

# 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 **December 6, 2018 at 2:00 PM**, at which time they will be publicly opened for the following:

CEI SERVICES FOR BEACH ST. STREETSCAPE, ORANGE AVE. TO BAY ST.

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

**THE RFP MAY BE OBTAINED** on-line at <a href="http://purchasing.codb.us">http://purchasing.codb.us</a> 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:** Construction Engineering and Inspection (CEI) services which are required for contract administration, inspection, and materials sampling and testing for the Beach Street Streetscape construction project.

<u>A NON-MANDATORY PRE-PROPOSAL CONFERENCE</u> will be held at the Daytona Beach Public Works Complex, 950 Bellevue Ave., Large Conference Room, Daytona Beach, Florida 32114, on November 26, 2018 at 2:00 PM. 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: CEI SERVICES FOR BEACH ST. STREETSCAPE, ORANGE AVE.

TO BAY ST.

PROPOSAL NO: 19174

THE CITY OF DAYTONA BEACH BY: JOANNE FLICK PURCHASING AGENT ISSUED: November 8, 2018

2/26/18

# THE CITY OF DAYTONA BEACH REQUEST FOR PROPOSALS No. 19174

#### **GENERAL CONDITIONS**

**THIS IS NOT A BID.** This is a Request for Proposals for professional services as defined in F.S. 287.055, 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. Negotiations will commence with the selected Proposer(s). Upon completion of satisfactory negotiations, the Proposal negotiated as the best will be recommended to the City Commission. A copy of Chapter 30 may be obtained on-line at <a href="https://www.codb.us">www.codb.us</a> or upon request.

## **GENERAL CONDITIONS**

- 1. <u>INSTRUCTIONS TO PROPOSERS</u>: To ensure consideration of your Proposal, please follow these instructions. One original and five (5) copies of all Proposal sheets must be executed and returned, <u>unless otherwise directed</u>. <u>Provide one pdf copy of the Proposal in its entirety on cd, dvd, or other electronic media.</u>
  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 <u>on the outside</u> the following information:
  - a. Name and address of Proposer
  - b. Proposal Number 19174
  - 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 other sheets requiring the Proposal's name. In order to ensure 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. <u>WITHDRAWAL OF PROPOSALS</u>: 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. **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.

9. <u>LOCAL PREFERENCE</u>: 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:

- 1. 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.
- 2. 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.
- 10. **AWARD**: Award will be made by the City to the firm deemed most qualified, 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 contract and the purchase, and 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, and in such instances, any required insurance, performance and payment bonds, may be required to run in favor of the CRA in addition to or in lieu of the City.

11. 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.

- 12. **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 Proposal.
- 13. **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.
- 14. **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.
- 15. <u>FLORIDA PUBLIC RECORDS LAW</u>: 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 a 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 request the return of the sealed Proposal in writing.
- 16. **EVALUATION CRITERIA**: The following weighted evaluation criteria will be used to evaluate Proposals and develop a recommendation for award for subsequent City Manager approval. 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.
  - a. **Experience and Past Performance** The Proposer must show experience in providing the type of service being requested on projects with similar scope and similar size as detailed in the RFP. The Proposer's past performance on similar projects must be described in detail demonstrating the ability to complete the project. Proposers shall provide five (5) similar projects successfully completed in the last ten (10) years. Proposers shall provide name and telephone number of client references on each

submitted project. (Weight = 35 points)

- b. **Proposed Staffing Plan** The Proposer must show adequacy of key personnel both in numbers and technical capability, to complete the contract if awarded. The Proposer shall identify all individuals that will be assigned to provide services as outlined in the RFP and briefly explain why those individuals were selected. An organizational chart must be provided. The respondent must identify the team leader and primary contact for the CITY'S Contract. Availability of staff to perform work during the duration of the Construction Contract as outlined in Section 3.0 of the Scope of Services must be shown. **(Weight = 15 Points)**
- c. Narrative describing approach to the Project The Proposer must explain their intended approach to performing the services on the project as outlined in the RFP. The narrative must show the Proposer's allocation of administrative and inspection personnel resources for duration of the project. Narrative must outline the Proposer's approach to submittal requirements and processes for FDOT, LAP and State Grant programs. Proposers shall describe similar approaches implemented and managed for other governmental clients and describes what assistance might be required from the CITY. Proposers must include a description of the Proposer's Quality Assurance (QA) Plan detailing the firm's approach and procedures to implementing a quality assurance program on the project. (Weight = 30 Points)
- d. Qualifications of Key Personnel The education and CEI experience in similar roadway reconstruction projects of Key Personnel must be demonstrated. Key personnel categories are defined in Section d.1 Key Personnel below. Evidence of the respondent firm being pre-qualified by FDOT to perform CEI Services (field and laboratory) must be included. Failure of the Proposer to provide FDOT pre-qualification will render the Proposal non-responsive and ineligible for consideration. Key personnel information including licenses and certificates such as PE, concrete and asphalt technician, MOT Supervisor, etc. shall be included. It must be demonstrated that key personnel meet pertinent FDOT laboratory and field inspection qualification designations for their respective job category as outlined in Section d.2 Qualifications below. (Weight = 20 Points)

The Proposer must demonstrate key personnel's experience and familiarity with the following:

- SRF funded project documentation
- Davis Bacon payroll requirements
- CIGP funded project documentation
- LAP funded documentation
- Urban roadway reconstruction
- Utility line removal and replacement
- Traffic signal and mast arm installation
- Street light installation
- Conversion of overhead utilities to underground construction.

#### d.1. Key Personnel

The following is a listing of Key Personnel:

- a) CEI Resident Compliance Specialist. The Resident Compliance Specialist will be responsible for surveillance of the Contractor's compliance with Construction Contract requirements. The Resident Compliance Specialist is responsible for reviewing, monitoring, evaluating and acting upon documentation required for Construction Contract Compliance, and maintaining the appropriate files thereof. Typical areas of compliance responsibility include EEO Affirmative Actions for the prime contractor and subcontractors, DBE Affirmative Action, Contractor Formal Training, Payroll and Subcontracts. The Resident Compliance Specialist must keep all related documents and correspondence accurate and up to date; attend all compliance reviews and furnish the completed project files for review.
- **b) CEI Senior Inspector/Senior Engineering Intern**. The Senior Inspector will inspect the construction work and conducting field tests and coordinating and managing the lower level inspectors.
- c) CEI Inspector/ Engineering Intern. The Inspector will be responsible for inspection assignments in assisting the Senior Inspector in performance of their duties. General supervision will be received from the Senior Inspector.
- **d) CEI Project Administrator/Project Engineer**. The Project Administrator will direct and assign specific tasks to the inspectors and assist in all phases of the construction and solution of problems.
- **e) CEI Senior Project Engineer**. The Senior Project Engineer will direct the construction engineering administration and inspection program. The Senior Project Engineer will also plan and organize the work of subordinate staff members.

#### d.2. Qualifications

Provide competent personnel qualified by experience and education. Submit the names of personnel proposed for assignment to the Contract, including a detailed resumes for each containing, at a minimum, education, and experience.

Personnel identified in the proposal are to be assigned as proposed and are committed to performing services under this Agreement. Personnel changes will require prior written approval from the CITY. Staff that has been removed shall be replaced by the Consultant within one week of notification.

Before the project begins, all project staff shall have a working knowledge of the current CPAM and must possess all the necessary qualifications/certifications for fulfilling the duties of the position they hold. Cross training of the Consultant's project staff is highly recommended to achieve a knowledgeable and versatile project inspection team but shall not be at any additional cost to the CITY and should occur as workload permits.

Minimum qualifications for the Consultant personnel are set forth as follows. The CITY Construction Engineer or designee will have the authority on questions relating to qualifications of Consultant's substituted personnel.

- a) CEI RESIDENT COMPLIANCE SPECIALIST Graduation from an accredited high school or equivalent with one (1) year of experience as a resident compliance officer on a construction project or two (2) years of assisting the compliance officer in monitoring the project. Should have prior experience in both State funded and Federal Aid funded construction projects with FDOT and knowledge of EEO/AA laws and FDOT's DBE and OJT programs. Ability to analyze, collect, evaluate data, and take appropriate action when necessary. Must attend all training workshops or meetings for Resident Compliance Specialists as determined necessary.
- **b) CEI SENIOR INSPECTOR/SENIOR ENGINEER INTERN** High school graduate or equivalent plus four (4) years of experience in construction inspection, two (2) years of which shall have been in roadway construction inspection or a Civil Engineering degree and one (1) year of road CEI experience. (Note: Senior Engineer Intern classification requires one (1) year experience as an Engineer Intern.)

Must have the following as required by the scope of work for the project:

#### QUALIFICATIONS:

CTQP Concrete Field Technician Level I

CTQP Asphalt Roadway Level I

CTQP Asphalt Roadway Level II CTQP Earthwork Construction Inspection Level I

CTQP Earthwork Construction Inspection Level II

**FDOT Intermediate MOT** 

CTQP Final Estimates Level I

#### **CERTIFICATIONS:**

**Nuclear Radiation Safety** 

# OTHER:

Should be experienced in FDOT Materials and Acceptance Certification (MAC) System input

Responsible for performing highly complex technical assignments in field surveying and construction layout, making, and checking engineering computations, inspecting construction work, and conducting field tests and is responsible for coordinating and managing the lower level inspectors. Work is performed under the general supervision of the Project Administrator.

c) CEI INSPECTOR/ENGINEER INTERN - High school graduate or equivalent plus two (2) years' experience in construction inspection, one (1) year of which shall have been in roadway construction inspection, plus the following:

Must have the following as required by the scope of work of the project:

#### QUALIFICATIONS:

CTQP Concrete Field Inspector Level I

CTQP Asphalt Roadway Level I

CTQP Earthwork Construction Inspection Level I

CTQP Final Estimates Level I

FDOT Intermediate MOT

#### CERTIFICATIONS:

Nuclear Radiation Safety
Florida Stormwater, Erosion, and Sedimentation Control Training and
Certification Program for Inspectors and Contractors

#### OTHER:

Completed the Critical Structures Construction Issues Course, and have received the Certification of Course Completion, or

A Civil Engineering degree with the required certifications and qualifications. (Note: Engineer Intern classification requires E.I.T. certificate.)

Responsible for performing assignments in assisting Senior Inspector in the performance of their duties. Receive general supervision from the Senior Inspector who reviews work while in progress. Civil Engineering graduates must obtain certifications within the first year of working as an inspector or Engineer Intern. Exceptions will be permitted on a case-by-case basis so long as qualifications and certifications are appropriate for specific inspection duties.

**d) CEI PROJECT ADMINISTRATOR/PROJECT ENGINEER** - A Civil Engineering degree plus two (2) years of engineering experience in construction of major roads, or for non-degreed personnel eight (8) years of responsible and related engineering experience, two (2) years of which involved construction of major road projects.

Receives general instructions regarding assignments and is expected to exercise initiative and independent judgment in the solution of work problems. Directs and assigns specific tasks to inspectors and assists in all phases of the construction project. Will be responsible for the progress and final estimates throughout the construction project duration. The following qualifications and certifications must also be documented:

#### QUALIFICATIONS:

FDOT Advanced MOT CTQP Final Estimates Level II

#### **CERTIFICATIONS:**

None

#### OTHER:

Attended CTQP Quality Control Manager Course and passed the examination.

Completed the Critical Structures Construction Issues, Self Study Course, and has received the Certification of Course Completion.

A Master's Degree in Engineering may be substituted for one (1) year of engineering experience

e) CEI SENIOR PROJECT ENGINEER - A Civil Engineering degree and registered in the State of Florida as a Professional Engineer (or if registered in another state, the ability to obtain registration in the State of Florida within six months) and six (6) years of engineering experience two (2) years of which were in major road construction; or for non-degreed engineer with the aforementioned registration and ten (10) years of engineering experience (two (2) years of which are in major road

construction). The following qualifications and certifications must also be documented:

QUALIFICATIONS:

FDOT Advanced MOT

Attended the CTQP Quality Control Manager course and passed the examination.

**CERTIFICATIONS:** 

None

OTHER:

A Master's Degree in Engineering may be substituted for one (1) year engineering experience.

- 18. <a href="REFERENCES">REFERENCES</a>: The contact person(s) listed as a reference shall be someone who has personal knowledge of the contractor's performance during the referenced project. Contact persons must have been informed that they are being used as a reference and that the City may be calling them. More than one person can be listed but all must have knowledge of the project. DO NOT list principals or officers who will not be able to answer specific questions regarding the project.
- 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. **NO COSTS**: The City of Daytona Beach bears no responsibility for any costs incurred in the preparation of the Proposal.
- 23. **DRUG FREE WORKPLACE**: The selected firm must provide the Drug Free Workplace Form in accordance with Florida Statute 287.087, prior to Contract award.
- 24. **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.

# 25. **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 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 selected firm. Should the Project Manager be unable to negotiate a satisfactory contract with the firm considered to be most qualified, the City Manager, or designee, shall terminate such negotiations with that firm and begin negotiations with the next most qualified firm and so on until negotiations are successful.
- 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.

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#### **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 PROPSER 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 FIR	KW:
SIGNATURE:	
	(MUST BE SIGNED BY A COMPANY OFFICER OR AUTHORIZED AGENT)
NAME TYPE	D:TITLE:
ADDRESS:	
CITY AND ST	ATE:
TELEPHONE	:EMAIL:

# DRUG FREE WORKPLACE FORM

The u	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 solicitation 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 contender 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.
	e person authorized to sign this statement, I certify that this firm fully complies with bove 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.

οy					(print r	name of the publ	lic entity)	
<i>,</i>	(pi	rint individud	ıl's no	ame and ti	itle)			
for	٠.	rint name of	entity	submittin	g sworn state	ement)		
whos	se bus	siness addres	s is					

- 2. I understand that a "public entity crime" as defined in Paragraph 287.133(l)(g), <u>Florida Statutes</u>, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services, 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 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.

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 ac	ive 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 ac	ive 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.	

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

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

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 61 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		
	,	yped or stamped oned 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 Affidavit.	e Proposer's Daytona B	each Business Tax Receipt must be submitted with this
NAME OF P	ROPOSER:	
LOCAL BUS	INESS ADDRESS (street o	address being used to claim Local Preference, including. zip code):
The undersign	ned certifies under penalty	y of perjury each of the following:
The Local Bu least one full-	siness Address has contin time employee since	nuously been used as a Permanent Place of Business with at (Insert date)
The Local Bu	usiness Address has cons	during the time referenced above.
	at may be granted pursuar	been established with the sole purpose of obtaining the nt to the Local Preference provisions of the City of Daytona
Signature (Mt	ust be same person as per	son signing the Proposal
Print Name/T	itle	
Subscribed an	nd sworn to before me	
This	day of	, 20
(Signature of	Notary Public)	
My commissi	on 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.

# CONSTRUCTION ENGINEERING AND INSPECTION SCOPE OF SERVICES

**FOR** 

CEI SERVICES FOR BEACH ST. STREETSCAPE, ORANGE AVE. TO BAY ST.

THE CITY OF DAYTONA BEACH

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# SCOPE OF SERVICES CONSTRUCTION ENGINEERING AND INSPECTION

#### 1.0 PURPOSE:

This scope of services describes and defines the Construction Engineering and Inspection (CEI) services which are required for contract administration, inspection, and materials sampling and testing for the construction project listed below. The project <u>may</u> be fully or partially funded through the Local Agency Program (LAP), or other State of Florida Economic Development Grants

For the Consultant to provide the services outlined in the Scope of Services they must be prequalified by the Florida Department of Transportation (Department).

#### **2.0 SCOPE**:

Provide services as defined in this Scope of Services and the referenced Florida Department of Transportation (Department) manuals, and procedures.

The Projects for which the Services are required are:

Description: Beach Street Streetscape, Orange to Bay

County: Volusia

Exercise independent professional judgment in performing obligations and responsibilities under this Agreement. Services provided by the Consultant shall comply with CITY'S General Conditions of the Construction Contract and Department manuals, procedures, and memorandums in effect as of the date of execution of the Agreement. Such Department manuals, procedures, and memorandums are found at the State Construction Office's website.

On a single Construction Contract, it is a conflict of interest for a Consultant to receive compensation from both the CITY and the Contractor either directly or indirectly.

#### 3.0 LENGTH OF SERVICE

The Consultant's services for each project shall begin upon Notice to Proceed from the CITY.

The anticipated start date for the Construction Contracts is 01/14/2019 and the duration of the construction contract is anticipated to be 300 calendar days.

#### **4.0 DEFINITIONS:**

- A. <u>Agreement</u>: The Professional Services Agreement between the CITY and the Consultant setting forth the obligations of the parties thereto, including but not limited to the performance of the work, furnishing of services, and the basis of payment.
- B. <u>City</u>: The City of Daytona Beach
- C. City Engineer: The Administrative Head of the City's Public Works Department

- D. <u>Contractor</u>: The individual, firm, or company contracting with the CITY for performance of work or furnishing of materials.
- E. <u>Construction Contract</u>: The written agreement between the CITY and the Contractor setting forth the obligations of the parties thereto, including but not limited to the performance of the work, furnishing of labor and materials, and the basis of payment.
- F. <u>Construction Project Administration Manual</u> (CPAM): The FDOT prepared manual that contains instructions needed to complete the administrative portion of Department contracts. The manual details outlines details needed to comply with items mandated by Florida Statutes, rules and contract specifications.
- G. <u>Construction Project Manager</u>: The CITY employee assigned to manage the Construction Engineering and Inspection Contract and represent the CITY during the performance of the services covered under this Agreement.
- H. <u>Construction Training/Qualification Program</u> (CTQP): The Department program for training and qualifying technicians in Aggregates, Asphalt, Concrete, Earthwork, and Final Estimates Administration. Program information is available at CTQP website.
- I. <u>Consultant</u>: The Consulting firm under contract to the CITY for administration of Construction Engineering and Inspection services.
- J. <u>Consultant Project Administrator</u>: The employee assigned by the Consultant to be in charge of providing Construction Contract administration services for <u>the Construction Project</u>.
- K. <u>Consultant Senior Project Engineer</u>: The Engineer assigned by the Consultant to be in charge of providing Construction Contract administration for one or more Construction Projects. This person may supervise other Consultant employees and act as the lead Engineer for the Consultant.
- L. Department: The Florida Department of Transportation (FDOT)
- M. <u>Engineer of Record</u>: The Engineer noted on the Construction plans as the responsible person for the design and preparation of the plans.
- N. <u>Public Information Officer</u>: The <u>City</u>'s <u>Chief Information Officer</u> assigned to manage the Public Information Program.

#### 5.0 <u>ITEMS TO BE FURNISHED BY THE CITY TO THE CONSULTANT:</u>

- A. The CITY, on an as needed basis, will furnish the following Construction Contract documents for each project. These documents may be provided in either paper or electronic format.
  - 1. Construction Plans,
  - 2. Specification Package,
  - 3. Copy of the Executed Construction Contract, and
  - 4. CITY Utility Department approved Material List

# 6.0 ITEMS FURNISHED BY THE CONSULTANT:

#### **6.1** Documents:

All applicable documents referenced herein shall be a condition of this Agreement.

# **Office Automation:**

Provide all software and hardware necessary to efficiently and effectively carry out the responsibilities under this Agreement.

Ownership and possession of computer equipment and related software, which is provided by the Consultant, shall remain at all times with the Consultant. The Consultant shall retain responsibility for risk of loss or damage to said equipment during performance of this Agreement. Field office equipment should be maintained and operational at all times.

#### **6.3** Field Office:

Provide a Field Office with sufficient room and furnishings to effectively carry out the responsibilities under this Scope of Services. Field Office shall be approved by the CITY.

# 6.4 <u>Vehicles</u>:

Vehicles will be equipped with appropriate safety equipment and must be able to effectively carry out requirements of this Agreement. Vehicles shall have the name and phone number of the consulting firm visibly displayed on both sides of the vehicle.

#### 6.5 Field Equipment:

Supply survey, inspection, and testing equipment essential to perform services under this Agreement; such equipment includes non-consumable and non-expendable items.

Hard hats shall have the name of the consulting firm visibly displayed.

Equipment described herein and expendable materials under <u>the</u> Agreement will remain the property of the Consultant and shall be removed at completion of the work.

Handling of nuclear density gauges shall be in compliance with their license.

Retain responsibility for risk of loss or damage to said equipment during performance of this Agreement. Field office equipment shall be maintained and in operational condition at all times.

#### **6.6** Licensing for Equipment Operations:

Obtain proper licenses for equipment and personnel operating equipment when licenses are required. The license and supporting documents shall be available for verification by the CITY, upon request.

Radioactive Materials License for use of Surface Moisture Density Gauges shall be obtained through the State of Florida Department of Health.

# 7.0 <u>LIAISON RESPONSIBILITY OF THE CONSULTANT:</u>

For the duration of the Agreement, keep the CITY'S Construction Project Manager informed of all significant activities, decisions, correspondence, reports, and other communications related to its responsibilities under this Agreement.

Facilitate communications between all parties (i.e. Engineer of Record, CITY, Utility Agencies, FDOT, etc.) ensuring responses and resolutions are provided in a timely manner. Maintain accurate records to document the communication process.

Submit all administrative items relating to Invoice Approval, Personnel Approval, Time Extensions, and Amendments to the CITY'S Construction Project Manager for review and approval.

#### **8.0 PERFORMANCE OF THE CONSULTANT:**

During the term of this Agreement and all Amendments thereof, the CITY will review various phases of Consultant operations, such as construction inspection, materials sampling and testing, and administrative activities, to determine compliance with this Agreement. Cooperate and assist CITY representatives in conducting the reviews. If deficiencies are indicated, remedial action shall be implemented immediately. CITY recommendations and Consultant responses/actions are to be properly documented by the Consultant. No additional compensation shall be allowed for remedial action taken by the Consultant to correct deficiencies. Remedial actions and required response times may include but are not necessarily limited to the following:

- A. Further subdivide assigned inspection responsibilities, reassign inspection personnel, or assign additional inspection personnel, within one week of notification.
- B. Immediately replace personnel whose performance has been determined by the Consultant and/or the CITY to be inadequate.
- C. Immediately increase the frequency of monitoring and inspection activities in phases of work that are the Consultant's responsibility.
- D. Increase the scope and frequency of training of the Consultant personnel.

#### 9.0 **REQUIREMENTS OF THE CONSULTANT:**

#### 9.1 General:

It shall be the responsibility of the Consultant to administer, monitor, and inspect the Construction Contract such that the project is constructed in reasonable conformity with the plans, specifications, and special provisions for the Construction Contract.

Observe the Contractor's work to determine the progress and quality of work. Identify discrepancies, report significant discrepancies to the <u>CITY</u>, and direct the Contractor to correct such observed discrepancies.

Inform the CITY'S Construction Project Manager of any significant omissions, substitutions, defects, and deficiencies noted in the work of the Contractor and the corrective action that has been directed to be performed by the Contractor.

#### 9.2 Survey Control:

Check or establish the survey control baseline(s) along with sufficient baseline control points and bench marks at appropriate intervals along the project in order to: (1) make and record measurements necessary to calculate and document quantities for pay items, (2) make and record pre-construction and final cross section surveys of the project site in those areas where earthwork (i.e., embankment, excavation, subsoil excavation, etc.) is part of the construction project, and (3) perform incidental engineering surveys.

Any questions or requests for "Waiver of Survey" should be directed to the CITY

#### 9.3 On-site Inspection:

Monitor the Contractor's on-site construction activities and inspect materials entering into the work in accordance with the plans, specifications, and special provisions for the Construction Contract to determine that the projects are constructed in reasonable conformity with such documents. Maintain detailed accurate records of the Contractor's daily operations and of significant events that affect the work. The CITY will monitor off-site activities and fabrication unless otherwise stipulated by this Agreement.

Monitor and inspect Contractor's Work Zone Traffic Control Plan and review modifications to the Work Zone Traffic Control Plan, including Alternate Work Zone Traffic Control Plan, in accordance with the CITY'S and Department's procedures. Consultant employees performing such services shall be qualified in accordance with the Department's procedures.

#### 9.4 Sampling and Testing:

Perform sampling and testing of component materials and completed work in accordance with the Construction Contract documents. The minimum sampling frequencies set out in the Department's Materials Sampling, Testing and Reporting Guide shall be met. In complying with the aforementioned guide, provide daily surveillance of the Contractor's Quality Control activities and perform the sampling and testing of materials and completed work items for verification and acceptance.

Determine the acceptability of all materials and completed work items on the basis of either test results or verification of a certification, certified mill analysis, DOT label, DOT stamp, etc.

The CITY will monitor the effectiveness of the Consultant's testing procedures through observation and independent assurance testing.

Sampling, testing and laboratory methods shall be as required by the Department's Standard Specifications, Supplemental Specifications or as modified by the Special Provisions of the Construction Contract.

Documentation reports on sampling and testing performed by the Consultant shall be submitted during the same week that the construction work is done.

Input verification testing information and data into the Department's Materials and Acceptance and Certification database (MAC) using written instructions provided by the Department.

#### 9.5 Engineering Services:

Coordinate the Construction Contract administration activities of all parties other than the Contractor involved in completing the construction project. Notwithstanding the above, the Consultant is not liable to the CITY for failure of such parties to follow written direction issued by the Consultant.

Services shall include maintaining the required level of surveillance of Contractor activities, <u>and</u> interpreting plans, specifications, and special provisions for the Construction Contract. Maintain complete, accurate records of all activities and events relating to the project and properly document all project changes. The following services shall be performed:

- (1) Schedule and conduct a Pre-construction conference with Contractor, CITY, and Department.
- (2) Verify that the Contractor is conducting inspections, preparing reports and monitoring all storm water pollution prevention measures associated with the project. For each project that requires the use of the NPDES General Permit, provide at least one inspector who has successfully completed the "Florida Stormwater, Erosion, and Sedimentation Control Training and Certification Program for Inspectors and Contractors". The Consultant's inspector will be familiar with the requirements set forth in the FEDERAL REGISTER, Vol. 57, No. 187, Friday, September 5, 1992, pages 4412 to 4435 "Final NPDES General Permits for Storm Water Discharges from Construction Sites" and the Department's guidelines.
- (3) Analyze the Contractor's schedule(s) (i.e. baseline(s), revised baseline(s), updates, as-built, etc.) for compliance with the contract documents. Elements including, but not limited to, completeness, logic, durations, activity, flow, milestone dates, concurrency, resource allotment, and delays will be reviewed. Verify the schedule conforms with the construction phasing and MOT sequences, including all contract modifications. Provide a written review of the schedule identifying significant omissions, improbable or unreasonable activity durations, errors in logic, and any other concerns as detailed in CPAM.
- (4) Analyze problems that arise on a project and proposals submitted by the Contractor; work to resolve such issues, and process the necessary paperwork.

(5) Monitor, inspect and document utility construction for conformance with CITY Utility Department Standards and the CITY Utility Department Approved Materials List. Facilitate coordination and communication between Utility Agency's representatives, Department's staff and Contractors executing the work. Identify potential utility conflicts and assist in the resolution of utility issues

Identify, review, and track progress of all Department (LAP,) or other State Economic Development Grant agreements. Address work progress, track reimbursement activities, and address betterment and salvage determination. Prepare all necessary documentation to support reimbursement activities and betterment and salvage determination.

- (6) Produce reports, verify quantity calculations and field measure for payment purposes as needed to prevent delays in Contractor operations and to facilitate prompt processing of such information in order for the CITY to make timely payment to the Contractor.
- (7) Prepare and make presentations for meetings and hearings arising from any dispute resolution hearings, as described in the General Conditions of the Construction Contract, in connection with the projects covered by this Agreement.
- (8) Monitor and submit reports to CITY and Department on each Contractor and Subcontractor's compliance with specifications and special provisions of the Construction Contract in regard to payment of predetermined wage rates in accordance with Department and any other Federal requirements.
- (9) The CITY will provide all required Public Information Services.
- (10) Prepare and submit to the CITY'S Construction Project Manager a WEEKLY, Construction Status report, in a format to be provided by the CITY.
- (11) Provide a digital camera for photographic documentation of pre-construction state and of noteworthy incidents or events during construction.

These photographs will be filed and maintained on the Consultant's computer using a Digital Photo Management system.

Photographs shall be taken the day prior to the start of construction and continue as needed throughout the project. Photographs shall be taken the days of Conditional, Partial and Final Acceptance.

#### 10.0 PERSONNEL

#### 10.1 **General Requirements:**

Provide qualified personnel necessary to efficiently and effectively carry out its responsibilities under this Agreement.

Unless otherwise agreed to by CITY, CITY will not compensate straight overtime or premium overtime for the positions of Senior Project Engineer, Project Administrator/Project Engineer, Contract Support Specialist and Assistant or Associate to any of these positions.

#### 10.2 Staffing:

Once authorized, the Consultant shall establish and maintain appropriate staffing throughout the duration of construction and completion of the final estimate.

Construction engineering and inspection forces will be required of the Consultant while the Contractor is working. If Contractor operations are substantially reduced or suspended, the Consultant will reduce its staff appropriately.

In the event that the suspension of Contractor operations requires the removal of Consultant forces from the project, the Consultant will be allowed ten (10) days maximum to demobilize, relocate, or terminate such forces.

#### 11.0 QUALITY ASSURANCE (QA) PROGRAM

#### 11.1 Quality Assurance Plan:

Within thirty (30) days after receiving award of an Agreement, furnish a QA Plan to the CITY'S Construction Project Manager. The QA Plan shall detail the procedures, evaluation criteria, and instructions of the Consultant's organization for providing services pursuant to this Agreement. Unless specifically waived, no payment shall be made until the CITY approves the Consultant QA Plan.

Significant changes to the work requirements may require the Consultant to revise the QA Plan. It shall be the responsibility of the Consultant to keep the plan current with the work requirements. The Plan shall include, but not be limited to, the following areas:

#### A. <u>Organization:</u>

A description is required of the Consultant QA organization and its functional relationship to the part of the organization performing the work under the Agreement. The authority, responsibilities and autonomy of the QA organization shall be detailed as well as the names and qualifications of personnel in the quality control organization.

# **B.** Quality Assurance Reviews:

Detail the methods used to monitor and achieve organization compliance with Agreement requirements for services and products.

#### C. Quality Assurance Records:

Outline the types of records which will be generated and maintained during the execution of the QA program.

#### **D.** Control of Sub consultants and Vendors:

Detail the methods used to control sub consultant and vendor quality.

#### **E.** Quality Assurance Certification:

An officer of the Consultant firm shall certify that the inspection and documentation was done in accordance with FDOT specifications, plans, standard indexes, and Department procedures.

#### 11.2 Quality Assurance Reviews:

Conduct semi-annual Quality Assurance Reviews to ensure compliance with the requirements of the Agreement. Quality Assurance Reviews shall be conducted to evaluate the adequacy of materials, processes, documentation, procedures, training, guidance, and staffing included in the execution of this Agreement. Quality Assurance Reviews shall also be developed and performed to achieve compliance with specific QA provisions contained in this Agreement. The semi-annual reviews shall be submitted to the CITY'S Construction Project Manager in written form no later than one (1) month after the review.

On asphalt projects, the CEI shall perform an initial QA review on its asphalt inspection staff after the Contractor has completed ten (10) full work days of mainline asphalt paving operations, or 25% of the asphalt pay item amount (whichever is less) to validate that all sampling, testing, inspection, and documentation are occurring as required of the CEI staff.

#### **11.3** Quality Records:

Maintain adequate records of the quality assurance actions performed by the organization (including subcontractors and vendors) in providing services and products under this Agreement. All records shall indicate the nature and number of observations made, the number and type of deficiencies found, and the corrective actions taken. All records shall be available to the, CITY upon request, during the Agreement term. All records shall be kept at the primary job site and shall be subject to audit review.

#### 12 <u>CERTIFICATION OF FINAL ESTIMATES:</u>

#### 12.1 Final Estimate and As-Built Plans Submittal:

Prepare documentation and records in compliance with the Agreement or Consultant's approved QA Plan and the Department's Procedures as required by the General Conditions of the Construction Contract.

#### **13 AGREEMENT MANAGEMENT:**

#### 13.1 General:

- (1) With each monthly invoice submittal, the Consultant will provide a Status Report for the Agreement. This report will provide an accounting of the additional Contract time allowed to date, an estimate of the additional calendar days anticipated to be added to the original schedule time, an estimate of the Agreement completion date, and an estimate of the Consultant funds expiration date per the Agreement schedule for the prime Consultant and for each sub consultant. Invoices not including this required information may be rejected.
- (2) When the Consultant identifies a condition that will require an amendment to the Agreement, the Consultant will communicate this need to the CITY'S Construction Project Manager for acceptance. Upon acceptance, prepare and submit an Amendment Request (AR), and all accompanying documentation to the CITY'S Construction Project Manager for approval and further processing. The AR is to be submitted at such time to allow the CITY 12 weeks to process, approve, and execute the AR. The content and format of the AR and accompanying documentation shall be in accordance with the instructions and format to be provided by the CITY.
- (3) The Consultant is responsible for performing follow-up activities to determine the status of each Amendment Request submitted.

#### 13.2 <u>Invoicing Instructions:</u>

Monthly invoices shall be submitted to the CITY in a format and distribution schedule defined by the CITY, no later than the 20th day of the following month.

If the monthly invoice cannot be submitted on time, notify the CITY prior to the due date stating the reason for the delay and the planned submittal date. Once submitted, the Consultant Project Principal or Senior Project Engineer shall notify the CITY'S Construction Project Manager via e-mail of the total delay in calendar days and the reason(s) for the delay(s).

All invoices shall be submitted to the CITY in electronic and hard copy formats in accordance with CITY procedures. The CITY'S Construction Project Manager must receive hard copy documentation within three (3) workdays of electronic submittal or the electronic submittal will be rejected. (Saturday, Sunday, and CITY holidays are not considered workdays).

All charges to the individual project will end no later than thirty (30) calendar days following final acceptance, or where all items of work are complete and conditional/partial acceptance is issued, unless authorized in writing.

A Final Consultant Invoice will be submitted to the CITY no later than the 60<sup>th</sup> day following Final Acceptance of the individual project or as requested by the CITY.

#### 14.0 OTHER SERVICES

Upon written authorization by the CITY, the Consultant will perform additional services in connection with the project not otherwise identified in this Agreement. The following items are not included as part of this Agreement, but may be required by the CITY to supplement the Consultant services under this Agreement.

- A. Assist in preparing for arbitration hearings or litigation that occurs during the Agreement time in connection with the construction project covered by this Agreement.
- B. Provide qualified engineering witnesses and exhibits for arbitration hearings or litigation in connection with the Agreement.
- C. Provide inspection services in addition to those provided for in this Agreement.
- D. Provide services determined necessary for the successful completion and closure of the Construction Contract.

#### 15.0 POST CONSTRUCTION CLAIMS REVIEW:

In the event the Contractor submits a claim for additional compensation and/or time after the Consultant has completed this Agreement, analyze the claim, engage in negotiations leading to settlement of the claim, and prepare and process the required documentation to close out the claim. Compensation for such services will be negotiated and effected through a separate Agreement.

#### **16.0 CONTRADICTIONS:**

In the event of a contradiction between the provisions of this Scope of Services and the Consultant's proposal as made a part of their Agreement, the provisions of the Scope of Services shall apply.

#### 17.0 THIRD PARTY BENEFICIARY

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a claim, cause of action, lien or any other damages or any relief of any kind pursuant to the terms or provisions of this Agreement.

#### 18.0 CITY OF DAYTONA BEACH AUTHORITY

The CITY shall be the final authority in considering modifications to the Construction Contract for time, money or any other consideration.

## PROFESSIONAL SERVICES CONTRACT CONTRACT NO. 19174

**THE PARTIES TO THIS CONTRACT** are the City of Daytona Beach (the "CITY"), and >CONSULTANT, a > corporation ("CONSULTANT").

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

**Section 1. Scope of Services.** CONSULTANT will provide professional Construction Engineering and Inspection Services for Beach St. Streetscape, Orange Ave. to Bay St to the CITY as further described in Exhibit A, attached hereto and incorporated herein by reference. Exhibit A includes deadlines for tasks and if applicable, sub-tasks, and lists any deliverables required.

**Section 2.** Reserved.

#### Section 3. Fees and Other Payments; Limitations.

- (a) Unless the Exhibits specifically provides for reimbursement of expenses, the Fee(s) described herein will be CONSULTANT's sole compensation for the services to be provided.
  - (b) [Insert one or the other for the first paragraph of (b) based on the type of Fee.]

The CITY will pay CONSULTANT a Fixed Fee of \$	Exhibit B, attached
hereto, includes an agreed-upon estimate of the time needed by CONSULTANT to	complete the work,
including hourly rates. This estimate is provided solely to allow the CITY to determin	ne that the Fixed Fee
is reasonable	

#### [-or-1

The CITY will pay CONSULTANT a not-to-exceed Fee of up to \$\_\_\_\_\_, based on the hourly rates shown on Exhibit B.

#### [Delete the following second paragraph of (b) where inapplicable.]

In entering into this Contract, the CITY has relied on CONSULTANT's good faith estimate of the time needed to complete the work, included in Exhibit B. CONSULTANT's obligation to complete the work will not be affected merely because CONSULTANT's estimate is in error. The **[Fixed Fee/not-to-exceed Fee]** will not be increased merely because CONSULTANT's estimate is in error.

- (c) Payment for expenses such as reimbursables will only be made if expressly provided for in Exhibit B, and will be capped at \$\_\_\_\_\_. In addition:
- (1) If Exhibit B specifically provides for reimbursement of travel-related expenses per diem, mileage will be paid in accordance with then-current IRS business related mileage rate and in such cases, only for travel in excess of 50 miles round trip.
- (2) If Exhibit B specifically provide for reimbursement of CONSULTANT's cost of using one or more subconsultants, such costs will be paid at the rates set forth in the Exhibits, and CONSULTANT certifies that such rates do not include a mark-up for the benefit of CONSULTANT.
- (d) Except for any expenses specifically provided for in Exhibit B, CONSULTANT will be solely responsible for all of costs CONSULTANT incurs in meeting its obligations herein.
- **Section 4. Billing; Manner of Payment**. In addition to requirements for payment established by applicable federal, state, or local law including the City Code, payment terms are as follows:

(a) No payment will be due for services performed until CONSULTANT submits a proper invoice. CONSULTANT may invoice the CITY no more frequently than monthly, and no sooner than 30 days after the date of the purchase order.

#### [Insert one or the other, as applicable]

- (b) As to the Fixed Fee, the CITY will pay based on the percentage of work completed and accepted. [-or]
- (b) At to the not-to-exceed Fee, the CITY will pay based on the hours billed and the hourly rate schedule (see Exhibit B), provided that CONSULTANT is completing the work in a timely fashion consistent with Exhibits; and provided, that the not-to-exceed maximum set forth in Section 3 above will not be exceeded unless approved by the CITY.
- (c) In order to be considered proper, the invoice must include all information and documentation that the CITY may need to verify the accuracy of the invoice and the amount of payment due based on the specific requirements of this Contract. Where payment is for the cost incurred for certain reimbursables (such as for subconsultants or air travel), the invoice must include proof that CONSULTANT has paid such costs.
- (d) The CITY will within 30 days after receipt of an invoice notify the CONSULTANT that the invoice is improper, or pay CONSULTANT the amount due.
- **Section 5. Standard of Performance.** CONSULTANT's services will at a minimum meet the level of care and skill ordinarily used by qualified members of CONSULTANT's profession performing the type of services provided referenced herein within the State of Florida.
- **Section 6. Relationship between Parties.** This Contract does not create an employee-employer relationship between the CITY and CONSULTANT. CONSULTANT 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, CONSULTANT will be solely responsible for payment of all federal, state, and local income tax, and self-employment taxes, arising from this Contract; and CONSULTANT 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. CONSULTANT will also be responsible for the performance of CONSULTANT's sub-consultants.

#### Section 7. Documents.

- (a) All reports, estimates, logs, original drawings, and other materials furnished, prepared or executed by CONSULTANT during the term of and in accordance with the provisions of this Contract are the property of the CITY. CONSULTANT will immediately deliver all such materials to the CITY upon demand or upon completion of the particular task for which such materials were prepared, executed, or otherwise required; or, where no demand has been made at the time that this Contract expires or is terminated, upon such expiration or termination.
- (b) CONSULTANT understands and agrees that CITY will have the right to reuse any plans and specifications, including construction drawings, that CONSULTANT is required to provide to CITY pursuant to this Contract without having to obtain further approvals from or providing additional compensation to CONSULTANT. CITY understands and agrees that CONSULTANT will not be liable for CITY's use of such plans and specifications other than for the purposes intended by this Contract.

#### Section 8. Public Records.

- (a) To the extent applicable, CONSULTANT will comply with the requirements of Florida Statutes Section 119.0701, which include the following:
- (1) Keeping and maintaining public records that the CITY requires for performance of the service provided herein.
- (2) Upon the request of the City Clerk of the CITY, (i) providing the City Clerk with a copy of requested public records or (ii) allowing inspection or copying of the records, within a reasonable time after receipt of the City Clerk's request, 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 until completion of this Contract, and following such completion if CONSULTANT fails to transfer such records to the CITY if CONSULTANT does not transfer such records to the CITY.
- (4) Upon completion of this Contract, keep and maintain public records required by the CITY to perform the service. CONSULTANT will meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY upon request from the City Clerk, in a format that is compatible with the CITY's information technology systems.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONSULTANT MUST CONTACT THE CITY CLERK, WHOSE CONTACT INFORMATION IS AS FOLLOWS:

(Phone) 386 671-8023 (Email) clerk@codb.us

(Address) 301 S. Ridgewood Avenue

Daytona Beach, FL 32114

- (b) Nothing herein will be deemed to waive CONSULTANT's obligation to comply with Section 119.0701(3)(a), Florida Statutes, as amended by Chapter 2016-20, Laws of Florida (2016).
- **Section 9. Effective Date and Term.** The Effective Date of this Contract is the last signature date set forth below (the "Effective Date"). This Contract will begin on the Effective Date and end when the work is completed, unless terminated sooner pursuant to the provisions below.

#### **Section 10.** Termination of Contract.

- (a) The CITY may terminate this Contract, in whole or in part, at any time, for the CITY's convenience or upon CONSULTANT's material breach, by providing written notice as follows:
- (1) Before terminating for convenience, the CITY must provide CONSULTANT 30 days' notice. Termination will be automatic upon the expiration of the 30-day period.
- (2) Before terminating due to CONSULTANT's material breach of its contractual obligations, CITY must provide CONSULTANT prior written notice, specifying the breach and demanding that CONSULTANT remedy the breach within 10 days of the notice. This Contract will terminate automatically and without need for additional notice if CONSULTANT fails to remedy the material breach within this 10 day period.

In either instance upon termination CONSULTANT 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 CONSULTANT in performing this Contract, whether completed or in process.

- (b) If the termination is for the CITY's convenience, CONSULTANT will be paid compensation for services performed to the date of termination.
- (c) If the termination is due to the CONSULTANT's material breach, the CITY reserves all rights and remedies it may have under law due to such breach.
- (d) If after notice of termination for the CONSULTANT's material breach it is determined by the CITY or by a court of law that the CONSULTANT had not materially breached this Contract, or that the CITY's notice for termination upon such breach was insufficient, the termination will be conclusively deemed to have been effected for the CITY's convenience. In such event, adjustment in payment to CONSULTANT will be made as provided in Subsection (b) of this Section.
- (e) 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 11. Suspension of Services.** If a notice of material breach issued by the CITY so directs, CONSULTANT will suspend services immediately upon receipt thereof, other than the work required to remedy the material breach.
- **Section 12. Indemnification.** CONSULTANT 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 CONSULTANT's negligent acts or omissions, or reckless or intentionally wrongful conduct in the performance of this Contract. For purposes of this Section, the term, "CONSULTANT," includes CONSULTANT's officers, employees, and agents, including subconsultants and other persons employed or used by CONSULTANT. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this agreement or otherwise.
- **Section 13. Insurance.** CONSULTANT will provide and maintain at CONSULTANT'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 if required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of CONSULTANT, 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 CONSULTANTs, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring CONSULTANT 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 CONSULTANT in the performance of this Contract.

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 may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE CITY AS AN ADDITIONAL INSURED. CONTRACTOR'S Commercial General Liability insurance policy shall provide coverage to CONTRACTOR, and CITY when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent Contractors, Property of CITY in Contractor's Care, Custody or Control or Property of CITY on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds). When CITY is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used to provide such Additional Insured status.

**(3) Professional Liability Insurance,** insuring CONSULTANT and other interests, including, but not limited to, any associated or subsidiary companies involved in the work, for errors or omissions in the performance of professional services to be rendered pursuant to this Contract. The limit of liability will be no less than \$1,000,000.

Professional Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date no later than the Effective Date and with a two year reporting tail beyond the annual expiration date of the policy.

**(b) Proof of Insurance.** CONSULTANT will furnish proof of insurance acceptable to the CITY prior to or at the time of execution of this Contract. CONSULTANT will not commence work until proof of all required insurance has been filed with and approved by the CITY. CONSULTANT will furnish such proof 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, and the expiration dates.

If requested by the CITY, CONSULTANT 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. CONSULTANT 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 CONSULTANT's prior knowledge CONSULTANT 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 to replace the canceled policy at CONSULTANT'S expense if CONSULTANT fails to do so
- (d) Termination of Insurance. CONSULTANT may not cancel the insurance required by this Contract until the work is completed, accepted by the CITY and CONSULTANT has received written notification from the Risk Management Division of the CITY that CONSULTANT 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 CONSULTANT if the request is made no earlier than two weeks before the work is to be completed.
- **(e) Liabilities Unaffected.** CONSULTANT's liabilities under this Contract will survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Similarly, CONSULTANT's liabilities under this Contract will not be limited by the existence of any exclusions or limitations in insurance coverages, or by CONSULTANT'S failure to obtain insurance coverage.

CONSULTANT 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 CONSULTANT that does not meet the requirements of this Contract.

**Section 14. Notices.** 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, or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the Parties' addresses. The Parties' contact information is as follows:

If to the CITY	If to the CONSULTANT
Mark Veenstra	
Project Manager	
Daytona Beach Public Works	
950 Bellevue Ave	
Daytona Beach, FL 32114	
Fax: 386-671-8620	Fax:

Either Party may change the name or address for receipt of that Party's notices, by providing the other Party written notice in the manner described above.

Section 15. Personnel. [Delete the following sentence if non-applicable] In order to induce the CITY into entering this Contract, CONSULTANT represents that [insert name and title] will generally perform or directly supervise the tasks assigned to CONSULTANT herein, and that CONSULTANT will not replace [insert name and title] without the CITY's prior written approval. CONSULTANT represents that CONSULTANT has or will secure at CONSULTANT'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.

The CITY will have the right to approve or reject any subconsultants that CONSULTANT proposes to use for work assigned.

**Section 16. CITY's Responsibilities.** The CITY agrees to make available for review and use by the CONSULTANT, reports, studies, and data relating to the services required. The CITY will establish a project manager to meet periodically with the CONSULTANT to facilitate coordination and ensure expeditious review of work product.

**Section 17. Limitation on Waivers.** Neither the CITY's review, approval, or acceptance of, or payment for, any of the services provided by CONSULTANT, will be construed to operate as a waiver of the CITY's rights under this Contract. CONSULTANT 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 CONSULTANT'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 18. 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 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.

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 19. 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.

CITY has hired CONSULTANT to personally perform the services provided herein on the basis of CONSULTANT's personal skills, and CONSULTANT's unique experience with and knowledge of the Project. Therefore, CONSULTANT will not assign or subcontract without the CITY's written approval, which may be withheld for any reason.

- **(c)** Compliance with Laws and Regulations. In providing all services pursuant to this Contract, CONSULTANT 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 CONSULTANT.
- (d) Truth in Negotiations Certificate. CONSULTANT 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 CONSULTANT'S services under this Contract.
- (f) Contingency Fee. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, 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 CONSULTANT, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

- (g) Nondiscrimination. CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. CONSULTANT 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, CONSULTANT 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, CONSULTANT 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.
- (I) 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 CONSULTANT. The undersigned representative of CONSULTANT represents and warrants the he or she is fully authorized to bind CONSULTANT to the terms and conditions of this Contract.
- (n) Incorporation of RFP and Proposal. The CITY's Request for Proposals 19174, and the CONSULTANT'S responsive proposal are incorporated herein by reference as **Composite Exhibit C**. **Composite Exhibit C** is not attached but will remain on file with the CITY's Purchasing Agent and will be available upon request made to 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	CONSULTANT
By:	By:
Attest: Letitia LaMagna, City Clerk	Date:
Date:	
Approved as to legal form:	
By:Robert Jagger, City Attorney	

# **Exhibit A: Scope of Services**

# **Exhibit B: Fee Schedule**

Composite Exhibit C is not attached. It will be kept on file with the Purchasing Agent, and will be made available upon request made to the City Clerk