

**BID DOCUMENTS
FOR
CITY OF SOUTH DAYTONA
MAGNOLIA PARK PLAYGROUND
FISHING THEME**



CITY OF SOUTH DAYTONA

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

BID NO. 23-B-008

March 2023

SECTION 1: INVITATION TO BID

CITY OF SOUTH DAYTONA Magnolia Park Playground - Fishing Theme BID NO. 23-B-008

Notice is hereby given that the City of South Daytona is soliciting bids for BID NO. 23-B-008, Magnolia Park Playground - Fishing Theme. 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 31, 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

Fishing themed playground set for children age's five (5) to twelve (12) with several ADA wheelchair accessible features and swing set with (2) child/parent and (2) molded bucket seats for children ages five (5) to twelve (12) within an expanded area of the existing footprint. In addition, replacement of engineered wood fiber to artificial turf in swing set area, playground area, and sitting area. Total price for this project should not exceed \$220,000 and should include a complete turn-key price of design, equipment, ground preparation, installation of all elements, post construction cleanup, shipping and any other cost incurred to the City of South Daytona. Contractors are encouraged to visit the site to verify site size, shape condition, and accessibility before submitting a proposal.

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;

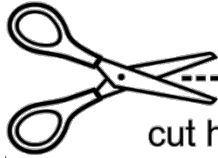
2. Irrevocable after the time and date set for the opening of bids and for a period of 90 days thereafter;
3. Respondents will submit one executed original marked and a USB drive containing an electronic version of the proposal, marked "**BID NO. 23-B-008, Magnolia Park Playground - Fishing Theme.**" 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-008
Magnolia Park Playground - Fishing Theme:	Magnolia Park Playground - Fishing Theme
Due Date / Time: :	Friday, March 31, 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 Magnolia Park Playground - Fishing Theme BID NO. 23-B-008

Project Description:

The work of this project consists of furnishing playground equipment, turf, labor, site prep, and materials for construction of a Fishing Theme Playground.

All work shall be complete, in place, and ready for service in accordance with the drawings and specifications.

The location of the project is South Daytona, Florida.

The awarded bid project agrees to provide the following equipment, any necessary support apparatus and proper installation of:

Reference	Item	QTY	Size/Description
A	Playground (for ages 5 to 12) and several separate components for wheelchair users.	1	Expanded footprint, traditional looking playground with upper and lower deck features, slides, shade cover, and climbing options.
B	Swing Set	1	(2) child/parent and (2) molded bucket seats for children ages five (5) to twelve (12)
C	Artificial Turf		swing set area, playground area, and sitting area

Playground Specification Notes and Requirements:

- The playground equipment is appropriate for the age group stipulated. The age group for this project ranges from five (5) to twelve (12) and incorporated a fishing theme.
- A swing set with 4 seats (2) child/parent and (2) molded bucket seats for children ages five (5) to twelve (12).
- All playground equipment proposed meets or exceeds the current guidelines of the Consumer Product Safety Commission (CPSC), the American Society for Testing Materials (ASTM), and the Americans with Disabilities Act (ADA).
- Playground installation shall be approved and supervised by a National Playground Safety Institute (NPSI) certified Playground Inspector that was also trained by the equipment manufacturer on proper installation techniques.

- Provide ground preparation required to successfully install the playground equipment. The playground equipment must be mounted in a footing.
- Decks shall be manufactured and finished with PVC coating and upright posts shall be either galvanized, steel, or aluminum material with a corrosion resistant finish.
- All bolts, nuts, washers, screws and other associated hardware used for playground assembly must be corrosion resistant stainless steel.
- All play decks shall have textured slip resistant surfaces.
- Installers must provide all labor, equipment, materials and supplies needed to install the play structure.
- There will be no “water play” type equipment installed on this playground; therefore, please do not include water play equipment in your proposal. Including water play equipment in your proposal could result in your proposal being rejected.
- Proper ADA access to all play features.
- Sod any disturbed areas adjacent to the playground footprint.

Specification Notes and Requirements:

1. There must be removal and cleanup of all debris and construction materials after the equipment is installed.
2. Any deviation from the terms of this RFP must be noted on these bidding documents and explanatory specifications attached to the proposal.
3. The final project will not be accepted until the City of South Daytona approves the work after the construction has been completed.
4. It will be the responsibility of the contractor, before digging (if needs to be done), to contact local utility agencies.
5. Any disturbed areas shall be sodded.
6. Construction site shall be returned to the condition it was in prior to construction starting. Contractor is responsible for repairing all damages to site.
7. In the event that any specification stated in this request for proposal conflicts with State and/or Federal laws, the State and/or Federal Laws shall prevail.
8. The selected contractor must comply with all Americans with Disabilities Act.
9. Any excess dirt as a result of construction and/or installation is to be removed from the site. Removed dirt shall be properly disposed of according to federal, state, and local laws that may apply.
10. All site preparation is the responsibility of the contractor.
11. No permit required for playground equipment in the City of South Daytona.
12. Must be a licensed contractor in Volusia County.

13. 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.
14. City Council will award contract based on selection committee recommendation.

SECTION 4: INSTRUCTIONS TO BIDDERS

**CITY OF SOUTH DAYTONA
Magnolia Park Playground - Fishing Theme
BID NO. 23-B-008**

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, March 13, 2023	Distribute RFP Document
Wednesday, March 22, 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 24, 2023	City to respond to Questions
Friday, March 31, 2023 at 2:00pm	Proposals Due to the City
Monday, April 3, 2023	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.

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 Wednesday, March 22, 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.

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SECTION 5: SCOPE OF WORK / BID SPECIFICATIONS

Scope for Project:

Project Description:

The work of this project consists of furnishing playground equipment, turf, labor, site prep, and materials for construction of a Fishing Theme Playground.

All work shall be complete, in place, and ready for service in accordance with the drawings and specifications.

The location of the project is South Daytona, Florida.

The awarded bid project agrees to provide the following equipment, any necessary support apparatus and proper installation of:

Reference	Item	QTY	Size/Description
A	Playground (for ages 5 to 12) and several separate components for wheelchair users.	1	Expanded footprint, exciting fishing theme playground with upper and lower deck features, slides, shade cover, and climbing options.
B	Swing Set	1	(2) child/parent and (2) molded bucket seats for children ages five (5) to twelve (12)
C	Artificial Turf		swing set area, playground area, and sitting area

Playground Specification Notes and Requirements:

- The playground equipment is appropriate for the age group stipulated. The age group for this project ranges from five (5) to twelve (12) and incorporated a fishing theme.
- A swing set with 4 seats (2) child/parent and (2) molded bucket seats for children ages five (5) to twelve (12).
- All playground equipment proposed meets or exceeds the current guidelines of the Consumer Product Safety Commission (CPSC), the American Society for Testing Materials (ASTM), and the Americans with Disabilities Act (ADA).
- Playground installation shall be approved and supervised by a National Playground Safety Institute (NPSI) certified Playground Inspector that was also trained by the equipment manufacturer on proper installation techniques.
- Provide ground preparation required to successfully install the playground equipment. The playground equipment must be mounted in a footing.

- Decks shall be manufactured and finished with PVC coating and upright posts shall be either galvanized, steel, or aluminum material with a corrosion resistant finish.
- All bolts, nuts, washers, screws and other associated hardware used for playground assembly must be corrosion resistant stainless steel.
- All play decks shall have textured slip resistant surfaces.
- Installers must provide all labor, equipment, materials and supplies needed to install the play structure.
- There will be no “water play” type equipment installed on this playground; therefore, please do not include water play equipment in your proposal. Including water play equipment in your proposal could result in your proposal being rejected.
- Proper ADA access to all play features.
- Sod any disturbed areas adjacent to the playground footprint.

Specification Notes and Requirements:

1. There must be removal and cleanup of all debris and construction materials after the equipment is installed.
2. Any deviation from the terms of this RFP must be noted on these bidding documents and explanatory specifications attached to the proposal.
3. The final project will not be accepted until the City of South Daytona approves the work after the construction has been completed.
4. It will be the responsibility of the contractor, before digging (if needs to be done), to contact local utility agencies.
5. Any disturbed areas shall be sodded.
6. Construction site shall be returned to the condition it was in prior to construction starting. Contractor is responsible for repairing all damages to site.
7. In the event that any specification stated in this request for proposal conflicts with State and/or Federal laws, the State and/or Federal Laws shall prevail.
8. The selected contractor must comply with all Americans with Disabilities Act.
9. Any excess dirt as a result of construction and/or installation is to be removed from the site. Removed dirt shall be properly disposed of according to federal, state, and local laws that may apply.
10. All site preparation is the responsibility of the contractor.
11. No permit required for playground equipment in the City of South Daytona.
12. Must be a licensed contractor in Volusia County.
13. 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.

14. City Council will award contract based on selection committee recommendation.

END-OF-SCOPE

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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 subcontracting 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(RFO)/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 90 calendar days thereafter, and to fully complete the work within 120 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.

SPECIFICATION NOTES AND REQUIREMENTS:

1. There must be removal and cleanup of all debris and construction materials after the equipment is installed.
2. Any deviation from the terms of this RFP must be noted on these bidding documents and explanatory specifications attached to the proposal.
3. The final project will not be accepted until the City of South Daytona approves the work after the construction has been completed.
4. It will be the responsibility of the contractor, before digging (if needs to be done), to contact local utility agencies.
5. Any disturbed areas shall be sodded.
6. Construction site shall be returned to the condition it was in prior to construction starting. Contractor is responsible for repairing all damages to site.
7. In the event that any specification stated in this request for proposal conflicts with State and/or Federal laws, the State and/or Federal Laws shall prevail.
8. The selected contractor must comply with all Americans with Disabilities Act.

9. Any excess dirt as a result of construction and/or installation is to be removed from the site. Removed dirt shall be properly disposed of according to federal, state, and local laws that may apply.
10. All site preparation is the responsibility of the contractor.
11. No permit required for playground equipment in the City of South Daytona.
12. Must be a licensed contractor in Volusia County.
13. 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.
14. City Council will award contract based on selection committee recommendation.

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.

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: Independent Contractors Agreement
- Attachment: Bid Proposal
- Copy of License(s)
- Insurance Certificate
- Submission of one (1) original marked "ORIGINAL," two (2) copies 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: **Magnolia Park Playground - Fishing Theme**

BID IDENTIFICATION AND NUMBER: BID NO. 23-B-008

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-008, Magnolia Park Playground - Fishing Theme," 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.

**BID FORM 8E:
Anti-Collusion Statement**

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*: **180 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

Magnolia Park Playground - Fishing Theme
BID NO. 23-B-008

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.

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 180 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: Parks and Recreation Director Amy Zengotita, 504 Big Tree Road, South Daytona, Florida 32119, 386-322-3070, azengotita@southdaytona.org
- 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