

BID DOCUMENTS
FOR
CITY OF SOUTH DAYTONA
Permanent Generator for
South Daytona Municipal Complex



CITY OF SOUTH DAYTONA

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

BID NO. 23-B-010

April 2023

SECTION 1: INVITATION TO BID

CITY OF SOUTH DAYTONA Permanent Generator for South Daytona Municipal Complex BID NO. 23-B-010

Notice is hereby given that the City of South Daytona is soliciting bids for BID NO. 23-B-010, Permanent Generator for South Daytona Municipal Complex. 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 Thursday, May 25, 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

As a Hazard Mitigation Grant Program (HMGP) project, the contractor shall provide backup power to the Municipal Complex, located at 1672 South Ridgewood Avenue, South Daytona, Florida 32119. Coordinates: (29.181117, -81.008100)

The HMGP project shall provide protection by purchasing and installing a permanent diesel generator with a capacity of 250 kW, or the adequate size determined by the vendor and/or an electrical engineer during the bid process to appropriately support the critical facility. The project includes constructing a concrete pad, installing an automatic transfer switch (ATS), and electrical connections. The Complex is made up of three (3) connected buildings (City Hall, Fire Department, and Police Department), which serve as the Emergency Operations Center (EOC), Public Information Office (PIO), and flood preparedness. Currently, there is a 100 kW generator that only covers the Fire Department and the Police Department, which has become inoperable due to its age. The project shall allow the city to maintain the Municipal Complex operational during future power outages.

The generator(s) shall be protected against a 500-year flood event by implementing specific activities or by locating the generator(s) outside the Special Flood Hazard Area (SFHA) and shall be protected against wind with a rated enclosure based on its location requirements. Activities shall be completed in strict compliance with Federal, State and Local Rules and Regulations.

PRE-BID CONFERENCE:

There will be a Pre-Bid Conference for the project on Friday, May 5, 2023 at 2:00pm at City Hall at 1672 South Ridgewood Avenue, South Daytona, Florida. All attendees to the Pre-Bid Conference must sign in. The representative of each Vendor shall be an authorized employee of the Vendor and shall sign in accordingly.

All work is specified within the Bid Documents. A digital copy of the Bid Documents may be obtained at no charge via electronic mail by making a request to the Deputy City Clerk at

bwitte@southdaytona.org. The documents will also be made available at the Office of the City Manager located inside City Hall at 1672 South Ridgewood Avenue, South Daytona, Florida. Any addenda to these documents will be issued via electronic mail and posted on the City of South Daytona Website (www.southdaytona.org). It is the bidder's responsibility to confirm that all addenda have been received prior to submitting a proposal in response to this request.

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

Bids shall be:

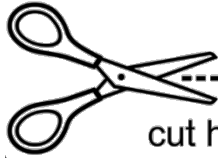
1. Submitted on standard forms which will be furnished with the Bid/Project Manual;
2. Irrevocable after the time and date set for the opening of bids and for a period of 90 days thereafter;
3. Respondents will submit one executed original marked and a USB drive containing an electronic version of the proposal, marked "**BID NO. 23-B-010, Permanent Generator for South Daytona Municipal Complex.**" 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:
 - Form 9B: Acknowledgement and Pricing Proposal
 - Form 9C: Drug Free/Tie Preference Statement
 - Form 9D: Public Entity Crimes Statement
 - Form 9E: Anti-Collusion Statement
 - Form 9F: Statement of Vendor Qualifications
 - Form 9G: Professional References for Previous Experience
 - Form 9H: Listing of Subcontractors
 - Form 9I: Required Project Milestones
 - Form 9J: Bid Bond
 - Form 9K: Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion
 - Form 9L: Independent Contractors Agreement
 - Attachment: Bid Proposal
 - Copy of License(s)
 - Insurance Certificate

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-010
Permanent Generator for South Daytona Municipal Complex:	Permanent Generator for South Daytona Municipal Complex
Due Date / Time: :	Thursday, May 25, 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 Permanent Generator for South Daytona Municipal Complex BID NO. 23-B-010

As a Hazard Mitigation Grant Program (HMGP) project, the Sub-Recipient shall provide backup power to the Municipal Complex, located at 1672 South Ridgewood Avenue, South Daytona, Florida 32119. Coordinates: (29.181117, -81.008100).

The HMGP project shall provide protection by purchasing and installing a permanent diesel generator with a capacity of 250 kW, or the adequate size determined by the vendor and/or an electrical engineer during the bid process to appropriately support the critical facility. The project includes constructing a concrete pad, installing an automatic transfer switch (ATS), and electrical connections. The Complex is made up of three (3) connected buildings (City Hall, Fire Department, and Police Department), which serve as the Emergency Operations Center (EOC), Public Information Office (PIO), and flood preparedness. Currently, there is a 100 kW generator that only covers the Fire Department and the Police Department, which has become inoperable due to its age. The project shall allow the city to maintain the Municipal Complex operational during future power outages.

The generator(s) shall be protected against a 500-year flood event by implementing specific activities or by locating the generator(s) outside the Special Flood Hazard Area (SFHA) and shall be protected against wind with a rated enclosure based on its location requirements. Activities shall be completed in strict compliance with Federal, State and Local Rules and Regulations.

GRANT AGREEMENT NUMBER H0939 FOR PROJECT 4486-018-R IS ATTACHED.

Compliance with the Federal procurement standards in 2 C.F.R. §§200.318 through 200.327 and required contract provisions in Appendix II to 2 C.F.R. Part 200 is required. Grant Agreement is attached.

SECTION 4: INSTRUCTIONS TO BIDDERS

CITY OF SOUTH DAYTONA Permanent Generator for South Daytona Municipal Complex BID NO. 23-B-010

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, April 17, 2023	Distribute RFP Document
Friday, May 5, 2023 at 2:00pm	Pre-Bid Conference at City Hall, 1672 S. Ridgewood Avenue, South Daytona
Friday, May 12, 2023 by 4:00pm	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.
Wednesday, May 17, 2023	City to respond to Questions
Thursday, May 25, 2023	Proposals Due to the City
Wednesday, May 31, 2023	Selection Committee Meeting (<i>tentative date</i>)
Tuesday, June 13, 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.

PRE-BID CONFERENCE:

There will be a Pre-Bid Conference for the project on Friday, May 5, 2023 at 2:00pm at City Hall at 1672 South Ridgewood Avenue, South Daytona, Florida. All attendees to the Pre-Bid Conference must sign in. The representative of each Vendor shall be an authorized employee of the Vendor and shall sign in accordingly.

Examination of Contract Documents and Site

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

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

On request the City will provide each Bidder access to the site to conduct such investigations and tests as each Bidder deems necessary for submission of his Bid. Bidders making such investigations shall return site to original condition and shall pay for any damages resulting therefrom.

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

Bid Coordinator

The coordinator for this Bid is:

Becky Witte, Deputy City Clerk

bwitte@southdaytona.org

Phone: 386-322-3011

The City will not respond to oral inquiries. Respondents may submit written (by email only) inquiries regarding this to the coordinator. **Written inquiries must be received by Friday, May 12, 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.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed.

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.

Grant Agreement Number H0939 for Project 4486-018-R is attached.

Compliance with the Federal procurement standards in 2 C.F.R. §§200.318 through 200.327 and required contract provisions in Appendix II to 2 C.F.R. Part 200 is required. Grant Agreement is attached.

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SECTION 5: SCOPE OF WORK / BID SPECIFICATIONS

Scope for Project:

Project Description:

As a Hazard Mitigation Grant Program (HMGP) project, the contractor shall provide backup power to the Municipal Complex, located at 1672 South Ridgewood Avenue, South Daytona, Florida 32119.

Coordinates: (29.181117, -81.008100).

The HMGP project shall provide protection by purchasing and installing a permanent diesel generator with a capacity of 250 kW, or the adequate size determined by the vendor and/or an electrical engineer during the bid process to appropriately support the critical facility. The project includes constructing a concrete pad, installing an automatic transfer switch (ATS), and electrical connections. The Complex is made up of three (3) connected buildings (City Hall, Fire Department, and Police Department), which serve as the Emergency Operations Center (EOC), Public Information Office (PIO), and flood preparedness. Currently, there is a 100 kW generator that only covers the Fire Department and the Police Department, which has become inoperable due to its age. The project shall allow the city to maintain the Municipal Complex operational during future power outages.

The generator(s) shall be protected against a 500-year flood event by implementing specific activities or by locating the generator(s) outside the Special Flood Hazard Area (SFHA) and shall be protected against wind with a rated enclosure based on its location requirements. Activities shall be completed in strict compliance with Federal, State and Local Rules and Regulations.

The contractor will be responsible for furnishing or contracting all labor, plans, permits, materials, equipment, tools, transportation and supervision and for performing all work.

All installations shall be done in strict compliance with the Florida Building Code and Contractor shall obtain (before starting project work) and comply with all required permits and approvals.

Upon Completion of the Project, the Contractor will be responsible for delivering the following to the City:

- a) Copy of permit(s), notice of commencement.
- b) City Building Official Inspection Report and Final Approval.
- c) A copy of electrical designs, specifications and/or drawings elaborated to complete the scope.
- d) Signed and Sealed copy of the As-built plans, as applicable.
- e) Certified Letter of Completion, as applicable:
 1. Affirming that the project has been completed in conformance with the approved project drawings, specifications, and scope.
 2. Certifying Compliance with all applicable codes.

f) All Product Specifications/ Data Sheet(s) (technical standards) satisfying protection requirements on all products utilized.

g) Verification letter or documentation showing if unusable equipment, debris and materials, petroleum products, hazardous materials, or toxic wastes were encountered and, if so, how they were handled and disposed of, to include where they were disposed of.

HMGP Budget (not to exceed):

Materials: \$310,000

Labor: \$95,000

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(RFQ)/ITN

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

95. RIGHT OF WITHDRAWAL

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

96. RIGHTS TO SOLICITATION SUBMITTED MATERIAL

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

97. RULES, REGULATIONS AND LICENSING REQUIREMENT

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

98. SAMPLES

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

99. SEPARATION AND DISTRIBUTION

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

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

100. SEVERABILITY

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

101. SIGNATURE REQUIRED

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

102. SIGNED RESPONSE CONSIDERED AN OFFER

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

103. SILENCE OF SPECIFICATIONS

The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations

of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item bid.

104. SOLICITATION FORM COMPLETION, SUBMISSION AND RECEIPT OF RESPONSES

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

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

105. SOVEREIGN IMMUNITY.

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

106. STATE LICENSING REQUIREMENTS

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

107. SUBCONTRACTING

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

108. SUPPLEMENTAL MATERIALS

Vendors are responsible for including all pertinent product data in the returned bid package. Literature, brochures, data sheets, specification information, completed forms requested as part of the bid package and any other facts which may affect the evaluation and subsequent contract award should be included.

Materials such as legal documents and contractual agreements that the Vendor wishes to include as a condition of the bid must also be in the returned bid package.

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

109. TAXES

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

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

110. TERM CONTRACTS

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

111. TERMINATION

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

112. TIME IS OF THE ESSENCE

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

113. TITLE TRANSFER

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

114. UNBALANCED BID

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

115. USE OF SOLICITATION FORMS

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

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

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

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

116. VARIANCES

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

117. VENDOR'S PRODUCT OR SERVICES

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

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

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

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

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

118. WAIVER OF IRREGULARITIES

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

119. WARRANTIES

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

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

SECTION 8: SPECIAL CONDITIONS

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

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 60 calendar days thereafter, and to fully complete the work within 90 calendar days. The Vendor shall not be entitled to any damages on account of hindrances or delays in construction from any cause whatsoever. This paragraph shall include but not be limited to any actions which result in delays in scheduling, substantial changes in scope of work, or substantial increases in the costs of performing the work under this Agreement.

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

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

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

GRANT AGREEMENT NUMBER H0939 FOR PROJECT 4486-018-R: Compliance with the Federal procurement standards in 2 C.F.R. §§200.318 through 200.327 and required contract provisions in Appendix II to 2 C.F.R. Part 200 is required. Grant Agreement is attached.

§ 200.318 General procurement standards.

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in [§§ 200.317](#) through [200.327](#).

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also [§ 200.214](#).

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)

(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[[85 FR 49543](#), Aug. 13, 2020, as amended at [86 FR 10440](#), Feb. 22, 2021]

§ 200.319 Competition.

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](#).

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with [§ 200.320\(c\)](#).

§ 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and [§§ 200.317](#), [200.318](#), and [200.319](#) for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) **Informal procurement methods.** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in [§ 200.1](#), or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) **Micro-purchases -**

(i) **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in [§ 200.1](#)). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with [paragraphs \(a\)\(1\)\(iv\)](#) and [\(v\)](#) of this section.

(iv) **Non-Federal entity increase to the micro-purchase threshold up to \$50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with [§ 200.334](#). The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in [§ 200.520](#) for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) ***Non-Federal entity increase to the micro-purchase threshold over \$50,000.*** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in [paragraph \(a\)\(1\)\(iv\)](#) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) ***Small purchases -***

(i) ***Small purchase procedures.*** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) ***Simplified acquisition thresholds.*** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) ***Formal procurement methods.*** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with [§ 200.319](#) or [paragraph \(c\)](#) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) ***Sealed bids.*** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) **Proposals.** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be

used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.

(c) ***Noncompetitive procurement.*** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see [paragraph \(a\)\(1\)](#) of this section);
- (2) The item is available only from a single source;
- (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
- (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
- (5) After solicitation of a number of sources, competition is determined inadequate.

[§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.](#)

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in [paragraphs \(b\)\(1\) through \(5\)](#) of this section.

§ 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

§ 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 200.324 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the

work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under [subpart E of this part](#). The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§ 200.325 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in [paragraph \(b\)](#) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§ 200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” ([30 FR 12319, 12935, 3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the

standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act ([42 U.S.C. 7401-7671q.](#)) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

SECTION 9: BID FORMS

BID FORM 9A: BID SUBMITTAL CHECKLIST

- Form 9B: Acknowledgement and Pricing Proposal
- Form 9C: Drug Free/Tie Preference Statement
- Form 9D: Public Entity Crimes Statement
- Form 9E: Anti-Collusion Statement
- Form 9F: Statement of Vendor Qualifications
- Form 9G: Professional References for Previous Experience
- Form 9H: Listing of Subcontractors
- Form 9I: Required Project Milestones
- Form 9J: Bid Bond (*if required*)
- Form 9K: Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion
- Form 9L: Independent Contractors Agreement
- GRANT AGREEMENT H0939 FOR PROJECT 4486-018-R
- Attachment: Bid Proposal
- Copy of License(s)
- Insurance Certificate
- Submission of one (1) original marked "ORIGINAL" 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 9B: Bid Form
Acknowledgement and Pricing Proposal

PROJECT IDENTIFICATION: Permanent Generator for South Daytona Municipal Complex

BID IDENTIFICATION AND NUMBER: BID NO. 23-B-010

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-010, Permanent Generator for South Daytona Municipal Complex," 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 9C:
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 9D:
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 9E:
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 9F:
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 9G:
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 9H:
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 9I:
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*: **60 Days**

Required Final Completion Time*: **90 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 9K:
 Certification Regarding
 Debarment, Suspension, Ineligibility
 And Voluntary Exclusion**

Subcontractor Covered Transactions

The prospective subcontractor, _____, of the Sub-Recipient certifies, by submission of this document, that neither it, its principals, nor affiliates are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this transaction by any Federal department or agency.

SUBCONTRACTOR

By: _____
 Signature

Name and Title

Street Address

City, State, Zip

Date

City of South Daytona _____
 Sub-Recipient's Name

H0939 _____
 DEM Contract Number

4486-018-R _____
 FEMA Project Number

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 60 calendar days thereafter, and to

fully complete the work within 90 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: Becky Witte, Deputy City Clerk, 386-322-3014, bwitte@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.** 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: _____

BID FORM
GRANT AGREEMENT H0939 FOR PROJECT 4486-018-R



STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

Ron DeSantis
Governor

Kevin Guthrie
Director

March 8, 2023

Ms. Becky Witte
Deputy City Clerk
1672 S. Ridgewood Avenue
South Daytona, FL 32119

Re: Project #4486-018-R, City of South Daytona

Dear Ms. Witte:

Enclosed is the executed Hazard Mitigation Grant Program (HMGP) contract number H0939 between City of South Daytona and the Division of Emergency Management.

Please email all Requests for Reimbursement (Attachment D) to the project manager at Brianna.Nelson@em.myflorida.com. The Project Manager for this contract is:

Brianna Nelson, Project Manager
Florida Division of Emergency Management
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399

If you have any specific questions regarding the contract or the Request for Reimbursement form, please contact Brianna Nelson at (850) 328-5672.

Respectfully,

Laura Dhuwe

Digitally signed by Laura
Dhuwe
Date: 2023.03.08 13:07:57
-05'00'

Laura Dhuwe
Bureau Chief, Mitigation
State Hazard Mitigation Officer

Enclosure

Agreement Number: H0939
 Project Number: 4486-018-R

FEDERALLY-FUNDED SUBAWARD AND GRANT AGREEMENT

2 C.F.R. §200.1 states that a “subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.”

As defined by 2 C.F.R. §200.1, “pass-through entity” means “a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.”

As defined by 2 C.F.R. §200.1, “Sub-Recipient” means “an entity, usually but not limited to non-Federal entities that receives a subaward from a pass-through entity to carry out part of a Federal program.”

As defined by 2 C.F.R. §200.1, “Federal award” means “Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity.”

As defined by 2 C.F.R. §200.1, “subaward” means “an award provided by a pass-through entity to a Sub-Recipient for the Sub-Recipient to carry out part of a Federal award received by the pass-through entity.”

The following information is provided pursuant to 2 C.F.R. §200.332:

Sub-Recipient’s name:	<u>City of South Daytona</u>
Sub-Recipient’s unique entity identifier (UEI/FEIN):	<u>JGF6FNNSXLS3 / 59-6000430</u>
Federal Award Identification Number (FAIN):	<u>FEMA-DR-4486-FL</u>
Federal Award Date:	<u>December 16, 2022</u>
Subaward Period of Performance Start and End Date:	<u>Upon execution through December 31, 2025</u>
Amount of Federal Funds Obligated by this Agreement:	<u>\$364,500.00</u>
Total Amount of Federal Funds Obligated to the Sub-Recipient by the pass-through entity to include this Agreement:	<u>\$378,000.00</u>
Total Amount of the Federal Award committed to the Sub-Recipient by the pass-through entity	<u>\$378,000.00</u>
Federal award project description (see FFATA):	<u>Generator</u>
Name of Federal awarding agency:	<u>Federal Emergency Management Agency</u>
Name of pass-through entity:	<u>FL Division of Emergency Management</u>
Contact information for the pass-through entity:	<u>Brianna.Nelson@em.myflorida.com</u>
Catalog of Federal Domestic Assistance (CFDA) Number and Name:	<u>97.039 Hazard Mitigation Grant Program</u>
Whether the award is R&D:	<u>N/A</u>
Indirect cost rate for the Federal award:	<u>N/A</u>

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and City of South Daytona, (hereinafter referred to as the "Sub-Recipient").

For the purposes of this Agreement, the Division serves as the pass-through entity for a Federal award, and the Sub-Recipient serves as the recipient of a subaward.

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

A. The Sub-Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein;

B. The State of Florida received these grant funds from the Federal government, and the Division has the authority to subgrant these funds to the Sub-Recipient upon the terms and conditions outlined below; and,

C. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Sub-Recipient agree to the following:

(1) APPLICATION OF STATE LAW TO THIS AGREEMENT

2 C.F.R. §200.302(a) provides: "Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds." Therefore, section 215.971, Florida Statutes, entitled "Agreements funded with federal or state assistance", applies to this Agreement.

(2) LAWS, RULES, REGULATIONS AND POLICIES

a. The Sub-Recipient's performance under this Agreement is subject to 2 C.F.R. Part 200, entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

b. As required by section 215.971(1), Florida Statutes, this Agreement includes:

i. A provision specifying a scope of work that clearly establishes the tasks that the Sub-Recipient is required to perform.

ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

iii. A provision specifying the financial consequences that apply if the Sub-Recipient fails to perform the minimum level of service required by the agreement.

iv. A provision specifying that the Sub-Recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.

v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.

vi. A provision specifying that any funds paid in excess of the amount to which the Sub-Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.

c. In addition to the foregoing, the Sub-Recipient and the Division shall be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment B. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(3) CONTACT

a. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Sub-Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Sub-Recipient performance; and,
- ii. Review and document all deliverables for which the Sub-Recipient requests payment.

b. The Division's Grant Manager for this Agreement is:

Brianna Nelson
Project Manager
Bureau of Mitigation
Florida Division of Emergency Management
2555 Shumard Oak Boulevard
Tallahassee, FL 32399
Telephone: (850) 328-5672
Email: Brianna.Nelson@em.myflorida.com

The Division's Alternate Grant Manager for this Agreement is:

Kathleen Marshall
Community Program Manager
Bureau of Mitigation
Florida Division of Emergency Management
2555 Shumard Oak Boulevard
Tallahassee, FL 32399
Telephone: 850-815-4503
Email: Kathleen.Marshall@em.myflorida.com

1. The name and address of the Representative of the Sub-Recipient responsible for the administration of this Agreement is:

Becky Witte
Deputy City Clerk
1672 S. Ridgewood Avenue
South Daytona, Florida 32119
Telephone: (386) 322-3011
Email: bwitte@southdaytona.org

2. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

(4) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(5) EXECUTION

This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(6) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(7) SCOPE OF WORK

The Sub-Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(8) PERIOD OF AGREEMENT

This Agreement shall begin upon execution by both parties and shall end on December 31, 2025, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement. Consistent with the definition of "period of performance" contained in 2 C.F.R. §200.1, the term "period of agreement" refers to the time during which the Sub-Recipient "may incur new obligations to carry out the work authorized under" this Agreement. In accordance with section 215.971(1)(d), Florida Statutes, the Sub-Recipient may expend funds authorized by this Agreement "only for allowable costs resulting from obligations incurred during" the period of agreement.

(9) FUNDING

- a. This is a cost-reimbursement Agreement, subject to the availability of funds.

b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either chapter 216, Florida Statutes, or the Florida Constitution.

c. The Division will reimburse the Sub-Recipient only for allowable costs incurred by the Sub-Recipient in the successful completion of each deliverable. The maximum reimbursement amount for each deliverable is outlined in Attachment A of this Agreement ("Budget and Scope of Work"). The maximum reimbursement amount for the entirety of this Agreement is **\$364,500.00**.

d. As required by 2 C.F.R. §200.415(a), any request for payment under this Agreement must include a certification, signed by an official who is authorized to legally bind the Sub-Recipient, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

e. The Division will review any request for reimbursement by comparing the documentation provided by the Sub-Recipient against a performance measure, outlined in Attachment A, that clearly delineates:

- i. The required minimum acceptable level of service to be performed; and,
- ii. The criteria for evaluating the successful completion of each deliverable.

f. The performance measure required by section 215.971(1)(b), Florida Statutes, remains consistent with the requirement for a "performance goal", which is defined in 2 C.F.R. §200.1 as "a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared." It also remains consistent with the requirement, contained in 2 C.F.R. §200.329, that the Division and the Sub-Recipient "relate financial data to performance goals and objectives of the Federal award."

g. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for overtime expenses in accordance with 2 C.F.R. §200.430 ("Compensation—personal services") and 2 C.F.R. §200.431 ("Compensation—fringe benefits"). If the Sub-Recipient seeks reimbursement for overtime expenses for periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause (See 29 U.S.C. §207(e)(2)), then the Division will treat the expense as a fringe benefit. 2 C.F.R. §200.431(a) defines fringe benefits as "allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages." Fringe benefits are allowable under this Agreement as long as the benefits are reasonable and are required by law, Sub-Recipient-employee agreement, or an established policy of the Sub-Recipient. 2 C.F.R. §200.431(b) provides that the cost of fringe benefits in

the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

- i. They are provided under established written leave policies;
- ii. The costs are equitably allocated to all related activities, including Federal awards; and,
- iii. The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

h. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for travel expenses in accordance with 2 C.F.R. §200.474. As required by the Reference Guide for State Expenditures, reimbursement for travel must be in accordance with section 112.061, Florida Statutes, which includes submission of the claim on the approved state travel voucher. If the Sub-Recipient seeks reimbursement for travel costs that exceed the amounts stated in section 112.061(6)(b), Florida Statutes (\$6 for breakfast, \$11 for lunch, and \$19 for dinner), then the Sub-Recipient must provide documentation that:

- i. The costs are reasonable and do not exceed charges normally allowed by the Sub-Recipient in its regular operations as a result of the Sub-Recipient's written travel policy; and,
- ii. Participation of the individual in the travel is necessary to the Federal award.

i. The Division's grant manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the grant agreement period and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Sub-Recipient.

j. As defined by 2 C.F.R. §200.1, the term "improper payment" means or includes:
i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,

ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

(10) RECORDS

a. As required by 2 C.F.R. §200.336, the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the Division, or any of their authorized representatives, shall enjoy the right of access to any documents, papers, or other records of the Sub-Recipient which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right

of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents. Finally, the right of access is not limited to the required retention period but lasts as long as the records are retained.

b. As required by 2 C.F.R. §200.332(a)(5), the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Sub-Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents.

c. As required by Florida Department of State's record retention requirements (Chapter 119, Florida Statutes) and by 2 C.F.R. §200.334, the Sub-Recipient shall retain sufficient records to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of five (5) years from the date of submission of the final expenditure report. The following are the only exceptions to the five (5) year requirement:

i. If any litigation, claim, or audit is started before the expiration of the 5-year period, then the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

ii. When the Division or the Sub-Recipient is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

iii. Records for real property and equipment acquired with Federal funds must be retained for 5 years after final disposition.

iv. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 5-year retention requirement is not applicable to the Sub-Recipient.

v. Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

d. In accordance with 2 C.F.R. §200.335, the Federal awarding agency must request transfer of certain records to its custody from the Division or the Sub-Recipient when it determines that the records possess long-term retention value.

e. In accordance with 2 C.F.R. §200.336, the Division must always provide or accept paper versions of Agreement information to and from the Sub-Recipient upon request. If paper copies are submitted, then the Division must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

f. As required by 2 C.F.R. §200.303, the Sub-Recipient shall take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or the Division designates as sensitive or the Sub-Recipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

g. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three, basic requirements: (1) meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and, (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Sub-Recipient based upon the funds provided under this Agreement, the meetings of the Sub-Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with chapter 119, Florida Statutes.

h. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to

perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

i. The Sub-Recipient shall maintain all records for the Sub-Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 815-7671 Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

(11) AUDITS

a. The Sub-Recipient shall comply with the audit requirements contained in 2 C.F.R. Part 200, Subpart F.

b. In accounting for the receipt and expenditure of funds under this Agreement, the Sub-Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R. §200.1, GAAP "has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB)."

c. When conducting an audit of the Sub-Recipient's performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.1, GAGAS, "also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits."

d. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Sub-Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the Division has notified the Sub-Recipient of such non-compliance.

e. The Sub-Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as “an independent certified public accountant licensed under chapter 473.” The independent auditor shall state that the audit complied with the applicable provisions noted above. The audit must be received by the Division no later than nine months from the end of the Sub-Recipient’s fiscal year.

f. The Sub-Recipient shall send copies of reporting packages for audits conducted in accordance with 2 C.F.R. Part 200, by or on behalf of the Sub-Recipient, to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

g. The Sub-Recipient shall send the Single Audit reporting package and Form SF-SAC to the Federal Audit Clearinghouse by submission online at:

<http://harvester.census.gov/fac/collect/ddeindex.html>

h. The Sub-Recipient shall send any management letter issued by the auditor to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

(12) REPORTS

a. Consistent with 2 C.F.R. §200.328, the Sub-Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Sub-Recipient and all subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

b. Quarterly reports are due to the Division no later than fifteen (15) days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30, and December 31.

c. The close-out report is due sixty (60) days after termination of this Agreement or sixty (60) days after completion of the activities contained in this Agreement, whichever first occurs.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, then the Division may withhold further payments until they are completed or may take other action as stated in Paragraph (16) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.

e. The Sub-Recipient shall provide additional program updates or information that may be required by the Division.

f. The Sub-Recipient shall provide additional reports and information identified in Attachment F.

(13) MONITORING

a. The Sub-Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement and reported in the quarterly report.

b. In addition to reviews of audits, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, and/or other procedures. The Sub-Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that a limited scope audit of the Sub-Recipient is appropriate, the Sub-Recipient agrees to comply with any additional instructions provided by the Division to the Sub-Recipient regarding such audit. The Sub-Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Sub-Recipient throughout the contract term to ensure timely completion of all tasks.

(14) LIABILITY

a. Unless Sub-Recipient is a State agency or subdivision, as defined in section 768.28(2), Florida Statutes, the Sub-Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement and, as authorized by section 768.28(19), Florida Statutes, Sub-Recipient shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performance under this Agreement. For purposes of this Agreement, Sub-Recipient agrees that it is not an employee or agent of the Division, but is an independent contractor.

b. As required by section 768.28(19), Florida Statutes, any Sub-Recipient which is a state agency or subdivision, as defined in section 768.28(2), Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of

sovereign immunity by any Sub-Recipient to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

(15) DEFAULT

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (16); however, the Division may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment if:

- a. Any warranty or representation made by the Sub-Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Sub-Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;
- b. Material adverse changes occur in the financial condition of the Sub-Recipient at any time during the term of this Agreement, and the Sub-Recipient fails to cure this adverse change within thirty (30) days from the date written notice is sent by the Division;
- c. Any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information; or,
- d. The Sub-Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(16) REMEDIES

If an Event of Default occurs, then the Division shall, after thirty (30) calendar days written notice to the Sub-Recipient and upon the Sub-Recipient's failure to cure within those thirty (30) days, exercise any one or more of the following remedies, either concurrently or consecutively:

- a. Terminate this Agreement, provided that the Sub-Recipient is given at least thirty (30) days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (3) herein;
- b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;
- c. Withhold or suspend payment of all or any part of a request for payment;
- d. Require that the Sub-Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
- e. Exercise any corrective or remedial actions, to include but not be limited to:

- i. Request additional information from the Sub-Recipient to determine the reasons for or the extent of non-compliance or lack of performance,
- ii. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected,
- iii. Advise the Sub-Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or
- iv. Require the Sub-Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;
- f. Exercise any other rights or remedies which may be available under law.

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Sub-Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Sub-Recipient.

(17) TERMINATION

- a. The Division may terminate this Agreement for cause after thirty (30) days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Sub-Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under chapter 119, Florida Statutes, as amended.
- b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Sub-Recipient with thirty (30) calendar day's prior written notice.
- c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of the Agreement.
- d. In the event that this Agreement is terminated, the Sub-Recipient will not incur new obligations for the terminated portion of the Agreement after the Sub-Recipient has received the notification of termination. The Sub-Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Sub-Recipient shall not be relieved of liability to the Division because of any breach of Agreement by the Sub-Recipient. The Division may, to the extent authorized by law, withhold payments to the Sub-Recipient for the purpose of set-off until the exact amount of damages due the Division from the Sub-Recipient is determined.

(18) PROCUREMENT

a. The Sub-Recipient shall ensure that any procurement involving funds authorized by the Agreement complies with all applicable federal and state laws and regulations, to include 2 C.F.R. §§200.318 through 200.327 as well as Appendix II to 2 C.F.R. Part 200 (entitled "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards").

b. As required by 2 C.F.R. §200.318(i), the Sub-Recipient shall "maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."

c. As required by 2 C.F.R. §200.318(b), the Sub-Recipient shall "maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders." In order to demonstrate compliance with this requirement, the Sub-Recipient shall document, in its quarterly report to the Division, the progress of any and all subcontractors performing work under this Agreement.

d. The Sub-Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

e. As required by 2 C.F.R. §200.318(c)(1), the Sub-Recipient shall "maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts."

f. As required by 2 C.F.R. §200.319(a), the Sub-Recipient shall conduct any procurement under this agreement "in a manner providing full and open competition." Accordingly, the Sub-Recipient shall not:

- i. Place unreasonable requirements on firms in order for them to qualify to do business;
- ii. Require unnecessary experience or excessive bonding;
- iii. Use noncompetitive pricing practices between firms or between affiliated companies;
- iv. Execute noncompetitive contracts to consultants that are on retainer contracts;
- v. Authorize, condone, or ignore organizational conflicts of interest;
- vi. Specify only a brand name product without allowing vendors to offer an equivalent;

- vii. Specify a brand name product instead of describing the performance, specifications, or other relevant requirements that pertain to the commodity or service solicited by the procurement;
- viii. Engage in any arbitrary action during the procurement process; or,
- ix. Allow a vendor to bid on a contract if that bidder was involved with developing or drafting the specifications, requirements, statement of work, invitation to bid, or request for proposals.
- g. "[E]xcept in those cases where applicable Federal statutes expressly mandate or encourage" otherwise, the Sub-Recipient, as required by 2 C.F.R. §200.319(c), shall not use a geographic preference when procuring commodities or services under this Agreement.
- h. The Sub-Recipient shall conduct any procurement involving invitations to bid (i.e. sealed bids) in accordance with 2 C.F.R. §200.320(d) as well as section 287.057(1)(a), Florida Statutes.
- i. The Sub-Recipient shall conduct any procurement involving requests for proposals (i.e. competitive proposals) in accordance with 2 C.F.R. §200.320(2) as well as section 287.057(1)(b), Florida Statutes.
- j. For each subcontract, the Sub-Recipient shall provide a written statement to the Division as to whether that subcontractor is a minority business enterprise, as defined in section 288.703, Florida Statutes. Additionally, the Sub-Recipient shall comply with the requirements of 2 C.F.R. §200.321 ("Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms").
- k. If the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall review its competitive solicitation and subsequent contract to be awarded for compliance with the procurement standards in 2 C.F.R. §§200.318 through 200.327 and required contract provisions in Appendix II to 2 C.F.R. Part 200. If the Sub-Recipient publishes a competitive solicitation or executes a contract that is not in compliance with the Federal procurement standards in 2 C.F.R. §§200.318 through 200.327 or the requirements of Appendix II to 2 C.F.R. Part 200, then the Sub-Recipient is on notice that the Division may:
 - a) Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; or,
 - b) Refuse to reimburse the Sub-Recipient for any costs associated with that solicitation.
- l. FEMA has developed helpful resources for subgrant recipients related to compliance with the Federal procurement standards in 2 C.F.R. §§200.318 through 200.327 and required contract provisions in Appendix II to 2 C.F.R. Part 200. These resources are generally available at <https://www.fema.gov/procurement-disaster-assistance-team>.

(19) ATTACHMENTS

- a. All attachments to this Agreement are incorporated as if set out fully.
- b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.
- c. This Agreement has the following attachments:
 - i. Exhibit 1 - Funding Sources
 - ii. Attachment A – Budget and Scope of Work
 - iii. Attachment B – Program Statutes and Regulations
 - iv. Attachment C – Statement of Assurances
 - v. Attachment D – Request for Advance or Reimbursement
 - vi. Attachment E – Justification of Advance Payment
 - vii. Attachment F – Quarterly Report Form
 - viii. Attachment G – Warranties and Representations
 - ix. Attachment H – Certification Regarding Debarment
 - x. Attachment I – Federal Funding Accountability and Transparency Act
 - xi. Attachment J – Mandatory Contract Provisions
 - xii. Attachment K – Certification Regarding Lobbying

(20) PAYMENTS

- a. Any advance payment under this Agreement is subject to 2 C.F.R. §200.305 and, as applicable, section 216.181(16), Florida Statutes. All advances are required to be held in an interest-bearing account. If an advance payment is requested, the budget data on which the request is based and a justification statement shall be included in this Agreement as Attachment E. Attachment E will specify the amount of advance payment needed and provide an explanation of the necessity for and proposed use of these funds. No advance shall be accepted for processing if a reimbursement has been paid prior to the submittal of a request for advanced payment. After the initial advance, if any, payment shall be made on a reimbursement basis as needed.
- b. Invoices shall be submitted at least quarterly and shall include the supporting documentation for all costs of the project or services. The final invoice shall be submitted within sixty (60) days after the expiration date of the agreement. An explanation of any circumstances prohibiting the submittal of quarterly invoices shall be submitted to the Division grant manager as part of the Sub-Recipient's quarterly reporting as referenced in Paragraph (12) of this Agreement.
- c. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer or under subparagraph (9)b. of this Agreement, all obligations on the part of the Division

to make any further payment of funds shall terminate, and the Sub-Recipient shall submit its closeout report within thirty (30) days of receiving notice from the Division.

(21) REPAYMENTS

a. All refunds or repayments due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management", and mailed directly to the following address:

Division of Emergency Management
Cashier
2555 Shumard Oak Boulevard
Tallahassee FL 32399-2100

b. In accordance with section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Sub-Recipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(22) MANDATED CONDITIONS

a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Sub-Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials are incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty (30) days written notice to the Sub-Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Sub-Recipient.

b. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

c. Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

d. The Sub-Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

e. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list 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 a public entity, and may not transact business with any public entity in excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

f. Any Sub-Recipient which is not a local government or state agency, and which receives funds under this Agreement from the federal government, certifies, to the best of its knowledge and belief, that it and its principals or affiliates:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded or disqualified from covered transactions by a federal department or agency;

ii. Have not, within a five-year period preceding this proposal been convicted of or had a civil judgment rendered against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (22) f. ii. of this certification; and,

iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

g. In addition, the Sub-Recipient shall send to the Division (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion" (Attachment H) for each intended subcontractor which Sub-Recipient plans to fund under this Agreement. The form must be received by the Division before the Sub-Recipient enters into a contract with any subcontractor.

h. The Division reserves the right to unilaterally cancel this Agreement if the Sub-Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of chapter 119, Florida Statutes, which the Sub-Recipient created or received under this Agreement.

i. If the Sub-Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

j. The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation

of Section 274A(e) of the INA. Such violation by the Sub-Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

k. Section 287.05805, Florida Statutes, requires that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least 5 years from the date of purchase or the completion of the improvements or as further required by law.

l. The Division may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, or 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 been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

(23) LOBBYING PROHIBITION

a. 2 C.F.R. §200.450 prohibits reimbursement for costs associated with certain lobbying activities.

b. Section 216.347, Florida Statutes, prohibits “any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.”

c. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

d. The Sub-Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sub-Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in

connection with this Federal contract, grant, loan or cooperative agreement, the Sub-Recipient shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities."

iii. The Sub-Recipient shall require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Sub-Recipients shall certify and disclose.

iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(24) COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA; AND, ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE SUB-RECIPIENT TO THE STATE OF FLORIDA.

a. If the Sub-Recipient has a pre-existing patent or copyright, the Sub-Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.

b. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Sub-Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Sub-Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Sub-Recipient to the State of Florida.

c. Within thirty (30) days of execution of this Agreement, the Sub-Recipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Sub-Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (24) b., have the right to all patents and copyrights which accrue during performance of the Agreement.

d. If the Sub-Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Sub-Recipient shall become the sole property of the Sub-Recipient. In the case of joint inventions, that is

inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully-paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked work products, developed solely by the Sub-Recipient, under this Agreement, for Florida government purposes.

(25) LEGAL AUTHORIZATION

The Sub-Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Sub-Recipient also certifies that the undersigned person has the authority to legally execute and bind Sub-Recipient to the terms of this Agreement.

(26) EQUAL OPPORTUNITY EMPLOYMENT

a. In accordance with 41 C.F.R. §60-1.4(b), the Sub-Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

i. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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.

ii. 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, sexual orientation, gender identity, or national origin.

iii. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because

such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

iv. 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.

v. 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.

vi. 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.

vii. 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.

viii. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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.

b. The Sub-Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

c. The Sub-Recipient agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

d. The Sub-Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Sub-Recipient agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Sub-Recipient under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Sub-Recipient; and refer the case to the Department of Justice for appropriate legal proceedings.

(27) COPELAND ANTI-KICKBACK ACT

The Sub-Recipient hereby agrees that, unless exempt under Federal law, it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, the following clause:

i. **Contractor.** The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

ii. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts.

The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

iii. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(28) CONTRACT WORK HOURS AND SAFETY STANDARDS

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$100,000 and involves the employment of mechanics or laborers, then any such contract must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

(29) CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$150,000, then any such contract must include the following provision:

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

(30) SUSPENSION AND DEBARMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following provisions:

i. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

ii. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

iii. This certification is a material representation of fact relied upon by the Division. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Division, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

iv. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(31) BYRD ANTI-LOBBYING AMENDMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following clause:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

If this subgrant agreement amount is \$100,000 or more, the Sub-Recipient, and subcontractors as applicable, shall sign Attachment K – Certification Regarding Lobbying.

(32) CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

a. If the Sub-Recipient, with the funds authorized by this Agreement, seeks to procure goods or services, then, in accordance with 2 C.F.R. §200.321, the Sub-Recipient shall take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible:

i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs i. through v. of this subparagraph.

b. The requirement outlined in subparagraph a. above, sometimes referred to as "socioeconomic contracting," does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.

c. The "socioeconomic contracting" requirement outlines the affirmative steps that the Sub-Recipient must take; the requirements do not preclude the Sub-Recipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.

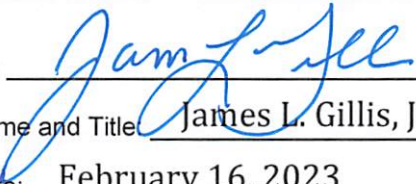
d. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize the Sub-Recipient to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

(33) ASSURANCES

The Sub-Recipient shall comply with any Statement of Assurances incorporated as Attachment C.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

SUB-RECIPIENT: CITY OF SOUTH DAYTONA

By: 
Name and Title: James L. Gillis, Jr., City Manager
Date: February 16, 2023
FEID#: 59-6000430

**STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

By: Laura Dhuwe Digitally signed by Laura Dhuwe
Date: 2023.03.08 13:07:44 -05'00'
Name and Title: Kevin Guthrie, Director
Date: 08-MAR-2023

EXHIBIT – 1

THE FOLLOWING FEDERAL RESOURCES ARE AWARDED TO THE SUB-RECIPIENT UNDER THIS AGREEMENT:

Federal Program

Federal agency: Federal Emergency Management Agency: Hazard Mitigation Grant

Catalog of Federal Domestic Assistance title and number: 97.039

Award amount: \$ 364,500.00

THE FOLLOWING COMPLIANCE REQUIREMENTS APPLY TO THE FEDERAL RESOURCES AWARDED UNDER THIS AGREEMENT:

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- Sections 1361(A) of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c, as amended by the National Flood Insurance Reform Act of 1994, Public Law 103-325 and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264
- 31 C.F.R. Part 205 Rules and Procedures for Funds Transfers

Federal Program:

1. Sub-Recipient is to use funding to perform the following eligible activities:
 - Generators for Critical Facilities
2. Sub-Recipient is subject to all administrative and financial requirements as set forth in this Agreement, or will be in violation of the terms of the Agreement.

Attachment A
Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to provide protection to the Municipal Complex, in South Daytona, Volusia County, Florida, funded through the Hazard Mitigation Grant Program (HMGP) DR-4486-018-R, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA). The project is for the purchase and installation of an emergency system to reduce and/or mitigate the damage that might otherwise occur from severe weather or other hazards.

The Sub-Recipient, City of South Daytona, agrees to administer and complete the project per scope of work as submitted by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall complete the work in accordance with all applicable Federal, State and Local Laws, Regulations, and Codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program (HMGP) project, the Sub-Recipient shall provide backup power to the Municipal Complex, located at 1672 South Ridgewood Avenue, South Daytona, Florida 32119. Coordinates: (29.181117, -81.008100).

The HMGP project shall provide protection by purchasing and installing a permanent diesel generator with a capacity of 250 kW, or the adequate size determined by the vendor and/or an electrical engineer during the bid process to appropriately support the critical facility. The project includes constructing a concrete pad, installing an automatic transfer switch (ATS), and electrical connections. The Complex is made up of three (3) connected buildings (City Hall, Fire Department, and Police Department), which serve as the Emergency Operations Center (EOC), Public Information Office (PIO), and flood preparedness. Currently, there is a 100 kW generator that only covers the Fire Department and the Police Department, which has become inoperable due to its age. The project shall allow the city to maintain the Municipal Complex operational during future power outages.

The generator(s) shall be protected against a 500-year flood event by implementing specific activities or by locating the generator(s) outside the Special Flood Hazard Area (SFHA) and shall be protected against wind with a rated enclosure based on its location requirements. Activities shall be completed in strict compliance with Federal, State and Local Rules and Regulations.

TASKS & DELIVERABLES:

A) Tasks:

- 1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all Federal and State Laws and Regulations. All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Sub-Recipient shall be responsible for furnishing or contracting all labor, materials, equipment, tools, transportation and supervision and for performing all work per sealed engineering designs and construction plans presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all work staging areas in a neat and presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed.

The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient within ten (10) days of execution.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

- 2) The Sub-Recipient shall monitor and manage the procurement and installation of all products in accordance with the HMGP application and associated documentation as presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall ensure that all applicable State, Local and Federal Laws and Regulations are followed and documented, as appropriate.

The Sub-Recipient shall fully perform the approved project, as described in the application, in accordance with the approved scope of work indicated herein, the estimate of costs indicated herein, the allocation of funds indicated herein, and all applicable terms and conditions. The Sub-Recipient shall not deviate from the approved project terms and conditions.

Upon completion of the work, the Sub-Recipient shall schedule and participate in a final inspection of the completed project by the local municipal or county building department (official), or other approving official, as applicable. The official shall inspect and certify that all installation was in accordance with the manufacturer's specifications. Any deficiencies found during this final inspection shall be corrected by the Sub-Recipient prior to Sub-Recipient's submittal of the final inspection request to the Division.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation and provide a summary of all contract scope of work and scope of work changes, if any. Additional documentation shall include:

- a) Copy of permit(s), notice of commencement.
- b) Local Building Official Inspection Report and Final Approval.
- c) A copy of electrical designs, specifications and/or drawings elaborated to complete the scope.
- d) Signed and Sealed copy of the As-built plans, as applicable.
- e) Certified Letter of Completion, as applicable:
 1. Affirming that the project has been completed in conformance with the approved project drawings, specifications, and scope.
 2. Certifying Compliance with all applicable codes.
- f) All Product Specifications / Data Sheet(s) (technical standards) satisfying protection requirements on all products utilized.

- g) Verification letter or documentation showing if unusable equipment, debris and materials, petroleum products, hazardous materials, or toxic wastes were encountered and, if so, how they were handled and disposed of, to include where they were disposed of.
 - h) Proof of compliance with Project Conditions and Requirements contained herein.
- 3) During the course of this agreement, the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Construction Expense: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Project Management Expenses (only applies to disasters prior to August 1, 2017, all others adhere to FEMA Policy #104-11-1 for SRMC): The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third-party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient. Quarterly Reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual construction and managerial costs related to the project as identified in the project application, and plans. The requests for reimbursement shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;
- b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;

- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's final request for reimbursement shall include the final construction project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of providing protection to the Municipal Complex in South Daytona, Florida 32119, by installing a permanent diesel generator to support the critical facility. The project includes constructing a concrete pad, installing an automatic transfer switch (ATS), and electrical connections.

The generator(s) shall be protected against a 500-year flood event by implementing specific activities or by locating the generator(s) outside the SFHA and shall be protected against wind with a rated enclosure based on its location requirements. Activities shall be completed in strict compliance with Federal, State and Local Rules and Regulations.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

- 1) The Sub-Recipient shall submit to the Division an official letter stating that the project is 100% complete and ready for the Division's Final Inspection of the project.
- 2) The Sub-Recipient shall provide a copy of the Notice of Commencement, and any local official Inspection Report and/or Final Approval, as applicable.
- 3) The Sub-Recipient shall submit a signed and sealed final copy of the completed project's As-built drawings and all necessary supporting documentation and provide a summary of all contract scope of work changes, as applicable.
- 4) The Sub-Recipient shall submit a final copy of any electrical designs, specifications and/or drawings elaborated to complete the job.
- 5) The Sub-Recipient shall submit a certified letter of completion from Engineer of Record, as applicable. The Sub-Recipient's Engineer of Record shall provide a formal certificate or letter affirming that the project has been completed in conformance with the approved project drawings, specifications, scope, and applicable codes.
- 6) The Sub-Recipient shall submit all Product Specifications / Data Sheet(s) (technical standards) satisfying protection requirements on all products utilized.
- 7) All installations shall be done in strict compliance with the Florida Building Code or Miami Dade Specifications. All materials shall be certified to exceed the wind and impact standards of the current local codes.
- 8) The Sub-Recipient shall follow all applicable State, Local and Federal Laws, Regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. Failure to obtain all appropriate Federal, State, and Local permits and clearances may jeopardize federal funding.

D) Environmental:

- 1) The Sub-Recipient shall follow all applicable state, local and federal laws, regulations and requirements, and obtain (before starting project work) and comply with all required permits and

approvals. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding. If project is delayed for a year or more after the date of the categorical exclusion (CATEX), then coordination with and project review by regulatory agencies must be redone.

- 2) Any change, addition or supplement to the approved mitigation measure or scope of work that alters the project (including other work not funded by FEMA but done substantially at the same time) shall require resubmission to the Division and FEMA for reevaluation of compliance with the National Environmental Protection Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA) prior to initiation of any work. Non-compliance with these requirements may jeopardize FEMA's ability to fund this project. A change in the scope of work shall be approved by the Division and FEMA in advance regardless of the budget implications.
- 3) If any ground disturbance activities occur during construction, the Sub-Recipient shall monitor ground disturbance during construction, and if any potential archeological resources are discovered, shall immediately cease construction in that area and notify the Division and FEMA.
- 4) Unusable equipment, debris and material shall be disposed of in an approved manner and location. In the event significant items (or evidence thereof) are discovered during implementation of the project, subgrantee shall handle, manage, and dispose of petroleum products, hazardous materials and toxic waste in accordance to the requirements and to the satisfaction of the governing local, state and federal agencies. Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance shall be required at project closeout.
- 5) Construction vehicles and equipment used for this project shall be maintained in good working order to minimize pollutant emissions.

E) Programmatic:

- 1) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 2) The Division and FEMA shall approve a change in the scope of work in advance, regardless of the budget implementations.
- 3) The Sub-Recipient must "obtain prior written approval for any budget revision which would result in a need for additional funds" [44 CFR 13(c)], from the Division and FEMA.
- 4) Any extension of the Period of Performance shall be submitted to FEMA sixty (60) days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of new expiration date and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing to FEMA.
- 5) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.
- 6) A copy of the executed subcontract agreement must be forwarded to the Division within ten (10) days of execution.
- 7) Project approval is with the condition that the tasks, deliverables, and conditions be accomplished, and documentation submitted thirty (30) days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA for Closeout.
- 8) Special Condition required on implementation of project:
 - a) **RCRA Condition:** Unusable equipment, debris and material shall be disposed of in an approved manner and location. In the event significant items (or evidence thereof) are discovered during implementation of the project, Sub-Recipient shall handle, manage and dispose of petroleum products, hazardous materials, and toxic waste in accordance to the requirements and to the

satisfaction of the governing local, state, and federal agencies. Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance will be required at project closeout. **Source of condition:** Resource Conservation and Recovery Act, aka Solid Waste Disposal Act (RCRA). **Monitoring Required:** No

- 9) Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.

This is FEMA project number **4486-018-R**. It is funded under HMGP, FEMA-4486-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4486.

FEMA awarded this project on December 16, 2022; this Agreement shall begin upon execution by both parties, and the Period of Performance for this project shall end on **December 31, 2025**.

F) FINANCIAL CONSEQUENCES:

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;
- 3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;
- 4) Withhold further awards for the program; or
- 5) Take other remedies that may be legally available.

SCHEDULE OF WORK

State Contracting:	3 Months
Construction Plan/Technical Specifications:	3 Months
Bidding / Local Procurement:	3 Months
Permitting:	3 Months
Construction / Installation:	15 Months
Local Inspections / Compliance:	3 Months
State Final Inspection / Compliance:	3 Months
Closeout Compliance:	3 Months
Total Period of Performance:	36 Months

BUDGET

Line Item Budget*

	Project Cost	Federal Cost	Non-Federal Cost
Materials:	\$310,000.00	\$279,000.00	\$31,000.00
Labor:	\$95,000.00	\$85,500.00	\$9,500.00
Fees:	\$0.00	\$0.00	\$0.00
<hr/>			
Initial Agreement Amount:	\$405,000.00	\$364,500.00	\$40,500.00
***Contingency Funds:	\$15,000.00	\$13,500.00	\$1,500.00
<hr/>			
Project Total:	\$420,000.00	\$378,000.00	\$42,000.00

**Any line item amount in this Budget may be increased or decreased 10% or less, with the Division's approval, without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

**** This project has an estimated \$15,000.00 in contingency funds. Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.*

Project Management costs are included for this project in the amount of \$0.00

Funding Summary Totals

Federal Share:	\$378,000.00	(90.00%)
Non-Federal Share:	\$42,000.00	(10.00%)
<hr/>		
Total Project Cost:	\$420,000.00	(100.00%)

Attachment B
Program Statutes and Regulations

The parties to this Agreement and the Hazard Mitigation Grant Program (HMGP) are generally governed by the following statutes and regulations:

- (1) The Robert T. Stafford Disaster Relief and Emergency Assistance Act;
- (2) 44 C.F.R. Parts 7, 9, 10, 13, 14, 17, 18, 25, 206, 220, and 221, and any other applicable FEMA policy memoranda and guidance documents;
- (3) State of Florida Administrative Plan for the Hazard Mitigation Grant Program;
- (4) Hazard Mitigation Assistance Guidance- February 27, 2015 Update; and
- (5) All applicable laws and regulations delineated in Attachment C of this Agreement.

In addition to the above statutes and regulations, the Sub-recipient must comply with the following:

The Sub-recipient shall fully perform the approved hazard mitigation project, as described in the Application and Attachment A (Budget and Scope of Work) attached to this Agreement, in accordance with approved scope of work indicated therein, the estimate of costs indicated therein, the allocation of funds indicated therein, and the terms and conditions of this Agreement. The Sub-recipient shall not deviate from the approved project and the terms and conditions of this Agreement. The Sub-recipient shall comply with any and all applicable codes and standards in performing work funded under this Agreement, and shall provide any appropriate maintenance and security for the project.

Any development permit issued by, or development activity undertaken by, the Sub-recipient and any land use permitted by or engaged in by the Sub-recipient, shall be consistent with the local comprehensive plan and land development regulations prepared and adopted pursuant to chapter 163, Part II, Florida Statutes. Funds shall be expended for, and development activities and land uses authorized for, only those uses which are permitted under the comprehensive plan and land development regulations. The Sub-recipient shall be responsible for ensuring that any development permit issued and any development activity or land use undertaken is, where applicable, also authorized by the Water Management District, the Florida Department of Environmental Protection, the Florida Department of Health, the Florida Game and Fish Commission, and any Federal, State, or local environmental or land use permitting authority, where required. The Sub-recipient agrees that any repair or construction shall be in accordance with applicable standards of safety, decency, and sanitation, and in conformity with applicable codes, specifications and standards.

The Sub-recipient will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms with the approved plans and specifications and will furnish progress reports and such other information to HMGP as may be required.

If the hazard mitigation project described in Attachment A includes an acquisition or relocation project, then the Sub-recipient shall ensure that, as a condition of funding under this Agreement, the owner of the affected real property shall record in the public records of the county where it is located the following covenants and restrictions, which shall run with and apply to any property acquired, accepted, or from which a structure will be removed pursuant to the project.

- (1) The property will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;
- (2) No new structure will be erected on property other than:
 - a. a public facility that is open on all sides and functionally related to a designed open space;
 - b. a restroom; or
- (3) A structure that the Director of the Federal Emergency Management Agency approves in writing before the commencement of the construction of the structure;
- (4) After the date of the acquisition or relocation no application for disaster assistance for any purpose will be made to any Federal entity and no disaster assistance will be provided for the property by any Federal source; and
- (5) If any of these covenants and restrictions is violated by the owner or by some third party with the knowledge of the owner, fee simple title to the Property described herein shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida without further notice to the owner, its successors and assigns, and the owner, its successors and assigns shall forfeit all right, title and interest in and to the property.

HMGP Contract Manager will evaluate requests for cost overruns and submit to the regional Director written determination of cost overrun eligibility. Cost overruns shall meet Federal regulations set forth in 44 C.F.R. §206.438(b).

The National Environmental Policy Act (NEPA) stipulates that additions or amendments to a HMGP Sub-Recipient Scope of Work (SOW) shall be reviewed by all State and Federal agencies participating in the NEPA process.

As a reminder, the Sub-recipient must obtain prior approval from the State, before implementing changes to the approved project Scope of Work (SOW). Per the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments:

- (1) For Construction projects, the grantee must "obtain prior written approval for any budget revision which result in a need for additional funds" (2 C.F.R. § 200.308);
- (2) A change in the Scope of Work must be approved by FEMA in advance regardless of the budget implications; and
- (3) The Sub-recipient must notify the State as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower cost or earlier completion. Any extensions of the period of performance must be submitted to FEMA sixty (60) days prior to the project expiration date.

The Sub-recipient assures that it will comply with the following statutes and regulations to the extent applicable:

- (1) 53 Federal Register 8034
- (2) Federal Acquisition Regulations 31.2
- (3) Section 1352, Title 31, US Code
- (4) Chapter 473, Florida Statutes
- (5) Chapter 215, Florida Statutes
- (6) Section 768.28, Florida Statutes
- (7) Chapter 119, Florida Statutes
- (8) Section 216.181(6), Florida Statutes

- (9) Cash Management Improvement Act of 1990
- (10) American with Disabilities Act
- (11) Section 112.061, Florida Statutes
- (12) Immigration and Nationality Act
- (13) Section 286.011, Florida Statutes
- (14) 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- (15) Uniform Relocation Assistance and Real Property Acquisitions Act of 1970
- (16) Title I of the Omnibus Crime Control and Safe Streets Act of 1968
- (17) Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act
- (18) Omnibus Crime Control and Safe Streets Act of 1968, as amended
- (19) Victims of Crime Act (as appropriate)
- (20) Section 504 of the Rehabilitation Act of 1973, as amended
- (21) Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990)
- (22) Department of Justice regulations on disability discrimination, 28 C.F.R., Part 35 and Part 39
- (23) 42 U.S.C. 5154a

Attachment C

Statement of Assurances

To the extent the following provisions apply to this Agreement, the Sub-recipient certifies that:

- (a) It possesses legal authority to enter into this Agreement and to carry out the proposed program;
- (b) Its governing body has duly adopted or passed as an official act of resolution, motion or similar action authorizing the execution of the hazard mitigation agreement with the Division of Emergency Management (DEM), including all understandings and assurances contained in it, and directing and authorizing the Sub-recipient's chief administrative officer or designee to act in connection with the application and to provide such additional information as may be required;
- (c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall receive any share or part of this Agreement or any benefit. No member, officer, or employee of the Sub-recipient or its designees or agents, no member of the governing body of the locality in which this program is situated, and no other public official of the locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year after, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds, for work to be performed in connection with the program assisted under this Agreement. The Sub-recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;
- (d) All Sub-recipient contracts for which the State Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the Sub-recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Sub-recipient. Any cost incurred after a notice of suspension or termination is received by the Sub-recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Sub-recipient contracts shall contain provisions for termination for cause or convenience and shall provide for the method of payment in such event;
- (e) It will comply with:
 - (1) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and
 - (2) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed work-week.
- (f) It will comply with
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Sub-recipient received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Sub-

recipient, this assurance shall obligate the Sub-recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

- (2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualified handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;
- (3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;
- (g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to section 112.313 and section 112.3135, Florida Statutes;
- (h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Chapter 87 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities;
- (i) It will comply with the provisions of 5 U.S.C. 7323 (further known as the Hatch Act) which limits the political activities of employees;
- (j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 50, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;

For sites located within Special Flood Hazard Areas (SFHA), the Sub-recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at www.fema.gov/government/grant/sfha_conditions.shtml

- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 C.F.R. Section 101-19.6 for general type buildings and Appendix A to 24 C.F.R., Part 40 for residential structures. The Sub-recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;
- (l) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C.), Executive Order 11593, 36 C.F.R., Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (54 U.S.C. 3125) by:

- (1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 C.F.R., Section 800.8) by the proposed activity; and
- (2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.
- (3) Abiding by the terms and conditions of the **“Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)”** which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C., and implementing regulations in 36 C.F.R., Part 800.
- (4) When any of the Sub-recipient’s projects funded under this Agreement may affect a historic property, as defined in 36 C.F.R., Part 800.16 (l)(1), the Federal Emergency Management Agency (FEMA) may require the Sub-recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the **Secretary of Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards)**, the **Secretary of the Interior’s Guidelines for Archeological Documentation (Guidelines)** (48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the **Standards**, the Sub-recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
- (5) The Sub-recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO’s opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Sub-recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Sub-recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the **Guidelines** and take into account the Advisory Council on Historic Preservation (Council) publication **“Treatment of Archeological Properties”**. The Sub-recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within fifteen (15) calendar days of receipt of the treatment plan, FEMA may direct the Sub-recipient to implement the treatment plan. If either the Council or the SHPO object, Sub-recipient shall not proceed with the project until the objection is resolved.
- (6) The Sub-recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be

eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner. The Sub-recipient acknowledges that FEMA may require the Sub-recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Sub-recipient further acknowledges that FEMA may require the Sub-recipient to take all reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Sub-recipient also acknowledges that FEMA will require, and the Sub-recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

- (7) The Sub-recipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the PA or the NHPA, the Sub-recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.
- (m) It will comply with applicable provisions of the following laws and policies prohibiting discrimination:
- i. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination based on race, color, or national origin (including limited English proficiency).
 - ii. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination based on disability.
 - iii. Title IX of the Education Amendments Act of 1972, as amended, which prohibits discrimination based on sex in education programs or activities.
 - iv. Age Discrimination Act of 1975, which prohibits discrimination based on age.
 - v. U.S. Department of Homeland Security regulation 6 C.F.R. Part 19, which prohibits discrimination based on religion in social service programs.
- (n) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
- (o) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4541-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (p) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (q) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead based paint in construction of rehabilitation or residential structures;
- (r) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;
- (s) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;
- (t) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and

Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;

- (u) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7675;
- (v) It will comply with the Clean Water Act of 1977, as amended, 33 U.S.C. 1251-1388
- (w) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;
- (x) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4701-4772;
- (y) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 54 U.S.C.;
- (z) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;
- (aa) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 54 U.S.C. 3125
- (bb) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;
- (cc) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j-27, regarding the protection of underground water sources;
- (dd) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;
- (ee) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;
- (ff) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);
- (gg) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3501-3510;
- (hh) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-14674; and
- (ii) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-668.
- (jj) With respect to demolition activities, it will:
 - (1) Create and make available documentation sufficient to demonstrate that the Sub-recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
 - (2) Return the property to its natural state as though no improvements had ever been contained thereon.

- (3) **Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Sub-recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.**
- (4) **Provide documentation of the inspection results for each structure to indicate:**
 - a. **Safety Hazard Present**
 - b. **Health Hazards Present**
 - c. **Hazardous Materials Present**
- (5) **Provide supervision over contractors or employees employed by the Sub-recipient to remove asbestos and lead from demolished or otherwise applicable structures.**
- (6) **Leave the demolished site clean, level and free of debris.**
- (7) **Notify the Division promptly of any unusual existing condition which hampers the contractor's work.**
- (8) **Obtain all required permits.**
- (9) **Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.**
- (10) **Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).**
- (11) **Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857), Section 508 of the Clean Water Act (33 U.S.C. 1251-1388), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 C.F.R., Part 15 and 61). This clause shall be added to any subcontracts.**
- (12) **Provide documentation of public notices for demolition activities.**

Attachment D

**REQUEST FOR ADVANCE OR REIMBURSEMENT
OF HAZARD MITIGATION ASSISTANCE PROGRAM FUNDS**

SUB-RECIPIENT: City of South Daytona

REMIT ADDRESS: 1672 S. Ridgewood Avenue

CITY: South Daytona STATE: FL ZIP CODE: 32119

PROJECT TYPE: Generator PROJECT #: 4486-018-R

PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0939

BUDGET: _____ FEDERAL SHARE: _____ LOCAL: _____

ADVANCED RECEIVED: N/A AMOUNT: _____ SETTLED? _____

Invoice Period: _____ through _____ Payment No: _____

Total of Previous Payments to Date: _____ (Federal)
 Total of Previous SRMC to Date: _____ (SRMC Federal)
 Total Federal to Date: _____ (Total Federal Paid)

Eligible Amount 100% (Current Request)	Obligated Federal Amount 90 %	Obligated Local Non-Federal 10%	Division Use Only	
			Approved	Comments

TOTAL CURRENT REQUEST: \$ _____

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812.

SUB-RECIPIENT SIGNATURE: _____

NAME: _____ TITLE: _____ DATE: _____

TO BE COMPLETED BY THE DIVISION	
APPROVED PROJECT TOTAL \$ _____	DIVISION DIRECTOR _____
APPROVED SRMC TOTAL: \$ _____	
APPROVED FOR PAYMENT \$ _____	DATE _____

**Attachment D (cont.)
SUMMARY OF DOCUMENTATION IN SUPPORT OF AMOUNT
CLAIMED FOR ELIGIBLE DISASTER WORK UNDER THE
HAZARD MITIGATION ASSISTANCE PROGRAM**

SUB-RECIPIENT: City of South Daytona PAYMENT #: _____
 PROJECT TYPE: Generator PROJECT #: 4486-018-R
 PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0939

	REF NO ²	DATE ³	DOCUMENTATION ⁴	(Check) AMOUNT	ELIGIBLE COSTS (100%)
1					
2					
3					
4					
5					
6					
7					
8					
<i>This payment represents</i> <i>% completion of the project.</i>				TOTAL	

² Recipient's internal reference number (e.g., Invoice, Receipt, Warrant, Voucher, Claim Check, or Schedule #)

³ Date of delivery of articles, completion of work or performance services. (per document)

⁴ List Documentation (Recipient's payroll, material out of recipient's stock, recipient owned equipment and name of vendor or contractor) by category (Materials, Labor, Fees) and line item in the approved project line item budget. Provide a brief description of the articles or services. List service dates per each invoice.

**Attachment E
JUSTIFICATION OF ADVANCE PAYMENT**

SUB-RECIPIENT: CITY OF SOUTH DAYTONA

If you are requesting an advance, indicate same by checking the box below.

<p><input type="checkbox"/> ADVANCE REQUESTED</p> <p>Advance payment of \$ _____ is requested. Balance of payments will be made on a reimbursement basis. These funds are needed to pay staff, award benefits to clients, duplicate forms and purchase start-up supplies and equipment. We would not be able to operate the program without this advance.</p>
--

If you are requesting an advance, complete the following chart and line item justification below.

PLEASE NOTE: Calculate your estimated expenses at 100% of your expected needs for ninety (90) days. Submit Attachment D with the cost share breakdown along with Attachment E and all supporting documentation.

ESTIMATED EXPENSES

BUDGET CATEGORY/LINE ITEMS (list applicable line items)	20__-20__ Anticipated Expenditures for First Three Months of Contract
<u>For example</u> ADMINISTRATIVE COSTS (Include Secondary Administration.)	
<u>For example</u> PROGRAM EXPENSES	
TOTAL EXPENSES	

LINE ITEM JUSTIFICATION (For each line item, provide a detailed justification explaining the need for the cash advance. The justification must include supporting documentation that clearly shows the advance will be expended within the first ninety (90) days of the contract term. Support documentation should include quotes for purchases, delivery timelines, salary and expense projections, etc. to provide the Division reasonable and necessary support that the advance will be expended within the first ninety (90) days of the contract term. Any advance funds not expended within the first ninety (90) days of the contract term as evidenced by copies of invoices and cancelled checks as required by the Budget and Scope of work showing 100% of expenditures for the 90 day period shall be returned to the Division Cashier, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, within thirty (30) days of receipt, along with any interest earned on the advance.

**Attachment F
QUARTERLY REPORT FORM**

Instructions: Complete and submit this form to State Project Manager within 15-days after each quarter:

SUB-RECIPIENT: City of South Daytona PROJECT #: 4486-018-R
 PROJECT TYPE: Generator CONTRACT #: H0939
 PROGRAM: Hazard Mitigation Grant Program QUARTER ENDING: _____

Advance Payment Information:

Advance Received N/A Amount: \$ _____ Advance Settled? Yes No

Financial Amount to Date:

Sub-Recipient Total Project Expenditures to date (federal & local): \$ _____

Target Dates (State Agreement):

Contract Execution Date: _____ Contract Expiration Date: _____
 Date Deliverables Submitted: _____ Closeout Requested Date: _____

Describe **Milestones** achieved during this quarter:

Project Proceeding on **Schedule?** Yes No (If No, Describe under **Issues** below)

Percentage of Milestones completed to Date: _____%

Describe Activities - Milestones completed this quarter only:

Schedule of the Milestones-Activities:

<u>Milestone</u>	<u>Dates</u> (estimated)
<u>State Contracting</u>	
<u>Closeout Compliance</u>	
<u>Estimated Project Completion Date:</u>	

Issues or circumstances affecting completion date, milestones, scope of work, and/or cost:

Cost Status: Cost Unchanged Under Budget Over Budget

Cost / Financial Comments:

NOTE: Events may occur between quarterly reports, which have significant impact upon your project(s), such as anticipated overruns, changes in scope of work, extensions. Contact the Division as soon as these conditions are known, otherwise you could be non-compliant with your sub-grant award.

Sub-Recipient Contract Representative (POC): _____

Signature: _____ Phone: _____

~ To be completed by Florida Division of Emergency Management Project Manager ~

Project Manager Statement: No Action Required, OR

Action Required: _____

PM Percentage of Activates competed per PM Review QR Milestones Spreadsheet: _____%
 Date Reviewed: _____ Reviewer: _____ Project Manager

Attachment G
Warranties and Representations

Financial Management

The Sub-Recipient's financial management system must comply with 2 C.F.R. §200.302.

Procurements

Any procurement undertaken with funds authorized by this Agreement must comply with the requirements of 2 C.F.R. §200, Part D—Post Federal Award Requirements—Procurement Standards (2 C.F.R. §§200.317 through 200.327).

Business Hours

The Sub-Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from: **8:00 AM - 5:00 PM, Monday Thru Friday, as applicable.**

Licensing and Permitting

All subcontractors or employees hired by the Sub-Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Sub-Recipient.

Attachment H

**Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion**

Subcontractor Covered Transactions

The prospective subcontractor, _____, of the Sub-Recipient certifies, by submission of this document, that neither it, its principals, nor affiliates are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this transaction by any Federal department or agency.

SUBCONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

Date

City of South Daytona

Sub-Recipient's Name
H0939

DEM Contract Number
4486-018-R

FEMA Project Number

Attachment I
Federal Funding Accountability and Transparency Act
Instructions and Worksheet

PURPOSE: The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of this legislation is to empower every American with the ability to hold the government accountable for each spending decision. The FFATA legislation requires information on federal awards (federal assistance and expenditures) be made available to the public via a single, searchable website, which is <http://www.usaspending.gov/>.

The FFATA Sub-award Reporting System (FSRS) is the reporting tool the Florida Division of Emergency Management ("FDEM" or "Division") must use to capture and report sub-award and executive compensation data regarding first-tier sub-awards that obligate \$25,000 or more in Federal funds (excluding Recovery funds as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5).

Note: This "Instructions and Worksheet" is meant to explain the requirements of the FFATA and give clarity to the FFATA Form distributed to sub-awardees for completion. All pertinent information below should be filled out, signed, and returned to the project manager.

ORGANIZATION AND PROJECT INFORMATION

The following information must be provided to the FDEM prior to the FDEM's issuance of a sub-award (Agreement) that obligates \$25,000 or more in federal funds as described above. Please provide the following information and return the signed form to the Division as requested.

PROJECT #: 4486-018-R
FUNDING AGENCY: Federal Emergency Management Agency
AWARD AMOUNT: \$ 364,500.00
OBLIGATION/ACTION DATE: December 16, 2022
SUBAWARD DATE (if applicable): _____
UEID/SAM#: JGF6FNNSXLS3

*If your company or organization does not have a UEID/SAM number, you will need to obtain one from <https://sam.gov/content/entity-registration>The process to request a UEID/SAM number takes about ten minutes and is free of charge.

BUSINESS NAME: City of South Daytona
DBA NAME (IF APPLICABLE): _____
PRINCIPAL PLACE OF BUSINESS ADDRESS: _____
ADDRESS LINE 1: 1672 S. Ridgewood Avenue
ADDRESS LINE 2: _____
ADDRESS LINE 3: _____
CITY South Daytona **STATE** FL **ZIP CODE+4**** 32119-8462

PARENT COMPANY UEID/SAM# (if applicable): JGF6FNNSXLS3
CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA#): _____

DESCRIPTION OF PROJECT (Up to 4000 Characters)

As a Hazard Mitigation Grant Program (HMGP) project, the Sub-Recipient shall provide backup power to the Municipal Complex, located at 1672 South Ridgewood Avenue, South Daytona, Florida 32119. Coordinates: (29.181117, -81.008100).

The HMGP project shall provide protection by purchasing and installing a permanent diesel generator with a capacity of 250 kW, or the adequate size determined by the vendor and/or an electrical engineer during the bid process to appropriately support the critical facility. The project includes constructing a concrete pad, installing an automatic transfer switch (ATS), and electrical connections. The Complex is made up of three (3) connected buildings (City Hall, Fire Department, and Police Department), which serve as the Emergency Operations Center (EOC), Public Information Office (PIO), and flood preparedness. Currently, there is a 100 kW generator that only covers the Fire Department and the Police Department, which has become inoperable due to its age. The project shall allow the city to maintain the Municipal Complex operational during future power outages.

The generator(s) shall be protected against a 500-year flood event by implementing specific activities or by locating the generator(s) outside the Special Flood Hazard Area (SFHA) and shall be protected against wind with a rated enclosure based on its location requirements. Activities shall be completed in strict compliance with Federal, State and Local Rules and Regulations.

Verify the approved project description above, if there is any discrepancy, please contact the project manager.

PRINCIPAL PLACE OF PROJECT PERFORMANCE (IF DIFFERENT THAN PRINCIPAL PLACE OF BUSINESS): _____
ADDRESS LINE 1: _____
ADDRESS LINE 2: _____
ADDRESS LINE 3: _____
CITY _____ **STATE** _____ **ZIP CODE+4**** _____

CONGRESSIONAL DISTRICT FOR PRINCIPAL PLACE OF PROJECT PERFORMANCE: _____

****Providing the Zip+4 ensures that the correct Congressional District is reported.**

EXECUTIVE COMPENSATION INFORMATION:

1. In your business or organization's previous fiscal year, did your business or organization (including parent organization, all branches, and all affiliates worldwide) receive (a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act, as defined at 2 C.F.R. 170.320; , (b) \$25,000,000 or more in annual gross revenues from U.S. Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act?

Yes No

If the answer to Question 1 is "Yes," continue to Question 2. If the answer to Question 1 is "No", move to the signature block below to complete the certification and submittal process.

2. Does the public have access to information about the compensation of the executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) Section 6104 of the Internal Revenue Code of 1986?

Yes No

If the answer to Question 2 is "Yes," move to the signature block below to complete the certification and submittal process. [Note: Securities Exchange Commission information should be accessible at <http://www.sec.gov/answers/execomp.htm>. Requests for Internal Revenue Service (IRS) information should be directed to the local IRS for further assistance.]

If the answer to Question 2 is "No" FFATA reporting is required. Provide the information required in the "TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR" appearing below to report the "Total Compensation" for the five (5) most highly compensated "Executives", in rank order, in your organization. For purposes of this request, the following terms apply as defined in 2 C.F.R. Ch. 1 Part 170 Appendix A:

"Executive" is defined as "officers, managing partners, or other employees in management positions".

"Total Compensation" is defined as the cash and noncash dollar value earned by the executive during the most recently completed fiscal year and includes the following:

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR

(Date of Fiscal Year Completion _____)

Rank (Highest to Lowest)	Name (Last, First, MI)	Title	Total Compensation for Most Recently Completed Fiscal Year
1			
2			
3			
4			
5			

THE UNDERSIGNED CERTIFIES THAT ON THE DATE WRITTEN BELOW, THE INFORMATION PROVIDED HEREIN IS ACCURATE.

SIGNATURE: _____

NAME AND TITLE: _____

James L. Gillis, Jr., City Manager

DATE: February 21, 2023

Attachment J
Mandatory Contract Provisions

Provisions:

Any contract or subcontract funded by this Agreement must contain the applicable provisions outlined in Appendix II to 2 C.F.R. Part 200. It is the responsibility of the sub-recipient to include the required provisions. The following is a list of sample provisions from Appendix II to 2 C.F.R. Part 200 that may be required:¹

**Appendix II to Part 200—Contract Provisions for Non-Federal Entity
Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or Sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or

¹ For example, the Davis-Bacon Act is not applicable to other FEMA grant and cooperative agreement programs, including the Public Assistance Program or Hazard Mitigation Grant Program; however, sub-recipient may include the provision in its subcontracts.

repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2 (a) and the recipient or Sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or Sub-recipient must comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 C.F.R. 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See 2 C.F.R. § 200.323 Procurement of recovered materials.

(K) See 2 C.F.R. § 200.216 Prohibition on certain telecommunication and video surveillance services or equipment.

(L) See 2 C.F.R. § 200.322 Domestic preferences for procurements
(Appendix II to Part 200, Revised Eff. 11/12/2020).

FEMA created the 2019 PDAT Contract Provisions Template to assist non-Federal entities. It is *available* at https://www.fema.gov/media-library-data/1569959119092-92358d63e00d17639d5db4de015184c9/PDAT_ContractProvisionsTemplate_9-30-19.pdf.

Please note that the sub-recipient alone is responsible for ensuring that all language included in its contracts meets the requirements of 2 C.F.R. § 200.327 and 2 C.F.R. Part 200, Appendix II.

Attachment K

Certification Regarding Lobbying

Check the appropriate box:

- This Certification Regarding Lobbying is required because the Contract, Grant, Loan, or Cooperative Agreement will exceed \$100,000 pursuant to 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18.
- This Certification is not required because the Contract, Grant, Loan, or Cooperative Agreement will be less than \$100,000.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

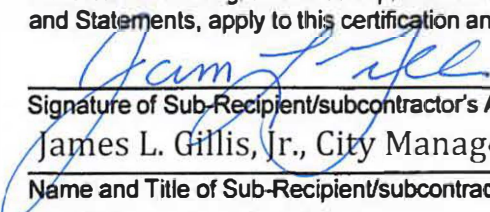
Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Sub-Recipient or subcontractor, City of South Daytona, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Sub-Recipient/subcontractor's Authorized Official

James L. Gillis, Jr., City Manager

Name and Title of Sub-Recipient/subcontractor's Authorized Official

February 21, 2023

Date

RESOLUTION NO. 2021-34

A RESOLUTION OF THE CITY OF SOUTH DAYTONA, FLORIDA, AUTHORIZING SUBMITTAL OF AN APPLICATION TO THE STATE OF FLORIDA HAZARD MITIGATION GRANT PROGRAM (HMGP) FOR THE REPLACEMENT OF THE GENERATOR AT THE CITY HALL MUNICIPAL COMPLEX AND AUTHORIZING ACCEPTANCE AND EXECUTION OF THE GRANT, IF AWARDED.

WHEREAS, the City of South Daytona is vulnerable to natural and man-made disasters that can cause loss of life and damages to public and private property; and

WHEREAS, the City of South Daytona desires to seek ways to mitigate situations that may aggravate such circumstance; and

WHEREAS, the City of South Daytona is committed to protecting its citizens and property through mitigation efforts; and

WHEREAS, the City of South Daytona desires to apply for a Hazard Mitigation Grant through the Department of Community Affairs, Division of Emergency Management in partnership with the Federal Emergency Management Agency.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA:

Section 1. The City Council of South Daytona hereby authorizes the City Manager to execute and submit all documents relating to the Hazard Mitigation Grant Program, including but not limited to all documents relating to submittal of an application, and acceptance and execution of a grant agreement, if awarded.

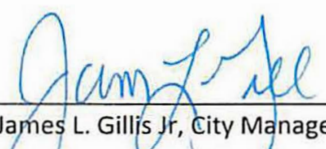
Section 5. That this Resolution shall become effective immediately upon its adoption.

THIS RESOLUTION APPROVED ON FIRST AND ONLY READING this 14th day of December 2021 by the City Council of the City of South Daytona, Florida.

CITY OF SOUTH DAYTONA, FLORIDA

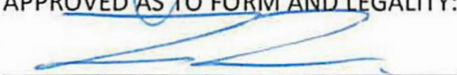


William C. Hall, Mayor

ATTEST: 

James L. Gillis Jr, City Manager

APPROVED AS TO FORM AND LEGALITY:



Wade C. Vose, City Attorney

End of Solicitation Documents