mechanic (employed on a federally assisted project) to kickback (i.e. give up or pay back) any part of their wages. The Copeland Act requires every contractor and subcontractor to submit weekly payroll reports (certified payroll) and regulates permissible payroll deductions.

3. Federal Labor Standards

The project or program to which the construction work covered by this contract pertains is a federally assisted project and the Federal Labor Standards Provisions are included in this contract pursuant to the provisions applicable to such Federal assistance. See Attachment 1 for a complete copy of these labor standards.

4. Environmental Compliance- Section 306 of the Clean Air Act, Section 508 of the Clean Water Act and EPA Regulations- 42 U.S.C. 1857(h)

The contractor shall comply with the requirements of the Federal Clean Air Act and the Federal Water Pollution Control Act, as amended. Requirements for compliance with these regulations apply to contracts and subcontracts in amounts in excess of \$100,000. all applicable standards, orders, or requirements issued under (), (33 U.S.C. 1368), Executive Order 11738, and U.S. Environmental Protection Agency regulations (40 C.F.R. Part 15).

5. Lead- Based Paint Requirements- 24 CFR Part 35

All housing that is assisted by the contractor through this project with federal funds is subject to the lead-based paint requirements, found at 24 CFR Part 35. These rules apply to properties that were constructed prior to 1978, and require:

- Certain disclosures (in the form of notices) to occupants and applicants about any known or potential lead-based paint hazards
- Testing, assessing, and stabilization or reduction of lead-based paint hazards in accordance with established procedures, based on activity type and level of Federal assistance (for rehabilitation)
- Use of safe work practices
- Certain provisions included in all contracts and subcontracts related to lead-based paint
- Ongoing maintenance to monitor controls put in place to limit the hazards associated with the presence of lead-based paint.

6. Historic Preservation- 16 USC 470; 36 CFR Part 800

The contractor's performance may be subject to the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties.

7. Energy Efficiency

The contractor shall comply with any mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

8. Flood Disaster Protection- 42 USC 4001

The contractor's performance may be subject to the Flood Disaster Protection Act of 1973 which requires that activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program must be obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including housing rehabilitation.)

9. Special Equal Opportunity Provisions

A. Activities and Contracts Not Subject to Executive Order 11246, as Amended

(Applicable to Federally assisted construction contracts and related subcontracts \$10,000 and under.)

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

- i. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- ii. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer seeking forth the provisions of this nondiscrimination clause. The Contractor shall state that all qualified applicants be considered without regard to race, color, religion, sex or national origin.
- iii. Contractors shall incorporate foregoing requirements in all subcontracts.

B. Executive Order 11246 (contracts/subcontracts above \$10,000)

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

- i. Section 202 Equal Opportunity Clause
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are

treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in a conspicuous place, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.
- c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the Contract Compliance Officer advising the said labor union or workers representatives of the Contractors commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the Rules, Regulations, and Relevant Orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.

C. Certification of Non-segregated Facilities- E.O. 11246; 41 CFR Part 60-1.8

By the submission of this bid, the bidder, offeror, applicant or subcontractor certifies that he/she does not maintain or provide for his/her employees any segregated facility at any of his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/She certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is violation of the Equal Opportunity Clause of this contract. As used in this certification, the term segregated facilities means any waiting rooms, work eating areas, time clocks, locker rooms, and other storage or dressing areas, transportation and housing facilities provided for employees

which are in fact segregated on the basis of race, color, religion, or otherwise. He/She further agrees that (except where he/she has obtained identical certifications from proposed subcontractors prior to the award of subcontractors have submitted identical certifications for specific time periods).

D. Equal Employment Opportunity- Title VII of the Civil Rights Act of 1964 E.O. 11246

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

E. Americans with Disabilities Act of 1990- E.O. 11250; 42 U.S.C 12131; 24 CFR Part 35

The contractor shall not exclude on the basis of handicap persons from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

F. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the grounds of race, color, national original, or sex is excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

G. Section 504 of the Rehabilitation Act of 1973- 29 USC 794, 24 CFR Parts 8 and 9

- i. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- ii. The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- iii. In the event of the Contractors noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- iv. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be

prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractors obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

- v. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or their contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- vi. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

H. Age Discrimination Act of 1975- 42 U.S.C. 6101, et seq; 24 CFR Part 146

The contractor shall comply with the Age Discrimination Act of 1975, which provides that no person, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program, or activity receiving Federal Financial assistance.

I. NSP 3 Vicinity Hiring and Contracting Preference-

A contractor that is awarded a project involving the use of NSP3 funds, as provided by the Dodd-Frank "Wall Street Reform and Consumer Protection Act" of January 5, 2010, sec 1497 (a)(8), is required to take actions to hire employees who reside in the vicinity of NSP3-funded projects, and provide contracting opportunities to small businesses that are owned and operated by residents in this vicinity.

10. Section 3- 24 CFR Part 75

The contractor shall comply with the purposes of the Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701U) (Section 3) and ensure that employment and other economic opportunities generated by HUD funded programs, to the greatest extent feasible, and consistent with Federal, State, and local laws and regulations, be directed to low- and very-low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low-income persons. Sub-recipients, contractors and subcontractors for a Section 3 project must meet the requirements of § 75.19, regardless of whether Section 3 language is included in related agreements or contracts.

11. Conflict Of Interest- 24 CFR Part 85.36 and 24 CFR Part 570.611

No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this contract, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

12. Utilization Of Minority And Women Firms (M/WBE)- 24 CFR Part 85 (e)

The contractor shall take affirmative steps to assure that M/WBE firms are utilized when possible as suppliers and/or subcontractors, as applicable.

Prior to contract award, the contractor shall document efforts to utilize M/WBE firms, including identifying what firms were solicited as suppliers and/or subcontractors, as applicable. Information regarding certified M/WBE firms can be obtained from:

- State of Florida at 904-487-4698 (all goods and services)
- State of Florida at 904-921-7370 (construction services, particularly highway)
- Minority Business Development Center in most major cities
- Local government M/WBE programs in many large counties and cities

13. Fair Housing Laws

The contractor shall comply with the Fair Housing Act, and related laws that prohibit discrimination on the basis of race, color, national origin, religion, sex, familial status and handicap in the provision of housing, including rental, purchase, advertising, financing, insurance and multi-family housing on the basis of race, color, national origin, religion, sex, familial status and handicap. The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR part 100; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958-1063 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1 shall apply to any housing related contract awarded hereunder.

14. Drug Free Workplace- 41 USC 701, 24 CFR Part 21

The Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1988. The Contractor certifies to comply with the drug-free workplace requirements in accordance with the Act, and with U.S. Department of Housing and Urban Development regulations.

15. Debarred Contractors

This project is subject to requirements prohibiting use of federal funds to directly or indirectly employ, award contracts to, or otherwise engage the services of any contractor, subcontractor or subrecipient during any period of federal debarment, suspension, or placement of ineligibility status. The County is required to check the eligibility status of all contractors, subcontractors, and subrecipients against the federal publication that lists debarred and ineligible contractors. This list can be found on the The System for Award Management (SAM) at <https://www.sam.gov>

16. Lobbying

The Contractor certifies, to the best of his or her knowledge and belief, that:

- A.** No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
- B.** If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C.** The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements.
- D.** This certification is a material representation of fact upon which reliance was placed when this contract was made or entered into. Agreement to this certification is a prerequisite for making or entering into this contract imposed by Section 1352, title 31, U.S. Code. Any person or agency that makes an expenditure prohibited by this section is subject to a civil penalty from \$10,000 up to \$100,000 for each failure. This penalty also applies to any person or agency that fails to submit or amend the disclosure form (LLL), when required. Failure to submit the required certification may result in payment under this contract being delayed or denied.

17. Access to Records- 24 CFR Part 85.42 (e) & (f)

The contractor shall give access to all records, pertinent books, documents, papers or other records related to this contract to the awarding agency, the County of Volusia, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, and any of their duly authorized representatives for the purpose of making audit, examination, excerpts, and transcriptions as needed.

18. Records Retention- 24 CFR Part 85.42 (a)-(d)

The contractor shall comply with the CDBG records retention regulations. Financial, program, supporting, and other records pertinent to this contract and the grant program shall be maintained for five years after the local government makes final payment and all other pending matters are closed.

Attachment I

FEDERAL LABOR STANDARDS PROVISIONS

U.S. Department of Housing
And Urban Development

HUD-4010
(7/03)

Applicability

The project or program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR-5.5(a)(1)(iv); also regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its sub-contractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2)** The classification is utilized in the area by the construction industry; and
 - (3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (b)** If the contractor and the laborers and mechanics employed in the classification (if known, or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent to HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (approved by the Office of Management and Budget under OMB control number 1215-0140.)
- (c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate). HUD or its

designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee with the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

- (d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1) (b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federally contract with the same prime contractor, or any other Federally assisted contract subject to Davis Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violation have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payroll and basic records. Payroll and basic records related thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b) (2) (B) of the Davis bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely, all of the information required to be maintained under 29 CFR Part 5.5(a) (3) (i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5 (a) (3) (i) and that such information is correct and complete:

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been fully paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than the permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of WH-347 shall satisfy the requirement of submission of the: "Statement of Compliance" required by paragraph A.3. (ii)(b) of this section

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available shall be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, which is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is

performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the training program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its

subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a) (1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of ... influencing in any way the action of such Administration....makes, utters or publishes any statement knowing the same to be false shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or related to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanic" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basis rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth on subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract, or any other Federal contract with the same prime contract, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontracts to include these clauses in any lower tier subcontracts, The prime contractor shall be responsible for compliance by any

subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor, by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat 96).

(3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

Wage and Hour Division (WHD)

Instructions For Completing Payroll Form, WH-347

- [WH-347](#) (PDF)
OMB Control No. 1235-0008, Expires 04/30/2021.

General: Form WH-347 has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) Regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Under the Davis-Bacon and related Acts, the contractor is required to pay not less than prevailing wage, including fringe benefits, as predetermined by the Department of Labor. The contractor's obligation to pay fringe benefits may be met either by payment of the fringe benefits to bona fide benefit plans, funds or programs or by making payments to the covered workers (laborers and mechanics) as cash in lieu of fringe benefits.

This payroll provides for the contractor to show on the face of the payroll all monies to each worker, whether as basic rates or as cash in lieu of fringe benefits, and provides for the contractor's representation in the statement of compliance on the payroll (as shown on page 2) that he/she is paying for fringe benefits required by the contract and not paid as cash in lieu of fringe benefits. Detailed instructions concerning the preparation of the payroll follow:

Contractor or Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

Payroll No.: Beginning with the number "1", list the payroll number for the submission.

For Week Ending: List the workweek ending date.

Project and Location: Self-explanatory.

Project or Contract No.: Self-explanatory.

Column 1 - Name and Individual Identifying Number of Worker: Enter each worker's full name and an individual identifying number (e.g., last four digits of worker's social security number) on each weekly payroll submitted.

Column 2 - No. of Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.

Column 3 - Work Classifications: List classification descriptive of work actually performed by each laborer or mechanic. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. An individual may be shown as having worked in more than one classification provided an accurate breakdown of hours worked in each classification is maintained and shown on the submitted payroll by use of separate entries.

Column 4 - Hours worked: List the day and date and straight time and overtime hours worked in the applicable boxes. On all contracts subject to the Contract Work Hours Standard Act, enter hours worked in excess of 40 hours a week as "overtime".

Column 5 - Total: Self-explanatory

Column 6 - Rate of Pay (Including Fringe Benefits): In the "straight time" box for each worker, list the actual hourly rate paid for straight time worked, plus cash paid in lieu of fringe benefits paid. When recording the straight time hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic rate. For example, "\$12.25/.40" would reflect a \$12.25 base hourly rate plus \$0.40 for fringe benefits. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. When overtime is worked, show the overtime hourly rate paid plus any cash in lieu of fringe benefits paid in the "overtime" box for each worker; otherwise, you may skip this box. See "Fringe Benefits" below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962 if the prime contract exceeds \$100,000. In addition to paying no less than the predetermined rate for the classification which an individual works, the contractor must pay amounts predetermined as fringe benefits in the wage decision made part of the contract to approved fringe benefit plans, funds or programs or shall pay as cash in lieu of fringe benefits. See "FRINGE BENEFITS" below.

Column 7 - Gross Amount Earned: Enter gross amount earned on this project. If part of a worker's weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus "\$163.00/\$420.00" would reflect the earnings of a worker who earned \$163.00 on a Federally assisted construction project during a week in which \$420.00 was earned on all work.

Column 8 - Deductions: Five columns are provided for showing deductions made. If more than five deduction are involved, use the first four columns and show the balance deductions under "Other" column; show actual total under "Total Deductions" column; and in the attachment to the payroll describe the deduction(s) contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 C.F.R., Part 3. If an individual worked on other jobs in addition to this project, show actual deductions from his/her weekly gross wage, and indicate that deductions are based on his gross wages.

Column 9 - Net Wages Paid for Week: Self-explanatory.

Totals - Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

Statement Required by Regulations, Parts 3 and 5: While the "statement of compliance" need not be notarized, the statement (on page 2 of the payroll form) is subject to the penalties provided by 18 U.S.C. § 1001, namely, a fine, possible imprisonment of not more than 5 years, or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

Items 1and 2: Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state

"See Deductions column in this payroll." See "FRINGE BENEFITS" below for instructions concerning filling out paragraph 4 of the statement.

Item 4 FRINGE BENEFITS - Contractors who pay all required fringe benefits: If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor, show the basic cash hourly rate and overtime rate paid to each worker on the face of the payroll and check paragraph 4(a) of the statement on page 2 of the WH-347 payroll form to indicate the payment. Note any exceptions in section 4(c).

Contractors who pay no fringe benefits: If not paying all fringe benefits to approved plans, funds, or programs in amounts of at least those that were determined in the applicable wage decision of the Secretary of Labor, pay any remaining fringe benefit amount to each laborer and mechanic and insert in the "straight time" of the "Rate of Pay" column of the payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the application wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringe benefits, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringe benefits at the straight time rate. In addition, check paragraph 4(b) of the statement on page 2 the payroll form to indicate the payment of fringe benefits in cash directly to the workers. Note any exceptions in section 4(c).

Use of Section 4(c), Exceptions

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the covered worker as cash in lieu of fringe benefits. Enter any exceptions to section 4(a) or 4(b) in section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid each worker as cash in lieu of fringe benefits and the hourly amount paid to plans, funds, or programs as fringe benefits. The contractor must pay an amount not less than the predetermined rate plus cash in lieu of fringe benefits as shown in section 4(c) to each such individual for all hours worked (unless otherwise provided by applicable wage determination) on the Federal or Federally assisted project. Enter the rate paid and amount of cash paid in lieu of fringe benefits per hour in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

Public Burden Statement: We estimate that it will take an average of 55 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing this burden, send to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



Rev. Dec. 2008

NAME OF CONTRACTOR OR SUBCONTRACTOR				ADDRESS										OMB No.: 1235-0008 Expires: 04/30/2021						
PAYROLL NO.			FOR WEEK ENDING				PROJECT AND LOCATION						PROJECT OR CONTRACT NO.							
(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS						(9) NET WAGES PAID FOR WEEK
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210

Date _____

I, _____
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by _____ on the _____
(Contractor or Subcontractor)
_____ ; that during the payroll period commencing on the _____
(Building or Work)
_____ day of _____, _____, and ending the _____ day of _____, _____,
all persons employed on said project have been paid the full weekly wages earned, that no rebates have
been or will be made either directly or indirectly to or on behalf of said
_____ from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly
from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part
3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948,
63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are
correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the
applicable wage rates contained in any wage determination incorporated into the contract; that the classifications
set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship
program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and
Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered
with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:
(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in
the above referenced payroll, payments of fringe benefits as listed in the contract
have been or will be made to appropriate programs for the benefit of such employees,
except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid,
as indicated on the payroll, an amount not less than the sum of the applicable
basic hourly wage rate plus the amount of the required fringe benefits as listed
in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR
SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE
31 OF THE UNITED STATES CODE.

Superseded General Decision Number: FL20210137

State: Florida

Construction Type: Heavy

County: Volusia County in Florida.

HEAVY CONSTRUCTION PROJECTS (Including Sewer and Water Lines)
(EXCLUDING CAPE CANAVERAL AIR FORCE STATION, PATRICK AIR FORCE
BASE, KENNEDY SPACE FLIGHT CENTER AND MALABAR RADAR SITE)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none">. Executive Order 14026 generally applies to the contract.. The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none">. Executive Order 13658 generally applies to the contract.. The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

1 02/25/2022
2 09/09/2022

ENGI0673-013 05/01/2021

	Rates	Fringes
OPERATOR: Oiler.....	\$ 28.44	14.60

IRON0808-003 02/01/2020

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 28.28	14.70

* LAB00517-002 05/01/2022

	Rates	Fringes
LABORER: Grade Checker.....	\$ 22.06	10.98

PAIN1010-011 06/01/2021

	Rates	Fringes
Painter - Brush, Roller & Spray.....	\$ 24.71	14.60

* SUFL2009-176 06/24/2009

	Rates	Fringes
CARPENTER, Excludes Form Work....	\$ 13.56 **	1.84
CEMENT MASON/CONCRETE FINISHER...	\$ 12.63 **	0.00
ELECTRICIAN.....	\$ 16.71	3.51
FORM WORKER.....	\$ 11.36 **	0.00
LABORER: Common or General.....	\$ 9.03 **	0.81
LABORER: Landscape.....	\$ 8.44 **	0.00
LABORER: Pipelayer.....	\$ 11.17 **	1.27
LABORER: Power Tool Operator (Hand Held Drills/Saws, Jackhammer and Power Saws Only).....	\$ 10.63 **	2.20
OPERATOR: Asphalt Paver.....	\$ 11.88 **	0.00
OPERATOR: Backhoe Loader Combo.....	\$ 16.10	2.44
OPERATOR: Backhoe/Excavator.....	\$ 13.12 **	2.58
OPERATOR: Bulldozer.....	\$ 12.88 **	0.00
OPERATOR: Crane.....	\$ 14.88 **	3.17
OPERATOR: Grader/Blade.....	\$ 16.00	2.84
OPERATOR: Loader.....	\$ 13.38 **	0.00

OPERATOR: Mechanic.....	\$ 13.83 **	2.19
OPERATOR: Roller.....	\$ 10.50 **	0.00
OPERATOR: Scraper.....	\$ 11.00 **	1.74
OPERATOR: Trackhoe.....	\$ 20.92	5.50
OPERATOR: Tractor.....	\$ 10.00 **	0.00
TRUCK DRIVER, Includes Dump Truck.....	\$ 11.07 **	0.00
TRUCK DRIVER: Lowboy Truck.....	\$ 11.00 **	0.00
TRUCK DRIVER: Off the Road Truck.....	\$ 12.21 **	1.97

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate

(weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"



Minority & Women Business Reporting Form (MWBE)
Information and Instructions for Contractors & Subcontractors

Reporting

This report shall be completed by all contractors and subcontractors for reporting contract and subcontract activities for construction projects as required by the County of Volusia Community Assistance Division. Subcontracts of less than \$10,000 must be reported individually only if such contracts represent a significant portion of the total contracting activity.

- Section 7a:
 - ✓ **Amount of Contract/Subcontract:** Enter the dollar amount rounded to the nearest dollar. If subcontractor ID number is provided in 7f, the dollar figure would be for the subcontract only and not for the prime contract.
- Section 7b:
 - ✓ **Type of Trade:** Enter the numeric code which best indicates each contractor's/subcontractor's service type. If subcontractor ID number is provided in 7f, the type of trade code would be for the subcontractor only and not for the prime contractor.
 - * The "other" category includes supply, professional services, and all other activities except construction and education/training activities
- Section 7c:
 - ✓ **Business Racial/Ethnic/Gender Code:** Enter the numeric code which best indicates the racial/ethnic/gender character of the owner(s) and controller(s) of 51% of the business. When 51% or more is not owned and controlled by any single racial/ethnic/gender category, enter the code which seems most appropriate. If the subcontractor ID number is provided, the code would apply to the subcontractor and not the prime contractor
- Section 7d:
 - ✓ **Women Owned Business:** Enter "yes" or "no" to if each listed agency is women owned
- Section 7e:
 - ✓ **Contractor Identification Number:** Enter the Employer (IRS/FEIN) Number of the Prime Contractor as the unique identifier of the prime recipient of HUD funds. Note that the Employer (IRS) Number must be provided for each contract/subcontract awarded.
- Section 7f:
 - ✓ **Subcontractor Identification Number:** Enter the Employer (IRS/FEIN) Number of the subcontractor as the unique identifier for each subcontract awarded from HUD funds. When the subcontractor ID number is provided, the respective Prime Contractor ID Number must also be provided.
- Section 7g:
 - ✓ **Contractor/Subcontractor Business Name and Address:** Enter this information for each firm receiving contract/subcontract activity only one time on each report for each firm.

County of Volusia Community Assistance Division - Contract and Subcontract - Minority and Women Business Reporting Form										
Project Name: _____										
Amount of Contract or Subcontract 7a.	Type of Trade Code (See below) 7b.	Contractor or Subcontractor Business Racial/Ethnic (See below) 7c.	Woman Owned Business (Yes or No) 7d.	Prime Contractor Identification Number (IRS/FEIN) 7e.	Subcontractor Identification Number (IRS/FEIN) 7f.	Contractor/Subcontractor Business Name and Address 7g.				
						Business Name	Street	City	State	Zip

Name/Title: _____Signature: _____Date: _____

7b: Type of Trade Codes:
CPD

1 = New Construction
2 = Education/Training
3 = Other

7c: Racial/
Ethnic Codes

1= White Americans
2= Black Americans
3= Native Americans
4= Hispanic American
5= Asian/Pacific American



Section 3 Information

What is Section 3?

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low income persons; particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is provided.

What is a Section 3 Business Concern?

A business concern meeting at least one of the following criteria, documented within the last six-month period:

- Owned and controlled by at least 51% low- or very low-income persons;
- Over 75% of the labor hours performed for the business over the prior three-month period performed by Section 3 workers;
- Owned and controlled by at least 51% current public housing residents or residents currently living in Section-8 assisted housing

What is a Section 3 Worker?

A Section 3 worker is any worker who currently fits, or if hired on or after 11/30/20 fit, one the following categories, as documented:

- A worker whose annual income is at or below the 80% income limit as established by HUD
- A worker employed by a documented Section 3 Business Concern
- A worker that is a YouthBuild participant

What is a Targeted Section 3 Worker?

For Community Development funded projects, a Targeted Section 3 worker is:

- A worker employed by a documented Section 3 Business Concern; or
- A worker who currently fits, or if hired on or after 11/30/20 fit, one the following categories, as documented:
 - A worker living within the service area of the project, as defined at § 75.5; or
 - A worker that is a YouthBuild participant

Are there contract provisions related to Section 3?

Yes; all contracts for Section 3 covered projects must include language applying Section 3 requirements to any subrecipient agreement or contract for a Section 3 project. Sub-recipients, contractors and subcontractors for a Section 3 project must meet the requirements of § 75.19, regardless of whether Section 3 language is included in related agreements or contracts.

What information is required for Section 3 Reporting?

For Community Development funded projects, the following may be required:

- Section 3 Business Concern Certification
- Section 3 Project Workforce form
- Section 3 Certification form, when applicable
- Supporting documents for those claiming status as of Section 3 Business Concerns, Section 3 Worker, and/or Section 3 Targeted Worker
- Any other information requested by Volusia County to ensure Section 3 compliance



Section 3 Business Concern Certification

This document must be completed and returned from the primary bidder with their bid submission. Bids submitted for certain federally assisted projects that do not include this completed document may be considered non-responsive and not be eligible for award.

This document may be required from all sub-contractors prior to project award as well.

Project Name: _____
Agency Name: _____
Contact person: _____ Title: _____
Address of business: _____
Telephone number: _____ Fax number: _____
E-mail address: _____
Federal Employer Identification Number/SSN: _____

1. Type of business:

(Check one) ☐ Corporation ☐ Sole Proprietorship ☐ Partnership ☐ Joint Venture

2. Type of Contractor for project: (Check one) ☐ Prime Contractor ☐ Sub-Contractor

3. Check where applicable and provide required documentation*:

☐ The business is **NOT** claiming a Section 3 Business Concern status.

☐ The business **IS** claiming a Section 3 Business Concern status based on the following:

☐ 51% or more of the business is owned and controlled by low- or very low-income persons

2021 AMI → Maximum annual gross income for very low-income individual: \$ 22,900
Maximum annual gross income for very low-income individual: \$ 36,650

☐ Over 75% of the labor hours performed for the business over the prior three-month period were performed by Section 3 workers

☐ 51% or more of the business is owned and controlled by current public housing residents or residents currently living in Section-8 assisted housing

**To be considered; documentation from within the last six-month period for the criteria selected must be provided.*

I certify to the best of my knowledge that the information contained here within is true and correct.

Print name: _____

Signature: _____

Date: _____

Title: _____

NOTE: Volusia County shall maintain this form and supporting documentation a minimum of five years in the project files for review during monitoring. The contractor must retain a copy of the reports in their files for a minimum of five years after completion of the project.



County of Volusia
Community Assistance
110 W. Rich Avenue
DeLand, FL 32720



Section 3 Project Workforce

Project Name: _____ Agency Name: _____

This document must be completed by the Prime Contractor and all Sub-Contractors. It must be returned to, and approved by, Community Assistance at least 1 week prior to the pre-construction meeting.

The following is a list of employees may perform physical on-site work on this project. All areas should be completed and the Wage Classification **must** include the title(s) from the project wage decision that is/are best suited to the actions the worker will perform on-site for the project.

If a worker is eligible under a Section 3 Worker or Section 3 Targeted Worker status, please have the Section 3 Certification Form completed and return with this Section 3 Project Workforce form.

Employee Name	ID #	Hire Date	Wage Classification	Phone Number	Residential Address	Claiming Section 3 status?



County of Volusia
Community Assistance
110 W. Rich Avenue
DeLand, FL 32720



Section 3 Certification

Employer Name: _____

Employee name: _____ ID #: _____

Status being claimed: ☐ Section 3 Worker ☐ Section 3 Targeted Worker

The Section 3 Worker status is being certified in the following manner:

☐ **Self-Certification by employee**

I am self-certifying as a Section 3 Worker because:

☐ My gross annual income from the last calendar year was: \$ _____; my w-2 or paystubs are attached

☐ I am a Public Housing or Section 8 Housing recipient; current documentation showing this is attached

Employee Signature

Date

☐ **Certification by employer**

This employee is certified as a Section 3 Worker because:

☐ Their gross annual income from the last calendar year was: \$ _____; current documentation showing this is attached

☐ They were hired after 11/30/20 and their gross annual income for the first year was: \$ _____; documentation showing this is attached

☐ We are a business concern and they are an employee; see Section 3 Business Concern Certification and supporting documentation

Employer Signature & Title

Date

The Section 3 Targeted Worker status is being certified in the following manner:

☐ **Self-Certification by employee**

I am self-certifying as a Section 3 Worker because I am a YouthBuild participant; documentation supporting my current enrollment is attached.

Employee Signature

Date

☐ **Certification by employer**

This employee is certified as a Section 3 Targeted Worker because:

☐ Their residence is within the project service area as defined at § 75.5; documentation supporting this is attached

☐ We are a business concern and they are an employee; see Section 3 Business Concern Certification and supporting documentation

Employer Signature & Title

Date

NOTE: Volusia County shall maintain this form and supporting documentation a minimum of five years in the project files for review during monitoring. The contractor must retain a copy of the reports in their files for a minimum of five years after completion of the project.

24 CFR PART 85.36 Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments

<https://www.hud.gov/sites/documents/24CFR85-36PROC.PDF>

Compliance with the following bonding requirements is mandatory.

Proof of bonding will be verified prior to issuance of the notice to proceed.

(h) Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or sub grantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

- (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- (2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (3) A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Once awarded, the applicant will enter an Agreement similar to the one below:

STANDARD AGREEMENT FOR SERVICES

THIS Standard Agreement for Services (hereinafter this "Agreement") is made and entered into this ____ day of _____ 20__, by and between the **CITY OF SOUTH DAYTONA**, a Florida municipality, whose principal address is 1672 S. Ridgewood Avenue, South Daytona, Florida 32119 (hereinafter the "CITY") and _____, a _____ corporation, whose principal address _____ (hereinafter "CONTRACTOR"). The CITY and CONTRACTOR are collectively referred to herein as the "PARTIES."

WITNESSETH

WHEREAS, the CITY is a political subdivision of the State of Florida, having a responsibility to provide certain services to benefit the citizens of the City of South Daytona; and

WHEREAS, the CITY has the full power and authority to enter into the transactions contemplated by this Agreement; and

WHEREAS, CONTRACTOR is in the business of providing the equipment, materials, labor and other such service as identified in Exhibit "A" in the City of South Daytona and elsewhere in the State of Florida; and

WHEREAS, CONTRACTOR is competent and has sufficient manpower, training, and technical expertise to perform the services contemplated by this Agreement in a timely and professional manner consistent with the standards of the industry in which CONTRACTOR operates; and

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors.

WHEREAS, CONTRACTOR was the successful bidder of a project competitively bid and identified as Invitation to Bid (Exhibit "A") for City of South Daytona which satisfies the CITY's Procurement Policy; and

WHEREAS, CONTRACTOR agrees to provide such goods and services as more particularly described in this Agreement, as well as in any bid or quotation documents issued in connection with this project.

NOW THEREFORE in consideration of the premises, and in consideration of the mutual conditions, covenants, and obligations hereafter expressed, the parties agree as follows:

1. **Recitals.** The foregoing recitals are true and correct, constitute a material inducement to the parties to enter into this Agreement, and are hereby ratified and made a part of this Agreement.

2. **Description of Work.**

- a. The CITY hereby retains CONTRACTOR to furnish goods and services as described in the Scope of Services, which is attached hereto as Exhibit "A" and incorporated herein by reference. Any conflict between the terms and conditions in the body of this Agreement and the terms and conditions set forth in Exhibit "A" will be resolved in favor of the body of this Agreement.
- b. CONTRACTOR must provide all permits, labor, materials, equipment, and supervision necessary for the completion of the Scope of Services, unless specifically excluded.
- c. CONTRACTOR must also comply with, and abide by, all requirements as contained in any invitation to bid (ITB), request for proposals (RFP), request for qualifications (RFQ), bid specifications, engineering plans, shop drawings, material lists, or other similar documents issued for this project by the CITY, together with any addenda, hereinafter the "Bid Documents, as applicable." The Bid Documents, if applicable, are hereby incorporated into this Agreement by reference and are declared to be material part of this Agreement.

3. **Provision of Services**

- a. **Scope:** The CONTRACTOR hereby agrees to provide the proposed scope as identified in Exhibit "A."
- b. **Manner and Place:** The work shall be performed as outlined in Exhibit "A," in accordance with Standard Construction Details as required and in a manner as required by all current federal, state, county, fire, building, and land development codes, laws, ordinances and regulations, and with applicable permits and licenses per the City Code of Ordinance. Contractors shall not deliver goods or services without a written Purchase Order(s) or Notice to Proceed(s), signed by an authorized agent of the CITY.
- c. **Time and Essence:** CONTRACTOR acknowledges that time is of the essence for this Agreement.
- d. **Authorization for Services:** This Agreement standing alone does not authorize the purchase of any work or services or require the CITY to place any orders for work or service. Authorization for performance of services by the CONTRACTOR under this agreement shall be in the form of a written Notice to Proceed issued and executed by the CITY. The CITY reserves the right to contract with other parties for work and services contemplated by this Agreement, as determined in the CITY's sole and absolute discretion.
- e. **Liquidated Damages:** CONTRACTOR is responsible for commencing work under this Agreement within 30 days upon receipt of the Notice of Award and must substantially complete the work not later than 120 calendar days thereafter, and to fully complete the work within 150 calendar days. The CONTRACTOR shall not be entitled to any damages on account of hindrances or delays in construction from any cause whatsoever. This paragraph shall include but not be limited to any

actions which result in delays in scheduling, substantial changes in scope of work, or substantial increases in the costs of performing the work under this Agreement.

Liquidated damages will be assessed against Vendor in the amount of \$500.00 per day, for each day after each milestone that the work contemplated is incomplete.

4. Payment.

- a. The CITY agrees to compensate CONTRACTOR, for work actually performed under this Agreement, at the rate or basis described in Exhibit "A", which is attached hereto and incorporated herein by reference. CONTRACTOR must perform all work required by the Scope of Services, but in no event will CONTRACTOR be paid more than the negotiated amount set forth in Exhibit "A".
- b. Progress payments, if any, will be made as set forth in Exhibit "A".
- c. The CITY reserves the right to ratably withhold amounts in the event of the nonperformance of all or part of CONTRACTOR's obligations. CONTRACTOR must, without additional compensation, correct and revise any errors, omissions, or other deficiencies in its work product, services, or materials arising from the error or omission or negligent act of CONTRACTOR.

5. Acceptance of work product, payment, and warranty.

- a. Upon receipt of a periodic work product, or notice that work has progressed to a point of payment in accordance with Exhibit "A" attached or the Bid Documents, if any, together with an invoice sufficiently itemized to permit audit, the CITY will diligently review those documents. When it finds the work acceptable under this Agreement the installment payment, found to be due to CONTRACTOR, will be paid to CONTRACTOR within thirty (30) days after the date of receipt of the invoice, unless another payment schedule is provided in Exhibit "A". CONTRACTOR warrants that the data utilized by CONTRACTOR (other than as provided by the CITY) is from a source, and collected using methodologies, which are generally recognized in CONTRACTOR's industry or profession to be a reliable basis and foundation for CONTRACTOR's work product. CONTRACTOR must notify the CITY in writing if it appears, in CONTRACTOR's professional judgement that the data or information provided by the CITY for use in CONTRACTOR's work product is incomplete, defective, or unreliable. CONTRACTOR guarantees to amend, revise, or correct to the satisfaction of the CITY any error appearing in the work as a result of CONTRACTOR's failure to comply with the warranties and representations contained herein. Neither inspection nor payment, including final payment, by the CITY will relieve CONTRACTOR from its obligations to do and complete the work product in accordance with this Agreement.

6. Termination.

- a. Termination at Will: This Agreement may be terminated by the CITY in whole or in part at any time without cause by the CITY giving written notice to CONTRACTOR not less than 30 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations of this Agreement through the date of the actual termination. Notice

must be delivered by certified mail, return receipt requested, or in person with proof of delivery.

- b. Termination for Cause: This Agreement may be terminated by either party for cause by the CITY or CONTRACTOR giving written notice to the other party not less than 10 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations of this Agreement through the date of the actual termination. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.

7. **Project management.**

- a. The Project Managers for this project are as follows. Any subsequent changes to the Project Manager for either party may be provided by notice as described in paragraph 8 below and does not require an amendment to this Agreement.
- b. CITY's Project Manager is: Amy Zengotita, Parks and Recreation Director, 504 Big Tree Road, South Daytona, Florida 32119, 386-322-3070.
- c. CONTRACTOR's Project Manager is: [...].

8. **Notices.** All notices to the parties under this Agreement must be in writing and sent certified mail to:

- a. To CITY: The City of South Daytona, Attention: City Manager, 1672 Ridgewood Avenue, South Daytona, Florida 32119;
- b. To CONTRACTOR: _____, Attention: _____,

[insert street address], _____
[insert city, state, zip].

9. **Insurance.**

- a. CONTRACTOR must maintain such insurance as will fully protect both CONTRACTOR and the CITY from any and all claims under any Workers Compensation Act or Employers Liability Laws, and from any and all other claims of whatsoever kind or nature to the damage or property, or for personal injury, including death, made by anyone whomsoever, that may arise from operations carried on under this Agreement, either by CONTRACTOR, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them.
- b. The insurance coverage required by this Agreement must not be less than the amounts described in the Bid Documents. If the Bid Documents do not state an insurance requirement or the amount of insurance, then the amount of insurance required by this Agreement must not be less than:
 - i. Workers' Compensation (unless exempt) with Employers' Liability with a limit of \$500,000.00 each accident, \$500,000.00 each employee, \$500,000.00 policy limit for disease;

- ii. Commercial General Liability (CGL) insurance with a limit of not less than \$300,000.00 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project in the amount of \$600,000.00. CGL insurance shall be written on an occurrence form and include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury, and advertising injury. Damage to rented premises shall be included at \$100,000.00;
 - iii. Commercial Automobile Liability Insurance with a limit of not less than \$300,000.00 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos) and such policy shall be endorsed to provide contractual liability coverage; and
 - iv. Fire damage liability shall be included at \$300,000.00.
 - c. CONTRACTOR must furnish the CITY with Certificates of Insurance, which are to be signed by a person authorized by that insurer to bind coverage on its behalf. The CITY is to be specifically included as an additional insured and loss payee on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate must be issued 30 days prior to the expiration date. The policy must provide a 30 day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the CITY before commencement of any work activities.
 - d. The insurance coverages procured by CONTRACTOR as required herein will be considered as primary insurance over and above any other insurance, or self-insurance, available to CONTRACTOR, and any other insurance, or self-insurance available to CONTRACTOR will be considered secondary to, or in excess of, the insurance coverage(s) procured by CONTRACTOR as required herein.
10. **General Provisions.** CONTRACTOR must comply with the following general provisions:
- a. **Bond.** If a surety bond has been required by the Bid Documents for CONTRACTOR's faithful performance and payment, and if at any time the surety is no longer acceptable to the CITY, CONTRACTOR must, at its expense, within five (5) days after the receipt of notice from the CITY to do so, furnish an additional bond or bonds in such form and with such Surety or Sureties as are satisfactory to the CITY. The CITY will not make any further payment to CONTRACTOR, nor will any further payment be deemed to be due to CONTRACTOR, until such new or additional security for the faithful performance of the work is furnished in a manner and form satisfactory to the CITY.

- b. **Compliance with Laws.** In providing the Scope of Services, CONTRACTOR must comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations pertaining to or regulating the provision of such services, including those now in effect and hereafter adopted.
- c. **Personal nature of Agreement; Assignment.**
 - i. The parties acknowledge that the CITY places great reliance and emphasis upon the knowledge, expertise, training, and personal abilities of CONTRACTOR. Accordingly, this Agreement is personal and CONTRACTOR is prohibited from assigning or delegating any rights or duties hereunder without the specific written consent of the CITY.
 - ii. If CONTRACTOR requires the services of any subcontractor or professional associate in connection with the work to be performed under this Agreement, CONTRACTOR must obtain the written approval of the CITY Project Manager prior to engaging such subcontractor or professional associate. CONTRACTOR will remain fully responsible for the services of any subcontractors or professional associates.
- d. **Discrimination.**
 - i. CONTRACTOR shall not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. CONTRACTOR shall not exclude any person, on the grounds of age, ethnicity, race, religious belief, disability, national origin, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under, this Agreement.
 - ii. CONTRACTOR shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management.
- e. **Independent contractor.**
 - i. CONTRACTOR is, and will be deemed to be, an independent contractor and not a servant, employee, joint adventurer, or partner of the CITY. None of CONTRACTOR's agents, employees, or servants are, or will be deemed to be, the agent, employee, or servant of the CITY. None of the benefits, if any, provided by the CITY to its employees, including but not limited to, compensation insurance and unemployment insurance, are available from the CITY to the employees, agents, or servants of CONTRACTOR. CONTRACTOR will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, and subcontractors during the performance of this Agreement. Although CONTRACTOR is an independent contractor, the work contemplated herein must meet the approval of the CITY and is subject to the CITY's general right of inspection to secure the

satisfactory completion thereof. CONTRACTOR must comply with all Federal, State and municipal laws, rules and regulations that are now or may in the future become applicable to CONTRACTOR, or to CONTRACTOR's business, equipment, or personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations. The CITY will not be held responsible for the collection of or the payment of taxes or contributions of any nature on behalf of CONTRACTOR.

- ii. CONTRACTOR will bear all losses resulting to it on account of the amount or character of the work, or because of bad weather, or because of errors or omissions in its contract price.
- iii. CONTRACTOR must utilize, and must expressly require all subcontractors to utilize, the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by CONTRACTOR and any subcontractors during the Term of this Agreement.

f. **Indemnification.**

- i. CONTRACTOR must indemnify and hold the CITY harmless against and from any and all claims, losses, penalties, interest, demands, judgments, costs, damages, or expenses, including attorney's fees and court costs, incurred by the CITY, or its agents, officers, or employees, arising directly or indirectly from CONTRACTOR's performance under this Agreement or by any person on CONTRACTOR's behalf, including but not limited to those claims, losses, penalties, interest, demands, judgments, costs, damages, or expenses arising out of any accident, casualty, or other occurrence causing injury to any person or property. This includes persons employed or utilized by CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors). CONTRACTOR must further indemnify the CITY against any claim that any product purchased or licensed by the CITY from CONTRACTOR under this Agreement infringes a United States patent, trademark, or copyright. CONTRACTOR acknowledges that CONTRACTOR has received consideration for this indemnification, and any other indemnification of the CITY by CONTRACTOR provided for within the Bid Documents, the sufficiency of such consideration being acknowledged by CONTRACTOR, by CONTRACTOR's execution of this Agreement. CONTRACTOR's obligation will not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance, whether such insurance is in connection with this Agreement or otherwise. Such indemnification is in addition to any and all other legal remedies available to the CITY and not considered to be the CITY's exclusive remedy.
- ii. In the event that any claim in writing is asserted by a third party which may entitle the CITY to indemnification, the CITY must give notice thereof to CONTRACTOR, which notice must be accompanied by a copy of statement of the claim. Following the notice, CONTRACTOR has the right, but not the obligation, to participate at its sole expense, in the defense, compromise or settlement of such claim with counsel of its choice. If CONTRACTOR does

not timely defend, contest, or otherwise protect against any suit, action or other proceeding arising from such claim, or in the event the CITY decides to participate in the proceeding or defense, the CITY will have the right to defend, contest, or otherwise protect itself against same and be reimbursed for expenses and reasonable attorney's fees and, upon not less than ten (10) days notice to CONTRACTOR, to make any reasonable compromise or settlement thereof. In connection with any claim as aforesaid, the parties hereto must cooperate fully with each other and make available all pertinent information necessary or advisable for the defense, compromise or settlement of such claim.

iii. The indemnification provisions of this paragraph will survive the termination of this Agreement.

g. **Sovereign Immunity.** Nothing in this Agreement extends, or will be construed to extend, the CITY's liability beyond that provided in section 768.28, Florida Statutes. Nothing in this Agreement is a consent, or will be construed as consent, by the CITY to be sued by third parties in any matter arising out of this Agreement.

h. **Public records.**

i. CONTRACTOR is a "Contractor" as defined by Section 119.0701(1)(a), Florida Statutes, and must comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

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

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

- ii. "Public records" is defined in Section 119.011(12), Florida Statutes, as may, from time to time, be amended.
 - iii. If CONTRACTOR asserts any exemptions to the requirements of Chapter 119 and related law, CONTRACTOR will have the burden of establishing such exemption, by way of injunctive or other relief as provided by law.
 - iv. CONTRACTOR consents to the CITY's enforcement of CONTRACTOR's Chapter 119 requirements, by all legal means, including, but not limited to, a mandatory injunction, whereupon CONTRACTOR must pay all court costs and reasonable attorney's fees incurred by CITY.
 - v. CONTRACTOR's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by CONTRACTOR will be grounds for immediate unilateral cancellation of this Agreement by the CITY.
 - vi. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, DEPUTY CITY CLERK BECKY WITTE, AT 386-322-3011; BWITTE@SOUTHDAYTONA.ORG; MAILING ADDRESS: 1672 RIDGEWOOD AVE., SOUTH DAYTONA, FL 32119.**
- i. **Federal or State Funding.** If any portion of the funding for this Agreement is derived from the State of Florida, or any department of the State of Florida, or from federal funding through the State of Florida, the provisions of this sub-paragraph shall apply, provisions elsewhere in this Agreement to the contrary notwithstanding. CONTRACTOR shall make inquiry from the CITY's Project Manager to determine whether Federal or State funding is applicable to this Agreement.
- i. E-Verify. CONTRACTOR must utilize, and must expressly require all subcontractors to utilize, the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by CONTRACTOR during the Term of this Agreement.
 - ii. Agency. CONTRACTOR agrees and acknowledges that it, its employees, and its subcontractors are not agents or employees of the Federal Government, of the State of Florida, or of any department of the Federal Government or the State of Florida.
 - iii. Indemnification. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless the CITY, the Federal Government, the State of Florida, any department of the Federal Government or the State of Florida, and all officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of CONTRACTOR and persons employed or utilized by CONTRACTOR in the

performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the CITY's sovereign immunity.

- iv. Workers' Compensation Insurance. CONTRACTOR must provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, CONTRACTOR must ensure that the subcontractor(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), CONTRACTOR must ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. CONTRACTOR must ensure that any equipment rental agreements that include operators or other personnel who are employees of independent Contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.
- v. Liability Insurance. Contractor shall carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. CONTRACTOR shall cause the State of Florida to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the State of Florida as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Contract, and may not be shared with or diminished by claims unrelated to this Agreement. The policy/ies and coverage described herein may be subject to a deductible. CONTRACTOR shall pay all deductibles as required by the policy. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention. At all renewal periods which occur prior to final acceptance of the work, the CITY and the State of Florida shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The CITY and the State of Florida shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The CITY's or the State of Florida's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and

maintain the insurance required herein, nor serve as a waiver of any rights or defenses the CITY or the State of Florida may have.

- vi. **Inspections.** CONTRACTOR shall permit, and require its subcontractors to permit, the CITY's and the State of Florida's authorized representatives to inspect all work, materials, payrolls, and records, to audit the books, records, and accounts pertaining to the financing and development of the Services described in the Contract Documents.
- vii. **Auditor General Cooperation.** CONTRACTOR shall comply with §20.055 (5), Florida Statutes, and shall incorporate in all subcontracts the obligation to comply with §20.055 (5), Florida Statutes.

- j. **E-Verify Compliance.** Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.
- k. **Federal-Aid Construction Contract.** If this is a federal-aid construction project, it shall be subject to the provisions in Exhibit "A", which is attached hereto and incorporated herein by reference.

11. **Miscellaneous Provisions.** The following miscellaneous provisions apply to this Agreement:

- a. **Binding Nature of Agreement.** This Agreement is binding upon the successors and assigns of the parties hereto.
- b. **Entire Agreement.** This Agreement states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. CONTRACTOR recognizes that any representations, statements, or negotiations made by the City staff do not suffice to legally bind the CITY in a contractual relationship unless they have been reduced to writing, authorized, and signed by the authorized CITY representatives.
- c. **Amendment.** No modification, amendment, or alteration in the terms or conditions of this Agreement will be effective unless contained in a written document executed with the same formality as this Agreement.
- d. **Severability.** If any term or provision of this Agreement is held, to any extent, invalid or unenforceable, as against any person, entity, or circumstance during the Term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity will not affect any other term or provision of this

Agreement, to the extent that the Agreement will remain operable, enforceable, and in full force and effect to the extent permitted by law.

- e. **Construction.** If any provision of this Agreement becomes subject to judicial interpretation, the court interpreting or considering such provision should not apply the presumption or rule of construction that the terms of this Agreement be more strictly construed against the party which itself or through its counsel or other agent prepared it. All parties hereto have participated in the preparation of the final form of this Agreement through review by their respective counsel, if any, or the negotiation of specific language, or both, and, therefore, the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.
- f. **Headings.** All headings in this Agreement are for convenience only and are not to be used in any judicial construction or interpretation of this Agreement or any paragraph.
- g. **Waiver.** The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement does not constitute a waiver of the provision or any portion of this Agreement, either at the time the breach or failure occurs or at any time throughout the term of this Agreement. The review of, approval of, or payment for any of CONTRACTOR's work product, services, or materials does not operate as a waiver, and should not be construed as a waiver, of any of the CITY's rights under this Agreement, or of any cause of action the CITY may have arising out of the performance of this Agreement.
- h. **Force Majeure.** Notwithstanding any provisions of this Agreement to the contrary, the parties will not be held liable if failure or delay in the performance of this Agreement arises from fires, floods, strikes, embargos, acts of the public enemy, unusually severe weather, out break of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. This provision does not apply if the "Scope of Services" of this Agreement specifies that performance by CONTRACTOR is specifically required during the occurrence of any of the events herein mentioned.
- i. **Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in

Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. CONTRACTOR hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. CONTRACTOR further hereby certifies that CONTRACTOR is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. CONTRACTOR understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject CONTRACTOR to civil penalties, attorney's fees, and/or costs. CONTRACTOR further understands that any contract with CITY for goods or services of any amount may be terminated at the option of CITY if CONTRACTOR (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of CITY if the CONTRACTOR is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

- j. **Law; Venue.** This Agreement is being executed in Volusia County, Florida and is governed in accordance with the laws of the State of Florida. Venue of any action hereunder will be in Volusia County, Florida.

12. **Special Provisions.**

- a. This Agreement is a non-exclusive contract; the CITY is not prohibited, or deemed to be prohibited, from bidding similar services either as an independent job or a component of a larger project.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement effective the date first written above.

CITY OF SOUTH DAYTONA,
A Florida Municipality

WILLIAM C. HALL, Mayor

ATTEST:

(Seal)

JAMES L. GILLIS, City Manager

Date signed by CITY: _____

by _____
[...], as its President and authorized agent

(CORPORATE SEAL)

ATTEST:

[...], Secretary

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this __ day of _____, 2022, by _____ of _____, a Florida corporation, on behalf of the corporation, and he/she is personally known to me or has produced _____ as identification.

Signature of Notary Public - State of Florida

Printed/Typed/Stamped Name of Notary

My commission expires: _____

End of Solicitation Documents