



**THE CITY OF DAYTONA BEACH  
OFFICE OF THE PURCHASING AGENT**

Post Office Box 2451  
Daytona Beach, Florida 32115-2451

Phone (386) 671-8080  
Fax (386) 671-8085

**REQUEST FOR PROPOSALS  
INVITATION**

**NOTICE IS HEREBY GIVEN** that sealed proposals will be received in the office of the Purchasing Agent, Daytona Beach City Hall, Room 146, 301 South Ridgewood Avenue, Daytona Beach, Florida 32114, until **March 30, 2018 at 2:00 PM**, at which time they will be publicly opened for the following:

**SMALL BUSINESS INCUBATOR PROGRAM**

**AWARD OF CONTRACT** subject to the Purchasing Code of the City of Daytona Beach.

**THE RFP MAY BE OBTAINED** on-line at <http://purchasing.codb.us> by clicking on the link to "Public Solicitations" or as a hard copy at the office of the Purchasing Agent City Hall, 301 South Ridgewood Avenue, Room 146, Daytona Beach, FL 32114.

**SCOPE OF WORK:** Establish and manage a Small Business Incubator Program (SBIP) at the City of Daytona Beach Enterprise Center.

**A NON-MANDATORY PRE-PROPOSAL CONFERENCE** will be held at the Daytona Beach City Hall, 301 S. Ridgewood Ave., Room 149B, Daytona Beach, Florida 32114, **on March 19, 2018 at 9:00 AM**. Interested Proposers are *urged* to attend.

**THE CITY RESERVES THE RIGHT** to reject any or all proposals or parts thereof, or to accept the proposal(s) or parts thereof, when considered by it to be in the best interest of the City. Any proposal received after the time and date specified will not be considered. No proposer may withdraw their proposal for a period of sixty (60) days after the date of the opening of proposals. This time period is reserved for the purpose of reviewing proposals and investigating the qualifications of the proposers.

**PROPOSALS SHALL BE ADDRESSED** to the City of Daytona Beach, Purchasing Agent, 301 South Ridgewood Avenue, Room 146, Daytona Beach, Florida, 32114, and all proposals shall have the following plainly marked on the outside of the envelope:

PROPOSAL FOR: **SMALL BUSINESS INCUBATOR PROGRAM**  
PROPOSAL NO: **0118-0890**

**THE CITY OF DAYTONA BEACH  
BY: JOANNE FLICK, CPPO  
PURCHASING AGENT  
ISSUED: MARCH 9, 2018**

RFP NON-PRO SERVICES

**THE CITY OF DAYTONA BEACH  
REQUEST FOR PROPOSALS  
SMALL BUSINESS INCUBATOR PROGRAM  
No. 0118-0890**

**GENERAL CONDITIONS**

**THIS IS NOT A BID.** This is a Request for Proposals for non-professional services issued in accordance with the City of Daytona Beach Code Chapter 30, Article II, Division 3, "Source Selection and Contract Formation". The Request for Proposal specifies the services needed, and lists the criteria upon which the Proposal responses will be evaluated. When received, Proposals will be reviewed and ranked in order, beginning with the one deemed most advantageous to the City. Contract negotiations will commence with the selected Proposer(s). Upon completion of satisfactory negotiations, the contract negotiated that best meets the needs of the City will be recommended for award to the City Commission. A copy of Chapter 30 may be obtained upon request.

**GENERAL CONDITIONS**

1. **INSTRUCTIONS TO PROPOSERS:** To insure consideration of your Proposal, please follow these instructions. One original and five (5) copies of all Proposal sheets must be executed and returned, unless otherwise directed. **Provide one pdf copy of the Proposal in its entirety on cd, dvd, or other electronic media.** All Proposals not in compliance with the conditions specified herein are subject to rejection.
2. **PROPOSAL ENVELOPE:** All Proposals must be returned in a sealed box or envelope addressed to the City of Daytona Beach and should contain on the outside the following information:
  - a. Name and address of Proposer
  - b. Proposal Number 0118-0890
  - c. Date and time of Proposal opening

**PLEASE NOTE:** The address of the Purchasing Division is:

Daytona Beach City Hall  
301 South Ridgewood Avenue  
Room 146  
Daytona Beach, FL 32114

3. **REQUESTS FOR INTERPRETATIONS.** If the Proposer is in doubt as to the meaning of any of the RFP Documents or other Contract Documents included in this solicitation, the Proposer may submit a written request to the City for an interpretation, care of the Purchasing Agent at the address set forth in the Invitation for delivery of the completed Proposal. Such requests must be received 10 days

prior to Proposal opening in order to be considered. The City is not obligated to respond to such requests. Any clarification or interpretation issued by the City in the form of a written addendum will be deemed to be a part of the Proposal Documents.

No oral clarification or interpretation will be binding.

4. **EXECUTION OF PROPOSAL:** The Proposal must contain a manual signature of an individual or of an authorized representative of the firm making the Proposal, in the space provided on the Proposal Form, if provided as a part of the Proposal package, or on Proposer's own form, if a specific Proposal form is not provided. The Proposer's name shall be inserted on all sheets requiring the Proposer's name. In order to insure uniformity, Proposals must be submitted on the Proposal Form, if provided, and on the attached pages.
5. **PROPOSAL OPENING - LATE PROPOSALS:** Proposals will be opened publicly, the name of the Proposers read aloud and recorded, on the date and time indicated, at the location specified in this Request for Proposals. It is the Proposers' responsibility to make certain that his/her Proposal is in the hands of the Purchasing Agent prior to the opening time at the specified location. Any Proposal received thereafter will be rejected and returned to the Proposer.
6. **WITHDRAWAL OF PROPOSALS:** Proposals may be amended or withdrawn only by written notice prior to the Proposal opening. Proposal amendments must be submitted in a sealed envelope. Amendments or withdrawals received after the Proposal opening will not be effective, and the original Proposal submitted will be considered.
7. **CONSIDERATION OF PROPOSALS:** Telephonic, electronic, or faxed Proposals will not be considered. The Proposer agrees that his/her Proposal will not be withdrawn within sixty (60) calendar days following opening of the Proposals, and that during such time his Proposal will remain firm and irrevocable. The City reserves the right to reject any or all Proposals, and to waive any technical defects in Proposals.
8. **COOPERATIVE PURCHASING:** All proposers awarded contracts from this RFP are required to permit governmental entities in Volusia County to participate in the contract under the same prices, terms, and conditions except that allowances may be made for differences in delivery costs. At the option of the awarded proposer, the use of the contract resulting from this solicitation may be extended to other governmental agencies, cities, counties, and political subdivisions.
9. **GENERAL REVIEW PROCEDURES:** The Purchasing Code, Chapter 30, Code of the City of Daytona Beach, sets forth the general review procedures for competitive sealed proposals. Under the Purchasing Code, the City Manager is required to evaluate and rank responsive Proposals in accordance with the criteria

identified in the RFP. Before submitting a recommendation for final action on this RFP to the City Commission, the City Manager is authorized to “shortlist” and negotiate with one or more of the Proposers who submitted the highest ranked Proposals. As part of these negotiations, the City Manager may request revised Proposals from shortlisted Proposers.

The City Manager has adopted a policy delegating the task of initially ranking responsive Proposals to a Selection Committee. The Selection Committee may require personal interviews with Proposers before submitting its recommendations to the City Manager.

- 10. LOCAL PREFERENCE:** Pursuant to the Purchasing Code, preferences may be given in the evaluation of responsive Proposals to Local Vendors. A “Local Vendor” is a vendor which has maintained a permanent place of business with full-time employees within the city limits of the City of Daytona Beach for a minimum of six months prior to the date Proposals were received for the contract at issue, which generally provides from such permanent place of business the kinds of services solicited, and which at the time of the solicitation fully complies with state and local laws, including City zoning and licensing ordinances.

In order to qualify as a Local Vendor, the Proposer must submit a properly completed Local Vendor affidavit as part of its Proposal. A Proposer who fails to properly complete and sign this affidavit or submit it with the Proposal will not be considered for local preference in this RFP. The City is the ultimate arbiter as to whether the Proposer qualifies as a Local Vendor; and the City may require the Proposer to submit additional documentation verifying that the Proposer qualifies as a Local Vendor.

A Proposer qualifying as a Local Vendor will be given the following Preferences:

- a. At the City’s discretion, the Proposer may be given bonus points of up to 10% of the total available points used to score Proposals for purposes of ranking them. The ranking process is described further in Paragraph 8, above. The exact percentage awarded may be adjusted based on the extent of work to be subcontracted to non-local vendors.
- b. After the Selection Committee has evaluated and ranked Proposals, if the highest-ranked Local Vendor’s Proposal would not otherwise be among the list of the highest-ranked Proposals submitted to the City Manager (See Paragraph 8 above), the list will be modified to include the highest-ranked Local Vendor’s Proposal. In addition, if the evaluation criteria referenced in Paragraph 8, above, includes price, all of the Proposers on the modified short list will be given the opportunity to submit best and final fee proposals; and final ranking provided by the Selection Committee will be based on the best and final proposals. For purposes herein, the reference to “best and final” will not serve to alter the City Manager’s authority, as referenced in

Paragraph 8, above, from requiring a short listed Proposer to submit a revised Proposal.

11. **AWARD:** The award will be made by the City to the firm most qualified and offering the best value to the City, which will be determined by evaluation of Proposals using the evaluation criteria contained in the RFP, and in accordance with applicable rules and regulations governing the purchase and contract adopted and established by the City, and the State of Florida.

Any contract resulting from this solicitation may, in the alternative, be awarded by the City of Daytona Beach Community Redevelopment Agency (CRA). Therefore, any bids/proposals submitted in response to this solicitation shall be deemed to be offers to the CRA as well as the City. Any final written contract may be with the CRA instead of the City.

12. **NON-COLLUSION:** By submitting a Proposal in response to the request and signing the Anti-Collusion Statement form enclosed, the Proposer represents that, should the Proposal be accepted, the resulting contract(s) would not violate any provisions of federal law or regulations, or any ordinances or regulations established by the City. The Proposer warrants as an integral and essential part of his/her Proposal: (a) that he/she has not participated in nor is he/she obligated or bound by any agreement, arrangement or other understanding with any person, firm or corporation with respect to the allocation of the business afforded by or resulting from the acceptance of his/her Proposal; (b) that his/her Proposal is or is intended to be competitive and free from any collusion with any person, firm or corporation; and (c) that he/she is not a party to nor has participated in nor is he/she obligated or otherwise bound by any agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning Proposals, prices, terms or conditions upon which the contract(s) resulting from this acceptance is to be performed.
13. **PERMITS, ETC.:** All Proposals submitted shall include in the price the cost of any business or professional licenses, permits or fees required by the City and any agency having jurisdiction over the services solicited through this Request for Proposals.
14. **PATENT INFRINGEMENT, ETC:** By submission of a Proposal the Proposer certifies that the services to be furnished will not infringe any valid patent, copyright, or trademark and the successful Proposer shall, at his/her own expense, defend any and all actions or suits charging such infringement and hold the City harmless in case of any such infringements.
15. **TAXES:** All Proposals shall be exclusive of federal taxes. However, if the Proposer believes that certain other taxes are properly payable by the City, he/she may list such taxes separately in each case directly below the respective item price. Tax exemption certificates will be furnished upon request.

16. **PERFORMANCE**: During the performance of the contract, the Proposer agrees as follows:

- a. The Proposer will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin.
- b. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirement of this section.

17. **FLORIDA PUBLIC RECORDS LAW**: Sealed proposals received by the City pursuant to the Request for Proposals will be temporarily exempt from disclosure in accordance with Florida's Public Records Laws. Thereafter, all Proposals will be open for a personal inspection by any person pursuant to Public Records Law.

If the Proposer believes that the Proposal or any portion thereof is permanently exempt from disclosure under the public records laws, the Proposer must state the grounds for this position in CAPITAL LETTERS on the cover sheet accompanying the sealed Proposal. The Proposer will be contacted prior to the opening of the Proposal and a determination will be made as to whether or not it is exempt prior to opening. If a determination is made that it is not exempt from disclosure, the Proposer may in writing request the return of the sealed Proposal.

18. **EVALUATION CRITERIA**: The weighted evaluation criteria below will be used to evaluate Proposals and develop a recommendation to the City Manager as described in Section 8, above. Each criterion will be scored between 1 and 5; 1=poor, 2=below average, 3=average, 4=above average, 5=excellent. Scores will be multiplied by the criterion weight for a weighted score; weighted scores will be totaled for the weighted total score.

The City will evaluate each proposal according to the criteria listed below, taking into account the information provided in the proposal, references and any other information about the Proposer and its performance available to the City of Daytona Beach. Proposals that are not complete or do not conform to the requirements of this RFP may not be considered. The City reserves the right to request additional information, site visits, interviews or presentations, from one or more of the Proposers.

Proposals are limited to 20 pages, single sided.

CRITERIA	WEIGHT
Proposer Qualifications	15
Proposed Concept, Program and Quality of Space	35
Operational and Financial Feasibility and Schedule	30
Economic and Community Impact	20

## **CRITERIA DESCRIPTIONS AND SUBMITTAL REQUIREMENTS**

**A. PROPOSER QUALIFICATIONS:** The Proposer demonstrates an established and successful track record in managing Small Business Enterprise Programs, with strong organizational qualifications and a strong professional network of universities, regulators, investors, technology companies, youth services, industry groups, veterans, etc.

Provide the qualifications, experience, and credentials of the Proposer's team, including partners and subcontractors. If the Proposer lacks experience in any area, it should demonstrate how its subcontractors and partner organizations will address the gaps. Provide an explanation of the additional value team members add to the Proposal.

1. Provide information on the Proposer's team regarding:
  - relevant professional experience in the development and operation of the SBIP
  - business acumen
  - previous experience in addressing community challenges
  - previous experience of the Proposer's team in managing and operating SBIPs in a financially sustainable manner
2. Provide name, address, telephone number, and email of the key personnel on the Proposer's team
3. Provide any additional documentation or information evidencing the strength of the Proposer and its team, and their ability to manage the SBIP. Include any past experience in endeavors similar to the SBIP, business development, workforce development, and any partnerships with community, educational, financial or other organizations that would support the long-term viability of the SBIP.

**B. PROPOSED CONCEPT, PROGRAM AND QUALITY OF SPACE:** The viability, creativity, and impact of the Proposer's approach to developing and maintaining the SBIP, including modifications to the facility.

1. **Operating & Programming Concept** Proposers will describe their general operating and programming concept, including their vision and a description of the services offered to tenants, including which entities will provide these

services. Demonstrate an understanding of the demand for the proposed Incubator space and services.

**2. Tenant Recruitment Plan** Proposers will include a tenant recruitment plan describing their strategies for conducting outreach and securing companies to participate and locate in the SBIP. This plan will also include profiles of the types of tenants the Proposer will target, differentiating anchor tenants from other potential organizations, timelines for occupying the space, their approach to maintaining full occupancy after the initial build-up, and general strategy for marketing the SBIP.

**3. Program Concept** Proposers will offer an innovative program that provides business support, commercialization support, administrative support and education to startups. The Proposal will be evaluated on the creativity and impact of its overall approach and services offered to tenants. The Proposal will address the Proposer's vision and approach in relation to the services related to developing and operating the SBIP.

#### **4. Quality of Space**

i. **Facility Improvements:** Proposers will include all suggested improvements to the facility. Proposals for building modifications should be reviewed by the Building Department prior to submittal of the proposal.

ii. **Signage Modifications:** Proposers will include any new signage locations and any suggested changes or additions to signage. Proposers are urged to review the applicable signage code in the Land Development Code, Article 18, Section 6. Proposers are encouraged to review the signage code requirements prior to submitting their Proposal if that Proposal includes structural changes or additions to signage.

iii. **Space Plan: Planned Functionality / Workspace Offerings** Proposers will provide a detailed description of the proposed workspace offerings, describing various workspace options, the proportions of such options within the floor plan, and the specific equipment required for each space.

### **C. OPERATIONAL AND FINANCIAL FEASIBILITY AND SCHEDULE**

**1. Operational:** Proposers will include a management and operations plan, including, but not limited to, staffing information (e.g. role descriptions, organizational structure, governance structure), and operational information (e.g. services offered, hours of operation, etc.)

**2. Financial Feasibility** Proposers will demonstrate sufficient financial resources and professional ability to develop and launch the Small Business Incubator

Program (SBIP) and support its ongoing operations in a manner consistent with its Proposal without government subsidies.

Proposers will submit a revenue analysis for a period of five (5) years stating the amounts they will invest to cover start-up and/or operating costs and the amounts they seek to raise from other sources.

The analysis must include capital and operating budgets detailing expenses for space layout and any capital improvements; and other upfront and ongoing expenses; rents incurred by the operator and rents or other fees charged to tenants, and other potential funding sources for any operating expense funding gaps.

If applicable, Proposers may include letters of interest from potential financial partners.

The Proposer must provide detail plans on how they will raise additional funds for the SBIP, and where the funds would originate, including revenues that the space will generate, the Proposer's own assets, and any external contributions.

### **3. Schedule**

Proposer will also be evaluated on the proposed schedule for implementation of the SBIP and demonstration of ability to launch it in a timely fashion.

**D. ECONOMIC AND COMMUNITY IMPACT:** How the Proposer's plan will impact the surrounding community. From an economic development perspective, Proposer should consider how many jobs the SBIP will create, how many dollars of economic impact it will generate, and the types of jobs it will create (e.g. is the SBIP creating opportunities for all entrepreneurs, not just high-wage, high skill opportunities). Further, Proposers should consider how the SBIP will integrate itself into, and support, the surrounding community, including elements such as workforce development and educational opportunities.

19. **REJECTION OF PROPOSALS:** The City reserves the right to reject any or all Proposals in whole or in part and to award by items, parts of items, or by any aggregate group of items specified. The City also reserves the right to waive technical defect when in its judgment the best interests of the City thereby will be served.
20. **QUALIFYING PROPOSERS:** Prior to awarding of Proposal, the City may require submission by Proposer of complete financial statement and questionnaire describing Proposer's financial ability and experience in performance of similar work.
21. **RULES AND REGULATIONS:** All work performed under this agreement shall be in strict compliance with local, State and Federal laws, rules and regulations.

Proposer shall assume all liability for fines and penalties assessed by the authorities for any infractions.

22. **MINORITY AND WOMEN WORK FORCE PARTICIPATION:** The City has an established policy of: 1) promoting Minority and Women-Owned Business Enterprise participation in business contracts and 2) requiring Proposers doing business with the City to use good faith efforts to promote cultural diversity and minority participation in the work force, including managerial positions. Proposers must provide information as part of the Proposal acknowledging its understanding and willingness to comply with the Purchasing Code of The City of Daytona Beach.
23. **NO COSTS:** The City of Daytona Beach bears no responsibility for any costs incurred in the preparation of the Proposal.
24. **DRUG FREE WORKPLACE:** The selected firm must provide the Drug Free Workplace Form in accordance with Florida Statute 287.087, prior to Contract award.
25. **PROHIBITION OF LOBBYING.** Except for negotiations authorized by the City Purchasing Code, the Consultants Competitive Negotiations Act, or other state or federal law, lobbying by the Proposer, or the Proposer's principals, officers, employees, attorneys, or other agents, is strictly prohibited during the Blackout Period. Lobbying in violation of this section may cause the proposal to be rejected.

"Lobbying" means influencing or attempting to influence action or non-action in connection with this RFP or the proposal, through direct or indirect oral or written communication with the Mayor, any member of the City Commission, the City Manager, or any other City employee. The following activities are not within the definition of "lobbying," and are permitted: requests for clarification submitted to the Purchasing Agent in accordance with this RFP, discussions with the Selection Committee as part of the selection process, the submission of additional information in response to a request by the City, and addressing the City Commission during the City Commission meeting at which the contract is awarded or all Proposals are rejected.

The Blackout Period begins on the date that this RFP is issued and ends when the contract is awarded or all Proposals are rejected.

26. **SELECTION PROCESS:**

For the purpose of selecting the most qualified firm, the City will use a competitive selection process as set forth in pertinent City and State procurement requirements. The procedure will involve the following steps:

- a. The City will advertise and mail notice of formal Requests For Proposals to interested Proposers.

- b. The City's Selection Committee will review, rank, and shortlist all Proposals received by the established deadline for submission. Oral presentations by the short-listed Proposers to clarify their Proposals may be required. These presentations will serve to explain implementation techniques integral to their written Proposal. Subsequent to the receipt of Proposals, the City may schedule a time for each requested oral presentation at a place convenient to the City.
- c. The City's Selection Committee will then rank each Proposal and prepare a recommendation for approval by the City Manager. Upon receipt of the City Manager's authorization, the City's Project Manager shall negotiate a contract with the highest ranked Proposer(s) approved by the City Manager. Should the Project Manager be unable to negotiate a satisfactory contract with the any of the shortlisted Proposers, the City Manager, or designee, shall terminate such negotiations with any or all of the shortlisted Proposers and begin negotiations with remaining Proposers based on ranking, until negotiations are successful or this RFP is cancelled.
- d. **The City Commission has the sole authority to bind the City to the terms and conditions of a contract that has been approved in a public meeting of the City Commission. The City Commission reserves the right to modify or reject any contract for the acquisition of goods and/or services submitted to it for consideration.**

### ANTI-COLLUSION STATEMENT

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

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

IT IS AGREED BY THE UNDERSIGNED PROPSEER THAT THE SIGNING AND DELIVERY OF THE PROPSAL REPRESENTS THE PROPOSER'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE FORGOING TERMS AND CONDITIONS AND SCOPE OF SERVICES, AND IF AWARDED, THIS CONTRACT WILL REPRESENT THE AGREEMENT BETWEEN THE PARTIES.

NAME OF FIRM: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_  
(MUST BE SIGNED BY A COMPANY OFFICER OR AUTHORIZED AGENT)

NAME TYPED: \_\_\_\_\_ TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY AND STATE: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

## **DRUG FREE WORKPLACE FORM**

The undersigned, in accordance with the Florida Statue 287.087 hereby certifies that  
\_\_\_\_\_ does:

(Proposer)

1. Publish a statement notifying 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 violation of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, any Available drug counseling, rehabilitation, 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 Proposal a copy of the statement specified in Paragraph 1.
4. In the statement specified in Paragraph 1, notify the employees that, as a condition of working on the commodities or contractual services that 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 1893 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 convicted.
6. Make a good faith effort to continue to maintain a drug free workplace through implementation of Paragraph 1, through Paragraph 5.

As the person authorized to sign this statement, I certify that this firm fully complies with the above requirements.

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

\_\_\_\_\_  
Signature & Title

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

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to \_\_\_\_\_  
(print name of the public entity)  
by \_\_\_\_\_  
(print individual's name and title)  
for \_\_\_\_\_  
(print name of entity submitting sworn statement)  
whose business address is \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and (if applicable) its Federal Employer Identification Number (FEIN) is \_\_\_\_\_

(If the entity has no FEIN, insert the Social Security Number of the individual signing this sworn statement above:

2. I understand that a "public entity crime" as defined in Paragraph 287.133(l)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any Proposal or CONTRACT for goods or services, any lease for real property, or any CONTRACT for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined In Paragraph 287.133(l)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133(l)(a), Florida Statutes means:

(a) A predecessor or successor of a person convicted of a public entity crime, or

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

- (b) 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. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, will be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months will be considered an affiliate.
5. I understand that a “person” as defined in Paragraph 287.133(l)(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 Proposal 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.

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

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

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

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

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

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

\_\_\_\_\_  
[Signature]

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Personally known \_\_\_\_\_

OR Produced Identification \_\_\_\_\_ (Type of identification)

Notary Public - State of \_\_\_\_\_

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

My commission expires \_\_\_\_\_

\_\_\_\_\_  
(Printed typed or stamped  
commissioned name of Notary Public)

## LOCAL VENDOR AFFIDAVIT

*Complete and submit this form ONLY if you qualify for local preference as provided in the City of Daytona Beach Purchasing Code.*

*A copy of the Proposer's Daytona Beach Business Tax Receipt must be submitted with this Affidavit.*

NAME OF PROPOSER: \_\_\_\_\_

LOCAL BUSINESS ADDRESS *(street address being used to claim Local Preference, including, zip code):*

\_\_\_\_\_  
The undersigned certifies under penalty of perjury each of the following:

The Local Business Address has continuously been used as a Permanent Place of Business with at least one full-time employee since \_\_\_\_\_.

*(Insert date)*

The Local Business Address has consistently offered or provided the goods or services being solicited by the City of Daytona Beach during the time referenced above.

The Local Business Address has not been established with the sole purpose of obtaining the advantages that may be granted pursuant to the Local Preference provisions of the City of Daytona Beach Purchasing Code.

\_\_\_\_\_  
Signature *(Must be same person as person signing the Proposal)*

\_\_\_\_\_  
Print Name/Title

Subscribed and sworn to before me

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Signature of Notary Public)

My commission expires: \_\_\_\_\_

**The City of Daytona Beach reserves authority to require a copy of the corporate charter, corporate income tax filing return, and any other documents(s) to evaluate the Proposer's Local Preference claim.**

## **SMALL BUSINESS INCUBATOR PROGRAM SCOPE OF SERVICES**

### **PURPOSE**

The purpose of this RFP is to secure the services of a private Service Provider to establish and manage a Small Business Incubator Program (SBIP) at the City of Daytona Beach Enterprise Center.

### **BACKGROUND**

Many people think starting a business is hard. Too many would-be entrepreneurs get stuck early in the process because they think only a certain type of person has what it takes to make it as a successful business owner. The reality is most people have a good idea and are creative. What most people lack, however, is the patience, determination, and the ability to plan. It is easy to become overwhelmed in the early stages of starting a business. The key is to have a place to go to develop a business plan based on established criteria for starting a new business; and professionals trained to assist individuals in developing a focus-based strategy for starting their business.

By 2050, it is predicted that 7 out of every 10 people will live in an urban area. As the world's population continues to gravitate towards urban centers, cities will become an increasingly important actor in addressing society's social, environmental, and economic challenges. In short, Daytona Beach will need to work to create synergy and partnerships among local entrepreneurs and professional business organizations to remain a leading urban growth area.

The City of Daytona Beach owns an Enterprise Center facility located at 847 Orange Avenue. This facility houses a Small Business Incubator Program (SBIP) under private management. The current agreement has expired and the City is desirous of securing a Service Provider to continue the SBIP.

The SBIP provides a nurturing, supportive, and instructive environment for upstart entrepreneurs during the critical stages of new business start-up. The Enterprise Center serves as the facility to provide requisite services with the goal of increasing the probability that start-up entrepreneurs will succeed.

The SBIP will serve as a facilitator in the economic growth in Daytona Beach and the surrounding communities.

### **THE VISION**

The vision of the Small Business Incubator Program (SBIP) is to stimulate economic growth through entrepreneurship and enterprise development. In order to achieve this vision, the SBIP will train, and nurture our community's entrepreneurial talent to fuel growth and create wealth. The SBIP will provide a sustainable environment in which new and emerging businesses can develop and achieve growth, with the end result being profitable businesses, job creation, capital generation, and a positive impact on the Daytona Beach Community.

To further accomplish the SBIP vision, the Service Provider will graduate business owners from the program who open a business which remains open for at least one year, preferably longer;

The SBIP should create a cohort of businesses that will share in the journey of establishing their new businesses together.

## **THE MODEL**

The SBIP model provides start-up companies with support and guidance, including one-on-one consulting, mentorship, networking, and other resources in a shared / individual workspace and/or customized web-based curriculum. The model also create synergy and partnerships among local entrepreneurs and professional business organizations that will equip start-up businesses with tools and skills to launch a successful business.

## **THE ENTERPRISE CENTER CHARACTERISTICS AND EXPENSES**

The Enterprise Center is a 5,000 square foot building with 20 parking spaces located in the heart of the Daytona Beach Midtown Redevelopment Area at 847 Orange Avenue, Daytona Beach, FL 32114.

The Center houses retail spaces, office spaces, and manufacturing spaces. Currently, the four front retail spaces and the four front offices are occupied. The four manufacturing spaces, however, are not occupied. The floor plan of the Enterprise Center is provided as Attachment A.

The estimated annual Enterprise Center operating expense is \$18,000.00, which includes utilities, grounds maintenance, and janitorial services.

## **THE ENTERPRISE CENTER FACILITY**

The Service Provider will manage the entire Enterprise Center and Small Business Incubator Program (SBIP). The City is offering the use of the entire facility under a license agreement for the sole purpose of providing the community with an affordable SBIP. In return, the Service Provider will accept and assume all janitorial costs, utility costs, maintenance costs (both interior, exterior, and mechanical systems), taxes, security cost, phone and internet costs, and property insurance.

The facility has electric, water, sanitary sewer, phone, and cable television. High speed internet is also available.

The facility property has a monument sign structure in front of the building. The structure accommodates 12 individual sign faces on both sides

The Service Provider will keep and maintain the premises in a neat, sanitary, and orderly manner to comply with all applicable City, County, and State regulations, and will bear the expense of any and all painting and decoration furnished to the interior and exterior of the building.

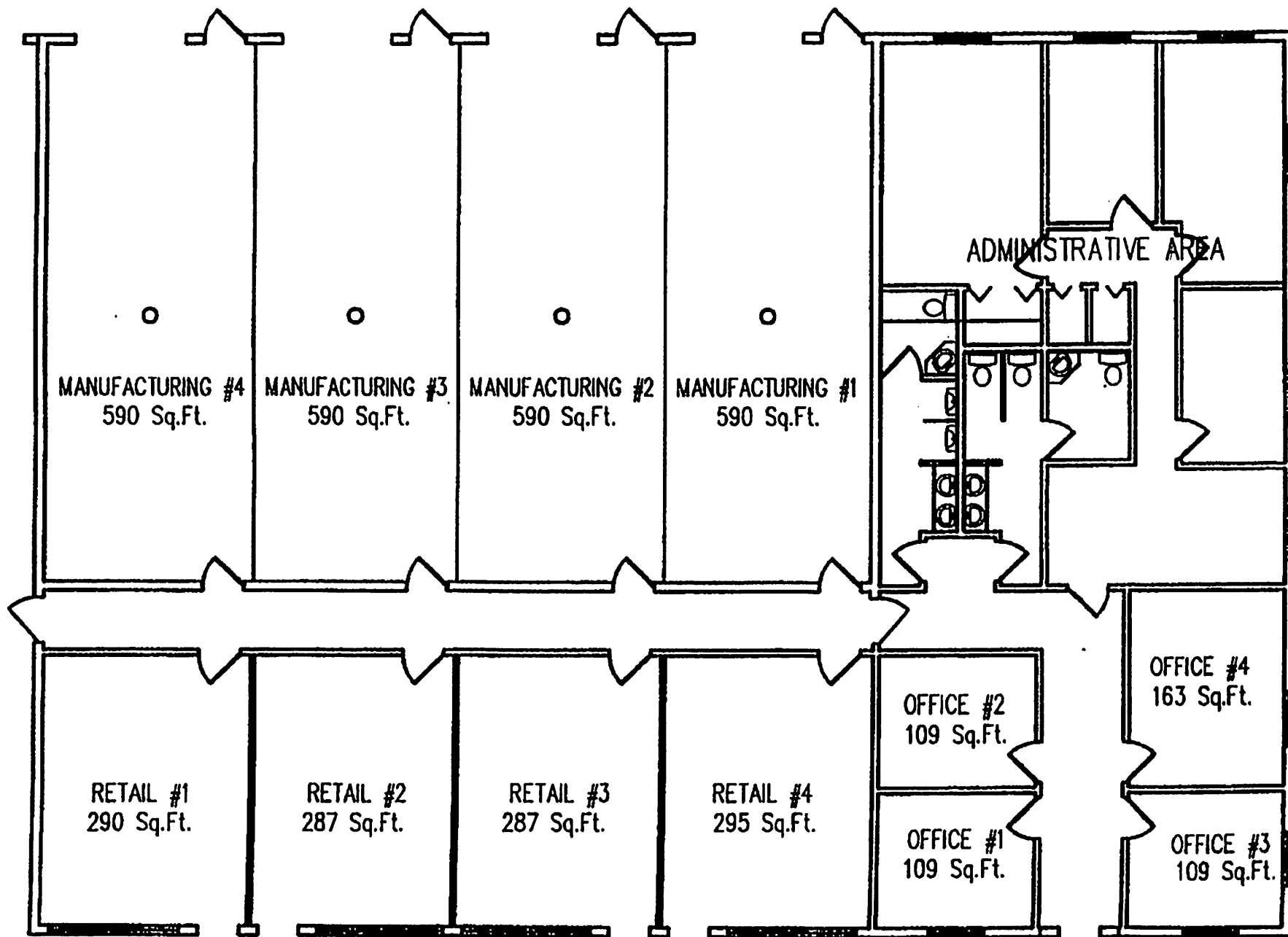
All improvements made and installed by the Service Provider will be paid by the Service Provider, will be approved by the City of Daytona Beach, will be code compliant, and will become the property of the City upon any termination of the negotiated agreement, including the cost of any improvements to or replacement of sign faces or sign additions.

## **SCOPE OF WORK**

The Proposer will provide services for the Small Business Incubator Program (SBIP) in order to further the vision of small business growth and expansion, including but not limited to:

- Identify, design, and launch a well-managed, fully equipped SBIP
- Develop a strategic plan and financial plan for the SBIP
- Provide staff to manage the facility and tenants participating in the program and utilizing space in the facility
- Develop criteria for tenant recruitment to include eligibility and selection criteria
- Offer affordable (i.e. less than or equal to market rates on a per square foot or per desk basis) flexible rents to tenants
- Provide shared and dedicated meeting space for tenants
- Enable basic support services (i.e. IT, and communication services)
- Develop programming, including, but not limited to, business mentorship, workforce development, and networking opportunities
- Develop tenant success metrics
- Encourage local and regional collaborations to enhance community, establish market opportunities, and attract talent and resources to Daytona Beach
- Enhance the value of start-ups and small businesses by increasing their probability of success
- Develop branding and marketing materials to promote the services and SBIP
- Recruit “anchor” tenants to off-set operating costs
- Develop a self-sustaining SBIP operation
- Emphasize diversity in recruitment and selection of tenant practices

The term of the agreement would be an initial term of five (5) years with two 5-year renewal options.



# DAYTONA BEACH ENTERPRISE CENTER

Scale 1"=10'

**GENERAL SERVICES CONTRACT  
CONTRACT NO. 0118-0890**

**THE PARTIES TO THIS CONTRACT** are the City of Daytona Beach, a Florida municipal corporation (the "City"), and **[insert full legal name of Contractor, include state where formed if Contractor is anything other than an individual person]** ("Contractor").

In consideration of the mutual covenants herein contained, the Parties agree as follows:

**Section 1. Scope of Services.** Contractor will provide Small Business Incubator Program management services as further described in Exhibit A, attached hereto and incorporated herein, to the City from time to time at the direction of the City during the Term of this Contract

**Section 2. Reserved.**

**Section 3. Reserved**

**Section 4. Reserved**

**Section 5. Standard of Performance.** Contractor's services will at a minimum meet the level care and skill ordinarily used by members of Contractor's profession performing the type of services provided herein within the State of Florida.

**Section 6. Relationship between Parties.** This Contract does not create an employee-employer relationship between the City and Contractor. Contractor is an independent contractor of the City and will be in control of the means and the method in which the requested work is performed. As an independent contractor, Contractor will be solely responsible for payment of all federal, state and local income tax, and self-employment taxes, arising from this Contract; and Contractor agrees to indemnify and hold harmless the City from any obligations relating to such taxes. The City will not make deductions from payments due, for such taxes, or for social security, unemployment insurance, worker's compensation, or other employment or payroll taxes.

**Section 7. Documents and Records.**

(a) All reports, estimates, logs, original drawings, and other materials furnished, prepared or executed by Contractor during the term of and in accordance with the provisions of this Contract will be the property of the City and delivered to the City upon demand or, if no demand has previously been made, upon completion of the particular task for which such materials were prepared, executed, or otherwise required.

(b) To the extent applicable, Contractor will comply with the requirements of Florida Statutes Section 119.0701, which may include the following:

(1) Keeping and maintaining public records that ordinarily and necessarily would be required by the public agency in order to perform the service provided herein.

(2) Providing 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 Ch. 119, Florida Statutes, or as otherwise provided by law.

(3) Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(4) Meeting all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of Contractor upon termination of this Contract for any reason, and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. When such records are stored electronically, providing the City all records stored electronically in a format that is compatible with the City's information technology systems.

## **Section 8. Effective Date and Term.**

The Effective Date of this Contract is the date on which the last Party signs it. The Term of this Contract is 5 years, commencing on the Effective Date. The City will have the option to renew this Contract for up to 2 Terms of five years each, by providing Contractor written notice at least 60 days before the end of the current Term.

## **Section 9. Termination.**

(a) The City may by written notice to Contractor terminate this Contract, in whole or in part, at any time, either for the City's convenience or because of the failure of the Contractor to fulfill its contractual obligations.

(1) Before terminating for convenience, City must provide Contractor at least 30 day's advance notice of termination. This Contract will terminate automatically and without need for further notice upon the expiration of the notice period.

(2) Before terminating due to Contractor's material breach of its contractual obligations, City must provide Contractor prior written notice, specifying the breach and demanding Contractor remedy the breach within 10 days of the notice, or within such longer period as may be reasonably required if the nature of the breach is that it cannot be remedied within 10 days of notice. This Contract will terminate automatically and without need for further notice if Contractor fails to remedy the material breach within the period described in the City's notice of breach.

In either instance described above, upon termination Contractor will immediately discontinue all services affected, unless the notice directs otherwise, and deliver to the City all data, drawings, specifications, reports, estimates, summaries, and any and all such other information and services of whatever type or nature as may have been accumulated by Contractor in performing this Contract, whether completed or in process.

(b) If the termination is for convenience, Contractor will be paid compensation for authorized services performed to the date of termination. If termination is due to Contractor's material breach, the City reserves all rights and remedies it may have under law due to such breach. Among other things, the City may take over the work and prosecute the same to completion by other agreements or otherwise; and in such case, the Contractor will be liable to the City for all reasonable additional costs occasioned to the City thereby.

(c) If after notice of termination for the Contractor's failure to fulfill contractual obligations it is judicially determined by a court of law that the Contractor had not so failed, the termination will be conclusively deemed to have been effected for the City's convenience. In such event, adjustment in payment to Contractor will be made as provided in subsection (b) of this Section for a termination for convenience.

(d) The rights and remedies of City provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Contract.

Section 10. Suspension of Services. If the notice of material breach issued by the City pursuant to the preceding Section so directs, Contractor will suspend services immediately upon receipt thereof, other than the work required to remedy the material breach.

**Section 11. Indemnification.** Contractor will indemnify and hold harmless the City, including the City's officers, employees, and agents, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Contractor, or Contractor's officers, employees, or agents, including subcontractors and other persons employed or use by Contractor in the performance of this Contract. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this agreement or otherwise by, any insurance provided pursuant to this agreement or otherwise.

**Section 12. Insurance.** Contractor will provide and maintain at Contractor's own expense, insurance of the kinds of coverage and in the amounts set forth in this Section. All such insurance will be primary and non-contributory with the City's own insurance. In the event any request for the performance of services presents exposures to the City not covered by the requirements set forth below, the City reserves the right to add insurance requirements that will cover such an exposure.

**(a) Coverage and Amounts.**

**(1) Workers Compensation Insurance** as required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of Contractor, employed at the site of the service or in any way connected with the work, which is the subject of this service. The insurance required by this provision will comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage.

**(2) Liability Insurance**, including (i) **Commercial General Liability coverage** for operations, independent contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring Contractor and any other interests, including but not limited to any associated or subsidiary companies involved in the work; and (ii) **Automobile Liability Insurance**, which will insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the Contractor in the performance of this Contract.

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE City AS AN ADDITIONAL INSURED. The limit of liability for each policy will be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate will be in an amount of no less than \$2,000,000. The Risk Manager for the City may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.

Unless specifically waived hereafter in writing by the Risk Manager, Contractor agrees that the insurer shall waive its rights of subrogation, if any, against the City on each of the foregoing types of required insurance coverage.

**(b) Proof of Insurance.** Contractor will furnish proof of insurance acceptable to the City prior to or at the time of execution of this Contract. Contractor will not commence work until all proof of such insurance has been filed with and approved by the City. Contractor will furnish evidence of all required insurance in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, the expiration dates.

If requested by the City, Contractor will furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the City.

**(c) Cancellation; Replacement Required.** Contractor will file replacement certificates 30 days prior to expiration or termination of the required insurance occurring prior to the acceptance of the work by the City. If a required policy is canceled without Contractor's prior knowledge Contractor will immediately notify the City immediately upon becoming aware that a required insurance coverage has been canceled for any reason, and promptly replace the canceled policy. The City expressly reserves the right or replace the canceled policy at Contractor's expense of Contractor fails to do so.

(d) **Termination of Insurance.** Contractor may not cancel the insurance required by this Contract until the work is completed, accepted by the City and Contractor has received written notification from the Risk Management Division of the City that Contractor may cancel the insurance required by this Contract and the date upon which the insurance may be canceled. The Risk Management Division of the City will provide such written notification at the request of Contractor if the request is made no earlier than two weeks before the work is to be completed.

(e) **Liabilities Unaffected.** Contractor's liabilities under this Contract will survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Similarly, Contractor's liabilities under this Contract will not be limited to the extent of by the existence of any exclusions or limitations in insurance coverages, or by Contractor's failure to obtain insurance coverage.

Contractor will not be relieved from responsibility to provide required insurance by any failure of the City to demand such coverage, or by City's approval of a policy submitted by Contractor that does not meet the requirements of this Contract.

**Section 13. Notice.** Unless otherwise expressly agreed herein, all notices, requests, and demands to or upon the Parties will be delivered by hand, delivered by a courier service, provided to a nationally recognized delivery service for overnight delivery, transmitted to a receiving fax machine followed by hard copy within two days, or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the addresses set forth herein:

To the City:  
John J. Drago, BEM Director  
Daytona Beach Utilities  
125 Basin St., Suite 204  
Daytona Beach, FL 32114  
Fax 386-671-3545

To Contractor:

---

---

---

---

---

provided, however, that either Party may change the person or address designated for receipt of the Party's notices, by providing written notice to the other Party.

**Section 14. Personnel** Contractor represents that Contractor has or will secure at Contractor's own expense, all personnel required in performing the services under this Contract. Such personnel will not be employees of or have any contractual relationship with the City.

All personnel engaged in the work will be fully qualified and will be authorized under state and local law to perform such services.

**Section 15. City's Responsibilities.** The City agrees to make available for review and use by the Contractor, reports, studies, and data relating to the services required. The

City will establish a project manager to meet periodically with the Contractor to facilitate coordination and ensure expeditious review of work product.

**Section 16. Limitation on Waivers.** Neither the City's review, approval, or acceptance of, or payment for, any of the services provided by Contractor, will be construed to operate as a waiver of the City's rights under this Contract. Contractor will be and always remain liable to the City in accordance with applicable law for any and all damages to the City caused by the Contractor's negligent or wrongful provision of any of the services furnished under this Contract.

Failure of the City to exercise any right or option arising out of a breach of this Contract will not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach. Furthermore, the failure of the City at any time to insist upon strict performance of any condition, promise, agreement or understanding set forth herein will not be construed as a waiver or relinquishment of the City's right to insist upon strict performance of the same condition, promise, agreement or understanding at a future time.

### **Section 17. Dispute Resolution.**

If a dispute exists concerning this Contract, the Parties agree to use the following procedure prior to pursuing any judicial remedies.

**(a) Negotiations.** A Party will request in writing that a meeting be held between representatives of each Party within 14 calendar days of the request or such later date that the Parties may agree to. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. The purpose of this meeting is to negotiate in the matters constituting the dispute in good faith. The Parties may mutually agree in writing to waive this step and proceed directly to mediation as described below.

**(b) Non-Binding Mediation.** Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described in Subsection (a) proves unsuccessful or the Parties mutually waive the subsection (a) procedure, the Parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all Parties for the exchange of points of view and (iii) separate meetings between the mediator and each Party to the dispute for the formulation of resolution alternatives. The Parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist with resolution of the dispute. The Parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Contract prevents the Parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a contract interpretation expert. Each Party will attend

will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization.

If the Parties fail to reach a resolution of the dispute through mediation, then the Parties are released to pursue any judicial remedies available to them.

## **Section 18. General Terms and Conditions.**

**(a) Amendments.** Except as otherwise provided herein, no change or modification of this Contract will be valid unless the same is in writing and signed by both Parties.

**(b) Assignments and Subcontracting.** No assignment or subcontracting will be permitted without the City's written approval.

**(c) Compliance with Laws and Regulations.** In providing all services pursuant to this Contract, Contractor will abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations will constitute a material breach of this Contract and will entitle the City to terminate this Contract immediately upon delivery of written notice of termination to the Contractor.

**(d) Truth in Negotiations Certificate.** Contractor hereby certifies that the wages and other factual unit costs supporting the compensation herein are accurate, complete, and current at the time of this Contract.

**(e) No Third Party Beneficiaries.** There are no third party beneficiaries of Contractor's services under this Contract.

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

**(g) Nondiscrimination.** Contractor will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their sex, race, creed, color, or national origin. Further, Contractor agrees to comply with all local, state, and federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical or mental impairment, or age. In particular, Contractor agrees to comply with the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable executive orders including, but not limited to, Executive Order No. 11246.

**(h) Principles in Construing Contract.** This Contract will be governed by and construed in accordance with the laws of the State of Florida. Captions and paragraph headings used herein are for convenience only, are not a part of this Contract and will not be deemed to limit or alter any provisions hereof or to be relevant in construing this Contract. The use of any gender herein will be deemed to be or include the other genders, and the use of the singular herein will be deemed to be or include the plural (and vice versa), wherever appropriate. If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding will only effect such word, phrase, clause, sentence or provision, and such finding will not affect the remaining portions of this Contract; this being the intent of the Parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

**(i) Venue.** The exclusive venue for any litigation arising out of this Contract will be Volusia County, Florida if in state court, or the U.S. District Court, Middle District of Florida if in federal court.

**(j) Litigation Costs.** Except where specifically provided herein, in case of litigation between the Parties concerning this Contract, each party will bear all of its litigation costs, including attorney's fees.

**(k) Force Majeure.** A force majeure event is an act of God or of the public enemy, riots, civil commotion, war, acts of government or government immobility (whether federal, state, or local) fire, flood, epidemic, quarantine restriction, strike, freight embargo, or unusually severe weather; provided, however, that no event or occurrence will be deemed to be a force majeure event unless the failure to perform is beyond the control and without any fault or negligence of the Party charged with performing or that Party's officers, employees, or agents. Whenever this Contract imposes a deadline for performing upon a Party, the deadline will be extended by one day for each day that a Force Majeure event prevents the Party from performing; provided, however, that the Party charged with performing and claiming delay due to a Force Majeure event will promptly notify the other Party of the Event and will use its best efforts to minimize any resulting delay.

**(l) Jury Trial Waived.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS CONTRACT, OR ANY DEALINGS BETWEEN THE PARTIES. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY DISPUTES BETWEEN THE PARTIES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

**(m) Authority to Bind Contractor.** The undersigned representative of Contractor represents and warrants the he or she is fully authorized to bind Contractor to the terms and conditions of this Contract.

**(n) Incorporation of RFP and Proposal.** The City's Request for Proposals 0118-0890, and the Contractor's responsive proposal are incorporated herein by reference as Composite Exhibit C and will remain on file in the Office of the City Clerk. In case of conflicts between the RFP and Proposal, the RFP will govern. In case of conflicts between Composite Exhibit C and other provisions of this Contract, including Exhibits A and B, this Contract will govern

**(o) Integration.** This Contract represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by either Party except as expressly set forth herein, or in other contemporaneous written agreements.

IN WITNESS WHEREOF, the Parties through their undersigned representatives have caused this Contract to be executed in duplicate original.

**THE CITY**

**CONTRACTOR**

By: \_\_\_\_\_  
> Mayor or >City Manager

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

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Letitia LaMagna, City Clerk

**Approved as to legal form:**

By: \_\_\_\_\_  
Robert Jagger, City Attorney

## **EXHIBIT A: Scope of Services**